

STORAGE NAME: h4145.rpp
DATE: April 7, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4145
RELATING TO: Murphy Act Reservations
SPONSOR(S): Representative Eggelletion and others
COMPANION BILL(S): S 0516 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
 - (2) WATER & RESOURCE MANAGEMENT
 - (3) COMMUNITY AFFAIRS
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 4145 amends section 253.82, Florida Statutes, to provide for the transfer of the ownership of road reservations on property acquired by the state under the Murphy Act which had been sold to private owners to the governmental entity currently having jurisdiction over the adjacent roadway. The bill requires that the governmental entity receiving jurisdiction must develop a process for evaluating the need for the easement. The bill provides that the governmental entity is required to either release the easements or provide for payment at the time the property is to be used for a road. The bill provides that if a property owner is entitled to payment for the reservation, he or she is entitled to request payment before the property is to be used for a road if the property owner can show the reservation denies the property owner the current economic use of the property.

HB 4145 amends section 712.04, Florida Statutes, of the Marketable Records Title Act to provide that reservations for future transportation projects reserved in deeds conveyed pursuant to the Murphy Act shall be extinguished by the Marketable Record Title Act on July 1, 2001, subject to standard exceptions or the right of any governmental entity holding title to such reservations to preserve the reservations that it needs for future transportation projects by filing notice before July 1, 2001.

HB 4145 amends section 712.05, Florida Statutes, to authorize any governmental entity claiming a road reservation pursuant to a deed conveyed under the Murphy Act prior to July 1, 1991, to preserve the reservation or any portion of it necessary for future transportation projects by filing a written notice prior to July 1, 2001. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years. If the reservation is used for a road during the 10-year period, the reservation is not extinguished.

This act is to take effect upon becoming a law.

There will be a fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In 1937, the Legislature enacted chapter 18296, Laws of Florida, commonly known as the Murphy Act, to facilitate the state sale of numerous tax certificates. At that time, there were many tax certificates which had remained uncollected for two or more years as a result of the devaluation of Florida property after the 1929 stock market crash. The Murphy Act legislation provided for sale of two-year-old tax certificates upon a demand for public sale. If, after two years from the date a tax certificate became eligible for sale, there had not been demand for sale, the act provided that "fee simple title to all lands, against which there remains outstanding tax certificates which on the date this Act becomes a law, are more than 2 years old, shall become absolutely vested in [the] State of Florida. . . ."

In 1940, the Board of Trustees of the Internal Improvement Trust Fund [Trustees] adopted a motion relative to all lands acquired pursuant to the Murphy Act that reserved rights-of-way through any parcel where there was a designated State Highway. The Trustees then offered numerous parcels for sale.

Thereafter, advertisements for sale of such property and the deed conveying title contained the reservations, such as:

Unto the State of Florida easement for State Road Right of Way Two Hundred (200) feet wide, lying equally on each side of the center line of any State Road existing on the date of this deed through so much of any parcel herein described as is within One Hundred (100) feet of said center line.

See Florida B. Of Trustees Internal Imp. Trust Fund v. Wakulla Silver Springs Co., 368 So. 2d 706, 710 (Fla. 3d DCA 1978).

While the original deed conveying title to the property contained the above reservation and all deeds in the chain of title should have contained the reservation, problems have arisen. In some cases, the language was eliminated from later recorded deeds. Additionally, when property was subdivided, the reservation language was in some cases carried forward in all parcels, whether that parcel was or was not within 100 feet of a state road. In some instances the road had been relocated and property which is currently on the road was not within 100 feet of the original center line.

Property owners receive notice of these reservations in several ways. Where the language is in the deed, they are on notice of the easement at the time of purchase. When the language is not in the deed the reservation may be identified as an exception in a title policy or it is discovered when the state, a city, or a county notifies the property owner that some or all of the reservation will be used for a transportation project.

