

Bill No. CS for SB 2316

Amendment No. ____ Barcode 101776

CHAMBER ACTION

Senate

House

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Senator Alexander moved the following amendment:

Senate Amendment (with title amendment)

On page 21, between lines 18 and 19,

insert:

Section 13. 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, 15 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, 43.75 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, 13 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, 11.5 percent.

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1 (4) Beginning July 1, 2003, and annually thereafter,
2 the Department of Environmental Protection may utilize up to
3 \$2 million of the funds in the Nonmandatory Land Reclamation
4 Trust Fund to purchase a surety bond or a policy of insurance,
5 the proceeds of which would pay the cost of restoration,
6 reclamation, and cleanup of any phosphogypsum stack system and
7 phosphate mining activities in the event that an operator or
8 permittee thereof has been subject to a final order of
9 bankruptcy and all funds available therefrom are determined to
10 be inadequate to accomplish such restoration, reclamation, and
11 cleanup. Nothing in this section shall be construed to imply
12 that such operator or permittee is thereby relieved of its
13 obligations or relieved of any liabilities pursuant to any
14 other remedies at law, administrative remedies, statutory
15 remedies, or remedies pursuant to bankruptcy law. The
16 department shall adopt rules to implement the provisions of
17 this paragraph, including the purchase and oversight of the
18 bond or policy.

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

22 1. For planning, preparing, and financing of
23 infrastructure projects for job creation and capital
24 investment, especially those related to industrial and
25 commercial sites. Infrastructure investments may include the
26 following public or public-private partnership facilities:
27 stormwater systems; telecommunications facilities; roads or
28 other remedies to transportation impediments; nature-based
29 tourism facilities; or other physical requirements necessary
30 to facilitate trade and economic development activities.

31 2. For maximizing the use of federal, local, and

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1 private resources, including, but not limited to, those
 2 available under the Small Cities Community Development Block
 3 Grant Program.

4 3. For projects that improve inadequate infrastructure
 5 that has resulted in regulatory action that prohibits economic
 6 or community growth, provided that such projects are related
 7 to specific job creation or job retention opportunities.

8 (6) Beginning January 1, 2004, the tax rate shall be
 9 the base rate of \$1.62 per ton severed.

10 (7) Beginning January 1, 2005, and annually
 11 thereafter, the tax rate shall be the base rate times the base
 12 rate adjustment for the tax year as calculated by the
 13 department in accordance with subsection (8).

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

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

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

24 ~~1. To the credit of the General Revenue Fund of the~~
 25 ~~state, 60 percent. However, from this amount the amounts of~~
 26 ~~\$7.4 million, \$8.2 million, and \$8.1 million, respectively,~~
 27 ~~shall be transferred to the Nonmandatory Land Reclamation~~
 28 ~~Trust Fund on January 1, 1993, January 1, 1994, and January 1,~~
 29 ~~1995.~~

30 ~~2. To the credit of the Nonmandatory Land Reclamation~~
 31 ~~Trust Fund which is established for reclamation and~~

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1 ~~acquisition of unreclaimed lands disturbed by phosphate mining~~
2 ~~and not subject to mandatory reclamation, 20 percent.~~

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

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

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

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

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

24 ~~1. To the credit of the General Revenue Fund of the~~
25 ~~state, 58 percent.~~

26 ~~2. To the credit of the Nonmandatory Land Reclamation~~
27 ~~Trust Fund for reclamation and acquisition of unreclaimed~~
28 ~~lands disturbed by phosphate mining and not subject to~~
29 ~~mandatory reclamation, 14.5 percent.~~

30 ~~3. To the credit of the Phosphate Research Trust Fund~~
31 ~~in the Department of Education, Division of Universities, to~~

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1 ~~carry out the purposes set forth in s. 378.101, 10 percent.~~

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

10 ~~5. To the credit of the Minerals Trust Fund, 7.5~~
11 ~~percent.~~

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

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

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

22 ~~1. To the credit of the General Revenue Fund of the~~
23 ~~state, 55.15 percent.~~

24 ~~2. To the credit of the Phosphate Research Trust Fund~~
25 ~~in the Department of Education, Division of Universities, 12.5~~
26 ~~percent.~~

