

By the Committees on General Government Appropriations;
Environmental Preservation; and Senator Dockery

601-2061-05

1 A bill to be entitled
2 An act relating to phosphate mine reclamation;
3 amending s. 378.034, F.S.; deleting an obsolete
4 provision relating to the use of reclamation
5 funds; amending s. 378.035, F.S.; deleting an
6 obsolete provision authorizing the Department
7 of Environmental Protection to expend certain
8 funds; amending s. 373.414, F.S.; requiring
9 financial responsibility for wetlands
10 mitigation; specifying the financial
11 responsibility demonstration for permitted
12 activities occurring over a period of 3 years
13 or more of mining activities; extending the due
14 date of the Peace River Basin study; providing
15 an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:
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19 Section 1. Section 378.034, Florida Statutes, is
20 amended to read:

21 378.034 Submission of a reclamation program request;
22 procedures.--

23 (1) The department shall establish by rule procedures
24 for a nonbinding preapplication review to assist a landowner
25 in submitting a reclamation program request.

26 (2) Landowners shall reclaim all nonmandatory lands
27 which were put into use as clay settling areas after July 1,
28 1975, and on or before July 1, 1984, under the nonmandatory
29 land reclamation program, pursuant to the provisions of this
30 act. A landowner shall submit a reclamation program
31 application within 180 days after the land ceases to be used

1 as a clay settling area. The requirements of this subsection
2 are expressly contingent upon the availability of sufficient
3 funds in the Nonmandatory Land Reclamation Trust Fund
4 established pursuant to s. 211.3103.

5 (3)(a) Landowners shall submit reclamation program
6 applications to the department by November 1 of each year for
7 funding consideration during the following year.

8 (b) Each reclamation program application shall include
9 a timetable for completion of the program and a completion
10 date.

11 (4) The department staff shall review each reclamation
12 program application to determine whether it complies with the
13 standards and criteria for a reclamation program or for land
14 acquisition and to determine its consistency with the master
15 reclamation plan.

16 (5)(a) The department staff shall, by February 1 of
17 each year, present to the committee for its consideration
18 those reclamation program applications received by the
19 preceding November 1.

20 (b) The department staff shall recommend an order of
21 priority for the reclamation program applications that is
22 consistent with subsection (6).

23 (c) The recommendation of the department staff shall
24 include an estimate of the cost of each reclamation program or
25 land acquisition.

26 (6) The committee shall recommend approval,
27 modification, or denial of the reclamation program
28 applications, associated cost estimates, and the department
29 staff's recommended prioritized list. Recommendations on the
30 order of priority shall be based, among other criteria, on the
31 following criteria; however, the committee may give greater

1 weight to one or more of the criteria depending on the overall
2 needs of the nonmandatory land reclamation program:

3 (a) Whether health and safety hazards exist; and, if
4 so, such hazards shall be given the greatest weight;

5 (b) Whether the economic or environmental utility or
6 the aesthetic value of the land will return naturally within a
7 reasonable period of time;

8 (c) Whether there is a reasonable geographic and
9 applicant diversity in light of previously awarded reclamation
10 contracts, reclamation program applications before the
11 committee, and the remaining eligible lands;

12 (d) Whether reclamation is in the public interest;

13 (e) Whether the land has been naturally reclaimed or
14 is eligible for acquisition by the state for hunting, fishing,
15 or other outdoor recreation purposes or for wildlife
16 preservation;

17 (f) Whether the land is to be reclaimed for
18 agricultural use and the applicant has agreed to maintain the
19 land in agricultural use for at least 5 years after the
20 completion of the reclamation;

21 (g) Whether the program, alone or in conjunction with
22 other reclamation programs, will provide a substantial
23 regional benefit;

24 (h) Whether the program, alone or in conjunction with
25 other reclamation programs, will benefit regional drainage
26 patterns;

27 (i) Whether the land is publicly owned and will be
28 reclaimed for public purposes;

29 (j) Whether the program includes a donation or
30 agreement to sell a portion of the program application area to
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1 the state for outdoor recreational or wildlife habitat
2 protection purposes;

3 (k) Whether the program is cost-effective in achieving
4 the goals of the nonmandatory land reclamation program; and

5 (l) Whether the program will reclaim lands described
6 in subsection (2).

