

Amendment No. ____ (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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ORIGINAL STAMP BELOW

The Committee on Natural Resources & Environmental Protection offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Subsection (5) of section 378.035, Florida Statutes, is amended, and subsections (8) and (9) are added to that section, to read:

378.035 Department responsibilities and duties with respect to Nonmandatory Land Reclamation Trust Fund.--

(5) On July 1, 2001, ~~\$50 1997, \$30~~ million of the unencumbered funds within the Nonmandatory Land Reclamation Trust Fund are ~~hereby~~ reserved for use by the department.

(a) These reserved moneys are to be used to reclaim lands disturbed by the severance of phosphate rock on or after July 1, 1975, in the event that a mining company ceases mining and the associated reclamation prior to all lands disturbed by the operation being reclaimed. Moneys expended by the department to accomplish reclamation pursuant to this

Amendment No. ____ (for drafter's use only)

1 subsection shall become a lien upon the property enforceable
2 pursuant to chapter 85. The moneys received as a result of a
3 lien foreclosure or as repayment shall be deposited into the
4 trust fund. In the event the money received as a result of
5 lien foreclosure or repayment is less than the amount expended
6 for reclamation, the department shall use all means available
7 to recover, for the use of the fund, the difference from the
8 affected parties. Paragraph (3)(b) shall apply to lands
9 acquired as a result of a lien foreclosure.

10 (b) The department may also expend funds from the \$50
11 million reserve fund for the abatement of an imminent hazard
12 as provided by s. 403.4154(3) and for the purpose of closing
13 an abandoned phosphogypsum stack system and carrying out
14 postclosure care as provided by s. 403.4154(5). Fees deposited
15 in the Nonmandatory Land Reclamation Trust Fund pursuant to s.
16 403.4154(4) may be used for the purposes authorized in this
17 paragraph. However, such fees may only be used at a stack
18 system if closure or imminent-hazard-abatement activities
19 initially commence on or after July 1, 2002.

20 (8) The department may not accept any applications for
21 nonmandatory land reclamation programs after November 1, 2008.

22 (9) The Bureau of Mine Reclamation shall review the
23 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
24 support the stated objectives and report to the secretary
25 annually with recommendations as appropriate. The report
26 submittal for calendar year 2008 shall specifically address
27 the effect of providing a future refund of fees paid pursuant
28 to s. 403.4154(4) following certification of stack closure
29 pursuant to department rules, and the report shall be
30 submitted to the Governor, the President of the Senate, and
31 the Speaker of the House of Representatives on or before March

Amendment No. ____ (for drafter's use only)

1 1, 2009.

2 Section 2. Section 403.4154, Florida Statutes, is
3 amended to read:

4 403.4154 Phosphogypsum management program.--

5 (1) DEFINITIONS.--As used in this section, the term:

6 (a) "Department" means the Department of Environmental
7 Protection.

8 (b) "Existing stack" means a phosphogypsum stack, as
9 defined in paragraph (d), that is:

- 10 1. In existence in this state on May 12, 1993; or
11 2. Constructed in this state after May 12, 1993, and
12 for which the department has received a certification of
13 completion of construction submitted by the owner of the newly
14 constructed phosphogypsum stack.

15
16 The term "existing stack" does not include a phosphogypsum
17 stack that has been closed pursuant to a department permit or
18 order.

19 (c) "Phosphogypsum" means calcium sulfate and
20 byproducts produced by the reaction of sulfuric acid with
21 phosphate rock to produce phosphoric acid.

22 (d) "Phosphogypsum stack" means any defined geographic
23 area associated with a phosphoric acid production facility in
24 which phosphogypsum is disposed of or stored, other than
25 within a fully enclosed building, container, or tank.

26 (e) "Phosphogypsum stack system" means the
27 phosphogypsum stack, pile, or landfill, together with all
28 pumps, piping, ditches, drainage conveyances, water-control
29 structures, collection pools, cooling ponds, surge ponds, and
30 any other collection or conveyance system associated with the
31 transport of phosphogypsum from the plant to the phosphogypsum

Amendment No. ____ (for drafter's use only)

1 stack, its management at the stack, and the process-wastewater
2 return to the phosphoric acid production or other process.
3 This definition specifically includes toe drain systems and
4 ditches and other leachate collection systems but does not
5 include conveyances within the confines of the fertilizer
6 production plant or existing areas used in emergency
7 circumstances caused by rainfall events of high volume or
8 duration for the temporary storage of process wastewater to
9 avoid discharges to surface waters of the state, which process
10 wastewater must be removed from the temporary storage area as
11 expeditiously as possible, but not to exceed 120 days after
12 each emergency.

