

By the Committee on Appropriations; and Senators Alexander,
Lynn, Dockery, Constantine and Bennett

309-657-04

1 A bill to be entitled
2 An act relating to phosphate mining; amending
3 s. 211.3103, F.S.; amending the tax on
4 phosphate rock; providing for the distribution
5 of tax proceeds; deleting obsolete provisions;
6 amending s. 378.021, F.S.; directing the
7 Department of Environmental Protection to amend
8 the master reclamation plan; amending s.
9 378.031, F.S.; providing additional intent
10 concerning reclamation activities; amending s.
11 378.035, F.S.; amending authorized uses of
12 funds deposited in the Nonmandatory Land
13 Reclamation Trust Fund; removing requirements
14 for a reserve; limiting reclamation
15 expenditures for fiscal year 2003-2004;
16 amending s. 378.036, F.S.; creating a
17 not-for-profit partnership to assist in
18 phosphate reclamation; providing duties of the
19 partnership; providing for the administration
20 of partnership funds; amending s. 378.212,
21 F.S.; providing authority for a variance for
22 certain reclamation activities; amending s.
23 378.404, F.S.; allowing variances for water
24 supply development; amending s. 403.4154, F.S.;
25 providing criminal penalties for certain
26 violations; prohibiting the distribution of
27 certain company assets under specified
28 circumstances; providing for the declaration of
29 an imminent hazard if certain financial
30 conditions exist; providing limited liability
31 for entities assisting in the abatement of

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

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

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

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

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

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

31

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

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

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

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

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

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

29 5. To the credit of the Nonmandatory Land Reclamation
30 Trust Fund, 43.75 percent.

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

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

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

11 1. To the credit of the General Revenue Fund of the
12 state, 40.1 percent.

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

21 3. For payment to counties that have been designated a
22 rural area of critical economic concern pursuant to s.
23 288.0656 in proportion to the number of tons of phosphate rock
24 produced from a phosphate rock matrix located within such
25 political boundary, 13 percent. The department shall
26 distribute this portion of the proceeds annually based on
27 production information reported by the producers on the annual
28 returns for the taxable year. Payments under this subparagraph
29 shall be made to the counties unless the Legislature by
30 special act creates a local authority to promote and direct
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1 the economic development of the county. If such authority
2 exists, payments shall be made to that authority.

3 4. To the credit of the Phosphate Research Trust Fund
4 in the Division of Universities of the Department of
5 Education, 9.3 percent.

6 5. To the credit of the Minerals Trust Fund, 10.7
7 percent.

8 6. To the credit of the Nonmandatory Land Reclamation
9 Trust Fund, 10.4 percent.

10 (4) Beginning July 1, 2003, and annually thereafter,
11 the Department of Environmental Protection may use up to \$2
12 million of the funds in the Nonmandatory Land Reclamation
13 Trust Fund to purchase a surety bond or a policy of insurance,
14 the proceeds of which would pay the cost of restoration,
15 reclamation, and cleanup of any phosphogypsum stack system and
16 phosphate mining activities in the event that an operator or
17 permittee thereof has been subject to a final order of
18 bankruptcy and all funds available therefrom are determined to
19 be inadequate to accomplish such restoration, reclamation, and
20 cleanup. This section does not imply that such operator or
21 permittee is thereby relieved of its obligations or relieved
22 of any liabilities pursuant to any other remedies at law,
23 administrative remedies, statutory remedies, or remedies
24 pursuant to bankruptcy law. The department shall adopt rules
25 to implement this subsection, including the purchase and
26 oversight of the bond or policy.

27 (5) Funds distributed pursuant to subparagraphs
28 (2)(b)2. and (3)(b)3. shall be used for:

29 1. Planning, preparing, and financing of
30 infrastructure projects for job creation and capital
31 investment, especially those related to industrial and

1 commercial sites. Infrastructure investments may include the
2 following public or public-private partnership facilities:
3 stormwater systems, telecommunications facilities, roads or
4 other remedies to transportation impediments, nature-based
5 tourism facilities, or other physical requirements necessary
6 to facilitate trade and economic development activities.

7 2. Maximizing the use of federal, local, and private
8 resources, including, but not limited to, those available
9 under the Small Cities Community Development Block Grant
10 Program.

11 3. Projects that improve inadequate infrastructure
12 that has resulted in regulatory action that prohibits economic
13 or community growth, if such projects are related to specific
14 job creation or job retention opportunities.

