

By the Committees on Appropriations; Natural Resources; and
Senators Alexander and Dockery

309-2454-03

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 amending s. 378.021, F.S.; directing the
7 Department of Environmental Protection to amend
8 the master reclamation plan; amending s.
9 378.031, F.S.; providing additional intent
10 concerning reclamation activities; amending s.
11 378.035, F.S.; amending authorized uses of
12 funds deposited in the Nonmandatory Land
13 Reclamation Trust Fund; removing requirements
14 for a reserve; limiting reclamation
15 expenditures for fiscal year 2003-2004;
16 amending s. 378.036, F.S.; creating a
17 not-for-profit partnership to assist in
18 phosphate reclamation; providing duties of the
19 partnership; providing for the administration
20 of partnership funds; providing an
21 appropriation; amending s. 378.212; providing
22 authority for a variance for certain
23 reclamation activities; amending s. 403.4154,
24 F.S.; providing criminal penalties for certain
25 violations; prohibiting the distribution of
26 certain company assets under certain
27 circumstances; providing for the declaration of
28 an imminent hazard if certain financial
29 conditions exist; providing limited liability
30 for entities assisting in the abatement of
31 imminent hazards; amending a provision granting

1 certain rebates of phosphate fees; amending s.
2 403.4155, F.S.; directing that rules be
3 developed for financial assurance, interim
4 stack management, and stack closure; requiring
5 the Department of Environmental Protection to
6 conduct a study; providing funds for the study;
7 providing for the transfer of certain funds
8 from the P-2000 and Florida Forever Debt
9 Service Reserve Fund; providing for the funding
10 of a study by the Florida Institute of
11 Phosphate Research; providing an effective
12 date.

13

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

15

16 Section 1. Section 211.3103, Florida Statutes, is
17 amended to read:

18 211.3103 Levy of tax on severance of phosphate rock;
19 rate, basis, and distribution of tax.--

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

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

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

31

1 **(b) The remaining revenues collected from the tax**
2 **during that fiscal year, after the required payment under**
3 **paragraph (a), shall be paid into the State Treasury as**
4 **follows:**

5 **1. For payment to counties in proportion to the number**
6 **of tons of phosphate rock produced from a phosphate rock**
7 **matrix located within such political boundary, 18.75 percent.**
8 **The department shall distribute this portion of the proceeds**
9 **annually based on production information reported by the**
10 **producers on the annual returns for the taxable year. Any such**
11 **proceeds received by a county shall be used only for phosphate**
12 **related expenses.**

13 **2. For payment to counties that have been designated a**
14 **Rural Area of Critical Economic Concern pursuant to s.**
15 **288.0656 in proportion to the number of tons of phosphate rock**
16 **produced from a phosphate rock matrix located within such**
17 **political boundary, 18.75 percent. The department shall**
18 **distribute this portion of the proceeds annually based on**
19 **production information reported by the producers on the annual**
20 **returns for the taxable year.**

21 **3. To the credit of the Phosphate Research Trust Fund**
22 **in the Department of Education, Division of Universities,**
23 **11.25 percent.**

24 **4. To the credit of the Minerals Trust Fund, 11.25**
25 **percent.**

26 **5. To the credit of the Nonmandatory Land Reclamation**
27 **Trust Fund, 40 percent.**

28 **(3) Beginning July 1, 2004, the proceeds of all taxes,**
29 **interest, and penalties imposed under this section shall be**
30 **paid into the State Treasury as follows:**

31

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

4 (b) The remaining revenues collected from the tax
5 during that fiscal year, after the required payment under
6 paragraph (a), shall be paid into the State Treasury as
7 follows:

8 1. To the credit of the General Revenue Fund of the
9 state, 41 percent.

10 2. For payment to counties in proportion to the number
11 of tons of phosphate rock produced from a phosphate rock
12 matrix located within such political boundary, 16.5 percent.
13 The department shall distribute this portion of the proceeds
14 annually based on production information reported by the
15 producers on the annual returns for the taxable year. Any such
16 proceeds received by a county shall be used only for phosphate
17 related expenses.

18 3. For payment to counties that have been designated a
19 Rural Area of Critical Economic Concern pursuant to s.
20 288.0656 in proportion to the number of tons of phosphate rock
21 produced from a phosphate rock matrix located within such
22 political boundary, 16.5 percent. The department shall
23 distribute this portion of the proceeds annually based on
24 production information reported by the producers on the annual
25 returns for the taxable year.

