

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENRC 08-13 Aggregate Mining
SPONSOR(S): Environment & Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council		Deslatte / Perkins	Dixon / Hamby
Committee on Environmental Protection	6 Y, 0 N	Deslatte	Kliner
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill provides legislative findings regarding construction aggregate materials and establishes the Strategic Aggregate Resource Assessment (SARA) to identify aggregate resources in the State.

The Florida Department of Transportation (DOT) is directed to organize and provide administrative support in the preparation of SARA. The DOT will work with the Department of Environmental Protection (DEP), the Florida Department of Community Affairs (DCA), and local governments in preparation of the SARA. The SARA will address both the location and relevant regulatory framework for construction aggregate materials and the necessary infrastructure aspects for such materials (See Effect of Proposed Changes Section).

The bill provides that nothing in ss. 378.202-378.804, F.S., relating to phosphate land reclamation and resource extraction reclamation, shall preempt local ordinances that impose land use requirements for reclamation activities as set forth in the comprehensive plan or zoning regulations. However, the bill also provides that no county or municipality shall enact or enforce any ordinance, resolution, regulation, rule, policy, or other action which prohibits or prevents the construction or operation of a limestone mine based on issues or subject matters regulated by the DEP pursuant to Chapter 378 or Chapter 373, part IV, F.S., which regulate the management and storage of surface waters.

The bill authorizes the DEP to adopt rules for the construction, operation, and reclamation of construction aggregate mines, which must incorporate the permitting requirements in part IV of Chapter 373, F.S., and the reclamation requirements in part IV of Chapter 378, F.S. The permit is required to consider adverse impacts to all wetlands and other surface waters, including those to fish and wildlife, and their habitat. The permit must also require monitoring of groundwater to ensure that water quality outside the mining pit is protected.

The bill provides that the provisions of this act shall not apply to the Miami-Dade County Lake Belt areas as described in s. 373.4149, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires the DOT to organize and provide administrative support in the preparation of SARA. The DOT will work with the DEP, the DCA, and local governments in preparation of the SARA. The SARA will address both the location and relevant regulatory framework for construction aggregate materials and the necessary infrastructure aspects of such materials.

The bill also prohibits any county or municipality from enacting or enforcing any ordinance, resolution, regulation, rule, policy, or other action which prohibits or prevents the construction or operation of a limestone mine based on issues or subject matters regulated by the DEP pursuant to Chapter 378 or Chapter 373, part IV, F.S., which regulate the management and storage of surface waters.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

State and Federal Regulation of Mining

The Mandatory Nonphosphate program, within DEP's Bureau of Mine Reclamation, administers the laws and regulations related to the reclamation of mined land and the protection of water resources (water quality, water quantity and wetlands) at mines extracting heavy minerals, fuller's earth, limestone, dolomite & shell, gravel, sand, dirt, clay, peat, and other solid resources (except phosphate). The section administers two regulatory programs: Permitting (ERP) and Reclamation.

- ERP regulates the creation or alteration of water bodies, including old mine pits. It may also be required for the creation of impervious areas, and for certain projects exclusively in uplands. These permits focus on how the activity will affect wetlands, water quality, and water quantity. They also consider how changes to wetlands affect wildlife.
- Reclamation means the reasonable rehabilitation of land where resource extraction has occurred. Areas disturbed by mining operations, and subject to the reclamation requirements, must be reclaimed after mining is complete. Debris, litter, junk, worn-out or unusable equipment or materials must be appropriately disposed. The land must be recontoured and stabilized to control erosion. Bare areas must be revegetated. Prior to mining, the operator must provide a conceptual mining and reclamation plan, or a reclamation notice.

Specific to limestone mining, s. 378.501, F.S., provides that no operator may begin the process of limestone resource extraction at a new mine without notifying the Secretary of DEP of the intention to mine. The operator's notice of intent to mine must include, but not be limited to:

- The operator's conceptual mining plan which is comprised of such maps and other supporting documents as may be reasonably required by the DEP, the operator's time schedule that assures that the reclamation process is achieved in a timely manner, and the operator's estimated life of the mine.
- The operator's signed acknowledgment of the limestone reclamation performance standards provided by s. 378.503, F.S.

