

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. 378.404,
24 F.S.; allowing variances for water supply
25 development; amending s. 403.4154, F.S.;
26 providing criminal penalties for certain
27 violations; prohibiting the distribution of
28 certain company assets under certain
29 circumstances; providing for the declaration of
30 an imminent hazard if certain financial
31 conditions exist; providing limited liability

1 for entities assisting in the abatement of
2 imminent hazards; amending a provision granting
3 certain rebates of phosphate fees; amending s.
4 403.4155, F.S.; directing that rules be
5 developed for financial assurance, interim
6 stack management, and stack closure; requiring
7 the Department of Environmental Protection to
8 conduct a study; providing funds for the study;
9 providing for the transfer of certain funds
10 from the Nonmandatory Land Reclamation Trust
11 Fund to the General Revenue Fund; providing for
12 the funding of a study by the Florida Institute
13 of Phosphate Research; providing an effective
14 date.

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

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18 Section 1. Section 211.3103, Florida Statutes, is
19 amended to read:

20 211.3103 Levy of tax on severance of phosphate rock;
21 rate, basis, and distribution of tax.--

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

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

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

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

24 3. To the credit of the Phosphate Research Trust Fund
25 in the Department of Education, Division of Universities,
26 11.25 percent.

27 4. To the credit of the Minerals Trust Fund, 11.25
28 percent.

29 5. To the credit of the Nonmandatory Land Reclamation
30 Trust Fund, 40 percent.

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1 (3) Beginning July 1, 2004, the proceeds of all taxes,
2 interest, and penalties imposed under this section shall be
3 paid into the 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, 41 percent.

13 2. 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, 16.5 percent.
16 The department shall distribute this portion of the proceeds
17 annually based on production information reported by the
18 producers on the annual returns for the taxable year. Any such
19 proceeds received by a county shall be used only for phosphate
20 related expenses.

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

29 4. To the credit of the Phosphate Research Trust Fund
30 in the Department of Education, Division of Universities, 9
31 percent.

1 5. To the credit of the Minerals Trust Fund, 9
2 percent.

3 6. To the credit of the Nonmandatory Land Reclamation
4 Trust Fund, 8 percent.

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

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

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

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

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

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

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1 ~~(2) The proceeds of all taxes, interest, and penalties~~
2 ~~imposed under this section shall be paid into the State~~
3 ~~Treasury through June 30, 1995, 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, 60 percent. However, from this amount the amounts of~~
13 ~~\$7.4 million, \$8.2 million, and \$8.1 million, respectively,~~
14 ~~shall be transferred to the Nonmandatory Land Reclamation~~
15 ~~Trust Fund on January 1, 1993, January 1, 1994, and January 1,~~
16 ~~1995.~~

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

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

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

1 ~~(3) Beginning July 1, 1995, the proceeds of all taxes,~~
2 ~~interest, and penalties imposed under this section shall be~~
3 ~~paid into the 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, 58 percent.~~

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

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

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

28 ~~5. To the credit of the Minerals Trust Fund, 7.5~~
29 ~~percent.~~

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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 (7)(5) The excise tax levied by this section shall
27 apply to the total production of the producer during the
28 taxable year, measured on the basis of bone-dry tons produced
29 at the 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 (8)(6)(a) On or before March 30, 2004 ~~1989~~, and
11 annually thereafter, the department shall calculate the base
12 rate adjustment, if any, for phosphate rock based on the
13 change in the unadjusted annual producer price index for the
14 prior calendar year in relation to the unadjusted annual
15 producer 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 chemical and
27 fertilizer mineral mining phosphate rock primary products is
28 substantially revised, the department shall make appropriate
29 adjustment in the method used to compute the base rate
30 adjustment under this subsection which will produce results
31 reasonably consistent with the result which would have been

1 obtained if the producer price index for phosphate rock
2 primary products had not been revised. However, the tax rate
3 shall not be less than \$1.56 per ton severed.

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

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

14 (10)~~(8)~~ The tax levied by this section shall be
15 collected in the manner prescribed in s. 211.33.

