

By the Committees on Natural Resources, Judiciary and Senators
 Campbell, Grant, Mitchell, Sullivan, Bronson, Webster,
 Kirkpatrick, Childers, McKay, Horne, Myers and Scott

312-2170-00

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 water; defining ordinary high-water
 8 mark; providing a process for approval of
 9 sovereignty claims; providing an effective
 10 date.
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 12 Be It Enacted by the Legislature of the State of Florida:
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 14 Section 1. Section 253.90, Florida Statutes, is
 15 created to read:
 16 253.90 Ordinary high-water mark determination and
 17 confirmation of certain deeds or grants; legislative intent.--
 18 (1) The Legislature recognizes that because the
 19 stability of land titles and the clarity of real property
 20 boundaries is essential to a civil society, it is in the
 21 public interest to resolve the uncertainty and controversy
 22 arising from the assertion of state sovereignty ownership
 23 claims and public rights to lands that were purportedly
 24 conveyed by state deeds or grants as nonsovereignty lands, in
 25 a manner that fairly protects the interests of private
 26 landowners whose titles are derived from such state deeds or
 27 grants while preserving the public's ownership of and rights
 28 to use the navigable waters and sovereignty submerged lands up
 29 to the ordinary high-water mark. For that purpose, pursuant
 30 to Article X, Section 11 of the Florida Constitution, the
 31 Legislature expressly finds and declares:

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

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

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

22 (2) This section pertains to any title to real
23 property which is derived from a properly recorded deed or
24 grant made before this act takes effect by the Board of
25 Trustees of the Internal Improvement Trust Fund or by any
26 other state agency or official; which conveyed swamp or
27 overflowed lands, internal improvement lands, or other
28 nonsovereignty lands; and which contains a legal description
29 that encompasses sovereignty submerged lands.

30 (3) This section shall be construed to ratify,
31 confirm, and validate private waterfront landowners' title to

1 swamp and overflowed lands, internal improvement lands, and
2 any other nonsovereignty lands down to the ordinary high-water
3 mark of navigable waters. The present holders of the deeds or
4 grants to which this section applies shall retain all riparian
5 rights held by private waterfront landowners.

6 (4) This section reaffirms the state's title to
7 sovereignty submerged lands under navigable waters up to the
8 ordinary high-water boundary pursuant to Section 11 of Article
9 X of the State Constitution. This act in no way alters the
10 public's rights to use navigable waters and sovereignty
11 submerged lands for common law public trust purposes up to the
12 ordinary high-water mark as defined in this section, nor does
13 this act affect the ownership by the state of sovereignty
14 submerged lands lying below that mark.

15 (5) The ordinary high-water mark of nontidal waters is
16 not the highest point to which the water rises in time of
17 freshets, but is the line that the water impresses upon the
18 soil by covering it for periods sufficient to deprive it of
19 vegetation and to destroy its value for agriculture. It is an
20 ambulatory line, shifting in response to long-term changes.
21 The ordinary high-water mark is to be determined by examining
22 the bed and banks to ascertain where the presence and action
23 of the water are so common and usual, and so long continued in
24 all ordinary years, as to mark upon the soil of the bed a
25 character distinct from that of the banks, in respect to
26 vegetation and the nature of the soil itself. It is coordinate
27 with the limit of the bed the water occupies sufficiently long
28 and continuously to wrest it from vegetation and destroy its
29 value for agricultural purposes. Where the banks are low and
30 flat and the water does not impress on the soil any
31 well-defined line of demarcation between the bed and the

1 banks, the effect of the water upon vegetation shall be the
2 principal test in determining the location of the line as the
3 boundary between the property of the riparian owner and that
4 of the public. In such an instance, the ordinary high-water
5 mark is the point up to which the presence and action of the
6 water is so continuous as to destroy the value of the land for
7 agricultural purposes by preventing the growth of vegetation
8 constituting what may be termed an ordinary agricultural crop.
9 Marks upon the ground or upon local objects which are more or
10 less permanent may be considered in connection with competent
11 testimony and other evidence in determining the ordinary
12 high-water mark.

13 (6) It is not the intent of the Legislature to
14 supersede any specific grant of submerged lands granted to a
15 governmental entity by special act.

