

STORAGE NAME: h2121z.ca
DATE: May 22, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 00-285, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: 1ST ENG/HB 2121
RELATING TO: Miami-Dade /County Lake Belt Plan
SPONSOR(S): Representative Villalobos and other
TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
 - (2) REAL PROPERTY & PROBATE (CJC) (W/D)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill repeals a provision that requires the entity holding title to real property located inside the Miami-Dade Lake Belt area or within two miles of the boundary to submit a written affidavit of disclosure to Miami-Dade County. This must occur prior to the sale, lease, or issuance of a development order, including the approval of a change in land use designation or zoning. The bill also provides that any person who has acquired rights pursuant to the repealed section has six months to file an action to enforce such rights or such rights are lost.

This bill clarifies the boundaries of the Miami-Dade County Lake Belt area.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input 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 type="checkbox"/> | N/A <input checked="" 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:

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

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.

Blasting has filed a lawsuit against the mining industry this year alleging damage to their homes.⁴

LEGISLATION

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.

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

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.*

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 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

⁸ *Id.* at 2-3.

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.

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 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 repeals subsection (5) of section 373.4149, F.S., that requires the entity holding title to real property located inside the Miami-Dade Lake Belt area or within two miles of the boundary to submit a written affidavit of disclosure to Miami-Dade County prior to the sale, lease, or issuance of a development order, including the approval of a change in land use designation or zoning.

The bill also provides for the extinguishment of rights granted under section 373.4149(5). Any person who has acquired rights pursuant to section 373.4149(5) has six months from the effective date of this act to file an action in a court of competent jurisdiction to enforce such rights and has recorded a notice of lis pendens. If these protective steps are not undertaken, then that person's rights under this section are extinguished.

This bill clarifies the boundaries of the Miami-Dade County Lake Belt area.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 373.4149 (3), F.S., to clarify boundaries of the Miami-Dade County Lake Belt Plan.

Section 2: Repeals section 373.4149(5), F.S., relating to requirements on the sale or lease of certain property or the issuance of a development order in the plan area; provides for the extinguishment of rights granted under section

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.

373.4149(5); requires any person who has acquired rights pursuant to section 373.4149(5) to file an action in a court of competent jurisdiction to enforce such rights and has recorded a notice of lis pendens within six months from the effective date of this act, or lose such rights.

Section 3: Directs the Division of Statutory Revision to replace “six months after the effective date of this act” with the date which is six months after the date this bill becomes a law.

Section 4: Provides effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The homeowners within this area may be economically benefitted by the bill as there currently is some concern that the disclosure requirement is acting as a blight on their title. By removing this requirement, homeowners may be able to more easily sell or lease their properties.

Purchasers of properties within this area over the last seven years may be economically harmed by this bill. Currently, 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. This bill extinguishes this right by requiring those purchasers to file a judicial action within six months of the effective date of this act, or lose such rights.

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Due to the repeal of section 373.4149(5), F.S., the disclosure language and voidable provision no longer apply. Replacement language is not included, and therefore may be a cause of action for a claim of non-disclosure.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Community Affairs

The Committee on Community Affairs, at its April 5, 2000 meeting, adopted two amendments offered by Representative Villalobos. The first amendment is an amendment that addresses a potential constitutional concern relating to extinguishing the statutory cause of action created under section 373.4149(5), F.S. The second amendment changes the bill's effective date to upon becoming a law.

Floor Amendments

On April 25, 2000, the House adopted an amendment by Representative Goodlette. This amendment was a substitute amendment to an amendment which was adopted by the Committee on Community Affairs. The substitute amendment inserted a new section "3" of the bill which directed the Division of Statutory Revision to replace "six months after the effective date of this act" with the date which is six months after the date this bill becomes a law.

Upon passage of this bill by the House on May 1, 2000, these amendments were engrossed into HB 2121/1ST ENG.

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Laura L. Jacobs, Esq.

Joan Highsmith-Smith

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

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