Section 253.03, Florida Statutes, provides the Trustees authority to manage all lands owned by the state. Rules governing the Trustees and providing the authority to manage the reservations on properties acquired pursuant to the Murphy Act are found in Florida Administrative Code, Rule 18-2.018. This rule provides that road right-of-way reservations will be released to the record owner when an application is submitted,

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provided a recommendation from the transportation authority with jurisdiction has been obtained and the Trustees determine there is no further need for the reservation.

To implement this rule, the Trustees adopted an Application For Release of Reservations. The applicant must complete the information on the application, obtain approval by the Department of Transportation [hereinafter D.O.T.], and where a road has been transferred, the county or city government determined to have authority over the adjacent roadway. Current proof of title to the property containing the reservation must be attached, which includes either title insurance, title binder, or title commitment obtained within the last six months, or an opinion of title from an attorney. Additionally, a survey may be required. Finally, there is an application fee of \$300 payable to the Department of Environmental Protection [hereinafter D.E.P.]. Upon receipt of the completed application, all required documents and the \$300 fee, the D.E.P. staff will review and approve or deny the application.

This application process is applicable for obtaining a statement of release for any deed which contained the reservation language, whether or not the impacted property is within 100 feet of the center line of a state road.

Property owners are impacted by these reservations in three major ways:

First, in situations where the reservation language appears in the deed, but there is not an actual reservation, property owners must either ignore the language or must have a statement from the Trustees that no reservation exists. To obtain such a statement, the property owner must complete the application process, including obtaining the approval of the governmental entity having jurisdiction of the adjacent roadway, and paying the \$300 fee.

Second, where the reservation exists but the governmental entity having jurisdiction over the adjacent road has no need for the property and agrees to a release, the property owner must obtain the approval for the release, file the application, and pay the \$300 fee.

Finally, where the governmental entity having jurisdiction of the roadway does anticipate using some or all of the reservation for a road project at some time in the future, the reservation is not released; however, the property owner has beneficial use of the reservation until such time as the property is taken for a road. During this time, the property owner may not obtain a building permit for construction in the reservation. Where the D.O.T., a city or county finds that it wants to retain the reservation for future transportation purposes, the applicant applying for a release has no recourse except against any title insurance where notice was not provided, even if the remaining property cannot be used because of past subdivision or because of the location of structures in the reservation. In some instances the governmental entity using the property has paid to relocate individuals severely impacted by the taking of a reservation.

A property owner may have a right of action against their title insurance company if the company failed to identify and disclose the Murphy Land reservations. The difficulty in claims against the title insurance companies is that the insurance policy is based upon the price of the land at the time the property was purchased and insured against title defects. The insurance rarely will protect against appreciated value or improvements.

Some title companies have excluded the Murphy Act as a general caveat in their standard exceptions.

Chapter 712, Florida Statutes, commonly referred to as the Marketable Record Title Act [hereinafter MRTA], extinguishes all interests in land prior to the root title except interests of federal or state government reserved in the deed transferring title from a federal or state agency. In this instance all reservations in these lands are extinguished if they are more than 30 years old except the reservations reserved by the Trustees. As stated in City of Jacksonville v. Horn, 496 So.2d 204, 206 (Fla. 1st DCA 1986): "The purpose of the MRTA is to simplify and facilitate land title transactions. It eliminates all stale claims to real estate, with certain enumerated exceptions, unless notice of these claims is filed in a procedurally proper manner. [Citation omitted.] More specifically, the [MRTA] provides that any person who, along with his predecessors, ". . . has been vested with any estate in land of record for 30 years or more, shall have a marketable title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03." Id.

B. EFFECT OF PROPOSED CHANGES:

HB 4145 provides for the transfer of the ownership of road reservations on property acquired by the state under the Murphy Act which had been sold to private owners to the governmental entity currently having jurisdiction over the adjacent roadway. The bill requires that the governmental entity receiving the Murphy Act land must develop a process for evaluating the need for the easement. The bill provides that the governmental entity is required to either release the easements or provide for payment at the time the property is to be used for a road. The bill provides that a property owner is entitled to payment for the reservation, he or she is entitled to request payment before the property is to be used for a road if the property owner can show the reservation denies the property owner the current economic use of the property.