26 4. To the credit of the Phosphate Research Trust Fund
27 in the Department of Education, Division of Universities, 9
28 percent.

29 5. To the credit of the Minerals Trust Fund, 9
30 percent.

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1 6. To the credit of the Nonmandatory Land Reclamation
2 Trust Fund, 8 percent.

3 (4) Funds distributed pursuant to subparagraphs
4 (2)(b)2. and (3)(b)3. shall be used for the following
5 purposes:

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

15 2. For maximizing the use of federal, local, and
16 private resources, including, but not limited to, those
17 available under the Small Cities Community Development Block
18 Grant Program.

19 3. For projects that improve inadequate infrastructure
20 that has resulted in regulatory action that prohibits economic
21 or community growth, provided that such projects are related
22 to specific job creation or job retention opportunities.

23 (5) Beginning January 1, 2004, the tax rate shall be
24 the base rate of \$1.62 per ton severed.

25 (6) Beginning January 1, 2005, and annually
26 thereafter, the tax rate shall be the base rate times the base
27 rate adjustment for the tax year as calculated by the
28 department in accordance with subsection (8).

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

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

4 ~~(b) The remaining revenues collected from the tax~~
5 ~~during that fiscal year, after the required payment under~~
6 ~~paragraph (a), shall be paid into the State Treasury as~~
7 ~~follows:~~

8 ~~1. To the credit of the General Revenue Fund of the~~
9 ~~state, 60 percent. However, from this amount the amounts of~~
10 ~~\$7.4 million, \$8.2 million, and \$8.1 million, respectively,~~
11 ~~shall be transferred to the Nonmandatory Land Reclamation~~
12 ~~Trust Fund on January 1, 1993, January 1, 1994, and January 1,~~
13 ~~1995.~~

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

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

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

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

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

4 ~~(b) The remaining revenues collected from the tax~~
5 ~~during that fiscal year, after the required payment under~~
6 ~~paragraph (a), shall be paid into the State Treasury as~~
7 ~~follows:~~

8 ~~1. To the credit of the General Revenue Fund of the~~
9 ~~state, 58 percent.~~

10 ~~2. To the credit of the Nonmandatory Land Reclamation~~
11 ~~Trust Fund for reclamation and acquisition of unreclaimed~~
12 ~~lands disturbed by phosphate mining and not subject to~~
13 ~~mandatory reclamation, 14.5 percent.~~

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

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

25 ~~5. To the credit of the Minerals Trust Fund, 7.5~~
26 ~~percent.~~

27 ~~(4) If the base rate is reduced pursuant to paragraph~~
28 ~~(5)(c), then the proceeds of the tax shall be paid into the~~
29 ~~State Treasury as follows:~~

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

4 ~~(b) The remaining revenues collected from the tax~~
5 ~~during that fiscal year, after the required payment under~~
6 ~~paragraph (a), shall be paid into the State Treasury as~~
7 ~~follows:~~

8 ~~1. To the credit of the General Revenue Fund of the~~
9 ~~state, 55.15 percent.~~

10 ~~2. To the credit of the Phosphate Research Trust Fund~~
11 ~~in the Department of Education, Division of Universities, 12.5~~
12 ~~percent.~~

13 ~~3. For payment to counties in proportion to the number~~
14 ~~of tons of phosphate rock produced from a phosphate rock~~
15 ~~matrix located within such political boundary, 18 percent. The~~
16 ~~department shall distribute this portion of the proceeds~~
17 ~~annually based on production information reported by producers~~
18 ~~on the annual returns for the taxable year. Any such proceeds~~
19 ~~received by a county shall be used only for phosphate-related~~
20 ~~expenses.~~

21 ~~4. To the credit of the Minerals Trust Fund, 14.35~~
22 ~~percent.~~

23 ~~(7)(5)~~ The excise tax levied by this section shall
24 apply to the total production of the producer during the
25 taxable year, measured on the basis of bone-dry tons produced
26 at the point of severance, ~~subject to the following rates:~~

27 ~~(a) Beginning July 1, 1987, to December 31, 1987, the~~
28 ~~tax rate shall be \$1.79 per ton severed.~~

29 ~~(b) For 1988, the tax rate shall be the base rate of~~
30 ~~\$1.35 per ton severed.~~

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

8 (8)(6)(a) On or before March 30, 2004 ~~1989~~, and
9 annually thereafter, the department shall calculate the base
10 rate adjustment, if any, for phosphate rock based on the
11 change in the unadjusted annual producer price index for the
12 prior calendar year in relation to the unadjusted annual
13 producer price index for calendar year 1999 ~~1987~~.