27 ~~3. For payment to counties in proportion to the number~~
28 ~~of tons of phosphate rock produced from a phosphate rock~~
29 ~~matrix located within such political boundary, 18 percent. The~~
30 ~~department shall distribute this portion of the proceeds~~
31 ~~annually based on production information reported by producers~~

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1 ~~on the annual returns for the taxable year. Any such proceeds~~
 2 ~~received by a county shall be used only for phosphate-related~~
 3 ~~expenses.~~

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

6 ~~(8)(5)~~ The excise tax levied by this section shall
 7 apply to the total production of the producer during the
 8 taxable year, measured on the basis of bone-dry tons produced
 9 at the point of severance, ~~subject to the following rates:~~

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

12 ~~(b) For 1988, the tax rate shall be the base rate of~~
 13 ~~\$1.35 per ton severed.~~

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

21 ~~(9)(6)(a)~~ On or before March 30, 2004 ~~1989~~, and
 22 annually thereafter, the department shall calculate the base
 23 rate adjustment, if any, for phosphate rock based on the
 24 change in the unadjusted annual producer price index for the
 25 prior calendar year in relation to the unadjusted annual
 26 producer price index for calendar year 1999 ~~1987~~.

27 (b) For the purposes of determining the base rate
 28 adjustment for any year, the base rate adjustment shall be a
 29 fraction, the numerator of which is the unadjusted annual
 30 producer price index for the prior calendar year and the
 31 denominator of which is the unadjusted annual producer price

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1 index for calendar year 1999 ~~1987~~.

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

6 (d) If the producer price index for chemical and
7 fertilizer mineral mining ~~phosphate rock primary products~~ is
8 substantially revised, the department shall make appropriate
9 adjustment in the method used to compute the base rate
10 adjustment under this subsection which will produce results
11 reasonably consistent with the result which would have been
12 obtained if the producer price index for phosphate rock
13 primary products had not been revised. However, the tax rate
14 shall not be less than \$1.56 per ton severed.

15 (e) In the event the producer price index for
16 phosphate rock primary products is discontinued, then a
17 comparable index shall be selected by the department and
18 adopted by rule.

19 ~~(10)(7)~~ The excise tax levied on the severance of
20 phosphate rock shall be in addition to any ad valorem taxes
21 levied upon the separately assessed mineral interest in the
22 real property upon which the site of severance is located, or
23 any other tax, permit, or license fee imposed by the state or
24 its political subdivisions.

25 ~~(11)(8)~~ The tax levied by this section shall be
26 collected in the manner prescribed in s. 211.33.

27 Section 14. Section 378.021, Florida Statutes, is
28 amended to read:

29 378.021 Master reclamation plan.--

30 (1) The Department of Environmental Protection ~~Natural~~
31 ~~Resources~~ shall amend the ~~adopt by rule, as expeditiously as~~

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1 ~~possible upon receipt of the report of the Land Use Advisory~~
2 ~~Committee, a master reclamation plan that provides to provide~~
3 guidelines for the reclamation of lands mined or disturbed by
4 the severance of phosphate rock prior to July 1, 1975, which
5 lands are not subject to mandatory reclamation under part II
6 of chapter 211. In amending the ~~developing said~~ master
7 reclamation plan, the Department of Environmental Protection
8 ~~Natural Resources~~ shall continue to conduct an onsite
9 evaluation of all lands mined or disturbed by the severance of
10 phosphate rock prior to July 1, 1975, which lands are not
11 subject to mandatory reclamation under part II of chapter 211,
12 and shall consider the report and plan prepared by the Land
13 Use Advisory Committee under s. 378.011 and submitted to the
14 former Department of Natural Resources for adoption by rule on
15 or before July 1, 1979. The master reclamation plan when
16 amended ~~adopted~~ by the Department of Environmental Protection
17 ~~Natural Resources~~ shall be consistent with local government
18 plans prepared pursuant to the Local Government Comprehensive
19 Planning and Land Development Regulation Act.

