

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 702

INTRODUCER: Senator Martin

SUBJECT: Attorney Fees and Costs

DATE: January 12, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 702 requires courts to award reasonable attorney fees and costs to prevailing defendants in civil litigation concerning property rights, if the improvements made by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency.

For purposes of the bill, the term “property rights” includes, but is not limited to, use rights, ingress and egress rights, and those rights incident to land bordering upon navigable waters as described in the riparian rights statute.<sup>1</sup>

The bill takes effect upon becoming a law.

## II. Present Situation:

### Real Property Disputes

“Property” may be described as the rightful and legal domination one might have over a material object, including the right to use, enjoy, and dispose of that object.<sup>2</sup> Rights in property are basic civil rights.<sup>3</sup> The primary elements of property ownership are the rights of possession, use and enjoyment; the right to change or improve the property; and the right to alienate the property.<sup>4</sup>

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<sup>1</sup> Section 253.141, F.S.

<sup>2</sup> See *Tatum Bros. Real Estate & Investment Co. v. Watson*, 109 So. 623, 626 (1926) (providing that “[w]hile the word ‘property,’ in common use, is applied to the tangible physical thing commonly called property, in the law it is not the material object but the right and interest which one has in it, to the exclusion of others, which constitutes property”); see also *Village of Tequesta v. Jupiter Inlet Corp.*, 371 So. 2d 663, 668 (Fla. 1979) (remarking that property in its strict legal sense means that “dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or objects” (internal citation and quotations omitted)); *Dade County v. General Waterworks Corp.*, 267 So. 2d 633, 636 (Fla. 1972) (noting that the Florida Constitution requires full compensation for the taking of property).

<sup>3</sup> *Corn v. State*, 332 So. 2d 4, 7 (Fla. 1976).

<sup>4</sup> *Southern Owners Ins. Co. v. Cooperativa De Seguros Multiples*, 143 So. 3d 439, 442 (Fla. 5<sup>th</sup> DCA 2014).

Property may be either tangible or intangible<sup>5</sup> and may be classified as either personal property, which is movable, or real property, which is not.<sup>6</sup>

Unfortunately, real property disputes between neighbors are common. They include, among other things, title disputes (involving competing claims to property ownership); boundary disputes (involving confusion or disagreement over property lines); easement and right-of-way disputes (involving disagreement over the precise extent and nature of ingress and egress access rights); and zoning and land use disputes (involving disagreement regarding how local land use and zoning laws are applied to specific properties).<sup>7</sup>

One way to resolve adverse claims to disputed property is to bring a quiet title action in circuit court pursuant to state law.<sup>8</sup> Quiet title actions, which are equitable in nature,<sup>9</sup> can determine the ownership or allocation of real property as between the disputing parties and others.<sup>10</sup>

In Florida, a prevailing party can recover attorney's fees only if they are: authorized by contract; authorized by a constitutional legislative enactment; or awarded for services performed by an attorney in creating or bringing into the court a fund or other property.<sup>11</sup> Unless one of these conditions applies, there can be no recovery for prevailing party attorney's fees in quiet title actions.<sup>12</sup>

### Riparian Rights

Riparian rights<sup>13</sup> are rights of a landowner incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law.<sup>14</sup> Riparian rights benefit the owner of the riparian land, but such rights are attached to the land and are not owned by the land owner. In order for the rights to attach, the

<sup>5</sup> 10 FLA. JUR. 2D, *Conflict of Laws* s. 18.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., The Boutty Law Firm, P.A., *Understanding Common Property Disputes in Florida*, <https://bouttylaw.com/understanding-common-property-disputes-in-florida/> (last visited Jan. 4, 2024) (identifying boundary disputes, easement disputes, and title disputes as common property disputes); Nettleman Land Consultants, *Types of Property Disputes*, <https://cnettleman.net/types-of-land-disputes/> (last visited Jan. 4, 2024) (similar).

<sup>8</sup> See generally ch. 65, F.S.

<sup>9</sup> *Price v. Tyler*, 890 So. 2d 246, 252 (Fla. 2004).

<sup>10</sup> 20 FLA. JUR. 2D, *Ejectment and Related Remedies* s. 73.

<sup>11</sup> *Kittel v. Kittel*, 210 So. 2d 1, 3 (Fla. 1967).

<sup>12</sup> *Price*, 890 So. 2d at 252-53.

<sup>13</sup> Technically, the term “riparian” refers to land abutting nontidal or navigable river waters, and the term “littoral” refers to land abutting navigable ocean, sea, or lake waters. *5F, LLC v. Hawthorne*, 317 So. 3d 220, 222 n.1 (Fla. 2d DCA 2021) and *Walton County v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1105 n.3 (Fla. 2008), *aff'd sub nom. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702 (2010). However, the term “riparian” is commonly used to refer to all waterfront owners, so “riparian rights” can be used to refer to rights associated with both riparian and littoral lands. *Id.*

