

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1556

INTRODUCER: Commerce and Tourism Committee and Senator Simpson

SUBJECT: Mineral Rights

DATE: April 7, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baye</u>	<u>Hrdlicka</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1556 requires that sellers of residential property provide a prospective purchaser with a disclosure summary at or before the execution of the contract for sale if a subsurface right or right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity. The disclosure summary must inform the purchaser that the subsurface 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."<sup>1</sup> A landowner may also sever his or her mineral rights in the land and sell them separately.<sup>2</sup>

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.<sup>3</sup> However, the owner of the mineral estate cannot take

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<sup>1</sup> 36 Fla. Jur. 2d Mines and Minerals s. 54.

<sup>2</sup> *Id.*

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

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.”<sup>4</sup>

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.

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.<sup>5</sup> 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.<sup>6</sup>

### III. Effect of Proposed Changes:

CS/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 subsurface rights of the real property if a subsurface right or right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity. The disclosure summary must inform the prospective purchaser:

- That subsurface rights have been or will be severed and may permit the owner of those rights to access the property and remove subsurface minerals from the property; and
- That subsurface rights may have a monetary value.

The disclosure summary is required for the sale of residential property upon which a new dwelling:

- Will be constructed pursuant to a contract of sale;
- Is being constructed; or
- Has been constructed since the last transfer of the property.

The disclosure summary must be provided at or before the execution of the contract for sale if a subsurface right or the right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity. 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.

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<sup>4</sup> *Id.*

<sup>5</sup> See also, Drew Harwell, *Home Builder Grabs Drilling Rights Beneath Thousands of Tampa Bay Homes*, TAMPA BAY TIMES, November 8, 2013, at <http://www.tampabay.com/news/business/realestate/homebuilder-pockets-drilling-rights-beneath-thousands-of-tampa-bay-homes/2151468> (last visited April 3, 2014).

<sup>6</sup> 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 March 11, 2014).

If the disclosure summary is not included in the contract for sale, the contract for sale 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.

The term “subsurface rights” means the rights to all minerals and 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 term “seller” means any seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed, or will be constructed pursuant to the contract of sale with the seller, or has been constructed since the last transfer of the property.

This bill takes effect October 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:

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

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 Commerce and Tourism on March 17, 2014:**

The committee substitute:

- Requires a disclosure summary only if a subsurface right or the right of entry was severed or retained by the seller or an affiliated or related entity, or will be severed or retained by the seller or an affiliated or related entity.
- Changes the form of the disclosure summary.
- Deletes the requirement for the disclosure summary to be in the contract for sale. The amendment provides if the disclosure summary is not included in the contract for sale, the contract for sale 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.
- Defines “subsurface rights” to include all minerals, mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, and phosphate, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.
- Defines the term “seller” to mean any seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed, or will be constructed pursuant to the contract of sale with the seller, or has been constructed since the last transfer of the property.
- Changes the effective date of the bill from July 1, 2014 to October 1, 2014.

**B. Amendments:**

None.