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A bill to be entitled

An act relating to phosphate mining; amending s. 211.3103, F.S.; amending the tax on phosphate rock; providing for the distribution of tax proceeds; deleting obsolete provisions; amending s. 378.021, F.S.; directing the Department of Environmental Protection to amend the master reclamation plan; amending s. 378.031, F.S.; providing additional intent concerning reclamation activities; amending s. 378.035, F.S.; amending authorized uses of funds deposited in the Nonmandatory Land Reclamation Trust Fund; removing requirements for a reserve; limiting reclamation expenditures for fiscal year 2003-2004; amending s. 378.036, F.S.; creating a not-for-profit partnership to assist in phosphate reclamation; providing duties of the partnership; providing for the administration of partnership funds; amending s. 378.212, F.S.; providing authority for a variance for certain reclamation activities; amending s. 378.404, F.S.; allowing variances for water supply development; amending s. 403.4154, F.S.; providing criminal penalties for certain violations; prohibiting the distribution of certain company assets under specified circumstances; providing for the declaration of an imminent hazard if certain financial conditions exist; providing limited liability for entities assisting in the abatement of imminent hazards; amending a provision granting certain rebates of phosphate fees; amending s. 403.4155, F.S.; directing that rules be developed for financial assurance, interim stack management, and stack closure; requiring the Department of Environmental Protection to conduct a study;

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31 providing funds for the study; providing for the transfer
 32 of certain funds from the Nonmandatory Land Reclamation
 33 Trust Fund to the General Revenue Fund, the Minerals Trust
 34 Fund, and the Phosphate Research Trust Fund; providing an
 35 appropriation for the funding of a study by the Florida
 36 Institute of Phosphate Research; providing an effective
 37 date.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 211.3103, Florida Statutes, is amended
 42 to read:

43 211.3103 Levy of tax on severance of phosphate rock; rate,
 44 basis, and distribution of tax.--

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

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

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

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

58 1. For payment to counties in proportion to the number of
 59 tons of phosphate rock produced from a phosphate rock matrix
 60 located within such political boundary, 18.75 percent. The

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61 department shall distribute this portion of the proceeds
62 annually based on production information reported by the
63 producers on the annual returns for the taxable year. Any such
64 proceeds received by a county shall be used only for phosphate
65 related expenses.

66 2. For payment to counties that have been designated a
67 Rural Area of Critical Economic Concern pursuant to s. 288.0656
68 in proportion to the number of tons of phosphate rock produced
69 from a phosphate rock matrix located within such political
70 boundary, 15 percent. The department shall distribute this
71 portion of the proceeds annually based on production information
72 reported by the producers on the annual returns for the taxable
73 year.

74 3. To the credit of the Phosphate Research Trust Fund in
75 the Department of Education, Division of Universities, 11.25
76 percent.

77 4. To the credit of the Minerals Trust Fund, 11.25
78 percent.

79 5. To the credit of the Nonmandatory Land Reclamation
80 Trust Fund, 43.75 percent.

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

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

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

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90 1. To the credit of the General Revenue Fund of the state,
 91 40.1 percent.

92 2. For payment to counties in proportion to the number of
 93 tons of phosphate rock produced from a phosphate rock matrix
 94 located within such political boundary, 16.5 percent. The
 95 department shall distribute this portion of the proceeds
 96 annually based on production information reported by the
 97 producers on the annual returns for the taxable year. Any such
 98 proceeds received by a county shall be used only for phosphate
 99 related expenses.

100 3. For payment to counties that have been designated a
 101 rural area of critical economic concern pursuant to s. 288.0656
 102 in proportion to the number of tons of phosphate rock produced
 103 from a phosphate rock matrix located within such political
 104 boundary, 13 percent. The department shall distribute this
 105 portion of the proceeds annually based on production information
 106 reported by the producers on the annual returns for the taxable
 107 year. Payments under this subparagraph shall be made to the
 108 counties unless the Legislature by special act creates a local
 109 authority to promote and direct the economic development of the
 110 county. If such authority exists, payments shall be made to that
 111 authority.

112 4. To the credit of the Phosphate Research Trust Fund in
 113 the Division of Universities of the Department of Education, 9.3
 114 percent.

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

116 6. To the credit of the Nonmandatory Land Reclamation
 117 Trust Fund, 10.4 percent.

