

By the Council for Ready Infrastructure and
Representatives Dockery, Murman, Stansel, Spratt, Bowen and
ROSS

1 A bill to be entitled
2 An act relating to mining; amending s. 378.035,
3 F.S.; reserving certain funds in the
4 Nonmandatory Land Reclamation Trust Fund for
5 use by the Department of Environmental
6 Protection for reclaiming lands; authorizing
7 the department to use funds from the trust fund
8 for the purpose of closing certain abandoned
9 phosphogypsum stack systems; limiting the
10 period of operation of the program; requiring
11 the Bureau of Mine Reclamation to review the
12 sufficiency of the trust fund to support
13 certain objectives and make reports; amending
14 s. 378.601, F.S.; removing limitations on an
15 exemption from required development of regional
16 impact review for certain heavy mineral mining
17 operations; amending s. 403.4154, F.S.;
18 defining the terms "phosphogypsum stack system"
19 and "process wastewater"; authorizing the
20 Department of Environmental Protection to take
21 action to abate or reduce any imminent hazard
22 caused by a phosphogypsum stack system;
23 requiring the department to recover moneys from
24 the owner or operator of the system; providing
25 for attorney's fees and costs; authorizing the
26 department to impose a lien for the recovery of
27 such moneys; imposing certain fees upon an
28 owner or operator who has not demonstrated
29 financial responsibility; providing for the
30 refund of the fee upon closure of the
31 phosphogypsum stack; authorizing the department

1 to expend moneys from the Nonmandatory Land
2 Reclamation Trust Fund to close abandoned
3 phosphogypsum stack systems; providing for a
4 lien for the recovery of such moneys; amending
5 s. 403.4155, F.S.; requiring the department to
6 review certain rules and determine the adequacy
7 of the rules; providing an appropriation;
8 providing an effective date.
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10 Be It Enacted by the Legislature of the State of Florida:

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

15 378.035 Department responsibilities and duties with
16 respect to Nonmandatory Land Reclamation Trust Fund.--

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

20 (a) These reserved moneys are to be used to reclaim
21 lands disturbed by the severance of phosphate rock on or after
22 July 1, 1975, in the event that a mining company ceases mining
23 and the associated reclamation prior to all lands disturbed by
24 the operation being reclaimed. Moneys expended by the
25 department to accomplish reclamation pursuant to this
26 subsection shall become a lien upon the property enforceable
27 pursuant to chapter 85. The moneys received as a result of a
28 lien foreclosure or as repayment shall be deposited into the
29 trust fund. In the event the money received as a result of
30 lien foreclosure or repayment is less than the amount expended
31 for reclamation, the department shall use all means available

1 to recover, for the use of the fund, the difference from the
2 affected parties. Paragraph (3)(b) shall apply to lands
3 acquired as a result of a lien foreclosure.

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

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

16 (9) The Bureau of Mine Reclamation shall review the
17 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
18 support the stated objectives and report to the secretary
19 annually with recommendations as appropriate. The report
20 submittal for calendar year 2008 shall specifically address
21 the effect of providing a future refund of fees paid pursuant
22 to s. 403.4154(4) following certification of stack closure
23 pursuant to department rules, and the report shall be
24 submitted to the Governor, the President of the Senate, and
25 the Speaker of the House of Representatives on or before March
26 1, 2009.

27 Section 2. Subsection (5) of section 378.601, Florida
28 Statutes, is amended to read:

29 378.601 Heavy minerals.--

30 (5) Any heavy mineral mining operation which annually
31 mines less than 500 acres and whose proposed consumption of

1 water is 3 million gallons per day or less shall not be
2 required to undergo development of regional impact review
3 pursuant to s. 380.06, provided permits and plan approvals
4 pursuant to either this section and part IV of chapter 373, or
5 s. 378.901, are issued. ~~This subsection applies only in the~~
6 ~~following circumstances:~~

7 ~~(a) Mining is conducted in counties where the operator~~
8 ~~has conducted heavy mineral mining activities prior to March~~
9 ~~1, 1997; and~~

10 ~~(b) The operator of the heavy mineral mining operation~~
11 ~~has executed a developer agreement pursuant to s. 380.032 or~~
12 ~~has received a development order under s. 380.06(15) as of~~
13 ~~March 1, 1997. Lands mined pursuant to this section need not~~
14 ~~be the subject of the developer agreement or development~~
15 ~~order.~~

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

18 403.4154 Phosphogypsum management program.--

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

20 (a) "Department" means the Department of Environmental
21 Protection.

