

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Marketable Record Title Act (MRTA) provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title¹ that are not referenced in the root of title. Due to the vast holdings of each of the water management districts (districts) and the Board of Trustees of the Internal Improvement Trust Fund (Board), it is a burden for the districts and the Board to expend significant resources in monitoring the status of title of all district land holdings, filing notices to protect district interests, and defending its interest in land holdings where they may be challenged based on MRTA.

Section 712.03, F.S., identifies those interests in property that are not extinguished by marketable record title. Currently, only sovereignty submerged lands and covenants recorded under the provisions of chapter 376, F.S., or chapter 403, F.S., expressly exempt governmental interests from extinguishment. Another provision of s. 712.03, F.S., exempts easements from extinguishment when any parts of the easement are in use. The easement exception implicates governmental entities who acquire conservation easements and land protection agreements. The "easement in use" exception was originally intended to apply to visible use on the ground, by which an owner would have notice that someone else might be using the land. Conservation easements and land protection agreements, however, are not necessarily visible on the ground, so uncertainty surrounds whether the "easement in use" exception protects those interests from extinguishment by the MRTA.

Section 712.05, F.S., provides that any person claiming an interest in land, or a homeowners' association desiring to preserve any covenant or restriction, may preserve and protect it from extinguishment by the operation of MRTA by filing for record (during the 30-year period immediately following the effective date of the root of title) a notice that will have the effect of preserving the claim of right or covenant or restriction for a period of not longer than 30 years after filing it unless again filed as required by the statute. Section 712.06, F.S., requires the notice to contain certain information, such as, the name or description of the claimant and a full and complete description of all land affected by the notice.

¹ "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. Stated differently, the "root of title" for purposes of the Marketable Record Title Act is the most recent deed or other title transaction recorded in the unbroken chain of title at least 30 years in the past.

Effect of the Bill

This bill creates s. 712.03(9), F.S., and amends s. 712.04, F.S., respectively, to create an exception to the applicability of MRTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government. These amendments also resolve the confusion over whether conservation easements and land protection agreements were "easements in use" and prevent rights and interests acquired with public funds for public benefit from being extinguished.

This bill also amends s. 712.06(3), F.S., requiring any person filing a notice claiming an interest in land, or a homeowners' association desiring to preserve any covenant or restriction, to publish the notice once a week for two consecutive weeks in a newspaper in the county where the property is located.

B. SECTION DIRECTORY:

Section 1. Creates s. 712.03(9), F.S., related to exceptions to the Marketable Record Title Act.

Section 2. Amends s. 712.04, F.S., providing conforming language.

Section 3. Amends s. 712.06(3), F.S., providing that the notice required under the Marketable Record Title Act be published once a week for two consecutive weeks in a newspaper in the county where the subject property is located.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Board of Trustees of the Internal Improvement Trust Fund and water management districts may see reduced litigation costs from the clarification of titles to lands vested in the state. However, these litigation savings, if any, are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Agriculture and Natural Resources Committee passed one amendment that made only non-substantive changes to conform to the Senate bill.

On March 17, 2010, the General Government Policy Council passed one amendment requiring any person filing a notice claiming an interest in land, or a homeowners' association desiring to preserve any covenant or restriction, to publish the notice once a week for two consecutive weeks in a newspaper in the county where the property is located.