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

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

29 (b) The environmental or economic utility or aesthetic
30 value of the land would not naturally return within a
31 reasonable time, and reclamation would substantially promote

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1 the environmental or economic utility or the aesthetic value
2 of the land; ~~and~~

3 (c) The reclamation of the land is in the public
4 interest because the reclamation, when combined with other
5 reclamation under the master plan, would provide a substantial
6 regional benefit; ~~and-~~

7 (d) The reclamation of the land is in the public
8 interest because the reclamation, when combined with other
9 reclamation under the master plan, will provide significant
10 benefits to surface water bodies supplying water for
11 environmental and public purposes in those areas of the state
12 where phosphate mining has been permitted.

13 (3) Lands evaluated by the department under subsection
14 (1) which meet the criteria set forth in subsection (2) shall
15 be identified with specificity in the master reclamation plan.
16 Lands evaluated by the department under subsection (1) which
17 do not meet the criteria set forth in subsection (2) shall
18 also be identified with specificity in the master reclamation
19 plan as lands which are acceptable in their present form.

20 (4) Upon adoption of the amendments to the master
21 reclamation plan as a rule, such plan shall provide the
22 guidelines for approval of reclamation programs for lands
23 covered in the plan, recognizing that reclamation of such
24 lands is not mandatory, but that any payment of costs expended
25 for reclamation paid under s. 378.031 shall be contingent upon
26 conformity with the guidelines set forth in the master
27 reclamation plan.

28 Section 15. Section 378.031, Florida Statutes, is
29 amended to read:

30 378.031 Reclamation or acquisition of nonmandatory
31 lands; legislative intent.--It is the intent of the

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1 | Legislature to provide an economic incentive to encourage the
2 | reclamation of the maximum number of acres of eligible
3 | nonmandatory lands in the most timely and efficient manner or
4 | the donation or purchase of nonmandatory lands, especially
5 | those lands for which reclamation activities will result in
6 | significant improvements to surface water bodies of regional
7 | importance in those areas of the state where phosphate mining
8 | has been permitted. The Legislature recognizes that certain
9 | lands mined or disturbed prior to July 1, 1975, have been
10 | naturally reclaimed.

11 | Section 16. Subsections (5), (6), (7), (8), and (9) of
12 | section 378.035, Florida Statutes, are amended to read:

13 | 378.035 Department responsibilities and duties with
14 | respect to Nonmandatory Land Reclamation Trust Fund.--

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

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

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

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

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

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

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

24 3. For which other management funding options are not
25 available.

26
27 These funds may, after the basic management or protection has
28 been assured for all such lands, be combined with other
29 available funds to provide a higher level of management for
30 such lands.

31 ~~(d)(b) Up to one-half of the interest income accruing~~

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1 ~~to the funds reserved by subsection (5) shall be available to~~
 2 ~~the department annually~~ For the sole purpose of funding the
 3 department's implementation of:

4 1. The NPDES permitting program authorized by s.
 5 403.0885, as it applies to phosphate mining and beneficiation
 6 facilities, phosphate fertilizer production facilities, and
 7 phosphate loading and handling facilities;

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

10 3. The phosphogypsum management program pursuant to s.
 11 403.4154 and department rule 62-673, Florida Administrative
 12 Code.

13
 14 ~~On or before August 1 of each fiscal year, the department~~
 15 ~~shall prepare a report presenting the expenditures using the~~
 16 ~~interest income allocated by this section made by the~~
 17 ~~department during the immediately preceding fiscal year, which~~
 18 ~~report shall be available to the public upon request.~~

19 ~~(6)(7)~~ Should the nonmandatory land reclamation
 20 program encumber all the funds in the Nonmandatory Land
 21 Reclamation Trust Fund except those reserved by subsection (5)
 22 prior to funding all the reclamation applications for eligible
 23 parcels, the funds reserved by subsection (5) shall be
 24 available to the program to the extent required to complete
 25 the reclamation of all eligible parcels for which the
 26 department has received applications.

27 ~~(7)(8)~~ The department may not accept any applications
 28 for nonmandatory land reclamation programs after July 1, 2004
 29 ~~November 1, 2008~~.

