

Customary Use: Legislative Overview

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SURFRIDER FOUNDATION

We are dedicated to the protection and enjoyment of the world's ocean, waves and beaches through a powerful activist network.



2017: Real Property

- **HB 735 (Rep. Edwards-Walpole)**
- **Amendment in final committee stop**
- **“A local government shall not adopt or promulgate any ordinance or regulation that purports to establish a common law customary use of property.”**
- **Passed full House, but Senator Passidomo stops it in the Senate**



2018: Possession of Real Property

- **HB 631 (Rep. Edwards-Walpole)**
- **Original version requires judicial determination, parcel by parcel, clear and convincing evidence**
- **Two committee stops**
- **Amended to grandfather in ordinances adopted before January 1, 2016, to add explicit preemption, and lower standard of proof**

2018: Possession of Real Property

- **SB 804 (Sen. Passidomo)**
- **Original version requires judicial determination, parcel by parcel**
- **Three committee stops**
- **Amended with new quasi-judicial process & grandfather provision**

New Process:

- **Local government must hold a public hearing to adopt a formal notice of intent to affirm CU which must identify:**
 - **Portions/parcels where CU is sought**
 - **Specific uses of property to which CU is sought**
 - **Each source of evidence that the governmental entity will rely on to prove CU**
- **Notice the hearing to all potentially impacted property owners (certified mail, local newspaper, and government website)**

New Process:

- **Within 60 days of adopting the notice of intent, local government must file a Complaint for the Declaration of Recreational Customary Use with the circuit court where the impacted properties are located.**
- **Must again notice the owners. Owners have 45-days to intervene in the proceeding.**
- **Local government must prove use has been ancient, reasonable, without interruption, and free from dispute.**

2018: Timeline

- **March 6th, Final passage in Senate, 29-7**
- **March 8th, Final passage in House, 95-17**
- **March 23rd, Approved by Governor**
- **July 1st, Took effect**
- **July 13th, Executive Order**



But what does it do??

- **Grandfathered in Volusia & St. Johns, eliminated Walton**
- **Requires local governments to go to court to ratify CU**
- **Mass confusion**
- **Bad precedent for signage, fencing, etc.**
- **Potentially makes it harder for local governments to protect beach access, but also creates a process**



And what does it not do??

- **Privatize Florida's beaches**
- **Eliminate perpendicular access points**
- **Give property owners new land/sand after public nourishment projects**



NEXT SESSION

- **FDEP Reporting:
flbeachaccess.com**
- **Report due to Legislature &
Governor before next session**
- **Sen. Darryl Rouson plans to file
repeal**

