

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 359 Miami-Dade County Lake Belt Area

SPONSOR(S): Diaz, Jr.

TIED BILLS: None **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Gregory	Blalock
2) Finance & Tax Committee	15 Y, 1 N	Pewitt	Langston
3) State Affairs Committee	16 Y, 0 N	Gregory	Camechis

SUMMARY ANALYSIS

The Miami-Dade County Lake Belt Area (Lake Belt) encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area. The Lake Belt contains deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials. Rock mined from the Lake Belt supplies one half of the limestone used annually in Florida.

In 1992, the Legislature established the Lake Belt Committee (Committee). Under current law, the mining companies operating in the Lake Belt must pay a combination of fees based on the number of tons of limestone or sand extracted from the area. The fees are used to conduct wetland mitigation activities, fund seepage mitigation projects, and fund water treatment plant upgrades.

The bill includes the following revisions to the Lake Belt statutes:

- Requires amendments to local zoning and subdivision regulations so that properties located within one mile of the Lake Belt are compatible with limestone mining activities. Further, the bill prohibits amendments to local zoning and subdivision regulations that would result in an increase in residential density in certain parts of the Lake Belt until active mining operations cease within two miles of the property.
- Reduces the mitigation fees from 45 cents per ton to 25 cents per ton beginning January 1, 2016, to 15 cents per ton beginning January 1, 2017, and to 5 cents per ton beginning January 1, 2018. The reason for the mitigation fee reduction is because there are sufficient funds in the Lake Belt Mitigation Trust Fund to cover the cost of projected mitigation requirements.
- Requires proceeds from the mitigation fee to be used to conduct water quality monitoring to ensure the protection of water resources within the Lake Belt.
- Removes the requirement that the South Florida Water Management District use the water treatment plant upgrade fee to pay for seepage mitigation projects. The Committee previously approved sufficient funds to complete the seepage mitigation project.
- Replaces the water treatment plant upgrade fee with an environmentally endangered lands (EEL) fee. The bill also reduces the fee from 15 cents to 5 cents per ton of limerock and sand sold. If the Department of Environmental Protection determines that mining activities have, directly or indirectly, resulted in pathogens contaminating certain groundwater wellfields, then the proceeds of the EEL fee must first be used to upgrade a water treatment plant.
- Proceeds from the EEL fee must be used solely for the acquisition, preservation, enhancement, restoration, conservation, and maintenance of wetland and threatened forest communities located in Miami-Dade County (not just near the Lake Belt).

The estimated impact to total local government revenues is -\$6.2 million in the first year (2015-2016) and -\$15.7 million on a recurring basis, split between the South Florida Water Management District and Miami-Dade County. However, there is projected to be sufficient funds in the Lake Belt Mitigation Trust Fund to cover projected future mitigation requirements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Miami-Dade County Lake Belt Area (Lake Belt) encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area.¹ Generally, the Lake Belt is bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west, and Tamiami Trail to the south; along with certain lands south of Tamiami Trail.²

The Lake Belt contains deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials.³ Mining companies extract rock from the Lake Belt. This supplies one-half of the limestone used annually in Florida.⁴ In south Florida, groundwater occurs so near the surface of the ground that when rock is mined from the Lake Belt, even in shallow pits, the excavation areas fill with water and man-made "lakes" are formed.⁵ The "lakes" that form after rock is mined are the features after which the "Lake Belt" is named.⁶

The wetlands and lakes of the Lake Belt offer the potential to buffer the Everglades from the potentially adverse impacts of urban development.⁷ The Northwest Wellfield, located at the eastern edge of the Lake Belt, is the largest drinking water wellfield in Florida and supplies approximately 40 percent of the potable water for Miami-Dade County.⁸

In 1992, the Florida Legislature recognized the importance of the Lake Belt and established the Lake Belt Committee (Committee).⁹ The Legislature charged the Committee with the task of developing a long-term plan for the Lake Belt to address a number of critical concerns.¹⁰ Through a cooperative process involving government agencies, mining interests, non-mining interests, and environmental groups, the Committee completed the Miami-Dade County Lake Belt Plan (Lake Belt Plan).¹¹ The Legislature accepted the Lake Belt Plan and recommendations of the Committee in 1997.¹² The Lake Belt Plan guides the mitigation¹³ that is required to offset the impacts to wetlands caused by the mining operations in the Lake Belt.

¹ South Florida Water Management District, *Regional Contacts, Miami-Dade*, <http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center> (last visited January 22, 2015).

