

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 144

SPONSOR: Transportation Committee and Senator Hargrett

SUBJECT: Murphy Act Lands

DATE: March 4, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
3.	<u>Hayes</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill addresses road easements reserved to the state when property, acquired by the Board of Trustees of the Internal Improvement Trust Fund under the Murphy Act of 1937, was sold to private owners. These easements were for 100 feet on either side of the center line of a state road designated on the date the property was transferred to a private owner. The bill amends s. 253.82, F.S., to place these reservations of easements in the control of the governmental entity currently owning and maintaining the adjacent road. The easements are transferred to either the Department of Transportation, a county, or a municipality. Each governmental entity is then required to establish a procedure for review of any deed containing a reservation and the bill establishes requirements for the review and a determination whether the easement exists on a property and whether the easement is needed for a road improvement.

When it is determined an easement *substantially denies* the owner of the property containing the easement the current economic use of the property, the owner is entitled to apply for release of all or part of the easement or for payment for the real property and improvements not retained by the owner. "Current economic use" is defined to mean the use of the property on the date notice of the easement is filed under s. 712.05, F.S., or if notice has not been received, upon the date the property owner applies for release of the easement. If the governmental entity and the property owner are unable to agree as to either the substantial denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration to resolve these issues. If mediation is unsuccessful, the property owner may demand binding arbitration pursuant to the process in chapter 44, F.S.

The bill amends s. 712.04, F.S., to extinguish all Murphy Act reservations of easements pursuant to the Marketable Record Title Act on July 1, 2002, unless the reservation is preserved. The bill authorizes a governmental entity to preserve a reservation, or a portion of the reservation, for a period of 10 years when it is necessary for future transportation projects which are scheduled for construction in adopted transportation plans.

The bill substantially amends the following sections of the Florida Statutes: 253.82, 712.04, and 712.05.

II. Present Situation:

A. Background

Murphy Act lands are lands acquired by the state due to nonpayment of taxes after the depression. The lands were acquired pursuant to law enacted in 1937, the Murphy Act (General Law 18296). The Murphy Act provided for sale of 2-year old property tax certificates upon a demand for public sale. If after 2 years from the date a tax certificate became eligible for sale there had not been a demand for sale, the act provided “. . . fee simple title to all lands, against which there remains outstanding tax certificates . . . shall become absolutely vested in [the] State of Florida. . . .”

In May of 1940, the Trustees of the Internal Improvement Trust Fund (Trustees) adopted a motion relating to all lands acquired pursuant to the Murphy Act. The motion reserved rights-of-way through any parcel where there was a designated State Highway. The Trustees then offered numerous parcels for sale.

Future advertisements for sale of such property and the deed conveying title contained the following reservation:

Upon the State of Florida easement for State Road Right of Way Two Hundred (200) feet wide, lying equally on each side of the center line of any State Road existing on the date of this deed through so much of any parcel herein described as is within One Hundred (100) feet of said center line.

Although the original deed conveying title to the property contained the reservation and all deeds in the chain of title *should have contained* the reservation, problems have arisen. In some cases, the language was eliminated from later recorded deeds. In other cases, when property was subdivided, the reservation language was carried forward in all parcels whether that parcel was or was not within 100 feet of a state road. Finally, in some instances the road has been relocated and property which is currently on the road was not within 100 feet of the original center line.

Property owners learn of these reservations in several ways. Where the language is in the deed, they are on notice of the easement at the time of purchase. When the language is not in the deed, the reservation either may be identified as an exception in a title policy or is discovered when the state, a city, or a county notifies the property owner some or all of the reservation will be used for a transportation project.

A number of problems have arisen due to the lack of notice of the reservation. In some cases, building permits have been issued for construction within the easement because the easement did not appear on the deed. In some cases, the property has been subdivided into lots so small that, when the easement is considered, no structure on the property can meet current building code requirements. In these cases, the problem arose with some past transfer of the property which did not include the easement language in the deed and was compounded where a title company did not research sufficiently to identify the easement.

B. Reservation Release Process

Chapter 253.03, F.S., provides for the Trustees to manage all lands owned by the state. To carry out this authority for the reservations on properties acquired pursuant to the Murphy Act, the Trustees adopted administrative rule 18-2.018, F.A.C. This rule provides road right-of-way reservations will be released to the record owner when an application is submitted, provided a recommendation from the transportation authority with jurisdiction has been obtained and the Trustees determine there is no further need for the reservation.

