

By Senator Lynn

7-571-04

1                                   A bill to be entitled  
2           An act relating to county road systems;  
3           amending s. 336.02, F.S.; prescribing  
4           conditions under which the governing body of a  
5           county may declare an existing road to be a  
6           prescriptive easement by necessity and public  
7           right-of-way upon which public moneys may be  
8           spent for maintenance; providing for a hearing;  
9           providing for cancellation of delinquent taxes  
10          on lands so declared; providing an effective  
11          date.

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

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15           Section 1. Section 336.02, Florida Statutes, is  
16 amended to read:

17           336.02 Responsibility for county road system; approval  
18 of maps of reservation and prescriptive easements by  
19 necessity.--

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

27           (b) Commissioners may approve maps of reservation for  
28 any transportation facility or transportation corridor within  
29 the county's jurisdiction. Any such maps must delineate the  
30 limits of the transportation corridor or of the proposed  
31 rights-of-way for the eventual widening of an existing or

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

23 (c) Any existing road in the unincorporated part of a  
24 county which presents a public safety hazard or access to  
25 which by school buses or law enforcement, fire, or rescue  
26 vehicles is impeded due to lack of regular maintenance may be  
27 designated by the governing body of the county as a public  
28 prescriptive easement by necessity to the extent and width of  
29 actual public use, unless the boundaries of such road are  
30 described in the public records of the county as being larger  
31 in extent or width than the actual public use thereof, in

1 which case such easement shall encompass such boundaries. This  
2 designation may be made even though the road has not been  
3 formally established as a public right-of-way. Before making  
4 such designation, the governing body of the county shall  
5 advertise and hold a public hearing and shall notify the  
6 record owners of the lands comprising such road as well as the  
7 record owners of all property adjoining such road, as recorded  
8 in the property appraiser's office, by mail at least 20 days  
9 before the date set for the hearing. If the road is then  
10 designated as a public prescriptive easement by necessity, the  
11 circuit court clerk or county clerk, as appropriate, shall  
12 record the designation in the official records of the county,  
13 together with a legal description, to the extent practical, of  
14 the road and may also include a resolution providing for the  
15 cancellation of delinquent taxes upon the lands comprising  
16 such road in the same manner as taxes are canceled on lands  
17 used for roads pursuant to s. 196.28. Upon the recording of  
18 this designation, the road thereafter shall be a public  
19 right-of-way, and public funds may be used for the maintenance  
20 and improvement thereof, subject to subsections (4) and (5).

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

27 (3) Prior to filing any map or designation of  
28 prescriptive easement by necessity pursuant to this section, a  
29 county must ~~shall~~ have adopted an ordinance defining the types  
30 of restrictions on nonresidential and residential construction  
31 within the proposed rights-of-way and building setback lines.

1 In no case, however, may such ~~shall said~~ ordinance restrict  
2 the renovation of an existing residential structure when the  
3 cost of the renovation does not exceed 20 percent of the  
4 appraised value of the structure.

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

19 (5) Upon the failure by the county to acquire such  
20 property or to initiate such acquisition proceedings, the  
21 appropriate local governmental entity may issue any permit in  
22 accordance with its established procedures.

23 Section 2. This act shall take effect October 1, 2004.

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26 SENATE SUMMARY

27 Provides that the governing body may, after a hearing,  
28 declare lands in the unincorporated part of the county  
29 which are in actual use as a road but which are not  
30 publicly owned a prescriptive easement by necessity which  
31 the county may improve and upon which the county may  
spend public moneys. The county may cancel delinquent  
taxes on lands so designated.