STORAGE NAME: h0603s1.tr
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HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
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 & PROBATE
(3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill addresses road easements reserved to the state when property, acquired by the state under the Murphy Act of 1937, was sold to private owners. These easements were for 100 feet on either side of the center line of a road designated as a state road on the date the property was transferred to a private owner. The bill places control of these reservations of easements under the governmental entity currently owning the adjacent road. The easements are transferred to either the Department of Transportation (DOT), a county, or a municipality. Each governmental entity is then required to establish a procedure for reviewing deeds containing a reservation to determine whether the easement exists on a property and whether the easement is needed for a road improvement. The governmental entity may charge a fee of up to $300 for performing the review process.

When it is determined that an easement substantially denies the owner of the property containing the easement the current economic use of the property, the owner is entitled to apply for release of all or part of the easement or for payment for the real property and improvements not retained by the owner. 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. The amount of compensation paid by the government is to be reduced by any amounts the property owner receives under a title insurance policy. Further, the governmental entity is not required to pay the costs or attorney fees of the property owner.

The bill extinguishes all Murphy Act reservations of easements pursuant to the Marketable Record Title Act on July 1, 2002, unless the reservation is preserved. The bill authorizes a governmental entity to preserve a reservation, or a portion of the reservation, for a period of 10 years when it is necessary for future transportation projects which are scheduled for construction in adopted transportation plans.

The bill will have an indeterminate fiscal impact on state and local governments relating to paying compensation to certain property owners and the release of certain easements which are currently reserved for transportation projects. See part III. Fiscal Analysis & Economic Impact Statement for details.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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 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;
- 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.

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:

N/A

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.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:	Staff Director:
Phillip B. Miller	John R. Johnston