

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1500

INTRODUCER: Appropriations Committee; Environment and Natural Resources Committee; and Senator Simmons

SUBJECT: Right of Entry

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>Reagan</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1500 releases the right of entry to any interest in phosphate, minerals, and metals, or any interest in petroleum, reserved for a local government, water management district, or other agency of the state, for any parcel that is or has ever been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

The bill will have an indeterminate, negative fiscal impact on local governments, water management districts, and state agencies, as these entities will no longer be able to develop the oil and mineral rights on these properties. However, the bill will create an indeterminate, positive fiscal impact because those entities would no longer need to process requests to release rights of entry.

The bill takes effect July 1, 2019.

II. Present Situation:

Right of Entry under Section 270.11, F.S.

Right of Entry

In Florida, surface property rights can be severed from subsurface rights to the minerals and oil underneath the land.¹ Once these rights are severed they may be sold or conveyed separately by their respective owners.² Despite the separate ownership, the owner of the oil and mineral rights generally has an implied easement to enter onto the surface property to explore for and extract the oil and minerals found underneath, so long as there is not unreasonable injury to the surface property.³ This right to enter onto the surface property and develop the resources below is known as a “right of entry.”⁴

Board of Trustees of the Internal Improvement Trust Fund

In 1855, the Board of Trustees of the Internal Improvement Trust Fund was created as a state agency.⁵ The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of the state.⁶ The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.⁷ The Department of Environmental Protection (DEP) performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.⁸ Serving as staff for the Board of Trustees, the DEP’s Division of State Lands carries out environmental management and stewardship activities for more than 12 million acres of public lands.⁹

Sale of Public Lands in Florida

Since 1911, in all contracts and deeds for the sale of land by the Board of Trustees, Florida law has reserved for the Board of Trustees ownership of three-fourths of all phosphate, minerals, and

¹ *Noblin v. Harbor Hills Dev., L.P.*, 896 So. 2d 781, 783 (Fla. 5th DCA 2005)(stating that a reservation or grant of oil and mineral rights reflects an intent on the part of the parties to sever the surface estate from the underlying mineral estate and create two estates); The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, 1-2 (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited Mar. 18, 2019).

² 58 C.J.S. Mines and Minerals § 207.

³ *Noblin*, 896 So. 2d at 783-785 (stating that a grant or reservation of oil and mineral rights implies an easement for ingress and egress to explore for and remove the oil and minerals found on or underneath the surface estate); see *P & N Inv. Corp. v. Fla. Ranchettes, Inc.*, 220 So. 2d 451, 453 (Fla. 1st DCA 1968)(stating that, “[w]hen the surface estate is severed from the mineral estate, the mineral estate is the dominant estate and, therefore, the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals, but he cannot so abuse the surface estate so as unreasonably to injure or destroy its value and is answerable to damages to the owners of the surface estate for any unreasonable injuries done”).

⁴ Section 704.05(1), F.S.

⁵ DEP, *History of State Lands*, <https://floridadep.gov/lands/lands-director/content/history-state-lands> (last visited Mar. 18, 2019).

⁶ Sections 253.01-253.03, F.S.

⁷ FLA. CONST. art. IV, s. 4(f).

⁸ Section 253.002, F.S.

⁹ DEP, *Division of State Lands*, <https://floridadep.gov/lands/> (last visited Mar. 18, 2019).

metals, and half of all petroleum, that is or may be under the land that was sold, with the privilege to mine and develop those resources.¹⁰ In 1986, the Legislature expanded this reservation of rights, so that “any local government, water management district, or other agency of the state” that sells land would also own such subsurface rights to the minerals and petroleum.¹¹ Also in 1986, the Legislature added a provision releasing any right of entry that the Board of Trustees and the State Board of Education have relating to the mineral and petroleum interests on parcels less than 20 acres and under the same ownership.¹² However, no such release of the right of entry was made for the mineral and petroleum rights reserved for the local governments, water management districts, and state agencies.

The Board of Trustees, the State Board of Education, a local government, a water management district, or any other state agency may, at its discretion, sell or release any of these reserved mineral or petroleum rights.¹³ Such sale or release requires the proper application of the owner, or petition of the purchaser, along with a statement of reasons justifying such sale or release.¹⁴ The law also requires that any state agency, except a water management district, that receives royalties for parcels shall remit any such moneys into the General Revenue Fund, unless otherwise provided by law.¹⁵ In the context of minerals and petroleum, the term royalties pertains to the minerals or petroleum that are produced or the profits derived by their sale.¹⁶

Issues for Property Owners

Rights of entry for mineral or petroleum rights can cause issues for the owners of the surface property, as it can constitute a defect in the title, the legal rights of ownership to the property.¹⁷ For a property to have marketable title, it must be free and clear of all estates, interests, claims, or charges.¹⁸ In real estate transactions, the purchaser of a property will commonly obtain title insurance. Title insurance is essentially an agreement protecting against defects in title to real property, usually issued to the buyer of a property by the title insurance company that conducted the title search.¹⁹

In general, when a party is pursuing title insurance for a property subject to a right of entry pursuant to a reservation under s. 270.11 F.S., there must either be a release of the right of entry or an exception for the reservation in the title policy.²⁰ The reservations can create special

¹⁰ Section 270.11, F.S.; *Trustees of Tufts Coll. v. Triple R. Ranch, Inc.*, 275 So. 2d 521, 532 (Fla. 1973)(taking notice that the reservation of rights existed in Chapter 6159, Acts of 1911); see ss. 253.03(3) and 253.62(1), F.S. Exceptions to the reservation requirement exist in the conveyance of certain lands or when lands inure to the Board of Trustees from other state agencies.