118 (4) Beginning July 1, 2003, and annually thereafter, the
 119 Department of Environmental Protection may use up to \$2 million

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120 of the funds in the Nonmandatory Land Reclamation Trust Fund to
 121 purchase a surety bond or a policy of insurance, the proceeds of
 122 which would pay the cost of restoration, reclamation, and
 123 cleanup of any phosphogypsum stack system and phosphate mining
 124 activities in the event that an operator or permittee thereof
 125 has been subject to a final order of bankruptcy and all funds
 126 available therefrom are determined to be inadequate to
 127 accomplish such restoration, reclamation, and cleanup. This
 128 section does not imply that such operator or permittee is
 129 thereby relieved of its obligations or relieved of any
 130 liabilities pursuant to any other remedies at law,
 131 administrative remedies, statutory remedies, or remedies
 132 pursuant to bankruptcy law. The department shall adopt rules to
 133 implement this subsection, including the purchase and oversight
 134 of the bond or policy.

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

137 1. Planning, preparing, and financing of infrastructure
 138 projects for job creation and capital investment, especially
 139 those related to industrial and commercial sites. Infrastructure
 140 investments may include the following public or public-private
 141 partnership facilities: stormwater systems, telecommunications
 142 facilities, roads or other remedies to transportation
 143 impediments, nature-based tourism facilities, or other physical
 144 requirements necessary to facilitate trade and economic
 145 development activities.

146 2. Maximizing the use of federal, local, and private
 147 resources, including, but not limited to, those available under
 148 the Small Cities Community Development Block Grant Program.

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149 3. Projects that improve inadequate infrastructure that
 150 has resulted in regulatory action that prohibits economic or
 151 community growth, if such projects are related to specific job
 152 creation or job retention opportunities.

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

155 (7) Beginning January 1, 2005, and annually thereafter,
 156 the tax rate shall be the base rate times the base rate
 157 adjustment for the tax year as calculated by the department in
 158 accordance with subsection (9).

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

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

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

168 ~~1. To the credit of the General Revenue Fund of the state,~~
 169 ~~60 percent. However, from this amount the amounts of \$7.4~~
 170 ~~million, \$8.2 million, and \$8.1 million, respectively, shall be~~
 171 ~~transferred to the Nonmandatory Land Reclamation Trust Fund on~~
 172 ~~January 1, 1993, January 1, 1994, and January 1, 1995.~~

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

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

180 ~~4. For payment to counties in proportion to the number of~~
 181 ~~tons of phosphate rock produced from a phosphate rock matrix~~
 182 ~~located within such political boundary, 10 percent. The~~
 183 ~~department shall distribute this portion of the proceeds~~
 184 ~~annually based on production information reported by producers~~
 185 ~~on the annual returns for the taxable year. Any such proceeds~~
 186 ~~received by a county shall be used only for phosphate related~~
 187 ~~expenses.~~

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

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

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

197 ~~1. To the credit of the General Revenue Fund of the state,~~
 198 ~~58 percent.~~

199 ~~2. To the credit of the Nonmandatory Land Reclamation~~
 200 ~~Trust Fund for reclamation and acquisition of unreclaimed lands~~
 201 ~~disturbed by phosphate mining and not subject to mandatory~~
 202 ~~reclamation, 14.5 percent.~~

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

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206 ~~4. For payment to counties in proportion to the number of~~
 207 ~~tens of phosphate rock produced from a phosphate rock matrix~~
 208 ~~located within such political boundary, 10 percent. The~~
 209 ~~department shall distribute this portion of the proceeds~~
 210 ~~annually based on production information reported by producers~~
 211 ~~on the annual returns for the taxable year. Any such proceeds~~
 212 ~~received by a county shall be used only for phosphate-related~~
 213 ~~expenses.~~

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

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

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

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

224 ~~1. To the credit of the General Revenue Fund of the state,~~
 225 ~~55.15 percent.~~

226 ~~2. To the credit of the Phosphate Research Trust Fund in~~
 227 ~~the Department of Education, Division of Universities, 12.5~~
 228 ~~percent.~~

229 ~~3. For payment to counties in proportion to the number of~~
 230 ~~tens of phosphate rock produced from a phosphate rock matrix~~
 231 ~~located within such political boundary, 18 percent. The~~
 232 ~~department shall distribute this portion of the proceeds~~
 233 ~~annually based on production information reported by producers~~
 234 ~~on the annual returns for the taxable year. Any such proceeds~~

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235 ~~received by a county shall be used only for phosphate-related~~
 236 ~~expenses.~~

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

239 ~~(8)(5)~~ The excise tax levied by this section shall apply
 240 to the total production of the producer during the taxable year,
 241 measured on the basis of bone-dry tons produced at the point of
 242 severance, ~~subject to the following rates:~~

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

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

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

253 ~~(9)(6)~~(a) On or before March 30, 2004 ~~1989~~, and annually
 254 thereafter, the department shall calculate the base rate
 255 adjustment, if any, for phosphate rock based on the change in
 256 the unadjusted annual producer price index for the prior
 257 calendar year in relation to the unadjusted annual producer
 258 price index for calendar year 1999 ~~1987~~.

