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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.

31

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  
31

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:~~

31

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  
31

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.

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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.

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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, and must include criteria to  
3 evaluate the adequacy of the demonstration of financial  
4 responsibility.

5 1. The costs of terminal closure shall be estimated  
6 based on the stack system configuration as of the end of its  
7 useful life as determined by the owner or operator. These  
8 costs shall be verified by an independent third party.

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

11 a. Bond.

12 b. Letter of credit.

13 c. Cash deposit arrangement.

14 d. Closure insurance.

15 e. Financial tests.

16 f. Corporate guarantee.

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

26 3. A trustee, escrow agent, or other fiduciary of a  
27 cash deposit arrangement authorized by this section has no  
28 liability for any damage or loss of any kind arising out of or  
29 caused by performance of duties imposed by the terms of the  
30 applicable agreement unless such damage or loss is directly  
31 caused by the gross negligence or criminal act of the trustee,

1 escrow agent, or other fiduciary. In performing its duties  
2 pursuant to the applicable agreement, a trustee, escrow agent,  
3 or other fiduciary is entitled to rely upon information and  
4 direction received from the grantor or the department without  
5 independent verification unless such information and direction  
6 are manifestly in error.

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

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

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

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

30 (a) That the cost of closure and long-term care be  
31 re-estimated by a professional engineer and adjusted for

1 inflation on an annual basis. At a minimum, such cost data  
2 must include:

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

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

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

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

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

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

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

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

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

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

28 (3) Rulemaking authority is granted to the Department  
29 of Environmental Protection and the Southwest Florida Water  
30 Management District to implement the regulatory

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1 recommendations identified in the study or the resource  
2 management plan.

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

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

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

17 Section 11. For fiscal year 2003-2004, the sum of  
18 \$11.71 million is transferred from the Nonmandatory Land  
19 Reclamation Trust Fund to the General Revenue Fund.

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

1 disposing of the clay/fiber product produced, including  
2 admixing the material with soil.

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

10           Section 14. This act shall take effect upon becoming a  
11 law.

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