SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1312

SPONSOR: Appropriations Subcommittee on General Government and Committee on Natural Resources and Senator Alexander

SUBJECT: Phosphate mining

DATE: April 15, 2003 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kiger	Kiger	NR	Fav/CS
2.			CP	Withdrawn
3.	DeLoach	Hayes	AGG	Fav/CS
4.			AP	
5.			RC	
6.				

I. Summary:

The bill contains a series of changes to general laws governing the phosphate industry. These changes include:

- Increasing the tax rate paid for the severance of phosphate.
- Changes to the distribution formula.
- Providing for a study of the impacts of certain activities, including mining, within the Peace River Basin.
- Permitting phosphate reclamation variances for certain water supply and resource projects.
- Elimination of reserve requirements for the Nonmandatory Land Reclamation Trust Fund.
- Changing from 2008 to 2004 the deadline for phosphate companies to apply for reclamation funds.
- Creating a non-profit corporation to assist in developing recreational opportunities on phosphate lands.
- Creating criminal penalties for the violation of certain financial reporting requirements under certain conditions.
- Clarifying the department's rule making authority, specifically as it relates to financial responsibility, interim stack management, and stack closure.
- Provides for the transfer of $100 million from the Preservation 2000 and Florida Forever debt service accounts for the environmental hazard cleanups.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: : s. 211.3103, s. 378.021, s. 378.031, s. 378.035, s. 378.036, s. 378.212, s. 403.4154, and s. 403.4155.

II. Present Situation:

The United States is the largest producer and consumer of phosphate rock in the world and the leading producer and supplier of phosphate fertilizers in the world. Florida provides approximately 75 percent of the nation's phosphate supply and approximately 25 percent of the world supply. Phosphate companies own or have mineral rights to almost 450,000 acres in the state.

Nitrogen, phosphate, and potassium are the three primary nutrients in fertilizer. For phosphate rock mined in Florida, 90 percent is used to make fertilizer. Of the remaining 10 percent, half is used in animal feed supplements. Phosphate is also used in a variety of products, including vitamins, soft drinks, toothpaste, light bulbs, film, bone china, flame resistant fabric, optical glass, and other consumer goods. There is no substitute or synthetic for phosphorus, which is essential for life in all growing things, plants and animals alike. (Phosphate Fact Sheet – Florida Phosphate Council)

There is an extensive history of regulation involving the industry. Significant regulatory efforts or laws have been passed, in brief:

> 1970's – Federal and State Clean Water Legislation and Rules imposed controls on stack system surface water discharges.
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> 1983 – State Groundwater Rules established groundwater quality standards; prohibited violations by installations including stack systems; and required groundwater monitoring around stack systems.
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> 1993 – Phosphogypsum Management Rules required liners for new and laterally expanded stack systems; established closure and long-term care requirements; and imposed financial responsibility demonstration requirements.
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> 1996 – Mining Dams Memorandum of Agreement updated construction standards for new clay settling area dams and spillways; updated operational, maintenance, and inspection requirements; and established best management practices for non-clay impoundments.
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> 1999 – DEP rules for earthen dams and dikes established construction and inspection standards for new stack system perimeter dikes; created procedures for raising stacks and decanting water; and established detailed water management and other operational requirements.

Phosphate operations produce gypsum, a sandy mineral by-product of phosphate fertilizer manufacturing. Gypsum is stored in stacks, commonly referred to as "gypstacks," of 150 feet or taller. The gypsum goes on to the stack and mixes with water. Rain also adds water to these stacks. Because the water is acidic, it must be contained on the site or recycled into the plant for cooling. These stacks must be continuously monitored to ensure that the water does not seep into the environment. There are currently 25 stacks in Florida. The vast majorities of these stacks are located just south of Lakeland and are in various stages of their life-cycle, 10 are active, 12 are inactive, and 3 are closed.

Mulberry Phosphates in Polk County and Piney Point in Manatee County are both former phosphate fertilizer chemical processing plants that closed in December 1999. The Mulberry Corporation owned both Mulberry and Piney Point chemical plants. In 2001 the company notified the DEP that it did not have funds to maintain the facilities and would abandon both sites. To prevent environmental catastrophe, the US Environmental Protection Agency (EPA) assumed responsibility for the environmental security at the facilities until transferring that role to the Department of Environmental Protection (DEP) in February 2001. In the same month, the Mulberry Corporation filed for bankruptcy protection.

