

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: CS/CS/SB 964

SPONSOR: Regulated Industries Committee, Environmental Preservation Committee, and Senator Smith

SUBJECT: Coastal Properties Sales/Disclosures

DATE: April 14, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute for committee substitute (CS/CS) prescribes additional disclosure requirements for sellers of coastal real property that are seaward of the coastal construction control line. The seller is required to make the following disclosure at or prior to the time a seller and a purchaser both execute a contract for the sale and purchase of the real property:

- That the property may be subject to coastal erosion and certain federal, state, or local environmental laws that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and marine turtles; and
- That additional information can be obtained from the Department of Environmental Protection (DEP), including whether there are significant erosion conditions associated with the shore line of the property being purchased.

The disclosure may be set forth in the contract or in a separate writing.

The CS/CS also provides that failure to deliver the disclosure, affidavit, or survey required by s. 161.57, F.S., shall not effect the enforcement of sale and purchase contract, create a right of recession, or impair the property's title.

The CS/CS has an effective date of July 1, 2005.

This bill substantially amends section 161.57, Florida Statutes.

II. Present Situation:

Section 161.57, F.S. requires that the seller of coastal property inform the buyer if the property is located partially or totally seaward of the coastal construction control line. This disclosure must be made at or prior to closing. Section 161.57, F.S., does not require the seller to provide any further information such as whether the property is located in a critically eroding area, is known to have sea turtle nests, or is in an area that has restrictions on the use of lights. The current statute also allows the purchaser to waive the right to be informed of the location of the coastal construction control line.

Erosion is defined by the DEP, pursuant to s. 161.161, F.S. The DEP designates each area along Florida's coast as eroding, critically eroding or accreting. This information is posted on the DEP webpage under the *Beaches* section, and a property owner can find out his or her designation by looking under the county map where the property is located.¹ The map is set up by dividing areas into R-monuments or range monuments. By comparing the location of the property under the county maps with the location of the areas designated as eroding, critically eroding or accreting, the property owner can see how the DEP has classified the property.²

Section 161.053, F.S., requires that the DEP establish coastal construction control lines along the sand beaches of the state. The established control lines must define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

Critical erosion impacts the value of property a great deal more than is often acknowledged. The amount of depression of coastal property values due to erosion over the next twenty years for properties along the Atlantic coast of the United States has been estimated at between \$1.7 and \$2.7 billion.³ In Florida, the annual budget of federal funds for beach nourishment is over \$42 million. The 2003-04 fiscal year budget for Florida state funds was over \$48 million and local municipalities spent over \$65 million.⁴

Throughout the country, other states such as California, Oregon, and South Carolina have begun to recognize that the potential of natural hazards, specific erosion rates and any other issue concerning the value of coastal property should be disclosed to potential buyers.⁵

III. Effect of Proposed Changes:

The CS/CS amends s. 161.57, F.S., known as "Coastal Properties Disclosure Statement." This bill prescribes additional disclosure requirements for sellers of coastal real property that is

¹ Florida Department of Environmental Protection, *Beaches and Coastal Publications. Technical Reports (2003)* at: <http://www.dep.state.fl.us/beaches/publications/cntymaps.htm#county-maps>

² Florida Department of Environmental Protection, *Critical Erosion Areas (Maps Only) (1999)* at: <http://www.dep.state.fl.us/beaches/publications/pdf/ero-area.pdf>

³ The H. John Heinz III Center, *Evaluation of Erosion Hazards Summary 1 (2000)* at: http://www.heinzctr.org/NEW_WEB/PDF/erosnum.pdf#zoom=100

⁴ Florida Department of Environmental Protection, *Florida Beach Erosion Control Program Fixed Capital Outlay Legislative Budget Request for FY 2003-04 (2002)* at: <http://www.dep.state.fl.us/beaches/programs/pdf/fco03-04.pdf>

⁵ Ryan Osborne, and Thomas Ankersen, *University of Florida Conservation Clinic Document, Amendment Report, April 2004.*

seaward of the coastal construction control line as defined s. 161.053, F.S. At or prior to closing the seller is required to disclose:

- That the property may be subject to coastal erosion and certain federal, state, or local environmental laws that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and marine turtles; and
- That additional information can be obtained from the Department of Environmental Protection (DEP), including whether there are significant erosion conditions associated with the shore line of the property being purchased.

The disclosure may be set forth in the contract or in a separate writing.

The CS/CS also provides that failure to deliver the disclosure, affidavit, or survey required by s. 161.57, F.S., shall not effect the enforcement of sale and purchase contract by either party, create a right of recession by the purchaser, or impair the property's title.

This act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A seller of property may have additional expenses related to identifying the additional information needed in the affidavit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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