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

17 (7) Beginning January 1, 2005, and annually
18 thereafter, the tax rate shall be the base rate times the base
19 rate adjustment for the tax year as calculated by the
20 department in accordance with subsection (9).

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

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

27 ~~(b) The remaining revenues collected from the tax~~
28 ~~during that fiscal year, after the required payment under~~
29 ~~paragraph (a), shall be paid into the State Treasury as~~
30 ~~follows:~~

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1 ~~1. To the credit of the General Revenue Fund of the~~
2 ~~state, 60 percent. However, from this amount the amounts of~~
3 ~~\$7.4 million, \$8.2 million, and \$8.1 million, respectively,~~
4 ~~shall be transferred to the Nonmandatory Land Reclamation~~
5 ~~Trust Fund on January 1, 1993, January 1, 1994, and January 1,~~
6 ~~1995.~~

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

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

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

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

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

28 ~~(b) The remaining revenues collected from the tax~~
29 ~~during that fiscal year, after the required payment under~~
30 ~~paragraph (a), shall be paid into the State Treasury as~~
31 ~~follows:~~

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

3 ~~2. To the credit of the Nonmandatory Land Reclamation~~
4 ~~Trust Fund for reclamation and acquisition of unreclaimed~~
5 ~~lands disturbed by phosphate mining and not subject to~~
6 ~~mandatory reclamation, 14.5 percent.~~

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

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

18 ~~5. To the credit of the Minerals Trust Fund, 7.5~~
19 ~~percent.~~

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

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

26 ~~(b) The remaining revenues collected from the tax~~
27 ~~during that fiscal year, after the required payment under~~
28 ~~paragraph (a), shall be paid into the State Treasury as~~
29 ~~follows:~~

30 ~~1. To the credit of the General Revenue Fund of the~~
31 ~~state, 55.15 percent.~~

1 ~~2. To the credit of the Phosphate Research Trust Fund~~
2 ~~in the Department of Education, Division of Universities, 12.5~~
3 ~~percent.~~

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

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

14 (8)(5) The excise tax levied by this section shall
15 apply to the total production of the producer during the
16 taxable year, measured on the basis of bone-dry tons produced
17 at the point of severance., ~~subject to the following rates:~~

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

20 ~~(b) For 1988, the tax rate shall be the base rate of~~
21 ~~\$1.35 per ton severed.~~

22 ~~(c) For 1989 and subsequent years, the tax rate shall~~
23 ~~be the base rate times the base rate adjustment for the tax~~
24 ~~year as calculated by the department in accordance with~~
25 ~~subsection (6). However, for 2000 and subsequent taxable~~
26 ~~years, the base rate shall be reduced by 20 percent, unless~~
27 ~~additional funding of the Nonmandatory Land Reclamation Trust~~
28 ~~Fund is approved by law.~~

29 (9)(6)(a) On or before March 30, 2004 ~~1989~~, and
30 annually thereafter, the department shall calculate the base
31 rate adjustment, if any, for phosphate rock based on the

1 change in the unadjusted annual producer price index for the
2 prior calendar year in relation to the unadjusted annual
3 producer price index for calendar year 1999 ~~1987~~.

4 (b) For the purposes of determining the base rate
5 adjustment for any year, the base rate adjustment shall be a
6 fraction, the numerator of which is the unadjusted annual
7 producer price index for the prior calendar year and the
8 denominator of which is the unadjusted annual producer price
9 index for calendar year 1999 ~~1987~~.

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

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

23 (e) In the event the producer price index for
24 phosphate rock primary products is discontinued, then a
25 comparable index shall be selected by the department and
26 adopted by rule.

27 (10)~~(7)~~ The excise tax levied on the severance of
28 phosphate rock shall be in addition to any ad valorem taxes
29 levied upon the separately assessed mineral interest in the
30 real property upon which the site of severance is located, or
31

1 any other tax, permit, or license fee imposed by the state or
2 its political subdivisions.

3 (11)~~(8)~~ The tax levied by this section shall be
4 collected in the manner prescribed in s. 211.33.

5 Section 2. Section 378.021, Florida Statutes, is
6 amended to read:

7 378.021 Master reclamation plan.--

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

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

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

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

13 (c) The reclamation of the land is in the public
14 interest because the reclamation, when combined with other
15 reclamation under the master plan, would provide a substantial
16 regional benefit; ~~and~~.

