

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 10, 1998

Revised: 03/05/98 _____

Subject: Murphy Act Lands

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill transfers the ownership of road easements on property acquired by the state under the Murphy Act and then sold to private owners to the governmental entity currently having jurisdiction over the adjacent roadway. The governmental entity receiving jurisdiction must develop a process for evaluating the need for the easement. For those easements found to have been left out of deeds transferring ownership of the property since the passage of the Marketable Record Title Act, the governmental entity must either release the easements or provide for payment at the time the property is to be used for a road. A property owner entitled to payment for the easement may request payment before the property is to be used for a road where the property owner can show a special hardship.

This bill substantially amends section 253.82 of the Florida Statutes.

II. Present Situation:

In 1937, the legislature enacted the Murphy Act (General Law 18296) to facilitate the state sale of numerous tax certificates which had remained uncollected for two or more years as a result of the devaluation of Florida property after the 1929 stock market crash. The Murphy Act legislation provided for sale of two year old tax certificates upon a demand for public sale. If after two years from the date a tax certificate became eligible for sale there had not been demand for sale, the act provided "... fee simple title to all lands, against which there remains outstanding tax certificates which on the date this Act becomes a law, are more than 2 years old, 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 relative to all lands acquired pursuant to the Murphy Act that 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.

While the original deed conveying title to the property contained the reservation and all deeds in the chain of title should contain the reservation, problems have arisen. In some cases the language was eliminated from later recorded deeds. Additionally, when property was subdivided the reservation language was in some cases 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 receive notice 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 may be identified as an exception in a title policy or it 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.

In some cases, building permits have been issued for construction within the easement because the easement did not appear on the deed and in some cases the property has been subdivided into lots so small that when the easement is considered no structure on the property can meet current building code requirements. In these cases the problem arose with some past transfer of the property which did not include the easement language in the deed and was compounded where a title company did not research sufficiently to identify the easement. In some cases a building permit could have been requested without information on the easement being provided in the permit application.

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 adopted an Application For Release of Reservations. The applicant must complete the information on the application, obtain approval by the Department of Transportation (DOT), and where a road has been transferred, the county or city government determined to have authority over the adjacent roadway. Current proof of title to the property

containing the reservation must be attached, which includes 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.

Property owners are impacted by these reservations in three major ways. 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, 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, and pay the \$300 fee.

Finally, where the governmental entity having jurisdiction of the roadway does anticipate using some or all of the easement for a road project at some time in the future, 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 may not obtain a building permit for construction in the easement. Where the D.O.T. or a city or county finds that it wants to retain the easement for future transportation purposes, the applicant applying for a release has no recourse except against any title insurance where notice was not provided, even if the remaining property can not be used because of past subdivision or because of the location of structures in the easement. In some instances the governmental entity using the property has paid to relocate individuals severely impacted by the taking of an easement.

The Marketable Record Title Act set out in chapter 712, F. S., extinguishes all interests in land prior to the root 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 Trustees.

III. Effect of Proposed Changes:

The bill transfers the ownership rights to all easements on property sold after acquisition under the Murphy Act to the governmental entity with current jurisdiction of the adjacent roadway.

Each governmental entity holding title to these easements would be required to establish a process for determining the validity of an easement when a review is requested or the easement is to be used for a road project. The governmental entity is required to determine if an easement in fact exists on the property, determine if the easement has previously been released or if it can currently be released, and record documentation of the non-existence of the easement or if the release is granted, record the release.

The bill then provides a process for addressing easements which have been identified by a governmental entity or by an individual when the easement has not appeared in the deed since the enactment of the Marketable Record Title Act. In those instances, the bill provides that the property owner is entitled to a release of the easement or compensation from the governmental entity, at the time the easement is used for a road project. Where a property owner whose deed did not contain the easement can demonstrate that the discovery of the easement has rendered the remaining property useless or valueless or the owner has been unable to make beneficial use of the property, the property owner may demand immediate release of the easement or payment by the governmental entity.

Where a property owner is entitled to compensation for an easement, either at the time of the use for a road project or based on a hardship, if negotiation by the parties is unsuccessful in establishing compensation, the property is to be valued based on the agreement of two appraisers from a panel of three. The property owner is to select one appraiser for the panel, the impacted governmental entity is to select a second and the two are to select a third. The governmental entity is charged with paying the cost of the three appraisers at the market rate.

This act is to take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires local governments to compensate owners of Murphy Act lands whose land is burdened with a transportation reservation not indicated on their deeds, if the local government intends to use the easement for a transportation project. While the amount of the compensation will vary depending on the circumstances, it could total substantial sums over time. The bill also requires local governments to develop a process for review of deeds containing such reservations when requested to do so or when a road project is anticipated. The costs to perform this task should not be substantial, however. Because the bill does not provide funding for these programs, it appears to constitute an unfunded mandate on local governments which will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Impacted property owners would be compensated for, or receive releases from Trustees-owned easements on lands acquired by the state pursuant to the Murphy Act, where the property owner can demonstrate that the easement was not included in the property deed from the date of the enactment of the Marketable Record Title Act to the present.

