

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2238

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee, Senator Diaz-Balart and others

SUBJECT: Limerock Mining

DATE: March 29, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/3 amendments</u>
2.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FR</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute would impose a mitigation fee of 5 cents for each ton of limerock or sand sold from within the Miami-Dade County Lake Belt Area. Beginning October 1, 1999, the fee would be applied to limerock or sand in raw, processed, or manufactured form including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. Proceeds of the fee, less administrative costs, are to be used exclusively for the purpose of conducting mitigation activities that offset the loss of the value and functions of wetlands as a result of mining in the Lake Belt Area.

The Miami-Dade County Lake Belt Area is redefined. Provides that the local land use jurisdiction shall not be preempted for areas within the Lake Belt Area, provided the exercise of local land use jurisdiction accommodates limerock mining activities and related operations within areas designated for rock mining by the Miami-Dade County Lake Belt Plan.

Provides additional requirements for Phase II of the Lake Belt Plan. In developing the plan, the Miami-Dade County Lake Belt Plan Implementation Committee must consider the feasibility of a common mitigation plan for nonrock mining uses, including a mitigation fee. The committee must also analyze the hydrological impacts resulting from future mining anticipated in the Lake Belt Plan and recommend any appropriate mitigation measures to be included in the Lake Belt Mitigation Plan.

The CS substantially amends ss. 373.4149, 373.4415, and 378.4115; and creates s. 373.41492, F.S.

II. Present Situation:

The Dade County rock mining industry supplies more than half of the construction grade rock and sand used throughout Florida for building roads, schools, and for private construction. The Dade

County deposit spreads under the urban areas and out into the wetlands of the water conservation areas. Most of the Dade County rock is mined in a narrow strip of land located between the urban areas and the conservation areas called the Dade County Lake Belt Area. The Lake Belt Area is an 89 square mile area located between the Everglades and the urbanized areas of Miami-Dade County. The Lake Belt produces about 35-40 million tons of rock annually, transforming about 300 acres of melaleuca-infested wetlands into lakes 80 feet deep, surrounded by manmade wetlands.

The environmental significance of the Lake Belt Area is largely a function of its location between the remnant Everglades ecosystem to the west and the urbanized areas of Miami-Dade County to the east. As part of the Comprehensive Review of the Central and Southern Florida Project (Restudy), plans call for a series of interconnected surface water areas along the eastern boundary of the Everglades in Palm Beach, Broward, and Dade Counties. These areas, collectively referred to as the East Coast Buffer/Water Preserve Areas, are intended to provide additional water storage, water quality treatment, wetlands and habitat protection, as well as providing a buffer between urban areas and the Everglades ecosystem. The Comprehensive Plan for the Restudy includes a number of project components within the Lake Belt Area, both as part of the East Coast Buffer/Water Preserve Areas as well as other discrete project components.

Miami-Dade County operates two wellfields within the Lake Belt Area. Wellfield protection is critical within the Lake Belt Area and is required to be considered in the ongoing planning process for the area.

In 1984, the Florida Legislature passed the Henderson Wetlands Act which expanded wetland regulatory jurisdiction for dredge and fill activities in the state. This act recognized the economic importance of mining in the Lake Belt and exempted ongoing mining operations located east of the Dade-Broward Levee from the more expanded (Henderson Wetlands Act) wetlands jurisdictions for a period of ten years. During the 1994 Legislative Session, the exemption was extended for a reduced area until October, 1997. In 1997, this exemption was extended until October 1, 2000. While these lands have been subject to reduced state permitting jurisdiction, they have continued to be regulated by both Dade County and the U.S. Army Corps of Engineers (Corps).

Development of a mitigation plan is a critical component of the ongoing planning efforts for the Lake Belt Area. After environmental studies, the Corps, the DEP, and the Dade County Department of Environmental Resource Management (DERM) determined that for each wetland acre mined, 2.5 acres of wetlands within the area should be purchased, enhanced, and maintained in perpetuity as mitigation for the mining activities. Phase I of the Lake Belt Plan, which provided the framework for development of the Lake Belt Mitigation Plan, was adopted by the 1997 Legislature. However, a key component of the Lake Belt Mitigation Plan, establishment of a mitigation fee imposed for limerock mining, has not been enacted by the Legislature. Legislation (CS/HB 4071) was passed during the 1998 Session to enact the mitigation fee, but the bill was subsequently vetoed due to a provision unrelated to the Lake Belt Area.

