The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 130.

This bill, as amended by the committee, would clarify the statutes concerning adverse possession and promote the stability of land titles in light of the New Jersey Supreme Court's decision in J & M Land Co. v. First Union Bank, 166 N.J. 493 (2001). This bill, as amended by the committee, would also clarify the holding in the court's decision in Devins v. Borough of Bogota, 124 N.J. 570 (1991), with regard to the ability to adversely possess publicly owned property.

Under the current statutes governing adverse possession, N.J.S.A.2A:14-30 and 2A:14-31, a possessor is vested with title to real estate after 30 years' actual possession of the real estate, unless the property consists of woodlands or uncultivated tracts. Title vests to the possessor of woodlands or uncultivated tracts after 60 years' possession. However, two other statutes seem to conflict with N.J.S.A.2A:14-30 and 2A:14-31. Under the provisions of N.J.S.A.2A:14-6, every person with any right or title of entry into real estate must make such entry within 20 years after the right or title accrues; under N.J.S.A.2A:14-7, every action for real estate must be commenced within 20 years after the cause of action accrues. In the J & M case, the plaintiff had had 39 years' possession of a tract of uncultivated land that actually belonged to First Union Bank, an adjoining landowner. When J & M sought a court declaration that it had acquired the land through adverse possession, the court turned it down, ruling that the 60-year period of N.J.S.A.2A:14-31, and not the 20-year time period of N.J.S.A.2A:14-7, applies.

As a result of this decision, it is unclear how title is held after an adverse possessor has occupied land for more than 20 years but less than 30 years (or, where applicable, 60 years). The Supreme Court noted that the Legislature might choose to clarify the matter by enacting appropriate legislation. 166 N.J. at 521.

This bill, as amended, addresses the problem by repealing N.J.S.A. 2A:14-30 and 2A:14-31 and by amending N.J.S.A. 2A:14-7 to provide that title may be acquired by an adverse possessor after 20 years in most cases, and after 30 years in the case of woodlands or uncultivated...
lands. (The historical rationale for treating woodlands and uncultivated lands differently than developed lands has been that the record owner may experience difficulty in determining the precise location and boundaries of uncultivated land.)

Thus, under the bill, once the applicable time period has expired, the record owner is not merely barred from attempting to recover possession; his title is extinguished and title is vested in the adverse possessor. Enactment of this bill would bring New Jersey’s statutory scheme in line with that of most other states, in which the relevant time period for adverse possession is 20 years or less.

The committee amendments clarify that the 20-year statute of limitations applicable to actions by the State of New Jersey for possession of real estate under N.J.S.A.2A:14-8 does not apply to real property held by the State of New Jersey, or any agency or subdivision thereof, so long as the property is dedicated to or used or intended to be used for a public or transportation, environmental, recreational, governmental, educational, charitable, institutional or other similar purpose or held in public trust. In the Devins case, the court held that municipally-owned property that is neither dedicated to nor used for a public purpose is subject to acquisition by adverse possession. The State and its subdivisions, however, have numerous properties that are not in active public use but are being held for future public use such as the expansion of existing facilities or for highway or rail purposes. If these properties are subject to adverse possession claims, not only could the State lose valuable property but public projects may also be jeopardized. The committee also amended the bill to extend this protection to lands held by a public utility.

The amendments would therefore clarify that the holding in Devins is limited to properties that are not used or being held for public purposes, and the other purposes enumerated above, limiting the ability to adversely possess publicly owned property to property such as that which has been taken by foreclosure actions or which has been forfeited.

The committee amendments also protect persons who for 40 years have possessed real property that was tidal-flowed more than 40 years ago, but not since that time, from a riparian rights claim by the State, provided the person has good title to the property according to a deed or other recorded instrument describing the property and the person has paid the property taxes on the property.

The committee amendments also clarify that the period of possession includes possession by the adverse possessor and all persons with whom the adverse possessor is in privity.

Finally, the committee amended the bill to make a technical correction to the effective date of the bill to account for the addition of new section 3.
This bill was prefiled for introduction in the 2008-2009 session pending technical review. As reported, the bill includes changes required by technical review, which has been performed.

As amended by the committee, this bill is identical to A-2054(3R).