HB 4145 provides that reservations for future transportation projects reserved in deeds conveyed pursuant to the Murphy Act shall be extinguished by the Marketable Record Title Act on July 1, 2001, subject to standard exceptions or the right of any governmental entity holding title to such reservations to preserve the reservations that it needs for future transportation projects in adopted transportation plans by filing notice before July 1, 2001.

HB 4145 authorizes any governmental entity claiming a road reservation pursuant to a deed conveyed under the Murphy Act prior to July 1, 1991, to preserve the reservation or any portion of it necessary for future transportation projects in adopted transportation plans and protect it from extinguishment by the operation of the Marketable Record Title Act by filing for record, prior to July 1, 2001, a written notice in accordance with the provisions of chapter 712, Florida Statutes. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years. If the reservation is used for a road during the 10-year period, the reservation is not extinguished.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 4145 provides that ownership of road reservations on property acquired by the state under the Murphy Act which had been sold to private owners prior to July 1, 1991, will be transferred to the governmental entity currently having jurisdiction over the adjacent roadway.

HB 4145 provides that each governmental entity holding title to these reservations will be required to establish a process for determining the validity of a reservation when a review is requested or the reservation is to be used for a road project. This process must provide for:

1. A determination of whether the language of the deed created a reservation at the time of the original conveyance;
2. Review of any release of the reservation provided by the property owner;
3. The recording of a notice of the non-existence of a reservation if reservation language in the deed does not impact the property;
4. A determination of whether any or all of the reservation may be released, and a form for recording the release;
5. A process to allow for review through mediation if requested by the property owner or through binding arbitration pursuant to chapter 44, Florida Statutes;
6. Any fee charged not to exceed the actual cost to review the deed, perform an appeal and pay for any recording expenses, with no fee to exceed \$300.

HB 4145 provides that if the governmental entity determines that the reservation denies the property owner the current economic use of the property, the entity must purchase the real property and improvements not retained by the property owner in fee simple title or release all or part of the reservation as necessary to allow for beneficial use of the property. If the governmental entity and the property owner are unable to agree as to the

denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration pursuant to chapter 44, Florida Statutes, to resolve these issues. Prior to the payment of any compensation, the property owner must provide the governmental entity copies of any title insurance policies and notice of any compensation received from a title company related to the reservation.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Jurisdiction to administer the Murphy Act reservations, presently with the Trustees, will be transferred to those governmental entities having jurisdiction on the adjacent roadways.

- (2) what is the cost of such responsibility at the new level/agency?

According to the Hillsborough County Real Estate Department, the amounts of research and resources which will be required to properly identify, reassert and provide notice to owners is tremendous. The cost to provide these services is presently indeterminable.

- (3) how is the new agency accountable to the people governed?

Each governmental entity holding title to these reservations will be required to establish a process for determining the validity of a reservation when a review is requested or the reservation is to be used for a road project. Each governmental entities holding title to these reservations will be required to file a notice of intent to reserve rights to the reservation prior to July 1, 2001.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

The bill permits the governmental entity to impose a fee for its expenses, not to exceed \$300, to be paid by the property owner review the reservation deed, performs an appeal and pay for any recording expenses.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

A fee not to exceed \$300 paid by the property owner is provided to review a deed, perform an appeal and pay for any recording expenses.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill creates a mechanism to clean up title defects related to Murphy Act reservations where deed transfers and/or title companies have failed to disclose the existence of the reservations.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 253.82, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1.

HB 4145 adds subsection (6) to section 253.82, Florida Statutes, to provide that ownership of road reservations on property acquired by the state under the Murphy Act which had been sold to private owners prior to July 1, 1991 will be transferred to the governmental entity currently having jurisdiction over the adjacent roadway.

