

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 Commerce and Tourism

BILL: SB 1556

INTRODUCER: Senator Simpson

SUBJECT: Mineral Rights

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baye</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____

I. Summary:

SB 1556 provides that sellers of residential property must provide a prospective purchaser with a disclosure summary at or before the execution of the contract for sale. The disclosure summary must inform the purchaser whether the mineral rights have been or will be severed from the property.

II. Present Situation:

Pursuant to ch. 689.01, F.S., property conveyed for a term of more than 1 year must be made by an instrument in writing. “A landowner is entitled to the surface and all that is below it, and on the execution of a deed that contains no reservation and does not limit the estate conveyed, the owner conveys everything under the surface as well as on the surface itself.”¹ A landowner can also sever his or her mineral rights in the land and sell them separately.²

Generally, when the surface estate is severed from the mineral estate, the mineral estate is the dominant estate and the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals.³ However, the owner of the mineral estate cannot take actions that unreasonably injure or destroy the value of the surface estate and may be liable for damages to the owner of the surface estate for any unreasonable damages.”⁴

Some developers retain mineral rights without a reference to the mineral rights on the face of the deed. There may be a catch-all provision in the deed indicating that the land is “subject to Covenants, Conditions, Restrictions, Reservations, Limitations, Easements, and Agreements of Records, if any.” In this case, the prospective purchaser may be unsure about the state of the mineral rights on the land.

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

² *Id.*

³ *P&N Inv. Corp. v. Florida Ranchettes, Inc.*, 220 So. 2d 451, 453 (Fla. 1st DCA 1968).

⁴ *Id.*

In February 2014, Florida Attorney General Pam Bondi stated in a press release that her office was working with a home builder to notify approximately 18,000 homeowners who had purchased real property from the builder without knowledge that the mineral rights to the property had been severed. The notice informs the homeowners that they have the option to receive the mineral rights by completing a certification form. The home builder agreed to cease the practice of reserving mineral rights until the Florida Legislature provides guidance on the issue.⁵

III. Effect of Proposed Changes:

SB 1556 creates s. 689.29, F.S., to provide that the seller must provide a prospective purchaser of residential property with a disclosure summary about the mineral rights of the real property. The disclosure summary must inform the prospective purchaser:

- That mineral rights may be severed and may permit the owner of those rights to access the property and remove subsurface minerals from the property; and
- Whether or not the mineral rights have been or will be severed from the property.

The disclosure summary must be provided to the prospective purchaser at or before the execution of the contract for sale, and must be included in or attached to the contract for sale. If attached, the contract must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required under this section. The disclosure summary must be conspicuous, in boldfaced type, and in a form substantially similar to the form contained in the bill. The purchaser is also required to initial the disclosure summary.

The term “mineral rights” means the rights to all minerals and mineral fuels, including oil, gas, coal, oil shale, and uranium.

This act takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ Florida Office of the Attorney General, *Attorney General Pam Bondi Announces that Home Builder is Notifying Florida Homeowners of Option to Request Mineral Rights*, February 7, 2014, available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/06535F8FE26017C785257C780071C51D> (last visited Mar. 11, 2014).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may impact the private sector related to the cost of providing notice to buyers.

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 Changes:**

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

None.

B. Amendments:

None.