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

23 (3) Lands evaluated by the department under subsection
24 (1) which meet the criteria set forth in subsection (2) shall
25 be identified with specificity in the master reclamation plan.
26 Lands evaluated by the department under subsection (1) which
27 do not meet the criteria set forth in subsection (2) shall
28 also be identified with specificity in the master reclamation
29 plan as lands which are acceptable in their present form.

30 (4) Upon adoption of the amendments to the master
31 reclamation plan as a rule, such plan shall provide the

1 guidelines for approval of reclamation programs for lands
2 covered in the plan, recognizing that reclamation of such
3 lands is not mandatory, but that any payment of costs expended
4 for reclamation paid under s. 378.031 shall be contingent upon
5 conformity with the guidelines set forth in the master
6 reclamation plan.

7 Section 3. Section 378.031, Florida Statutes, is
8 amended to read:

9 378.031 Reclamation or acquisition of nonmandatory
10 lands; legislative intent.--It is the intent of the
11 Legislature to provide an economic incentive to encourage the
12 reclamation of the maximum number of acres of eligible
13 nonmandatory lands in the most timely and efficient manner or
14 the donation or purchase of nonmandatory lands, especially
15 those lands for which reclamation activities will result in
16 significant improvements to surface water bodies of regional
17 importance in those areas of the state where phosphate mining
18 has been permitted. The Legislature recognizes that certain
19 lands mined or disturbed prior to July 1, 1975, have been
20 naturally reclaimed.

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

23 378.035 Department responsibilities and duties with
24 respect to Nonmandatory Land Reclamation Trust Fund.--

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

29 (a) ~~These reserved moneys are to be used~~ To reclaim
30 lands disturbed by the severance of phosphate rock on or after
31 July 1, 1975, in the event that a mining company ceases mining

1 and the associated reclamation prior to all lands disturbed by
2 the operation being reclaimed. Moneys expended by the
3 department to accomplish reclamation pursuant to this
4 subsection shall become a lien upon the property enforceable
5 pursuant to chapter 85. The moneys received as a result of a
6 lien foreclosure or as repayment shall be deposited into the
7 trust fund. In the event the money received as a result of
8 lien foreclosure or repayment is less than the amount expended
9 for reclamation, the department shall use all means available
10 to recover, for the use of the fund, the difference from the
11 affected parties. Paragraph (3)(b) shall apply to lands
12 acquired as a result of a lien foreclosure.

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

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

- 28 1. Which have wildlife habitat value as determined by
- 29 the Bureau of Mine Reclamation;
- 30 2. Which have been transferred by the landowner to a
- 31 public agency or a private, nonprofit land conservation and

1 management entity in fee simple, or which have been made
2 subject to a conservation easement pursuant to s. 704.06; and
3 3. For which other management funding options are not
4 available.

5
6 These funds may, after the basic management or protection has
7 been assured for all such lands, be combined with other
8 available funds to provide a higher level of management for
9 such lands.

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

14 1. The NPDES permitting program authorized by s.
15 403.0885, as it applies to phosphate mining and beneficiation
16 facilities, phosphate fertilizer production facilities, and
17 phosphate loading and handling facilities;

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

20 3. The phosphogypsum management program pursuant to s.
21 403.4154 and department rule 62-673, Florida Administrative
22 Code.

23
24 ~~On or before August 1 of each fiscal year, the department~~
25 ~~shall prepare a report presenting the expenditures using the~~
26 ~~interest income allocated by this section made by the~~
27 ~~department during the immediately preceding fiscal year, which~~
28 ~~report shall be available to the public upon request.~~

29 ~~(6)(7)~~ Should the nonmandatory land reclamation
30 program encumber all the funds in the Nonmandatory Land
31 Reclamation Trust Fund except those reserved by subsection (5)

1 prior to funding all the reclamation applications for eligible
2 parcels, the funds reserved by subsection (5) shall be
3 available to the program to the extent required to complete
4 the reclamation of all eligible parcels for which the
5 department has received applications.

6 ~~(7)(8)~~ The department may not accept any applications
7 for nonmandatory land reclamation programs after January 1,
8 2005 ~~November 1, 2008~~.

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

20
21 For the 2003-2004 fiscal year the department may not approve
22 or encumber nonmandatory reclamation projects in amounts
23 greater than \$15 million.

