

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: _____

Subject: Murphy Act Lands

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 amendment</u>
3.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill transfers the ownership rights to all easements on property sold after acquisition under the Murphy Act to the governmental entity with current jurisdiction of the adjacent roadway. The bill amends s. 253.82, F.S., to vest all reservations of easements in deeds by the Board of Trustees of the Internal Improvement Trust Fund conveying land acquired under the Murphy Act, by operation of law and without the necessity of instruments of conveyance from the Trustees, in the governmental entity having right and title to the road to which the reservations are adjacent, either the Department of Transportation, a county, or a municipality. Each governmental entity must establish a procedure for review of any deed containing a reservation when a review is requested or a road project is anticipated. The bill establishes requirements for the review process.

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 may appeal to the entity and show that the reservation *substantially denies* the property owner the current economic use of the property held by the owner. “*Current economic use*” is defined to mean the use of the property on the date notice of the easement is filed under s. 712.05, F.S.

If the governmental entity determines that the reservation substantially denies the property owner the current economic use of the property, the entity must either purchase the real property and improvements not retained by the property owner 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 either the substantial denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration 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 easement.

The bill amends s. 712.04, F.S., to extinguish all Murphy Act reservations of easements pursuant to the Marketable Record Title Act on July 1, 2001, unless the reservation is used or identified by a governmental entity in the final design plans of a road project scheduled for construction to begin prior to the end of a 10-year period. The bill amends s. 712.05, F.S., to authorize any governmental entity claiming a Murphy Act reservation to preserve the reservation, or a portion of the reservation, which is 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 of reservation. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years if the reservation is used or identified by the governmental entity in the final design plans of a road project scheduled for construction to begin prior to the end of the 10 years. If the reservation is used or identified in the final design plans of a road project scheduled for construction to begin prior to the end of the 10-year period, the reservation is not extinguished.

The bill substantially amends the following sections of the Florida Statutes: 253.82, 712.04, and 712.05.

II. Present Situation:

A. Background

Murphy Act lands are lands acquired by the state due to nonpayment of taxes after the depression. The lands were acquired pursuant to law enacted in 1937, the Murphy Act (General Law 18296). The Act also provided a method to facilitate the state sale of numerous tax certificates which had remained uncollected for 2 or more years. The Murphy Act provided for sale of 2-year old tax certificates upon a demand for public sale. If after 2 years from the date a tax certificate became eligible for sale there had not been a demand for sale, the act provided “. . . 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 May of 1940, the Trustees of the Internal Improvement Trust Fund (Trustees) adopted a motion relating to all lands acquired pursuant to the Murphy Act. The motion reserved rights-of-way through any parcel where there was a designated State Highway. The Trustees then offered numerous parcels for sale.

Future advertisements for sale of such property and the deed conveying title contained the following reservation:

Upon 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.

Although the original deed conveying title to the property contained the 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. In other cases, when property was subdivided, the reservation language was carried forward in all parcels whether that parcel was or was not within 100 feet of a state road. Finally, in some instances the road has been relocated and property which is currently on the road was not within 100 feet of the original center line.

Property owners learn 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 either may be identified as an exception in a title policy or 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.

A number of problems have arisen due to the lack of notice of the reservation. In some cases, building permits have been issued for construction within the easement because the easement did not appear on the deed. In some cases, the property has been subdivided into lots so small that, when the easement is considered, no structure on the property can meet current building code requirements. In these cases, the problem arose with some past transfer of the property which did not include the easement language in the deed and was compounded where a title company did not research sufficiently to identify the easement.

B. Reservation Release Process

Chapter 253.03, F.S., provides for the Trustees to manage all lands owned by the state. To carry out this authority for the reservations on properties acquired pursuant to the Murphy Act, the Trustees adopted administrative rule 18-2.018, F.A.C. This rule provides that road right-of-way reservations will be released to the record owner when an application is submitted, 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 (DOT), and, where a road has been transferred, obtain approval from 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 must include either title insurance, title binder, or title commitment obtained within the last 6 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 (DEP). Upon receipt of the completed application, all required documents, and the \$300 fee, the DEP 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 the impacted property is within 100 feet of the center line of a state road or not.

