

**STORAGE NAME:** h0603s1b.rpp

**DATE:** April 6, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
COMMITTEE ON REAL PROPERTY AND PROBATE  
ANALYSIS**

**BILL #:** CS/HB 603

**RELATING TO:** Murphy Act Lands/Road Easements

**SPONSOR(S):** Committee on Transportation and Rep. Eggelletion

**COMPANION BILL(S):** CS/SB 144 (s)

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

- (1) TRANSPORTATION YEAS 9 NAYS 2
  - (2) REAL PROPERTY AND PROBATE YEAS 5 NAYS 3
  - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

CS/HB 603 attempts to resolve the issues surrounding road easements that were reserved to the state when Murphy Act lands were sold to private owners. The bill transfers some of these reservations to the Department of Transportation ("DOT"), a county, or an incorporated area, depending upon which entity currently owns the road adjacent to the reservation. These entities must preserve the reservations pursuant to specified requirements, or the reservations are extinguished on July 1, 2002.

There is a fiscal impact on the state, county and city governments. See "Fiscal Comments" section (page 9) of this analysis for information provided by the Committee on Real Property and Probate.

The bill is effective upon becoming law.

On April 5, 1999, the Committee on Real Property and Probate adopted four amendments which are now traveling with the bill.

***There are numerous concerns regarding this bill which the Committee on Real Property and Probate addresses in the "Comments" section of this analysis (page 10).***

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

***The Committee on Transportation provides the following information:***

**1. Background**

Murphy Act lands are lands acquired by the state after the depression due to nonpayment of taxes. The lands were acquired pursuant to a law enacted in 1937, the Murphy Act (General Law 18296). The Murphy Act provided for sale of 2-year old property 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 . . . 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, this was not always the case. In some instances, the language was eliminated from later recorded deeds. Further, when some 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. Building permits have been issued for construction within the easement because the easement did not appear on the deed. The property has sometimes been subdivided into lots so small that, when the easement is considered, no structure on the property can meet current building code requirements. These problems arise when some past transfer of the property did not include the easement language in the deed, and is compounded when a title company does not identify the easement.

**2. 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 require a property owner to complete an application, obtain approval by DOT, and, where a road has been transferred, obtain approval from the county or city government determined to have jurisdiction 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.

### **3. 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, attaching all required documentation, 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 with all required documentation, and pay the \$300 fee.

Finally, where the governmental entity having jurisdiction of the roadway does want to reserve the property, 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 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 recourse against any title insurance where notice of the easement was not provided. In some instances, at the time a governmental entity uses the property it has paid to relocate individuals severely impacted by the taking of the easement.

### **4. 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 of 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 Board of Trustees of the Internal Improvement Trust Fund.

## **B. EFFECT OF PROPOSED CHANGES:**

### ***The Committee on Transportation provides the following information:***

The bill transfers the ownership rights to all easements on property acquired pursuant to the Murphy Act, to the governmental entity with current jurisdiction of the adjacent roadway. This transfer is by operation of law, without the necessity of an instrument of conveyance from the Trustees. All reservations adjacent to a road that was designated as a state road at the time of the reservation and which is currently a state road are conveyed to DOT. All reservations adjacent to a non-state road that was a state road at the time of the reservation and which is located in an unincorporated area of a county, or which is located on a county road within any incorporated area, are conveyed to the respective counties. All other reservations within incorporated areas adjacent to a road that was a state road at the time of the reservation and which are not otherwise conveyed to the state or a county are conveyed to the municipality. The conveyance includes all 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. 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;

**STORAGE NAME:** h0603s1b.rpp

**DATE:** April 6, 1999

**PAGE 4**

- 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
- An administrative fee which 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., or on the date the property owner applies for a release if notice has not been received.

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 owner or release 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 to resolve these issues. If mediation is unsuccessful, the property owner can demand binding arbitration. 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 amount of compensation paid by the government is to be reduced by any amounts the property owner receives under a title insurance policy.

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 the act, and any action for the condemnation or inverse condemnation 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 related to the process created by the bill.

The bill amends s. 712.04, F.S., to provide that all reservations of easements in deeds by the Trustees 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 within 10 years are extinguished by the Marketable Record Title Act on July 1, 2002. However, prior to that date any governmental entity holding title to Murphy Act reservations may preserve the reservations that it needs for future transportation projects which are in adopted transportation plans, by filing notice under s. 712.05, F.S., before July 1, 2002.

The bill amends s. 712.05, F.S., to authorize any governmental entity claiming a road reservation under the Murphy Act to preserve the reservation, or a portion of the reservation, which is necessary for future transportation projects that are in adopted transportation plans. The entity may protect such a reservation from extinguishment under the Marketable Record Title Act, by filing a written notice for record prior to July 1, 2002. The notice will have the effect of preserving the reservation for a period of 10 years if the reservation is used or identified by the governmental entity in the design plans of a road project for which construction is scheduled to begin prior to the end of the 10 years.

