

STORAGE NAME: h1019.jo.doc
DATE: April 2, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1019
RELATING TO: Land Acquisition & Management
SPONSOR(S): Representative Machek
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
 - (3) SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

This bill:

- Revises eminent domain law to provide that the condemning authority in an eminent domain proceeding must provide the fee owner with copies of statutes regarding property owner rights in eminent domain, rather than a summary and description of those rights.
- Allows state and local government entities to sell real property without reserving mineral interests.
- Allows water management districts to: lease district-owned property; grant utility easements on district-owned property; advertise notice of intent to lease property earlier; unilaterally vacate or abandon property interests without consent of any other party; provide to sellers and third parties working with the district confidential property information; and contract with any person or entity for land management services.
- Provides that any right, title, or interest in real property held by a water management district is not extinguishable under the Marketable Record Title Act.
- Provides that the Marketable Record Title Act may extinguish a right, title, or interest in real property that is "reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title."

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida's five water management districts were created in 1972 at the same time that the Legislature adopted the "Florida Water Resources Act" which was designed to create a comprehensive administrative system of water regulation within the state. The district boundaries were based on hydrogeologic data as well as political considerations, but in the end, the following water management districts were established:

Northwest Florida Water Management District (NFWWMD)
Suwannee River Water Management District (SRWMD)
St. Johns River Water Management District (SJRWMD)
Southwest Florida Water Management District (SWFWMD)
South Florida Water Management District (SFWMD)

See "Section-by-Section Analysis" for the present situation as to each section of this bill.

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amending s. 73.015, F.S., regarding the required presuit negotiation in eminent domain actions.

Present Situation: Section 73.015, F.S., which first became effective July 1, 2000, requires that a condemning authority contemplating an eminent domain action must first negotiate with the property owner in an attempt to settle on a price.

Among the required negotiation steps, s. 73.015(1)(a), F.S., requires a condemning authority, at the inception of negotiation for acquisition of the property, to advise the fee owner of his or her statutory rights under ss. 73.091, 73.092, F.S., and the owner's rights and responsibilities under ss. 73.015(1)(b) and (c) and 73.015(4), F.S.

Effect of Proposed Changes: Deletes the requirement that a condemning authority advise the property owner of statutory rights and responsibilities. Amends s. 73.015(1)(a), F.S., to require that a condemning authority provide a copy of ss. 73.015, 73.091, and 73.092, F.S., to the fee owner prior to or concurrent with the condemning authority making the written offer of compensation to the fee owner.

Section 2. Amending s. 270.11, F.S., regarding contracts for sale of public lands.

Present Situation: Section 270.11(1), F.S., requires, in general, that a state or local government selling real property owned by the state or local government must reserve the following mineral rights:

- Three-quarters interest in all phosphate, minerals, and metals
- One-half interest in petroleum.

This requirement was first enacted in 1911. Ch. 6159, L.O.F. (1911, No. 40). A person who wishes to purchase the reserved mineral or petroleum rights from a governmental entity other than the Trustees of the Internal Improvement Fund must file a petition requesting approval of the sale, which petition must contain a statement submitted by the agency of the reasons justifying the sale or release.

Effect of Proposed Changes: Amends s. 270.11, F.S., to provide a state or local government agency may choose to not reserve an interest in certain mineral and petroleum rights when selling real property. Additionally, provides that the statement of the reasons justifying the sale or release need not be submitted by the agency.

Section 3. Amending s. 373.056, F.S., regarding real property conveyances between water management districts and other governmental agencies.

Present Situation: Section 373.056(4), F.S., authorizes water management districts to “convey” unneeded lands to the United States or to any other state or local governmental entity. The statute does not specifically authorize the leasing of the property, nor does it specifically authorize the granting of utility easements. Section 373.089, F.S., requires a water management district selling surplus land to sell for at least the appraised value of the property, after advertising notice of intent to sell. Section 373.093, F.S., requires a water management district leasing land owned by the district to obtain the best price and terms, and to advertise a notice of intent to lease.

Effect of Proposed Changes: Section 373.056(4), F.S., is amended to provide that a water management district may additionally lease real property owned by the district to another government entity on terms and conditions determined by the governing board. Additionally, this subsection is amended to provide that a water management district may grant utility easements on lands owned by such district to any private or public utility for the limited purpose of obtaining utility service to district property, without complying with ss. 373.089 or 373.093, F.S.

Section 4. Amending s. 373.093, F.S., regarding lease of lands owned by a water management district.

Present Situation: Section 373.093, F.S., requires a water management district leasing land owned by the district to obtain the best price and terms, and to advertise a notice of intent to lease. The first publication of the advertising must be published between 30 and 45 days “prior to [the] lease”.