30 ~~(8)(9)~~ The Bureau of Mine Reclamation shall review the
 31 sufficiency of the Nonmandatory Land Reclamation Trust Fund to

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1 support the stated objectives and report to the secretary
2 annually with recommendations as appropriate. ~~The report~~
3 ~~submittal for calendar year 2008 shall specifically address~~
4 ~~the effect of providing a future refund of fees paid pursuant~~
5 ~~to s. 403.4154(4) following certification of stack closure~~
6 ~~pursuant to department rules, and the report shall be~~
7 ~~submitted to the Governor, the President of the Senate, and~~
8 ~~the Speaker of the House of Representatives on or before March~~
9 ~~1, 2009.~~

10

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

14 Section 17. Subsection (6) is added to section
15 378.036, Florida Statutes, to read:

16 378.036 Land acquisitions financed by Nonmandatory
17 Land Reclamation Trust Fund moneys.--

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

30 (b) The board of directors of the corporation shall be
31 composed of three members, one designated by the Florida

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1 Phosphate Council, one as the designee of the Florida Wildlife
2 Federation, Audubon Florida, and Rails-to-Trails Conservancy,
3 and the third chosen by the other two designees.

4 (c) The business of the corporation shall be conducted
5 by the board of directors or a chief executive officer as the
6 board shall see fit in accordance with the provisions of its
7 articles of incorporation and applicable law. The activities
8 of the corporation shall be coordinated with all landowners
9 who have voluntarily agreed to participate in the process as
10 well as any local government where such lands are recorded.

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

15 (e) The corporation shall dissolve on January 1, 2009,
16 unless dissolved previously by action of its board of
17 directors or extended by the Legislature. Upon dissolution,
18 any moneys remaining in the accounts of the corporation that
19 are unobligated shall be returned to the funds from which they
20 were appropriated in proportion to the amount contributed. All
21 tangible assets of the corporation at dissolution which were
22 acquired using state funding shall become the property of the
23 Department of Environmental Protection.

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

30 Section 18. Subsection (1) of section 378.212, Florida
31 Statutes, is amended to read:

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1 378.212 Variances.--

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

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

9 (b) Compliance with a particular requirement or
10 requirements from which a variance is sought will necessitate
11 the taking of measures which must be spread over a
12 considerable period of time. A variance granted for this
13 reason shall prescribe a timetable for the taking of the
14 measures required.

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

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

21 (e) To provide for an experimental technique that
22 would advance the knowledge of reclamation and restoration
23 methods.

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

27 (g) To accommodate reclamation that provides water
28 supply development or water resource development not
29 inconsistent with the applicable regional water supply plan
30 approved pursuant to s. 373.0361, provided adverse impacts are
31 not caused to the water resources in the basin. A variance may

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1 also be granted from the requirements of part IV of chapter
2 373, or the rules adopted thereunder, when a project provides
3 an improvement in water availability in the basin and does not
4 cause adverse impacts to water resources in the basin.

5 Section 19. Subsection (9) is added to section
6 378.404, Florida Statutes, to read:

7 378.404 Department of Environmental Protection; powers
8 and duties.--The department shall have the following powers
9 and duties:

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

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

21 403.4154 Phosphogypsum management program.--

22 (2) REGULATORY PROGRAM.--

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

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

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

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

18 (3) ABATEMENT OF IMMINENT HAZARD.--

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

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

31 (c) The failure of an owner or operator of a

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1 phosphogypsum stack system to comply with department rules
2 requiring demonstration of closure financial responsibility
3 may be considered by the department as evidence that a
4 phosphogypsum stack poses an imminent hazard for purposes of
5 initiating actions authorized by paragraph (d).

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

27 ~~(e)(d)~~ To abate or substantially reduce an imminent
28 hazard, the department may take any appropriate action,
29 including, but not limited to, using employees of the
30 department or contracting with other state or federal
31 agencies, with private third-party contractors, or with the

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1 owner or operator of the stack system, or financing,
2 compensating, or funding a receiver, trustee, or owner of the
3 stack system, to perform all or part of the work.

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

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

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1 | lien on the real property, personal property, or other assets
2 | referenced in this paragraph, including, but not limited to,
3 | the associated phosphate rock mine and reserves.

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

15 | (4) REGISTRATION FEES.--

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

23 | 2. The amount of the fee for each existing stack shall
24 | be \$75,000 for each of the five 12-month periods following
25 | July 1, 2001.

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

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1 construction permit for that stack.

