

STORAGE NAME: h2015a.rpp
DATE: April 10, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
ANALYSIS**

BILL #: HB 2015 (PCB RPP 00-04)
RELATING TO: Miami-Dade County Lake Belt Area
SPONSOR(S): Committee on Real Property & Probate, Representative Goodlette & Others
TIED BILL(S): none

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

- (1) REAL PROPERTY & PROBATE YEAS 10 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Miami-Dade County Lake Belt Area (“Lake Belt Area”) consists of approximately 89 square miles of property located between the Everglades and urbanized areas of Miami-Dade County. Blasting from mining activities in the Lake Belt Area has generated complaints from affected homeowners.

Last year legislation passed which required that before the sale, lease, or issuance of a development order in the Lake Belt Area, and surrounding 2-mile area, the entity owning the real property had to submit a written affidavit of disclosure to Miami-Dade County acknowledging the existence of mining activities, agreeing to provide copies of the affidavit to certain persons, and acknowledging potential liability for failure to provide such disclosure. Failure to substantially comply with this requirement made the “sale of the real property or interest therein voidable at the purchaser’s option for a period of 7 years”. These provisions are unclear, inconsistent, and create substantial concerns regarding liability and clear title to real property. This proposed committee bill repeals the above-described provisions. Any rights that may have been created thereunder are extinguished; unless, prior to January 1, 2001, an action in a court of competent jurisdiction has been filed and a notice of lis pendens recorded.

This bill requires a seller or lessor in conjunction with the sale or lease of any real property in the Lake Belt Area, and surrounding 2-mile area, to disclose in writing that the property is within the affected area and that limestone mining activities in the area involve the use of explosives. If a seller or lessor wilfully, knowingly, or with culpable negligence fails to comply with the disclosure provisions, he or she is guilty of a misdemeanor of the first degree.

This bill requires Miami-Dade County to file for recording in the Official Records of Miami-Dade County and Broward County a certificate, by a Florida licensed professional surveyor and mapper, which sets forth the legal description of the Lake Belt Area and which describes, as specified, the area within 2 miles of the boundary of the Lake Belt Area, and identifies, as specified, the subdivisions and condominiums in the Lake Belt Area and surrounding 2-mile area.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input 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: This proposed committee bill creates a criminal penalty for failure to comply with certain requirements.

B. PRESENT SITUATION:

MIAMI-DADE COUNTY LAKE BELT AREA

The Miami-Dade County Lake Belt Area ("Lake Belt Area") consists of 89 square miles of property located between the Everglades and urbanized areas of Miami-Dade County. The Lake Belt Area is located within an environmentally sensitive area and has substantial deposits of construction grade limerock. Additionally, the Lake Belt Area contains one of the state's largest public well fields.¹

Rock mining operations within the Lake Belt Area produce 35-40 million tons of rock and related products each year, providing more than half of the state's rock, sand, and cement for concrete, asphalt, and road base. Each year, mining operations transform approximately 300 acres of wetlands into freshwater lakes. Rock mining companies own approximately 26,600 acres within the Lake Belt Area, or about 47 percent of the total 57,000 acres. Another 10,600 acres, or about 19 percent of the total area, is publicly owned.² This area has been mined for the past 50 years and generates nearly \$10 billion in revenue per year.³

The blasting that occurs during rock mining has generated complaints from affected homeowners:

Many homeowners believe the tremors from the blasts rattle the homes so much that they experience cracks. Westward expansion in Miami-Dade County has brought homes to the edge of the quarries and boosted the number of blasting complaints from homeowners to about 149 this year. A group of homeowners called Citizens Against Blasting has filed a lawsuit against the mining industry this year alleging damage to their homes.⁴

LEGISLATION

¹ See House of Representatives, as revised by the Committee on Environmental Protection, Final Analysis, HB 329 (Chapter 99-298, Laws of Florida), June 16, 1999, at 2.

² *Id.*

³ "Blasting task force seeks answers for February report", The Miami Laker, by Peggy Austen, Feb. 2000, at 11A.

⁴ "Homeowners near Lake Belt cry foul over law", Newspaper Article, by Carolyn Salazar, no date.

In 1984, the Florida Legislature enacted the Warren F. Henderson Wetlands Protection Act (the "Act")⁵, which expanded the wetlands regulatory jurisdiction for dredge and fill activities in Florida. The Act exempted limerock mining in the Lake Belt Area from the wetlands regulatory jurisdiction for a period of ten years. During the 1994 Legislative Session, this exemption was extended for a reduced area until October 1, 1997. In 1997, this exemption was extended to October 1, 2000.⁶ Although these lands have been subject to reduced state permitting jurisdiction, they have continued to be regulated by both Dade County and the U.S. Army Corps of Engineers.