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

26 378.036 Land acquisitions financed by Nonmandatory
27 Land Reclamation Trust Fund moneys.--

28 (6)(a) By January 1, 2004, or within 6 months
29 following the date funds become available from the
30 Legislature, whichever is later, the Florida Wildlife
31 Federation, Audubon Florida, and Rails-to-Trails Conservancy

1 in partnership with the Florida Phosphate Council are
2 authorized to form a nonprofit corporation pursuant to chapter
3 617 for the purpose of implementing this section by creating
4 plans and assisting in the development of recreational
5 opportunities on lands mined for phosphate in the state. The
6 first plans must concentrate on recreational activities in
7 Hardee and Hamilton Counties which will assist them in rural
8 economic development.

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

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

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

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

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

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

5 378.212 Variances.--

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

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

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

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

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

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1 in the basin and public health and safety are not adversely
2 affected.

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

5 403.4154 Phosphogypsum management program.--

6 (2) REGULATORY PROGRAM.--

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

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

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

23 (d) If an owner or operator of a phosphogypsum stack
24 or stack system fails to comply with department rules
25 requiring demonstration of closure financial responsibility,
26 no distribution may be made which would be prohibited under s.
27 607.06401(3) until the noncompliance is corrected. Whoever
28 willfully, knowingly, or with reckless indifference or gross
29 carelessness violates this prohibition commits a felony of the
30 third degree, punishable as provided in s. 775.082 or s.

31

1 775.083 by a fine of not more than \$50,000 or by imprisonment
2 for 5 years for each offense.

3 (3) ABATEMENT OF IMMINENT HAZARD.--

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

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

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

22 (d)(e) If the department determines that the failure
23 of an owner or operator to comply with department rules
24 requiring demonstration of financial responsibility or that
25 the physical condition, maintenance, operation, or closure of
26 a phosphogypsum stack system poses an imminent hazard, the
27 department shall request access to the property on which such
28 stack system is located from the owner or operator of the
29 stack system for the purposes of taking action to abate or
30 substantially reduce the imminent hazard. If the department,
31 after reasonable effort, is unable to timely obtain the

1 necessary access to abate or substantially reduce the imminent
2 hazard, the department may institute action in its own name,
3 using the procedures and remedies of s. 403.121 or s. 403.131,
4 to abate or substantially reduce an imminent hazard. Whenever
5 serious harm to human health, safety, or welfare, to the
6 environment, or to private or public property may occur prior
7 to completion of an administrative hearing or other formal
8 proceeding that might be initiated to abate the risk of
9 serious harm, the department may obtain from the court, ex
10 parte, an injunction without paying filing and service fees
11 prior to the filing and service of process.

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

20 (f)~~(e)~~ The department shall recover from the owner or
21 operator of the phosphogypsum stack system to the use of the
22 Nonmandatory Land Reclamation Trust Fund all moneys expended
23 from the fund, including funds expended prior to the effective
24 date of this section, to abate an imminent hazard posed by the
25 phosphogypsum stack system plus a penalty equal to an amount
26 calculated at 30 percent of such funds expended. This penalty
27 shall be imposed annually, and prorated from the date of
28 payment from the fund until the expended funds and the penalty
29 are repaid. If the department prevails in any action to
30 recover funds pursuant to this subsection, it may recover
31 reasonable attorney's fees and costs incurred. Phosphogypsum

1 may not be deposited on a stack until all moneys expended from
2 the fund in connection with the stack have been repaid, unless
3 the department determines that such placement is necessary to
4 abate or avoid an imminent hazard or unless otherwise
5 authorized by the department.

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

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

31 (4) REGISTRATION FEES.--

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

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

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

18 4. Within 30 days after a phosphogypsum stack has been
19 certified as closed pursuant to rule 62-673.620(2) and (3),
20 Florida Administrative Code, the department shall refund to
21 the owner of the closed phosphogypsum stack an amount from the
22 Nonmandatory Land Reclamation Trust Fund equal to the total
23 amount of fee payments made by the owner or operator to the
24 fund in connection with the closed phosphogypsum stack.
25 However, a refund may not be paid until the Mulberry and Piney
26 Point phosphogypsum stack systems have been closed and a
27 satisfactory reserve has been established in the Nonmandatory
28 Reclamation Lands Trust Fund, except that any refund becoming
29 payable prior to July 1, 2009, shall be paid to the owner on
30 or after that date.
31