<sup>14</sup> Section 253.141(1), F.S.; see also *Odom v. Deltona Corp.*, 341 So. 2d 977, 981 (Fla. 1976) (providing that “whether or not a particular area is that of a navigable body of water and thus sovereignty property held in trust [under Article X, Section 11 of the Florida Constitution] is a question of fact and dependent upon whether or not the body of water is permanent in character and, in its ordinary and natural state, is navigable for useful purposes and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located); see also *Brevard Cty. v. Blasky*, 875 So. 2d 6, 13-14 (Fla. 5<sup>th</sup> DCA 2004) (explaining that navigability is determined as of 1845, the date Florida became a state).

land must extend to the ordinary high water mark or the mean high water line<sup>15</sup> of the navigable water. Whoever owns or leases the land enjoys the rights, regardless of whether they are mentioned in a deed or lease.<sup>16</sup> Riparian rights may not be taken without just compensation and due process of law.<sup>17</sup> If a landowner's common-law riparian rights are violated by the acts of another individual, the landowner may bring an action against him or her.<sup>18</sup>

The state holds title to sovereign submerged lands in trust for public use.<sup>19</sup> The public generally enjoys rights such as bathing, fishing, commerce, and navigation.<sup>20</sup> Upland property owners enjoy these rights in common with the public.<sup>21</sup> Riparian rights are additional, exclusive rights that are held by upland property owners but not the general public.<sup>22</sup> Such rights generally include, but are not limited to, the following:

- Access to and from the water.
- An unobstructed view over the water.
- Reasonable use of the water.
- Accretions and relictions.<sup>23</sup>
- Wharfing out, meaning building structures on the shoreline.<sup>24</sup>

The doctrines of erosion, accretion, and reliction affect riparian rights.<sup>25</sup> When gradual and imperceptible losses or additions to the shoreline occur, the boundary between public and private land (i.e., the mean high-water line)<sup>26</sup> is altered accordingly.<sup>27</sup> Riparian property owners automatically take title to dry land added to their property by accretion or reliction.<sup>28</sup> However, under the doctrine of avulsion, following sudden or perceptible loss or addition to the shoreline,

<sup>15</sup> *Walton County*, 998 So. 2d at 1124 (noting that the “ordinary high water mark is well established as the dividing line between private riparian and sovereign or public ownership of the land beneath the water”); *see also* s. 253.03(8)(b), F.S. (identifying “submerged lands,” for purposes of inventorying public lands, as “publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state”); *see also* s. 177.28, F.S. (same).

<sup>16</sup> Section 253.141(1), F.S.

<sup>17</sup> *Broward v. Mabry*, 58 Fla. 398, 410 (1909).

<sup>18</sup> *Harrell v. Hess Oil & Chem. Corp.*, 287 So. 2d 291, 295 (Fla. 1973).

<sup>19</sup> FLA. CONST. art. X, s. 11.

<sup>20</sup> *Walton County*, 998 So. 2d at 1110-11.

<sup>21</sup> *Id.* at 1110-11. These special littoral rights are such as are necessary for the use and enjoyment of the upland property, but these rights may not be so exercised as to injure others in their lawful rights. *Id.* at 1111.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* “Accretion” is the gradual and imperceptible accumulation of land; “reliction” is an increase of the land by a gradual and imperceptible withdrawal of a waterbody. *Id.* at 1113.

<sup>24</sup> *See* Brendan Mackesey, *An Overview of Riparian Rights in Florida*, The Reporter, The Environmental and Land Use Law Section, Vol. XLI, No. 1, 1, 13–16 (Oct. 2020), available at <https://eluls.org/wp-content/uploads/2021/02/The-Environmental-and-Land-Use-Law-Section-Reporter-October-2020.pdf>.

<sup>25</sup> *Walton County*, 998 So. 2d at 1112-15.

<sup>26</sup> *See* s. 177.28(1), F.S.

<sup>27</sup> *Bd. of Trustees of the Internal Imp. Tr. Fund v. Sand Key Assocs., Ltd.*, 512 So. 2d 934, 936 (Fla. 1987).

<sup>28</sup> *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 709 (2010); *see also Bd. of Trustees of the Internal Imp. Tr. Fund v. Sand Key Assocs., Ltd.*, 512 So. 2d 934, 938-39 (holding that owners have a right to claim accreted land when the accretion was artificially-caused, as long as the owner did not cause the accretion); *see also New Jersey v. New York*, 523 U.S. 767, 783 (1998) (explaining that an owner may not extend their own property into the water by landfilling or purposefully causing accretion); *see also* s. 161.051, F.S. (providing that the state will retain title to additions or accretions to the permittee's property caused by permitted coastal improvements).

the boundary between public and private land remains where it existed before the avulsive event occurred.<sup>29</sup>

## **Environmental or Regulatory Approvals or Permits**

### ***Political Subdivisions and State Agencies***

“Political subdivisions” include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in the state.<sup>30</sup> Notably, although the state’s five water management districts<sup>31</sup> qualify as political subdivisions of the state, state courts have also treated them as state agencies in certain contexts.<sup>32</sup>

An “agency,” as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government.<sup>33</sup> State agencies have been described as “component parts of the state which jurisdiction extends to every part of the state[.]”<sup>34</sup> The Department of Environmental Protection is one example of a state agency.<sup>35</sup>