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?

Yes, DOT and local governments will be required to review easements reserved to the state. The bill allows the charging of a fee of up to \$300 for each deed to conduct such a review.

(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?

N/A

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

N/A

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

N/A

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?

Yes, DOT will be required to review easements reserved to the state. The bill allows the charging of a fee of up to \$300 for each deed to conduct such a review.

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?

Yes, local governments will be required to review easements reserved under the Murphy Act. The bill allows the charging of a fee of up to \$300 for each deed to conduct such a review.

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?

Yes, DOT and local governments will be required to review Murphy Act easement reservations. The bill allows property owners to be charged a fee of up to \$300 for the governmental review of each deed.

4. Individual Freedom:

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

N/A

- 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:

Sections 253.82, 712.04, and 712.05, F.S.

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, see D. Fiscal Comments

2. Recurring Effects:

Indeterminate, see D. Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

Indeterminate, see D. Fiscal Comments

4. Total Revenues and Expenditures:

Indeterminate, see D. Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate, see D. Fiscal Comments

2. Recurring Effects:

Indeterminate, see D. Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

Indeterminate, see D. Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

Property owners who currently own property subject to a Murphy Act reservation would be able to seek compensation or a release. After 2012 all Murphy Act reservations of private property would be released. The amount of the compensation and the value of any release will vary depending on the property's circumstances.

To have government review a reservation to determine if it could be released, an individual would be required to go to the governmental entity having current jurisdiction of the road. Any fee for the review would be established by the governmental entity, and would not exceed the \$300 fee currently charged by DEP for this service. Additionally, the governmental entity could decide to release the reservation without the property owner being required to obtain the documentation currently required by DEP. This could reduce the cost of obtaining a release.

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

N/A

D. FISCAL COMMENTS:

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 compensation will vary depending on the circumstances. DOT has indicated that there would be a non-recurring impact of \$250,000 for title work, filing reservations, and required notices to property owners. DOT anticipates an annual impact of about \$100,000 for 10 years for payments in cases where a reservation is determined to have denied the owner the current economic use of the property. After 2012 when the 10 year period for which reservations can be preserved has expired, DOT may experience increased costs to acquire rights-of-way that would have been reserved to the state under the Murphy Act. These impacts would be on the State Transportation Trust Fund (STTF).

Local governments would also be impacted by the termination of reservations and by the requirement for release or purchase where the reservation denies the property owner the current economic use of the property. The amount of this impact will vary depending on the extent a local government currently has these reservations within road rights of way and the extent to which that local government plans to use the reservations for future road improvements.

The state and local governments would be required to bear costs to prepare releases of easements and review easements which may be beyond that which is currently performed for a DEP release. It cannot be determined whether the \$300 fee authorized by the bill would be sufficient to perform those functions.

DEP would not receive approximately \$30,000 annually in fees which are currently deposited into the Internal Improvement Trust Fund. However, under the bill DEP would not have to conduct the records search or process the applications for release.

***Fiscal comments by the Committee on Real Property and Probate:***

The Department of Transportation ("DOT") estimates that the bill has a negative fiscal impact on the State Transportation Trust Fund of \$350,000 in year one, \$350,000 in year two, and \$100,000 for years three through ten. The DOT notes, however, that the negative fiscal impact to the state may increase significantly after year ten.

The fiscal impact on local governments is indeterminate, however, the costs associated with implementation of the bill at the local level appear to fall within the following categories:



- costs of implementing a process to review all deeds containing reservations (there were 80,000 original deeds issued pursuant to the Murphy Act);
- fees for title searches to determine the existence and validity of a reservation (Hillsborough County estimates that a title search will cost an average of \$200 for each deed, and that the total cost for title searches for one road project may be as much as \$20,000, depending upon the number of properties affected);
- legal costs incurred by the entity in arbitration proceedings or appeals;
- expenditures for acquiring each reservation from the current property owner; and
- the potential costs of acquiring land in the future if the reservations are extinguished. The local governments will pay a higher price for any land acquired in an eminent domain proceeding in addition to increased litigation fees.

