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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2018	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 343 - 348

and insert:

Section 10. Section 163.035, Florida Statutes, is created to read:

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



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12 exercises governmental authority.

13 (2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE.—A
14 governmental entity may not adopt or keep in effect an ordinance
15 or rule that finds, determines, relies on, or is based upon
16 customary use of any portion of a beach above the mean high-
17 water line, as defined in s. 177.27, unless such ordinance or
18 rule is based on a judicial declaration affirming recreational
19 customary use on such beach.

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

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

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

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

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

40



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

49 (b) *Judicial determination.*—

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

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



70 customary use with respect to any parcel of property, and the
71 governmental entity has the burden of proof to show that a
72 recreational customary use exists. An owner of a parcel of
73 property that is subject to the complaint has the right to
74 intervene as a party defendant in such proceeding.

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

81
82 ===== T I T L E A M E N D M E N T =====

83 And the title is amended as follows:

84 Delete lines 3 - 57

85 and insert:

86 amending s. 66.021 F.S.; authorizing a person with a
87 superior right to possession of real property to
88 recover possession by ejectment; declaring that
89 circuit courts have exclusive jurisdiction; providing
90 that a plaintiff is not required to provide any
91 presuit notice or demand to a defendant; requiring
92 that copies of instruments be attached to a complaint
93 or answer under certain circumstances; requiring a
94 statement to list certain details; providing for
95 construction; amending s. 82.01, F.S.; redefining the
96 terms "unlawful entry" and "forcible entry"; defining
97 the terms "real property," "record titleholder," and
98 "unlawful detention"; amending s. 82.02, F.S.;



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99 exempting possession of real property under part II of
100 ch. 83, F.S., and under chs. 513 and 723, F.S.;

101 amending s. 82.03, F.S.; providing that a person
102 entitled to possession of real property has a cause of
103 action to regain possession from another person who
104 obtained possession of real property by forcible
105 entry, unlawful entry, or unlawful detainer; providing
106 that a person entitled to possession is not required
107 to give a defendant presuit notice; requiring the
108 court to award plaintiff extra damages if a defendant
109 acted in a willful and knowingly wrongful manner;
110 authorizing bifurcation of actions for possession and
111 damages; requiring that an action be brought by
112 summary procedure; requiring the court to advance the
113 cause on the calendar; renumbering and amending s.
114 82.045, F.S.; conforming provisions to changes made by
115 the act; amending s. 82.04, F.S.; requiring that the
116 court determine the right of possession and damages;
117 prohibiting the court from determining question of
118 title unless necessary; amending s. 82.05, F.S.;

119 requiring that the summons and complaint be attached
120 to the real property after two unsuccessful attempts
121 to serve a defendant; requiring a plaintiff to provide
122 the clerk of the court with prestamped envelopes and
123 additional copies of the summons and complaint if the
124 defendant is served by attaching the summons and
125 complaint to the real property; requiring the clerk to
126 immediately mail copies of the summons and complaint
127 and note the fact of mailing in the docket; specifying



128 that service is effective on the date of posting or
129 mailing; requiring that 5 days elapse from the date of
130 service before the entry of a judgment; amending s.
131 82.091, F.S.; providing requirements after a judgment
132 is entered for the plaintiff or the defendant;
133 amending s. 82.101, F.S.; adding quiet title to the
134 types of future actions for which a judgment is not
135 conclusive as to certain facts; providing that the
136 judgment may be superseded by a subsequent judgment;
137 creating s. 163.035, F.S.; defining the term
138 "governmental entity"; prohibiting a governmental
139 entity from adopting or keeping in effect certain
140 ordinances and rules based upon customary use;
141 providing an exception; requiring a governmental
142 entity seeking to affirm the existence of a
143 recreational customary use on private property to
144 follow certain procedures; providing notice
145 requirements for a governmental entity seeking to
146 affirm such recreational customary use; requiring the
147 governmental entity to file a specified complaint with
148 a certain circuit court within a certain time;
149 providing notice requirements for the filing of such
150 complaint; specifying that proceedings resulting from
151 such complaint are de novo; requiring the court to
152 consider specific factors when determining whether a
153 recreational customary use exists; specifying that the
154 governmental entity has the burden of proof;
155 specifying that an owner of a parcel of property
156 subject to the complaint has the right to intervene in



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157 the proceeding; providing applicability; repealing s.
158 82.061,