² Section 373.4149(1), F.S.

³ Section 373.4149, F.S.

⁴ South Florida Water Management District, *Regional Contacts, Miami-Dade*, <http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center> (last visited January 22, 2015).

⁵ Id.

⁶ Id.

⁷ South Florida Water Management District, *Regional Contacts, Miami-Dade*, <http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center> (last visited January 22, 2015).

⁸ Id.

⁹ S. 21 Ch. 92-132, Laws of Fla.; Originally called the Northwest Dade County Freshwater Lake Plan Implementation Committee.

¹⁰ Id.

¹¹ Phase I Plan in 1997 and Phase II Plan in 2000. South Florida Water Management District, *Regional Contacts, Miami-Dade*, <http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center> (last visited January 22, 2015).

¹² Lake Belt Mitigation Committee, 1997 Progress Report p. 2. available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited February 13, 2015).

¹³ "Mitigation" means an action or series of actions to offset the adverse impacts that would otherwise cause an activity that requires an Environmental Resource Permit to fail to meet the criteria set forth in the statutes and rules. Mitigation

Mitigation Fee

The Lake Belt statute requires that the mining companies operating in the Lake Belt pay a mitigation fee of 45 cents per ton of limestone or sand extracted from the area.¹⁴ The statute requires that the proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities, and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Committee.¹⁵ Such mitigation may include:

- The purchase, enhancement, restoration, and management of wetlands and uplands;
- The purchase of mitigation credit from a permitted mitigation bank; and
- Any structural modifications to the existing drainage system to enhance the hydrology of Lake Belt.¹⁶

Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District (SFWMD), and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land for mitigation due to rock mining.¹⁷ The mitigation fee is collected from the mining industry by the Department of Revenue and transferred to the SFWMD's Lake Belt Mitigation Trust Fund.¹⁸ Payment of the mitigation fee satisfies the mitigation requirements imposed under ss. 373.403 through 373.439, F.S.,¹⁹ and any applicable county ordinance for loss of the value and functions from mining of the wetlands.²⁰

The mitigation fee imposed by the Lake Belt statute could have been suspended until revived by the Legislature if the United States Army Corps of Engineers (USACE) had not issued a permit for mining in the Lake Belt by September 30, 2000.²¹ Permits were issued in 2002 and subsequently challenged in federal court.²² The USACE issued new permits in 2010.²³

Water Treatment Plant Upgrade Fee

The Lake Belt statute also requires mining companies operating in the Lake Belt to pay a water treatment plant upgrade fee of 15 cents per ton of limestone or sand extracted from the Lake Belt.²⁴ In 2006, the Legislature created this fee to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County.²⁵ Originally, the water treatment plant upgrade fee was deposited into a trust fund established by Miami-Dade County.

In 2012, the Legislature expanded the authorized uses of the proceeds of the water treatment plant upgrade fee to allow them to be used to pay for seepage mitigation projects performed by SFWMD,

usually consists of restoration, enhancement, creation, preservation, or a combination thereof. Rule 62-330.021, F.A.C., incorporating by reference Environmental Resource Permit Applicant's Handbook, Volume I, Section 2.0.

¹⁴ Section 373.41492(2), F.S.

¹⁵ Section 373.41492(6)(a), F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Section 373.41492(3), F.S.

¹⁹ A discussion of what is typically required for mitigation can be found in the Environmental Resource Permit Applicant's Handbook, Volume I, Section 10.3, incorporated by reference in Chapter 62-330, F.A.C.

²⁰ Section 373.41492(7), F.S.

²¹ Section 373.41492(8), F.S.

²² See Sierra Club v. Flowers, 423 F. Supp.2d 1306 (S.D. Fla. 2006); Sierra Club v. Strock, 494 F. Supp.2d 1188 (S.D. Fla. 2007).

²³ Lake Belt Mitigation Committee, Annual Report for 2013 p. 8. available at

http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited January 22, 2015).

²⁴ Section 373.41492(2), F.S.

²⁵ Section 2 Ch. 2006-13, Laws of Fla.

including groundwater or surface water management structures designed to improve wetland habitat.²⁶ The new law changed the recipient of the proceeds of the water treatment plant upgrade fee from Miami-Dade County to the SFWMD and specified that these funds would be deposited into the Lake Belt Mitigation Trust Fund until:

- A total of \$20 million, less administrative costs, is deposited in the Lake Belt Mitigation Trust Fund; or
- Quarterly pathogen sampling demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher.²⁷

According to the statute, as soon as either of these qualifications is triggered, Miami-Dade County would again be the recipient of the water treatment plant upgrade fee proceeds.

