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## 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.)

Date: March 13, 1998 Revised: \_\_\_\_\_

Subject: Environmental mitigation

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>McAuliffe</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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### I. Summary:

This bill allows the Department of Transportation and the Department of Environmental Protection (DEP) more flexibility in the mitigation of impacts to wetlands and other sensitive habitats from Department of Transportation projects.

The bill authorizes the Department of Transportation to include additional work program projects in the inventory of habitats beyond the three year minimum requirement. The bill specifies the activities that may be paid for from the amount transferred each year for mitigation. The bill clarifies that the preliminary approval of the mitigation plan by the water management district is not a decision affecting substantial interests.

The bill provides that the \$12 million transferred from the Department of Transportation to the DEP for surface water and wetland management purposes was a one-time event. The bill further allows the DEP and the water management districts to modify mitigation plans throughout the year to accommodate changes in the Department of Transportation's production schedules or additional projects.

This bill includes the provisions of SB 1988 pertaining to the Dade County Lake Belt Area. A fee is imposed for the extraction of limerock and sand in the Lake Belt Area. Provides that the fee is to be collected and administered by the Department of Revenue. The proceeds of the fee are to be deposited into an interest-bearing account maintained by the South Florida Water Management District. Allows for future adjustment of the fee. Provides for uses of the fee. Provides that expenditure of the fee must be approved by an interagency committee that consists of representative of the Miami-Dade County Department of Environmental Resource Management, the DEP, the South Florida Water Management District, the Game and Fresh Water Fish Commission, and certain other specified members.

This bill amends s. 373.4137, F.S.; and creates an unspecified section of the Florida Statutes.

## **II. Present Situation:**

Currently, the Department of Transportation submits annually to the DEP and the water management districts a copy of the adopted work program and an inventory of wetlands and habitats which may be impacted by transportation projects in the first three years of the adopted work program. The Department of Transportation transfers into the Ecosystem Management and Restoration Trust Fund within the DEP \$75,000 for each acre within the water management districts where an impact upon wetlands has been projected. The funds are used by the water management districts for use in mitigation development and implementation activities. Water management districts are not currently authorized to use these funds for support and development of mitigation plans, including staff support, design, engineering, production.

Section 373.4137, F.S., further provides that certain projects may be excluded from a mitigation plan and mitigation plan requirements if the Department of Environmental Protection, the Department of Transportation and the appropriate water management district agree that the inclusion of the project would hamper the efficiency or timeliness of the mitigation planning and permitting process. However, the Department of Transportation must still include such a project in their inventory of affected habitats and apply for the appropriate permits.

In 1996, the department transferred \$12 million from the State Transportation Trust Fund to the DEP for the surface water improvement management program to address statewide aquatic and exotic plant problems within wetlands and other surface waters. This was considered an advance upon funds which the Department of Transportation would have to pay for statewide wetland mitigation until the year 2000. The DEP expended a portion of the funds on exotic plant eradication and surface water improvement projects which were not credited toward mitigation of the Department of Transportation's work program. As a result, the Department of Environmental Protection is indebted to the Department of Transportation for a portion of those funds, or mitigation credits, and is not able to replace those funds by the year 2000.

Currently, mitigation plans prepared by the water management districts are updated annually to reflect changes in the department's work program, and preliminarily approved by the water management district governing board. The plans are then submitted to the secretary of the DEP for final approval.

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 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.

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 state wetlands jurisdictions for a period of ten years. During the 1994 legislative session, the exemption was extended for a reduced area until October, 1997. While these lands have been exempt from state permitting, they have continued to be regulated by both Dade County and the U.S. Army Corps of Engineers (Corps).

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.

In 1992, pursuant to ch. 92-132, L.O.F., the Legislature established the Northwest Dade County Freshwater Lake Plan Implementation Committee. The committee will expire January 1, 1999. The committee was created as a public and private partnership to develop a plan for the design and implementation of a freshwater lake system in Northwest Dade County. 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's report and recommendations were submitted 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.

When the departments of Natural Resources and Environmental Regulation were merged into the new DEP, certain mining activities were exempted from environmental resource permitting requirements and continue to be regulated under the rules and laws in effect on January 1, 1993. This exemption is to remain in effect until January 1, 1998, and does not apply to any mine on which the operator had not commenced construction or initiated the permitting process prior to June 1, 1994.

### **III. Effect of Proposed Changes:**

The bill amends s. 373.4137, F.S., to authorize the Department of Transportation to include additional projects identified in the adopted work program in the inventory of affected wetland habitats submitted to the DEP and the water management districts beyond the current 3 years. The water management district may draw from the Ecosystem Management Trust Fund funds

needed to pay for activities associated with the development or implementation of the mitigation plan. This bill specifies what those activities include.

The section is further amended to clarify that the Department of Transportation is not required to include projects in their inventory of affected habitats if the projects have been excluded from the mitigation plan and mitigation plan requirements by agreement between the DEP, the Department of Transportation and the appropriate water management district where the inclusion of the project would hamper the efficiency or timeliness of the mitigation planning and permitting process. The Department of Transportation must still apply for the appropriate permits.

The bill further provides that preliminary approval of a mitigation plan by the water management district governing board does not constitute a decision that affects substantial interests as provided by the Administrative Procedures Act. This clarifies that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval from the Secretary of the DEP.