### ***The State ERP Permitting Process***

The Department of Environmental Protection, or a water management district having jurisdiction, regulates activities in, on, or over surface waters of the state, as well as any activity that alters surface water flows, through the issuance of environmental resource permits (ERPs). ERPs are generally required for the construction, alteration, operation, maintenance, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, work, or appurtenant work.<sup>36</sup> In this context, the term “works” includes any artificial structure that is placed in or across the waters of the state, such as a docking facility.<sup>37</sup>

The department or the water management district may require an ERP and impose conditions necessary to assure that the construction or alteration of any work complies with state law and

<sup>29</sup> *Walton County*, 998 So. 2d at 1114. “Avulsion” is the sudden or perceptible loss of or addition to land by the action of the water or a sudden change in the bed of a lake or the course of a stream. *Id.* at 1116.

<sup>30</sup> Section 1.01(8), F.S.

<sup>31</sup> The Department of Environmental Protection exercises general supervisory authority over the state’s five water management districts, which are responsible for the administration of water resources at the regional level: the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District, and South Florida Water Management District. Florida Department of Environmental Protection, *Water Management Districts*, <https://floridadep.gov/owper/water-policy/content/water-management-districts> (last visited Jan. 4, 2024).

<sup>32</sup> See Op. Att’y Gen. Fla. 90-66 (1995) (concluding that water management districts would more accurately be characterized as districts, special districts, or political subdivisions); see also *Miccosukee Tribe of Indians of Florida v. U.S.*, 980 F.Supp. 448, 452, 459-60 (S.D. Fla. 1997) (describing the South Florida Water Management District as a political subdivision of the state, but also concluding that it is a state agency for purposes of immunity from suit under the Eleventh Amendment to the U.S. Constitution).

<sup>33</sup> Section 20.03(1), F.S.

<sup>34</sup> Op. Att’y Gen. Fla. 90-66 (1995).

<sup>35</sup> See Office of Program Policy Analysis and Government Accountability, *State of Florida Organizational Chart*, <https://oppaga.fl.gov/ProgramSummary/OrgChart> (last visited Jan. 4, 2024) (identifying all state agencies).

<sup>36</sup> Section 373.413(1), F.S.

<sup>37</sup> Section 373.403(5), F.S.; see also Fla. Admin. Code R. 18-21.003(22) and 18-21.004 (providing definitions and specific approval criteria for the construction of docking facilities over sovereign submerged lands).

rules, and will not be harmful to water resources.<sup>38</sup> Pursuant to statutory authority,<sup>39</sup> the department has adopted a comprehensive chapter of rules and a handbook that governs the permitting process.<sup>40</sup>

In 2020,<sup>41</sup> the state assumed responsibility under section 404 of the federal Clean Water Act<sup>42</sup> for dredge and fill permitting.<sup>43</sup> The department has adopted rules to implement the section 404 program<sup>44</sup> and is responsible for overseeing the permitting for any project that proposes dredge or fill activities within state-assumed waters.<sup>45</sup> There is significant overlap between the federal 404 permitting program and the ERP program.

### III. Effect of Proposed Changes:

The bill creates s. 57.106, F.S., regarding the recovery of attorney fees and costs in certain disputes regarding property rights.

The bill provides that in a civil action brought against the owner of a parcel of real property to resolve a dispute concerning property rights, the court must award reasonable attorney fees and costs to the prevailing defendant if the improvements made to the property by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency.

For purposes of the bill, the term “property rights” includes, but is not limited to, use rights, ingress and egress rights, and those rights incident to land bordering upon navigable waters as described in the riparian rights statute.<sup>46</sup>

The act takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>38</sup> Section 373.413(1), F.S.

<sup>39</sup> Section 373.4131, F.S.

<sup>40</sup> See generally Fla. Admin. Code Ch. 62-330; DEP, *Environmental Resource Permit Applicant’s Handbook, Vol. 1* (Dec. 22, 2020), available at <https://floridadep.gov/water/water/content/water-resource-management-rules>; Fla. Admin. Code R. 62-330.010(4) (incorporating the handbook by reference).

<sup>41</sup> See generally DEP, *State 404 Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Jan. 4, 2024) (citing 85 FR 83553).

<sup>42</sup> 33 U.S.C. s. 1251 et seq.

<sup>43</sup> Section 373.4146, F.S.

<sup>44</sup> See Fla. Admin. Code Ch. 62-331.

<sup>45</sup> DEP, *State 404 Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Jan. 4, 2024).

<sup>46</sup> Section 253.141, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill requires courts to award reasonable attorney fees and costs to prevailing defendants (only) under the circumstances contemplated by the bill, it will be riskier and potentially more expensive for adjacent private property owners to bring such lawsuits. Likewise, the bill will reduce the need for property owners who act in reliance on government approvals and permits to spend funds to defend against lawsuits based on those actions.

C. Government Sector Impact:

Because it will be riskier and potentially more expensive for adjacent private property owners to bring lawsuits under the circumstances contemplated by the bill, it is anticipated that fewer lawsuits will be filed in circuit courts, thereby decreasing their caseloads to some extent.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 57.106 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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