

Bill No. HB 1363, 1st Eng.

Amendment No. Barcode 841238

CHAMBER ACTION

Senate

House

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Senator Alexander moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

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

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

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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 (a) The first \$10 million in revenue collected from

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1 the tax during each fiscal year shall be paid to the credit of
2 the Conservation and Recreation Lands Trust Fund.

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

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

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

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

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

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

30 6. To the credit of the Nonmandatory Land Reclamation
31 Trust Fund, 8 percent.

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1 (4) Funds distributed pursuant to subparagraphs
2 (2)(b)2. and (3)(b)3. shall be used for the following
3 purposes:
4 1. For planning, preparing, and financing of
5 infrastructure projects for job creation and capital
6 investment, especially those related to industrial and
7 commercial sites. Infrastructure investments may include the
8 following public or public-private partnership facilities:
9 stormwater systems; telecommunications facilities; roads or
10 other remedies to transportation impediments; nature-based
11 tourism facilities; or other physical requirements necessary
12 to facilitate trade and economic development activities.
13 2. For maximizing the use of federal, local, and
14 private resources, including, but not limited to, those
15 available under the Small Cities Community Development Block
16 Grant Program.
17 3. For projects that improve inadequate infrastructure
18 that has resulted in regulatory action that prohibits economic
19 or community growth, provided that such projects are related
20 to specific job creation or job retention opportunities.
21 (5) Beginning January 1, 2004, the tax rate shall be
22 the base rate of \$1.62 per ton severed.
23 (6) Beginning January 1, 2005, and annually
24 thereafter, the tax rate shall be the base rate times the base
25 rate adjustment for the tax year as calculated by the
26 department in accordance with subsection (8).
27 ~~(2) The proceeds of all taxes, interest, and penalties~~
28 ~~imposed under this section shall be paid into the State~~
29 ~~Treasury through June 30, 1995, as follows:~~
30 ~~(a) The first \$10 million in revenue collected from~~
31 ~~the tax during each fiscal year shall be paid to the credit of~~

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1 ~~the Conservation and Recreation Lands Trust Fund.~~

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

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

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

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

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

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

30 ~~(a) The first \$10 million in revenue collected from~~
31 ~~the tax during each fiscal year shall be paid to the credit of~~

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1 ~~the Conservation and Recreation Lands Trust Fund.~~

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

6 ~~1. To the credit of the General Revenue Fund of the~~
7 ~~state, 58 percent.~~

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

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

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

23 ~~5. To the credit of the Minerals Trust Fund, 7.5~~
24 ~~percent.~~

25 ~~(4) If the base rate is reduced pursuant to paragraph~~
26 ~~(5)(c), then the proceeds of the tax shall be paid into the~~
27 ~~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 ~~(b) The remaining revenues collected from the tax~~

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1 ~~during that fiscal year, after the required payment under~~
 2 ~~paragraph (a), shall be paid into the State Treasury as~~
 3 ~~follows:~~

4 1. ~~To the credit of the General Revenue Fund of the~~
 5 ~~state, 55.15 percent.~~

6 2. ~~To the credit of the Phosphate Research Trust Fund~~
 7 ~~in the Department of Education, Division of Universities, 12.5~~
 8 ~~percent.~~

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

17 4. ~~To the credit of the Minerals Trust Fund, 14.35~~
 18 ~~percent.~~

19 ~~(7)(5)~~ The excise tax levied by this section shall
 20 apply to the total production of the producer during the
 21 taxable year, measured on the basis of bone-dry tons produced
 22 at the point of severance, ~~subject to the following rates:~~

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

25 ~~(b) For 1988, the tax rate shall be the base rate of~~
 26 ~~\$1.35 per ton severed.~~

27 ~~(c) For 1989 and subsequent years, the tax rate shall~~
 28 ~~be the base rate times the base rate adjustment for the tax~~
 29 ~~year as calculated by the department in accordance with~~
 30 ~~subsection (6). However, for 2000 and subsequent taxable~~
 31 ~~years, the base rate shall be reduced by 20 percent, unless~~

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1 ~~additional funding of the Nonmandatory Land Reclamation Trust~~
2 ~~Fund is approved by law.~~

3 ~~(8)(6)~~(a) On or before March 30, 2004 ~~1989~~, and
4 annually thereafter, the department shall calculate the base
5 rate adjustment, if any, for phosphate rock based on the
6 change in the unadjusted annual producer price index for the
7 prior calendar year in relation to the unadjusted annual
8 producer price index for calendar year 1999 ~~1987~~.