259 (b) For the purposes of determining the base rate
 260 adjustment for any year, the base rate adjustment shall be a
 261 fraction, the numerator of which is the unadjusted annual
 262 producer price index for the prior calendar year and the
 263 denominator of which is the unadjusted annual producer price
 264 index for calendar year 1999 ~~1987~~.

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

269 (d) If the producer price index for chemical and
 270 fertilizer mineral mining ~~phosphate rock primary products~~ is
 271 substantially revised, the department shall make appropriate
 272 adjustment in the method used to compute the base rate
 273 adjustment under this subsection which will produce results
 274 reasonably consistent with the result which would have been
 275 obtained if the producer price index for phosphate rock primary
 276 products had not been revised. However, the tax rate shall not
 277 be less than \$1.56 per ton severed.

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

281 ~~(10)(7)~~ The excise tax levied on the severance of
 282 phosphate rock shall be in addition to any ad valorem taxes
 283 levied upon the separately assessed mineral interest in the real
 284 property upon which the site of severance is located, or any
 285 other tax, permit, or license fee imposed by the state or its
 286 political subdivisions.

287 ~~(11)(8)~~ The tax levied by this section shall be collected
 288 in the manner prescribed in s. 211.33.

289 Section 2. Section 378.021, Florida Statutes, is amended
 290 to read:

291 378.021 Master reclamation plan.--

292 (1) The Department of Environmental Protection ~~Natural~~
 293 ~~Resources~~ shall amend the adopt by rule, as expeditiously as
 294 possible upon receipt of the report of the Land Use Advisory

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295 ~~Committee,~~ a master reclamation plan that provides ~~to provide~~
 296 guidelines for the reclamation of lands mined or disturbed by
 297 the severance of phosphate rock prior to July 1, 1975, which
 298 lands are not subject to mandatory reclamation under part II of
 299 chapter 211. In amending the ~~developing said~~ master reclamation
 300 plan, the Department of Environmental Protection ~~Natural~~
 301 ~~Resources~~ shall continue to conduct an onsite evaluation of all
 302 lands mined or disturbed by the severance of phosphate rock
 303 prior to July 1, 1975, which lands are not subject to mandatory
 304 reclamation under part II of chapter 211, and shall consider the
 305 report and plan prepared by the Land Use Advisory Committee
 306 under s. 378.011 and submitted to the former Department of
 307 Natural Resources for adoption by rule on or before July 1,
 308 1979. The master reclamation plan when amended ~~adopted~~ by the
 309 Department of Environmental Protection ~~Natural Resources~~ shall
 310 be consistent with local government plans prepared pursuant to
 311 the Local Government Comprehensive Planning and Land Development
 312 Regulation Act.

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

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

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

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325 environmental or economic utility or the aesthetic value of the
 326 land; ~~and~~

327 (c) The reclamation of the land is in the public interest
 328 because the reclamation, when combined with other reclamation
 329 under the master plan, would provide a substantial regional
 330 benefit; ~~and-~~

331 (d) The reclamation of the land is in the public interest
 332 because the reclamation, when combined with other reclamation
 333 under the master plan, will provide significant benefits to
 334 surface water bodies supplying water for environmental and
 335 public purposes in those areas of the state where phosphate
 336 mining has been permitted.

337 (3) Lands evaluated by the department under subsection (1)
 338 which meet the criteria set forth in subsection (2) shall be
 339 identified with specificity in the master reclamation plan.
 340 Lands evaluated by the department under subsection (1) which do
 341 not meet the criteria set forth in subsection (2) shall also be
 342 identified with specificity in the master reclamation plan as
 343 lands which are acceptable in their present form.

344 (4) Upon adoption of the amendments to the master
 345 reclamation plan as a rule, such plan shall provide the
 346 guidelines for approval of reclamation programs for lands
 347 covered in the plan, recognizing that reclamation of such lands
 348 is not mandatory, but that any payment of costs expended for
 349 reclamation paid under s. 378.031 shall be contingent upon
 350 conformity with the guidelines set forth in the master
 351 reclamation plan.

352 Section 3. Section 378.031, Florida Statutes, is amended
 353 to read:

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354 378.031 Reclamation or acquisition of nonmandatory lands;
 355 legislative intent.--It is the intent of the Legislature to
 356 provide an economic incentive to encourage the reclamation of
 357 the maximum number of acres of eligible nonmandatory lands in
 358 the most timely and efficient manner or the donation or purchase
 359 of nonmandatory lands, especially those lands for which
 360 reclamation activities will result in significant improvements
 361 to surface water bodies of regional importance in those areas of
 362 the state where phosphate mining has been permitted. The
 363 Legislature recognizes that certain lands mined or disturbed
 364 prior to July 1, 1975, have been naturally reclaimed.

