

STORAGE NAME: h0329z.ep
DATE: June 16, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
ENVIRONMENTAL PROTECTION
FINAL ANALYSIS**

BILL #: HB 329 (Chapter 99-298, Laws of Florida)

RELATING TO: Limerock mining

SPONSOR(S): Representative Villalobos

COMPANION BILL(S): CS/CS/SB 2238 by Fiscal Resource; Comprehensive Planning, Local and Military Affairs; and Senator Diaz-Balart and Others

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 13 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

On April 22, 1999, the House considered and passed HB 329 by a vote of 115 to 0. On April 27, 1999, it was taken up by the Senate and passed by a vote of 40 to 0. HB 329 was approved by the Governor on June 8, 1999, and became Chapter 99-298, Laws of Florida.

II. SUMMARY:

HB 329 imposes a mitigation fee of five cents for each ton of limerock or sand sold from within the Miami-Dade 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. Payment of the mitigation fee will satisfy any mitigation requirements imposed by ss. 373.403-373.439, F.S., or by any applicable county ordinance.

HB 329 redefines the Lake Belt Area by deleting areas that are currently within its boundaries. It also provides that local land use jurisdiction shall not be preempted for areas within the Lake Belt Area, provided the exercise of local land use jurisdiction accommodates limestone mining activities and related operations within areas designated for rock mining by the Lake Belt Plan.

HB 329 provides additional requirements for the Phase II Lake Belt Plan. In developing the plan, the Lake Belt 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, necessary mitigation measures to be included in the Lake Belt Mitigation Plan.

The bill provides that the act will take effect upon becoming law.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Lake Belt Area is an 89 square mile area located between the Everglades and the urbanized areas of Miami-Dade County. Significant features of the area include its location within one of the state's most environmentally sensitive areas, its substantial deposits of construction grade limerock, and the presence of the state's largest public wellfield. Ongoing planning efforts for the Lake Belt Area have attempted to balance the economic values of continued rock mining, the environmental value of freshwater wetlands, the protection of public water supply, and restoration of the greater Everglades ecosystem.

Rock mining operations within the Lake Belt Area produce 35-40 million tons of rock and related products each year, providing more than half of the state's rock, sand, and cement for concrete, asphalt, and road base. Each year, mining operations transform approximately 300 acres of melaleuca-dominated wetlands into deep (~ 80 feet) freshwater lakes surrounded by constructed littoral zones. Rock mining companies own approximately 26,600 acres within the Lake Belt Area, or about 47 percent of the total 57,000 acres. Another 10,600 acres, or about 19 percent of the total area, are in public ownership.

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. The Northwest Wellfield includes 15 wells, that together pump an average of 90 million gallons per day (MGD), and has a total installed capacity of 225 MGD. The West Wellfield, which includes three wells, is currently permitted to withdraw a maximum of 15 MGD and has a total installed capacity of 30 MGD. 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 enacted the Warren F. Henderson Wetlands Protection Act, expanding wetlands regulatory jurisdiction for dredge and fill activities in the state. Because of its economic importance, limerock mining in the Lake Belt Area was made exempt from wetlands regulatory jurisdiction for a period of ten years. This exemption was subsequently extended, first until October 1, 1997, and then to October 1, 2000. Development of a mitigation plan is another critical component of the ongoing planning efforts for the Lake Belt Area. 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, the Florida Legislature created the Northwest Dade County Freshwater Lake Plan Implementation Committee (Lake Belt Committee) with the specific responsibility to develop a plan which a) enhances the water supply for Dade County and the Everglades, b) maximizes efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment, and 3) educates various groups and the general public of the benefits of the plan. The Lake Belt Committee is currently composed of representatives from various governmental agencies, the rock mining industry, and environmental groups, as well as a representative of nonrock mining private land owners in the Lake Belt Area.

In February 1997, the Lake Belt Committee published Phase I of the Lake Belt Plan, "Making a Whole, Not Just Holes." The plan included specific recommendations regarding:

- ▶ A strategy for streamlining the permitting process for rock mining;
- ▶ Specified areas for mining, mitigation, and additional analysis;
- ▶ Establishment of a dedicated funding mechanism for mitigation;
- ▶ Authorization for government-industry land exchanges;
- ▶ Authorization for agencies to enter into agreements to implement the Lake Belt Plan; and
- ▶ Development of the Lake Belt Phase II Detailed Master Plan.

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

B. EFFECT OF PROPOSED CHANGES:

HB 329 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. It provides for a mitigation fee of five cents for each 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) will 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 three percent of the total revenues collected for administrative costs that are reasonably attributable to the mitigation fee. HB 329 also provides for an annual increase in the mitigation fee beginning January 1, 2001. The annual increase will be two percent plus a cost growth index derived from several U.S. Department of Labor price indices.

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 committee is required to submit to the Legislature a report recommending any necessary adjustments to the mitigation fee.