9 (b) For the purposes of determining the base rate
10 adjustment for any year, the base rate adjustment shall be a
11 fraction, the numerator of which is the unadjusted annual
12 producer price index for the prior calendar year and the
13 denominator of which is the unadjusted annual producer price
14 index for calendar year 1999 ~~1987~~.

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

19 (d) If the producer price index for chemical and
20 fertilizer mineral mining ~~phosphate rock primary products~~ is
21 substantially revised, the department shall make appropriate
22 adjustment in the method used to compute the base rate
23 adjustment under this subsection which will produce results
24 reasonably consistent with the result which would have been
25 obtained if the producer price index for phosphate rock
26 primary products had not been revised. However, the tax rate
27 shall not be less than \$1.56 per ton severed.

28 (e) In the event the producer price index for
29 phosphate rock primary products is discontinued, then a
30 comparable index shall be selected by the department and
31 adopted by rule.

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1 ~~(9)(7)~~ The excise tax levied on the severance of
2 phosphate rock shall be in addition to any ad valorem taxes
3 levied upon the separately assessed mineral interest in the
4 real property upon which the site of severance is located, or
5 any other tax, permit, or license fee imposed by the state or
6 its political subdivisions.

7 ~~(10)(8)~~ The tax levied by this section shall be
8 collected in the manner prescribed in s. 211.33.

9 Section 2. Section 378.021, Florida Statutes, is
10 amended to read:

11 378.021 Master reclamation plan.--

12 (1) The Department of Environmental Protection ~~Natural~~
13 ~~Resources~~ shall amend the adopt by rule, as expeditiously as
14 ~~possible upon receipt of the report of the Land Use Advisory~~
15 ~~Committee, a master reclamation plan that provides to provide~~
16 guidelines for the reclamation of lands mined or disturbed by
17 the severance of phosphate rock prior to July 1, 1975, which
18 lands are not subject to mandatory reclamation under part II
19 of chapter 211. In amending the developing said master
20 reclamation plan, the Department of Environmental Protection
21 ~~Natural Resources~~ shall continue to conduct an onsite
22 evaluation of all lands mined or disturbed by the severance of
23 phosphate rock prior to July 1, 1975, which lands are not
24 subject to mandatory reclamation under part II of chapter 211,
25 and shall consider the report and plan prepared by the Land
26 Use Advisory Committee under s. 378.011 and submitted to the
27 former Department of Natural Resources for adoption by rule on
28 or before July 1, 1979. The master reclamation plan when
29 amended adopted by the Department of Environmental Protection
30 ~~Natural Resources~~ shall be consistent with local government
31 plans prepared pursuant to the Local Government Comprehensive

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1 Planning and Land Development Regulation Act.

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

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

11 (b) The environmental or economic utility or aesthetic
12 value of the land would not naturally return within a
13 reasonable time, and reclamation would substantially promote
14 the environmental or economic utility or the aesthetic value
15 of the land; ~~and~~

16 (c) The reclamation of the land is in the public
17 interest because the reclamation, when combined with other
18 reclamation under the master plan, would provide a substantial
19 regional benefit; ~~and-~~

20 (d) The reclamation of the land is in the public
21 interest because the reclamation, when combined with other
22 reclamation under the master plan, will provide significant
23 benefits to surface water bodies supplying water for
24 environmental and public purposes in those areas of the state
25 where phosphate mining has been permitted.

26 (3) Lands evaluated by the department under subsection
27 (1) which meet the criteria set forth in subsection (2) shall
28 be identified with specificity in the master reclamation plan.
29 Lands evaluated by the department under subsection (1) which
30 do not meet the criteria set forth in subsection (2) shall
31 also be identified with specificity in the master reclamation

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1 plan as lands which are acceptable in their present form.