The DEP is required to notify the operator as to the sufficiency of the notice of intent to mine. The review of the notice must be accomplished in accordance with the provisions of s. 378.405, F.S., which requires that within 30 days after receipt of an operator's conceptual reclamation plan, the DEP or the affected agency must review the plan and request submittal of all additional information the agency is

permitted by law to require. If the applicant believes any agency request for additional information is not authorized by law or agency rule, the applicant may request a hearing under ss. 120.569 and 120.57, F.S. Within 30 days after receipt of such additional information, the agency must review it and may request only such further information as is needed to clarify the additional information. If the applicant believes the request of the agency for such additional information is not authorized by law or agency rule, the agency, at the applicant's request, shall proceed to process the plan. A plan must be approved or denied within 90 days after receipt of the original plan, the last item of timely requested additional information, or the applicant's written request to begin processing the plan. Currently, s. 373.4141, F.S., provides that a permit under Part IV of Chapter 373, F.S., including ERP and wetland resource permits, shall be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

In addition to the regulatory programs discussed above, many mining activities are subject to other regulatory requirements. If water will be pumped or moved, a water/consumptive use permit may be required from the water management district. If wetlands or surface waters will be altered, a federal dredge and fill permit may be required from the U.S. Army Corps of Engineers. In order to address stormwater runoff and industrial waste discharges, an industrial wastewater permit may be required from the Industrial Wastewater Program within the DEP.

The State Fire Marshal's Office licenses all blasters and users of explosives in the state and sets standards for blasting ground vibration and noise.

The Florida Department of Transportation (FDOT) has the role of approving the quality of the materials that ultimately are produced from the mines. The State Materials Office and FDOT District Materials Engineers keep close contact with mining operations to provide validation that materials being produced meet specifications set by the department for engineering applications.

The Florida Department of Community Affairs (DCA) oversees Florida's local government comprehensive planning process that establishes land use conditions for local development. DCA also coordinates the activities of the regional planning councils for reviews of Developments of Regional Impact (DRI). For construction aggregate mines the threshold for a DRI review is annually mining more than 100 acres per year, or water consumption exceeding 3,000,000 gallons per day.

Local Regulation of Mining

In addition to state and federal regulations, there are 67 counties and 390 municipalities that may regulate activities at mines. Local ordinances address: conformance with the Comprehensive Land Use Plan, impacts to wetlands, operating permits, reclamation, set backs from property lines, storm water management, truck routes, noise, dust, hours of operation, blasting, performance bonding, garbage disposal, etc.

Florida's current growth management system includes: ss. 163.3161-163.3246, F.S., the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; chapter 380, F.S., the Florida Environmental Land and Water Management Act, that includes the Development of Regional Impact (DRI) and the Areas of Critical State Concern programs; chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and chapter 187, F.S., the State Comprehensive Plan.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 ("Act"), ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making.

Under the Act, the Department of Community Affairs adopted by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria require that the elements of the plan are consistent with each other and with the State Comprehensive Plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

A local government may amend its comprehensive plan, provided certain conditions are met including advertised public hearings on a proposed amendment before its adoption and mandatory review by the DCA. A local government may amend its comprehensive plan only twice per year with certain exceptions.

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Chapter 28-24, Florida Administrative Code. Mining is one of several land uses subject to DRI review.

Strategic Aggregates Review Task Force

In 2007, the Florida Legislature created the Strategic Aggregates Review Task Force (SARTF) with the passage of House Bill 985. The bill defined "Construction aggregate materials" to mean

Crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base.

Finding that there is a strategic and critical need for an available supply of construction aggregate materials within the state and that a disruption of the supply would cause a significant detriment to the state's construction industry, transportation system, and overall health, safety, and welfare, the bill included the following provisions:

- Prohibited local governments from approving or denying a proposed land use zoning change, comprehensive plan amendment, land use permit, ordinance, or order regarding construction aggregate materials without considering any information provided by the Department of Transportation regarding the effect such change, amendment, permit decision, ordinance, or order would have on the availability, transportation, and potential extraction of construction aggregate materials on the local area, the region, and the state.
- Prohibited local governments from imposing a moratorium, or combination of moratoria, of more than 12 months' duration on the mining or extraction of construction aggregate materials, commencing on the date the vote was taken to impose the moratorium. The bill specified January 1, 2007, as the commencement of the 12-month period for moratoria already in place as of July 1, 2007.
- Provided that limerock environmental resource permitting and reclamation applications filed after March 1, 2007, are eligible for the expedited permitting processes contained in s. 403.973, F.S., and provided that challenges to state agency action in the expedited permitting process for establishment of a limerock mine in this state under s. 403.973, F.S., are subject to the same requirements as challenges brought under s. 403.973(15)(a), F.S., except that, notwithstanding s. 120.574, F.S., summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.
- Created the Strategic Aggregates Review Task Force to evaluate the availability and disposition of construction aggregate materials and related mining and land use practices in this state. The

task force was required to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2008. The report was required to identify locations with significant concentrations of construction aggregate materials and recommend actions intended to ensure the continued extraction and availability of construction aggregate materials.