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

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

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1 The term "existing stack" does not include a phosphogypsum
2 stack that has been closed pursuant to a department permit or
3 order.

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

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

11 (e) "Phosphogypsum stack system" means the
12 phosphogypsum stack, pile, or landfill, together with all
13 pumps, piping, ditches, drainage conveyances, water control
14 structures, collection pools, cooling ponds, surge ponds, and
15 any other collection or conveyance system associated with the
16 transport of phosphogypsum from the plant to the phosphogypsum
17 stack, its management at the stack, and the process wastewater
18 return to the phosphoric acid production or other process.
19 This definition specifically includes toe drain systems and
20 ditches and other leachate collection systems but does not
21 include conveyances within the confines of the fertilizer
22 production plant or existing areas used in emergency
23 circumstances caused by rainfall events of high volume or
24 duration for the temporary storage of process wastewater to
25 avoid discharges to surface waters of the state, which process
26 wastewater must be removed from the temporary storage area as
27 expeditiously as possible, but not to exceed 120 days after
28 each emergency.

29 (f) "Process wastewater" means any water that, during
30 manufacturing or processing, comes into direct contact with or
31 results from the production or use of any raw material,

1 intermediate product, finished product, byproduct, or waste
2 product, along with any leachate or runoff from the
3 phosphogypsum stack system. This term does not include
4 contaminated nonprocess wastewater as that term is defined in
5 40 C.F.R. part 418.11(c).

6 (2) REGULATORY PROGRAM.--

7 (a) It is the intent of the Legislature that the
8 department develop a program for the sound and effective
9 regulation of phosphogypsum stack systems in the state. ~~It is~~
10 ~~further the intent of the Legislature that such regulatory~~
11 ~~program include the imposition of an annual registration fee~~
12 ~~on stacks that have not been closed and that such fees be used~~
13 ~~for the purpose of paying the costs of the department's review~~
14 ~~of applications to permit the closure of stack systems or the~~
15 ~~construction of new or expanded stack systems and of the~~
16 ~~department's review of requests for deferral of mandatory~~
17 ~~closure requirements.~~

18 (b) The department shall adopt rules that prescribe
19 acceptable construction designs for new or expanded
20 phosphogypsum stack systems and that prescribe permitting
21 criteria for operation, closure criteria, long-term care
22 requirements, and closure financial responsibility
23 requirements for phosphogypsum stack systems.

24 (3) ABATEMENT OF IMMINENT HAZARD.--

25 (a) The department may take action to abate or
26 substantially reduce any imminent hazard caused by the
27 physical condition, maintenance, operation, or closure of a
28 phosphogypsum stack system.

29 (b) An imminent hazard exists if the physical
30 condition, maintenance, operation, or closure of a
31 phosphogypsum stack system creates an immediate and

1 substantial danger to human health, safety, or welfare or to
2 the environment. A phosphogypsum stack system is presumed not
3 to cause an imminent hazard if the physical condition and
4 operation of the system are in compliance with all applicable
5 department rules.

6 (c) If the department determines that the physical
7 condition, maintenance, operation, or closure of a
8 phosphogypsum stack system poses an imminent hazard, the
9 department shall request access to the property on which such
10 stack system is located from the owner or operator of the
11 stack system for the purposes of taking action to abate or
12 substantially reduce the imminent hazard. If the department,
13 after reasonable effort, is unable to timely obtain the
14 necessary access to abate or substantially reduce the imminent
15 hazard, the department may institute action in its own name,
16 using the procedures and remedies of s. 403.121 or s. 403.131,
17 to abate or substantially reduce an imminent hazard. Whenever
18 serious harm to human health, safety, or welfare, to the
19 environment, or to private or public property may occur prior
20 to completion of an administrative hearing or other formal
21 proceeding that might be initiated to abate the risk of
22 serious harm, the department may obtain from the court, ex
23 parte, an injunction without paying filing and service fees
24 prior to the filing and service of process.