2 4. Within 30 days after a phosphogypsum stack has been
3 certified as closed pursuant to rule 62-673.620(2) and (3),
4 Florida Administrative Code, the department shall refund to
5 the owner of the closed phosphogypsum stack an amount from the
6 Nonmandatory Land Reclamation Trust Fund equal to the total
7 amount of fee payments made by the owner or operator to the
8 fund in connection with the closed phosphogypsum stack.
9 However, no refund shall be paid until such time as the
10 Mulberry and Piney Point phosphogypsum stack systems have been
11 closed and a satisfactory reserve has been established in the
12 Nonmandatory Reclamation Lands Trust Fund, except that any
13 refund becoming payable prior to July 1, 2009, shall be paid
14 to the owner on or after that date.

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

20 Section 21. Section 403.4155, Florida Statutes, is
21 amended to read:

22 403.4155 Phosphogypsum management; rulemaking
23 authority.--

24 (1) The Department of Environmental Protection shall
25 adopt rules to amend existing chapter 62-672, Florida
26 Administrative Code, to ensure that impoundment structures and
27 water conveyance piping systems used in phosphogypsum
28 management are designed and maintained to meet critical safety
29 standards. The rules must require that any impoundment
30 structure used in a phosphogypsum stack system, together with
31 all pumps, piping, ditches, drainage conveyances, water

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

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

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

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

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

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

11 4. Identification of the sources of power or fuel
12 necessary to implement the plan.

13 5. Identification of the personnel necessary to
14 implement the plan.

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

18 (c) The requirements listed in paragraphs (a) and (b)
19 are applicable to all phosphogypsum stack systems except those
20 which have been closed, which are undergoing closure, or for
21 which an application for a closure permit has been submitted
22 pursuant to department rule.

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

27 1. A description of the physical configuration of the
28 phosphogypsum stack system anticipated at the time of closure
29 at the end of useful life of the system.

30 2. A site-specific water management plan describing
31 the procedures to be employed at the end of the useful life of

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

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

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

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

11 (b) The department shall revise chapter 62-673,
12 Florida Administrative Code, to require the owner or operator
13 of a phosphogypsum stack management system to demonstrate
14 financial responsibility for the costs of terminal closure of
15 the phosphogypsum stack system in a manner that protects the
16 public health and safety.

17 1. The costs of terminal closure shall be estimated
18 based on the stack system configuration as of the end of its
19 useful life as determined by the owner or operator.

20 2. The owner or operator may demonstrate financial
21 responsibility by use of one or more of the following methods:

- 22 a. Bond.
- 23 b. Letter of credit.
- 24 c. Cash deposit arrangement.
- 25 d. Closure insurance.
- 26 e. Financial tests.
- 27 f. Corporate guarantee.

28
29 For the purposes of this section, a "cash deposit arrangement"
30 refers to a trust fund, business or statutory trust, escrow
31 account, or similar cash deposit entity whereby a fiduciary

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1 holds and invests funds deposited by the owner or operator,
2 which funds shall be expended only for the purpose of directly
3 implementing all or some portion of phosphogypsum stack system
4 closure requirements of that particular owner or operator.

5 3. A trustee, escrow agent, or other fiduciary of a
6 cash deposit arrangement authorized by this section shall have
7 no liability for any damage or loss of any kind arising out of
8 or caused by performance of duties imposed by the terms of the
9 applicable agreement except where such damage or loss is
10 directly caused by the gross negligence or criminal act of the
11 trustee, escrow agent, or other fiduciary. In performing its
12 duties pursuant to the applicable agreement, a trustee, escrow
13 agent, or other fiduciary shall be entitled to rely upon
14 information and direction received from the grantor or the
15 department without independent verification unless such
16 information and direction are manifestly in error:

17 4. To the extent that a cash deposit arrangement is
18 used to provide proof of financial responsibility for all or a
19 portion of closure costs, the trust, escrow, or cash
20 arrangement deposit entity shall be deemed to have assumed all
21 liability for such closure costs up to the amount of the cash
22 deposit, less any fees or costs of the trustee, escrow agent,
23 or other fiduciary.

24 5. Any funds maintained in a cash deposit arrangement
25 authorized by this section shall not be subject to claims of
26 creditors of the owner or operator and shall otherwise be
27 exempt from setoff, execution, levy, garnishment, and similar
28 writs and proceedings.

