

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2220

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Diaz-Balart

SUBJECT: The Miami-Dade County Lake Belt Plan

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) repeals disclosure requirements by specified property owners who are selling or leasing real property within the Miami-Dade County Lake Belt Area. It replaces the 7-year statute-of-limitations period with a 6-month statute-of-repose period within which a purchaser of such real property can bring a cause of action based on a seller's or lessor's failure to comply with the statutory disclosure requirements, or else the claim is forever barred. The CS also corrects reference to the Ronald Reagan Turnpike and clarifies the boundaries of the Miami Beach Lake Belt Area (Area) as publicly recorded.

This CS amends section 373.4149 and subsection (5) of section 373.4149 of the Florida Statutes.

II. Present Situation:

Description of Lake Belt Area

The Miami-Dade County rock mining industry supplies more than half of the construction grade rock and sand used throughout Florida for building roads, schools, and for private construction. The Miami-Dade County deposit spreads under the urban areas and out into the wetlands of the water conservation areas. Most of the Miami-Dade County rock is mined in a narrow strip of land located between the urban areas and the conservation areas called the Miami-Dade County Lake Belt Area. The Lake Belt Area is an 89 square mile area located between the Everglades and the urbanized areas of Miami-Dade County. The Lake Belt produces about 35-40 million tons of rock annually, transforming about 300 acres of melaleuca-infested wetlands into lakes 80 feet deep, surrounded by manmade wetlands.

The environmental significance of the Lake Belt Area is largely a function of its location between the remnant Everglades ecosystem to the west and the urbanized areas of Miami-Dade County to the east. As part of the Comprehensive Review of the Central and Southern Florida Project (Restudy), plans call for a series of interconnected surface water areas along the eastern boundary

of the Everglades in Palm Beach, Broward, and Miami-Dade Counties. These areas, collectively referred to as the East Coast Buffer/Water Preserve Areas, are intended to provide additional water storage, water quality treatment, wetlands and habitat protection, as well as providing a buffer between urban areas and the Everglades ecosystem. The Comprehensive Plan for the Restudy includes a number of project components within the Lake Belt Area, both as part of the East Coast Buffer/Water Preserve Areas as well as other discrete project components.

Miami-Dade County operates two wellfields within the Lake Belt Area. Wellfield protection is critical within the Lake Belt Area and is required to be considered in the ongoing planning process for the area.

In 1984, the Florida Legislature passed the Henderson Wetlands Act which expanded wetland regulatory jurisdiction for dredge and fill activities in the state. This act recognized the economic importance of mining in the Lake Belt and exempted ongoing mining operations located east of the Miami-Dade-Broward County Levee from the more expanded (Henderson Wetlands Act) wetlands jurisdictions for a period of ten years. During the 1994 Legislative Session, the exemption was extended for a reduced area until October, 1997. In 1997, this exemption was extended until October 1, 2000. While these lands have been subject to reduced state permitting jurisdiction, they have continued to be regulated by both Miami-Dade County and the U.S. Army Corps of Engineers (Corps).

Development of a mitigation plan is a critical component of the ongoing planning efforts for the Lake Belt Area. After environmental studies, the Corps, the DEP, and the Miami-Dade County Department of Environmental Resource Management (DERM) determined that for each wetland acre mined, 2.5 acres of wetlands within the area should be purchased, enhanced, and maintained in perpetuity as mitigation for the mining activities. 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, has 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.

In 1992, pursuant to ch. 92-132, L.O.F., the Legislature established the Northwest Dade County Freshwater Lake Plan Implementation Committee, which has subsequently been renamed as the Miami-Dade County Lake Belt Plan Implementation Committee. The committee will expire January 1, 2001. The committee was created as a public and private partnership to develop a strategy for the design and implementation of the Miami-Dade County Lake Belt Plan. The committee was to develop a plan that would enhance the water supply for Miami-Dade County and the Everglades, maximize efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment, and educate various groups and the general public of the benefits of the plan. The committee published a report on Phase I of the Lake Belt Plan in February 1997.

The February 1997 report contains specific recommendations concerning:

- Streamlining the permitting process for rock mining within the Lake Belt;
- Identifying areas for mining, mitigation, and additional analysis;

- Establishing a dedicated funding mechanism for mitigation;
- Authorizing government-industry land exchanges; and
- Authorizing state agencies to enter into agreements to implement the plan.

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

MIAMI-DADE COUNTY ORDINANCE

Section 13-19 of the Code of Metropolitan Miami-Dade County, Florida, was enacted to require any person constructing a residential structure located within two miles of a permitted rock mining operation where blasting is permitted to: “prior to the issuance of the first development permit, record in the public records a notice that the proposed development is located within two (2) miles of a blasting site.” The notice must provide the location of the blasting site and provide that the blasting activity is regulated by Chapter 13 of the Code of Miami-Dade County. In addition, “Notice shall be given to and signed by buyers contemporaneous with signing purchase contracts with said developments.”

In addition, the Director of the Miami-Dade County Public Works Department (Code) and the Director of the Miami-Dade County Department of Planning and Zoning must maintain detailed maps of all permitted rock mining activities where blasting is permitted. They must also provide notice of Section 13-19 of the Code with the official application forms for development permits.