16 Section 2. This act shall take effect upon becoming a
17 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS Senate Bill 1824

4 The amendment deleted everything after the enacting clause.
5 The committee substitute (CS) creates s. 253.90, F.S., which
6 provides intent to resolve the uncertainty and controversy
7 arising from the assertion of state sovereignty ownership
8 claims and public rights to lands that were purportedly
9 conveyed by state deeds or grants as nonsovereignty lands, in
10 a manner that fairly protects the interests of private
11 landowners whose titles are derived from such state deeds or
12 grants while preserving the public's ownership of and rights
13 to use the navigable waters and sovereignty submerged lands up
14 to the ordinary high-water mark.

15 The CS provides that it is in the public interest that:

- 16 - The ordinary high-water mark be clearly defined,
17 consistent with its common law meaning as historically
18 applied in Florida and with its intended purpose as an
19 observable physical boundary that landowners and members
20 of the public can readily identify.
- 21 - Titles derived from state deeds or grants that purported
22 to convey nonsovereignty lands, but that may have
23 included sovereignty submerged lands within the
24 boundaries described in the deed or grant, be ratified,
25 confirmed, and validated to the extent that the lands
26 purportedly conveyed are located above the ordinary
27 high-water mark, as set forth in this section.
- 28 - The state's title to sovereignty submerged lands under
29 navigable waters, which have not been alienated, and the
30 public's rights to use the navigable waters and
31 sovereignty submerged lands thereunder, be reaffirmed to
the extent that such waters and lands are located below
the ordinary high-water mark as set forth in this
section.

32 The CS provides that s. 253.90, F.S., pertains to any title to
33 real property which is derived from a properly recorded deed
34 or grant made before this act takes effect by the Board of
35 Trustees or by any other state agency or official; which
36 conveyed swamp or overflowed lands, internal improvement
37 lands, or other nonsovereignty lands; and which contains a
38 legal description that encompasses sovereignty submerged
39 lands.

40 Section 253.90, F.S., must be construed to ratify private
41 waterfront owner's title to swamp and overflowed lands,
42 internal improvement lands, and any other nonsovereignty lands
43 down to the ordinary high-water mark of navigable waters. It
44 also reaffirms the state's title to sovereignty submerged
45 lands under navigable waters up to the ordinary high-water
46 boundary. The bill clarifies that the act in no way alters the
47 public's rights to use navigable waters and sovereignty
48 submerged lands for common law public trust purposes up to the
49 ordinary high-water mark as defined in this section, nor does
50 this act affect the ownership by the state of sovereignty
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1 submerged lands lying below the mark.

2 The CS defines the "ordinary high-water mark" of nontidal
3 waters as not the highest point to which the water rises in
4 time of freshets, but as the line that the water impresses
5 upon the soil by covering it for periods sufficient to deprive
6 it of vegetation and to destroy its value for agriculture. It
7 is an ambulatory line, shifting in response to long-term
8 changes. The ordinary high-water mark is to be determined by
9 examining the bed and banks to ascertain where the presence
10 and action of the water are so common and usual, and so long
11 continued in all ordinary years, as to mark upon the soil of
12 the bed a character distinct from that of the banks, in
13 respect to vegetation and the nature of the soil itself. It is
14 coordinate with the limit of the bed the water occupies
15 sufficiently long and continuously to wrest it from vegetation
16 and destroy its value for agricultural purposes. Where the
17 banks are low and flat and the water does not impress on the
18 soil any well-defined line of demarcation between the bed and
19 the banks, the effect of the water upon vegetation shall be
20 the principal test in determining the location of the line as
21 the boundary between the property of the riparian owner and
22 that of the public. In such an instance, the ordinary
23 high-water mark is the point up to which the presence and
24 action of the water is so continuous as to destroy the value
25 of the land for agricultural purposes by preventing the growth
26 of vegetation constituting what may be termed an ordinary
27 agricultural crop. Marks upon the ground or upon local objects
28 which are more or less permanent may be considered in
29 connection with competent testimony and other evidence in
30 determining the ordinary high-water mark.

31 Finally, the CS clarifies that it is not the intent of the
Legislature to supersede any specific grant of submerged lands
granted to a governmental entity by special act.

The bill will take effect upon becoming a law.