

Committee Substitute for
Committee Substitute for Senate Bill No. 1376

An act relating to mining; amending s. 378.035, F.S.; reserving certain funds in the Nonmandatory Land Reclamation Trust Fund for use by the Department of Environmental Protection for reclaiming lands; authorizing the department to use funds from the trust fund for the purpose of closing certain abandoned phosphogypsum stack systems; limiting the period of operation of the program; requiring the Bureau of Mine Reclamation to review the sufficiency of the trust fund to support certain objectives and make reports; amending s. 378.601, F.S.; deleting provisions exempting certain mining operations from review as developments of regional impact; amending s. 403.4154, F.S.; defining the terms “phosphogypsum stack system” and “process wastewater”; authorizing the Department of Environmental Protection to take action to abate or reduce any imminent hazard caused by a phosphogypsum stack system; requiring the department to recover moneys from the owner or operator of the system; providing for attorney’s fees and costs; authorizing the department to impose a lien for the recovery of such moneys; imposing certain fees upon an owner or operator who has not demonstrated financial responsibility; providing for the refund of the fee upon closure of the phosphogypsum stack; authorizing the department to expend moneys from the Nonmandatory Land Reclamation Trust Fund to close abandoned phosphogypsum stack systems; providing for a lien for the recovery of such moneys; amending s. 403.4155, F.S.; requiring the department to review certain rules and determine the adequacy of the rules; providing an appropriation; providing an effective date.

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

Section 1. Subsection (5) of section 378.035, Florida Statutes, is amended, and subsections (8) and (9) are added to that section, to read:

378.035 Department responsibilities and duties with respect to Nonmandatory Land Reclamation Trust Fund.—

(5) On July 1, 2001, ~~\$50~~ ~~1997~~, \$30 million of the unencumbered funds within the Nonmandatory Land Reclamation Trust Fund are hereby reserved for use by the department.

(a) These reserved moneys are to be used to reclaim lands disturbed by the severance of phosphate rock on or after July 1, 1975, in the event that a mining company ceases mining and the associated reclamation prior to all lands disturbed by the operation being reclaimed. Moneys expended by the department to accomplish reclamation pursuant to this subsection shall become a lien upon the property enforceable pursuant to chapter 85. The moneys received as a result of a lien foreclosure or as repayment shall be deposited into the trust fund. In the event the money received as a result

of lien foreclosure or repayment is less than the amount expended for reclamation, the department shall use all means available to recover, for the use of the fund, the difference from the affected parties. Paragraph (3)(b) shall apply to lands acquired as a result of a lien foreclosure.

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

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

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

Section 2. Subsection (5) of section 378.601, Florida Statutes, is amended to read:

378.601 Heavy minerals.—

(5) Any heavy mineral mining operation which annually mines less than 500 acres and whose proposed consumption of water is 3 million gallons per day or less shall not be required to undergo development of regional impact review pursuant to s. 380.06, provided permits and plan approvals pursuant to either this section and part IV of chapter 373, or s. 378.901, are issued. ~~This subsection applies only in the following circumstances:~~

~~(a) Mining is conducted in counties where the operator has conducted heavy mineral mining activities prior to March 1, 1997; and~~

~~(b) The operator of the heavy mineral mining operation has executed a developer agreement pursuant to s. 380.032 or has received a development order under s. 380.06(15) as of March 1, 1997. Lands mined pursuant to this section need not be the subject of the developer agreement or development order.~~

Section 3. Section 403.4154, Florida Statutes, is amended to read:

403.4154 Phosphogypsum management program.—

(1) DEFINITIONS.—As used in this section, the term:

- (a) "Department" means the Department of Environmental Protection.
- (b) "Existing stack" means a phosphogypsum stack, as defined in paragraph (d), that is:
1. In existence in this state on May 12, 1993; or
 2. Constructed in this state after May 12, 1993, and for which the department has received a certification of completion of construction submitted by the owner of the newly constructed phosphogypsum stack.

The term "existing stack" does not include a phosphogypsum stack that has been closed pursuant to a department permit or order.

(c) "Phosphogypsum" means calcium sulfate and byproducts produced by the reaction of sulfuric acid with phosphate rock to produce phosphoric acid.