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

367 378.035 Department responsibilities and duties with
 368 respect to Nonmandatory Land Reclamation Trust Fund.--

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

373 (a) ~~These reserved moneys are to be used~~ To reclaim lands
 374 disturbed by the severance of phosphate rock on or after July 1,
 375 1975, in the event that a mining company ceases mining and the
 376 associated reclamation prior to all lands disturbed by the
 377 operation being reclaimed. Moneys expended by the department to
 378 accomplish reclamation pursuant to this subsection shall become
 379 a lien upon the property enforceable pursuant to chapter 85. The
 380 moneys received as a result of a lien foreclosure or as
 381 repayment shall be deposited into the trust fund. In the event
 382 the money received as a result of lien foreclosure or repayment
 383 is less than the amount expended for reclamation, the department

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384 shall use all means available to recover, for the use of the
 385 fund, the difference from the affected parties. Paragraph (3)(b)
 386 shall apply to lands acquired as a result of a lien foreclosure.

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

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

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

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

408 3. For which other management funding options are not
 409 available.

410

411 These funds may, after the basic management or protection has
 412 been assured for all such lands, be combined with other

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413 available funds to provide a higher level of management for such
414 lands.

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

419 1. The NPDES permitting program authorized by s. 403.0885,
420 as it applies to phosphate mining and beneficiation facilities,
421 phosphate fertilizer production facilities, and phosphate
422 loading and handling facilities;

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

425 3. The phosphogypsum management program pursuant to s.
426 403.4154 and department rule 62-673, Florida Administrative
427 Code.

428

429 ~~On or before August 1 of each fiscal year, the department shall~~
430 ~~prepare a report presenting the expenditures using the interest~~
431 ~~income allocated by this section made by the department during~~
432 ~~the immediately preceding fiscal year, which report shall be~~
433 ~~available to the public upon request.~~

434 ~~(6)(7)~~ Should the nonmandatory land reclamation program
435 encumber all the funds in the Nonmandatory Land Reclamation
436 Trust Fund except those reserved by subsection (5) prior to
437 funding all the reclamation applications for eligible parcels,
438 the funds reserved by subsection (5) shall be available to the
439 program to the extent required to complete the reclamation of
440 all eligible parcels for which the department has received
441 applications.

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442 ~~(7)(8)~~ The department may not accept any applications for
 443 nonmandatory land reclamation programs after January 1, 2005
 444 ~~November 1, 2008.~~

445 ~~(8)(9)~~ The Bureau of Mine Reclamation shall review the
 446 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
 447 support the stated objectives and report to the secretary
 448 annually with recommendations as appropriate. ~~The report~~
 449 ~~submittal for calendar year 2008 shall specifically address the~~
 450 ~~effect of providing a future refund of fees paid pursuant to s.~~
 451 ~~403.4154(4) following certification of stack closure pursuant to~~
 452 ~~department rules, and the report shall be submitted to the~~
 453 ~~Governor, the President of the Senate, and the Speaker of the~~
 454 ~~House of Representatives on or before March 1, 2009.~~

455
 456 For the 2003-2004 fiscal year the department may not approve or
 457 encumber nonmandatory reclamation projects in amounts greater
 458 than \$15 million.

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

461 378.036 Land acquisitions financed by Nonmandatory Land
 462 Reclamation Trust Fund moneys.--

463 (6)(a) By January 1, 2004, or within 6 months following
 464 the date funds become available from the Legislature, whichever
 465 is later, the Florida Wildlife Federation, Audubon Florida, and
 466 Rails-to-Trails Conservancy in partnership with the Florida
 467 Phosphate Council are authorized to form a nonprofit corporation
 468 pursuant to chapter 617 for the purpose of implementing this
 469 section by creating plans and assisting in the development of
 470 recreational opportunities on lands mined for phosphate in the
 471 state. The first plans must concentrate on recreational

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472 activities in Hardee and Hamilton Counties which will assist
473 them in rural economic development.

474 (b) The board of directors of the corporation shall be
475 composed of three members, one designated by the Florida
476 Phosphate Council, one as the designee of the Florida Wildlife
477 Federation, Audubon Florida, and Rails-to-Trails Conservancy,
478 and the third chosen by the other two designees.

479 (c) The business of the corporation shall be conducted by
480 the board of directors or a chief executive officer as the board
481 shall see fit in accordance with the provisions of its articles
482 of incorporation and applicable law. The activities of the
483 corporation shall be coordinated with all landowners who have
484 voluntarily agreed to participate in the process as well as any
485 local government where such lands are recorded.

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

490 (e) The corporation shall dissolve on January 1, 2009,
491 unless dissolved previously by action of its board of directors
492 or extended by the Legislature. Upon dissolution, any moneys
493 remaining in the accounts of the corporation that are
494 unobligated shall be returned to the funds from which they were
495 appropriated in proportion to the amount contributed. All
496 tangible assets of the corporation at dissolution which were
497 acquired using state funding shall become the property of the
498 Department of Environmental Protection.