C. Property Owners' Recourse

A property owner's recourse depends in part on the specific circumstances and the road construction authority's response to the owner. 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 easement 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 easement 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 easement for a road project at some time in the future, the easement is not released, but the property owner has beneficial use of the easement until such time as the property is taken for a road. However, the property owner cannot obtain a building permit for construction in the easement. Where the DOT or a city or county finds that it wants to retain the easement 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 easement. In some instances, the governmental entity using the property has paid to relocate individuals severely impacted by the taking of an easement.

D. Marketable Record Title Act

The Marketable Record Title Act, set out in ch. 712, F. S., 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 over 30 years old except the easements reserved by the Trustees.

III. Effect of Proposed Changes:

The bill transfers the ownership rights to all easements on property sold after acquisition under the Murphy Act to the governmental entity with current jurisdiction of the adjacent roadway. The bill amends s. 253.82, F.S., to vest all reservations of easements in deeds by the Board of Trustees of the Internal Improvement Trust Fund conveying land acquired under the Murphy Act, by operation of law and without the necessity of instruments of conveyance from the Trustees, in the governmental entity having right and title to the road to which the reservations are adjacent. All reservations adjacent to a road that was designated as a state road at the time of the reservation and which is currently held by the state are conveyed to the DOT. All reservations adjacent to a road that was designated as a state road at the time of the reservation and which is located in an unincorporated area of a county or on a road owned by the county within any incorporated area

are conveyed to the respective counties. All other reservations within incorporated areas adjacent to a road that was designated as a state road at the time of the reservation and which are not otherwise conveyed to the state or the county are conveyed to the incorporated area. The conveyance includes all right, title, and interests in the reservation held by the Trustees.

Each entity holding title to Murphy Act reservations must establish a procedure for review of any deed containing a reservation when a review is requested or a road project is anticipated. The review process must provide for:

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

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 s. 712.05, F.S., may appeal to the entity and show that the reservation *substantially denies* the property owner the current economic use of the property held by the owner. "*Current economic use*" is defined to mean the use of the property on the date notice of the easement is filed under s. 712.05, F.S.

If the governmental entity determines that the reservation substantially denies the property owner the current economic use of the property, the entity must either 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 either the substantial denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration 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 easement.

The process for release of these reservations or payment for property impacted by the use of such a reservation is to 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's fees or costs incurred by an owner in establishing the impact of the road reservation on the property.

The bill amends s. 712.04, F.S., to provide that all reservations of easements in deeds by the Board of Trustees of the Internal Improvement Trust Fund conveying land acquired under the Murphy Act and not used or identified by the governmental entity in the final design plans of a road project scheduled for construction to begin prior to the end of the 10 years are extinguished by the Marketable Record Title Act on July 1, 2001, 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 s. 712.05, F.S., before July 1, 2001.

The bill amends s. 712.05, F.S., to authorize any governmental entity claiming a road reservation pursuant to a deed conveyed under the Murphy Act to preserve the reservation, or a portion of the reservation, which is 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 ch. 712, F.S. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years if the reservation is used or identified by the governmental entity in the final design plans of a road project scheduled for construction to begin prior to the end of the 10 years. If the reservation is used or identified in the final design plans of a road project scheduled for construction to begin prior to the end of the 10-year period, the reservation is not extinguished.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The total cost to any specific local government or to local governments in general cannot be determined. The bill requires local governments to compensate property owners who are substantially denied the current economic use of their property due to a Murphy Act reservation. While the amount of the compensation will vary depending on the circumstances, it could total substantial sums for some local governments over time.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill requires local governments to compensate property owners who are substantially denied the current economic use of their property due to a Murphy Act reservation. The amount of the compensation will vary depending on the circumstances.

To have government review an easement to determine if it could be released, an individual would be required to go only to the governmental entity having current jurisdiction of the road, not DEP. Any fee for the review would be established by the governmental entity and not DEP, which currently charges a \$300 fee for this service. The maximum fee the governmental entity could charge would be \$300.

C. Government Sector Impact:

State and local governmental entities would have to compensate property owners who are substantially denied the current economic use of their property. The amount of the compensation will vary depending on the circumstances.

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.