In 1992, pursuant to ch. 92-132, L.O.F., the Legislature established the Northwest Dade County Freshwater Lake Plan Implementation Committee, which has subsequently been renamed as the Dade County Lake Belt Plan Implementation Committee. The committee will expire

January 1, 2001. The committee was created as a public and private partnership to develop a strategy for the design and implementation of the Dade County Lake Belt Plan. The committee was to develop a plan that would enhance the water supply for Dade County and the Everglades, maximize efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment, and educate various groups and the general public of the benefits of the plan. The committee published a report on Phase I of the Lake Belt Plan in February 1997.

The February 1997 report contains specific recommendations concerning:

- Streamlining the permitting process for rock mining within the Lake Belt;
- Identifying areas for mining, mitigation, and additional analysis;
- Establishing a dedicated funding mechanism for mitigation;
- Authorizing government-industry land exchanges; and
- Authorizing state agencies to enter into agreements to implement the plan.

The 1997 Legislature adopted the Phase I Lake Belt Plan and provided direction for the development of the Phase II Lake Belt Plan.

III. Effect of Proposed Changes:

Section 373.4149, F.S., is amended to provide that the Dade County Lake Belt Plan is redesignated as the Miami-Dade County Lake Belt Plan. The Miami-Dade County Lake Belt Area is redefined as that area bounded by the Florida Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west, and the Tamiami Trail to the south. Also, certain other specified areas are included and certain specified areas are excluded.

The identification of the Miami-Dade County Lake Belt Area shall not preempt local land use jurisdiction or the use of land for other purposes by private land owners; provided, however, local comprehensive plans, zoning regulations, development regulations, and other local regulations shall accommodate limestone mining activities and ancillary operations, such as lake excavation, including use of explosives, rock processing, cement, concrete and asphalt products manufacturing, and ancillary activities, within the rock mining supported and allowable areas of the Miami-Dade County Lake Plan. Limerock mining activities are deemed consistent with well-head protection. Rezoning or amendments to local comprehensive plans concerning properties within 1 mile of the Miami-Dade lake Belt Area are to be compatible with limestone mining activities. Certain rezonings, variances, or local comprehensive plan amendments are not allowed until there is no active mining within 2 miles of the property. Residential development that complies with current regulations is not precluded.

Beginning October 1, 1999, before the sale, lease, or the issuance of a development order, including the approval of a change in land use designation or zoning, for any real property located inside the Miami-Dade Lake Belt Area or within 2 miles of the boundary of the Miami-Dade Lake Belt Area, the entity holding title to the real property is required to submit a written affidavit of disclosure to Miami-Dade County in a form suitable for recording that contains certain specified information.

The membership of the Miami-Dade County Lake Belt Plan Implementation Committee is increased by adding four representatives of the nonmining private landowners instead of one.

Currently, the Implementation Committee must develop Phase II of the Lake Belt Plan which must include certain specified information. This bill adds the requirement that the committee must consider the feasibility of a common mitigation plan for nonrock mining uses, including a nonrock mining mitigation fee. Any mitigation fee shall be for the limited purpose of offsetting the loss of wetland functions and values and not as a revenue source for other purposes. The committee must also analyze the hydrological impacts resulting from the future mining included in the Lake Belt Plan and recommend appropriate mitigation measures, if needed, to be incorporated into the Lake Belt Mitigation Plan.

The requirement that the Department of Environmental Protection, in conjunction with the South Florida Water Management District and the Dade County Department of Environmental Resources Management, develop a comprehensive mitigation plan for the Lake Belt Plan, is deleted.