13 (f) "Process wastewater" means any water that, during
14 manufacturing or processing, comes into direct contact with or
15 results from the production or use of any raw material,
16 intermediate product, finished product, byproduct, or waste
17 product, along with any leachate or runoff from the
18 phosphogypsum stack system. This term does not include
19 contaminated nonprocess wastewater as that term is defined in
20 40 C.F.R. part 418.11(c).

21 (2) REGULATORY PROGRAM.--

22 (a) It is the intent of the Legislature that the
23 department develop a program for the sound and effective
24 regulation of phosphogypsum stack systems in the state. ~~It is~~
25 ~~further the intent of the Legislature that such regulatory~~
26 ~~program include the imposition of an annual registration fee~~
27 ~~on stacks that have not been closed and that such fees be used~~
28 ~~for the purpose of paying the costs of the department's review~~
29 ~~of applications to permit the closure of stack systems or the~~
30 ~~construction of new or expanded stack systems and of the~~
31 ~~department's review of requests for deferral of mandatory~~

Amendment No. ____ (for drafter's use only)

1 ~~closure requirements.~~

2 (b) The department shall adopt rules that prescribe
3 acceptable construction designs for new or expanded
4 phosphogypsum stack systems and that prescribe permitting
5 criteria for operation, closure criteria, long-term-care
6 ~~long-term-care~~ requirements, and closure financial
7 responsibility requirements for phosphogypsum stack systems.

8 (3) ABATEMENT OF IMMINENT HAZARD.--

9 (a) The department may take action to abate or
10 substantially reduce any imminent hazard caused by the
11 physical condition, maintenance, operation, or closure of a
12 phosphogypsum stack system.

13 (b) An imminent hazard exists if the physical
14 condition, maintenance, operation, or closure of a
15 phosphogypsum stack system creates an immediate and
16 substantial danger to human health, safety, or welfare or to
17 the environment. A phosphogypsum stack system is presumed not
18 to cause an imminent hazard if the physical condition and
19 operation of the system are in compliance with all applicable
20 department rules.

21 (c) If the department determines that the physical
22 condition, maintenance, operation, or closure of a
23 phosphogypsum stack system poses an imminent hazard, the
24 department shall request access to the property on which such
25 stack system is located from the owner or operator of the
26 stack system for the purposes of taking action to abate or
27 substantially reduce the imminent hazard. If the department,
28 after reasonable effort, is unable to timely obtain the
29 necessary access to abate or substantially reduce the imminent
30 hazard, the department may institute action in its own name,
31 using the procedures and remedies of s. 403.121 or s. 403.131,

Amendment No. ____ (for drafter's use only)

1 to abate or substantially reduce an imminent hazard. Whenever
2 serious harm to human health, safety, or welfare, to the
3 environment, or to private or public property may occur prior
4 to completion of an administrative hearing or other formal
5 proceeding that might be initiated to abate the risk of
6 serious harm, the department may obtain from the court, ex
7 parte, an injunction without paying filing and service fees
8 prior to the filing and service of process.

9 (d) To abate or substantially reduce an imminent
10 hazard, the department may take any appropriate action,
11 including, but not limited to, using employees of the
12 department or contracting with other state or federal
13 agencies, with private third-party contractors, or with the
14 owner or operator of the stack system to perform all or part
15 of the work.

16 (e) The department shall recover from the owner or
17 operator of the phosphogypsum stack system to the use of the
18 Nonmandatory Land Reclamation Trust Fund all moneys expended
19 from the fund, including funds expended prior to July 1, 2001,
20 to abate an imminent hazard posed by the phosphogypsum stack
21 system plus 30 percent annual interest on such funds following
22 the date of payment from the fund. If the department prevails
23 in any action to recover funds pursuant to this subsection, it
24 may recover reasonable attorney's fees and costs incurred.
25 Phosphogypsum may not be deposited on a stack until all moneys
26 expended from the fund in connection with the stack have been
27 repaid, unless the department determines that such placement
28 is necessary to abate or avoid an imminent hazard or unless
29 otherwise authorized by the department.

30 (f) The department may impose a lien on the real
31 property on which the phosphogypsum stack system that poses an

Amendment No. ____ (for drafter's use only)

1 imminent hazard is located and on the real property underlying
2 and other assets located at associated phosphate fertilizer
3 production facilities equal in amount to the moneys expended
4 from the Nonmandatory Land Reclamation Trust Fund pursuant to
5 paragraph (d), including attorney's fees and court costs. The
6 owner of any property on which such a lien is imposed is
7 entitled to a release of the lien upon payment to the
8 department of the lien amount. The lien imposed by this
9 section does not take priority over any other prior perfected
10 lien on the real property, personal property, or other assets
11 referenced in this paragraph, including, but not limited to,
12 the associated phosphate rock mine and reserves.