HB 329 provides that payment of the mitigation fee will satisfy any mitigation requirements imposed by wetlands regulatory jurisdiction under ss. 373.403-373.439, F.S., or by any applicable county ordinance. The bill also provides legislative intent that any federal mitigation requirements also be satisfied by payment of the mitigation fee, and conditions continued imposition of the mitigation fee beyond September 30, 2000, on issuance of a general permit by the U.S. Army Corps of Engineers that satisfies this intent.

HB 329 redefines the Lake Belt Area by deleting areas of nonrock mining land uses that are currently within its boundaries. It also provides that local land use jurisdiction shall not be preempted for areas within the Lake Belt Area. However, it further provides that any exercise of local land use jurisdiction must accommodate limestone mining activities and related operations within areas designated for rock mining by the Lake Belt Plan. In addition, any land uses allowed in the vicinity of limestone operations within such designated areas must be compatible with rock mining activities. Finally, local governments are required to provide appropriate public notice of the location of active limestone mining operations.

HB 329 changes the composition of the Lake Belt Committee by increasing from one to four the number of representatives for nonrock mining private landowners. It also provides additional requirements for the Phase II Lake Belt Plan. In developing the plan, the Lake Belt 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, necessary mitigation measures to be included in the Lake Belt Mitigation Plan.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 329 assigns the Miami-Dade County Lake Belt Plan Implementation Committee additional responsibilities in developing Phase II of the Lake Belt Plan. It also creates an interagency committee to review and approve expenditures from the Lake Belt Mitigation Trust Fund.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

HB 329 imposes a mitigation fee of 5 cents per ton for limerock and sand sold from within the Lake Belt.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 373.4115, 373.4149, and 373.4415, F.S., are amended and s. 373.41492, F.S., is created.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 373.4149, F.S., providing legislative intent; revising the description of land included in the Lake Belt Area; revising requirements for Phase II of the Lake Belt Plan; and extending the existence of the Lake Belt Plan Implementation Committee.

Section 2: Creates s. 373.41492, F.S., imposing a mitigation fee; providing for collection, report, and disposition of the fee; providing for administration and use of the proceeds of the fee.

Section 3: Amends s. 373.4415, F.S., changing all instances of "Dade" to "Miami-Dade."

Section 4: Amends s. 373.4115, F.S., changing all instances of "Dade" to "Miami-Dade."

Section 5: Provides that provisions of the act are severable if any provisions of the act is found to be invalid.

Section 6: Provides that the act shall take effect upon becoming law.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Department of Revenue	<u>FY 1999 - 00</u>
Other Personal Services	
Administrative Trust Fund	25,000

2. Recurring Effects:

The Department of Revenue (DOR) is authorized to retain up to three percent of fee collections to offset its actual administrative costs. No estimate of these costs was provided by DOR. Based on estimates by Committee staff, administrative costs would not exceed \$60,000 in the first full fiscal year (FY 2000-01) and would then be allowed to increase in line with the annual authorized fee increases.

3. Long Run Effects Other Than Normal Growth:

See 2. above.

4. Total Revenues and Expenditures:

See 1. and 2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>
Revenues:			
Lake Belt Mitigation TF	\$ 1,455,000	\$1,991,440	\$2,043,220

Notes: Revenue estimates assume that the mitigation fee is applied to 40 million tons of rock and sand each year. At five cents per ton, gross annual revenue would be \$2,000,000. Maximum allowable administrative costs (3%) would be \$60,000, yielding annual net revenues of \$1,940,000.

Revenues for FY 1999-00 are for 9-month period.

Revenues for FY 2000-01 reflect the first annual increase in the mitigation fee (2% + cost growth index = ~5.2% increase). The increase applies only to the last six months of FY 2000-01 (January 1, 2001 - June 30, 2001).

Revenues for FY 2001-02 reflect a mitigation fee increase for the last six months of FY 2001-02 (January 1, 2002 - June 30, 2002).

3. Long Run Effects Other Than Normal Growth:

The mitigation fee increases each year by a specified rate (2% + cost growth index) beginning January 1, 2001.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

A mitigation fee will be imposed upon all rock and sand products sold from within the Lake Belt Area.

2. Direct Private Sector Benefits:

The bill affords a degree of regulatory certainty for limerock mining operations within the Lake Belt Area by providing that wetlands mitigation requirements are satisfied through payment of the mitigation fee.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Conference did not review the revenue provisions of HB 329. The revenue estimates included in the "Fiscal Analysis & Economic Impact Statement" of this analysis were calculated by committee staff.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities.

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1999, the Committee on Environmental Protection adopted two amendments to HB 329:

- ▶ Amendment #1 amends obsolete language related to a Department of Environmental Protection representative on the Lake Belt Committee.
- ▶ Amendment #2 replaces words that were omitted when the bill was originally drafted.

The Committee then passed the bill as amended.

On April 9, 1999, the Committee on General Government Appropriations adopted a strike-all amendment to HB 329 that incorporated the amendments adopted by the Committee on Environmental Protection, made technical corrections to the Lake Belt area boundaries, and provided additional detail in the local land use preemption provisions.

VIII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

W. Ray Scott

Wayne S. Kiger

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Cynthia P. Kelly

Cynthia P. Kelly

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

W. Ray Scott

Wayne S. Kiger