Shortly after the DEP assumed responsibility for securing the sites, bankruptcy proceedings were invoked, and the federal bankruptcy court appointed a receiver funded by the DEP. The department is responsible, in conjunction with the receiver, for managing and securing the stack systems and providing for long-term closure.

In May 2002, the DEP and Cargill Fertilizer, Inc., entered into an agreement where Cargill will manage and close the Mulberry facility. The DEP will reimburse Cargill up to $25 million for the closure work. Closure of the stack system is expected to be completed by 2008, after which Cargill will continue long-term care for approximately 50 years. Ownership of the stack system remains with the federal bankruptcy trustee.

Since February 2001, the DEP and the court appointed receiver have maintained the Piney Point gypsum stack system. The primary problem that is being addressed, in addition to ongoing maintenance of the system, is treatment, movement and disposal of hundreds of millions of gallons of water from the stack system. The existing inventory to be disposed of is approximately two billion gallons, which fluctuates due to the amount of rainfall. There have been no reasonable offers to purchase the site and assume responsibility for management and closure.

The DEP is currently awaiting a decision from the US EPA for a permit to ocean discharge the water from the Piney Point stack system. The plan is to load the water onto barges, which can hold from 2 to 10 million gallons, and in turn discharge it over a wide area in the central Gulf of Mexico. A decision by the EPA is expected any day. The decision to use ocean barging was selected because of its ability to quickly relieve engineering concerns with the stack. Barges can move 2 to 10 million gallons a trip, trucks can only carry thousands of gallons. The situation at Piney Point is considered time-critical, especially with the wet season approaching.

To date, the DEP has spent a total of $35 million from the Nonmandatory Land Reclamation Trust Fund (NLRTF) on both sites. Additionally, there was $60 million appropriated for maintenance and closure costs for this fiscal year. Department estimates to complete the closure of both sites is $119 million, $100 million for Piney Point and $19 million for Mulberry. These closure costs are spread over the next 10 years with a significant portion due over the next four.

The NLRTF was established by the Legislature in 1978 to fund the reclamation of land that was mined before 1975. The Legislature declared that all lands disturbed by phosphate mining after that time must be reclaimed by the owners. The revenue source, for the trust fund is a tax on the severance of materials, was enacted into law in 1971 and was paid by all phosphate companies on the basis of tons of phosphate rock produced. Revenues from the severance tax were no longer deposited into the NLRTF as of January 2000 when it was determined that funds were sufficient to reclaim the remaining lands.

Currently, revenues come solely from the phosphogypsum stack registration fees ($1.4M annually) and interest earnings. The estimated fund balance for July 1, 2003 is between $77.5M and $82.6M, $50M of which is statutorily required reserve for use should an imminent hazard situation arise. The department estimates that $90M is needed to finish reclaiming 20,000 acres of mined phosphate lands, and an additional $119M to complete the gypsum stack closures at Mulberry and Piney Point. With the projected funding needs, the NLRTF as currently structured will not be able to meet these responsibilities.

For 2001, the severance tax rate was $1.30 per ton with 25.1 million tons of rock mined. The total tax distribution was $32.7 million. Statutorily the distribution is as follows:

$10 million, off the top, to the Conservation and Recreation Lands Trust Fund (CARL) for use by state agencies for land management.

Of the remaining funds:

55.15 percent	to General Revenue
12.5 percent	to the Florida Institute of Phosphate Research
18 percent	to Local Counties with mining activities
14.35 percent	to the Minerals Trust Fund

III. Effect of Proposed Changes:

Section 1: Amends s. 211.3103, F.S., concerning the levy of tax on the severance of phosphate rock. This section creates two distribution provisions. The first is for the 2003-04 Fiscal Year, and the second distribution is for the years after. Two provisions are needed to address a change in revenues because of the effective date of the tax.