The bill extends the time period that the DEP has to use the Department of Transportation's \$12 million in wetlands mitigation funds to the year 2005 to allow the DEP enough time to supplant the funds that were not credited toward the mitigation of Department of Transportation projects.

The bill further authorizes the DEP and the water management districts to amend mitigation plans throughout the year, instead of once a year, to anticipate schedule changes or additional projects, and authorizes the DEP to establish a process for these modifications. This process does not constitute a rule within the meaning of s. 120.52, F.S.

This bill also contains similar provisions to those in SB 1988 which provide for the Dade County Lake Belt Mitigation Plan to mitigate for the loss of wetland resources lost to mining activities within the Dade County Lake Belt Area. Beginning January 1, 1999, a fee of 4.41 cents on each ton of limerock and sand extracted is imposed on any person who engages in the business of extracting limerock or sand from within the Dade County Lake Belt Area. The fee will be assessed for each ton of limerock and sand sold, in raw, manufactured, or processed form, including, but not limited to, sized aggregate, cement, concrete, and concrete products from within the Lake Belt. The amount of the fee must be stated separately on the invoice provided to the purchaser. The proceeds of the fee must be paid to the Department of Revenue (DOR) on or before the 20th day of the month following the calendar month in which the sale occurs.

The fee must be reported to the DOR and payment of the fee must be accompanied by a form prescribed by the DOR. The proceeds of the fee, less administrative costs, must be transferred by the DOR to the South Florida Water Management District and deposited into an interest-bearing account to be maintained separately and not commingled with other funds. As used in this section, the term "proceeds of the fee" means all funds collected and received by the DOR under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs must not exceed 3 percent of the total revenues collected and may equal only those administrative costs reasonably attributable to the fee.

The DOR will administer, collect, and enforce the fee in accordance with the procedures used in the administration, collection, and enforcement of the general sales tax imposed under ch. 212, F.S., except as provided in this bill. The provisions of ch. 212, F.S., regarding the authority to audit and make assessments, the keeping of books and records, and interest and penalties on delinquent fees are applicable. The fee must not be included in the computation of estimated taxes under s. 212.11, F.S., nor does the dealer's credit for collecting taxes or fees in s. 212.12, F.S., apply to this fee.

In administering this section, the DOR is authorized to employ persons and incur expenses for which funds are appropriated by the Legislature. The department must adopt such rules and prescribe and publish such forms as are necessary to effectuate the purposes of this section. The department will establish audit procedures and may assess delinquent fees.

Beginning July 1, 2000, the fee per ton must be adjusted each July 1, by the percentage change in the average of the Consumer Price Index issued by the U.S. Department of Labor, and the percentage change in the Producer's Price Index for Net Output of Crushed and Broken Stone, South Atlantic Region, issued by the U.S. Department of Labor for the most recent 12-month period ending on September 30, compared to the average of these indexes for the base year, which is the 12-month period ending on September 30, 1999.

The proceeds of this fee must be used to conduct mitigation activities that are appropriate to offset the impact on fish and wildlife habitat resulting from mining activities in the Lake Belt and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Dade County Lake Belt Plan Implementation Committee under s. 373.4149, F.S. Such mitigation may include purchase, enhancement, restoration, and management of wetlands and uplands and may also include structural modifications to the existing drainage system which enhance the hydrology of the Lake Belt. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Trust Fund and the Internal Improvement Trust Fund, for lands that were acquired in areas appropriate for rock mining mitigation and to reimburse those governmental agencies that exchanged land under s. 373.4149, F.S., for rock mining mitigation.

Expenditures must be approved by an interagency committee consisting of representatives from the Dade County Department of Environmental Resource Management, the DEP, the South Florida Water Management District (SFWMD), the Florida Game and Freshwater Fish Commission (GFWFC), and, at the discretion of the committee, additional members who represent federal regulatory, environmental, and fish and wildlife agencies.

The bill provides that payment of the fee satisfies the mitigation requirements for the loss of fish and wildlife habitat which are imposed under ss. 373.403-373.439, F.S., and any applicable county ordinance. Also, the payment of the fee is intended to satisfy all federal mitigation requirements. If a general permit by the U.S. Army Corps of Engineers, or an appropriate long-term permit for mining, issued on or before September 30, 2000, is inconsistent with the Lake

Belt Plan, this section, and ss. 378.4115, 373.4149, and 373.4415, F.S., and the fee imposed herein is suspended until reenacted by the Legislature.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

This bill requires that the proceeds of the fee for the extraction of limerock and sand must be deposited into an interest-bearing account maintained by the South Florida Water Management District. This account must be maintained separately and not commingled with other funds. As required by s. 19(f), Art, III, of the State Constitution, trust funds must be created by a separate bill and must pass by a three-fifths vote of each house of the Legislature. This provision has been interpreted to mean that the creation of separate accounts in existing trust funds for new programs to be funded from new sources of revenue constitute the creation of new trust funds.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The bill imposes a 4.41 cents fee for each ton of limerock and sand severed within the Lake Belt.

B. Private Sector Impact:

Those extracting limerock and sand in the Lake Belt would pay a fee of 4.41 cents per ton extracted. The average annual tonnage extracted is 35-40 million tons, which should yield between \$1,543,500 and \$1,764,000 yearly.

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 will be.

**C. Government Sector Impact:**

The DOR 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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.