

By the Committee on Natural Resources; and Senator Alexander

312-2150-03

1 A bill to be entitled
2 An act relating to phosphate mining; amending
3 s. 211.3103, F.S.; amending the tax on
4 phosphate rock; providing for the distribution
5 of tax proceeds; deleting obsolete language;
6 providing for a sunset; amending s. 378.021,
7 F.S.; directing the Department of Environmental
8 Protection to amend the master reclamation
9 plan; amending s. 378.031, F.S.; providing
10 additional intent concerning reclamation
11 activities; amending s. 378.035, F.S.; amending
12 authorized uses of funds deposited in the
13 Nonmandatory Land Reclamation Trust Fund;
14 providing for bonding authority; amending s.
15 378.036, F.S.; creating a not-for-profit
16 partnership to assist in phosphate reclamation;
17 providing duties of the partnership; providing
18 for the administration of partnership funds;
19 amending s. 378.212; providing authority for a
20 variance for certain reclamation activities;
21 amending s. 403.4154, F.S.; providing criminal
22 penalties for certain violations; prohibiting
23 the distribution of certain company assets
24 under certain circumstances; providing for the
25 declaration of an imminent hazard if certain
26 financial conditions exist; deleting a
27 provision granting certain rebates of phosphate
28 fees; amending s. 403.4155, F.S.; directing
29 that rules be developed for financial
30 assurance, interim stack management, and stack
31 closure; requiring the Southwest Florida Water

1 Management District to conduct a study;
2 providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 211.3103, Florida Statutes, is
7 amended to read:

8 211.3103 Levy of tax on severance of phosphate rock;
9 rate, basis, and distribution of tax.--

10 (1) There is hereby levied an excise tax upon every
11 person engaging in the business of severing phosphate rock
12 from the soils or waters of this state for commercial use. The
13 tax shall be collected, administered, and enforced by the
14 department.

15 (2) Beginning July 1, 2003, the proceeds of all taxes,
16 interest, and penalties imposed under this section shall be
17 paid into the State Treasury as follows:

18 (a) The first \$10 million in revenue collected from
19 the tax during each fiscal year shall be paid to the credit of
20 the Conservation and Recreation Lands Trust Fund.

21 (b) The remaining revenues collected from the tax
22 during that fiscal year, after the required payment under
23 paragraph (a), shall be paid into the State Treasury as
24 follows:

25 1. To the credit of the Nonmandatory Land Reclamation
26 Trust Fund, 58 percent.

27 2. For payment to counties in proportion to the number
28 of tons of phosphate rock produced from a phosphate rock
29 matrix located within such political boundary, 26 percent. The
30 department shall distribute this portion of the proceeds

31

1 annually based on production information reported by the
2 producers on the annual returns for the taxable year.

3 3. To the credit of the Phosphate Research Trust Fund
4 in the Department of Education, Division of Universities, 8
5 percent.

6 4. To the credit of the Minerals Trust Fund, 8
7 percent.

8 (c) Funds distributed pursuant to subparagraph 2.
9 shall be used for the following purposes:

10 1. For planning, preparing, and financing of
11 infrastructure projects for job creation and capital
12 investment, especially those related to industrial and
13 commercial sites. Infrastructure investments may include the
14 following public or public-private partnership facilities:
15 stormwater systems; telecommunications facilities; roads or
16 other remedies to transportation impediments; nature-based
17 tourism facilities; or other physical requirements necessary
18 to facilitate trade and economic development activities.

19 2. For maximizing the use of federal, local, and
20 private resources, including, but not limited to, those
21 available under the Small Cities Community Development Block
22 Grant Program.

23 3. For projects that improve inadequate infrastructure
24 that has resulted in regulatory action that prohibits economic
25 or community growth, provided that such projects are related
26 to specific job creation or job retention opportunities.

27 (3) Beginning July 1, 2003, the tax rate shall be the
28 base rate of \$1.62 per ton severed.