The Task Force conducted a series of meetings to identify areas of improvement in policy and public investment as related to the supply of construction aggregate materials available for use in Florida. The Task Force was directed to evaluate the availability and disposition of construction aggregate materials and related mining and land use practices in Florida. Some of the consensus Task Force's recommendations include:

Issue 1: Construction Aggregate Materials Resource Management

Statutorily acknowledge that:

- Construction aggregate materials are a finite natural resource.
- Construction aggregate materials mining is an industry of critical importance to the state.
- The siting and permitting of mines must be compatible with Florida's environment and communities.
- There are at least 33 counties where the aggregate and sand resource exists. Those counties include:
 - Aggregate Counties: Alachua, Broward, Charlotte, Citrus, Collier, Dixie, Hamilton, Hernando, Jackson, Lake, Lee, Levy, Liberty, Marion, Miami-Dade, Okeechobee, Palm Beach, Pasco, Sumter, Suwannee, Taylor, Washington
 - Fine Aggregate Sand Counties: Bay, Calhoun, Clay, Gadsden, Glades, Hendry, Lake, Marion, Polk, Putnam, Walton, Washington
 - Shell Rock and Coquina Counties: Charlotte, Collier, Indian River, Lee, Okeechobee, Palm Beach, Sarasota, St Lucie.
- The Legislature should encourage a reliable, predictable, and sustainable supply of construction aggregate materials with a goal of maintaining public and private construction without interruptions.
- The Legislature should continue to adopt policies, regulations and laws to encourage the increased use of recycled and reused construction aggregate materials as appropriate.
- Alternative material substitutions for construction aggregate materials should be investigated and encouraged by all state agencies involved in construction as appropriate.
- The Legislature should provide a specific appropriation for those activities required to further the goals of construction aggregate materials management, including but not limited to the development of the Strategic Aggregate Resource Assessment (SARA).
- The SARA is critical to the economic, environmental, and social stability of the state of Florida. The FDOT should be the lead agency and should work with the DEP and the DCA in the preparation of SARA. The SARA should include, on a regional basis, the following:
 - A. For construction aggregate materials the SARA should:
 1. The Florida Geological Survey (FGS) shall identify and map the areas where the construction aggregate materials deposits are located.

Information can be submitted by willing land owners to the Florida Geological Survey (FGS) for inclusion in State data repository.

The FGS should be directed to protect the confidentiality of any materials submitted to the FGS pursuant to the SARA process. The FGS shall maintain

the confidential status of such information, as required by s. [to be adopted], and such information shall be exempt from the provisions of s.119.07(1).

2. FDEP shall identify and superimpose on the above map the areas of natural resources subject to state permitting requirements.
3. FDCA, along with the local governments, shall identify and superimpose the above map the areas of existing future land use elements of local comprehensive plans and local zoning regulations.
4. Provide a projection of short and long term (5, 25 and 50 year) demand.
5. Provide an estimate of volume of aggregate available from already permitted mines to meet that demand.
6. Identify out of state construction aggregate materials available to meet demand projections.

B. For infrastructure, identify the current and potential capacity of construction aggregate material imports into the State utilizing current and planned rail, connecting roadways and port infrastructure.

C. The SARA shall be updated every five (5) years and be included as part of the FDOT Florida Transportation Plan.

- The state and local governments should protect existing mines from encroachment from incompatible development, and such actions should be expressly exempted from the Bert J. Harris Act.
- The local governments should consider the expansion of existing mines. Mines should be sited, permitted or expanded in locations that result in the least amount of additional environmental and community impacts.
- The construction aggregate mining industry and construction industry should work with FDOT to establish a fee mechanism to pay for the initial costs of the SARA implementation.

Issue 2: State and Local Planning and Regulation of Mining

- Future procedures for the siting and permitting of construction aggregate materials mines should be based upon earlier and more inter-agency coordination.

Issue 3: Infrastructure Improvements

- Provide statutory authority for FDOT to enter into Public-Private-Partnerships in development of rail and port infrastructure to facilitate distribution of strategic construction aggregate materials.
- The state should identify and prioritize possible funding sources for the improvement of or building of new rail/port facilities.
- The aggregate resource counties should be offered incentives regarding transportation funding.¹

The Task Force also had numerous non-consensus recommendations that can be found in the report.²

¹ Strategic Aggregates Review Task Force Final Report, <http://www.dot.state.fl.us/statematerialsoffice/administration/resources/library/issues-trends/aggtaskforce/meetingfour/finalreport.pdf>

² *Id.*

Proposed Changes

The bill provides legislative findings regarding construction aggregate materials. The Legislature finds the following:

- Construction aggregate materials are a finite natural resource;
- Construction aggregate materials mining is an industry of critical importance to the state and is therefore in the public interest;
- There is a need for a reliable, predictable, and sustainable supply of construction aggregate materials so that public and private construction is maintained without interruption;
- There are a limited number of aggregate resource counties within the State where aggregate and sand resources exist

Strategic Aggregate Resource Assessment (SARA)

The bill requires DOT to organize and provide administrative support in the preparation of SARA. The DOT will work with the DEP, the DCA, and local governments in preparation of the SARA.