To implement this rule, the Trustees adopted an Application For Release of Reservations. The applicant must complete the information on the application, obtain approval by the Department of Transportation (DOT), and, where a road has been transferred, obtain approval from the county or city government determined to have authority over the adjacent roadway. Current proof of title to the property containing the reservation must be attached, which must include either title insurance, title binder, or title commitment obtained within the last 6 months, or an opinion of title from an attorney. Additionally, a survey may be required. Finally, there is an application fee of \$300 payable to the Department of Environmental Protection (DEP). Upon receipt of the completed application, all required documents, and the \$300 fee, the DEP staff will review and approve or deny the application.

This application process is applicable for obtaining a statement of release for any deed which contained the reservation language, whether the impacted property is within 100 feet of the center line of a state road or not.

C. Property Owners' Recourse

A property owner's recourse depends in part on the specific circumstances and the road construction authority's response to the owner. First, in situations where the reservation language appears in the deed but there is not an actual reservation, property owners must either ignore the language or must have a statement from the Trustees that no easement exists. To obtain such a statement, the property owner must complete the application process, including obtaining the approval of the governmental entity having jurisdiction of the adjacent roadway, attaching all required documentation, and paying the \$300 fee.

Second, where the easement exists but the governmental entity having jurisdiction over the adjacent road has no need for the property and agrees to a release, the property owner must obtain the approval for the release, file the application with all required documentation, and pay the \$300 fee.

Finally, where the governmental entity having jurisdiction of the roadway does want to reserve the property, the easement is not released, but the property owner has beneficial use of the easement until such time as the property is taken for a road. However, the property owner cannot obtain a building permit for construction in the easement. Where the DOT or a city or county finds it wants to retain the easement for future transportation purposes, the applicant applying for a release has no recourse except against any title insurance where notice was not provided, even if the remaining property cannot be used because of the manner it was subdivided in the past or because of the location of structures in the easement. In some instances, at the time a

governmental entity uses the property it has paid to relocate individuals severely impacted by the taking of the easement.

D. Marketable Record Title Act

The Marketable Record Title Act, set out in ch. 712, F. S., extinguishes all interests in land prior to the root title except interests of federal or state government reserved in the deed transferring title from a federal or state agency. In this instance, all reservations in these lands are extinguished if they are over 30 years old except the easements reserved by the Board of Trustees of the Internal Improvement Trust Fund.

III. Effect of Proposed Changes:

The bill transfers the ownership rights to all easements on property acquired pursuant to the Murphy Act, to the governmental entity with current jurisdiction of the adjacent roadway. The bill amends s. 253.82, F.S., to vest all reservations of easements in deeds issued by the Board of Trustees of the Internal Improvement Trust Fund to convey land acquired under the Murphy Act, by operation of law and without the necessity of instruments of conveyance from the Trustees, in the governmental entity having right and title to the road to which the reservations are adjacent. All reservations adjacent to a road that was designated as a state road at the time of the reservation and which is currently held by the state are conveyed to the DOT. All reservations adjacent to a road designated as a state road at the time of the reservation and which is not held by the state and which is located in an unincorporated area of a county or on a road held by the county within any incorporated area are conveyed to the respective counties. All other reservations within incorporated areas adjacent to a road designated as a state road at the time of the reservation and which are not otherwise conveyed to the state or the county are conveyed to the incorporated area. The conveyance includes all right, title, and interests in the reservation held by the Trustees.

Each entity holding title to Murphy Act reservations must establish a procedure for review of any deed containing a reservation when a review is requested or a road project is anticipated. The review process must provide for:

- A determination of whether the language of the deed created a reservation at the time of the original conveyance;
- Review of any release of the reservation provided by the property owner;
- The recording of a notice of the non-existence of a reservation if reservation language in the deed does not impact the property;
- A determination of whether any or all of the reservation may be released, and a form for recording the release;
- A process to allow for review through mediation if requested by the property owner or through binding arbitration pursuant to the process in ch. 44, F.S.; and
- Any administrative fee charged cannot exceed the actual cost to review the deed, perform an appeal, and pay for any recording expenses, with no administrative fee to exceed \$300.

Any owner of property encumbered by a Murphy Act road reservation who has been denied a release of all or part of the reservation, or who has received notice of a governmental entity's intent to preserve the reservation under s. 712.05, F.S., may appeal to the entity and show the

reservation *substantially denies* the property owner the current economic use of the property held by the owner. “*Current economic use*” is defined to mean the use of the property on the date notice of the easement is filed under s. 712.05, F.S., or, if notice has not been received, upon the date the property owner applies for release of the easement.