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

18 378.021 Master reclamation plan.--

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

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

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

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

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

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

27 (d) The reclamation of the land is in the public
28 interest because the reclamation, when combined with other
29 reclamation under the master plan, will provide significant
30 benefits to surface water bodies supplying water for
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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), (6), (7), (8), and (9) of
2 section 378.035, Florida Statutes, are amended to read:

3 378.035 Department responsibilities and duties with
4 respect to Nonmandatory Land Reclamation Trust Fund.--

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

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

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

1 ~~system if closure or imminent-hazard-abatement activities~~
2 ~~initially commence on or after July 1, 2002.~~

3 ~~(c)(6)(a) Up to one-half of the interest income~~
4 ~~accruing to the funds reserved by subsection (5) shall be~~
5 ~~available to the department annually~~ For the purpose of
6 funding basic management or protection of reclaimed, restored,
7 or preserved phosphate lands:

8 1. Which have wildlife habitat value as determined by
9 the Bureau of Mine Reclamation;

10 2. Which have been transferred by the landowner to a
11 public agency or a private, nonprofit land conservation and
12 management entity in fee simple, or which have been made
13 subject to a conservation easement pursuant to s. 704.06; and

14 3. For which other management funding options are not
15 available.

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17 These funds may, after the basic management or protection has
18 been assured for all such lands, be combined with other
19 available funds to provide a higher level of management for
20 such lands.

21 ~~(d)(b) Up to one-half of the interest income accruing~~
22 ~~to the funds reserved by subsection (5) shall be available to~~
23 ~~the department annually~~ For the sole purpose of funding the
24 department's implementation of:

25 1. The NPDES permitting program authorized by s.
26 403.0885, as it applies to phosphate mining and beneficiation
27 facilities, phosphate fertilizer production facilities, and
28 phosphate loading and handling facilities;

29 2. The regulation of dams in accordance with
30 department rule 62-672, Florida Administrative Code; and

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1 3. The phosphogypsum management program pursuant to s.
2 403.4154 and department rule 62-673, Florida Administrative
3 Code.

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5 ~~On or before August 1 of each fiscal year, the department~~
6 ~~shall prepare a report presenting the expenditures using the~~
7 ~~interest income allocated by this section made by the~~
8 ~~department during the immediately preceding fiscal year, which~~
9 ~~report shall be available to the public upon request.~~

10 (6)~~(7)~~ Should the nonmandatory land reclamation
11 program encumber all the funds in the Nonmandatory Land
12 Reclamation Trust Fund except those reserved by subsection (5)
13 prior to funding all the reclamation applications for eligible
14 parcels, the funds reserved by subsection (5) shall be
15 available to the program to the extent required to complete
16 the reclamation of all eligible parcels for which the
17 department has received applications.

18 (7)~~(8)~~ The department may not accept any applications
19 for nonmandatory land reclamation programs after July 1, 2004
20 ~~November 1, 2008~~.

21 (8)~~(9)~~ The Bureau of Mine Reclamation shall review the
22 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
23 support the stated objectives and report to the secretary
24 annually with recommendations as appropriate. ~~The report~~
25 ~~submittal for calendar year 2008 shall specifically address~~
26 ~~the effect of providing a future refund of fees paid pursuant~~
27 ~~to s. 403.4154(4) following certification of stack closure~~
28 ~~pursuant to department rules, and the report shall be~~
29 ~~submitted to the Governor, the President of the Senate, and~~
30 ~~the Speaker of the House of Representatives on or before March~~
31 ~~1, 2009.~~

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2 For the 2003-2004 fiscal year the department may not approve
3 or encumber nonmandatory reclamation projects in amounts
4 greater than \$15 million.

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

7 378.036 Land acquisitions financed by Nonmandatory
8 Land Reclamation Trust Fund moneys.--

9 (6)(a) By January 1, 2004, or within 6 months from the
10 date funds become available from the Legislature, whichever is
11 later, the Florida Wildlife Federation, Audubon Florida, and
12 Rails-to-Trails Conservancy in partnership with the Florida
13 Phosphate Council are authorized to form a nonprofit
14 corporation pursuant to chapter 617 for the purpose of
15 implementing the provisions of this section by creating plans
16 and assisting in the development of recreational opportunities
17 on lands mined for phosphate in the state. The first plans
18 shall concentrate on recreational activities in Hardee and
19 Hamilton Counties which will assist them in rural economic
20 development.

21 (b) The board of directors of the corporation shall be
22 composed of three members, one designated by the Florida
23 Phosphate Council, one as the designee of the Florida Wildlife
24 Federation, Audubon Florida, and Rails-to-Trails Conservancy,
25 and the third chosen by the other two designees.

26 (c) The business of the corporation shall be conducted
27 by the board of directors or a chief executive officer as the
28 board shall see fit in accordance with the provisions of its
29 articles of incorporation and applicable law. The activities
30 of the corporation shall be coordinated with all landowners
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1 who have voluntarily agreed to participate in the process as
2 well as any local government where such lands are recorded.