29 (4) Beginning July 1, 2004, and annually thereafter,
30 the tax rate shall be the base rate times the base rate
31

1 adjustment for the tax year as calculated by the department in
2 accordance with subsection (6).

3 ~~(2) The proceeds of all taxes, interest, and penalties~~
4 ~~imposed under this section shall be paid into the State~~
5 ~~Treasury through June 30, 1995, as follows:~~

6 ~~(a) The first \$10 million in revenue collected from~~
7 ~~the tax during each fiscal year shall be paid to the credit of~~
8 ~~the Conservation and Recreation Lands Trust Fund.~~

9 ~~(b) The remaining revenues collected from the tax~~
10 ~~during that fiscal year, after the required payment under~~
11 ~~paragraph (a), shall be paid into the State Treasury as~~
12 ~~follows:~~

13 ~~1. To the credit of the General Revenue Fund of the~~
14 ~~state, 60 percent. However, from this amount the amounts of~~
15 ~~\$7.4 million, \$8.2 million, and \$8.1 million, respectively,~~
16 ~~shall be transferred to the Nonmandatory Land Reclamation~~
17 ~~Trust Fund on January 1, 1993, January 1, 1994, and January 1,~~
18 ~~1995.~~

19 ~~2. To the credit of the Nonmandatory Land Reclamation~~
20 ~~Trust Fund which is established for reclamation and~~
21 ~~acquisition of unreclaimed lands disturbed by phosphate mining~~
22 ~~and not subject to mandatory reclamation, 20 percent.~~

23 ~~3. To the credit of the Phosphate Research Trust Fund~~
24 ~~in the Department of Education, Division of Universities, to~~
25 ~~carry out the purposes set forth in s. 378.101, 10 percent.~~

26 ~~4. For payment to counties in proportion to the number~~
27 ~~of tons of phosphate rock produced from a phosphate rock~~
28 ~~matrix located within such political boundary, 10 percent. The~~
29 ~~department shall distribute this portion of the proceeds~~
30 ~~annually based on production information reported by producers~~
31 ~~on the annual returns for the taxable year. Any such proceeds~~

1 ~~received by a county shall be used only for phosphate-related~~
2 ~~expenses.~~

3 ~~(3) Beginning July 1, 1995, the proceeds of all taxes,~~
4 ~~interest, and penalties imposed under this section shall be~~
5 ~~paid into the State Treasury as follows:~~

6 ~~(a) The first \$10 million in revenue collected from~~
7 ~~the tax during each fiscal year shall be paid to the credit of~~
8 ~~the Conservation and Recreation Lands Trust Fund.~~

9 ~~(b) The remaining revenues collected from the tax~~
10 ~~during that fiscal year, after the required payment under~~
11 ~~paragraph (a), shall be paid into the State Treasury as~~
12 ~~follows:~~

13 ~~1. To the credit of the General Revenue Fund of the~~
14 ~~state, 58 percent.~~

15 ~~2. To the credit of the Nonmandatory Land Reclamation~~
16 ~~Trust Fund for reclamation and acquisition of unreclaimed~~
17 ~~lands disturbed by phosphate mining and not subject to~~
18 ~~mandatory reclamation, 14.5 percent.~~

19 ~~3. To the credit of the Phosphate Research Trust Fund~~
20 ~~in the Department of Education, Division of Universities, to~~
21 ~~carry out the purposes set forth in s. 378.101, 10 percent.~~

22 ~~4. For payment to counties in proportion to the number~~
23 ~~of tons of phosphate rock produced from a phosphate rock~~
24 ~~matrix located within such political boundary, 10 percent. The~~
25 ~~department shall distribute this portion of the proceeds~~
26 ~~annually based on production information reported by producers~~
27 ~~on the annual returns for the taxable year. Any such proceeds~~
28 ~~received by a county shall be used only for phosphate-related~~
29 ~~expenses.~~