Development of a mitigation plan is a critical component of the planning efforts for the Lake Belt Area. Phase I of the Lake Belt Plan, which provided the framework for development of the Lake Belt Mitigation Plan, was adopted by the 1997 Legislature. However, a key component of the Lake Belt Mitigation Plan, establishment of a mitigation fee imposed for limerock mining, had not been enacted by the Legislature. Legislation (CS/HB 4071) was passed during the 1998 Session to enact the mitigation fee, but the bill was subsequently vetoed due to a provision unrelated to the Lake Belt Area.⁷

In 1992, the Florida Legislature created the Northwest Dade County Freshwater Lake Plan Implementation Committee ("Lake Belt Committee") with the specific responsibility to develop a plan which

- ✓ Enhances the water supply for Dade County and the Everglades,
- ✓ Maximizes efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment, and
- ✓ Educates various groups and the general public of the benefits of the plan.

In February 1997, the Lake Belt Committee published Phase I of the Lake Belt Plan, "Making a Whole, Not Just Holes." The plan included specific recommendations regarding:

- ✓ A strategy for streamlining the permitting process for rock mining;
- ✓ Specified areas for mining, mitigation, and additional analysis;
- ✓ Establishment of a dedicated funding mechanism for mitigation;
- ✓ Authorization for government-industry land exchanges;
- ✓ Authorization for agencies to enter into agreements to implement the Lake Belt Plan; and
- ✓ Development of the Lake Belt Phase II Detailed Master Plan.

The 1997 Legislature adopted the Phase I Lake Belt Plan and provided direction for development of the Phase II Lake Belt Plan.⁸

CHAPTER 99-298, LAWS OF FLORIDA

Chapter 99-298, Laws of Florida, imposes a mitigation fee for each ton of limerock or sand sold from within the Lake Belt Area. Proceeds of the fee, less administrative costs, are to be used exclusively for the purpose of conducting mitigation activities that offset the loss of the value and functions of

⁵ Chapter 84-79, Laws of Florida, created the Warren F. Henderson Wetlands Protection Act at ss. 403.91 - 403.929, F.S. (1984). Most of these sections were repealed by s. 45, Chapter 93-213, Laws of Florida (CS/CS/HB 1751).

⁶ Senate Staff Analysis and Economic Impact Statement, CC/CS/SB 2238, April 20, 1999, at 2.

⁷ *Id.*

⁸ *Id.* at 2-3.

wetlands as a result of mining in the Lake Belt Area. Chapter 99-298, Laws of Florida, also redefines the Lake Belt Area and provides additional requirements for the Phase II Lake Belt Plan.

Additionally, Chapter 99-298, Laws of Florida, establishes the following disclosure requirement:

373.4149 Miami Dade County Lake Belt Plan.--

(5) Beginning October 1, 1999, before the sale, lease, or the issuance of a development order, including the approval of a change in land use designation or zoning, for any real property located inside the Miami-Dade Lake Belt Area or within 2 miles of the boundary of the Lake Belt Area, the entity holding title to the real property is required to submit a written affidavit of disclosure to Miami-Dade County in a form prescribed by the County that is suitable for recording:

- (a) Acknowledging the existence of limestone mining activities involving the use of explosives within close proximity of the real property proposed to be soled, leased, used, or developed;
- (b) Agreeing to provide copies of the affidavit of disclosure to all subsequent parties to whom whole or part interest in the real property is transferred, by sale, lease, or other means; and
- (c) Acknowledging potential civil liability, as well as fines and penalties that could result from failure to provide disclosure

Failure to substantially comply with the provisions of this subsection makes the sale of the real property or interest therein voidable at the purchaser's option for a period of 7 years from the date of the affidavit of disclosure.⁹

The "failure to substantially comply" provision is unclear because it only references "sale"; whereas, the provisions of the subsection relate to sale, lease, or issuance of a development order. Also, the affidavit of disclosure must be "suitable for recording"; yet, the statute does not require that it be recorded. The statute "acknowledges potential civil liability, as well as fines and penalties"; yet, no fines or penalties are created by statute. The statute creates a requirement that "all subsequent parties" that the real property is sold or leased to are authorized to get copies of the affidavit of disclosure. The language does not limit that requirement to the immediate next buyer/lessor; thus, the requirements have no expiration. Furthermore, the provision making the sale of real property voidable at the purchaser's option for a period of 7 years raises substantial concerns. The 7-year window begins from the date of the affidavit of disclosure. A question arises as to what happens if no affidavit of disclosure is created, or it is not submitted to Miami-Dade County. Additionally, the voidability of title for 7 years raises significant concerns regarding liability and acquisition of clear title:

If you don't sign this Affidavit and give it to your buyer it will be you, not the blasters, who is subject to civil fines, civil litigation. Additionally, the sale of your home can be voided by the buyer for a period up to 7 years!!! Just imagine, selling your beautiful home to people who trash it, don't maintain it, and then 7 years later demand you buy it back from them (and be