The fiscal impact on the Department of Environmental Protection ("DEP") is indeterminate. Currently, DEP annually receives approximately \$30,000 in fees, which are deposited into the Internal Improvement Trust Fund. Under the bill, DEP is not required to process certain reservations, therefore, total fees collected will be reduced. However, DEP retains jurisdiction over certain reservations and will continue to collect fees for the next two years.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require cities and counties to spend funds or take actions requiring the expenditure of funds. The impact 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. Where the local government wishes to avoid paying for the reservation it must release all or part of the easement to allow for the current economic use. Local governments will also be required to purchase property in the future for road construction projects which may currently be covered by a reservation if a project for which the reservation would be used is not in a local transportation plan by July 1, 2002. These expenditures are required to comply with a law that applies to all persons similarly situated, including state and local governments. The state's interest in protecting private property ownership interests from uncertainties about whether Murphy Act easements are reserved on certain properties is served by this bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

***The Committee on Real Property and Probate offers the following discussion of the bill:***

1. Currently, the Department of Environmental Protection ("DEP") issues all releases related to reservations for roads, minerals, gas, canals, and oil. This bill addresses reservations that are **adjacent** to a road that was designated as a state road at the time of the reservation, and requires the Department of Transportation ("DOT"), each county, and each incorporated area, as applicable, to individually implement this legislation. Therefore, the 471 governmental entities will be interpreting and implementing these provisions as deemed appropriate by each entity. This lack of consistency may make it more difficult to obtain clear title to property encumbered by a reservation.

2. The bill does not specify the governmental entity responsible for resolving title issues related to reservations that are **not adjacent** to a state road. However, contrary to the apparent intent of this bill, it appears that such reservations will remain under the jurisdiction of DEP, by default. This uncertainty is problematic because, even though no state road may have run through the land as of the effective date of the Murphy Act deed, a reservation constitutes a cloud on a title since it is an adverse right.<sup>1</sup> It should be noted that all such reservations are extinguished July 1, 2002.
3. The bill states that "every entity holding title to a Murphy Act reservation" must establish a review process. However, the bill does not define "**entity**." The reader must assume that "entity" refers to the DOT, a county, or incorporated area which holds the rights to a reservation. However, "entity" may also refer to the DEP, which will retain certain road reservations. (See page 2, line 21 of the bill.)
4. Any owner of property encumbered by a "**Murphy Act reservation**" has certain rights under the bill if a governmental entity attempts to preserve the reservation. Also, the bill requires "every entity holding title to Murphy Act reservations" to establish procedures for reviewing any deed containing a reservation if a review is requested or a road project is anticipated. However, the Murphy Act did not create reservations. Rather, the Trustees of the Internal Improvement Fund created the reservations in individual deeds pursuant to the trustees' general powers to manage state lands. Accordingly, it is impossible for any governmental entity to hold title to "Murphy Act reservations," since the Murphy Act did not create reservations. (See page 3, line 11 of the bill and page 2, lines 21-24.)
5. If a governmental entity intends to retain a reservation, or denies the release of a reservation, the property owner may appeal to the entity and show that the reservation "substantially denies" the "**current economic use**" of the property. The phrase "current economic use" is defined in the bill to mean "the use of the property" on a specified date. However, this standard is not applied in any case reported in Florida or Federal case law, and it is not a standard applied by the courts in eminent domain proceedings. (See page 3, line 18 of the bill.)
6. Prior to payment of any compensation to a property owner by a governmental entity retaining a reservation, the property owner must inform the governmental entity of any compensation "received or **due**" as a result of a title insurance policy. However, the bill does not specify how to determine what is "due." Questions arise, then, as to whether a court order or an agreement with a title insurer is required, or whether the property owner or the governmental entity can simply speculate as to what they believe the title insurer may provide. (See page 4, lines 6-12 of the bill.)
7. A governmental entity claiming a road reservation may preserve the reservation "for future transportation projects in **adopted** transportation plans" if the entity files a notice prior to July 1, 2002. Otherwise, the reservation is extinguished. However, the bill does not specify what type of "transportation plan" must be adopted, when the plan must be "adopted," or who must adopt the plan. Apparently, each county and incorporated area establish their own procedures for the development and implementation of "transportation plans," while the DOT "adopts" transportation plans pursuant to s. 339.135(5), F.S. (See page 5, line 28 through page 6, line 4 of the bill.)
8. The bill states that "[a]ny reservation used or identified in the **final design plans** of a road project scheduled for construction to begin before the end of the 10 years is not extinguished." It is unclear whether governmental entities are required to comply with the notice requirements for such a reservation, whether the reservation is extinguished if construction does not actually begin within 10 years, or the date on which the 10 year period begins. (See page 6, lines 9-12 of the bill.)
9. The bill provides that a governmental entity may preserve a reservation for 10 years if the reservation is "**used** or identified by the governmental entity in the plans of a road project **scheduled for construction** to begin prior to the end of the 10 years." The bill does not, however, actually require construction to begin during the 10 years. Therefore, if a governmental entity schedules construction to begin on a road project within the 10 years, but actual construction of the project is postponed indefinitely, the reservation appears to remain preserved and the title encumbered. Furthermore, the bill does not specify for what purpose the reservation must be **used** by a governmental entity, nor does it specify the date on which the 10-year period begins. (See page 6, lines 4-12 of the bill.)

