

By Senator Smith

5-1555-02

See HB

1 A bill to be entitled
2 An act relating to the county road system;
3 amending s. 336.02, F.S.; providing for
4 designation as public prescriptive easement by
5 necessity on certain roads; providing criteria;
6 providing for notice and public hearing;
7 providing procedures; providing for review;
8 providing an effective date.

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

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12 Section 1. Section 336.02, Florida Statutes, is
13 amended to read:

14 336.02 Responsibility for county road system; approval
15 of maps of reservation; designation of prescriptive easement
16 by necessity.--

17 (1)(a) The commissioners are invested with the general
18 superintendence and control of the county roads and structures
19 within their respective counties, and they may establish new
20 roads, change and discontinue old roads, and keep the roads in
21 good repair in the manner herein provided. They are
22 responsible for establishing the width and grade of such roads
23 and structures in their respective counties.

24 (b) Commissioners may approve maps of reservation for
25 any transportation facility or transportation corridor within
26 the county's jurisdiction. Any such maps must delineate the
27 limits of the transportation corridor or of the proposed
28 rights-of-way for the eventual widening of an existing or
29 proposed transportation facility. Before approving or
30 disapproving such map, the governing body of the county shall
31 advertise and hold a public hearing and shall notify all

1 property owners of record within the limits of the
2 transportation corridor or rights-of-way of the transportation
3 facility shown on the proposed map, as recorded in the
4 property appraiser's office, and all local governmental
5 entities in which the transportation corridor or
6 transportation facility is located, by mail at least 20 days
7 prior to the date set for the hearing. If the map is approved
8 by the governing body of the county, the circuit court clerk
9 or county clerk, as appropriate, of the affected county shall
10 forthwith record the map in accordance with chapter 177 in the
11 public land records of the county. Minor amendments to such
12 maps may be made by the county after recordation, which
13 amendments are not subject to the notice and public hearing
14 provisions of this section, except that property owners
15 directly affected by changes in a minor amendment and all
16 local governmental entities in which a minor amendment occurs
17 must be notified by mail. Minor amendments are defined as
18 those changes which affect less than 5 percent of the total
19 area within the map.

20 (c) Any existing road in the unincorporated part of a
21 county which, due to lack of regular maintenance, presents a
22 public safety hazard or impedes access by school buses or law
23 enforcement, fire, or rescue vehicles may be designated by the
24 governing body of the county as a public prescriptive easement
25 by necessity to the extent and width of actual public use,
26 unless the boundaries of such road are described in the public
27 records of the county as being larger in extent or width than
28 the actual public use thereof, in which case such easement
29 shall encompass such boundaries. This designation may be made
30 even though the road has not been formally established as a
31 public right-of-way. Before making such designation, the

1 governing body of the county shall advertise and hold a public
2 hearing and shall notify all property owners of record
3 adjoining the affected road, as recorded in the property
4 appraiser's office, by mail at least 20 days prior to the date
5 set for the hearing. If the road is then designated as a
6 public prescriptive easement by necessity, the circuit court
7 clerk or county clerk, as appropriate, shall forthwith record
8 the designation in the official records books of the county,
9 together with a legal description, to the extent practical, of
10 the road and may also include a resolution providing for the
11 cancellation of delinquent taxes upon the lands comprising
12 such road pursuant to s. 196.28. Upon recording of this
13 designation, the road shall thereafter be a public
14 right-of-way and public funds may be used for the maintenance
15 and improvement thereof, subject to subsections (4) and (5).

16 (2) Upon recording, such map or designation of
17 prescriptive easement by necessity shall establish a building
18 setback line from the centerline of any transportation
19 facility and an area of proposed right-of-way and shall cite
20 the ordinance which defines building restrictions for such
21 maps.

22 (3) Prior to filing any map or designation of
23 prescriptive easement by necessity pursuant to this section, a
24 county shall have adopted an ordinance defining the types of
25 restrictions on nonresidential and residential construction
26 within the proposed rights-of-way and building setback lines.
27 In no case, however, shall said ordinance restrict the
28 renovation of an existing residential structure when the cost
29 of the renovation does not exceed 20 percent of the appraised
30 value of the structure.

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1 (4) Upon petition by any property owner of record
2 within the limits of the map or designation of prescriptive
3 easement by necessity, alleging that such property regulation
4 is unreasonable or arbitrary and that its effect is to deny a
5 substantial portion of the beneficial use of such property,
6 the county shall hold a hearing. When such a hearing results
7 in a finding in favor of the petitioning property owner, the
8 county shall have 180 days from the date of such order to
9 acquire such property, to amend the map or designation of
10 prescriptive easement by necessity, to withdraw the map or
11 designation of prescriptive easement by necessity, or to file
12 appropriate proceedings, whether in eminent domain, an action
13 to establish prescriptive rights, or otherwise. Either party
14 may seek judicial ~~appellate~~ review.

15 (5) Upon the failure by the county to acquire such
16 property or to initiate such ~~acquisition~~ proceedings, the
17 appropriate local governmental entity may issue any permit in
18 accordance with its established procedures.

19 Section 2. This act shall take effect July 1, 2002.

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LEGISLATIVE SUMMARY

Provides that a road in the county road system that presents a public hazard or impedes certain emergency vehicles may be designated by the county governing body as a public prescriptive easement by necessity on certain roads. Provides criteria. Provides for notice and public hearing. Provides procedures. Provides for judicial review. (See bill for details.)