Effect of Proposed Changes: Section 373.093(2), F.S., is amended to change the date of first publication to be between 30 and 90 days prior to the date the board executes the lease.

Section 5. Amending s. 373.096, F.S., regarding release by a water management district of easements, reservations, and rights-of-way.

Present Situation: Section 373.096, F.S., authorizes a water management district to release an unneeded canal easement, reservation, or right-of-way interest.

Section 704.06, F.S., provides that a "conservation easement" means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following: (a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground. (b) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials. (c) Removal or destruction of trees, shrubs, or other vegetation. (d) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface. (e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition. (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation. (g) Acts or uses detrimental to such retention of land or water areas. (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

In general, a governmental entity may abandon or vacate an interest in real property held by the entity, subject to certain limitations. A governmental entity is authorized to discontinue or vacate any street or portion thereof when done in the interest of the general welfare. *McLeod v. Carr*, 90 So.2d 112 (Fla. 1956). When a street is lawfully vacated, title to the area vacated vests in the adjoining property owners, *Smith v. Horn*, 70 Fla. 484, 70 So. 435 (1915), but neighboring properties may have an easement equal to the abandoned roadway. *Id.* The rule is different, however, for property uses other than roads. Where a dedication to public use is made in a park, playground, or beach, then the users of that park, playground, or beach can perhaps block the vacation or abandonment. See, *Boothby v. Gulf Properties of Alabama*, 40 So.2d 117 (Fla. 1948) (beach reserved for public use); *Mainor v. Hobbie*, 218 So.2d 203, 205 (Fla. 1st DCA 1969) ("After a common law dedication is once accepted by the public, it is irrevocable by the owner and his successors in title except with the consent of the public and of those persons who have vested rights in dedication."); *City of Miami v. Florida East Coast Ry. Co.*, 79 Fla. 539, 84 So. 726 (1920) (dedication of park on waterfront); *Powers v. Scobie*, So.2d 738 (Fla. 1952) (explaining difference between road use and other uses as it relates to vacation).

Effect of Proposed Changes: Section 373.096, F.S., is amended to provide that the section is applicable to all easements held by a water management district, not just canal easements.

The section is also amended to authorize the governing board of a water management district to unilaterally abandon or vacate easements, reservations, or right-of-way interests, or portions thereof, for which the district has no present or apparent future use. Such abandonment or vacation by the board is conclusive and does not require any other party to give its approval, acknowledge its acceptance, or take any other action, and the district will

have no further obligations, liabilities, or responsibilities with respect to the abandoned or vacated easement, reservation, or right-of-way interest. This does not apply to the release of conservation easements, which are governed by s. 704.06, F.S.

Section 6. Amending s. 373.139, F.S., regarding acquisition of real property by a water management district.

Present Situation: Section 373.139(2), F.S., authorizes a water management district to acquire real property. Section 373.139(3)(a), F.S., provides that title information, appraisal reports, offers, and counteroffers are confidential and exempt from public records laws until an option contract is executed or until 30 days before a contract or agreement for purchase is considered for approval by the district. However, a district may disclose certain of this confidential information to prospective sellers as part of a negotiation process.

Effect of Proposed Changes: Section 373.139(2), F.S., is amended to clarify that a water management district may acquire any form of interest in real property. Section 373.139(3)(a), F.S., is amended to provide that a water management district may additionally disclose title information as part of the negotiation process with a landowner. Additionally, a water management district may disclose the same information that it would disclose to a property owner to a third party working with or on the behalf of the district in connection with land acquisitions. Also, a water management district may use, as its own, appraisals obtained by a third party provided the appraiser is selected from the district's list of approved appraisers and the appraiser is reviewed and approved by the district.

Section 7. Amending s. 373.1401, F.S., regarding management of lands owned by water management districts.

Present Situation: Section 373.1401, F.S., provides that a water management district may contract with a federal or state agency, a county, a municipality, or any other governmental entity or environmental nonprofit organization to provide for the improvement, management, or maintenance of any real property owned by or under the control of the district.

Section 373.1391(1)(d), F.S., provides that, for any fee simple acquisition of a parcel which is or will be leased back for agricultural purposes, or for any acquisition of a less-than-fee interest in lands that is or will be used for agricultural purposes, the district governing board shall first consider having a soil and water conservation district created pursuant to chapter 582 manage and monitor such district.

Effect of Proposed Changes: Section 373.1401, F.S., is amended to provide that a water management district may contract with any private entity for real property improvement, management, and maintenance services. Additionally, contracting for services is to be done in conjunction with the provisions of s. 373.1391(1), F.S.