If the governmental entity determines the reservation substantially denies the property owner the current economic use of the property, the entity must either purchase the real property and improvements not retained by the property owner in fee simple title or release all or part of the reservation as necessary to allow for the current economic use of the property. If the governmental entity and the property owner are unable to agree as to either the substantial denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration to resolve these issues. If mediation is unsuccessful the property owner may demand binding arbitration pursuant to the process in chapter 44, F.S. Prior to the payment of any compensation, the property owner must provide the governmental entity copies of any title insurance policies and notice of any compensation received from a title company related to the easement and the amount of any compensation received or due as a result of such title insurance policies shall be offset against the amount of compensation paid by the governmental entity.

The process for release of these reservations or payment for property impacted by the use of such a reservation is to be solely in accordance with this act. Any action for the condemnation or inverse condemnation of property related to road construction is separate and distinct from an action pursuant to this act. The governmental entity will not be liable for attorney’s fees or costs incurred by an owner in establishing substantial denial of the current economic use or in establishing the purchase price of the property.

The bill amends s. 712.04, F.S., to provide all reservations of easements in deeds by the Board of Trustees of the Internal Improvement Trust Fund conveying land acquired under the Murphy Act and not preserved in accordance with s. 712.05(3), F.S., are extinguished by the Marketable Record Title Act on July 1, 2002. However, prior to that date any governmental entity holding title to such reservations may preserve the reservations that it needs for future transportation projects which are in adopted transportation plans, by filing notice under s. 712.05(3), F.S., before July 1, 2002.

The bill amends s. 712.05, F.S., to authorize any governmental entity claiming a road reservation pursuant to a deed conveyed under the Murphy Act to preserve the reservation, or a portion of the reservation, which is necessary for future transportation projects that are in adopted transportation plans, and protect it from extinguishment under the Marketable Record Title Act, by filing for record, prior to July 1, 2002, a written notice in accordance with the provisions of ch. 712, F.S. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years if prior to the end of the 10 years the reservation is used or identified by the governmental entity in the final design plans of a road project for which construction is scheduled to begin prior to the end of the 10 years.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The impact to any specific local government or to local governments in general cannot be determined. The bill does require local governments to compensate property owners who are substantially denied the current economic use of their property due to a Murphy Act reservation where the local government wishes to avoid paying for the reservation they must release all or part to allow for the current economic use. Local governments will also be required to purchase property which may currently be covered by a reservation if a project for which the reservation would be used is not in a local transportation plan by July 1, 2002 or the reservation is not used in accordance with the bill.

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:

Property owners who are substantially denied the current economic use of their property due to a Murphy Act reservation would be able to seek compensation or a release. The amount of the compensation will vary depending on the circumstances.

To have government review a reservation to determine if it could be released, an individual would be required to go only to the governmental entity having current jurisdiction of the road, not DEP. Any fee for the review would be established by the governmental entity and not DEP, and would not exceed the \$300 fee currently charged by DEP for this service. Additionally, the governmental entity could decide to release the reservation without the property owner being required to obtain the documentation currently required by DEP. This could reduce the cost of obtaining a release.

C. Government Sector Impact:

State and local governmental entities would have to compensate property owners who are substantially denied the current economic use of their property. The amount of the compensation will vary depending on the circumstances.

Local governments would also be impacted by the termination of reservations and by the requirement for release or purchase where the reservation denies the property owner the current economic use of the property. The amount of this impact will vary depending on the extent a local government currently has these reservations within road rights of way and the extent to which that local government plans to use the reservations for future road improvements.

The state and local governments would be required to bear costs to prepare releases of easements and review easements which may be beyond that which is currently performed for a DEP release. At this time it can not be determined whether \$300 would be sufficient to perform those functions.

The DEP projects it would not receive approximately \$30,000 annually in fees which are currently deposited into the Internal Improvement Trust Fund. However, the DEP would not have to conduct the records search or process the applications for release.

Additional Comments by the Fiscal Policy Committee Staff:

The fiscal impact to the Department of Transportation has been reduced from an earlier estimate of \$1.3 million based on the Committee Substitute. The major change to the original bill allows the department to protect the easement for 10 years and only buy the easements that deny the owner the current economic use of the property. According to the Department of Transportation, the new estimate is a non-recurring impact of \$250,000 and an approximate annual impact of \$100,000 for ten years. The non-recurring cost will be for title work, filing of reservations, and notices in order to be in position for the July 1, 2002 deadline. The \$100,000 recurring estimate is for payment in cases where the reservation is determined to have denied the owner the current economic use of the property. According to the Department, the estimated cost can be absorbed within the agency's current budget. However, following 2012, the protection of the easements is eliminated, and the costs could increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None