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

6 Section 9. Section 403.4155, Florida Statutes, is
7 amended to read:

8 403.4155 Phosphogypsum management; rulemaking
9 authority.--

10 (1) The Department of Environmental Protection shall
11 adopt rules to amend existing chapter 62-672, Florida
12 Administrative Code, to ensure that impoundment structures and
13 water conveyance piping systems used in phosphogypsum
14 management are designed and maintained to meet critical safety
15 standards. The rules must require that any impoundment
16 structure used in a phosphogypsum stack system, together with
17 all pumps, piping, ditches, drainage conveyances, water
18 control structures, collection pools, cooling ponds, surge
19 ponds, and any other collection or conveyance system
20 associated with phosphogypsum transport, cooling water, or the
21 return of process wastewater, is constructed using sound
22 engineering practices and is operated to avoid spills or
23 discharges of materials which adversely affect surface or
24 ground waters. The rules must require that a phosphogypsum
25 stack system owner maintain a log detailing the owner's
26 operating inspection schedule, results, and any corrective
27 action taken based on the inspection results. The rules must
28 require phosphogypsum stack owners to maintain an emergency
29 contingency plan and demonstrate the ability to mobilize
30 equipment and manpower to respond to emergency situations at
31 phosphogypsum stack systems. The rules must establish a

1 reasonable time period not to exceed 12 months for facilities
2 to meet the provisions of the rules adopted pursuant to this
3 section.

4 (2)(a) By October 1, 2004, the department shall
5 initiate rulemaking to require that phosphogypsum stack system
6 operation plans required by department rule be amended by
7 adding an interim stack system management (ISSM) plan that
8 provides written instructions for the operation of the system,
9 assuming that no phosphoric acid would be produced at the
10 facility for a 2-year period. The initial ISSM plan must be
11 completed as of the first July 1 following the adoption of the
12 rule required by this section. The ISSM plan must include:

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

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

26 3. Identification of all machinery, equipment, and
27 materials necessary to implement the plan.

28 4. Identification of the sources of power or fuel
29 necessary to implement the plan.

30 5. Identification of the personnel necessary to
31 implement the plan.

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

4 (c) The requirements listed in paragraphs (a) and (b)
5 are applicable to all phosphogypsum stack systems except those
6 that have been closed, that are undergoing closure, or for
7 which an application for a closure permit has been submitted
8 pursuant to department rule.

9 (3)(a) By October 1, 2004, the department shall
10 initiate rulemaking to require that general plans and
11 schedules for the closure of phosphogypsum stack systems
12 include:

13 1. A description of the physical configuration of the
14 phosphogypsum stack system anticipated at the time of closure
15 at the end of useful life of the system.

16 2. A site-specific water management plan describing
17 the procedures to be employed at the end of the useful life of
18 the system to manage the anticipated volume of process water
19 in an environmentally sound manner.

20 3. An estimate of the cost of management of the
21 anticipated volume of process water in accordance with the
22 site-specific water management plan.

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

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

28 (b) The department shall revise chapter 62-673,
29 Florida Administrative Code, to require the owner or operator
30 of a phosphogypsum stack management system to demonstrate
31 financial responsibility for the costs of terminal closure of

1 the phosphogypsum stack system in a manner that protects the
2 public health and safety.

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

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

8 a. Bond.

9 b. Letter of credit.

10 c. Cash deposit arrangement.

11 d. Closure insurance.

12 e. Financial tests.

13 f. Corporate guarantee.

14
15 For the purposes of this section, the term "cash deposit
16 arrangement" means a trust fund, business or statutory trust,
17 escrow account, or similar cash deposit entity whereby a
18 fiduciary holds and invests funds deposited by the owner or
19 operator, which funds shall be expended only for the purpose
20 of directly implementing all or some portion of phosphogypsum
21 stack system closure requirements of that particular owner or
22 operator.

23 3. A trustee, escrow agent, or other fiduciary of a
24 cash deposit arrangement authorized by this section has no
25 liability for any damage or loss of any kind arising out of or
26 caused by performance of duties imposed by the terms of the
27 applicable agreement unless such damage or loss is directly
28 caused by the gross negligence or criminal act of the trustee,
29 escrow agent, or other fiduciary. In performing its duties
30 pursuant to the applicable agreement, a trustee, escrow agent,
31 or other fiduciary is entitled to rely upon information and

1 direction received from the grantor or the department without
2 independent verification unless such information and direction
3 are manifestly in error.