Section 8. Amending s. 712.04, F.S., regarding interests extinguished by the Marketable Record Title Act (MRTA).

Present Situation: Chapter 712, F.S., is entitled "Marketable Record Titles to Real Property", but is commonly known as the "Marketable Record Title Act" or simply MRTA. This chapter provides that a property owner who, alone or together with his or her predecessors in title, has been vested in land of record for thirty years or more, has a marketable record title to that estate, free and clear of all claims except those described in the chapter. Generally, the exceptions to MRTA are claims which are sufficiently referenced in the chain of title, or claims preserved by providing notice in accordance with section 712.06, Florida Statutes.

Effect of Proposed Changes: This bill provides that any right title or interest in real property of any water management district may not be extinguished by MRTA. This bill further provides that a property interest reserved in the patent or deed by which the United States, the state of Florida, or any of agency of the state of Florida, parted with title, may be extinguished by MRTA.

Section 9. Provides that this bill will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by the Committee on Judicial Oversight:

Section 5.

This section appears to allow a water management district the right to abandon or vacate an easement, reservation, or right-of-way without consent of any other person or entity. Such an action of abandonment may perhaps affect the vested right that members of the public in such easement, reservation, or right of way. By this change, affected persons may not be able to claim a vested right in an easement, reservation, or right-of-way servicing, for example, a park, a lake, a beach, or a boat ramp.

Section 8.

Any change to the Marketable Record Title Act has the potential of creating significant effects far beyond those contemplated. All of the reserved property interests of the state and federal governments that might be extinguished by the change proposed in Section 8 of this bill are not known at this time. However, as written, deletion of the final clause of the section could perhaps lead to an argument that the reservation of sovereignty lands found in all patents or deeds from the United States would perhaps be extinguished upon the effective date of the act.

Comments provided by the South Florida Water Management District:

The South Florida Water Management District reports that there are several provisions of law that unnecessarily hinder its operations. They include:

Section 73.015(1)(a), F.S., requires a condemning authority to advise the fee owner of his or her statutory rights under ss. 73.091, 73.092, and 73.015(1)(b) and (c) and 73.015(4), F.S., at the inception of a negotiation for acquisition. The district believes that "inception" is vague and that it would be preferable to provide the fee owner the actual statutes, rather than advise the owner of statutory rights and responsibilities, and to do so prior to or concurrent with the written offer of compensation.

Section 270.11(1) and (3), F.S., require that the Trustees, local governments, water management district's, and other agencies of the state reserve certain mineral rights when selling land. The district often has no interest in such reserved rights and releases the rights upon request. The district would prefer to have the ability not to reserve the rights and convey clear title.

Section 373.056(4), F.S., authorizes water management districts to convey unneeded lands to the U.S. Government or other agencies. The statute does not authorize leases to such entities, nor does it authorize the granting of utility easements. Section 373.089, F.S., does authorize the sale of land or interests or rights in lands but requires a water management district to sell for the highest price obtainable, requires publication of the impending sale, and other requirements. The district

would like to grant utility easements to obtain power to district property and convey leases under the less-restrictive s. 373.056(4), F.S.

Section 373.093(2), F.S., requires notice by publication prior to the leasing by a water management district of lands or interests in land. The notice must be published no more than 45 days prior to the lease. The district wishes to extend the time period for publication prior to the execution of a lease to no more than 90 days.

Section 373.096, F.S., authorizes a water management district to release unneeded canal easements, reservations, or right-of-way interests. The district wishes to be authorized to release any unneeded easement and to be able to release any easements or interest unilaterally, without the need for another party to accept the released interests on easements.

Section 373.139(2) and (3)(a), F.S., authorize a water management district to acquire real property and easements but do not authorize the acquisition of any other interests in property. This section also authorizes a water management district to disclose appraisal reports to private landowners during acquisition negotiations for less-than-fee purchases if the district believes that disclosure will result in a sale. Otherwise, title information, appraisal reports, offers, and counteroffers are confidential until an option contract is executed. There are many instances when a third party works with or on behalf of water management district during land acquisitions.

Section 373.1401, F.S., authorizes a water management district to contract for land management services only with governmental entities and nonprofit companies. There are, however, private sector land management services available.

Section 374.984(6)(a), F.S., authorizes the Florida Inland Navigation District (FIND) to contract with the U.S. Army Corps of Engineers or other representative of the United States for its needs in operating the Atlantic Intracoastal Waterway. The FIND is not specifically authorized to contract with other parties or agencies for such assistance.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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