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

501 378.212 Variances.--

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

506 (g) To accommodate reclamation that provides water supply
 507 development or water resource development not inconsistent with
 508 the applicable regional water supply plan approved pursuant to
 509 s. 373.0361, provided adverse impacts are not caused to the
 510 water resources in the basin. A variance may also be granted
 511 from the requirements of part IV of chapter 373, or the rules
 512 adopted thereunder, when a project provides an improvement in
 513 water availability in the basin and does not cause adverse
 514 impacts to water resources in the basin.

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

517 378.404 Department of Environmental Protection; powers and
 518 duties.--The department shall have the following powers and
 519 duties:

520 (9) To grant variances from the provisions of this part to
 521 accommodate reclamation that provides for water supply
 522 development or water resource development not inconsistent with
 523 the applicable regional water supply plan approved pursuant to
 524 s. 373.0361, appropriate stormwater management, improved
 525 wildlife habitat, recreation, or a mixture thereof, provided
 526 adverse impacts are not caused to the water resources in the
 527 basin and public health and safety are not adversely affected.

528 Section 8. Subsections (2), (3), and (4) of section
 529 403.4154, Florida Statutes, are amended to read:

530 403.4154 Phosphogypsum management program.--

531 (2) REGULATORY PROGRAM.--

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

535 (b) The department shall adopt rules that prescribe
536 acceptable construction designs for new or expanded
537 phosphogypsum stack systems and that prescribe permitting
538 criteria for operation, ~~closure criteria~~, long-term-care
539 requirements, and closure financial responsibility requirements
540 for phosphogypsum stack systems.

541 (c) Whoever willfully, knowingly, or with reckless
542 indifference or gross carelessness misstates or misrepresents
543 the financial condition or closure costs of an entity engaged in
544 managing, owning, or operating a phosphogypsum stack or stack
545 system commits a felony of the third degree, punishable as
546 provided in s. 775.082 or s. 775.083 by a fine of not more than
547 \$50,000 and by imprisonment for 5 years for each offense.

548 (d) If an owner or operator of a phosphogypsum stack or
549 stack system fails to comply with department rules requiring
550 demonstration of closure financial responsibility, no
551 distribution may be made which would be prohibited under s.
552 607.06401(3) until the noncompliance is corrected. Whoever
553 willfully, knowingly, or with reckless indifference or gross
554 carelessness violates this prohibition commits a felony of the
555 third degree, punishable as provided in s. 775.082 or s. 775.083
556 by a fine of not more than \$50,000 or by imprisonment for 5
557 years for each offense.

558 (3) ABATEMENT OF IMMINENT HAZARD.--

559 (a) The department may take action to abate or
560 substantially reduce any imminent hazard caused by the physical

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561 condition, maintenance, operation, or closure of a phosphogypsum
562 stack system.

563 (b) An imminent hazard exists if the physical condition,
564 maintenance, operation, or closure of a phosphogypsum stack
565 system creates an immediate and substantial danger to human
566 health, safety, or welfare or to the environment. A
567 phosphogypsum stack system is presumed not to cause an imminent
568 hazard if the physical condition and operation of the system are
569 in compliance with all applicable department rules.

570 (c) The failure of an owner or operator of a phosphogypsum
571 stack system to comply with department rules requiring
572 demonstration of closure financial responsibility may be
573 considered by the department as evidence that a phosphogypsum
574 stack poses an imminent hazard for purposes of initiating
575 actions authorized by paragraph (d).

576 (d)(e) If the department determines that the failure of an
577 owner or operator to comply with department rules requiring
578 demonstration of financial responsibility or that the physical
579 condition, maintenance, operation, or closure of a phosphogypsum
580 stack system poses an imminent hazard, the department shall
581 request access to the property on which such stack system is
582 located from the owner or operator of the stack system for the
583 purposes of taking action to abate or substantially reduce the
584 imminent hazard. If the department, after reasonable effort, is
585 unable to timely obtain the necessary access to abate or
586 substantially reduce the imminent hazard, the department may
587 institute action in its own name, using the procedures and
588 remedies of s. 403.121 or s. 403.131, to abate or substantially
589 reduce an imminent hazard. Whenever serious harm to human
590 health, safety, or welfare, to the environment, or to private or

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591 public property may occur prior to completion of an
 592 administrative hearing or other formal proceeding that might be
 593 initiated to abate the risk of serious harm, the department may
 594 obtain from the court, ex parte, an injunction without paying
 595 filing and service fees prior to the filing and service of
 596 process.