4 4. To the extent that a cash deposit arrangement is
5 used to provide proof of financial responsibility for all or a
6 portion of closure costs, the trust, escrow, or cash
7 arrangement deposit entity is considered to have assumed all
8 liability for such closure costs up to the amount of the cash
9 deposit, less any fees or costs of the trustee, escrow agent,
10 or other fiduciary.

11 5. Any funds maintained in a cash deposit arrangement
12 authorized by this section are not subject to claims of
13 creditors of the owner or operator and are otherwise exempt
14 from setoff, execution, levy, garnishment, and similar writs
15 and proceedings.

16 6. Any funds remaining in a trust, escrow account, or
17 other cash deposit arrangement after the purpose of such cash
18 deposit arrangement under this section has been accomplished
19 shall be returned to the grantor.

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

27 (a) That the cost of closure and long-term care be
28 re-estimated by a professional engineer and adjusted for
29 inflation on an annual basis. At a minimum, such cost data
30 must include:

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

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

5 3. All costs associated with long-term care of the
6 closed system, including maintenance and monitoring, in
7 accordance with department rules.

8 (b) That financial statements and financial data be
9 prepared according to generally accepted accounting principles
10 within the United States and submitted quarterly.

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

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

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

23 Section 10. (1) The Department of Environmental
24 Protection, in consultation with the Southwest Florida Water
25 Management District, shall study cumulative impacts of changes
26 in landform and hydrology in the Peace River Basin. The study
27 shall evaluate cumulative impacts of activities conducted in
28 the Peace River Basin prior to state regulation, or pursuant
29 to an exemption, a permit, or a reclamation plan, on water
30 resources of the basin, including surface waters,
31 groundwaters, fisheries, aquatic and estuarine habitat, and

1 water supplies. The study must also include an evaluation of
2 the effectiveness of existing regulatory programs in avoiding,
3 minimizing, mitigating, or compensating for cumulative impacts
4 on water resources of the basin. In addition, the study shall
5 evaluate the environmental benefits, legal issues, and
6 economic impacts of limiting activities, including mining
7 activities, on waters and environmentally sensitive areas
8 around waterbodies by establishing a buffer within the
9 100-year floodplain of major perennial streams within the
10 Peace River Basin, including the Peace River, Horse Creek, and
11 the Myakka River. The study shall also recommend ways in which
12 any buffer areas recommended as prohibited areas can be
13 considered as mitigation under applicable permitting programs.

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

26 (3) Rulemaking authority is granted to the Department
27 of Environmental Protection and the Southwest Florida Water
28 Management District to implement the regulatory
29 recommendations identified in the study or the resource
30 management plan.

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1 (4) The resource management plan shall be submitted to
2 the Governor, the President of the Senate, and the Speaker of
3 the House of Representatives no later than July 1, 2005.

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

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

15 Section 11. For fiscal year 2003-2004, the sum of
16 \$11.71 million is transferred from the Nonmandatory Land
17 Reclamation Trust Fund to the General Revenue Fund.

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

1 Section 13. For the 2003-2004 fiscal year, the sum of
2 \$460,000 is transferred from the Nonmandatory Land Reclamation
3 Trust Fund to the Minerals Trust Fund in the Department of
4 Environmental Protection. For the 2003-2004 fiscal year, the
5 sum of \$60,000 is transferred from the Nonmandatory Land
6 Reclamation Trust Fund to the Phosphate Research Trust Fund in
7 the Division of Universities of the Department of Education.

8 Section 14. This act shall take effect upon becoming a
9 law.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 18-E

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14 The Committee Substitute for Senate Bill 18-E:

15 Revises the severance tax on phosphate percentage distribution
16 to continue the FY 2003-04 level of receipts to the Minerals
17 Trust Fund at the Department of Environmental Protection and
18 the Phosphate Research Trust Fund at the Department of
19 Education, beginning July 1, 2004.

20 Deletes a \$200,000 appropriation from the Nonmandatory Land
21 Reclamation Trust Fund for the non-profit corporation for the
22 development of recreational opportunities on lands mined for
23 phosphate.

24 Adds regional planning council to the technical advisory
25 committee to assist in the development of a study for the
26 Peace River's cumulative changes in landform and hydrology.

27 Provides an appropriation of \$460,000 from the Nonmandatory
28 Land Reclamation Trust Fund to the Minerals Trust Fund and
29 \$60,000 from the Nonmandatory Land Reclamation Trust Fund to
30 the Phosphate Research Trust Fund.

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