13 (4)(3) REGISTRATION FEES.--

14 (a)1. The owner or operator of each existing
15 phosphogypsum stack who has not provided a performance bond,
16 letter of credit, trust fund agreement, or closure insurance
17 to demonstrate financial responsibility for closure and
18 long-term care shall pay to the department a fee as set forth
19 in this paragraph. All fees shall be deposited in the
20 Nonmandatory Land Reclamation Trust Fund.

21 2. The amount of the fee for each existing stack shall
22 be \$75,000 for each of the five 12-month periods following
23 July 1, 2001.

24 3. The amount of the fee for any new stack for which
25 the owner or operator has not provided a performance bond,
26 letter of credit, trust fund agreement, or closure insurance
27 to demonstrate financial responsibility for closure and
28 long-term care shall be \$75,000 for each of the five 12-month
29 periods following the issuing by the department of a
30 construction permit for that stack.

31 4. Within 30 days after a phosphogypsum stack has been

Amendment No. ____ (for drafter's use only)

1 certified as closed pursuant to rule 62-673.620(2) and (3),
2 Florida Administrative Code, the department shall refund to
3 the owner of the closed phosphogypsum stack an amount from the
4 Nonmandatory Land Reclamation Trust Fund equal to the total
5 amount of fee payments made by the owner or operator to the
6 fund in connection with the closed phosphogypsum stack, except
7 that any refund becoming payable prior to July 1, 2009, shall
8 be paid to the owner on or after that date.

9 ~~(a) The total annual registration fees for all~~
10 ~~existing stacks shall be the amount required by the department~~
11 ~~to accomplish the following activities:~~

12 ~~1. Review and processing of a request by an owner of a~~
13 ~~phosphogypsum stack system that it be relieved of any~~
14 ~~mandatory obligation to close the system, or any portion~~
15 ~~thereof, prior to using the system for its entire remaining~~
16 ~~useful life.~~

17 ~~2. Review and processing of an application to~~
18 ~~construct a new or expanded phosphogypsum stack system.~~

19 ~~3. Review and processing of an application to close a~~
20 ~~phosphogypsum stack system, or portion thereof.~~

21 (b) On or before August 1 of each fiscal year, the
22 department shall provide written notice to each owner of an
23 existing stack of any the annual registration fee payable for
24 the 12-month period commencing on the immediately preceding
25 July 1 that fiscal year. Each owner shall remit the annual
26 registration fee to the department on or before August 31 of
27 each year within 30 days after receipt of the notice. The
28 notice required by this section shall be accompanied by a
29 report prepared by the department presenting the expenditures
30 using annual registration fees required by this section made
31 by the department during the immediately preceding fiscal year

Amendment No. ____ (for drafter's use only)

1 ~~and indicating the amount of any unexpended funds.~~
2 ~~(c) The total annual registration fees for all~~
3 ~~existing stacks shall not exceed \$500,000. The annual~~
4 ~~registration fee for each existing stack shall be the amount~~
5 ~~calculated by dividing the maximum total registration fees~~
6 ~~collectible in a particular fiscal year by the total number of~~
7 ~~existing stacks as of June 30 of the immediately preceding~~
8 ~~fiscal year.~~

9 (5) CLOSURE OF ABANDONED SYSTEMS.--

10 (a) The department may expend money from the
11 Nonmandatory Land Reclamation Trust Fund to take all steps
12 necessary to close a phosphogypsum stack system and to carry
13 out postclosure care in accordance with department rules in
14 effect as of the date of commencement of closure activities,
15 subject to the conditions set forth in this subsection. To
16 accomplish such closure and postclosure care, the department
17 may take any appropriate action, including, but not limited
18 to, using employees of the department or by contracting with
19 other state or federal agencies, with private third-party
20 contractors, or with the owner or operator of the stack
21 system, to perform all or part of the work.

22 (b) The department may close a phosphogypsum stack
23 system through agreement with the owner or by court order. In
24 determining whether closure is appropriate, the court shall
25 consider whether closing the stack will protect human health,
26 safety, or welfare or the environment; the useful life of the
27 stack; the effect of delaying closure on the stability of the
28 fund; the likelihood that the stack will be operated again;
29 and any other relevant factors. If the court finds that
30 closure is appropriate, the court may appoint a receiver to
31 oversee the closure or shall authorize department employees,

Amendment No. ____ (for drafter's use only)

1 agents, and contractors to enter all land owned by the owner
2 of the phosphogypsum stack system for the performance of
3 closure and postclosure activities.