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

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

24 (d) If the producer price index for chemical and
25 fertilizer mineral mining ~~phosphate rock primary products~~ is
26 substantially revised, the department shall make appropriate
27 adjustment in the method used to compute the base rate
28 adjustment under this subsection which will produce results
29 reasonably consistent with the result which would have been
30 obtained if the producer price index for phosphate rock
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1 primary products had not been revised. However, the tax rate
2 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 (9)(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 (10)(8) The tax levied by this section shall be
14 collected in the manner prescribed in s. 211.33.

15 Section 2. Section 378.021, Florida Statutes, is
16 amended to read:

17 378.021 Master reclamation plan.--

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

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

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

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

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

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

26 (d) The reclamation of the land is in the public
27 interest because the reclamation, when combined with other
28 reclamation under the master plan, will provide significant
29 benefits to surface water bodies supplying water for
30 environmental and public purposes in those areas of the state
31 where phosphate mining has been permitted.

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

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

16 Section 3. Section 378.031, Florida Statutes, is
17 amended to read:

18 378.031 Reclamation or acquisition of nonmandatory
19 lands; legislative intent.--It is the intent of the
20 Legislature to provide an economic incentive to encourage the
21 reclamation of the maximum number of acres of eligible
22 nonmandatory lands in the most timely and efficient manner or
23 the donation or purchase of nonmandatory lands, especially
24 those lands for which reclamation activities will result in
25 significant improvements to surface water bodies of regional
26 importance in those areas of the state where phosphate mining
27 has been permitted. The Legislature recognizes that certain
28 lands mined or disturbed prior to July 1, 1975, have been
29 naturally reclaimed.

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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(3) and for the purpose of closing
28 an abandoned phosphogypsum stack system and carrying out
29 postclosure care as provided by s. 403.4154(5). ~~Fees deposited~~
30 ~~in the Nonmandatory Land Reclamation Trust Fund pursuant to s.~~
31 ~~403.4154(4) may be used for the purposes authorized in this~~

1 ~~paragraph. However, such fees may only be used at a stack~~
2 ~~system if closure or imminent-hazard-abatement activities~~
3 ~~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
19 For the 2003-2004 fiscal year the department may not approve
20 or encumber nonmandatory reclamation projects in amounts
21 greater than \$15 million.

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

24 378.036 Land acquisitions financed by Nonmandatory
25 Land Reclamation Trust Fund moneys.--

26 (6)(a) By January 1, 2004, or within 6 months from the
27 date funds become available from the Legislature, whichever is
28 later, the Florida Wildlife Federation, Audubon Florida, and
29 Rails-to-Trails Conservancy in partnership with the Florida
30 Phosphate Council are authorized to form a nonprofit
31 corporation pursuant to chapter 617 for the purpose of

1 implementing the provisions of this section by creating plans
2 and assisting in the development of recreational opportunities
3 on lands mined for phosphate in the state. The first plans
4 shall concentrate on recreational activities in Hardee and
5 Hamilton Counties which will assist them in rural economic
6 development.

7 (b) The board of directors of the corporation shall be
8 composed of three members, one designated by the Florida
9 Phosphate Council, one as the designee of the Florida Wildlife
10 Federation, Audubon Florida, and Rails-to-Trails Conservancy,
11 and the third chosen by the other two designees.

12 (c) The business of the corporation shall be conducted
13 by the board of directors or a chief executive officer as the
14 board shall see fit in accordance with the provisions of its
15 articles of incorporation and applicable law. The activities
16 of the corporation shall be coordinated with all landowners
17 who have voluntarily agreed to participate in the process as
18 well as any local government where such lands are recorded.

19 (d) An annual report of the activities of the
20 corporation, including a certified audit, shall be presented
21 to the Secretary of Environmental Protection or his or her
22 designee by October 31 of each year following incorporation.