HB 4145 provides that each governmental entity holding title to these reservations would be required to establish a process for determining the validity of a reservation when a review is requested or the reservation is to be used for a road project. This process must provide for:

1. A determination of whether the language of the deed created a reservation at the time of the original conveyance;
2. Review of any release of the reservation provided by the property owner;
3. The recording of a notice of the non-existence of a reservation if reservation language in the deed does not impact the property;
4. A determination of whether any or all of the reservation may be released, and a form for recording the release;
5. A process to allow for review through mediation if requested by the property owner or through binding arbitration pursuant to chapter 44, Florida Statutes;
6. Any fee charged not to exceed the actual cost to review the deed, perform an appeal and pay for any recording expenses, with no fee to exceed \$300.

HB 4145 provides that any owner of property encumbered by a Murphy Act road reservation who has been denied a release of all or part of the reservation or who has received notice of a governmental entity's intent to preserve the reservation under section 712.05, Florida Statutes, to appeal to the entity and show that the reservation denies the property owner the current economic use of the property held by the owner.

HB 4145 provides that the property owner is entitled to a release of the reservation or compensation from the governmental entity, at the time the reservation is used for a road project. In circumstances where a property owner, whose deed did not contain the reservation, can demonstrate that the discovery of the reservation has rendered the remaining property useless or valueless or the owner has been unable to make beneficial use of the property, the property owner may demand immediate release of the reservation or payment by the governmental entity.

HB 4145 provides that if the governmental entity determines that the reservation denies the property owner the current economic use of the property, the entity must purchase the real property and improvements not retained by the property owner in fee simple title or release all or part of the reservation as necessary to allow for beneficial use of the property. If the governmental entity and the property owner are unable to agree as to

the denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration pursuant to chapter 44, Florida Statutes, to resolve these issues. Prior to the payment of any compensation, the property owner must provide the governmental entity copies of any title insurance policies and notice of any compensation received from a title company related to the reservation. It is unclear whether the governmental entity is to receive a credit or offset for any compensation already received by a title company for the Murphy Act reservations.

HB 4145 provides that the process for release of road reservations covered by this act or payment for property impacted by the use of a reservation covered by this act shall be solely in accordance with this act. Any action for the taking of property related to road construction is separate and distinct from an action pursuant to this act. The governmental entity will not be liable for attorney fees or costs incurred by an owner in establishing the impact of the road reservation on the property.

HB 4145 requires those entities receiving ownership of the Murphy Act reservations, whether a local government or the D.O.T., to compensate property owners whose land is burdened with a transportation reservation if the entity intends to use the reservation for a transportation project. According to the County of Hillsborough, the amount of the compensation will vary depending on the circumstances and could total substantial amounts over time. The bill also requires local governments to develop a process for review of deeds containing such reservations when requested to do so or when a road project is anticipated. According to the County of Hillsborough, the costs to perform this task may be substantial.

Section 2.

HB 4145 amends section 712.04, Florida Statutes, of the MRTA to provide that easements for future transportation projects reserved in deeds conveyed pursuant to the Murphy Act shall be extinguished by the MRTA on July 1, 2001, subject to the matters under section 712.03, Florida Statutes, and further subject to the right of any governmental entity holding title to such reservations to preserve the reservations that it needs for future transportation projects in adopted transportation plans by filing notice under section 712.05, Florida Statutes, before July 1, 2001.

Section 3.

HB 4145 amends section 712.05, Florida Statutes, to authorize any governmental entity claiming a road reservation pursuant to a deed conveyed under the Murphy Act prior to July 1, 1991, to preserve the reservation or any portion of it necessary for future transportation projects in adopted transportation plans and protect it from extinguishment by the operation of the Marketable Record Title Act by filing for record, prior to July 1, 2001, a written notice in accordance with the provisions of chapter 712, Florida Statutes. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years. If the reservation is used for a road during the 10-year period, the reservation is not extinguished.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The bill will have an indeterminant fiscal impact on local governments.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

The Department of Transportation has estimated that there will be recurring expenses of \$1,250,000 per year to compensate property owners for the Murphy Act reservations.

