

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the disclosure requirements that a seller of coastal property must provide to a prospective purchaser.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Environmental Protection (department) has established coastal construction control lines, as required by statute, on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida.¹ The purpose of these lines is to define that portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.² Upon the recording of the survey showing the location of a beach erosion control line, title to all lands seaward of the erosion control line are deemed to be vested in the state by right of its sovereignty.³ Property seaward of the coastal construction control line can be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, such rigid coastal protection structures⁴, beach nourishment, and protection of marine turtles.

Current law requires that a seller of real property located partially or totally seaward of the coastal construction control line provide to the purchaser an affidavit, or a survey, that discloses to the purchaser the location of the coastal control line on the property being conveyed.⁵ This disclosure requirement was established by the legislature to ensure that purchasers in coastal areas were aware that such lands are subject to frequent and severe fluctuations due to erosion.⁶ Critical erosion affects 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.⁷

There also exists in the common law a general duty to disclose when a seller is aware of facts materially affecting value or desirability of property, which are not readily observable and are not known to the buyer.⁸ Several provisions in current law require the seller to provide specific disclosure statements prior to the sale of real property. A seller must disclose:

- The amount of ad valorem taxes on real property;⁹
- Whether there are homeowners' association covenants;¹⁰
- Energy performance level for each new residential building¹¹; and

¹ Section 161.053(1)(a), F.S.

² Section 161.053(1)(a), F.S.

³ Section 161.191(1), F.S.

⁴ Rigid coastal protection structures are man-made structures or devices in or near the coastal system for the purpose of preventing erosion of the beach or the upland dune system or to protect upland structures from the effects of coastal wave and current activity.

⁵ Section 161.57(2), F.S.

⁶ Section 161.57(1), F.S.

⁷ *Evaluation of Erosion Hazards Summary* A Collaborative Project of The H. John Heinz III Center for Science, Economics and the Environment, (Prepared for the Federal Emergency Management Agency, Contract EMW-97-CO-0375, April 2000) at: http://www.heinzctr.org/NEW_WEB/PDF/erosnsum.pdf#zoom=100 (last visited March 16, 2006).

⁸ *Johnson v. Davis*, 449 So.2d 344 (Fla. 3rd DCA 1984)

⁹ Section 689.261, F.S.

¹⁰ Section 720.401, F.S.

- The possibility of increased levels of radon gas.¹²

Contracts for the sale and purchase of a condominium, cooperative, and timeshare interest have several disclosure requirements as well.^{13,14,15}

Effect of Bill

The bill amends s. 161.57, F.S., pertaining to the "Coastal Properties Disclosure Statement", to require an additional disclosure of a seller of coastal real property that is 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 being purchased may be subject to coastal erosion and certain federal, state, or local regulations that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. 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 bill 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.

C. SECTION DIRECTORY:

Section 1 amends s. 161.57, F.S., to provide disclosure requirements for property located seaward of the coastal construction control line.

Section 2 provides an effective date of October 1, 2006.

II. 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.

¹¹ Section 553.9085, F.S.

¹² Section 404.056, F.S.

¹³ Section 718.503, F.S.

¹⁴ Section 719.503, F.S.

¹⁵ Section 721.06, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.