Local Government Land Use Planning in the Lake Belt

Current law also requires that rezonings or amendments to local government comprehensive plans concerning properties within one mile of the Lake Belt be compatible with limestone mining activities.²⁸ In addition, rezonings, variances, or amendments to local government comprehensive plans for any residential purpose cannot be approved for any property located in certain areas until there is no active mining within two miles of the property.²⁹

Effect of Proposed Changes

The bill includes the following revisions to the Lake Belt statutes:

- Amends s. 373.4149(4), F.S., to require amendments to local zoning and subdivision regulations concerning properties located within one mile of the Lake Belt to be compatible with limestone mining activities. Further, the bill prohibits amendments to local zoning and subdivision regulations that would result in an increase in residential density in certain parts of the Lake Belt until active mining operations cease within two miles of the property.
- Amends s. 373.41492(1), F.S., to allow the per ton mitigation fee assessed on limestone sold from the Lake Belt to be used for water quality monitoring purposes.
- Amends s. 373.41492(2), F.S., to gradually reduce the mitigation fees collected for each ton of limerock and sand sold from the Lake Belt. The mitigation fee will be reduced from 45 cents per ton to 25 cents per ton beginning January 1, 2016, then to 15 cents per ton beginning January 1, 2017, and then to 5 cents per ton beginning January 1, 2018, and thereafter. The reason for the mitigation fee reduction is because there are sufficient funds in the Lake Belt Mitigation Trust Fund to cover the cost of projected mitigation requirements.³⁰ Over time, most of the land areas designated for mitigation within the Lake Belt was restored. The remaining projects within Miami-Dade County were all small and insufficient to meet the needs of the Lake Belt Plan.³¹ Thus, in 2012, the Committee approved a plan to allow mitigation on land in Hendry County that formally served as a citrus grove.³² The SFWMD owns this land.³³ The mitigation fee will be

²⁶ Section 1 Ch. 2012-107, Laws of Fla.

²⁷ Section 373.41492(3)(b), F.S. Bin 2 is an average source water concentration of cryptosporidium equal to or more than 0.075 oocysts/L, but less than 1.0 oocysts/L.

²⁸ Section 373.41492(4), F.S.

²⁹ Id.

³⁰ Email from Amanda Marsh, Office of Legislative Affairs, Department of Environmental Protection, FW: HB - 359 Miami-Dade Lake Belt Bill (February 4, 2015), on file with Agricultural & Natural Resources Subcommittee staff; Lake Belt Mitigation Committee, Annual Report for 2012 p. 5.; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited February 4, 2015).

³¹ Id.

³² Lake Belt Mitigation Committee, Annual Report for 2012 p. 5.; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited February 4, 2015).

³³ Lake Belt Committee, June 29, 2012 Meeting Summary p. 4; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lakebeltmc2012&p_thumbnails=no (last visited January 26, 2014).

used to reimburse the SFWMD for the land and to pay for the mitigation activities.³⁴ This proposed mitigation is projected to exceed the amount of mitigation needed to complete limestone and sand mining in the Lake Belt.³⁵ There are currently sufficient projected funds to complete this project with the new mitigation fee structure.

