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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 343 - 348
and insert:

Section 10. Section 163.035, Florida Statutes, is created
to read:

163.035 Establishment of recreational customary use.—

(1) DEFINITION.—The term “governmental entity” includes an
agency of the state, a regional or a local government created by
the State Constitution or by general or special act, any county
or municipality, or any other entity that independently



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12 exercises governmental authority.

13 (2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE.—A
14 governmental entity may not adopt or keep in effect an ordinance
15 or rule that finds, determines, relies on, or is based upon
16 customary use of any portion of a beach above the mean high-
17 water line, as defined in s. 177.27, unless such ordinance or
18 rule is based on a judicial declaration affirming recreational
19 customary use on such beach.

20 (3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON
21 PRIVATE PROPERTY; JUDICIAL DETERMINATION.—A governmental entity
22 that seeks to affirm the existence of a recreational customary
23 use on private property must follow the procedures set forth in
24 this subsection.

25 (a) Notice.—The governing board of a governmental entity
26 must, at a public hearing, adopt a formal notice of intent to
27 affirm the existence of a recreational customary use on private
28 property. The notice of intent must specifically identify the
29 following:

30 1. The specific parcels of property, or the specific
31 portions thereof, upon which a customary use affirmation is
32 sought;

33 2. The detailed, specific, and individual use or uses of
34 the parcels of property to which a customary use affirmation is
35 sought; and

36 3. Each source of evidence that the governmental entity
37 would rely upon to prove a recreational customary use has been
38 ancient, reasonable, without interruption, and free from
39 dispute.



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The governmental entity must provide notice of the public hearing to the owner of each parcel of property subject to the notice of intent at the address reflected in the county property appraiser's records no later than 30 days before the public meeting. Such notice must be provided by certified mail with return receipt requested, publication in a newspaper of general circulation in the area where the parcels of property are located, and posting on the governmental entity's website.

(b) Judicial determination.—

1. Within 60 days after the adoption of the notice of intent at the public hearing, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court in the county in which the properties subject to the notice of intent are located. The governmental entity must provide notice of the filing of the complaint to the owner of each parcel of property subject to the complaint in the same manner as is required for the notice of intent in paragraph (a). The notice must allow the owner receiving the notice to intervene in the proceeding within 45 days after receiving the notice. The governmental entity must provide verification of the service of the notice to the property owners required in this paragraph to the court so that the court may establish a schedule for the judicial proceedings.

2. All proceedings under this paragraph shall be de novo. The court must determine whether the evidence presented demonstrates that the recreational customary use for the use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. There is no presumption regarding the existence of a recreational



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customary use with respect to any parcel of property, and the
governmental entity has the burden of proof to show that a
recreational customary use exists. An owner of a parcel of
property that is subject to the complaint has the right to
intervene as a party defendant in such proceeding.

(4) APPLICABILITY.—This section does not apply to a
governmental entity with an ordinance or rule that was adopted
and in effect on or before January 1, 2016, and does not deprive
a governmental entity from raising customary use as an
affirmative defense in any proceeding challenging an ordinance
or rule adopted before July 1, 2018.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 57

and insert:

amending s. 66.021 F.S.; authorizing a person with a
superior right to possession of real property to
recover possession by ejectment; declaring that
circuit courts have exclusive jurisdiction; providing
that a plaintiff is not required to provide any
presuit notice or demand to a defendant; requiring
that copies of instruments be attached to a complaint
or answer under certain circumstances; requiring a
statement to list certain details; providing for
construction; amending s. 82.01, F.S.; redefining the
terms "unlawful entry" and "forcible entry"; defining
the terms "real property," "record titleholder," and
"unlawful detention"; amending s. 82.02, F.S.;



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exempting possession of real property under part II of
ch. 83, F.S., and under chs. 513 and 723, F.S.;
amending s. 82.03, F.S.; providing that a person
entitled to possession of real property has a cause of
action to regain possession from another person who
obtained possession of real property by forcible
entry, unlawful entry, or unlawful detainer; providing
that a person entitled to possession is not required
to give a defendant presuit notice; requiring the
court to award plaintiff extra damages if a defendant
acted in a willful and knowingly wrongful manner;
authorizing bifurcation of actions for possession and
damages; requiring that an action be brought by
summary procedure; requiring the court to advance the
cause on the calendar; renumbering and amending s.
82.045, F.S.; conforming provisions to changes made by
the act; amending s. 82.04, F.S.; requiring that the
court determine the right of possession and damages;
prohibiting the court from determining question of
title unless necessary; amending s. 82.05, F.S.;
requiring that the summons and complaint be attached
to the real property after two unsuccessful attempts
to serve a defendant; requiring a plaintiff to provide
the clerk of the court with prestamped envelopes and
additional copies of the summons and complaint if the
defendant is served by attaching the summons and
complaint to the real property; requiring the clerk to
immediately mail copies of the summons and complaint
and note the fact of mailing in the docket; specifying



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that service is effective on the date of posting or mailing; requiring that 5 days elapse from the date of service before the entry of a judgment; amending s. 82.091, F.S.; providing requirements after a judgment is entered for the plaintiff or the defendant; amending s. 82.101, F.S.; adding quiet title to the types of future actions for which a judgment is not conclusive as to certain facts; providing that the judgment may be superseded by a subsequent judgment; creating s. 163.035, F.S.; defining the term "governmental entity"; prohibiting a governmental entity from adopting or keeping in effect certain ordinances and rules based upon customary use; providing an exception; requiring a governmental entity seeking to affirm the existence of a recreational customary use on private property to follow certain procedures; providing notice requirements for a governmental entity seeking to affirm such recreational customary use; requiring the governmental entity to file a specified complaint with a certain circuit court within a certain time; providing notice requirements for the filing of such complaint; specifying that proceedings resulting from such complaint are de novo; requiring the court to consider specific factors when determining whether a recreational customary use exists; specifying that the governmental entity has the burden of proof; specifying that an owner of a parcel of property subject to the complaint has the right to intervene in



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157 the proceeding; providing applicability; repealing s.
158 82.061,