30 ~~5. To the credit of the Minerals Trust Fund, 7.5~~
31 ~~percent.~~

1 ~~(4) If the base rate is reduced pursuant to paragraph~~
2 ~~(5)(c), then the proceeds of the tax shall be paid into the~~
3 ~~State Treasury as follows:~~
4 ~~(a) The first \$10 million in revenue collected from~~
5 ~~the tax during each fiscal year shall be paid to the credit of~~
6 ~~the Conservation and Recreation Lands Trust Fund.~~
7 ~~(b) The remaining revenues collected from the tax~~
8 ~~during that fiscal year, after the required payment under~~
9 ~~paragraph (a), shall be paid into the State Treasury as~~
10 ~~follows:~~
11 ~~1. To the credit of the General Revenue Fund of the~~
12 ~~state, 55.15 percent.~~
13 ~~2. To the credit of the Phosphate Research Trust Fund~~
14 ~~in the Department of Education, Division of Universities, 12.5~~
15 ~~percent.~~
16 ~~3. For payment to counties in proportion to the number~~
17 ~~of tons of phosphate rock produced from a phosphate rock~~
18 ~~matrix located within such political boundary, 18 percent. The~~
19 ~~department shall distribute this portion of the proceeds~~
20 ~~annually based on production information reported by producers~~
21 ~~on the annual returns for the taxable year. Any such proceeds~~
22 ~~received by a county shall be used only for phosphate-related~~
23 ~~expenses.~~
24 ~~4. To the credit of the Minerals Trust Fund, 14.35~~
25 ~~percent.~~
26 (5) The excise tax levied by this section shall apply
27 to the total production of the producer during the taxable
28 year, measured on the basis of bone-dry tons produced at the
29 point of severance, subject to the following rates:
30 ~~(a) Beginning July 1, 1987, to December 31, 1987, the~~
31 ~~tax rate shall be \$1.79 per ton severed.~~

1 ~~(b) For 1988, the tax rate shall be the base rate of~~
2 ~~\$1.35 per ton severed.~~

3 ~~(c) For 1989 and subsequent years, the tax rate shall~~
4 ~~be the base rate times the base rate adjustment for the tax~~
5 ~~year as calculated by the department in accordance with~~
6 ~~subsection (6). However, for 2000 and subsequent taxable~~
7 ~~years, the base rate shall be reduced by 20 percent, unless~~
8 ~~additional funding of the Nonmandatory Land Reclamation Trust~~
9 ~~Fund is approved by law.~~

10 (6)(a) On or before March 30, 2004 ~~1989~~, and annually
11 thereafter, the department shall calculate the base rate
12 adjustment, if any, for phosphate rock based on the change in
13 the unadjusted annual producer price index for the prior
14 calendar year in relation to the unadjusted annual producer
15 price index for calendar year 1999 ~~1987~~.

16 (b) For the purposes of determining the base rate
17 adjustment for any year, the base rate adjustment shall be a
18 fraction, the numerator of which is the unadjusted annual
19 producer price index for the prior calendar year and the
20 denominator of which is the unadjusted annual producer price
21 index for calendar year 1999 ~~1987~~.

22 (c) The department shall provide the base rate, the
23 base rate adjustment, and the resulting tax rate to affected
24 producers by written notice on or before April 15 of the
25 current year.

26 (d) If the producer price index for phosphate rock
27 primary products is substantially revised, the department
28 shall make appropriate adjustment in the method used to
29 compute the base rate adjustment under this subsection which
30 will produce results reasonably consistent with the result
31 which would have been obtained if the producer price index for

1 phosphate rock primary products had not been revised. However,
2 the tax rate shall not be less than \$1.56 per ton severed.

3 (e) In the event the producer price index for
4 phosphate rock primary products is discontinued, then a
5 comparable index shall be selected by the department and
6 adopted by rule.