To have government review an easement to determine if it could be released, an individual would be required to go only to the governmental entity having current jurisdiction of the road, not D.E.P. Any fee for the review would be established by the governmental entity and not DEP, which currently charges a \$300 fee for this service.

C. Government Sector Impact:

State and local governmental entities wanting to use a Trustees-owned easement which had not appeared in a deed since the enactment of the Marketable Record Title Act would be required to pay for the easement. The payment would take place at the time the project was scheduled for right-of-way acquisition. If a property owner is able to show that the property has no value or no beneficial use as a result of the discovery of the easement, the claim for compensation must be considered immediately upon the showing. The D.O.T. has estimated this would cost approximately \$1,250,000 per year for state highway projects. No estimate of the cost to local government has been made.

The DEP projects it would not receive approximately \$50,000 annually in fees which are currently deposited into the Internal Improvement Trust Fund. However, the department would not have to conduct the records searches or process the applications for release.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

The amendment deletes everything after the enacting clause and contains the following:

Section 1. Section 253.82, F.S., is amended to vest all road reservations in deeds conveyed under the Murphy Act prior to July 1, 1991, by operation of law and without the necessity of instruments of conveyance from the Trustees, in the governmental entity having right and title to the road to which the reservations are adjacent. All reservations adjacent to a road that was designated as a state road at the time of the reservation and which is currently held by the state are conveyed to the DOT. All reservations adjacent to a road that was designated as a state road at the time of the reservation and which is located in an unincorporated area of a county or on a road owned by the county within any incorporated area are conveyed to the respective counties. All other reservations within incorporated areas adjacent to a road that was designated as a state road at the time of the reservation and which are not otherwise conveyed to the state or the county are conveyed to the incorporated area. The conveyance includes all right, title, and interests in the reservation held by the Trustees.

The amendment requires each entity holding title to Murphy Act reservations to establish a procedure for review of any deed containing a reservation when a review is requested or a road project is anticipated. The review process must provide for:

1. A determination of whether the language of the deed created a reservation at the time of the original conveyance;
2. Review of any release of the reservation provided by the property owner;
3. The recording of a notice of the non-existence of a reservation if reservation language in the deed does not impact the property;
4. A determination of whether any or all of the reservation may be released, and a form for recording the release;
5. A process to allow for review through mediation if requested by the property owner or through binding arbitration pursuant to ch. 44, F.S.;
6. Any fee charged not to exceed the actual cost to review the deed, perform an appeal and pay for any recording expenses, with no fee to exceed \$300.

The amendment authorizes 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 section 712.05, F.S., to appeal to the entity and show that the reservation denies the property owner the current economic use of the property held by the owner.

If the governmental entity determines that the reservation denies the property owner the current economic use of the property, the entity must purchase the real property and improvements not retained by the property owner in fee simple title or release all or part of 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 the denial of the current economic use of the property or the purchase price, the property owner may request mediation or binding arbitration pursuant to ch. 44, F.S., to resolve these issues. 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 amendment clarifies that the process for release of road reservations covered by this act or payment for property impacted by the use of a reservation covered by this act shall be solely in accordance with this act. Any action for the taking 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 fees or costs incurred by an owner in establishing the impact of the road reservation on the property.

Section 2. Section 712.04, F.S., is amended to provide that easements for state road rights of way reserved in deeds by the Trustees, conveying land acquired under chapter 18296, Laws of Florida, 1937, shall be extinguished by the Marketable Record Title Act on July 1, 2001, subject to the matters under section 712.03, F.S., and further subject to the right of any governmental entity holding title to such reservations to preserve the reservations that it needs for future transportation projects in adopted transportation plans by filing notice under section 712.05, F.S., before July 1, 2001.

Section 3. Section 712.05, F.S., is amended to authorize any governmental entity claiming a road reservation pursuant to a deed conveyed under the Murphy Act prior to July 1, 1991, to preserve the reservation or any portion of it necessary for future transportation projects in adopted transportation plans and protect it from extinguishment by the operation of the Marketable Record Title Act by filing for record, prior to July 1, 2001, a written notice in accordance with the provisions of ch. 712, F.S. The notice will have the effect of preserving the reservation or portion thereof for a period of 10 years. If the reservation is used for a road during the 10 year period the reservation is not extinguished.

Section 4. This act shall take effect upon becoming a law. (WITH TITLE AMENDMENT)

The amendment contains two scrivener's errors. On page 3, at lines 23 and 29, (3) and (4) should be designated (7) and (8).

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