CHAPTER 99-298, LAWS OF FLORIDA

In 1999, the Legislature enacted ch. 99-298, L.O.F., amending s. 373.4149, F.S., regarding the Miami-Dade County Lake Belt Plan, to require mitigation for mining activities within the Miami-Dade County Lake Belt. To accomplish this, the act 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, L.O.F., also redefines the Lake Belt Area and provides additional requirements for the Phase II Lake Belt Plan.

Additionally, ch. 99-298, L.O.F., establishes a disclosure requirement for title holders of property before the sale, lease or issuance of a development order for any property located within the Miami-Dade County Lake Belt Area, or within two miles of the boundary of the Miami-Dade County Lake Belt Area. Section 373.4149(5), F.S., requires the entity holding title to this real property to submit a written affidavit of disclosure to Miami-Dade County in a form that is “prescribed by the County that is suitable for recording.” The affidavit must:

1. Acknowledge the existence of limestone mining activities involving the use of explosives within close proximity of the real property proposed to be sold, leased, used, or developed;
2. Agree 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

3. Acknowledge potential civil liability, as well as fines and penalties that could result from failure to provide disclosure.

Importantly, the 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 seven years from the date of the affidavit of disclosure. Presumably, this disclosure requirement applies to resellers as well as to original sellers or lessors.

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 ch. 99-298, L.O.F.

III. Effect of Proposed Changes:

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

- ▶ Corrects proper name reference from Florida Turnpike to Ronald Reagan Turnpike;
- ▶ Repeals the disclosure requirements created by ch. 99-298, L.O.F., (373.4149(5), F.S.), which required a title-holder of property located inside the Miami-Dade County Lake Belt Area or within 2 miles of its boundary to file an affidavit of disclosure with the county and to include statements that: 1) The property was located in close proximity of the mining activities in the belt area, 2) The title-holder of the property agreed to provide copies of the affidavit to interested parties, and 3) The title-holder of the property acknowledged that failure to disclose such information subjected him or her to civil liability;
- ▶ Replaces the 7-year statute of limitations period with a 6-month statute of repose period to forever bar any cause of action arising under the right created by last year's act that allowed someone to void the sale or lease of real property based on the title property holder's failure to satisfy statutory disclosure requirements relating to the location of the real property inside or within the 2-mile boundary of the Miami-Dade County Lake Belt Area, unless cause of action is initiated by January 1, 2001;
- ▶ Amends the legal description of the Miami-Dade County Lake Belt Area to correct an oversight in the description that failed to reference the subdivision in which the specified tracts are located as provided in the public records of Miami-Dade County; and
- ▶ Provides an effective date of July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Unless the legislature provides a reasonable alternative to protect people's rights, the legislature is without power to abolish a common law or statutory right predating the adoption of the *Florida Constitution* based on the constitutional right of access to courts. *See* art. I, s. 21, *Fla. Const.* Otherwise, the legislature must show that there is an overpowering public necessity for doing so and that no alternative method of meeting such public necessity can be shown). *See Kluger v. White*, 281 So.2d 1, 4 (Fla.1973).

In contrast, this bill extinguishes a statutorily created right that post-dates the adoption of the Florida Constitution. The statutorily created right to void a real property purchase based on the failure of the seller or lessor to disclose specified facts about the real property was enacted last year. Under the bill, those persons with a vested right will have until January 1, 2001 (i.e., 6 months from the effective date of the bill) to assert their claim by filing an action and a notice of lis pendens, or be forever barred.

A revision of a statute of limitations that would have cut off a plaintiff's right to sue but which provided a 6-month grace period within which to bring an action was deemed constitutional and not violative of the right of access to the courts. *See Cates v. Graham*, 451 So.2d 475 (Fla. 1984)(relating to statute of limitations period in medical malpractice actions); *see also, Bauld v. J.A. Jones Constr. Co.*, 357 So.2d 401, 403 (Fla. 1978)(1-year grace period in revised statute of limitations in personal injury action).

The repeal of this subsection would not affect other existing rights under common law or statute that a commercial or residential property purchaser may have relating to the failure to disclose material facts to induce purchase or sale and that would otherwise affect the value of the property.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The repeal of the disclosure provisions of ch. 99-298, L.O.F., and extinguishment of any rights to void title for a period of seven years will likely have the effect of lowering the cost of title insurance for such properties.

The repeal of this statutory provision does not pre-empt or otherwise extinguish local government regulations under section 13-19 of the Code of Metropolitan Miami-Dade County, Florida, which require a similar disclosure notice to be filed on property located inside or within the 2-mile zone of the Miami-Dade County Belt Lake Area.

It is indeterminate how many persons would be affected by this repeal and statute of repose. The area at issue is currently under intense commercial and residential development. Notably, as currently worded, the existing subsection (5) of section 373.4149, F.S., provides that the 7-year statute of limitations period for a valid cause of action begins from the date an affidavit was filed. A property holder's failure to substantially comply with the statutory disclosure provision goes to the content of the affidavit and not the failure to file an affidavit. Arguably, unless or until a title holder of property holder files an affidavit, he or she could be held liable indefinitely under this subsection whereas those persons who have filed an affidavit would be liable up to 7-years from the date of the affidavit. Therefore, the statute of repose would affect the statutorily created rights of commercial and residential purchasers regardless of whether an affidavit has been filed.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.