State and local governmental entities wanting to use a Murphy Act reservation will be required to pay for the reservation. The payment will take place at the time the project is scheduled for right-of-way acquisition. However, if it is determined that the reservation denies the property owner the current economic use of the property, as a result of the discovery of the reservation, the claim for compensation must be considered immediately. The D.O.T. has estimated this would cost approximately \$1,250,000 per year for state highway projects. No estimate of the cost to local government has been made.

The D.E.P. projects it would not receive approximately \$50,000 annually in fees which are currently deposited into the Internal Improvement Trust Fund. However, the department would not have to conduct the record searches or process the applications for release.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

To have a governmental entity review a reservation to determine if it could be released, an individual would be required to go only to the governmental entity having title to the Murphy Act land, not to D.E.P. The fee for the review would be established by the governmental entity and limited to \$300.00. Currently, D.E.P. charges a \$300 fee for this service.

2. Direct Private Sector Benefits:

Many of the existing reservations will not be reserved by the governmental entity and title to the reservations will be conveyed to the property owners. These property owners will be benefitted by having their title cleared.

3. Effects on Competition, Private Enterprise and Employment Markets:

Private enterprise will be benefitted since those property owners who have reservations which will be extinguished, thereby making their property title marketable and permitting bank financing where it has occasionally been denied solely on the basis of the reservations.

D. FISCAL COMMENTS:

If a State or a local governmental entity wants to use a Murphy Act reservation, it would be required to pay for the reservation. The D.O.T. has estimated this would cost approximately \$1,250,000 per year for state highway projects.

The D.E.P. projects it would not receive approximately \$50,000 annually in fees which are currently deposited into the Internal Improvement Trust Fund. However, the department would not have to conduct the record searches or process the applications for release.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, section 18(a) of the Florida Constitution provides in pertinent part:

that no municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that the law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments

HB 4145 applies to both the Department of Transportation and local governments. Therefore, this bill is not a mandate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

HB 4145 appears to potentially relieve title insurance companies, who have not properly identified the Murphy Act property during title searches, of their contracted-for financial liability. It is unclear whether the governmental entities will have the legal ability to make claims against prior title policies which failed to identify the reservations. According to the County of Hillsborough and the D.O.T., where the costs to pay for reservations become the responsibility of local governments, the financial burden appears to be shifted from the title companies to local government taxpayers.

The maximum period of time in which a governmental entity may preserve a reservation intended to be used for a road is ten years from July 1, 2001. According to Hillsborough County, by limiting the validity of reasserted reservations to a period of ten years, the limit will effectively eliminate use of any reservation not already identified on the current transportation plan. Ten years does not afford Hillsborough County sufficient time to properly plan, design, acquire and construct road projects that are projected to begin within the next five years.

The bill provides that “[i]f the reservation is used for a road during the 10-year period the reservation is not extinguished.” (Emphasis added.) It is not clear what the requirements are to comply with the requirements of being “used as a road.” Similarly, the bill does not appear to permit the governmental agency to purchase the reservation prior to extinguishment in cases where the roads are planned and adopted in transportation plans, but are not “used for a road” prior to July 1, 2011.

The provision that “upon determination by the governmental entity that the reservation denies the property owner the current economic use of the property” is unclear. It appears to permit only the governmental entity to make that determination, and thus may promote litigation. It is also unclear as to what procedure determines the “current economic use of the property.” It may be interpreted to mean: no economic use whatsoever, the lack of present highest and best use of the property, or denial of the property owner’s ability to make desired improvements to the property.

The terminology amending section 253.82, Florida Statutes, refers to “road reservations.” The terminology in the Murphy Act reservations have used the terminology “easements for State Road Right of Way.” According to the County of Hillsborough, a road reservation may

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be used exclusively for road improvements, whereas, an easement may be used for related improvements, i.e., storm water, sewers, utilities, bike trails. It is unclear whether other property rights in the Murphy Act lands may exist, not specified within this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

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