

**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 Criminal Justice

---

BILL: SB 1032

INTRODUCER: Senator Latvala

SUBJECT: Residential Property Sales

DATE: March 5, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 1032 requires sellers of residential property to provide at least three days written notice to a prospective buyer of the seller's intent to retain subsurface rights. The purchaser must acknowledge receipt of the notice in writing. The purchaser has three business days after the contract or deed is fully executed to rescind the contract or deed if the seller failed to provide the notice. Sellers who knowingly violate this section commit a first degree misdemeanor.

**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 that they had the option to receive those mineral rights by completing a certification form. The seller agreed to cease the practicing of reserving mineral rights until the Florida Legislature provides guidance on the issue.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> Without a reference to the mineral rights on the face of the deed, homeowners may be unaware that the seller has retained those rights.

---

<sup>1</sup> Attorney General Pam Bondi News Release, February 7, 2014.

<sup>2</sup> 36 Fla Jur. 2d Mines and Minerals 54.

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

### III. Effect of Proposed Changes:

The bill provides that a seller who intends to retain subsurface rights as part of the sale of residential property<sup>4</sup> must provide the prospective purchaser and real estate agent (if applicable) written notice that the seller intends to retain those subsurface rights. The prospective purchaser must receive the notice at least three days before entering into the contract and must acknowledge receipt of the written notice by his or her signature.<sup>5</sup>

The bill provides the purchaser three business days to rescind the contract or deed after fully executed if the seller failed to provide the required notice. If the court finds that the seller failed to provide proper notice, the court shall issue an order declaring the contract or deed void.

The bill provides that a seller who knowingly violates this provision of the law commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.<sup>6</sup>

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.

#### B. Private Sector Impact:

None.

#### C. Government Sector Impact:

The provision of the bill creating a misdemeanor offense may require judicial resources for the courts, clerks, state attorneys, and public defenders.

---

<sup>4</sup> "Residential property" includes real estate on which there is located, or will be located, a single-family dwelling, duplex, triplex, quadruplex, or condominium.

<sup>5</sup> The bill provides the information and format that must be contained in the notice.

<sup>6</sup> A first degree misdemeanor is punishable up to one year in prison and a fine up to \$1,000.00.

**VI. Technical Deficiencies:**

The definition of “residential property” may not be expansive enough to cover additional types of residences such as a cooperative or a mobile home park.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 689.263 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.