7 (7) ~~Until 1995, the funds available for approved~~
8 ~~reclamation contracts and acquisitions of nonmandatory lands~~
9 ~~shall not exceed 20 percent of the uncommitted fund balance of~~
10 ~~the trust fund at the beginning of each year.~~ The prioritized
11 list approved by the committee may contain more reclamation
12 program applications than there are funds available during the
13 year.

14 (8) Each year, 15 percent of the funds available for
15 approved reclamation contracts, as set forth in subsection
16 (7), shall be reserved for reclamation programs which are
17 submitted by applicants other than corporations primarily
18 engaged in the mining or processing of phosphate ores to
19 create lands to be actively used for agricultural activities.
20 In the event that, in any given year, there are insufficient
21 applicants that meet the department criteria for approval to
22 use the funds reserved under this subsection, the remaining
23 moneys may be made available to other applicants.

24 (9) The committee recommendations shall be submitted
25 to the secretary by April 1 of each year for final agency
26 action by June 1 of that year. The secretary shall approve, in
27 whole or in part, the list of reclamation program applications
28 in the order of priority in which the applications are
29 presented.

30 (10) Any approved reclamation program application that
31 was not funded shall, at the request of the applicant, be

1 | considered by the committee at its next meeting called for
2 | that purpose, together with other reclamation program
3 | applications received by November 1 of the next year.

4 | (11)(a) After receiving the approval of the secretary,
5 | the department shall offer a reclamation contract to an
6 | applicant within 30 days after the applicant's reclamation
7 | program has been approved. The contracts shall be offered to
8 | the applicants in their approved order on the priority list to
9 | the extent funds are available. Each applicant shall have 30
10 | days in which to execute a reclamation contract. If the
11 | contract is not executed within 30 days, the application shall
12 | be dropped from the approved list for the current year.

13 | (b) Reclamation contracts may not be signed and
14 | available funds may not be committed after June 30 of the year
15 | in which a reclamation program application is approved by the
16 | secretary.

17 | (c) The amount of reimbursement for reclamation
18 | activities allowed in the contract shall be a grant of money
19 | equal to the estimated cost of the program as approved by the
20 | secretary. In no event, however, shall the grant amount exceed
21 | the maximum amounts specified in s. 378.037(1)(b).

22 | (d) After receiving the approval of the Governor and
23 | Cabinet, each reclamation program application for the
24 | acquisition of land shall be transferred to the Division of
25 | State Lands, which shall acquire the lands in compliance with
26 | the acquisition procedures of s. 253.025.

27 | (12) The department shall require by rule that owners
28 | of eligible properties who intend to seek approval of a
29 | reclamation program submit, not later than December 31, 1993,
30 | a notice of intent to file an application for approval,
31 | indicating the date upon which the application will be filed.

1 Section 2. Section 378.035, Florida Statutes, is
2 amended to read:

3 378.035 Department responsibilities and duties with
4 respect to Nonmandatory Land Reclamation Trust Fund.--

5 (1) The department shall administer the Nonmandatory
6 Land Reclamation Trust Fund.

7 (2)(a) The department shall verify that reclamation
8 activities or portions thereof have been accomplished in
9 accordance with the reclamation contract and shall certify the
10 cost of such reclamation activities to the Chief Financial
11 Officer for reimbursement.

12 (b) Beginning in 1985, the department shall determine
13 the maximum dollar amount a landowner may be reimbursed per
14 reclaimed acre under an approved reclamation program.

15 (c) Nothing in this act precludes a landowner from
16 performing the reclamation pursuant to the approved
17 reclamation program, provided the landowner complies with the
18 provisions of this act.

19 (3) If an applicant who has signed a reclamation
20 contract abandons the reclamation program prior to substantial
21 completion of the program, the department may spend the
22 remaining balance of funds not expended under the contract to
23 complete the program.

24 (a) The contract amount and any amounts spent by the
25 department in excess of the remaining balance of the funds
26 under the contract become a lien upon the property,
27 enforceable pursuant to chapter 85. The moneys received as a
28 result of a lien foreclosure or as repayment shall be
29 deposited into the trust fund.