Section 373.41492, F.S., is created to provide for implementation of the Miami-Dade County Lake Belt Mitigation Plan. The CS provides a legislative finding that wetlands impacts resulting from rock mining within the Lake Belt Area can best be offset by the Lake Belt Mitigation Plan. The bill provides for a mitigation fee of 5 cents per ton of limerock or sand sold from within the Lake Belt Area. Beginning October 1, 1999, the fee would be applied to limerock or sand in raw, processed, and manufactured form including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. Proceeds of the fee, less administrative costs, are to be used exclusively for the purpose of conducting mitigation activities that offset the loss of the value and functions of wetlands as a result of mining in the Lake Belt Area.

The Department of Revenue (DOR) would be responsible for administering, enforcing, and collecting the fee. Mitigation fees must be reported to the DOR in a manner it prescribes. Proceeds of the fee, less administrative costs retained by the DOR, must be transferred to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. The DOR may retain up to 3 percent of the total revenues collected for administrative costs that are reasonably attributable to the mitigation fee. The bill also provides for an annual increase in the mitigation fee beginning January 1, 2001. The annual increase will be 2 percent plus a cost growth index derived from several U.S. Department of Labor price indices.

The proceeds of the fee are to be used for mitigation activities that are consistent with the Lake Belt Mitigation Plan and may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credits from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Lake Belt Area. Expenditures must be approved by an interagency committee consisting of representatives of the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Game and Fresh Water Fish Commission. The limerock industry is allowed to select a representative to serve as a nonvoting member of the committee. At its discretion, the committee may add additional members representing federal regulatory, environmental, and fish and wildlife agencies. No sooner than January 31, 2010, and no more frequently than every 10 years

thereafter, the interagency committee is required to submit to the Legislature a report recommending any necessary adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill imposes a fee of 5 cents per ton of limerock and sand sold from within the Lake Belt Area.

B. Private Sector Impact:

Those extracting and selling limerock and sand in the Lake Belt Area would pay a fee of 5 cents per ton of limerock and sand that is extracted and sold. The average annual tonnage extracted is 35-40 million tons, which would produce between \$1.75 and \$2 million of fee revenue annually. This bill would afford a degree of regulatory certainty for limerock mining operations within the Lake Belt Area providing that wetlands mitigation requirements are satisfied through the payment of the mitigation fee.

It is not clear whether the public would be allowed to use the lakes created for recreation, either now or in the future, or what the long-term ownership status of the Lake Belt Area would be.

C. Government Sector Impact:

The Department of Revenue would likely incur expenses associated in collecting and administering the fee. The DOR is required to adopt certain rules and would incur certain rulemaking expenses; however, the bill provides that the DOR may use up to 3 percent of the fee proceeds for their administrative costs. If the fees are anticipated to be between \$1.75 and \$2 million, the DOR would be able to retain \$52,500 and \$60,000 to cover their administrative costs.

VI. Technical Deficiencies:

The bill provides for an interagency committee to approve expenditures of the mitigation fee proceeds. The membership of the committee is specified in the bill. One of the specified members is a representative of the Game and Fresh Water Fish Commission. At the general election on November 3, 1998, the voters approved Revision 5, creating the new Fish and Wildlife Conservation Commission on July 1, 1999, and abolishing the Game and Fresh Water Fish Commission and the Marine Fisheries Commission. This bill should probably be amended to provide that since the Game and Fresh Water Fish Commission will no longer exist on July 1, 1999, the interagency committee member should be a representative of the Fish and Wildlife Commission. This bill, however, becomes effective upon becoming a law and therefore could become effective before the Fish and Wildlife Commission officially exists.

Subsection 8 of the bill provides that if a general permit by the United States Army Corps of Engineers is not issued on or before September 30, 2000, the mitigation fee is suspended until revived by the Legislature. The bill also provides that payment of the mitigation fee satisfies the mitigation requirements of s. 373.403-373.439, F.S., and any applicable county ordinance. The bill is not clear as to what, if any, mitigation requirements will apply to the Miami-Dade Lake Belt Area if the mitigation fee is suspended.

VII. Related Issues:

None.

VIII. Amendments:

None.