23 (e) The corporation shall dissolve on January 1, 2009,
24 unless dissolved previously by action of its board of
25 directors or extended by the Legislature. Upon dissolution,
26 any moneys remaining in the accounts of the corporation that
27 are unobligated shall be returned to the funds from which they
28 were appropriated in proportion to the amount contributed. All
29 tangible assets of the corporation at dissolution which were
30 acquired using state funding shall become the property of the
31 Department of Environmental Protection.

1 (f) For fiscal year 2003-2004, the sum of \$200,000
2 shall be appropriated from the Nonmandatory Land Reclamation
3 Trust Fund to the non-profit corporation specified hereinabove
4 for the purpose of creating plans and assisting in the
5 development of recreational opportunities on lands mined for
6 phosphate in the state.

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

9 378.212 Variances.--

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

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

20 Section 7. Subsections (2), (3), and (4) of section
21 403.4154, Florida Statutes, are amended to read:

22 403.4154 Phosphogypsum management program.--

23 (2) REGULATORY PROGRAM.--

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

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

3 (c) Whoever willfully, knowingly, or with reckless
4 indifference or gross carelessness misstates or misrepresents
5 the financial condition or closure costs of an entity engaged
6 in managing, owning, or operating a phosphogypsum stack or
7 stack system commits a felony of the third degree, punishable
8 as provided in s. 775.082 or s. 775.083 by a fine of not more
9 than \$50,000 and by imprisonment for 5 years for each offense.

10 (d) In the event that an owner or operator of a
11 phosphogypsum stack or stack system fails to comply with
12 department rules requiring demonstration of closure financial
13 responsibility, no distribution may be made that would be
14 prohibited under s. 607.06401(3), until the noncompliance is
15 corrected. Whoever willfully, knowingly, or with reckless
16 indifference or gross carelessness violates this prohibition
17 commits a felony of the third degree, punishable as provided
18 in s. 775.082 or s. 775.083 by a fine of not more than \$50,000
19 or by imprisonment for 5 years for each offense.

20 (3) ABATEMENT OF IMMINENT HAZARD.--

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

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

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

3 (c) The failure of an owner or operator of a
4 phosphogypsum stack system to comply with department rules
5 requiring demonstration of closure financial responsibility
6 may be considered by the department as evidence that a
7 phosphogypsum stack poses an imminent hazard for purposes of
8 initiating actions authorized by paragraph (d).

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

30 (e)(d) To abate or substantially reduce an imminent
31 hazard, the department may take any appropriate action,

1 including, but not limited to, using employees of the
2 department or contracting with other state or federal
3 agencies, with private third-party contractors, or with the
4 owner or operator of the stack system, or financing,
5 compensating, or funding a receiver, trustee, or owner of the
6 stack system, to perform all or part of the work.

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

24 (g)~~(f)~~ The department may impose a lien on the real
25 property on which the phosphogypsum stack system that poses an
26 imminent hazard is located and on the real property underlying
27 and other assets located at associated phosphate fertilizer
28 production facilities equal in amount to the moneys expended
29 from the Nonmandatory Land Reclamation Trust Fund pursuant to
30 paragraph (d), including attorney's fees and court costs. The
31 owner of any property on which such a lien is imposed is

1 entitled to a release of the lien upon payment to the
2 department of the lien amount. The lien imposed by this
3 section does not take priority over any other prior perfected
4 lien on the real property, personal property, or other assets
5 referenced in this paragraph, including, but not limited to,
6 the associated phosphate rock mine and reserves.

7 (h) Upon a declaration by the Governor of an
8 environmental emergency concerning the abatement of a imminent
9 hazard involving a phosphogypsum stack or stack system, the
10 state and any agent under contract with the state for the
11 provision of services directly related to the abatement of
12 such hazard shall not become liable under state laws for
13 environmental protection for any costs, damages, or penalties
14 associated with the abatement of the imminent hazard. The
15 Legislature finds that provision of this limited immunity is
16 in the public interest and necessary for the abatement of the
17 imminent hazard.

18 (4) REGISTRATION FEES.--

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

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

29 3. The amount of the fee for any new stack for which
30 the owner or operator has not provided a performance bond,
31 letter of credit, trust fund agreement, or closure insurance

1 to demonstrate financial responsibility for closure and
2 long-term care shall be \$75,000 for each of the five 12-month
3 periods following the issuance by the department of a
4 construction permit for that stack.

