

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Environmental Preservation Committee

BILL: SB 1948

INTRODUCER: Senator Smith

SUBJECT: Coastal Property/Sale/Disclosures

DATE: March 29, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tomkiewicz</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prescribes additional disclosure requirements for sellers of coastal real property that are seaward of the coastal construction control line. The seller is required to make the following disclosure at or prior to the time a seller and a purchaser both execute a contract for the sale and purchase of the real property:

- That the property may be subject to coastal erosion and certain federal, state, or local environmental laws 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; and
- That 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, create a right of recession, or impair the property's title.

The bill has an effective date of July 1, 2006.

This bill substantially amends section 161.57, Florida Statutes.

II. Present Situation:

Coastal Erosion

Section 161.053, F.S., requires that the DEP establish coastal construction control lines along the sand beaches of the state. The established control lines must define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

Section 161.57, F.S. requires that the seller of coastal property inform the buyer if the property is located partially or totally seaward of the coastal construction control line. This disclosure must be made at or prior to closing. Section 161.57, F.S., does not require the seller to provide any further information such as whether the property is located in a critically eroding area, is known to have sea turtle nests, or is in an area that has restrictions on the use of lights. The current statute also allows the purchaser to waive the right to be informed of the location of the coastal construction control line.

Erosion is defined by the DEP, pursuant to s. 161.161, F.S. The DEP designates each area along Florida's coast as eroding, critically eroding or accreting. This information is posted on the DEP webpage under the *Beaches* section, and a property owner can find out his or her designation by looking under the county map where the property is located.¹ The map is set up by dividing areas into range monuments or R-monuments. By comparing the location of the property under the county maps with the location of the areas designated as eroding, critically eroding or accreting, the property owner can see how the DEP has classified the property.²

Critical erosion impacts 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.³ In Florida, the funding request for fiscal year 2006-07 for the Beach Management Funding Assistance Program is \$32.8 million in federal funds, \$104.6 million for local government entities, and \$53.7 million for state funds.⁴

Throughout the country, other states such as California, Oregon, and South Carolina have begun to recognize that the potential of natural hazards, specific erosion rates and any other issue concerning the value of coastal property should be disclosed to potential buyers.⁵

¹ Florida Department of Environmental Protection, *Beaches and Coastal Publications*. Technical Reports at: <http://www.dep.state.fl.us/beaches/publications/cntymaps.htm#county-maps> (last visited March 16, 2006).

² Florida Department of Environmental Protection, *Critical Erosion Areas (Maps Only)* (June 2005) at: <http://bcs.dep.state.fl.us/reports/ero-area.pdf> (last visited March 16, 2006).

³ *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).

⁴ FY 2006-2007 Funding Request, Beach Management Funding Assistance Program, Florida Department of Environmental Protection.

⁵ Ryan Osborne, and Thomas Ankersen, *University of Florida Conservation Clinic Document*, Amendment Report, April 2004.

Real Estate Regulation

The Department of Business and Professional Regulation (DBPR) regulates brokers and sales associates in Florida through the Florida Real Estate Commission. According to the DBPR, a broker acting as a single agent for a seller who had actual knowledge that the property was located in an area requiring the disclosure, and failed to make such a disclosure, may violate a duty imposed by statute and could be charged with a violation of licensing law.

III. Effect of Proposed Changes:

The bill amends s. 161.57, F.S., known as "Coastal Properties Disclosure Statement." This bill prescribes additional disclosure requirements for sellers of coastal real property that is seaward of the coastal construction control line as defined in s. 161.053, F.S. At or prior to closing the seller is required to disclose:

- That the property may be subject to coastal erosion and certain federal, state, or local environmental laws 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; and
- That 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.

According to the Caribbean Conservation Corporation, the addition of the exit clause is expected to limit the amount of litigation resulting from a failure to disclose. Because DBPR regulates brokers and sales associates through the Florida Real Estate Commission, this exit clause does not prevent the enforcement of an agent's statutory disclosure responsibility.

This act shall take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A seller of property may have additional expenses related to identifying the additional information needed in the affidavit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
