

## 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:** CS/CS/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	22 Y, 0 N	Mears	Williamson

### SUMMARY ANALYSIS

Fee simple land ownership includes the surface estate and the mineral estate. The surface estate refers to the ownership of the land surface and the mineral estate includes the deposits found beneath the surface. Land can be divided allowing one person to own the surface estate and another person to own the mineral estate. Once the surface and mineral estates are severed, the surface estate and mineral estate remain independent. A mineral estate owner may retain a right of entry to access the mineral estate, which is a type of easement.

In all contracts and deeds for sale of land executed by the Board of Trustees of the Internal Improvement Trust Fund (board of trustees) or by any local government, water management district, or agency of the state, there is reserved for such local government, water management district, other agency of the state, or the board of trustees and its successors an undivided three-fourths interest in all the phosphate, minerals, and metals and an undivided one-half interest in all the petroleum that is or may be in, on, or under the land, unless the applicable agency chooses not to reserve the rights. The right of entry is automatically released for phosphate, minerals, metals, and any interest in petroleum that is retained by the board of trustees or the State Board of Education if the property is, or has ever been, a contiguous tract of less than 20 acres in the aggregate under the same ownership. The automatic release of the right of entry does not apply to such rights retained by local governments, water management districts, or other agencies of the state.

The bill releases the right of entry that has been reserved for mineral estates held by a local government, water management district, or any 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 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 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 local government, water management district, or agency of the state to have marketable title of the property.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### *Surface and Mineral Estates in Real Property*

In property law, the rights and interests associated with an estate in land may be conceptually understood as a "bundle of rights" because of the potential for different parties to have different interests in the same real property.<sup>1</sup> The degree, quantity, nature, or extent of interest that a person has in land or in real property can vary from exclusive possession and use, such as fee simple ownership, to a non-possessory interest created by grant or agreement that gives the interest holder the limited right, liberty, and privilege to use the land for a specific purpose, term, and fee, such as an easement.<sup>2</sup>

Fee simple land ownership includes the surface estate and the mineral estate.<sup>3</sup> The surface estate refers to the ownership of the land surface, including structures, dwelling, right to till crops, and the right to bury storage tanks and septic tanks. The mineral estate includes the deposits found beneath the surface.<sup>4</sup> In some circumstances, land estates can be divided allowing one person to own the surface estate in fee simple and another person to own the mineral estate in a fee simple.<sup>5</sup> Once the surface and mineral estates are severed, the estates remain independent, and possession of one estate does not carry with it the automatic possession of the other.<sup>6</sup>

###### *Right of Entry*

In Florida, when the surface estate and mineral estate have been severed, the mineral estate owner is considered the dominant owner.<sup>7</sup> If the mineral estate owner retains a right of entry to access the mineral estate, the surface owner has no legal right to stop the mineral estate owner from entering onto the surface owner's property to explore and test for oil, gas, and minerals; drill wells; and dig mines.<sup>8</sup> Further, the mineral estate owner with a right of entry may remove all trees, grass, and topsoil to gain access to the minerals as long as there is not unreasonable injury.<sup>9</sup>

In 1855, the Board of Trustees of the Internal Improvement Trust Fund (board of trustees) was created as a state agency.<sup>10</sup> The board of trustees holds state lands for the use and benefit of the state of Florida.<sup>11</sup>

The Governor, Chief Financial Officer, Attorney General, and Commissioner of Agriculture make up the board of trustees.<sup>12</sup> The Department of Environmental Protection (DEP) performs all staff duties and

---

<sup>1</sup> *Duvall v. Fair Lane Acres, Inc.*, 50 So.3d 668, 671 (Fla. 2 DCA 2010).

<sup>2</sup> John G. Sprankling, *Understanding Property Law* 109, 528, (3rd ed. 2012).

<sup>3</sup> BWAB Oil and Gas, *Surface Rights vs. Mineral Rights: What's the difference?*, available at <https://bwab.com/surface-rights-vs-mineral-rights-whats-the-difference/> (last visited Apr. 14, 2019); the estate is often called rights.

<sup>4</sup> BWAB Oil and Gas, *Surface Rights vs. Mineral Rights: What's the difference?*, available at <https://bwab.com/surface-rights-vs-mineral-rights-whats-the-difference/> (last visited Apr. 14, 2019).

<sup>5</sup> *Dickinson v. Davis*, 224 So.2d 262, 265 (Fla. 1969).

<sup>6</sup> *Trustees of Tufts College v. Triple R. Ranch, Inc.*, 275 So.2d 521 (Fla. 1973).

<sup>7</sup> *Noblin v. Harbor Hills Development, L.P.*, 896 So.2d 781 (Fla. 5th DCA 2005).

