

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 228

SPONSOR: Senator Clary

SUBJECT: Easements/ Cemetery Ingress & Egress

DATE: December 14, 2001 REVISED: 01/08/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law provides that the family and descendants of a deceased person have an easement for visiting and maintaining the gravesite of their deceased relative. Senate bill 228 provides that the members of any not-for-profit organization whose purposes include the preservation of Florida's history may utilize that same easement.

This bill has an effective date of October 1, 2002.

This bill substantially amends section 704.08 of the Florida Statutes.

II. Present Situation:

Chapter 704, F.S., is entitled "Easements". Section 704.08, F.S., provides that the relatives and descendants of any person buried in a cemetery have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. The owner of the land may designate the easement. If the cemetery is abandoned or otherwise not being maintained, such relatives and descendants may request the owner to provide for reasonable maintenance of the cemetery. If the owner refuses, or fails to maintain the cemetery, the relatives and descendants have the right to maintain the cemetery.

The property rights of the owner of real property as to property upon which graves have been placed is described as:

Where an owner of land has appropriated a small part thereof as a private burying ground, and it has been used as such, the land cannot be conveyed or devised so as to interfere with such use, and he and his grantees, devisees, and heirs hold the title in trust

for the benefit of those entitled to burial in it, who also have a right to visit it for the purpose of repairing, beautifying, and protecting the graves and grounds, and for these purposes a right of ingress and egress from the nearest public road, to be exercised at reasonable times and in a reasonable manner In a conveyance or devise of land, part of which the owner appropriated as a private burying ground, it is not necessary to expressly reserve the right of burial therein; such reservation being implied, and the purchaser charged with notice of the fact that it has been dedicated to burial purposes, and of the rights of those entitled to use it.

See Mingledorff v. Crum, 388 So.2d 632, 635-36 (Fla. 1st DCA 1980), quoting *Hines v. State*, 126 Tenn. 1, 149 S.W. 1058, 42 L.R.A. (N.S.) 1138.

Pursuant to s. 497.345(1), F.S., a county or municipality which has within its jurisdiction an abandoned cemetery, or a cemetery that has not been reasonably maintained for over six months, may take necessary and appropriate action, upon notice to the Department of Banking and Finance, to provide for the maintenance and security of the cemetery. If a cemetery is abandoned or has not been reasonably maintained for over six months, the county or municipality may maintain an action against the cemetery owner pursuant to s. 497.345(3), F.S., to recover the value of any maintenance or security it provides.

III. Effect of Proposed Changes:

This bill amends s. 704.08, F.S., to provide that the members of any not-for-profit organization whose purposes include the preservation of Florida's history have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. If the cemetery is abandoned or otherwise not being maintained, the members of such organizations may request the owner to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the members of such organizations have the right to maintain the cemetery.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The phrase “members of any not-for-profit organization whose purposes include the preservation of Florida's history” is not defined in the bill. Landowners and organizations could possibly be confused as to which specific groups the phrase refers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Clarifies that only non-profit organizations that are registered with the Department of State, and whose purposes include the preservation of Florida’s history, have an easement for visiting or maintaining cemeteries.

Clarifies that the non-profit organizations only have easement rights if there are no relatives or descendants of the person buried in the cemetery.