7 (7) The excise tax levied on the severance of
8 phosphate rock shall be in addition to any ad valorem taxes
9 levied upon the separately assessed mineral interest in the
10 real property upon which the site of severance is located, or
11 any other tax, permit, or license fee imposed by the state or
12 its political subdivisions.

13 (8) The tax levied by this section shall be collected
14 in the manner prescribed in s. 211.33.

15 (9) The provisions of subsection (2) shall expire July
16 1, 2006.

17 Section 2. Section 378.021, Florida Statutes, is
18 amended to read:

19 378.021 Master reclamation plan.--

20 (1) The Department of Environmental Protection ~~Natural~~
21 ~~Resources~~ shall amend the ~~adopt by rule, as expeditiously as~~
22 ~~possible upon receipt of the report of the Land Use Advisory~~
23 ~~Committee, a~~ master reclamation plan that provides ~~to provide~~
24 guidelines for the reclamation of lands mined or disturbed by
25 the severance of phosphate rock prior to July 1, 1975, which
26 lands are not subject to mandatory reclamation under part II
27 of chapter 211. In amending the ~~developing said~~ master
28 reclamation plan, the Department of Environmental Protection
29 ~~Natural Resources~~ shall continue to conduct an onsite
30 evaluation of all lands mined or disturbed by the severance of
31 phosphate rock prior to July 1, 1975, which lands are not

1 subject to mandatory reclamation under part II of chapter 211,
2 and shall consider the report and plan prepared by the Land
3 Use Advisory Committee under s. 378.011 and submitted to the
4 former Department of Natural Resources for adoption by rule on
5 or before July 1, 1979. The master reclamation plan when
6 amended ~~adopted~~ by the Department of Environmental Protection
7 ~~Natural Resources~~ shall be consistent with local government
8 plans prepared pursuant to the Local Government Comprehensive
9 Planning and Land Development Regulation Act.

10 (2) The amended master reclamation plan shall identify
11 which of the lands mined or disturbed by the severance of
12 phosphate rock prior to July 1, 1975, meet the following
13 criteria:

14 (a) The quality of surface waters leaving the land
15 does not meet applicable water quality standards, if any; or,
16 health and safety hazards exist on the land; or, the soil has
17 not stabilized and revegetated; or, the remaining natural
18 resources associated with the land are not being conserved;

19 (b) The environmental or economic utility or aesthetic
20 value of the land would not naturally return within a
21 reasonable time, and reclamation would substantially promote
22 the environmental or economic utility or the aesthetic value
23 of the land; ~~and~~

24 (c) The reclamation of the land is in the public
25 interest because the reclamation, when combined with other
26 reclamation under the master plan, would provide a substantial
27 regional benefit; ~~and~~

28 (d) The reclamation of the land is in the public
29 interest because the reclamation, when combined with other
30 reclamation under the master plan, will provide significant
31 benefits to surface water bodies supplying water for

1 environmental and public purposes in those areas of the state
2 where phosphate mining has been permitted.

3 (3) Lands evaluated by the department under subsection
4 (1) which meet the criteria set forth in subsection (2) shall
5 be identified with specificity in the master reclamation plan.
6 Lands evaluated by the department under subsection (1) which
7 do not meet the criteria set forth in subsection (2) shall
8 also be identified with specificity in the master reclamation
9 plan as lands which are acceptable in their present form.

10 (4) Upon adoption of the amendments to the master
11 reclamation plan as a rule, such plan shall provide the
12 guidelines for approval of reclamation programs for lands
13 covered in the plan, recognizing that reclamation of such
14 lands is not mandatory, but that any payment of costs expended
15 for reclamation paid under s. 378.031 shall be contingent upon
16 conformity with the guidelines set forth in the master
17 reclamation plan.