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

7 (e) The corporation shall dissolve on January 1, 2009,
8 unless dissolved previously by action of its board of
9 directors or extended by the Legislature. Upon dissolution,
10 any moneys remaining in the accounts of the corporation that
11 are unobligated shall be returned to the funds from which they
12 were appropriated in proportion to the amount contributed. All
13 tangible assets of the corporation at dissolution which were
14 acquired using state funding shall become the property of the
15 Department of Environmental Protection.

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

22 Section 6. Subsection (1) of section 378.212, Florida
23 Statutes, is amended to read:

24 378.212 Variances.--

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

29 (a) There is no practicable means known or available
30 to comply with the provisions of this part or the rules
31 adopted pursuant thereto.

1 (b) Compliance with a particular requirement or
2 requirements from which a variance is sought will necessitate
3 the taking of measures which must be spread over a
4 considerable period of time. A variance granted for this
5 reason shall prescribe a timetable for the taking of the
6 measures required.

7 (c) To relieve or prevent hardship, including economic
8 hardship, of a kind other than those provided for in
9 paragraphs (a) and (b).

10 (d) To accommodate specific phosphate mining,
11 processing or chemical plant uses that otherwise would be
12 inconsistent with the requirements of this part.

13 (e) To provide for an experimental technique that
14 would advance the knowledge of reclamation and restoration
15 methods.

16 (f) To accommodate projects, including those proposing
17 offsite mitigation, that provide a significant regional
18 benefit for wildlife and the environment.

19 (g) To accommodate reclamation that provides water
20 supply development or water resource development not
21 inconsistent with the applicable regional water supply plan
22 approved pursuant to s. 373.0361, provided adverse impacts are
23 not caused to the water resources in the basin. A variance may
24 also be granted from the requirements of part IV of chapter
25 373, or the rules adopted thereunder, when a project provides
26 an improvement in water availability in the basin and does not
27 cause adverse impacts to water resources in the basin.

28 Section 7. Subsection (9) is added to section 378.404,
29 Florida Statutes, to read:

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1 378.404 Department of Environmental Protection; powers
2 and duties.--The department shall have the following powers
3 and duties:

4 (9) To grant variances from the provisions of this
5 part to accommodate reclamation that provides for water supply
6 development or water resource development not inconsistent
7 with the applicable regional water supply plan approved
8 pursuant to s. 373.0361, appropriate stormwater management,
9 improved wildlife habitat, recreation, or a mixture thereof,
10 provided adverse impacts are not caused to the water resources
11 in the basin and public health and safety are not adversely
12 affected.

13 Section 8. Subsections (2), (3), and (4) of section
14 403.4154, Florida Statutes, are amended to read:

15 403.4154 Phosphogypsum management program.--

16 (2) REGULATORY PROGRAM.--

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

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

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

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

13 (3) ABATEMENT OF IMMINENT HAZARD.--

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

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

26 (c) The failure of an owner or operator of a
27 phosphogypsum stack system to comply with department rules
28 requiring demonstration of closure financial responsibility
29 may be considered by the department as evidence that a
30 phosphogypsum stack poses an imminent hazard for purposes of
31 initiating actions authorized by paragraph (d).

1 (d)~~(c)~~ If the department determines that the failure
2 of an owner or operator to comply with department rules
3 requiring demonstration of financial responsibility or that
4 the physical condition, maintenance, operation, or closure of
5 a 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 (e)~~(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, or financing,
28 compensating, or funding a receiver, trustee, or owner of the
29 stack system, to perform all or part of the work.

30 (f)~~(e)~~ The department shall recover from the owner or
31 operator of the phosphogypsum stack system to the use of the

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

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

30 (h) Upon a declaration by the Governor of an
31 environmental emergency concerning the abatement of a imminent

1 hazard involving a phosphogypsum stack or stack system, the
2 state and any agent under contract with the state for the
3 provision of services directly related to the abatement of
4 such hazard shall not become liable under state laws for
5 environmental protection for any costs, damages, or penalties
6 associated with the abatement of the imminent hazard. The
7 Legislature finds that provision of this limited immunity is
8 in the public interest and necessary for the abatement of the
9 imminent hazard.