Both distribution provisions are designed to hold most of the beneficiaries of the revenue at their current level of funding. The only change is a doubling of revenues shared with counties impacted by mining. The new dollars will be directed to the rural counties and must be used for economic development. The distribution for FY 2003-04 is approximately:

$10 million to CARL
$10 million to counties
$3 million to Phosphate Research
$3 million to the Minerals Trust Fund
$10.7 million to the Nonmandatory Land Reclamation Trust Fund

The bill directs that the severance tax rate be set at $1.62 per ton beginning January 1, 2004. For subsequent years, the tax rate is to be adjusted according to the producer price index. This has been the historical practice. In addition to establishing the current rate and adjustment methods, the bill directs that the tax rate shall not be less than $1.56 per ton.

The bill eliminates obsolete language, updates the tax rate for phosphate and changes the distribution formula.

For the FY 2004-05 and thereafter, the distribution formula will retain the $10 million transfer to CARL and redistribute the remaining funds as follows:

41 percent to General Revenue;
16.5 percent to the counties were mining activities occur;
16.5 percent to counties designated a Rural Area of Critical Economic Concern, in which mining occurs;
9 percent to the Phosphate Research Trust Fund;
9 percent to the Minerals Trust Fund; and
8 percent to the Nonmandatory Land Reclamation Trust Fund.

Section 2: Amends s. 378.021, F.S., concerning the master reclamation plan for phosphate.

The bill directs the DEP to amend the existing master reclamation plan to address changes in the industry and to recognize the potential benefits for reclamation to water supply issues.

Section 3: Amends s. 378.031, F.S., concerning reclamation of nonmandatory lands.

The bill provides additional legislative intent to encourage the reclamation of lands that will result in improvements to surface water bodies.

Section 4: Amends s. 378.035, F.S., concerning the DEP's oversight of the NLRTF.

The bill repeals provisions that created the $50 million reserve in the trust fund and provides that the reserved funds can be used for the abatement of imminent hazards. The acceptance date for applications to fund nonmandatory reclamation projects is changed from November 1, 2008, to July 1, 2004. In addition a provision is added that caps, at $15 million, the amount that can be spent in fiscal year 2003-04 for nonmandatory land reclamation projects.

Section 5: Amends s. 378.036, F.S., concerning land acquisitions financed by the NLRTF.

The bill provides for the creation of non-profit corporation for the purpose of assisting in the development of recreational opportunities on lands mined for phosphate. The corporation is to consist of a Board of Directors comprised of the following: Florida Wildlife Federation, Audubon of Florida, Rails-to-Trails Conservancy and the Florida Phosphate Council.

The first plans are to concentrate on Hamilton and Hardee counties (most impacted by mining) and assist them in rural economic development.

The bill provides direction concerning the operation and administration of the corporation, requires certain reports be filed, and provides for its dissolution. Funding for the corporation is at the discretion of the Legislature.

The bill provides a one-time $200,000 appropriation from the Non-Mandatory Land Reclamation Trust Fund for the purpose of creating plans and assisting in the development of recreational opportunities on lands mined for phosphate in the state.

Section 6: Amends s. 378.212, F.S., concerning variances for reclamation activities.

The bill permits the DEP to grant variances for reclamation activities that provide for stormwater management, water supply or resource development, wildlife habitat, or recreational opportunities.

Section 7: Amends s. 403.4154, F.S., concerning the phosphogypsum management program.

New provisions are added that provide for criminal penalties for the violation of certain financial reporting requirements. Specific provisions will:

- Establish that it is a 3^{rd} degree felony punishable by a fine of not more than $50,000 and/or imprisonment for 5 years for anyone to misrepresent the financial condition or closure costs of a stack or stack system.

- Establish that it is a 3^{rd} degree felony punishable by a fine of not more than $50,000 and/or imprisonment for 5 years for anyone to issue dividends or make other distributions, pursuant to s. 607.06401(3), F.S., from earnings in the event of a failure to meet financial responsibility tests for stack operations.

Creates a new provision that allows the department to declare an imminent hazard when companies fail to meet financial responsibility rules, and clarifies that when an imminent hazard exists, including those created by a financial concern, the DEP may go on site and ensure that proper environmental safeguards are operating.