30 (b) If the land acquired pursuant to the lien
31 foreclosure has recreational or wildlife value, the department

1 | may retain ownership as with other property acquired pursuant
2 | to s. 378.036. If the department sells the property, the
3 | department shall deposit the proceeds of the sale into the
4 | trust fund.

5 | (4) Interest on moneys deposited in the Nonmandatory
6 | Land Reclamation Trust Fund shall accrue to that fund.

7 | (5) Funds within the Nonmandatory Land Reclamation
8 | Trust Fund are also authorized for use by the department for
9 | the following purposes:

10 | (a) To reclaim lands disturbed by the severance of
11 | phosphate rock on or after July 1, 1975, in the event that a
12 | mining company ceases mining and the associated reclamation
13 | prior to all lands disturbed by the operation being reclaimed.
14 | Moneys expended by the department to accomplish reclamation
15 | pursuant to this subsection shall become a lien upon the
16 | property enforceable pursuant to chapter 85. The moneys
17 | received as a result of a lien foreclosure or as repayment
18 | shall be deposited into the trust fund. In the event the money
19 | received as a result of lien foreclosure or repayment is less
20 | than the amount expended for reclamation, the department shall
21 | use all means available to recover, for the use of the fund,
22 | the difference from the affected parties. Paragraph (3)(b)
23 | shall apply to lands acquired as a result of a lien
24 | foreclosure.

25 | (b) For the abatement of an imminent hazard as
26 | provided by s. 403.4154(4) and for the purpose of closing an
27 | abandoned phosphogypsum stack system and carrying out
28 | postclosure care as provided by s. 403.4154(6).

29 | (c) For the purpose of funding basic management or
30 | protection of reclaimed, restored, or preserved phosphate
31 | lands:

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

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

7 3. For which other management funding options are not
8 available.

9
10 These funds may, after the basic management or protection has
11 been assured for all such lands, be combined with other
12 available funds to provide a higher level of management for
13 such lands.

14 (d) For the sole purpose of funding the department's
15 implementation of:

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

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

22 3. The phosphogypsum management program pursuant to s.
23 403.4154 and department rule 62-673, Florida Administrative
24 Code.

25 (6) Should the nonmandatory land reclamation program
26 encumber all the funds in the Nonmandatory Land Reclamation
27 Trust Fund except those reserved by subsection (5) prior to
28 funding all the reclamation applications for eligible parcels,
29 the funds reserved by subsection (5) shall be available to the
30 program to the extent required to complete the reclamation of
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1 all eligible parcels for which the department has received
2 applications.

3 (7) The department may not accept any applications for
4 nonmandatory land reclamation programs after January 1, 2005.

5 (8) The Bureau of Mine Reclamation shall review the
6 sufficiency of the Nonmandatory Land Reclamation Trust Fund to
7 support the stated objectives and report to the secretary
8 annually with recommendations as appropriate.

9 ~~(9) For the 2003-2004 fiscal year only,~~
10 ~~notwithstanding the provisions of subsections (5) and (6), the~~
11 ~~department is authorized to expend the moneys appropriated in~~
12 ~~the General Appropriations Act for the abatement of imminent~~
13 ~~hazards caused by, and for the closure of, abandoned~~
14 ~~phosphogypsum stack systems as provided in subsections (3) and~~
15 ~~(5) of s. 403.4154, respectively. This subsection expires July~~
16 ~~1, 2004.~~

17
18 ~~For the 2003-2004 fiscal year the department may not approve~~
19 ~~or encumber nonmandatory reclamation projects in amounts~~
20 ~~greater than \$15 million.~~

21 Section 3. Subsection (19) is added to section
22 373.414, Florida Statutes, to read:

23 373.414 Additional criteria for activities in surface
24 waters and wetlands.--

25 (19)(a) Financial responsibility for wetlands
26 mitigation required by a permit issued pursuant to part IV for
27 activities associated with the extraction of phosphate are
28 subject to approval by the department as part of permit
29 application review. Financial responsibility for permitted
30 activities which will occur over a period of 3 years or less
31 of mining operations must be provided to the department prior

1 to the commencement of mining operations and shall be in an
2 amount equal to 110 percent of the estimated mitigation costs
3 for wetlands affected under the permit. For permitted
4 activities which will occur over a period of more than 3 years
5 of mining operations, the initial financial responsibility
6 demonstration shall be in an amount equal to 110 percent of
7 the estimated mitigation costs for wetlands affected in the
8 first 3 years of operation under the permit. Each year
9 thereafter, the financial responsibility demonstration shall
10 be updated to provide an amount equal to 110 percent of the
11 estimated mitigation costs for the next year of operations
12 under the permit for which financial responsibility has not
13 already been demonstrated and to release portions of the
14 financial responsibility mechanisms in accordance with
15 applicable rules.

