

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Environmental Preservation Committee

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BILL: CS/SB 486

SPONSOR: Environmental Preservation Committee and Senator Dockery

SUBJECT: Phosphate Mine Reclamation

DATE: April 6, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute deletes an obsolete provision which limits funding of activities for reclamation activities on phosphate-mined lands from the Nonmandatory Reclamation Trust Fund. Also, the bill deletes a provision that expired relating to the expenditure of certain funds for the hazards caused by, and for the closure of, abandoned phosphogypsum stack systems.

The committee substitute also provides that financial responsibility must be provided for permitted phosphate mining activities that affect wetlands. In cases where the permitted activities cover a period of 3 years or more, the financial responsibility must equal 110 percent of the estimated mitigation costs for the first year of wetlands impacts. The financial responsibility costs are to be updated annually to include the following year of impacts, and to reduce the cost estimate for areas in which revegetation has already taken place to reflect the costs of monitoring and maintenance.

This bill amends ss. 378.034, 378.035, and 373.414, F.S.

## II. Present Situation:

Part I of ch. 378, F.S., provides for the reclamation of eligible nonmandatory mined lands. "Eligible lands," pursuant to s. 378.032, F.S., means those lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, and included as eligible lands in the master reclamation plan adopted pursuant to s. 378.021, F.S.

Section 378.034, F.S., requires the Department of Environmental Protection (DEP) to establish procedures for a nonbinding preapplication review to assist a landowner in submitting a reclamation program request.

Landowners are required to reclaim all nonmandatory lands which were put into use as clay settling areas after July 1, 1975, and on or before July 1, 1984, under the nonmandatory land reclamation program. This requirement is expressly contingent upon the availability of sufficient funds in the Nonmandatory Land Reclamation Trust Fund.

The DEP staff must present to the Nonmandatory Land Reclamation Committee (committee) by February 1 of each year, the reclamation program applications received by the November 1 deadline. The staff recommends an order of priority for the reclamation program applications and includes an estimate of the cost of each reclamation program or land acquisition.

The committee is to recommend approval, modification, or denial of the reclamation program applications, associated cost estimates, and the DEP staff's recommended prioritized list based on certain specified statutory criteria.

Until 1995, the funds available for approved reclamation contracts and acquisitions of nonmandatory lands shall not exceed 20 percent of the uncommitted fund balance of the trust fund at the beginning of each year.

Section 378.035, F.S., provides the DEP's responsibilities and duties with respect to the Nonmandatory Land Reclamation Trust Fund. For the 2003-2004 fiscal year only, the DEP was authorized to expend the moneys appropriated from the General Appropriations Act for the abatement of imminent hazards caused by, and for the closure of, abandoned phosphogypsum stack systems. This provision expired on July 1, 2004. Also, for FY 2003-2004, the DEP could not approve or encumber nonmandatory reclamation projects in amounts greater than \$15 million.

Phosphate and other mining operations currently must mitigate any damages occurring in wetland areas because of mining activities. Many mining activities are conducted pursuant to long-term permits or life-of-the-mine permits. Current practice has been to provide financial assurances to conduct the mitigation activities as the mining operations occur, not in advance of the mining activities over the life of the mine. Recently, an administrative law judge has ruled that mining concerns must demonstrate financial responsibility for the mitigation of wetland impacts for the entire life of the mine before such mining operations are conducted. As a result, many mining operations have begun to seek and operate under shorter mining permits and provide mitigation plans on a piecemeal, as-you-go basis.

### **III. Effect of Proposed Changes:**

The committee substitute deletes the obsolete provision in s. 378.034, F.S., that limits funding for reclamation activities on phosphate-mined lands. Also, the bill amends s. 378.035, F.S., to delete a provision authorizing the expenditure of certain funds for abandoned phosphogypsum stack systems that has expired.

In addition, the committee substitute amends s. 373.414, F.S., to require that financial responsibility must be provided for permitted phosphate mining activities that affect wetlands. In cases where the permitted activities cover a period of 3 years or more, the financial responsibility

must equal 110 percent of the estimated mitigation costs for the first year of wetlands impacts. The financial responsibility costs are to be updated annually to include the following year of impacts, and to reduce the cost estimate for areas in which revegetation has already taken place to reflect the costs of monitoring and maintenance.

The mechanisms that are available for the demonstration of financial responsibility are specified and the choice of which one to use is left to the applicant. The mechanisms must be approved by the permitting authority prior to the wetlands impacts occurring.

For long-term permits, the permittee does not have to provide a demonstration of financial responsibility for the entire wetlands impacts prior to beginning the activity. The financial responsibility demonstration will cover the initial year of impacts and must be updated annually to include the next year of operation under the permit.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Phosphate mining operations will be able to continue to provide a demonstration of financial responsibility on an as-mined basis, but prior to the wetlands impacts occurring. Many companies do not have the financial resources to provide the financial responsibility for the entire duration of the permit upfront.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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