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

10 Section 3. Section 378.031, Florida Statutes, is
11 amended to read:

12 378.031 Reclamation or acquisition of nonmandatory
13 lands; legislative intent.--It is the intent of the
14 Legislature to provide an economic incentive to encourage the
15 reclamation of the maximum number of acres of eligible
16 nonmandatory lands in the most timely and efficient manner or
17 the donation or purchase of nonmandatory lands, especially
18 those lands for which reclamation activities will result in
19 significant improvements to surface water bodies of regional
20 importance in those areas of the state where phosphate mining
21 has been permitted. The Legislature recognizes that certain
22 lands mined or disturbed prior to July 1, 1975, have been
23 naturally reclaimed.

24 Section 4. Subsections (5), (6), (7), (8), and (9) of
25 section 378.035, Florida Statutes, are amended to read:

26 378.035 Department responsibilities and duties with
27 respect to Nonmandatory Land Reclamation Trust Fund.--

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

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

16 (b) ~~The department may also expend funds from the \$50~~
17 ~~million reserve fund~~ For the abatement of an imminent hazard
18 as provided by s. 403.4154(3) and for the purpose of closing
19 an abandoned phosphogypsum stack system and carrying out
20 postclosure care as provided by s. 403.4154(5). ~~Fees deposited~~
21 ~~in the Nonmandatory Land Reclamation Trust Fund pursuant to s.~~
22 ~~403.4154(4) may be used for the purposes authorized in this~~
23 ~~paragraph. Fowever, such fees may only be used at a stack~~
24 ~~system if closure or imminent hazard abatement activities~~
25 ~~initially commence on or after July 1, 2002.~~

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

31 1. Which have wildlife habitat value as determined by

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1 the Bureau of Mine Reclamation;

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

6 3. For which other management funding options are not
7 available.

8

9 These funds may, after the basic management or protection has
10 been assured for all such lands, be combined with other
11 available funds to provide a higher level of management for
12 such lands.

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

17 1. The NPDES permitting program authorized by s.
18 403.0885, as it applies to phosphate mining and beneficiation
19 facilities, phosphate fertilizer production facilities, and
20 phosphate loading and handling facilities;

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

23 3. The phosphogypsum management program pursuant to s.
24 403.4154 and department rule 62-673, Florida Administrative
25 Code.

26

27 ~~On or before August 1 of each fiscal year, the department~~
28 ~~shall prepare a report presenting the expenditures using the~~
29 ~~interest income allocated by this section made by the~~
30 ~~department during the immediately preceding fiscal year, which~~
31 ~~report shall be available to the public upon request.~~

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1 ~~(6)(7)~~ Should the nonmandatory land reclamation
2 program encumber all the funds in the Nonmandatory Land
3 Reclamation Trust Fund except those reserved by subsection (5)
4 prior to funding all the reclamation applications for eligible
5 parcels, the funds reserved by subsection (5) shall be
6 available to the program to the extent required to complete
7 the reclamation of all eligible parcels for which the
8 department has received applications.

9 ~~(7)(8)~~ The department may not accept any applications
10 for nonmandatory land reclamation programs after July 1, 2004
11 ~~November 1, 2008~~.

12 ~~(8)(9)~~ The Bureau of Mine Reclamation shall review the
13 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
14 support the stated objectives and report to the secretary
15 annually with recommendations as appropriate. ~~The report~~
16 ~~submittal for calendar year 2008 shall specifically address~~
17 ~~the effect of providing a future refund of fees paid pursuant~~
18 ~~to s. 403.4154(4) following certification of stack closure~~
19 ~~pursuant to department rules, and the report shall be~~
20 ~~submitted to the Governor, the President of the Senate, and~~
21 ~~the Speaker of the House of Representatives on or before March~~
22 ~~1, 2009.~~

23
24 For the 2003-2004 fiscal year the department may not approve
25 or encumber nonmandatory reclamation projects in amounts
26 greater than \$15 million.

