

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1032

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Subsurface Rights

DATE: April 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1032 requires sellers of residential property to provide prospective purchasers with a disclosure summary at or before the execution of the contract for sale if any of the subsurface rights or right of re-entry are or will be severed or retained by the seller.

This bill has no fiscal impact on state government.

II. Present Situation:

In February 2014, the Florida Attorney General sent a News Release to approximately 18,000 homeowners who had purchased real property without knowledge that the mineral rights to the property had been severed. The Attorney General notified the homeowners they had the option to receive those mineral rights by completing a certification form. The seller agreed to cease the practice of reserving mineral rights until the Florida Legislature provided guidance on the issue.¹

Generally in real estate transactions the landowner is entitled to the surface of the property and all that is below it if the deed does not contain a reservation limiting the estate.² An express reservation to sever the mineral rights generally creates two separate estates with the mineral estate being the dominate estate. The owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals but may not abuse the surface estate.³

¹ Attorney General Pam Bondi News Release, February 7, 2014.

² 36 Fla Jur. 2d Mines and Minerals 54.

³ P & N Inv. Corp. v. Florida Ranchettes, Inc., 220 So. 2d 451, at 453 (Fla.1st DCA 1969).

Without a reference to the mineral rights on the face of the deed, homeowners may be unaware the seller has retained those rights.

III. Effect of Proposed Changes:

The bill requires sellers of residential property to provide prospective purchasers with a disclosure summary at or before the execution of the contract for sale if any of the subsurface rights or right of re-entry are or will be severed or retained by the seller.

The bill provides the disclosure summary must be included in or attached to the contract for sale. If attached, the contract must refer to and incorporate by reference a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.⁴

The bill defines “subsurface rights” as all minerals, mineral fuels, and other resources, including but not limited to, oil, gas, coal, oil shale, uranium, metals, and phosphate, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.

The bill defines “seller” as any seller of real property which, at the time of sale, is zoned for residential use and where a new dwelling is being constructed, is to be constructed, or has been constructed since the last transfer of property.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴ The bill provides the written requirements for the disclosure summary form.

B. Private Sector Impact:

Under CS/SB 1032, sellers of residential real property will incur minor costs to provide prospective purchasers with a disclosure summary of any subsurface rights or rights of re-entry that are or will be severed or retained by the seller.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.29 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 10, 2014:

The committee substitute removes the criminal penalty for knowingly violating the disclosure requirements. It requires that the disclosure summary be included in the contract or as an attachment and incorporated by reference rather than on a separate form and provided three days prior to entering into the contract.

B. Amendments:

None.