

1 A bill to be entitled
2 An act relating to the Florida Land Title
3 Protection Act; creating s. 253.90, F.S.;
4 providing legislative intent; validating
5 certain land titles derived from state
6 conveyances; providing for public use of
7 certain waters; defining ordinary high water
8 mark; providing a process for approval of
9 sovereignty claims; protecting certain public
10 access, easements, and common-law rights;
11 providing for severability; providing an
12 effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 253.90, Florida Statutes, is
17 created to read:

18 253.90 Ordinary high water mark determination and
19 confirmation of certain deeds or grants; legislative intent.--

20 (1) Legislative intent. The Legislature recognizes
21 that because the stability of land titles and the clarity of
22 real property boundaries is essential to a civil society, it
23 is in the public interest to resolve the uncertainty and
24 controversy arising from the assertion of state sovereignty
25 ownership claims and public rights to lands that were
26 purportedly conveyed by state deeds or grants as
27 nonsovereignty lands, in a manner that fairly protects the
28 interests of private landowners whose titles are derived from
29 such state deeds or grants, while preserving the public's
30 ownership of and rights to use the navigable waters and
31 sovereignty submerged lands up to the ordinary high water

1 mark. For that purpose, pursuant to Article X, Section 11 of
2 the Florida Constitution, the Legislature expressly finds and
3 declares:

4 (a) It is in the public interest that the ordinary
5 high water mark, as the boundary separating riparian lands
6 from sovereignty submerged lands under navigable nontidal
7 waters, be clearly defined, consistent with its common law
8 meaning as historically applied in Florida, and with its
9 intended purpose as an observable physical boundary that
10 landowners and members of the public can readily identify;

11 (b) It is in the public interest that titles derived
12 from state deeds or grants which purported to convey
13 nonsovereignty lands, but which may have included sovereignty
14 submerged lands within the boundaries described in the deed or
15 grant, be ratified, confirmed, and validated to the extent
16 that the lands purportedly conveyed are located above the
17 ordinary high water mark, as set forth herein.

18 (c) It is in the public interest that the state's
19 title to sovereignty submerged lands under navigable waters,
20 which have not been alienated, and the public's rights to use
21 the navigable waters and sovereignty submerged lands
22 thereunder, be reaffirmed to the extent that such waters and
23 lands are located below the ordinary high water mark, as set
24 forth herein.

25 (2) This section shall be construed to ratify,
26 confirm, and validate titles derived from state deeds or
27 grants which purported to convey nonsovereignty lands, but
28 which may have included sovereignty submerged lands within the
29 boundaries described in the deed or grant, to the extent that
30 the lands purportedly conveyed are located above the ordinary
31 high water mark, as set forth herein. The present holders of

1 the deeds or grants to which this section applies shall retain
2 all riparian rights held by waterfront landowners.

3 (3) This act in no way alters the public's rights to
4 use navigable waters and sovereignty submerged lands for
5 common law public trust purposes up to the ordinary high water
6 mark as defined in this section, nor does this act affect the
7 ownership by the state of sovereignty submerged lands lying
8 below that mark.

9 (4) The ordinary high water mark on nontidal waters is
10 not the highest point to which the water rises in time of
11 freshets, but is the line that the water impresses upon the
12 soil by covering it for periods sufficient to deprive it of
13 vegetation and to destroy its value for agriculture. It is an
14 ambulatory line, shifting in response to long term changes.
15 The ordinary high water mark is to be determined by examining
16 the bed and banks to ascertain where the presence and action
17 of the water are so common and usual, and so long continued in
18 all ordinary years, as to mark upon the soil of the bed a
19 character distinct from that of the banks, in respect to
20 vegetation and the nature of the soil itself. It is
21 co-ordinate with the limit of the bed the water occupies
22 sufficiently long and continuously to wrest it from vegetation
23 and destroy its value for agricultural purposes. In some
24 places where the banks are low and flat and the water does not
25 impress on the soil any well-defined line of demarkation
26 between the bed and the banks, the effect of the water upon
27 vegetation must be the principal test in determining the
28 location of the ordinary high water mark as a line between the
29 riparian owner and the public. In such an instance, the
30 ordinary high water mark is the point up to which the presence
31 and action of the water is so continuous as to destroy the

1 value of the land for the agricultural purposes by preventing
2 the growth of vegetation constituting what may be termed an
3 ordinary agricultural crop. Marks upon the ground or upon
4 local objects that are more or less permanent may be
5 considered in connection with the competent testimony and
6 other evidence in determining the ordinary high water mark.

7 (5) It is not the intent of the Legislature to
8 supersede any specific grant of submerged lands granted to a
9 governmental entity by special act.

10 (6) No lawsuit claiming sovereignty ownership or
11 public use rights to any lands for which a private claimant
12 holds record title from a state deed or grant shall be
13 initiated by or on behalf of the Board of Trustees of the
14 Internal Improvement Trust Fund without the prior approval of
15 a majority of the Board of Trustees of the Internal
16 Improvement Trust Fund.

17 (7) This act shall not be interpreted to preclude,
18 alter, or affect any rights of public access to lands and
19 waters below the ordinary high water mark, or any easements by
20 prescription or other common-law rights consistent with
21 Florida law, in effect at the time of passage of this act.

22 Section 2. If any provision of this act or the
23 application thereof to any person or circumstance is held
24 invalid, the invalidity shall not affect other provisions or
25 applications of the act which can be given effect without the
26 invalid provision or application, and to this end the
27 provisions of this act are declared severable.

28 Section 3. This act shall take effect upon becoming a
29 law.

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