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

29 378.036 Land acquisitions financed by Nonmandatory
30 Land Reclamation Trust Fund moneys.--

31 ~~(6)(a)~~ By January 1, 2004, or within 6 months from the

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1 date funds become available from the Legislature, whichever is
2 later, the Florida Wildlife Federation, Audubon Florida, and
3 Rails-to-Trails Conservancy in partnership with the Florida
4 Phosphate Council are authorized to form a nonprofit
5 corporation pursuant to chapter 617 for the purpose of
6 implementing the provisions of this section by creating plans
7 and assisting in the development of recreational opportunities
8 on lands mined for phosphate in the state. The first plans
9 shall concentrate on recreational activities in Hardee and
10 Hamilton Counties which will assist them in rural economic
11 development.

12 (b) The board of directors of the corporation shall be
13 composed of three members, one designated by the Florida
14 Phosphate Council, one as the designee of the Florida Wildlife
15 Federation, Audubon Florida, and Rails-to-Trails Conservancy,
16 and the third chosen by the other two designees.

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

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

28 (e) The corporation shall dissolve on January 1, 2009,
29 unless dissolved previously by action of its board of
30 directors or extended by the Legislature. Upon dissolution,
31 any moneys remaining in the accounts of the corporation that

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1 are unobligated shall be returned to the funds from which they
 2 were appropriated in proportion to the amount contributed. All
 3 tangible assets of the corporation at dissolution which were
 4 acquired using state funding shall become the property of the
 5 Department of Environmental Protection.

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

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

14 378.212 Variances.--

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

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

22 (b) Compliance with a particular requirement or
 23 requirements from which a variance is sought will necessitate
 24 the taking of measures which must be spread over a
 25 considerable period of time. A variance granted for this
 26 reason shall prescribe a timetable for the taking of the
 27 measures required.

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

31 (d) To accommodate specific phosphate mining,

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1 processing or chemical plant uses that otherwise would be
2 inconsistent with the requirements of this part.

3 (e) To provide for an experimental technique that
4 would advance the knowledge of reclamation and restoration
5 methods.

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

9 (g) To accommodate reclamation that provides water
10 supply development or water resource development not
11 inconsistent with the applicable regional water supply plan
12 approved pursuant to s. 373.0361, provided adverse impacts are
13 not caused to the water resources in the basin. A variance may
14 also be granted from the requirements of part IV of chapter
15 373, or the rules adopted thereunder, when a project provides
16 an improvement in water availability in the basin and does not
17 cause adverse impacts to water resources in the basin.

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

20 378.404 Department of Environmental Protection; powers
21 and duties.--The department shall have the following powers
22 and duties:

23 (9) To grant variances from the provisions of this
24 part to accommodate reclamation that provides for water supply
25 development or water resource development not inconsistent
26 with the applicable regional water supply plan approved
27 pursuant to s. 373.0361, appropriate stormwater management,
28 improved wildlife habitat, recreation, or a mixture thereof,
29 provided adverse impacts are not caused to the water resources
30 in the basin and public health and safety are not adversely
31 affected.

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

3 403.4154 Phosphogypsum management program.--

4 (2) REGULATORY PROGRAM.--

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

8 (b) The department shall adopt rules that prescribe
9 acceptable construction designs for new or expanded
10 phosphogypsum stack systems and that prescribe permitting
11 criteria for operation, ~~closure criteria~~, long-term-care
12 requirements, and closure financial responsibility
13 requirements for phosphogypsum stack systems.

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

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

31 (3) ABATEMENT OF IMMINENT HAZARD.--

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1 (a) The department may take action to abate or
2 substantially reduce any imminent hazard caused by the
3 physical condition, maintenance, operation, or closure of a
4 phosphogypsum stack system.

5 (b) An imminent hazard exists if the physical
6 condition, maintenance, operation, or closure of a
7 phosphogypsum stack system creates an immediate and
8 substantial danger to human health, safety, or welfare or to
9 the environment. A phosphogypsum stack system is presumed not
10 to cause an imminent hazard if the physical condition and
11 operation of the system are in compliance with all applicable
12 department rules.