¹¹ Chapter 86-257, L.O.F. This law also granted local governments, water management districts, and agencies of the state the right to sell or release these reserved interests in any parcel of land; see s. 270.11(3), F.S.

¹² Section 270.11(2)(b), F.S.; see ch. 86-205, L.O.F.

¹³ Section 270.11(2)(a), (3), F.S.

¹⁴ *Id.*

¹⁵ Section 270.11(4), F.S.

¹⁶ John N. Redding, Florida Real Property Complex Transactions, *Chapter 7: Oil, Gas and Minerals*, 12 (2018).

¹⁷ The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, 2-3 (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited March 18, 2019).

¹⁸ Section 712.04, F.S.

¹⁹ Black’s Law Dictionary, Ninth Edition, *Title Insurance*, 875 (2009).

²⁰ Jana Armstrong, Florida Real Property Title Examination and Insurance, *Chapter 3: Searching For and Examining Title*, 27 (2016).

problems for title insurers, who will often request releases of the land being sold.²¹ Even if a property subject to a right of entry is not zoned for drilling or mining activities, title insurance companies will not rely upon this, because zoning can be changed by the governmental zoning authorities.²² In addition, if mortgage lenders see a right of entry as an exception in a title policy, this can be considered a title defect that may hinder a homebuyer's ability to obtain a loan.²³ To extinguish a right of entry for the statutory oil and mineral rights reserved by Florida's local governments, water management districts, and other state agencies, the purchaser of a property must request written release of the right of entry by the government entity for which it is reserved, or enter an order to quiet title in the circuit court with jurisdiction over the property.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 270.11, F.S., to release the right of entry to any interest in phosphate, minerals, and metals, or any interest in petroleum, reserved for a local government, water management district, or other agency of the state, for any parcel that is or has ever been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

The bill reorganizes subsections (2) and (3) of s. 270.11, F.S., so that subsection (2) authorizes government entities to sell or release any reserved interest and subsection (3) includes local governments, water management districts, and state agencies in provisions releases the right of entry.

Section 2 states that the act shall take effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²¹ 19 Fla. Prac., Florida Real Estate § 5:12 (citing *Van Arsdale v. Dimil Land Co.*, 325 So. 2d 471 (Fla. 4th DCA 1975)).

²² The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, 2 (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited March 18, 2019).

²³ *Id.* at 2.

²⁴ Section 65.011, F.S. See also DEP, *FAQ: Use of State-Owned Land*, <https://floridadep.gov/lands/lands/content/faq-use-state-owned-land> (last visited March 20, 2019). An application need not be sent to the Division of State Lands for releasing a right of entry and exploration for oil and mineral reservations on parcels less than 20 acres, because the rights of entry for the lands held by the Board of Trustees have been released in statute.

E. **Other Constitutional Issues:**

None identified.

V. Fiscal Impact Statement:

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

Releasing the rights of entry as specified in the bill would presumably remove implied easements for mineral and petroleum rights for many properties in the state. In some circumstances, this could eliminate title defects and improve the ownership or value of the property on the surface, including improved success with processes such as real estate transactions, obtaining title insurance, and securing mortgage loans. Also, to the extent property owners incur costs by requesting releases from government entities or filing actions in court to obtain marketable title, releasing the rights of entry may avoid costs for private property owners. Therefore, this bill may have an indeterminate, positive impact on the private sector.

C. **Government Sector Impact:**

The bill releases the right of entry to any interest in phosphate, minerals, and metals, or any interest in petroleum, reserved for a local government, water management district, or other agency of the state, for any parcel that is or has ever been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

The bill will have an indeterminate, negative fiscal impact on the local governments, water management districts, and state agencies, as these entities will no longer be able to develop the oil and mineral rights on these properties. However, the bill will create an indeterminate, positive fiscal impact because those entities would no longer need to process requests to release rights of entry.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 270.11 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 11, 2019:

The committee substitute clarifies that a release of right of entry shall be made upon petition of the owner of the parcel of land rather than the purchaser of such interest.

CS by Environment and Natural Resources Committee on March 26, 2019:

The committee substitute:

- Amends the title to say that the act relates to “right of entry” instead of “mineral rights,” and that the act is releasing a right of entry instead of releasing mineral rights; and
- Renumbers the subsections in s. 270.11, F.S.

- B. **Amendments:**

None.