

By the Committee on Natural Resources and Senator Laurent

312-1721-01

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.; deleting provisions exempting
15 certain mining operations from review as
16 developments of regional impact; amending s.
17 403.4154, F.S.; defining the terms
18 "phosphogypsum stack system" and "process
19 wastewater"; authorizing the Department of
20 Environmental Protection to take action to
21 abate or reduce any imminent hazard caused by a
22 phosphogypsum stack system; requiring the
23 department to recover moneys from the owner or
24 operator of the system; providing for
25 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 effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

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

14 378.035 Department responsibilities and duties with
15 respect to Nonmandatory Land Reclamation Trust Fund.--

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

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

1 affected parties. Paragraph (3)(b) shall apply to lands
2 acquired as a result of a lien foreclosure.

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

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

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

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

28 378.601 Heavy minerals.--

29 (5) Any heavy mineral mining operation which annually
30 mines less than 500 acres and whose proposed consumption of
31 water is 3 million gallons per day or less shall not be

1 required to undergo development of regional impact review
2 pursuant to s. 380.06, provided permits and plan approvals
3 pursuant to either this section and part IV of chapter 373, or
4 s. 378.901, are issued. ~~This subsection applies only in the~~
5 ~~following circumstances:~~

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

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

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

17 403.4154 Phosphogypsum management program.--

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

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

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

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

28
29 The term "existing stack" does not include a phosphogypsum
30 stack that has been closed pursuant to a department permit or
31 order.

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

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

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

26 (f) "Process wastewater" means any water that, during
27 manufacturing or processing, comes into direct contact with or
28 results from the production or use of any raw material,
29 intermediate product, finished product, byproduct, or waste
30 product, along with any leachate or runoff from the
31 phosphogypsum stack system. This term does not include

1 contaminated nonprocess wastewater as that term is defined in
2 40 C.F.R. part 418.11(c).

3 (2) REGULATORY PROGRAM.--

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

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

21 (3) ABATEMENT OF IMMINENT HAZARD.--

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

26 (b) An imminent hazard exists if the physical
27 condition, maintenance, operation, or closure of a
28 phosphogypsum stack system creates an immediate and
29 substantial danger to human health, safety, or welfare or to
30 the environment. A phosphogypsum stack system is presumed not
31 to cause an imminent hazard if the physical condition and

1 operation of the system are in compliance with all applicable
2 department rules.

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

22 (d) To abate or substantially reduce an imminent
23 hazard, the department may take any appropriate action,
24 including, but not limited to, using employees of the
25 department or contracting with other state or federal
26 agencies, with private third-party contractors, or with the
27 owner or operator of the stack system to perform all or part
28 of the work.

29 (e) The department shall recover from the owner or
30 operator of the phosphogypsum stack system to the use of the
31 Nonmandatory Land Reclamation Trust Fund all moneys expended

1 from the fund, including funds expended prior to July 1, 2001,
2 to abate an imminent hazard posed by the phosphogypsum stack
3 system plus 30 percent annual interest on such funds following
4 the date of payment from the fund. If the department prevails
5 in any action to recover funds pursuant to this subsection, it
6 may recover reasonable attorney's fees and costs incurred.
7 Phosphogypsum may not be deposited on a stack until all moneys
8 expended from the fund in connection with the stack have been
9 repaid, unless the department determines that such placement
10 is necessary to abate or avoid an imminent hazard or unless
11 otherwise authorized by the department.

12 (f) The department may impose a lien on the real
13 property on which the phosphogypsum stack system that poses an
14 imminent hazard is located and on the real property underlying
15 and other assets located at associated phosphate fertilizer
16 production facilities equal in amount to the moneys expended
17 from the Nonmandatory Land Reclamation Trust Fund pursuant to
18 paragraph (d), including attorney's fees and court costs. The
19 owner of any property on which such a lien is imposed is
20 entitled to a release of the lien upon payment to the
21 department of the lien amount. The lien imposed by this
22 section does not take priority over any other prior perfected
23 lien on the real property, personal property, or other assets
24 referenced in this paragraph, including, but not limited to,
25 the associated phosphate rock mine and reserves.

26 (4)(3) REGISTRATION FEES.--

27 (a)1. The owner or operator of each existing
28 phosphogypsum stack who has not provided a performance bond,
29 letter of credit, trust fund agreement, or closure insurance
30 to demonstrate financial responsibility for closure and
31 long-term care shall pay to the department a fee as set forth

1 in this paragraph. All fees shall be deposited in the
2 Nonmandatory Land Reclamation Trust Fund.