597 (e)~~(d)~~ To abate or substantially reduce an imminent
 598 hazard, the department may take any appropriate action,
 599 including, but not limited to, using employees of the department
 600 or contracting with other state or federal agencies, with
 601 private third-party contractors, or with the owner or operator
 602 of the stack system, or financing, compensating, or funding a
 603 receiver, trustee, or owner of the stack system, to perform all
 604 or part of the work.

605 (f)~~(e)~~ The department shall recover from the owner or
 606 operator of the phosphogypsum stack system to the use of the
 607 Nonmandatory Land Reclamation Trust Fund all moneys expended
 608 from the fund, including funds expended prior to the effective
 609 date of this section, to abate an imminent hazard posed by the
 610 phosphogypsum stack system plus a penalty equal to an amount
 611 calculated at 30 percent of such funds expended. This penalty
 612 shall be imposed annually, and prorated from the date of payment
 613 from the fund until the expended funds and the penalty are
 614 repaid. If the department prevails in any action to recover
 615 funds pursuant to this subsection, it may recover reasonable
 616 attorney's fees and costs incurred. Phosphogypsum may not be
 617 deposited on a stack until all moneys expended from the fund in
 618 connection with the stack have been repaid, unless the
 619 department determines that such placement is necessary to abate

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620 or avoid an imminent hazard or unless otherwise authorized by
 621 the department.

622 (g)~~(f)~~ The department may impose a lien on the real
 623 property on which the phosphogypsum stack system that poses an
 624 imminent hazard is located and on the real property underlying
 625 and other assets located at associated phosphate fertilizer
 626 production facilities equal in amount to the moneys expended
 627 from the Nonmandatory Land Reclamation Trust Fund pursuant to
 628 paragraph (d), including attorney's fees and court costs. The
 629 owner of any property on which such a lien is imposed is
 630 entitled to a release of the lien upon payment to the department
 631 of the lien amount. The lien imposed by this section does not
 632 take priority over any other prior perfected lien on the real
 633 property, personal property, or other assets referenced in this
 634 paragraph, including, but not limited to, the associated
 635 phosphate rock mine and reserves.

636 (h) Upon a declaration by the Governor of an environmental
 637 emergency concerning the abatement of a imminent hazard
 638 involving a phosphogypsum stack or stack system, the state and
 639 any agent under contract with the state for the provision of
 640 services directly related to the abatement of such hazard shall
 641 not become liable under state laws for environmental protection
 642 for any costs, damages, or penalties associated with the
 643 abatement of the imminent hazard. The Legislature finds that
 644 provision of this limited immunity is in the public interest and
 645 necessary for the abatement of the imminent hazard.

646 (4) REGISTRATION FEES.--

647 (a)1. The owner or operator of each existing phosphogypsum
 648 stack who has not provided a performance bond, letter of credit,
 649 trust fund agreement, or closure insurance to demonstrate

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650 financial responsibility for closure and long-term care shall
 651 pay to the department a fee as set forth in this paragraph. All
 652 fees shall be deposited in the Nonmandatory Land Reclamation
 653 Trust Fund.

654 2. The amount of the fee for each existing stack shall be
 655 \$75,000 for each of the five 12-month periods following July 1,
 656 2001.

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

664 4. Within 30 days after a phosphogypsum stack has been
 665 certified as closed pursuant to rule 62-673.620(2) and (3),
 666 Florida Administrative Code, the department shall refund to the
 667 owner of the closed phosphogypsum stack an amount from the
 668 Nonmandatory Land Reclamation Trust Fund equal to the total
 669 amount of fee payments made by the owner or operator to the fund
 670 in connection with the closed phosphogypsum stack. However, a
 671 refund may not be paid until the Mulberry and Piney Point
 672 phosphogypsum stack systems have been closed and a satisfactory
 673 reserve has been established in the Nonmandatory Reclamation
 674 Lands Trust Fund, except that any refund becoming payable prior
 675 to July 1, 2009, shall be paid to the owner on or after that
 676 date.

677 (b) On or before August 1 of each year, the department
 678 shall provide written notice to each owner of an existing stack
 679 of any fee payable for the 12-month period commencing on the

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680 immediately preceding July 1. Each owner shall remit the fee to
 681 the department on or before August 31 of each year.

