

By Senator Rouson

19-00020-19

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1 A bill to be entitled
2 An act relating to possession of real property;
3 repealing s. 163.035, F.S., relating to a governmental
4 entity's establishment of recreational customary use
5 on a portion of a beach above the mean high-water line
6 on private property; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 163.035, Florida Statutes, is amended to
11 read:

12 ~~163.035 Establishment of recreational customary use.~~
13 ~~(1) DEFINITION. The term "governmental entity" includes an~~
14 ~~agency of the state, a regional or a local government created by~~
15 ~~the State Constitution or by general or special act, any county~~
16 ~~or municipality, or any other entity that independently~~
17 ~~exercises governmental authority.~~

18 ~~(2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE. A~~
19 ~~governmental entity may not adopt or keep in effect an ordinance~~
20 ~~or rule that finds, determines, relies on, or is based upon~~
21 ~~customary use of any portion of a beach above the mean high-~~
22 ~~water line, as defined in s. 177.27, unless such ordinance or~~
23 ~~rule is based on a judicial declaration affirming recreational~~
24 ~~customary use on such beach.~~

25 ~~(3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON~~
26 ~~PRIVATE PROPERTY; JUDICIAL DETERMINATION. A governmental entity~~
27 ~~that seeks to affirm the existence of a recreational customary~~
28 ~~use on private property must follow the procedures set forth in~~
29 ~~this subsection.~~

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30 ~~(a) Notice. The governing board of a governmental entity~~
31 ~~must, at a public hearing, adopt a formal notice of intent to~~
32 ~~affirm the existence of a recreational customary use on private~~
33 ~~property. The notice of intent must specifically identify the~~
34 ~~following:~~

35 ~~1. The specific parcels of property, or the specific~~
36 ~~portions thereof, upon which a customary use affirmation is~~
37 ~~sought;~~

38 ~~2. The detailed, specific, and individual use or uses of~~
39 ~~the parcels of property to which a customary use affirmation is~~
40 ~~sought; and~~

41 ~~3. Each source of evidence that the governmental entity~~
42 ~~would rely upon to prove a recreational customary use has been~~
43 ~~ancient, reasonable, without interruption, and free from~~
44 ~~dispute.~~

45
46 ~~The governmental entity must provide notice of the public~~
47 ~~hearing to the owner of each parcel of property subject to the~~
48 ~~notice of intent at the address reflected in the county property~~
49 ~~appraiser's records no later than 30 days before the public~~
50 ~~meeting. Such notice must be provided by certified mail with~~
51 ~~return receipt requested, publication in a newspaper of general~~
52 ~~circulation in the area where the parcels of property are~~
53 ~~located, and posting on the governmental entity's website.~~

54 ~~(b) Judicial determination.—~~

55 ~~1. Within 60 days after the adoption of the notice of~~
56 ~~intent at the public hearing, the governmental entity must file~~
57 ~~a Complaint for Declaration of Recreational Customary Use with~~
58 ~~the circuit court in the county in which the properties subject~~

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59 ~~to the notice of intent are located. The governmental entity~~
60 ~~must provide notice of the filing of the complaint to the owner~~
61 ~~of each parcel of property subject to the complaint in the same~~
62 ~~manner as is required for the notice of intent in paragraph (a).~~
63 ~~The notice must allow the owner receiving the notice to~~
64 ~~intervene in the proceeding within 45 days after receiving the~~
65 ~~notice. The governmental entity must provide verification of the~~
66 ~~service of the notice to the property owners required in this~~
67 ~~paragraph to the court so that the court may establish a~~
68 ~~schedule for the judicial proceedings.~~

69 ~~2. All proceedings under this paragraph shall be de novo.~~
70 ~~The court must determine whether the evidence presented~~
71 ~~demonstrates that the recreational customary use for the use or~~
72 ~~uses identified in the notice of intent have been ancient,~~
73 ~~reasonable, without interruption, and free from dispute. There~~
74 ~~is no presumption regarding the existence of a recreational~~
75 ~~customary use with respect to any parcel of property, and the~~
76 ~~governmental entity has the burden of proof to show that a~~
77 ~~recreational customary use exists. An owner of a parcel of~~
78 ~~property that is subject to the complaint has the right to~~
79 ~~intervene as a party defendant in such proceeding.~~

80 ~~(4) APPLICABILITY. This section does not apply to a~~
81 ~~governmental entity with an ordinance or rule that was adopted~~
82 ~~and in effect on or before January 1, 2016, and does not deprive~~
83 ~~a governmental entity from raising customary use as an~~
84 ~~affirmative defense in any proceeding challenging an ordinance~~
85 ~~or rule adopted before July 1, 2018.~~

86 Section 2. This act shall take effect July 1, 2019.

