

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 767 Right of Entry

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Robinson

TIED BILLS: IDEN./SIM. **BILLS:** SB 1500

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Mears	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N, As CS	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

An easement is a nonpossessory real property interest created by a grant or agreement, which gives the applicant the limited right, liberty, and privilege to use the land for a specific purpose, term, and fee. A right of entry is a common type of easement.

For a property to have marketable title, it must be free and clear of all estates, interests, claims, or charges.

The bill releases a right of entry that has been reserved for mineral rights held by a local government, water management district, or other agency of the state for property that is less than 20 acres of contiguous tract under the same ownership.

The bill may have an indeterminate positive fiscal impact on local governments, water management districts, and other agencies of the state because the governmental entities would no longer need to process requests to release rights of entry for properties less than 20 acres. The bill may have a negative fiscal impact of \$80,000 annually on revenues to the South Florida Water Management District that can be absorbed within existing resources. The bill may have an indeterminate positive fiscal impact on the private sector because property owners would no longer have to request a release from the right of entry from the state or local governmental agency or water management districts to have marketable title of the property.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Right of Entry

An easement is a non-possessory interest in real property created by a grant or agreement, which gives the interest holder the limited right, liberty and privilege to use the land for a specific purpose, term, and fee. Easements provide a less-than-fee interest in the property.¹ Unlike a lease or license, an easement may last forever, but does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate.² A right of entry gives the holding party the legal right to enter upon real property of another for a special purpose.³ Rights of entry are often associated with reservations of mineral rights.

For a property to have marketable title, it must be free and clear of all estates, interests, claims, or charges.⁴ Florida courts have held that owners of mineral rights have superior rights than owners of the land that hold the surface rights. Further, title companies will not insure a property with right of entry, even if the property is not zoned for drilling purposes.⁵

A right of entry is automatically released for phosphate, minerals, metals, or any interest in petroleum that is retained by the Board of Trustees of the Internal Improvement Trust Fund (board of trustees) or the State Board of Education if the property is less than 20 acres of contiguous tract in the aggregate and under the same ownership.⁶ However, the automatic release of rights of entry for property less than 20 contiguous acres were not provided for local governments, water management districts, and other agencies of the state.

When a government entity retains a right of entry, the reservation can affect the marketability of the title and conveyance of the property in subsequent real estate transactions. In order for a person to extinguish the right of entry reservation held by local governments, water management districts, or other agencies of the state, the purchaser of the property must request written release by the agency or enter an order to quiet title in the circuit court with jurisdiction over the property.⁷

¹ DEP, *FAQ: Use of State-Owned Land*, available at <https://floridadep.gov/lands/lands/content/faq-use-state-owned-land> (last visited Mar. 7, 2019)

² The Law Dictionary, *What is Easement*, available at <https://thelawdictionary.org/easement/> (last visited Mar. 5, 2019).

³ Merriam-Webster Dictionary, *Right of entry*, available at <https://www.merriam-webster.com/legal/right%20of%20entry> (last visited Mar. 7, 2019).

⁴ Section 712.04, F.S.

⁵ The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited Mar. 10, 2019).

⁶ Section 270.011(2)(b), F.S.

⁷ Section 65.011, F.S.

Effect of Proposed Changes

The bill releases a right of entry that has been reserved for mineral rights held by a local government, water management district, or other agency of the state for property that is less than 20 acres of contiguous tract under the same ownership.

This bill relocated provisions of the law within the section and updated the title of the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 270.11, F.S. releasing the right of entry that has been reserved for mineral rights held by a local governmental, water management district, or other agency of the state for property that is less than 20 acres of contiguous tract under the same ownership.

Section 2. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill would have an indeterminate positive fiscal impact on state agencies and water management districts because they would no longer need to process requests to release rights of entry for properties less than 20 acres. The bill may have a negative fiscal impact of an estimated \$80,000 annually on revenues to the South Florida Water Management District (SFWMD) that can be absorbed within existing resources. The SFWMD's Governing Board Policy is to require payment for the release of mineral rights, and SFWMD does an average of seven parcels annually.⁸

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill would have an indeterminate positive impact on local governments because the local governments would no longer need to process requests to release rights of entry for properties less than 20 acres.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector because property owners will no longer have to request releases from rights of entry from local governments, water management districts, or other agencies of the state or file an action in the circuit court to remove the right of entry to obtain marketable title to the property.

D. FISCAL COMMENTS:

None.

⁸ Email from Dawn Pigott, Bureau Chief of Planning and Budgeting, DEP FW: HB 767 (February 18, 2019).

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2019, the Agriculture & Natural Resources Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment relocated provisions of law within the section and updated the title of the bill.

On March 26, 2019, Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the language from "purchaser for such interest" to "owner of the parcel of land".

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.