18 Section 3. Section 378.031, Florida Statutes, is
19 amended to read:

20 378.031 Reclamation or acquisition of nonmandatory
21 lands; legislative intent.--It is the intent of the
22 Legislature to provide an economic incentive to encourage the
23 reclamation of the maximum number of acres of eligible
24 nonmandatory lands in the most timely and efficient manner or
25 the donation or purchase of nonmandatory lands, especially
26 those lands for which reclamation activities will result in
27 significant improvements to surface water bodies of regional
28 importance in those areas of the state where phosphate mining
29 has been permitted. The Legislature recognizes that certain
30 lands mined or disturbed prior to July 1, 1975, have been
31 naturally reclaimed.

1 Section 4. Subsections (5), (8), and (9) of section
2 378.035, Florida Statutes, are amended, and subsection (10) is
3 added to that section, to read:

4 378.035 Department responsibilities and duties with
5 respect to Nonmandatory Land Reclamation Trust Fund.--

6 (5) ~~On July 1, 2001, \$50 million of the unencumbered~~
7 Funds within the Nonmandatory Land Reclamation Trust Fund are
8 also authorized reserved for use by the department for the
9 following purposes:-

10 (a) ~~These reserved moneys are to be used~~ To reclaim
11 lands disturbed by the severance of phosphate rock on or after
12 July 1, 1975, in the event that a mining company ceases mining
13 and the associated reclamation prior to all lands disturbed by
14 the operation being reclaimed. Moneys expended by the
15 department to accomplish reclamation pursuant to this
16 subsection shall become a lien upon the property enforceable
17 pursuant to chapter 85. The moneys received as a result of a
18 lien foreclosure or as repayment shall be deposited into the
19 trust fund. In the event the money received as a result of
20 lien foreclosure or repayment is less than the amount expended
21 for reclamation, the department shall use all means available
22 to recover, for the use of the fund, the difference from the
23 affected parties. Paragraph (3)(b) shall apply to lands
24 acquired as a result of a lien foreclosure.

25 (b) ~~The department may also expend funds from the \$50~~
26 ~~million reserve fund~~ For the abatement of an imminent hazard
27 as provided by s. 403.4154(4)(3) and for the purpose of
28 closing an abandoned phosphogypsum stack system and carrying
29 out postclosure care as provided by s. 403.4154(6)(5). ~~Fees~~
30 ~~deposited in the Nonmandatory Land Reclamation Trust Fund~~
31 ~~pursuant to s. 403.4154(4) may be used for the purposes~~

1 ~~authorized in this paragraph. However, such fees may only be~~
2 ~~used at a stack system if closure or imminent-hazard-abatement~~
3 ~~activities initially commence on or after July 1, 2002.~~

4 (8) The department may not accept any applications for
5 nonmandatory land reclamation programs after July 1, 2004
6 ~~November 1, 2008.~~

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

18 (10) The department may, upon its determination,
19 petition the State Board of Administration for the issuance of
20 bonds to carry out its responsibilities pursuant to paragraph
21 (5)(b). The total amount of bonds issued pursuant to this
22 authority may not exceed \$25 million. Revenues credited to the
23 Nonmandatory Land Reclamation Trust Fund shall be used to fund
24 any issuance or debt obligations.

25 Section 5. Subsection (6) is added to section 378.036,
26 Florida Statutes, to read:

27 378.036 Land acquisitions financed by Nonmandatory
28 Land Reclamation Trust Fund moneys.--

29 (6) By January 1, 2004, or within 6 months from the
30 date funds become available from the Legislature, whichever is
31 later, the Florida Wildlife Federation, Audubon Florida, and