4 (c) The department may impose a lien on the real
5 property on which a closed phosphogypsum stack system is
6 located and on the real property underlying and other assets
7 located at its formerly associated phosphate fertilizer
8 production facilities equal in amount to the moneys expended
9 from the Nonmandatory Land Reclamation Trust Fund pursuant to
10 this subsection for closure and postclosure care. The owner of
11 any property on which such a lien is imposed is entitled to a
12 release of the lien upon payment to the department of the lien
13 amount and execution of an agreement to carry out postclosure
14 care in accordance with applicable department rules. The lien
15 imposed by this section does not take priority over any other
16 prior perfected lien on the real property, personal property,
17 or other assets referenced in this paragraph, including, but
18 not limited to, the associated phosphate rock mine and
19 reserves.

20 Section 3. Section 403.4155, Florida Statutes, is
21 amended to read:

22 403.4155 Phosphogypsum management; rulemaking
23 authority.--

24 (1) ~~By July 1, 1999,~~The Department of Environmental
25 Protection shall adopt rules to amend existing chapter 62-672,
26 Florida Administrative Code, to ensure that impoundment
27 structures and water conveyance piping systems used in
28 phosphogypsum management are designed and maintained to meet
29 critical safety standards. The rules must require that any
30 impoundment structure used in a phosphogypsum stack system,
31 together with all pumps, piping, ditches, drainage

Amendment No. ____ (for drafter's use only)

1 conveyances, water control structures, collection pools,
2 cooling ponds, surge ponds, and any other collection or
3 conveyance system associated with phosphogypsum transport,
4 cooling water, or the return of process wastewater, is
5 constructed using sound engineering practices and is operated
6 to avoid spills or discharges of materials which adversely
7 affect surface or ground waters. The rules must require that a
8 phosphogypsum stack system owner maintain a log detailing the
9 owner's operating inspection schedule, results, and any
10 corrective action taken based on the inspection results. The
11 rules must require phosphogypsum stack owners to maintain an
12 emergency contingency plan and demonstrate the ability to
13 mobilize equipment and manpower to respond to emergency
14 situations at phosphogypsum stack systems. The rules must
15 establish a reasonable time period not to exceed 12 months for
16 facilities to meet the provisions of the rules adopted
17 pursuant to this section.

18 (2) By January 31, 2002, the department shall review
19 chapter 62-673, Florida Administrative Code, to determine the
20 adequacy of the financial-responsibility provisions contained
21 in the rules and shall take any measures necessary to ensure
22 that the rules provide sound and effective provisions to
23 minimize risk to the environment and to public health and
24 safety from the business failure of a phosphogypsum stack
25 system.

26 Section 4. This act shall take effect July 1, 2001.
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28

29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 On page 1, lines 2 through 20

Amendment No. ____ (for drafter's use only)

1 remove from the title of the bill: all of said lines
2
3 and insert in lieu thereof:
4 An act relating to the reclamation of land;
5 amending s. 378.035, F.S.; reserving certain
6 funds in the Nonmandatory Land Reclamation
7 Trust Fund for use by the Department of
8 Environmental Protection for reclaiming lands;
9 authorizing the department to use funds from
10 the trust fund for the purpose of closing
11 certain abandoned phosphogypsum stack systems;
12 limiting the period of operation of the
13 program; requiring the Bureau of Mine
14 Reclamation to review the sufficiency of the
15 trust fund to support certain objectives and
16 make reports; amending s. 403.4154, F.S.;
17 defining the terms "phosphogypsum stack system"
18 and "process wastewater"; authorizing the
19 Department of Environmental Protection to take
20 action to abate or reduce any imminent hazard
21 caused by a phosphogypsum stack system;
22 requiring the department to recover moneys from
23 the owner or operator of the system; providing
24 for attorney's fees and costs; authorizing the
25 department to impose a lien for the recovery of
26 such moneys; imposing certain fees upon an
27 owner or operator who has not demonstrated
28 financial responsibility; providing for the
29 refund of the fee upon closure of the
30 phosphogypsum stack; authorizing the department
31 to expend moneys from the Nonmandatory Land

Amendment No. ____ (for drafter's use only)

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Reclamation Trust Fund to close abandoned
phosphogypsum stack systems; providing for a
lien for the recovery of such moneys; amending
s. 403.4155, F.S.; requiring the department to
review certain rules and determine the adequacy
of the rules; providing an effective date.