25 (d) To abate or substantially reduce an imminent
26 hazard, the department may take any appropriate action,
27 including, but not limited to, using employees of the
28 department or contracting with other state or federal
29 agencies, with private third-party contractors, or with the
30 owner or operator of the stack system, or financing,
31 compensating, or funding a receiver or trustee of the stack

1 system or of the owner of the stack system, to perform all or
2 part of the work.

3 (e) The department shall recover from the owner or
4 operator of the phosphogypsum stack system to the use of the
5 Nonmandatory Land Reclamation Trust Fund all moneys expended
6 from the fund, including funds expended prior to the effective
7 date of this section, to abate an imminent hazard posed by the
8 phosphogypsum stack system plus a penalty equal to an amount
9 calculated at 30 percent of such funds expended. This penalty
10 shall be imposed annually and prorated from the date of
11 payment from the fund until such time as the expended funds
12 together with this penalty are repaid. If the department
13 prevails in any action to recover funds pursuant to this
14 subsection, it shall be entitled to recover reasonable
15 attorney's fees and costs incurred. No phosphogypsum may be
16 deposited on a stack until all moneys expended from the fund
17 in connection with the stack have been repaid, unless the
18 department determines that such placement is necessary to
19 abate or avoid an imminent hazard or unless otherwise
20 authorized by the department.

21 (f) The department may impose a lien on the real
22 property on which the phosphogypsum stack system that poses an
23 imminent hazard is located and on the real property underlying
24 and other assets located at associated phosphate fertilizer
25 production facilities equal in amount to the moneys expended
26 from the Nonmandatory Land Reclamation Trust Fund pursuant to
27 paragraph (d), including attorney's fees and court costs. The
28 owner of any property on which such a lien is imposed is
29 entitled to a release of the lien upon payment to the
30 department of the lien amount. The lien imposed by this
31 section does not take priority over any other prior perfected

1 lien on the real property, personal property, or other assets
2 referenced in this paragraph, including, but not limited to,
3 the associated phosphate rock mine and reserves.

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

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

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

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

22 4. Within 30 days after a phosphogypsum stack has been
23 certified as closed pursuant to rule 62-673.620(2) and (3),
24 Florida Administrative Code, the department shall refund to
25 the owner of the closed phosphogypsum stack an amount from the
26 Nonmandatory Land Reclamation Trust Fund equal to the total
27 amount of fee payments made by the owner or operator to the
28 fund in connection with the closed phosphogypsum stack, except
29 that any refund becoming payable prior to July 1, 2009, shall
30 be paid to the owner on or after that date.

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1 ~~(a) The total annual registration fees for all~~
2 ~~existing stacks shall be the amount required by the department~~
3 ~~to accomplish the following activities:~~
4 ~~1. Review and processing of a request by an owner of a~~
5 ~~phosphogypsum stack system that it be relieved of any~~
6 ~~mandatory obligation to close the system, or any portion~~
7 ~~thereof, prior to using the system for its entire remaining~~
8 ~~useful life.~~
9 ~~2. Review and processing of an application to~~
10 ~~construct a new or expanded phosphogypsum stack system.~~
11 ~~3. Review and processing of an application to close a~~
12 ~~phosphogypsum stack system, or portion thereof.~~
13 ~~(b) On or before August 1 of each fiscal year, the~~
14 ~~department shall provide written notice to each owner of an~~
15 ~~existing stack of any the annual registration fee payable for~~
16 ~~the 12-month period commencing on the immediately preceding~~
17 ~~July 1 that fiscal year. Each owner shall remit the annual~~
18 ~~registration fee to the department on or before August 31 of~~
19 ~~each year within 30 days after receipt of the notice. The~~
20 ~~notice required by this section shall be accompanied by a~~
21 ~~report prepared by the department presenting the expenditures~~
22 ~~using annual registration fees required by this section made~~
23 ~~by the department during the immediately preceding fiscal year~~
24 ~~and indicating the amount of any unexpended funds.~~
25 ~~(c) The total annual registration fees for all~~
26 ~~existing stacks shall not exceed \$500,000. The annual~~
27 ~~registration fee for each existing stack shall be the amount~~
28 ~~calculated by dividing the maximum total registration fees~~
29 ~~collectible in a particular fiscal year by the total number of~~
30 ~~existing stacks as of June 30 of the immediately preceding~~
31 ~~fiscal year.~~