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

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

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

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

25 ~~1. Review and processing of a request by an owner of a~~
26 ~~phosphogypsum stack system that it be relieved of any~~
27 ~~mandatory obligation to close the system, or any portion~~
28 ~~thereof, prior to using the system for its entire remaining~~
29 ~~useful life.~~

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

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

3 (b) On or before August 1 of each fiscal year, the
4 department shall provide written notice to each owner of an
5 existing stack of any ~~the annual registration~~ fee payable for
6 the 12-month period commencing on the immediately preceding
7 July 1 ~~that fiscal year~~. Each owner shall remit the ~~annual~~
8 registration fee to the department on or before August 31 of
9 each year ~~within 30 days after receipt of the notice~~. The
10 ~~notice required by this section shall be accompanied by a~~
11 ~~report prepared by the department presenting the expenditures~~
12 ~~using annual registration fees required by this section made~~
13 ~~by the department during the immediately preceding fiscal year~~
14 ~~and indicating the amount of any unexpended funds.~~

15 ~~(c) The total annual registration fees for all~~
16 ~~existing stacks shall not exceed \$500,000. The annual~~
17 ~~registration fee for each existing stack shall be the amount~~
18 ~~calculated by dividing the maximum total registration fees~~
19 ~~collectible in a particular fiscal year by the total number of~~
20 ~~existing stacks as of June 30 of the immediately preceding~~
21 ~~fiscal year.~~

22 (5) CLOSURE OF ABANDONED SYSTEMS.--

23 (a) The department may expend money from the
24 Nonmandatory Land Reclamation Trust Fund to take all steps
25 necessary to close a phosphogypsum stack system and to carry
26 out postclosure care in accordance with department rules in
27 effect as of the date of commencement of closure activities,
28 subject to the conditions set forth in this subsection. To
29 accomplish such closure and postclosure care, the department
30 may take any appropriate action, including, but not limited
31 to, using employees of the department or by contracting with

1 other state or federal agencies, with private third-party
2 contractors, or with the owner or operator of the stack
3 system, to perform all or part of the work.

4 (b) The department may close a phosphogypsum stack
5 system through agreement with the owner or by court order. In
6 determining whether closure is appropriate, the court shall
7 consider whether closing the stack will protect human health,
8 safety, or welfare or the environment; the useful life of the
9 stack; the effect of delaying closure on the stability of the
10 fund; the likelihood that the stack will be operated again;
11 and any other relevant factors. If the court finds that
12 closure is appropriate, the court may appoint a receiver to
13 oversee the closure or shall authorize department employees,
14 agents, and contractors to enter all land owned by the owner
15 of the phosphogypsum stack system for the performance of
16 closure and postclosure activities.

17 (c) The department may impose a lien on the real
18 property on which a closed phosphogypsum stack system is
19 located and on the real property underlying and other assets
20 located at its formerly associated phosphate fertilizer
21 production facilities equal in amount to the moneys expended
22 from the Nonmandatory Land Reclamation Trust Fund pursuant to
23 this subsection for closure and postclosure care. The owner of
24 any property on which such a lien is imposed is entitled to a
25 release of the lien upon payment to the department of the lien
26 amount and execution of an agreement to carry out postclosure
27 care in accordance with applicable department rules. The lien
28 imposed by this section does not take priority over any other
29 prior perfected lien on the real property, personal property,
30 or other assets referenced in this paragraph, including, but

31

1 not limited to, the associated phosphate rock mine and
2 reserves.

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

5 403.4155 Phosphogypsum management; rulemaking
6 authority.--

7 (1) ~~By July 1, 1999,~~The Department of Environmental
8 Protection shall adopt rules to amend existing chapter 62-672,
9 Florida Administrative Code, to ensure that impoundment
10 structures and water conveyance piping systems used in
11 phosphogypsum management are designed and maintained to meet
12 critical safety standards. The rules must require that any
13 impoundment structure used in a phosphogypsum stack system,
14 together with all pumps, piping, ditches, drainage
15 conveyances, water control structures, collection pools,
16 cooling ponds, surge ponds, and any other collection or
17 conveyance system associated with phosphogypsum transport,
18 cooling water, or the return of process wastewater, is
19 constructed using sound engineering practices and is operated
20 to avoid spills or discharges of materials which adversely
21 affect surface or ground waters. The rules must require that a
22 phosphogypsum stack system owner maintain a log detailing the
23 owner's operating inspection schedule, results, and any
24 corrective action taken based on the inspection results. The
25 rules must require phosphogypsum stack owners to maintain an
26 emergency contingency plan and demonstrate the ability to
27 mobilize equipment and manpower to respond to emergency
28 situations at phosphogypsum stack systems. The rules must
29 establish a reasonable time period not to exceed 12 months for
30 facilities to meet the provisions of the rules adopted
31 pursuant to this section.