---

<sup>1</sup>The Fund, Taxation and Tax Titles, TN 30.05.02

10. The bill states that “[a]ny governmental entity claiming a road reservation *pursuant to a deed* conveyed pursuant to the Murphy Act” may preserve the reservation by complying with certain requirements. However, the governmental entities will claim road reservations pursuant to this Act, which vests such reservations in the governmental entities by operation of law, not pursuant to a deed. (See page 5, lines 28-30 of the bill.)
11. The bill states that all reservations are extinguished by the Marketable Record Title Act (“*MRTA*”) on July 1, 2002, “subject to the matters under s. 712.03.” The impact of this cross-reference is uncertain. (See page 5, line 19 of the bill.)
12. The bill does not clearly state that road reservations currently utilized by the DOT, counties, or incorporated areas are not affected by the provisions of the bill.
13. The bill specifically refers to reservations of easements on deeds “*by the Board of Trustees of the Internal Improvement Trust Fund.*” However, from 1937-1961, the statutory name of the entity was “Trustees of the Internal Improvement Fund;” from 1961-1969, it was “Trustees of the Internal Improvement Trust Fund;” and from 1969 to the present, it has been called the “Board of Trustees of the Internal Improvement Trust Fund.” Accordingly, the bill applies only to deeds issued after 1969, even though the majority of reservations were included in deeds issued prior to 1969. (An amendment was adopted by the Committee on Real Property and Probate that addresses this issue. See “Amendments or Committee Substitute Changes.”)
14. The bill could be construed to transfer all reservations, including those for *oil, gas, mineral rights, and canals*, as well as road reservations, to the DOT, a county, or a municipality, and extinguishes the reservations on July 1, 2002, unless specifically preserved by the appropriate entity. The intent of the bill was to transfer only road reservations. This amendment clarifies that the bill applies only to road reservations and not to reservations for oil, gas, mineral rights, or canals. (An amendment was adopted by the Committee on Real Property and Probate that addresses this issue. See “Amendments or Committee Substitute Changes.”)

#### VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Transportation considered this bill on March 17, 1999. The committee adopted an amendment which conformed the House Bill to its Senate companion (CS/SB 144). The primary changes made by the amendment included:

- That the term "current economic use" means the use of the property on the date notice of preserving the easement is filed, or, if notice has not been received by the property owner, on the date the owner applies for a release.
- That if voluntary mediation between the property owner and the governmental entity is unsuccessful the property owner may demand binding arbitration.
- That the amount of any compensation resulting from title insurance policies is an offset against compensation paid by the governmental entity.

The committee also adopted an amendment to the amendment which clarified that state and local governments will not have to pay property owner's attorney fees and costs related to the Murphy Act reservation review and preservation process created by the bill. The bill as amended was reported favorably as a committee substitute.

On April 5, 1999, the Committee on Real Property and Probate adopted four amendments, as summarized below, which are now traveling with the bill. The four amendments comport with amendments adopted to the Senate companion.

#### **Amendment #1:**

The bill specifically refers to reservations of easements on deeds “*by the Board of Trustees of the Internal Improvement Trust Fund.*” However, from 1937-1961, the statutory name of the entity was “Trustees of the Internal Improvement Fund;” from 1961-1969, it was “Trustees of the Internal

Improvement Trust Fund"; and from 1969 to the present, it has been called the "Board of Trustees of the Internal Improvement Trust Fund." Accordingly, the bill applies only to deeds issued after 1969, even though the majority of reservations were included in deeds issued prior to 1969. This amendment adds the other names of the Board, thus making the bill's provisions applicable to all deeds issued since 1937.

**Amendment #2:**

The bill could be construed to transfer all reservations, including those for **oil, gas, mineral rights, and canals**, as well as road reservations, to the DOT, a county, or a municipality, and extinguishes the reservations on July 1, 2002, unless specifically preserved by the appropriate entity. The intent of the bill was to transfer only road reservations. This amendment clarifies that the bill applies only to road reservations and not to reservations for oil, gas, mineral rights, or canals.

**Amendment #3:**

This amendment addresses the same issues as Amendments #1 and #2, but amends language in chapter 712, F.S., rather than chapter 253, F.S.

**Amendment #4:**

This amendment specifies that:

- \* each property owner must pay the actual cost of a title review, up to \$300;
- \* the property owner must pay recording costs;
- \* each party is responsible for their own fees in mediation, arbitration, or on appeal; and,
- \* the governmental entity may waive all administrative fees upon a determination of economic hardship of the property owner.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Phillip B. Miller

Staff Director:

John R. Johnston

AS REVISED BY THE COMMITTEE ON COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Karen M. Camechis, J.D.

Staff Director:

J. Marleen Ahearn, Ph.D, J.D.