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NEW FLORIDA LAW IMPACTS ATTORNEY FEES

Analysis of SB702

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On June 13, 2024, Gov. Ron DeSantis signed Senate Bill 702 into law after favorable treatment in both the House and Senate. Predominately, the statute provides for attorney fees to be paid to prevailing defendants in certain property disputes. Florida, and a majority of other United States jurisdictions, have adopted the "American Rule," where each party bears its own attorney fees unless a "fee-shifting statute" provides an entitlement to fees. As enrolled, Fla. Stat. § 57.106, (the "Statute") shifts the burden of potential attorney fees to non-prevailing plaintiffs in property rights disputes.

As cited in the Senate Staff Analysis, it will be riskier and potentially more expensive for adjacent property owners to bring lawsuits against their neighbors. See Staff of Fla. Judi Comm. SB702 (2024) (rev. 2/21/2024) (the "Staff Analysis"). This change may leave clients and potential clients frustrated, as it is not good news for plaintiffs in Florida. Let's take a closer look at what changed in terms of attorney fees and costs in Florida as a result of the change in the law.

The statute requires courts to award reasonable attorney fees and costs to prevailing defendants in civil litigation concerning property rights, if the improvements made by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency. The statute attempts to focus on the limited availability for attorney fees in quiet title actions.

The Staff Analysis provides examples of real property disputes that may be affected by the Statute:

- Title disputes (involving competing claims to property ownership);
- Boundary disputes (involving confusion or disagreement over property lines);
- Easement and right-of-way disputes (involving disagreement over the precise extent and nature of ingress and egress access rights); and;
- Zoning and land use disputes (involving disagreement regarding how local land use and zoning laws are applied to specific properties)

However, the fee shifting provision may turn out much broader in scope given the language of the Statute.

The Statute defines "property rights" to include, but it not limited to, use rights, ingress and egress rights, and those incident to land bordering upon navigable waters as described in the riparian rights statute. This change will equally apply to disputes related to riparian rights (land abutting nontidal or navigable river waters and littoral rights (land abutting navigable ocean, seal, or lake waters).

Of interest, the Legislature decided to strike the House version of the bill which provided an exception to the fee shift, "if the environmental or regulatory approval or permit was issued due to a material mistake of fact or law or was not issued in compliance with law." See HB 1167.

Ultimately, this Statute could be a net negative for affected landowners seeking to contest property rights, as the chilling effect of exposure to liability for attorney fees may have the unintended consequence of

discouraging meritorious lawsuits. The House Staff Analysis indicates that the Statute may also have a negative impact on state or local government entities, as they routinely bring property rights disputes against landowners and will be vulnerable to additional expenses. However, those in favor of the statute are hopeful it will reduce the need for property owners who act in reliance on government approvals and permits to spend funds to defend against lawsuits based on those actions.

Berger Singerman's Government and Regulatory Team is committed to helping you navigate these changes and understand their implications for your specific circumstances. If you have any questions regarding SB702, please reach out to James M. DuRant Jr., Joseph P. Jones or Michael J. Niles.

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