5 4. Within 30 days after a phosphogypsum stack has been
6 certified as closed pursuant to rule 62-673.620(2) and (3),
7 Florida Administrative Code, the department shall refund to
8 the owner of the closed phosphogypsum stack an amount from the
9 Nonmandatory Land Reclamation Trust Fund equal to the total
10 amount of fee payments made by the owner or operator to the
11 fund in connection with the closed phosphogypsum stack.

12 However, no refund shall be paid until such time as the
13 Mulberry and Piney Point phosphogypsum stack systems have been
14 closed and a satisfactory reserve has been established in the
15 Nonmandatory Reclamation Lands Trust Fund, except that any
16 refund becoming payable prior to July 1, 2009, shall be paid
17 to the owner on or after that date.

18 (b) On or before August 1 of each year, the department
19 shall provide written notice to each owner of an existing
20 stack of any fee payable for the 12-month period commencing on
21 the immediately preceding July 1. Each owner shall remit the
22 fee to the department on or before August 31 of each year.

23 Section 8. Section 403.4155, Florida Statutes, is
24 amended to read:

25 403.4155 Phosphogypsum management; rulemaking
26 authority.--

27 (1) The Department of Environmental Protection shall
28 adopt rules to amend existing chapter 62-672, Florida
29 Administrative Code, to ensure that impoundment structures and
30 water conveyance piping systems used in phosphogypsum
31 management are designed and maintained to meet critical safety

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

21 (2) The department shall revise chapter 62-673,
22 Florida Administrative Code, to require the owner or operator
23 of a phosphogypsum stack system to demonstrate financial
24 responsibility for the costs of terminal closure of the
25 phosphogypsum stack system in a manner that protects the
26 environment and the public health and safety. At a minimum,
27 such rules shall include or address the following:

28 (a) Requirements that the cost of closure and
29 long-term care be re-estimated by a professional engineer and
30 adjusted for inflation on an annual basis and, at a minimum,
31 such cost data shall include the cost of treatment and

1 appropriate disposal of all process wastewater, both ponded
2 and pore, in the system; all construction work necessary to
3 properly close the system in accordance with department rules;
4 and all costs associated with long-term care of the closed
5 system, including maintenance and monitoring, in accordance
6 with department rules.

7 (b) Financial statements and financial data be
8 prepared according to United States generally accepted
9 accounting principles and submitted quarterly.

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

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

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

18 (3) By October 1, 2003, the department shall initiate
19 rulemaking to require that phosphogypsum stack system
20 operation plans required by department rule be amended by
21 adding an interim stack system management (ISSM) plan that
22 provides written instructions for the operation of the system
23 assuming that no phosphoric acid would be produced at the
24 facility for a 2-year period. The initial ISSM plan shall be
25 completed as of the first July 1 following the adoption of the
26 rule required by this section. The ISSM plan shall include:

27 (a) A detailed description of process water management
28 procedures that will be implemented to ensure that the stack
29 system operates in accordance with all applicable department
30 permit conditions and rules. The procedures shall address the
31 actual process water levels present at the facility 30 days

1 prior to the completion of the plan and shall assume that the
2 facility will receive annual average rainfall during the
3 2-year planning period.

4 (b) A detailed description of the procedures to be
5 followed for the daily operation and routine maintenance of
6 the stack system, including required environmental sampling
7 and analyses, as well as for any maintenance or repairs
8 recommended following annual inspections of the system.

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

11 (d) Identification of the sources of power or fuel
12 necessary to implement the plan.

13 (e) Identification of the personnel necessary to
14 implement the plan.

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

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

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

26 (a) A description of the physical configuration of the
27 phosphogypsum stack system anticipated at the time of closure
28 at the end of useful life of the system.

29 (b) A site-specific water management plan describing
30 the procedure to be employed at the end of the useful life of
31

1 the system to manage the anticipated volume of process water
2 in an environmentally sound manner.

3 (c) An estimate of the cost of management of the
4 anticipated volume of process water in accordance with the
5 site-specific water management plan.

6 (d) A description of all construction work necessary
7 to properly close the system in accordance with department
8 rules.