⁹ HB 329 became Chapter 99-298, Laws of Florida. HB 329, as originally filed by Representative Villalobos, did not include any of the language in subsection (5). However, the companion Senate bill, SB 2238, and each subsequent version, CS/SB 2238 and CS/CS/SB 2238, did include that language. The House Committee on General Government Appropriations adopted a "remove everything after the enacting clause" amendment to HB 329, which included the language in subsection (5). However, HB 329, as amended, was not made a committee substitute, and therefore was not reviewed for further reference to substantive committees. Accordingly, HB 329 was not referred to the Committee on Real Property and Probate.

liable for their mortgage also?) because you didn't sign this Affidavit "warning them" that your home is within 2 miles of a blasting site.¹⁰

Mortgage lenders, title insurers, real estate brokers, property owners in the affected area, and the mining industry have expressed significant concerns regarding the impact of Chapter 99-298, Laws of Florida.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 373.4149, F.S., regarding the Miami-Dade County Lake Belt Plan. More particularly, this bill:

- ✓ Amends the legal description of the Miami-Dade County Lake Belt Area ("Lake Belt Area") to provide further detail with regard to an existing exception to the description;
- ✓ Requires Miami-Dade County to file for recording in the Official Records of Miami-Dade County, and in the Official Records of Broward County, a certificate, by a Florida licensed professional surveyor and mapper, which sets forth the legal description of the Lake Belt Area and which describes, as specified, the area within 2 miles of the boundary of the Lake Belt Area, and identifies, as specified, the subdivisions and condominiums in the Lake Belt Area and surrounding 2-mile area;
- ✓ **Repeals** the requirement that before the sale, lease, or issuance of a development order for property within the Lake Belt Area, or surrounding 2-mile area, the owner of the property must submit a written affidavit of disclosure to Miami-Dade County:
 - acknowledging the existence of limestone mining activities involving the use of explosives in the area;
 - agreeing to provide copies of the affidavit of disclosure to all subsequent parties to whom an interest in real property is transferred, by sale, lease or any other means; and
 - acknowledging potential civil liability, as well as fines and penalties that could result from failure to provide disclosure.
- ✓ Requires, as of October 1, 2000, that a seller or lessor of real property within the Lake Belt Area, and surrounding 2-mile area, in conjunction with the sale or lease of their property, disclose that the real property is within the Lake Belt Area, or the surrounding 2-mile area, and that limestone mining activities involving the use of explosives occur within the Lake Belt Area; and sets forth other requirements regarding the disclosure.
- ✓ **Repeals** the provision "making the sale of the real property or interest therein voidable at the purchaser's option for a period of 7 years from the date of the affidavit of disclosure"; and, provides that any rights that may have been created pursuant to this provision are extinguished unless, by January 1, 2001, an action in a court of competent jurisdiction has been filed and a notice of lis pendens has been duly recorded.

¹⁰ "What's the Truth About the Lake Belt? Coincidence, or Conflicts of Interest?" by We the People ... of Miami-Dade County Florida; <http://www.miafla.com/isenvi1.html>, printed 12/6/99.

- ✓ Provides that willfulness, knowledge, or culpable negligence in failing to comply with the disclosure requirements makes the seller or lessor of the real property guilty of a misdemeanor of the first degree, as provided in Florida Statutes s. 775.082¹¹ or s. 775.083¹².

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See "Fiscal Comments"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

See "Fiscal Comments". This bill requires Miami-Dade County to file for recording a certificate, prepared by a Florida licensed professional surveyor and mapper, in Broward County and in Dade County. The costs of so doing are indeterminate, but minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

This bill creates a criminal penalty. To the degree criminal charges are brought by the state, such will increase the costs to the judicial system.

¹¹ Section 775.082, F.S., provides: "(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows: (a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year."

¹² Section 775.083(1), F.S., provides: "A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described Fines for designated crimes and for noncriminal violations shall not exceed: ... (d) \$1,000, when the conviction is of a misdemeanor of the first degree. ... If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain."

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Although this bill requires Miami-Dade County to spend money to file for recording a certificate prepared by a Florida licensed professional surveyor and mapper, the fiscal impact is insignificant and thus falls within an exemption to the mandate requirements.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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:

This bill is substantially the work product of the Real Property, Probate, and Trust Law Section of the Florida Bar.¹³ That section worked with representatives of some of the affected parties, including title insurers, South Florida Water Management District, home builders, Florida Association of Realtors, and the mining interests. Considerable debate ensued regarding the inclusion of a criminal penalty.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 2000, the Committee on Real Property & Probate adopted three amendments to the proposed committee bill. The first amendment was editorial and made no substantive changes to the bill. The second amendment added the requirement to the criminal penalty that failure to comply with the bill's provisions had to be willful, knowing, or with culpable negligence. The third amendment changed from July 1, 2001, to January 1, 2001, the date by which certain affected parties had to file an action in a court of competent jurisdiction and record a notice of lis pendens in order to preserve certain alleged rights.

¹³ Staff of the Committee on Real Property and Probate have made clarifying and editorial changes.

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VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

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