29 6. Any funds remaining in a trust, escrow account, or
30 other cash deposit arrangement after the purpose of such cash
31 deposit arrangement under this section has been accomplished

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1 shall be returned to the grantor.

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

10 (a) That the cost of closure and long-term care be
11 re-estimated by a professional engineer and adjusted for
12 inflation on an annual basis. At a minimum, such cost data
13 shall include:

14 1. The cost of treatment and appropriate disposal of
15 all process wastewater, both ponded and pore, in the system.

16 2. All construction work necessary to properly close
17 the system in accordance with department rules.

18 3. All costs associated with long-term care of the
19 closed system, including maintenance and monitoring, in
20 accordance with department rules.

21 (b) That financial statements and financial data be
22 prepared according to generally accepted accounting principles
23 within the United States and submitted quarterly.

24 (c) That audited financial statements be provided
25 annually along with the statement of financial assurance.

26 (d) That any owner or operator in default on any of
27 its obligations report such default immediately.

28 ~~(2) By January 31, 2002, the department shall review~~
29 ~~chapter 62-673, Florida Administrative Code, to determine the~~
30 ~~adequacy of the financial responsibility provisions contained~~
31 ~~in the rules and shall take any measures necessary to ensure~~

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1 ~~that the rules provide sound and effective provisions to~~
2 ~~minimize risk to the environment and to public health and~~
3 ~~safety from the business failure of a phosphogypsum stack~~
4 ~~system.~~

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

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

30 (3) The resource management plan shall be submitted to
31 the Governor, the Speaker of the House of Representatives and

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1 the President of the Senate no later than January 1, 2005.

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

5 (5) The department may establish a technical advisory
6 committee to assist the department in developing a plan of
7 study, reviewing interim findings, and reviewing final
8 recommendations. The technical advisory committee may include
9 representatives from the following interests in the Peace
10 River Basin: industrial, mining, agriculture, development,
11 environmental, fishing, regional water supply, and local
12 government.

13 Section 23. For fiscal year 2003-2004, the sum of
14 \$12.5 million is hereby transferred from the Nonmandatory Land
15 Reclamation Trust Fund to the General Revenue Fund.

16 Section 24. For fiscal year 2003-2004, the sum of
17 \$800,000 is appropriated to the Phosphate Research Trust Fund
18 from the proceeds of the phosphate severance tax deposited
19 into the Nonmandatory Land Reclamation Trust Fund. Such funds
20 shall be used by the Florida Institute of Phosphate Research
21 to conduct a bench and pilot scale study of the FIPR/DIPR
22 process for the purpose of determining its technical and
23 economic feasibility. The study shall evaluate the
24 availability, technical feasibility, and cost of using various
25 types of fiber, including, but not limited to, paper and
26 sewage sludge. The study shall evaluate the technical
27 feasibility and practicality of various methods of using and
28 disposing of the clay/fiber product produced, including
29 admixing the material with soil.

30 Section 25. This act shall take effect upon becoming a
31 law.

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

2 And the title is amended as follows:

3 On page 3, line 2, after the semicolon

4

5 insert:

6 amending s. 211.3103, F.S.; amending the tax on
7 phosphate rock; providing for the distribution
8 of tax proceeds; deleting obsolete language;
9 amending s. 378.021, F.S.; directing the
10 Department of Environmental Protection to amend
11 the master reclamation plan; amending s.
12 378.031, F.S.; providing additional intent
13 concerning reclamation activities; amending s.
14 378.035, F.S.; amending authorized uses of
15 funds deposited in the Nonmandatory Land
16 Reclamation Trust Fund; removing requirements
17 for a reserve; limiting reclamation
18 expenditures for fiscal year 2003-2004;
19 amending s. 378.036, F.S.; creating a
20 not-for-profit partnership to assist in
21 phosphate reclamation; providing duties of the
22 partnership; providing for the administration
23 of partnership funds; providing an
24 appropriation; amending s. 378.212; providing
25 authority for a variance for certain
26 reclamation activities; amending s. 378.404,
27 F.S.; allowing variances for water supply
28 development; amending s. 403.4154, F.S.;
29 providing criminal penalties for certain
30 violations; prohibiting the distribution of
31 certain company assets under certain

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

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