(d) "Phosphogypsum stack" means any defined geographic area associated with a phosphoric acid production facility in which phosphogypsum is disposed of or stored, other than within a fully enclosed building, container, or tank.

(e) "Phosphogypsum stack system" means the phosphogypsum stack, pile, or landfill, together with all pumps, piping, ditches, drainage conveyances, water-control structures, collection pools, cooling ponds, surge ponds, and any other collection or conveyance system associated with the transport of phosphogypsum from the plant to the phosphogypsum stack, its management at the stack, and the process-wastewater return to the phosphoric acid production or other process. This definition specifically includes toe drain systems and ditches and other leachate collection systems but does not include conveyances within the confines of the fertilizer production plant or existing areas used in emergency circumstances caused by rainfall events of high volume or duration for the temporary storage of process wastewater to avoid discharges to surface waters of the state, which process wastewater must be removed from the temporary storage area as expeditiously as possible, but not to exceed 120 days after each emergency.

(f) "Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product, along with any leachate or runoff from the phosphogypsum stack system. This term does not include contaminated nonprocess wastewater as that term is defined in 40 C.F.R. part 418.11(c).

(2) REGULATORY PROGRAM.—

(a) It is the intent of the Legislature that the department develop a program for the sound and effective regulation of phosphogypsum stack systems in the state. ~~It is further the intent of the Legislature that such regulatory program include the imposition of an annual registration fee on stacks that have not been closed and that such fees be used for the purpose of paying the costs of the department's review of applications to permit the~~

~~closure of stack systems or the construction of new or expanded stack systems and of the department's review of requests for deferral of mandatory closure requirements.~~

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

(3) ABATEMENT OF IMMINENT HAZARD.—

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

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

(c) If the department determines that the physical condition, maintenance, operation, or closure of a phosphogypsum stack system poses an imminent hazard, the department shall request access to the property on which such stack system is located from the owner or operator of the stack system for the purposes of taking action to abate or substantially reduce the imminent hazard. If the department, after reasonable effort, is unable to timely obtain the necessary access to abate or substantially reduce the imminent hazard, the department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate or substantially reduce an imminent hazard. Whenever serious harm to human health, safety, or welfare, to the environment, or to private or public property may occur prior to completion of an administrative hearing or other formal proceeding that might be initiated to abate the risk of serious harm, the department may obtain from the court, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

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

(e) The department shall recover from the owner or operator of the phosphogypsum stack system to the use of the Nonmandatory Land Reclamation Trust Fund all moneys expended from the fund, including funds expended prior to the effective date of this section, to abate an imminent hazard posed by the phosphogypsum stack system plus a penalty equal to an amount calculated at 30 percent of such funds expended. This penalty shall be imposed annually, and prorated from the date of payment from the fund

until the expended funds and the penalty are repaid. If the department prevails in any action to recover funds pursuant to this subsection, it may recover reasonable attorney's fees and costs incurred. Phosphogypsum may not be deposited on a stack until all moneys expended from the fund in connection with the stack have been repaid, unless the department determines that such placement is necessary to abate or avoid an imminent hazard or unless otherwise authorized by the department.

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

(4)(3) REGISTRATION FEES.—

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

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

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

4. Within 30 days after a phosphogypsum stack has been certified as closed pursuant to rule 62-673.620(2) and (3), Florida Administrative Code, the department shall refund to the owner of the closed phosphogypsum stack an amount from the Nonmandatory Land Reclamation Trust Fund equal to the total amount of fee payments made by the owner or operator to the fund in connection with the closed phosphogypsum stack, except that any refund becoming payable prior to July 1, 2009, shall be paid to the owner on or after that date.