1 Rails-to-Trails Conservancy in partnership with the Florida
2 Phosphate Council are authorized to form a nonprofit
3 corporation pursuant to chapter 617 for the purpose of
4 implementing the provisions of this section by creating plans
5 and assisting in the development of recreational opportunities
6 on lands mined for phosphate in the state. The first plans
7 shall concentrate on recreational activities in Hardee and
8 Hamilton Counties that will assist them in rural economic
9 development. The board of directors of the corporation shall
10 be composed of three members, one designated by the Florida
11 Phosphate Council, one as the designee of the Florida Wildlife
12 Federation, Audubon Florida, and Rails-to-Trails Conservancy,
13 and the third chosen by the other two designees. The business
14 of the corporation shall be conducted by the board of
15 directors or a chief executive officer as the board shall see
16 fit in accordance with the provisions of its articles of
17 incorporation and applicable law. The activities of the
18 corporation shall be coordinated with all landowners who have
19 voluntarily agreed to participate in the process as well as
20 any local government where such lands are recorded. An annual
21 report of the activities of the corporation, including a
22 certified audit, shall be presented to the Secretary of
23 Environmental Protection or his or her designee by October 31
24 of each year following incorporation. The corporation shall
25 dissolve on January 1, 2009, unless dissolved previously by
26 action of its board of directors or extended by the
27 Legislature. Upon dissolution, any moneys remaining in the
28 accounts of the corporation that are unobligated shall be
29 returned to the funds from which they were appropriated in
30 proportion to the amount contributed. All tangible assets of
31 the corporation at dissolution which were acquired using state

1 funding shall become the property of the Department of
2 Environmental Protection.

3 Section 6. Paragraph (g) is added to subsection (1) of
4 section 378.212, Florida Statutes, to read:

5 378.212 Variances.--

6 (1) Upon application, the secretary may grant a
7 variance from the provisions of this part or the rules adopted
8 pursuant thereto. Variances and renewals thereof may be
9 granted for any one of the following reasons:

10 (g) To accommodate reclamation that provides for
11 stormwater management, water supply development, water
12 resource development, wildlife habitat, or recreation
13 consistent with the applicable regional water supply plan
14 approved pursuant to s. 373.0361, provided that regional water
15 resources are not adversely affected.

16 Section 7. Subsections (2), (3), and (4) of section
17 403.4154, Florida Statutes, are amended to read:

18 403.4154 Phosphogypsum management program.--

19 (2) REGULATORY PROGRAM.--

20 (a) It is the intent of the Legislature that the
21 department develop a program for the sound and effective
22 regulation of phosphogypsum stack systems in the state.

23 (b) The department shall adopt rules that prescribe
24 acceptable construction designs for new or expanded
25 phosphogypsum stack systems and that prescribe permitting
26 criteria for operation, ~~closure criteria~~, long-term-care
27 requirements, and closure financial responsibility
28 requirements for phosphogypsum stack systems.

29 (c) Whoever willfully, knowingly, or with reckless
30 indifference or gross carelessness misstates or misrepresents
31 the financial condition or closure costs of an entity engaged

1 in managing, owning, or operating a phosphogypsum stack or
2 stack system commits a felony of the third degree, punishable
3 as provided in s. 775.082 or s. 775.083 by a fine of not more
4 than \$50,000 and by imprisonment for 5 years for each offense.

5 (d) Corporate officers, owners, and operators of a
6 phosphogypsum stack or stack system are prohibited from
7 issuing dividends or making other distributions from retained
8 earnings in the event of a failure of the owner or operator to
9 meet the financial responsibility tests for phosphogypsum
10 stack operations. Whoever willfully, knowingly, or with
11 reckless indifference or gross carelessness, violates this
12 prohibition commits a felony of the third degree, punishable
13 as provided in s. 775.082 or s. 775.083 by a fine of not more
14 than \$50,000 and by imprisonment for 5 years for each offense.

15 (3) ABATEMENT OF IMMINENT HAZARD.--

16 (a) The department may take action to abate or
17 substantially reduce any imminent hazard caused by the
18 physical condition, maintenance, operation, or closure of a
19 phosphogypsum stack system.