682 Section 9. Section 403.4155, Florida Statutes, is amended
 683 to read:

684 403.4155 Phosphogypsum management; rulemaking authority.--

685 (1) The Department of Environmental Protection shall adopt
 686 rules to amend existing chapter 62-672, Florida Administrative
 687 Code, to ensure that impoundment structures and water conveyance
 688 piping systems used in phosphogypsum management are designed and
 689 maintained to meet critical safety standards. The rules must
 690 require that any impoundment structure used in a phosphogypsum
 691 stack system, together with all pumps, piping, ditches, drainage
 692 conveyances, water control structures, collection pools, cooling
 693 ponds, surge ponds, and any other collection or conveyance
 694 system associated with phosphogypsum transport, cooling water,
 695 or the return of process wastewater, is constructed using sound
 696 engineering practices and is operated to avoid spills or
 697 discharges of materials which adversely affect surface or ground
 698 waters. The rules must require that a phosphogypsum stack system
 699 owner maintain a log detailing the owner's operating inspection
 700 schedule, results, and any corrective action taken based on the
 701 inspection results. The rules must require phosphogypsum stack
 702 owners to maintain an emergency contingency plan and demonstrate
 703 the ability to mobilize equipment and manpower to respond to
 704 emergency situations at phosphogypsum stack systems. The rules
 705 must establish a reasonable time period not to exceed 12 months
 706 for facilities to meet the provisions of the rules adopted
 707 pursuant to this section.

708 (2)(a) By October 1, 2004, the department shall initiate
 709 rulemaking to require that phosphogypsum stack system operation

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710 plans required by department rule be amended by adding an
711 interim stack system management (ISSM) plan that provides
712 written instructions for the operation of the system, assuming
713 that no phosphoric acid would be produced at the facility for a
714 2-year period. The initial ISSM plan must be completed as of the
715 first July 1 following the adoption of the rule required by this
716 section. The ISSM plan must include:

717 1. A detailed description of process water management
718 procedures that will be implemented to ensure that the stack
719 system operates in accordance with all applicable department
720 permit conditions and rules. The procedures must address the
721 actual process water levels present at the facility 30 days
722 prior to the completion of the plan and must assume that the
723 facility will receive annual average rainfall during the 2-year
724 planning period.

725 2. A detailed description of the procedures to be followed
726 for the daily operation and routine maintenance of the stack
727 system, including required environmental sampling and analyses,
728 as well as for any maintenance or repairs recommended following
729 annual inspections of the system.

730 3. Identification of all machinery, equipment, and
731 materials necessary to implement the plan.

732 4. Identification of the sources of power or fuel
733 necessary to implement the plan.

734 5. Identification of the personnel necessary to implement
735 the plan.

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

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739 (c) The requirements listed in paragraphs (a) and (b) are
740 applicable to all phosphogypsum stack systems except those that
741 have been closed, that are undergoing closure, or for which an
742 application for a closure permit has been submitted pursuant to
743 department rule.

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

747 1. A description of the physical configuration of the
748 phosphogypsum stack system anticipated at the time of closure at
749 the end of useful life of the system.

750 2. A site-specific water management plan describing the
751 procedures to be employed at the end of the useful life of the
752 system to manage the anticipated volume of process water in an
753 environmentally sound manner.

754 3. An estimate of the cost of management of the
755 anticipated volume of process water in accordance with the site-
756 specific water management plan.

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

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

762 (b) The department shall revise chapter 62-673, Florida
763 Administrative Code, to require the owner or operator of a
764 phosphogypsum stack management system to demonstrate financial
765 responsibility for the costs of terminal closure of the
766 phosphogypsum stack system in a manner that protects the public
767 health and safety.

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

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

- 773 a. Bond.
- 774 b. Letter of credit.
- 775 c. Cash deposit arrangement.
- 776 d. Closure insurance.
- 777 e. Financial tests.
- 778 f. Corporate guarantee.

779

780 For the purposes of this section, the term "cash deposit
 781 arrangement" means a trust fund, business or statutory trust,
 782 escrow account, or similar cash deposit entity whereby a
 783 fiduciary holds and invests funds deposited by the owner or
 784 operator, which funds shall be expended only for the purpose of
 785 directly implementing all or some portion of phosphogypsum stack
 786 system closure requirements of that particular owner or
 787 operator.

788 3. A trustee, escrow agent, or other fiduciary of a cash
 789 deposit arrangement authorized by this section has no liability
 790 for any damage or loss of any kind arising out of or caused by
 791 performance of duties imposed by the terms of the applicable
 792 agreement unless such damage or loss is directly caused by the
 793 gross negligence or criminal act of the trustee, escrow agent,
 794 or other fiduciary. In performing its duties pursuant to the
 795 applicable agreement, a trustee, escrow agent, or other
 796 fiduciary is entitled to rely upon information and direction
 797 received from the grantor or the department without independent

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798 verification unless such information and direction are
799 manifestly in error.

800 4. To the extent that a cash deposit arrangement is used
801 to provide proof of financial responsibility for all or a
802 portion of closure costs, the trust, escrow, or cash arrangement
803 deposit entity is considered to have assumed all liability for
804 such closure costs up to the amount of the cash deposit, less
805 any fees or costs of the trustee, escrow agent, or other
806 fiduciary.

807 5. Any funds maintained in a cash deposit arrangement
808 authorized by this section are not subject to claims of
809 creditors of the owner or operator and are otherwise exempt from
810 setoff, execution, levy, garnishment, and similar writs and
811 proceedings.