10 (4) REGISTRATION FEES.--

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

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

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

28 4. Within 30 days after a phosphogypsum stack has been
29 certified as closed pursuant to rule 62-673.620(2) and (3),
30 Florida Administrative Code, the department shall refund to
31 the owner of the closed phosphogypsum stack an amount from the

1 Nonmandatory Land Reclamation Trust Fund equal to the total
2 amount of fee payments made by the owner or operator to the
3 fund in connection with the closed phosphogypsum stack.
4 However, no refund shall be paid until such time as the
5 Mulberry and Piney Point phosphogypsum stack systems have been
6 closed and a satisfactory reserve has been established in the
7 Nonmandatory Reclamation Lands Trust Fund, except that any
8 refund becoming payable prior to July 1, 2009, shall be paid
9 to the owner on or after that date.

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

15 Section 9. Section 403.4155, Florida Statutes, is
16 amended to read:

17 403.4155 Phosphogypsum management; rulemaking
18 authority.--

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

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

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

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

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1 (b) Financial statements and financial data be
2 prepared according to United States generally accepted
3 accounting principles and submitted quarterly.

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

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

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

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

21 (a) A detailed description of process water management
22 procedures that will be implemented to ensure that the stack
23 system operates in accordance with all applicable department
24 permit conditions and rules. The procedures shall address the
25 actual process water levels present at the facility 30 days
26 prior to the completion of the plan and shall assume that the
27 facility will receive annual average rainfall during the
28 2-year planning period.

29 (b) A detailed description of the procedures to be
30 followed for the daily operation and routine maintenance of
31 the stack system, including required environmental sampling

1 and analyses, as well as for any maintenance or repairs
2 recommended following annual inspections of the system.

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

5 (d) Identification of the sources of power or fuel
6 necessary to implement the plan.

7 (e) Identification of the personnel necessary to
8 implement the plan.

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

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

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

20 (a) A description of the physical configuration of the
21 phosphogypsum stack system anticipated at the time of closure
22 at the end of useful life of the system.

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

27 (c) An estimate of the cost of management of the
28 anticipated volume of process water in accordance with the
29 site-specific water management plan.

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1 (d) A description of all construction work necessary
2 to properly close the system in accordance with department
3 rules.

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

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

15 Section 10. (1) The Department of Environmental
16 Protection, in consultation with the Southwest Florida Water
17 Management District, shall study cumulative impacts of changes
18 in landform and hydrology in the Peace River Basin. The study
19 shall evaluate cumulative impacts of activities conducted in
20 the Peace River Basin prior to state regulation, or pursuant
21 to an exemption, a permit, or a reclamation plan on water
22 resources of the basin, including surface waters,
23 groundwaters, fisheries, aquatic and estuarine habitat, and
24 water supplies. The study shall also include an evaluation of
25 the effectiveness of existing regulatory programs in avoiding,
26 minimizing, mitigating, or compensating for cumulative impacts
27 on water resources of the basin.

28 (2) Upon completion of the study, the department shall
29 prepare and adopt a resource management plan for the Peace
30 River Basin to minimize any identified existing and future
31 adverse cumulative impacts to water resources of the basin,

1 including surface waters, groundwaters, wetlands, fisheries,
2 aquatic and estuarine habitat, and water supplies. The plan
3 shall identify regulatory and nonregulatory actions necessary
4 to minimize existing and future adverse cumulative impacts
5 identified in the study and where appropriate, shall also
6 recommend statutory changes to improve regulatory programs to
7 minimize identified cumulative impacts to water resources of
8 the basin.

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

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

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

23 Section 11. For fiscal year 2003-2004, the sum of
24 \$12.5 million is hereby transferred from the Nonmandatory Land
25 Reclamation Trust Fund to the General Revenue Fund.

26 Section 12. For fiscal year 2003-2004, the sum of
27 \$800,000 is appropriated to the Phosphate Research Trust Fund
28 from the proceeds of the phosphate severance tax deposited
29 into the Nonmandatory Land Reclamation Trust Fund. Such funds
30 shall be used by the Florida Institute of Phosphate Research
31 to conduct a bench and pilot scale study of the FIPR/DIPR

1 process for the purpose of determining its technical and
2 economic feasibility. The study shall evaluate the
3 availability, technical feasibility, and cost of using various
4 types of fiber, including, but not limited to, paper and
5 sewage sludge. The study shall evaluate the technical
6 feasibility and practicality of various methods of using and
7 disposing of the clay/fiber product produced, including
8 admixing the material with soil.

9 Section 13. This act shall take effect upon becoming a
10 law.

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