<sup>8</sup> In private landowner conveyances of estates, the owner of the mineral rights estate does not need an express right of entry because the courts have held there is an implied right of ingress and egress. *Noblin*, 896 So. 2d at 784-785. S. 270.11, F.S., only applies for the sale of land through the board of trustees, local government, water management district, or agency of the state.

<sup>9</sup> *Id.*

<sup>10</sup> DEP, *History of State Lands*, available at <https://floridadep.gov/lands/lands-director/content/history-state-lands> (last visited Apr. 15, 2019).

<sup>11</sup> Sections 253.01-253.03, F.S.

functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the board of trustees.<sup>13</sup> Serving as staff for the board of trustees, DEP's Division of State Lands carries out environmental management and stewardship activities for more than 12 million acres of public lands.<sup>14</sup>

Since 1911, the board of trustees has been authorized to reserve ownership of three-fourths interest in all phosphates, minerals, and metals and an undivided one-half interest in all petroleum, that is or may be in, on, or under the land that was sold, with the privilege to mine and develop those resources.<sup>15</sup> In 1986, the Legislature expanded the reservation of rights so that "any local government, water management district, or other agency of the state" that sells land would also be entitled to withhold the mineral estate to the minerals and petroleum. This expansion also allowed local governments, water management districts, and agencies of the state the right to sell or release the reservations of interest in any parcel of land.<sup>16</sup> In 1986, the right of entry was automatically released for phosphate, minerals, metals, or any interest in petroleum that was retained by the board of trustees or the State Board of Education if the property is, or ever has been, less than 20 acres of contiguous tract in the aggregate under the same ownership.<sup>17</sup> The automatic release of the right to entry did not apply to such rights retained by local governments, water management districts, or other agencies of the state

If a purchaser of land encumbered by such reservation of mineral rights petitions the board of trustees, State Board of Education, local governments, water management districts, or other state agencies for the sale or release of those rights, stating reasons justifying such sale or release, at its discretion, the agency may sell or release the encumbrance.<sup>18</sup>

For a property to have marketable title, it must be free and clear of all estates, interests, claims, or charges.<sup>19</sup> Florida courts have held that owners of mineral rights with a right of entry have superior rights than owners of the land that hold the surface rights. In most real estate transactions, the purchaser will generally obtain a mortgage through a lending institution. Mortgage lenders may view a right of entry as an exception in a title insurance policy, which would create a title defect and may hinder a buyer's ability to obtain a loan.<sup>20</sup>

Mineral rights<sup>21</sup> in Florida do not hold high value if the property is located in residential areas, commercial areas, parks, or other high traffic areas not zoned for drilling or mining.<sup>22</sup> However, title companies may not insure a property with a right of entry, even if the property is not zoned for drilling purposes, because zoning ordinances could be changed by governmental entities.<sup>23</sup>

## Effect of Proposed Changes

The bill releases the right of entry that has been reserved for mineral estates held by a local government, water management district, or other agency of the state for property that is less than 20

---

<sup>12</sup> Section 253.02(1), F.S.

<sup>13</sup> Section 253.0023, F.S.

<sup>14</sup> DEP, *Division of State Lands*, available at <https://floridadep.gov/lands/> (last visited Apr. 15, 2019).

<sup>15</sup> Section 270.11, F.S.; *Trustees of Tufts College v. Triple R. Ranch, Inc.*, 275 So.2d 521, 527 (Fla. 1973).

<sup>16</sup> Chapter 1986-257, Laws of Florida.

<sup>17</sup> Section 270.11(2)(b), F.S.; Ch. 1986-257, Laws of Fla.

<sup>18</sup> John N. Redding, *Oil, Gas, and Minerals*, Florida Real Property Complex Transactions, 2018, at p. 29.

<sup>19</sup> Section 712.04, F.S.

<sup>20</sup> 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).

<sup>21</sup> While the courts have yet to define what constitutes a "minerals," the word "minerals," when used in a deed, lease, or written contract, does not include peat, sand, common clay, humus, topsoil, or muck, unless expressly provided in the deed, lease, or contract in writing. John N. Redding, *Oil, Gas, and Minerals*, Florida Real Property Complex Transactions, 2018, at p. 3.

<sup>22</sup> 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 Apr. 11, 2019).

<sup>23</sup> *Id.*

acres of contiguous tract under the same ownership. A release of the right of entry without releasing the ownership of the mineral estate would allow the title to be marketable.<sup>24</sup>

**B. SECTION DIRECTORY:**

Section 1. Amends s. 270.11, F.S., releasing a right of entry reserved for mineral rights held by a local government, water management district, or 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 may 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.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may have an indeterminate positive fiscal 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.

**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

---

<sup>24</sup> 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 Apr. 11, 2019).

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:

None.

#### **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 bill 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.