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

816 (4) The department shall revise chapter 62-673, Florida
817 Administrative Code, to require the owner or operator of a
818 phosphogypsum stack system to demonstrate financial
819 responsibility for the costs of terminal closure of the
820 phosphogypsum stack system in a manner that protects the
821 environment and the public health and safety. At a minimum, such
822 rules must include or address the following requirements:

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

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

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

830 3. All costs associated with long-term care of the closed
 831 system, including maintenance and monitoring, in accordance with
 832 department rules.

833 (b) That financial statements and financial data be
 834 prepared according to generally accepted accounting principles
 835 within the United States and submitted quarterly.

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

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

840 ~~(2) By January 31, 2002, the department shall review~~
 841 ~~chapter 62-673, Florida Administrative Code, to determine the~~
 842 ~~adequacy of the financial responsibility provisions contained in~~
 843 ~~the rules and shall take any measures necessary to ensure that~~
 844 ~~the rules provide sound and effective provisions to minimize~~
 845 ~~risk to the environment and to public health and safety from the~~
 846 ~~business failure of a phosphogypsum stack system.~~

847 Section 10. (1) The Department of Environmental
 848 Protection, in consultation with the Southwest Florida Water
 849 Management District, shall study cumulative impacts of changes
 850 in landform and hydrology in the Peace River Basin. The study
 851 shall evaluate cumulative impacts of activities conducted in the
 852 Peace River Basin prior to state regulation, or pursuant to an
 853 exemption, a permit, or a reclamation plan, on water resources
 854 of the basin, including surface waters, groundwaters, fisheries,
 855 aquatic and estuarine habitat, and water supplies. The study
 856 must also include an evaluation of the effectiveness of existing
 857 regulatory programs in avoiding, minimizing, mitigating, or

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858 compensating for cumulative impacts on water resources of the
859 basin. In addition, the study shall evaluate the environmental
860 benefits, legal issues, and economic impacts of limiting
861 activities, including mining activities, on waters and
862 environmentally sensitive areas around waterbodies by
863 establishing a buffer within the 100-year floodplain of major
864 perennial streams within the Peace River Basin, including the
865 Peace River, Horse Creek, and the Myakka River. The study shall
866 also recommend ways in which any buffer areas recommended as
867 prohibited areas can be considered as mitigation under
868 applicable permitting programs.

869 (2) Upon completion of the study, the department shall
870 prepare and adopt a resource management plan for the Peace River
871 Basin to minimize any identified existing and future adverse
872 cumulative impacts to water resources of the basin, including
873 surface waters, groundwaters, wetlands, fisheries, aquatic and
874 estuarine habitat, and water supplies. The plan must identify
875 regulatory and nonregulatory actions necessary to minimize
876 existing and future adverse cumulative impacts identified in the
877 study and, where appropriate, must also recommend statutory
878 changes to improve regulatory programs to minimize identified
879 cumulative impacts to water resources of the basin.

880 (3) Rulemaking authority is granted to the Department of
881 Environmental Protection and the Southwest Florida Water
882 Management District to implement the regulatory recommendations
883 identified in the study or the resource management plan.

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

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

890 (6) The department may establish a technical advisory
891 committee to assist the department in developing a plan of
892 study, reviewing interim findings, and reviewing final
893 recommendations. The technical advisory committee may include
894 representatives from the following interests in the Peace River
895 Basin: industrial, mining, agriculture, development,
896 environmental, fishing, regional water supply, regional planning
897 council, and local government.

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

901 Section 12. For fiscal year 2003-2004, the sum of \$800,000
902 is appropriated to the Phosphate Research Trust Fund from the
903 proceeds of the phosphate severance tax deposited into the
904 Nonmandatory Land Reclamation Trust Fund. Such funds shall be
905 used by the Florida Institute of Phosphate Research to conduct a
906 bench and pilot scale study of the FIPR/DIPR process for the
907 purpose of determining its technical and economic feasibility.
908 The study must evaluate the availability, technical feasibility,
909 and cost of using various types of fiber, including, but not
910 limited to, paper and sewage sludge. The study must evaluate
911 the technical feasibility and practicality of various methods of
912 using and disposing of the clay/fiber product produced,
913 including admixing the material with soil.

914 Section 13. For the 2003-2004 fiscal year, the sum of
915 \$460,000 is transferred from the Nonmandatory Land Reclamation
916 Trust Fund to the Minerals Trust Fund in the Department of

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917 Environmental Protection. For the 2003-2004 fiscal year, the sum
 918 of \$60,000 is transferred from the Nonmandatory Land Reclamation
 919 Trust Fund to the Phosphate Research Trust Fund in the Division
 920 of Universities of the Department of Education.

921 Section 14. This act shall take effect upon becoming a
 922 law.