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

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

20 Section 9. (1) The Department of Environmental
21 Protection, in consultation with the Southwest Florida Water
22 Management District, shall study cumulative impacts of changes
23 in landform and hydrology in the Peace River Basin. The study
24 shall evaluate cumulative impacts of activities conducted in
25 the Peace River Basin prior to state regulation, or pursuant
26 to an exemption, a permit, or a reclamation plan on water
27 resources of the basin, including surface waters,
28 groundwaters, fisheries, aquatic and estuarine habitat, and
29 water supplies. The study shall also include an evaluation of
30 the effectiveness of existing regulatory programs in avoiding,
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1 minimizing, mitigating, or compensating for cumulative impacts
2 on water resources of the basin.

3 (2) Upon completion of the study, the department shall
4 prepare and adopt a resource management plan for the Peace
5 River Basin to minimize existing and future adverse cumulative
6 impacts to water resources of the basin, including surface
7 waters, groundwaters, wetlands, fisheries, aquatic and
8 estuarine habitat, and water supplies. The plan shall identify
9 regulatory and nonregulatory actions to minimize existing and
10 future adverse cumulative impacts identified in the study and
11 where appropriate, shall also recommend statutory changes to
12 improve regulatory programs to minimize cumulative impacts to
13 water resources of the basin.

14 (3) The resource management plan shall be submitted to
15 the Governor, the Speaker of the House of Representatives and
16 the President of the Senate no later than January 1, 2005.

17 (4) The department may use up to \$750,000 from the
18 Nonmandatory Land Reclamation Trust Fund to prepare the study
19 and plan required in this section.

20 (5) The department may establish a technical advisory
21 committee to assist the department in developing a plan of
22 study, reviewing interim findings, and reviewing final
23 recommendations. The technical advisory committee may include
24 representatives from the following interests in the Peace
25 River Basin: industrial, mining, agriculture, development,
26 environmental, fishing, regional water supply, and local
27 government.

28 Section 10. One hundred million dollars of funds in
29 the Debt Service Reserve Fund for Preservation 2000 and
30 Florida Forever bonds is hereby appropriated to the Sinking
31 Fund for the Preservation 2000 and Florida Forever Program.

1 The Division of Bond Finance and the Department of
2 Environmental Protection shall purchase a surety bond to
3 replace these funds. One hundred million dollars is hereby
4 transferred from the Land Acquisition Trust Fund to the
5 General Revenue Fund. There is hereby appropriated \$87.5
6 million from the General Revenue Fund to the NonMandatory Land
7 Reclamation Trust Fund for the 2003-2004 fiscal year.

8 Section 11. For fiscal year 2003-2004, the sum of
9 \$800,000 is appropriated to the Phosphate Research Trust Fund
10 from the proceeds of the phosphate severance tax deposited
11 into the Nonmandatory Land Reclamation Trust Fund. Such funds
12 shall be used by the Florida Institute of Phosphate Research
13 to conduct a bench and pilot scale study of the FIPR/DIPR
14 process for the purpose of determining its technical and
15 economic feasibility. The study shall evaluate the
16 availability, technical feasibility, and cost of using various
17 types of fiber, including, but not limited to, paper and
18 sewage sludge. The study shall evaluate the technical
19 feasibility and practicality of various methods of using and
20 disposing of the clay/fiber product produced, including
21 admixing the material with soil.

22 Section 12. This act shall take effect upon becoming a
23 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS for SB 1312

The committee substitute creates two distribution provisions, which are needed to address a change in revenues because of the effective date of the tax. The provisions are designed to hold most beneficiaries of these revenues to the current level of funding. The only change is a doubling of revenues shared with counties impacted by mining, with the new dollars being directed to the rural counties for economic development.

The substitute removes a provision to create a limited bonding authority, and caps the amount spent on nonmandatory land reclamation at \$15 million for the 2003-04 fiscal year.

It provides for a one time appropriation of \$200,000 for the non-profit partnership created to assist in the development of recreational opportunities on phosphate lands.

A provision provides for the transfer of \$100 million from the Preservation 2000 and Florida Forever debt service accounts to assist environmental hazard cleanups. A one time appropriation of \$800,000 is provided to the Florida Institute of Phosphate Research to study potential uses for clay settling. A one time appropriation of \$750,000 is provided to fund a Peace River Basin study.