



296326

LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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03/05/2018 10:44 AM

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Senator Passidomo moved the following:

**Senate Amendment (with title amendment)**

Delete lines 347 - 358

and insert:

163.035 Establishment of recreational customary use.-

(1) DEFINITION.-The term "governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority.

(2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE.-A



296326

12 governmental entity may not adopt or keep in effect an ordinance  
13 or rule that finds, determines, relies on, or is based upon  
14 customary use of any portion of a beach above the mean high-  
15 water line, as defined in s. 177.27, unless such ordinance or  
16 rule is based on a judicial declaration affirming recreational  
17 customary use on such beach.

18 (3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON  
19 PRIVATE PROPERTY; JUDICIAL DETERMINATION.—A governmental entity  
20 that seeks to affirm the existence of a recreational customary  
21 use on private property must follow the procedures set forth in  
22 this subsection.

23 (a) Notice.—The governing board of a governmental entity  
24 must, at a public hearing, adopt a formal notice of intent to  
25 affirm the existence of a recreational customary use on private  
26 property. The notice of intent must specifically identify the  
27 following:

28 1. The specific parcels of property, or the specific  
29 portions thereof, upon which a customary use affirmation is  
30 sought;

31 2. The detailed, specific, and individual use or uses of  
32 the parcels of property to which a customary use affirmation is  
33 sought; and

34 3. Each source of evidence that the governmental entity  
35 would rely upon to prove a recreational customary use has been  
36 ancient, reasonable, without interruption, and free from  
37 dispute.

38  
39 The governmental entity must provide notice of the public  
40 hearing to the owner of each parcel of property subject to the



296326

41 notice of intent at the address reflected in the county property  
42 appraiser's records no later than 30 days before the public  
43 meeting. Such notice must be provided by certified mail with  
44 return receipt requested, publication in a newspaper of general  
45 circulation in the area where the parcels of property are  
46 located, and posting on the governmental entity's website.

47 (b) Judicial determination.-

48 1. Within 60 days after the adoption of the notice of  
49 intent at the public hearing, the governmental entity must file  
50 a Complaint for Declaration of Recreational Customary Use with  
51 the circuit court in the county in which the properties subject  
52 to the notice of intent are located. The governmental entity  
53 must provide notice of the filing of the complaint to the owner  
54 of each parcel of property subject to the complaint in the same  
55 manner as is required for the notice of intent in paragraph (a).  
56 The notice must allow the owner receiving the notice to  
57 intervene in the proceeding within 45 days after receiving the  
58 notice. The governmental entity must provide verification of the  
59 service of the notice to the property owners required in this  
60 paragraph to the court so that the court may establish a  
61 schedule for the judicial proceedings.

62 2. All proceedings under this paragraph shall be de novo.  
63 The court must determine whether the evidence presented  
64 demonstrates that the recreational customary use for the use or  
65 uses identified in the notice of intent have been ancient,  
66 reasonable, without interruption, and free from dispute. There  
67 is no presumption regarding the existence of a recreational  
68 customary use with respect to any parcel of property, and the  
69 governmental entity has the burden of proof to show that a



296326

70 recreational customary use exists. An owner of a parcel of  
71 property that is subject to the complaint has the right to  
72 intervene as a party defendant in such proceeding.

73 (4) APPLICABILITY.—This section does not apply to a  
74 governmental entity with an ordinance or rule that was adopted  
75 and in effect on or before January 1, 2016, and does not deprive  
76 a governmental entity from raising customary use as an  
77 affirmative defense in any proceeding challenging an ordinance  
78 or rule adopted before July 1, 2018.

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80 ===== T I T L E A M E N D M E N T =====

81 And the title is amended as follows:

82 Delete lines 30 - 57

83 and insert:

84 advance the cause on the calendar; transferring,  
85 renumbering, and amending s. 82.045, F.S.; conforming  
86 provisions to changes made by the act; amending s.  
87 82.04, F.S.; requiring that the court determine the  
88 right of possession and damages; prohibiting the court  
89 from determining question of title unless necessary;  
90 amending s. 82.05, F.S.; requiring that the summons  
91 and complaint be attached to the real property after  
92 two unsuccessful attempts to serve a defendant;  
93 requiring a plaintiff to provide the clerk of the  
94 court with prestamped envelopes and additional copies  
95 of the summons and complaint if the defendant is  
96 served by attaching the summons and complaint to the  
97 real property; requiring the clerk to immediately mail  
98 copies of the summons and complaint and note the fact



296326

99 of mailing in the docket; specifying that service is  
100 effective on the date of posting or mailing; requiring  
101 that 5 days elapse after the date of service before  
102 the entry of a judgment; amending s. 82.091, F.S.;  
103 providing requirements after a judgment is entered for  
104 the plaintiff or the defendant; amending s. 82.101,  
105 F.S.; adding quiet title to the types of future  
106 actions for which a judgment is not conclusive as to  
107 certain facts; providing that the judgment may be  
108 superseded by a subsequent judgment; creating s.  
109 163.035, F.S.; defining the term "governmental  
110 entity"; prohibiting a governmental entity from  
111 adopting or keeping in effect certain ordinances and  
112 rules based upon customary use; providing an  
113 exception; requiring a governmental entity seeking to  
114 affirm the existence of a recreational customary use  
115 on private property to follow certain procedures;  
116 providing notice requirements for a governmental  
117 entity seeking to affirm such recreational customary  
118 use; requiring the governmental entity to file a  
119 specified complaint with a certain circuit court  
120 within a certain time; providing notice requirements  
121 for the filing of such complaint; specifying that  
122 proceedings resulting from such complaint are de novo;  
123 requiring the court to consider specific factors when  
124 determining whether a recreational customary use  
125 exists; specifying that the governmental entity has  
126 the burden of proof; specifying that an owner of a  
127 parcel of property subject to the complaint has the



296326

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right to intervene in the proceeding; providing  
applicability;