13 (c) The failure of an owner or operator of a
14 phosphogypsum stack system to comply with department rules
15 requiring demonstration of closure financial responsibility
16 may be considered by the department as evidence that a
17 phosphogypsum stack poses an imminent hazard for purposes of
18 initiating actions authorized by paragraph (d).

19 (d)~~(c)~~ If the department determines that the failure
20 of an owner or operator to comply with department rules
21 requiring demonstration of financial responsibility or that
22 the physical condition, maintenance, operation, or closure of
23 a phosphogypsum stack system poses an imminent hazard, the
24 department shall request access to the property on which such
25 stack system is located from the owner or operator of the
26 stack system for the purposes of taking action to abate or
27 substantially reduce the imminent hazard. If the department,
28 after reasonable effort, is unable to timely obtain the
29 necessary access to abate or substantially reduce the imminent
30 hazard, the department may institute action in its own name,
31 using the procedures and remedies of s. 403.121 or s. 403.131,

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1 to abate or substantially reduce an imminent hazard. Whenever
2 serious harm to human health, safety, or welfare, to the
3 environment, or to private or public property may occur prior
4 to completion of an administrative hearing or other formal
5 proceeding that might be initiated to abate the risk of
6 serious harm, the department may obtain from the court, ex
7 parte, an injunction without paying filing and service fees
8 prior to the filing and service of process.

9 ~~(e)(d)~~ To abate or substantially reduce an imminent
10 hazard, the department may take any appropriate action,
11 including, but not limited to, using employees of the
12 department or contracting with other state or federal
13 agencies, with private third-party contractors, or with the
14 owner or operator of the stack system, or financing,
15 compensating, or funding a receiver, trustee, or owner of the
16 stack system, to perform all or part of the work.

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

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1 abate or avoid an imminent hazard or unless otherwise
2 authorized by the department.

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

17 (h) Upon a declaration by the Governor of an
18 environmental emergency concerning the abatement of a imminent
19 hazard involving a phosphogypsum stack or stack system, the
20 state and any agent under contract with the state for the
21 provision of services directly related to the abatement of
22 such hazard shall not become liable under state laws for
23 environmental protection for any costs, damages, or penalties
24 associated with the abatement of the imminent hazard. The
25 Legislature finds that provision of this limited immunity is
26 in the public interest and necessary for the abatement of the
27 imminent hazard.

28 (4) REGISTRATION FEES.--

29 (a)1. The owner or operator of each existing
30 phosphogypsum stack who has not provided a performance bond,
31 letter of credit, trust fund agreement, or closure insurance

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1 to demonstrate financial responsibility for closure and
 2 long-term care shall pay to the department a fee as set forth
 3 in this paragraph. All fees shall be deposited in the
 4 Nonmandatory Land Reclamation Trust Fund.

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

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

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

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

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

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1 fee to the department on or before August 31 of each year.

2 Section 9. Section 403.4155, Florida Statutes, is
3 amended to read:

4 403.4155 Phosphogypsum management; rulemaking
5 authority.--

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

31 (2) The department shall revise chapter 62-673,

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1 Florida Administrative Code, to require the owner or operator
2 of a phosphogypsum stack system to demonstrate financial
3 responsibility for the costs of terminal closure of the
4 phosphogypsum stack system in a manner that protects the
5 environment and the public health and safety. At a minimum,
6 such rules shall include or address the following:

7 (a) Requirements that the cost of closure and
8 long-term care be re-estimated by a professional engineer and
9 adjusted for inflation on an annual basis and, at a minimum,
10 such cost data shall include the cost of treatment and
11 appropriate disposal of all process wastewater, both ponded
12 and pore, in the system; all construction work necessary to
13 properly close the system in accordance with department rules;
14 and all costs associated with long-term care of the closed
15 system, including maintenance and monitoring, in accordance
16 with department rules.

17 (b) Financial statements and financial data be
18 prepared according to United States generally accepted
19 accounting principles and submitted quarterly.