Creates a “Good Samaritan” provision for companies assisting in the abatement of emergencies with stacks of stack systems. The provision creates a limited protection of liability from actions directly related to this work.

Finally, the bill provides a provision allowing for the rebate of stack registration fees upon closure of a stack. However, refunds are prohibited until such time as the cleanups are completed and a satisfactory reserve exists.

Section 8: Amends s. 403.4155, F.S., concerning the DEP’s rulemaking authority for phosphogypsum management.

This section is significantly rewritten to provide more detailed guidance for the department’s rules concerning stack systems and company financial requirements. Specific provisions include:

- Financial costs for the closure of stack system be done by a professional engineer and adjusted annually. Accounting data must be prepared according to U.S. generally accepted accounting principles and audited statements be provided annually. Any defaults must be reported immediately. An option for companies to meet financial responsibility through corporate guarantees is provided.

- Stack systems are required to submit interim stack system management plans. Such plans shall include detailed descriptions of process water management, detailed descriptions of daily operation and routine maintenance, identification of all machinery and materials needed, identification of power or fuel needed, and workforce requirements.

- General plans and schedules for the closure of stack systems must be developed. Such plans shall, have a physical description of the stack system at closure, a site specific water management plan, estimated costs of management, description of all construction work necessary, and an estimate of all costs associated for long-term care.

Section 9: Creates new chapter law provisions.

This section directs the Department of Environmental Protection and the Southwest Florida Water Management District to undertake a study of impacts of activities within the Peace River Basin and provide recommendations to the DEP and the Legislature on potential changes needed to protect the basin.

The bill provides a one-time $750,000 appropriation from the Non-Mandatory Land Reclamation Trust Fund to fund the study.

Section 10: This section directs the transfer of $100 million from the Preservation 2000 and Florida Forever debt service accounts. These funds will be transferred from that account into General Revenue and then $87.5 million will be subsequently transferred, from General Revenue, into the Non-Mandatory Land Reclamation Trust Fund to assist in the cleanups.

Section 11: This section provides a one-time appropriation of $800,000 from the Non-Mandatory Lands Reclamation Trust Fund to the Florida Institute of Phosphate Research to undertake a study of the potential for using clay settling material in other areas, such as land cover and fertilizer.

Section 12: Provides that the act shall take effect upon becoming law.

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 proposed fee increase and related distribution changes will have the following annual impacts:

Severance tax revenue:
For fiscal year 2003/04: $36.83 million (12.57 tons x $1.31 + 12.57 tons x $1.62)
For fiscal year 2004/05: $40.73 million ($1.62 x 25.14 tons)

Distribution for FY 2003-04:

$10 million to CARL
$ 5 million to counties in which mining occurs (18.75%)
$ 5 milllion to counties, designated a rural area of critical economic concern and which mining occurs (18.75%)
$12.5 million to General Revenue ($100 million reserve transfer less $12.5 million)
$ 3.0 million to Phosphate Research (11.25%)
$ 3.0 million to the Minerals Trust Fund (11.25%)
$10.7 million to the Non-Mandatory Land Reclamation Trust Fund (40%)

Subsequent Years' Distribution:

$10 million to CARL
$12.6 million to General Revenue (41%)
$5 million to counties in which mining occurs (16.5%)
$5 million to counties, designated a rural area of critical economic concern and which mining occurs (16.5%)
$3.0 million to Phosphate Research (9%)
$3.0 million to the Minerals Trust Fund (9%)
$2.5 million to the Nonmandatory Land Reclamation Trust Fund (8%)

The estimated revenues generated by the fee increase are based on the amount of phosphate mined in 2001. It is anticipated that amount of phosphate mined will stay relatively consistent over the next few years.

Note: The amounts distributed, via percentage, are based on the amount of severance revenue after the CARL transfer.

B. Private Sector Impact:

Companies mining phosphate will see their annual tax rate increase from $1.31 to $1.62 per ton. Specific impacts to an individual company are based on the annual number of tons mined.

Counties that have been designated a Rural Area of Critical Economic Concern and in which mining is taking place will see a revenue increase. The amount of the increase will be dependent on the amount of tons mined in their county. Distributions to the counties are based on the number of tons mined in each individual county.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.