16 (b) The mechanisms for providing financial
17 responsibility pursuant to the permit shall, at the discretion
18 of the applicant, include the following:

- 19 1. Cash or cash equivalent deposited in an escrow
20 account.
- 21 2. An irrevocable letter of credit.
- 22 3. A performance bond.
- 23 4. A trust fund agreement.
- 24 5. A guarantee bond.
- 25 6. An insurance certificate.
- 26 7. A demonstration that the applicant meets the
27 financial test and corporate guarantee requirements set forth
28 in 40 C.F.R. s. 264.143(f).
- 29 8. A demonstration that the applicant meets the self
30 bonding provision set forth in 30 C.F.R. s. 800.23. The form
31 and content of all financial responsibility mechanisms shall

1 be approved by the department. When using an irrevocable
2 letter of credit, performance bond, or guarantee bond, all
3 payments made thereunder shall be deposited into a stand-by
4 trust fund established contemporaneously with the posting of
5 the financial assurance instrument. All trust fund agreements
6 and standby trust fund agreements shall provide that
7 distributions therefrom will be made only at the request of
8 the department and that the trustees of such funds shall be
9 either a national banking institution or a state regulated
10 trust company.

11 (c) This subsection does not apply to any wetlands
12 mitigation that is required pursuant to a permit or permits
13 initially issued by the department or district prior to
14 January 1, 2005.

15 (d) This subsection does not supersede or modify the
16 financial responsibility requirements of s. 378.209.

17 Section 4. Section 10 of chapter 2003-423, Laws of
18 Florida, is amended to read:

19 Section 10. (1) The Department of Environmental
20 Protection, in consultation with the Southwest Florida Water
21 Management District, shall study cumulative impacts of changes
22 in landform and hydrology in the Peace River Basin. The study
23 shall evaluate cumulative impacts of activities conducted in
24 the Peace River Basin prior to state regulation, or pursuant
25 to an exemption, a permit, or a reclamation plan, on water
26 resources of the basin, including surface waters,
27 groundwaters, fisheries, aquatic and estuarine habitat, and
28 water supplies. The study must also include an evaluation of
29 the effectiveness of existing regulatory programs in avoiding,
30 minimizing, mitigating, or compensating for cumulative impacts
31 on water resources of the basin. In addition, the study shall

1 evaluate the environmental benefits, legal issues, and
2 economic impacts of limiting activities, including mining
3 activities, on waters and environmentally sensitive areas
4 around waterbodies by establishing a buffer within the
5 100-year floodplain of major perennial streams within the
6 Peace River Basin, including the Peace River, Horse Creek, and
7 the Myakka River. The study shall also recommend ways in which
8 any buffer areas recommended as prohibited areas can be
9 considered as mitigation under applicable permitting programs.

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

22 (3) Rulemaking authority is granted to the Department
23 of Environmental Protection and the Southwest Florida Water
24 Management District to implement the regulatory
25 recommendations identified in the study or the resource
26 management plan.

27 (4) The resource management plan shall be submitted to
28 the Governor, the President of the Senate, and the Speaker of
29 the House of Representatives no later than January 31, 2007
30 ~~July 1, 2005~~.

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

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

12 Section 5. This act shall take effect July 1, 2005.

13
14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 CS/SB 486

17 The committee substitute:

- 18 o clarifies the financial responsibility requirements
19 related to wetland mitigation to cover a period of three
20 years or more of phosphate mining operations;
21 o clarifies that the financial responsibility must equal
22 110 percent of the estimated mitigation costs for the
23 first three years of wetland impacts, and that those
24 costs are to be updated annually to include the next
25 scheduled year of impacts and to make any adjustments in
26 the estimated costs as a result of cost increases or
27 decreases; and
28 o extends the date for completing a cumulative impact study
29 in the Peace River Basin from July 1, 2005, to January 1,
30 2007.
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