20 (b) An imminent hazard exists if the physical
21 condition, maintenance, operation, or closure of a
22 phosphogypsum stack system creates an immediate and
23 substantial danger to human health, safety, or welfare or to
24 the environment. A phosphogypsum stack system is presumed not
25 to cause an imminent hazard if the physical condition and
26 operation of the system are in compliance with all applicable
27 department rules.

28 (c) The failure of an owner or operator of a
29 phosphogypsum stack system to comply with department rules
30 requiring demonstration of closure financial responsibility
31 may be considered by the department as evidence that a

1 phosphogypsum stack poses an imminent hazard for purposes of
2 initiating actions authorized by paragraph (d).

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

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

1 (f)~~(e)~~ The department shall recover from the owner or
2 operator of the phosphogypsum stack system to the use of the
3 Nonmandatory Land Reclamation Trust Fund all moneys expended
4 from the fund, including funds expended prior to the effective
5 date of this section, to abate an imminent hazard posed by the
6 phosphogypsum stack system plus a penalty equal to an amount
7 calculated at 30 percent of such funds expended. This penalty
8 shall be imposed annually, and prorated from the date of
9 payment from the fund until the expended funds and the penalty
10 are repaid. If the department prevails in any action to
11 recover funds pursuant to this subsection, it may recover
12 reasonable attorney's fees and costs incurred. Phosphogypsum
13 may not be deposited on a stack until all moneys expended from
14 the fund in connection with the stack have been repaid, unless
15 the department determines that such placement is necessary to
16 abate or avoid an imminent hazard or unless otherwise
17 authorized by the department.

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

1 (4) REGISTRATION FEES.--

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

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

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

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

28 (b) On or before August 1 of each year, the department
29 shall provide written notice to each owner of an existing
30 stack of any fee payable for the 12-month period commencing on
31

1 the immediately preceding July 1. Each owner shall remit the
2 fee to the department on or before August 31 of each year.

3 Section 8. Subsection (2) of section 403.4155, Florida
4 Statutes, is amended, and subsections (3), (4), (5), and (6)
5 are added to that section, to read:

6 403.4155 Phosphogypsum management; rulemaking
7 authority.--

8 (2) The department shall revise chapter 62-673,
9 Florida Administrative Code, to require the owner or operator
10 of a phosphogypsum stack system to demonstrate financial
11 responsibility for the costs of terminal closure of the
12 phosphogypsum stack system in a manner that protects the
13 environment and the public health and safety. At a minimum,
14 such rules shall include or address the following:

15 (a) Requirements that the cost of closure and
16 long-term care be re-estimated by a professional engineer and
17 adjusted for inflation on an annual basis and, at a minimum,
18 such cost data shall include: the cost of treatment and
19 appropriate disposal of all process wastewater, both ponded
20 and pore, in the system; all construction work necessary to
21 properly close the system in accordance with department rules;
22 and all costs associated with long-term care of the closed
23 system, including maintenance and monitoring, in accordance
24 with department rules.

25 (b) Financial statements and financial data be
26 prepared according to United States generally accepted
27 accounting principles and submitted quarterly.

28 (c) That audited financial statements be provided
29 annually, along with the statement of financial assurance.

30 (d) A requirement that any owner or operator report
31 immediately if it is in default on any of its obligations.

1 (e) Include an option for the owner or operator to
2 satisfy the financial responsibility requirements with a
3 corporate guarantee for an amount that would assure adequate
4 coverage of the closure and postclosure costs.

5 (3) By October 1, 2003, the department shall initiate
6 rulemaking to require that phosphogypsum stack system
7 operation plans required by department rule be amended by
8 adding an interim stack system management (ISSM) plan that
9 provides written instructions for the operation of the system
10 assuming that no phosphoric acid would be produced at the
11 facility for a 2-year period. The initial ISSM plan shall be
12 completed as of the first July 1 following the adoption of the
13 rule required by this section. The ISSM plan shall include:

14 (a) A detailed description of process water management
15 procedures that will be implemented to ensure that the stack
16 system operates in accordance with all applicable department
17 permit conditions and rules. The procedures shall address the
18 actual process water levels present at the facility 30 days
19 prior to the completion of the plan and shall assume that the
20 facility will receive annual average rainfall during the
21 2-year planning period.