(a) The total annual registration fees for all existing stacks shall be the amount required by the department to accomplish the following activities:

~~1. Review and processing of a request by an owner of a phosphogypsum stack system that it be relieved of any mandatory obligation to close the system, or any portion thereof, prior to using the system for its entire remaining useful life.~~

~~2. Review and processing of an application to construct a new or expanded phosphogypsum stack system.~~

~~3. Review and processing of an application to close a phosphogypsum stack system, or portion thereof.~~

~~(b) On or before August 1 of each fiscal year, the department shall provide written notice to each owner of an existing stack of any the annual registration fee payable for the 12-month period commencing on the immediately preceding July 1 that fiscal year. Each owner shall remit the annual registration fee to the department on or before August 31 of each year within 30 days after receipt of the notice. The notice required by this section shall be accompanied by a report prepared by the department presenting the expenditures using annual registration fees required by this section made by the department during the immediately preceding fiscal year and indicating the amount of any unexpended funds.~~

~~(c) The total annual registration fees for all existing stacks shall not exceed \$500,000. The annual registration fee for each existing stack shall be the amount calculated by dividing the maximum total registration fees collectible in a particular fiscal year by the total number of existing stacks as of June 30 of the immediately preceding fiscal year.~~

(5) CLOSURE OF ABANDONED SYSTEMS.—

~~(a) The department may expend money from the Nonmandatory Land Reclamation Trust Fund to take all steps necessary to close a phosphogypsum stack system and to carry out postclosure care in accordance with department rules in effect as of the date of commencement of closure activities, subject to the conditions set forth in this subsection. To accomplish such closure and postclosure care, the department may take any appropriate action, including, but not limited to, using employees of the department or by contracting with other state or federal agencies, with private third-party contractors, or with the owner or operator of the stack system, to perform all or part of the work.~~

~~(b) The department may close a phosphogypsum stack system through agreement with the owner or by court order. In determining whether closure is appropriate, the court shall consider whether closing the stack will protect human health, safety, or welfare or the environment; the useful life of the stack; the effect of delaying closure on the stability of the fund; the likelihood that the stack will be operated again; and any other relevant factors. If the court finds that closure is appropriate, the court may appoint a receiver to oversee the closure or shall authorize department employees, agents, and contractors to enter all land owned by the owner of the phosphogypsum stack system for the performance of closure and postclosure activities.~~

(c) The department may impose a lien on the real property on which a closed phosphogypsum stack system is located and on the real property underlying and other assets located at its formerly associated phosphate fertilizer production facilities equal in amount to the moneys expended from the Nonmandatory Land Reclamation Trust Fund pursuant to this subsection for closure and postclosure care. The owner of any property on which such a lien is imposed is entitled to a release of the lien upon payment to the department of the lien amount and execution of an agreement to carry out postclosure care in accordance with applicable department rules. The lien imposed by this section does not take priority over any other prior perfected lien on the real property, personal property, or other assets referenced in this paragraph, including, but not limited to, the associated phosphate rock mine and reserves.

Section 4. Section 403.4155, Florida Statutes, is amended to read:

403.4155 Phosphogypsum management; rulemaking authority.—

(1) By July 1, 1999, The Department of Environmental Protection shall adopt rules to amend existing chapter 62-672, Florida Administrative Code, to ensure that impoundment structures and water conveyance piping systems used in phosphogypsum management are designed and maintained to meet critical safety standards. The rules must require that any impoundment structure used in a phosphogypsum stack system, together with all pumps, piping, ditches, drainage conveyances, water control structures, collection pools, cooling ponds, surge ponds, and any other collection or conveyance system associated with phosphogypsum transport, cooling water, or the return of process wastewater, is constructed using sound engineering practices and is operated to avoid spills or discharges of materials which adversely affect surface or ground waters. The rules must require that a phosphogypsum stack system owner maintain a log detailing the owner's operating inspection schedule, results, and any corrective action taken based on the inspection results. The rules must require phosphogypsum stack owners to maintain an emergency contingency plan and demonstrate the ability to mobilize equipment and manpower to respond to emergency situations at phosphogypsum stack systems. The rules must establish a reasonable time period not to exceed 12 months for facilities to meet the provisions of the rules adopted pursuant to this section.

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

Section 5. There is hereby appropriated \$16 million from the Nonmandatory Land Reclamation Trust Fund to the Department of Environmental Protection for fiscal year 2001-2002 to carry out the purposes authorized in section 378.035, Florida Statutes.

Section 6. This act shall take effect July 1, 2001.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.