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

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

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

28 (3) By October 1, 2003, the department shall initiate
29 rulemaking to require that phosphogypsum stack system
30 operation plans required by department rule be amended by
31 adding an interim stack system management (ISSM) plan that

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1 provides written instructions for the operation of the system
2 assuming that no phosphoric acid would be produced at the
3 facility for a 2-year period. The initial ISSM plan shall be
4 completed as of the first July 1 following the adoption of the
5 rule required by this section. The ISSM plan shall include:

6 (a) A detailed description of process water management
7 procedures that will be implemented to ensure that the stack
8 system operates in accordance with all applicable department
9 permit conditions and rules. The procedures shall address the
10 actual process water levels present at the facility 30 days
11 prior to the completion of the plan and shall assume that the
12 facility will receive annual average rainfall during the
13 2-year planning period.

14 (b) A detailed description of the procedures to be
15 followed for the daily operation and routine maintenance of
16 the stack system, including required environmental sampling
17 and analyses, as well as for any maintenance or repairs
18 recommended following annual inspections of the system.

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

21 (d) Identification of the sources of power or fuel
22 necessary to implement the plan.

23 (e) Identification of the personnel necessary to
24 implement the plan.

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

28 (5) The foregoing requirement for the preparation and
29 updating of the ISSM plan is applicable to all phosphogypsum
30 stack systems except those which have been closed, which are
31 undergoing closure, or for which an application for a closure

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1 permit has been submitted pursuant to department rule.

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

5 (a) A description of the physical configuration of the
6 phosphogypsum stack system anticipated at the time of closure
7 at the end of useful life of the system.

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

12 (c) An estimate of the cost of management of the
13 anticipated volume of process water in accordance with the
14 site-specific water management plan.

15 (d) A description of all construction work necessary
16 to properly close the system in accordance with department
17 rules.

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

21 ~~(2) By January 31, 2002, the department shall review~~
22 ~~chapter 62-673, Florida Administrative Code, to determine the~~
23 ~~adequacy of the financial responsibility provisions contained~~
24 ~~in the rules and shall take any measures necessary to ensure~~
25 ~~that the rules provide sound and effective provisions to~~
26 ~~minimize risk to the environment and to public health and~~
27 ~~safety from the business failure of a phosphogypsum stack~~
28 ~~system.~~

29 Section 10. (1) The Department of Environmental
30 Protection, in consultation with the Southwest Florida Water
31 Management District, shall study cumulative impacts of changes

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1 in landform and hydrology in the Peace River Basin. The study
2 shall evaluate cumulative impacts of activities conducted in
3 the Peace River Basin prior to state regulation, or pursuant
4 to an exemption, a permit, or a reclamation plan on water
5 resources of the basin, including surface waters,
6 groundwaters, fisheries, aquatic and estuarine habitat, and
7 water supplies. The study shall also include an evaluation of
8 the effectiveness of existing regulatory programs in avoiding,
9 minimizing, mitigating, or compensating for cumulative impacts
10 on water resources of the basin.

11 (2) Upon completion of the study, the department shall
12 prepare and adopt a resource management plan for the Peace
13 River Basin to minimize any identified existing and future
14 adverse cumulative impacts to water resources of the basin,
15 including surface waters, groundwaters, wetlands, fisheries,
16 aquatic and estuarine habitat, and water supplies. The plan
17 shall identify regulatory and nonregulatory actions necessary
18 to minimize existing and future adverse cumulative impacts
19 identified in the study and where appropriate, shall also
20 recommend statutory changes to improve regulatory programs to
21 minimize identified cumulative impacts to water resources of
22 the basin.

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

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

29 (5) The department may establish a technical advisory
30 committee to assist the department in developing a plan of
31 study, reviewing interim findings, and reviewing final

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1 recommendations. The technical advisory committee may include
2 representatives from the following interests in the Peace
3 River Basin: industrial, mining, agriculture, development,
4 environmental, fishing, regional water supply, and local
5 government.

6 Section 11. For fiscal year 2003-2004, the sum of
7 \$12.5 million is hereby transferred from the Nonmandatory Land
8 Reclamation Trust Fund to the General Revenue Fund.

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

23 Section 13. This act shall take effect upon becoming a
24 law.

25
26

27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete everything before the enacting clause

30

31 and insert:

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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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