- Amends s. 373.41492(6), F.S., to remove the requirement that the water treatment plant upgrade fees be used to pay for seepage mitigation projects. The SFWMD has completed two miles of a planned five-mile seepage barrier to block seepage from moving out of Everglades National Park.³⁶ The monitoring results from the initial construction of two miles of the barrier showed the project decreased the amount of seepage leaving Everglades National Park.³⁷ Modeling results showed that increasing the seepage barrier to five miles would result in increasing the area beneficially affected in Everglades National Park from approximately 12,000 acres to more than 30,000 acres.³⁸ There are currently previously approved funds in the Lake Belt Mitigation Fund to complete this project.³⁹
- Amends s. 373.41492(2), F.S., to replace the water treatment plant upgrade fee with an environmentally endangered lands (EEL) fee. The EEL fee will be deposited into a trust fund established by Miami-Dade County. According to the Lake Belt 2014 Annual Report, thousands of sampling events from the lakes over the years have demonstrated that water treatment is not needed to mitigate the effects of the mining operations.⁴⁰ The bill reduces the fee from 15 cents to 5 cents per ton of limerock and sand sold, and makes various revisions to conform the statutes to the replacement of the water treatment plant upgrade fee with the EEL fee. Miami-Dade County must use the proceeds from the EEL fee solely for the acquisition, preservation, enhancement, restoration, conservation, and maintenance of wetland and threatened forest communities located in Miami-Dade County (not just near the Lake Belt). Acquisition of these lands is above normal mitigation requirements to offset impacts caused by the mining activity. The bill directs the Department of Revenue to administer, collect, and enforce the fee.
- Amends s. 373.41492(6), F.S., to require the SFWMD to use the proceeds from the mitigation fee to conduct water quality monitoring to ensure the protection of water resources within the Lake Belt.
- Amends s. 373.41492(6)(a), F.S., to delete the requirement that the mitigation in the Lake Belt must be approved by the Committee. This provision is already adequately provided for in s. 373.41492(6)(b), F.S.
- Amends s. 373.41492(6)(a), F.S., to require the EEL fee be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield, if the Department of Environmental Protection (DEP) determines that due to the direct or indirect result of rock mining activities within the Lake Belt Area, the quarterly pathogen sampling conducted as a condition of the permits issued by the DEP for rock mining activities in the Miami-Dade County Lake Belt Area demonstrates that the water in any quarry lake monitored pursuant to the monitoring plan would be classified as being in Bin 2 or higher as defined in the Environmental Protection Agency's Long Term 2 Enhanced Surface Water Treatment Rule.
- Deletes s. 373.41492(8), F.S., which provides that the mitigation fee imposed by the Lake Belt statute must be suspended until revived by the Legislature if the United States Army Corps of Engineers (USACE) does not issue a permit for mining in the Lake Belt by September 30, 2000.

³⁴ Lake Belt Committee, November 20 2013 Meeting Summary p. 3; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lakebeltmc2013&p_thumbnails=no (last visited January 26, 2014).

³⁵ Lake Belt Committee, December 4, 2012 Meeting Summary p. 4; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lakebeltmc2012&p_thumbnails=no (last visited January 26, 2014); Lake Belt Mitigation Committee, Annual Report for 2013 p. 8.; available at http://www.sfwmd.gov/portal/pls/portal/portal_apps.repository_lib_pkg.repository_browse?p_keywords=lbannual&p_thumbnails=no (last visited January 22, 2015).

³⁶ Miami-Dade Limestone Products Association, L-31N Seepage Barrier Project Presentation (March 5, 2014) available at Florida Department of Environmental Protection.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Lake Belt 2014 Annual Report, Water Quality Section and Appendix p. 2-3 (available at Florida Department of Environmental Protection).

- The bill reenacts subsections 373.41495(1), (2), and (3), F.S., relating to the Lake Belt Mitigation Trust Fund to incorporate the amendments to s. 373.41492, F.S.

B. SECTION DIRECTORY:

- Section 1. Amends s. 373.4149, F.S., relating to the Miami-Dade Lake Belt Plan.
- Section 2. Amends s. 373.41492, F.S., relating to the Miami-Dade County Lake Belt Mitigation Plan.
- Section 3. Reenacts subsections (1), (2), and (3) of s. 373.41492, F.S., relating to the Lake Belt Mitigation Trust Fund.
- Section 4. Providing an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference met on February 26, 2015 and adopted estimates on the impact of the bill. The estimated impact to total local government revenues is -\$6.2 million in the first year (2015-2016) and -\$15.7 million on a recurring basis, split between the South Florida Water Management District and Miami-Dade County.

For South Florida Water Management District, in the first year there is a -\$7.8 million impact, growing to -\$12.6 million on a recurring basis. For Miami-Dade County, in the first year the impact is +\$1.6 million, but becomes negative in subsequent years. The recurring impact to Miami-Dade County is -\$3.1 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a positive economic impact on companies that mine limestone and sand in Lake Belt. The mitigation fee will gradually be reduced from 45 cents per ton to 5 cents per ton over a three-year period. Further, the water treatment plant upgrade fee of 15 cents per ton will be eliminated and replaced with the 5 cents per ton EEL fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2015, the Agricultural & Natural Resources Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Provides that if certain water quality standards are not met in the quarries in the Lake Belt Area, as determined by DEP, then the EEL fee must be used to upgrade a water treatment plant to treats water coming from the Northwest Wellfield; and
- Deletes the requirement that the proceeds of the mitigation fee be approved by the Lake Belt Committee. This provision is already adequately provided for in s. 373.41492(6)(b), F.S.

This analysis is drafted to the bill as amended and passed by the Agricultural and Natural Resources Subcommittee.