1 (2) By January 31, 2002, the department shall review
2 chapter 62-673, Florida Administrative Code, to determine the
3 adequacy of the financial-responsibility provisions contained
4 in the rules and shall take any measures necessary to ensure
5 that the rules provide sound and effective provisions to
6 minimize risk to the environment and to public health and
7 safety from the business failure of a phosphogypsum stack
8 system.

9 Section 5. This act shall take effect July 1, 2001.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1376

4 The CS does not create the PSSSATF; rather the NLRTF will be
5 used to house and disburse funds pursuant to the act. The CS
6 also increases, from \$30 million to \$50 million, the amount
7 that is reserved in the NLRTF for reclamation and permits the
8 DEP to spend the reserved funds for abatement of eminent
9 hazards and closure and post-closure care of abandoned stack
10 systems. Stack registration fees may also be used for such
11 purposes, but only if the activities commence on or after July
12 1, 2002.

13 Provisions in SB 1376 that allowed a \$10 million transfer from
14 the NLRTF to the PSSSATF are deleted.

15 The CS requires the Bureau of Mine Reclamation to review the
16 sufficiency of the NLRTF to support the program established by
17 the act and to annually report to the DEP its recommendations.
18 For 2008, the report must specifically address the effect of
19 providing refunds to owners of closed stacks in the future.
20 The report must be submitted to the Governor and Legislature
21 by March 1, 2009.

22 Provisions authorizing the DEP to provide financial assistance
23 to abate or reduce an eminent hazard have been expanded to
24 take any appropriate action necessary to abate or reduce an
25 eminent hazard, including using the DEP's employees, or
26 contracting with other state or federal agencies, private
27 contractors, or with the owner or operator of the stack
28 system.

29 A requirement for notice to be issued to the owner of a stack
30 system posing an eminent hazard has been deleted. Instead, if
31 the DEP determines that the physical condition, maintenance,
operation, or closure of a stack system poses an eminent
hazard, the DEP must request access to the property in order
to take necessary action. If access is denied, the DEP may
seek judicial enforcement. If serious harm may occur prior to
the completion of a formal proceeding, the DEP may obtain, ex
parte, an injunction without paying filing and service fees
prior to the filing or service of process.

Provisions directing the DEP to recover funds expended to
abate an eminent hazard from the owner of the stack have been
modified. The CS increases the rate of interest to be charged
from 15 percent to 30 percent and now applies the requirement
to funds expended prior to July 1, 2001.

The CS clarifies that a lien imposed on the stack system and
production facilities to recover funds expended to abate an
eminent hazard does not take priority over other prior
perfected liens.

Provisions providing for annual registration fees have been
changed. Registration fees are not required of stack owners or
operators if specified types of financial responsibility for
closure and long-term care are provided to the DEP. If
imposed, the annual fee will be \$75,000 for each of the first

1 five years following July 1, 2001; there will be no further
2 fees imposed. Fees will be deposited into the NLRTF. Any
3 refund due the owner of a closed stack becoming payable prior
4 to Jul 1, 2009, will be paid on or after that date.

5 Provisions relating to the closure of abandoned stack systems
6 have been changed. The CS provides for closure through
7 agreement with the owner or by court order. The bill provides
8 criteria for a court to consider when determining whether a
9 stack should be closed, and if it is to be closed the court
10 may appoint a receiver to oversee the closure or authorize the
11 DEP, agents, and contractors to enter the land for closure and
12 postclosure activities.

13 The CS authorizes the DEP to impose a lien on the real
14 property associated with a stack and production facilities to
15 recover amounts expended for closure and postclosure care.
16 Such a lien does not take priority over any other prior
17 perfected lien.

18 The CS also requires the DEP, by January 31, 2002, to review
19 ch. 62-673, F.A.C., to determine the adequacy of the financial
20 responsibility provisions in the administrative rules and take
21 any action necessary to ensure the rules properly minimize
22 risks due to business failure of a stack system.

23 Finally, s. 378.601, F.S., is amended to delete provisions
24 providing conditions for exempting certain small mining
25 operations from review as developments of regional impact.

26
27
28
29
30
31