22 (b) A detailed description of the procedures to be
23 followed for the daily operation and routine maintenance of
24 the stack system, including required environmental sampling
25 and analyses, as well as for any maintenance or repairs
26 recommended following annual inspections of the system.

27 (c) Identification of all machinery, equipment, and
28 materials necessary to implement the plan.

29 (d) Identification of the sources of power or fuel
30 necessary to implement the plan.

31

1 (e) Identification of the personnel necessary to
2 implement the plan.

3 (4) The ISSM plan shall be updated annually taking
4 into account process water levels as of June 1 and the
5 then-existing stack system configuration.

6 (5) The foregoing requirement for the preparation and
7 updating of the ISSM plan is applicable to all phosphogypsum
8 stack systems except those which have been closed, which are
9 undergoing closure, or for which an application for a closure
10 permit has been submitted pursuant to department rule.

11 (6) By October 1, 2003, the department shall initiate
12 rulemaking to require that general plans and schedules for the
13 closure of phosphogypsum stack systems include:

14 (a) A description of the physical configuration of the
15 phosphogypsum stack system anticipated at the time of closure
16 at the end of useful life of the system.

17 (b) A site-specific water management plan describing
18 the procedure to be employed at the end of the useful life of
19 the system to manage the anticipated volume of process water
20 in an environmentally sound manner.

21 (c) An estimate of the cost of management of the
22 anticipated volume of process water in accordance with the
23 site-specific water management plan.

24 (d) A description of all construction work necessary
25 to properly close the system in accordance with department
26 rules.

27 (e) An estimate of all costs associated with long-term
28 care of the closed system, including maintenance and
29 monitoring, in accordance with department rules.

30 ~~(2) By January 31, 2002, the department shall review~~
31 ~~chapter 62-673, Florida Administrative Code, to determine the~~

1 ~~adequacy of the financial responsibility provisions contained~~
2 ~~in the rules and shall take any measures necessary to ensure~~
3 ~~that the rules provide sound and effective provisions to~~
4 ~~minimize risk to the environment and to public health and~~
5 ~~safety from the business failure of a phosphogypsum stack~~
6 ~~system.~~

7 Section 9. The Southwest Florida Water Management
8 District shall perform a study of the cumulative impacts of
9 land use and land form changes in the Peace River Basin,
10 comparing predevelopment conditions to conditions reasonably
11 expected to exist in 2050. The study shall evaluate surface
12 water and groundwater resource changes. The study shall
13 include an evaluation of the general effectiveness of existing
14 federal, state, and local regulatory programs in mitigating or
15 compensating for the impacts of land use and land form
16 changes, identification of any deficiencies in the information
17 needed for evaluation of cumulative impacts, and
18 recommendations as appropriate for improvements in regulatory
19 programs needed for minimization of overall cumulative
20 impacts. The district is authorized to form a technical
21 advisory committee composed of representatives from the
22 following interests located in the Peace River
23 Basin: industry, mining, agriculture, development,
24 environmental, and local government. The technical advisory
25 committee shall recommend a plan of study to the district and
26 shall review interim findings and final recommendations.

27 Section 10. This act shall take effect upon becoming a
28 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1312

The committee substitute provides for a series of changes to laws governing phosphate mining operations. Severance tax formulas and distributions are changed. Reclamation requirements are amended to allow for the granting of certain variances and the changing of a deadline for application submittals. Financial assurance requirements are specified and criminal penalties provided for those who knowingly violate them. Rulemaking authority is clarified as it relates to interim stack management and stack closure. Finally, a study is created to examine certain cumulative impacts in the Peace River Basin.