1 (5) CLOSURE OF ABANDONED SYSTEMS.--
2 (a) The department may expend money from the
3 Nonmandatory Land Reclamation Trust Fund to take all steps
4 necessary to close a phosphogypsum stack system and to carry
5 out postclosure care in accordance with department rules in
6 effect as of the date of commencement of closure activities,
7 subject to the conditions set forth in this subsection. To
8 accomplish such closure and postclosure care, the department
9 may take any appropriate action, including, but not limited
10 to, using employees of the department or contracting with
11 other state or federal agencies, with private third-party
12 contractors, or with the owner or operator of the stack
13 system, to perform all or part of the work.
14 (b) The department may close a phosphogypsum stack
15 system through agreement with the owner or by court order. In
16 determining whether closure is appropriate, the court shall
17 consider whether closing the stack will protect human health,
18 safety, or welfare or the environment; the useful life of the
19 stack; the effect of delaying closure on the stability of the
20 fund; the likelihood that the stack will be operated again;
21 and any other relevant factors. If the court finds that
22 closure is appropriate, the court may appoint a receiver to
23 oversee the closure or shall authorize department employees,
24 agents, and contractors to enter all land owned by the owner
25 of the phosphogypsum stack system for the performance of
26 closure and postclosure activities.
27 (c) The department may impose a lien on the real
28 property on which a closed phosphogypsum stack system is
29 located and on the real property underlying and other assets
30 located at its formerly associated phosphate fertilizer
31 production facilities equal in amount to the moneys expended

1 from the Nonmandatory Land Reclamation Trust Fund pursuant to
2 this subsection for closure and postclosure care. The owner of
3 any property on which such a lien is imposed is entitled to a
4 release of the lien upon payment to the department of the lien
5 amount and execution of an agreement to carry out postclosure
6 care in accordance with applicable department rules. The lien
7 imposed by this section does not take priority over any other
8 prior perfected lien on the real property, personal property,
9 or other assets referenced in this paragraph, including, but
10 not limited to, the associated phosphate rock mine and
11 reserves.

12 Section 4. Section 403.4155, Florida Statutes, is
13 amended to read:

14 403.4155 Phosphogypsum management; rulemaking
15 authority.--

16 (1) ~~By July 1, 1999,~~The Department of Environmental
17 Protection shall adopt rules to amend existing chapter 62-672,
18 Florida Administrative Code, to ensure that impoundment
19 structures and water conveyance piping systems used in
20 phosphogypsum management are designed and maintained to meet
21 critical safety standards. The rules must require that any
22 impoundment structure used in a phosphogypsum stack system,
23 together with all pumps, piping, ditches, drainage
24 conveyances, water control structures, collection pools,
25 cooling ponds, surge ponds, and any other collection or
26 conveyance system associated with phosphogypsum transport,
27 cooling water, or the return of process wastewater, is
28 constructed using sound engineering practices and is operated
29 to avoid spills or discharges of materials which adversely
30 affect surface or ground waters. The rules must require that a
31 phosphogypsum stack system owner maintain a log detailing the

1 owner's operating inspection schedule, results, and any
2 corrective action taken based on the inspection results. The
3 rules must require phosphogypsum stack owners to maintain an
4 emergency contingency plan and demonstrate the ability to
5 mobilize equipment and manpower to respond to emergency
6 situations at phosphogypsum stack systems. The rules must
7 establish a reasonable time period not to exceed 12 months for
8 facilities to meet the provisions of the rules adopted
9 pursuant to this section.

10 (2) By January 31, 2002, the department shall review
11 chapter 62-673, Florida Administrative Code, to determine the
12 adequacy of the financial responsibility provisions contained
13 in the rules and shall take any measures necessary to ensure
14 that the rules provide sound and effective provisions to
15 minimize risk to the environment and to public health and
16 safety from the business failure of a phosphogypsum stack
17 system.

18 Section 5. There is hereby appropriated \$16 million
19 from the Nonmandatory Land Reclamation Trust Fund to the
20 Department of Environmental Protection for fiscal year
21 2001-2002 to carry out the purposes authorized in s. 378.035,
22 Florida Statutes.

23 Section 6. This act shall take effect July 1, 2001.
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