For construction aggregate materials:

- The Florida Geological Survey shall identify and map areas where construction aggregate materials deposits are located in the state. Information may be submitted by willing land owners to the Florida Geological Survey for inclusion in the state data repository.
- The DOT shall identify and superimpose on the above map a high to low quality grading classification to identify the areas that contain the materials needed for road building and repair.
- The DEP shall identify and superimpose on the above map the areas of natural resources subject to state permitting requirements in order to identify any potential conflicts between the location of geologically valuable resources and natural land and water resources.
- The DCA, along with local governments, shall identify and superimpose the above map the areas of existing future land use elements of local comprehensive plans and local zoning regulations in order to identify with natural resources and existing communities and any potential conflicts between the areas where growth and development is planned or placed adjacent to or over deposits of construction aggregate materials.
- The SARA will provide a projection of 5 year, 25 year, and 50 year demand for aggregate. The SARA will also provide an estimate of volume of aggregate available from already permitted mines to meet demand projections. The SARA will identify international and out-of-state construction aggregate materials available to meet demand projections.

For infrastructure:

- The SARA shall provide a rating structure assessing the ability to mine these deposits in an economic manner, taking into account the proximity of the materials to the available markets, the thickness of overburden, and the quantity and quality of the materials. In assessing the economic viability of a geologic deposit the SARA shall take into account the proximity to rail and port facilities where similar or replacement products can be imported at a lower cost than producing them locally.
- The SARA shall identify the current and potential capacity of construction aggregate material imports into the State utilizing current and planned rail, connecting roadways and port infrastructure.

The SARA shall be updated every 5 years and be included as part of the FDOT Florida Transportation Plan. The DOT shall prepare the findings of the SARA in an initial report submitted to the Governor, the President of the Senate, and the Speaker of the House no later than February 1, 2010. Subsequent reports shall be submitted by February 1 following each 5 year SARA update. The DOT is authorized to adopt rules pursuant to s. 120.536(1) and s. 120.54, F.S., to administer the SARA.

The bill authorizes the DEP to adopt rules for the construction, operation, and reclamation of construction aggregate mines. The rules will incorporate the permitting requirements in part IV of

Chapter 373, F.S., and the reclamation requirements in part IV of Chapter 378, F.S. The permit will consider adverse impacts to all wetlands and other surface waters, including those to fish and wildlife, and their habitat. The permit will also require monitoring of groundwater to ensure that water quality outside the mining pit is protected.

The bill provides a definition for “construction aggregate materials”, which means crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, and sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base. Mined materials that do not require sorting and grading and that are used for fill are not construction aggregate materials. The DEP will initiate rule making no later than October 1, 2008.

The bill provides that nothing in ss. 378.202-378.804, F.S., relating to phosphate land reclamation and resource extraction reclamation, shall preempt local ordinances that impose land use requirements for reclamation activities as set forth in the comprehensive plan or zoning regulations. However, the bill also provides that no county or municipality shall enact or enforce any ordinance, resolution, regulation, rule, policy, or other action which prohibits or prevents the construction or operation of a limestone mine based on issues or subject matters regulated by the DEP pursuant to Chapter 378 or Chapter 373, part IV, F.S., which regulate the management and storage of surface waters.

The provisions of this act shall not apply to the Miami-Dade County Lake Belt areas as described in s. 373.4149, F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 337.0261, F.S., providing legislative intent; providing for an assessment of aggregate construction materials in the state; providing duties for the DOT, the DEP, the DCA, and the Florida Geological survey; providing parameters for the assessment; providing rulemaking authority.

Section 2: Creates s. 373.4146, F.S., providing rulemaking authority; providing for a definition; providing a date certain to initiate rulemaking.

Section 3: Amends s. 378.412, F.S., prohibiting local governments from enacting or enforcing ordinances, resolutions, regulations, rules, policies, or other actions which prohibits or prevents the construction or operation of a limestone mine under specified conditions.

Section 4: Provides that the provisions of this act shall not apply to the Miami-Dade County Lake Belt areas as described in s. 373.4149, F.S.

Section 5: The act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See “Fiscal Comments”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow cost savings due to less regulatory delays by local governments.

D. FISCAL COMMENTS:

The bill requires the DOT, DEP, DCA, and the Florida Geological Survey to conduct a Strategic Aggregate Resource Assessment. This requirement will have a significant but undetermined fiscal impact on the affected agencies. The bill also allows DEP to adopt rules for aggregate material mines. The development of such rules will have a fiscal impact on the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill authorizes the DOT to adopt rules to administer the SARA. The bill also authorizes the DEP rulemaking authority for permitting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Staff recommends the inclusion of a public records exemption for proprietary documents relating to the SARA.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A