

Committee Substitute for Senate Bill No. 18-E

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

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

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

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

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

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

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

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

1. For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 18.75 percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Any such proceeds received by a county shall be used only for phosphate related expenses.

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

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

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

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

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

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

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

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

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

3. For payment to counties that have been designated a rural area of critical economic concern pursuant to s. 288.0656 in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 13 percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Payments under this subparagraph shall be made to the counties unless the

Legislature by special act creates a local authority to promote and direct the economic development of the county. If such authority exists, payments shall be made to that authority.

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

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

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

(4) Beginning July 1, 2003, and annually thereafter, the Department of Environmental Protection may use up to \$2 million of the funds in the Nonmandatory Land Reclamation Trust Fund to purchase a surety bond or a policy of insurance, the proceeds of which would pay the cost of restoration, reclamation, and cleanup of any phosphogypsum stack system and phosphate mining activities in the event that an operator or permittee thereof has been subject to a final order of bankruptcy and all funds available therefrom are determined to be inadequate to accomplish such restoration, reclamation, and cleanup. This section does not imply that such operator or permittee is thereby relieved of its obligations or relieved of any liabilities pursuant to any other remedies at law, administrative remedies, statutory remedies, or remedies pursuant to bankruptcy law. The department shall adopt rules to implement this subsection, including the purchase and oversight of the bond or policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~3.—For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 18 percent. The department shall distribute this portion of the proceeds annually based on production information reported by producers on the annual returns for the taxable year. Any such proceeds received by a county shall be used only for phosphate-related expenses.~~

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

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

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

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

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

~~(9)(6)(a) On or before March 30, 2004 1989, and annually thereafter, the department shall calculate the base rate adjustment, if any, for phosphate rock based on the change in the unadjusted annual producer price index for~~

the prior calendar year in relation to the unadjusted annual producer price index for calendar year 1999 ~~1987~~.

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

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

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

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

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

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

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

378.021 Master reclamation plan.—

(1) The Department of Environmental Protection Natural Resources shall amend the adopt by rule, as expeditiously as possible upon receipt of the report of the Land Use Advisory Committee, a master reclamation plan that provides to provide guidelines for the reclamation of lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211. In amending the developing said master reclamation plan, the Department of Environmental Protection Natural Resources shall continue to conduct an onsite evaluation of all lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211, and shall consider the report and plan prepared by the Land Use Advisory Committee under s. 378.011 and submitted to the former Department of Natural Resources for adoption by rule on or before July 1, 1979. The master reclamation plan when amended adopted by the Department of Environmental Protection Natural Resources

shall be consistent with local government plans prepared pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act.

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

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

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

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

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

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

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

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

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

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

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

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

(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(4)(3) and for the purpose of closing an abandoned phosphogypsum stack system and carrying out postclosure care as provided by s. 403.4154(6)(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.~~

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

1. Which have wildlife habitat value as determined by the Bureau of Mine Reclamation;
2. Which have been transferred by the landowner to a public agency or a private, nonprofit land conservation and management entity in fee simple, or which have been made subject to a conservation easement pursuant to s. 704.06; and
3. For which other management funding options are not available.

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

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

1. The NPDES permitting program authorized by s. 403.0885, as it applies to phosphate mining and beneficiation facilities, phosphate fertilizer production facilities, and phosphate loading and handling facilities;
2. The regulation of dams in accordance with department rule 62-672, Florida Administrative Code; and
3. The phosphogypsum management program pursuant to s. 403.4154 and department rule 62-673, Florida Administrative Code.

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

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

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

~~(8)(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.~~

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

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

378.036 Land acquisitions financed by Nonmandatory Land Reclamation Trust Fund moneys.—

(6)(a) By January 1, 2004, or within 6 months following the date funds become available from the Legislature, whichever is later, the Florida Wildlife Federation, Audubon Florida, and Rails-to-Trails Conservancy in partnership with the Florida Phosphate Council are authorized to form a non-profit corporation pursuant to chapter 617 for the purpose of implementing

this section by creating plans and assisting in the development of recreational opportunities on lands mined for phosphate in the state. The first plans must concentrate on recreational activities in Hardee and Hamilton Counties which will assist them in rural economic development.

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

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

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

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

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

378.212 Variances.—

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

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

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

378.404 Department of Environmental Protection; powers and duties.—
The department shall have the following powers and duties:

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

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

403.4154 Phosphogypsum management program.—

(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.

(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 requirements, and closure financial responsibility requirements for phosphogypsum stack systems.

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

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

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

(d)(e) If the department determines that the failure of an owner or operator to comply with department rules requiring demonstration of financial responsibility or 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.

(e)(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.

(f)(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.

(g)(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.

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

(4) 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 issuance 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. However, a refund may not be paid until the Mulberry and Piney Point phosphogypsum stack systems have been closed and a satisfactory reserve has been established in the Nonmandatory Reclamation Lands Trust Fund, except that any refund becoming payable prior to July 1, 2009, shall be paid to the owner on or after that date.

(b) On or before August 1 of each year, the department shall provide written notice to each owner of an existing stack of any fee payable for the 12-month period commencing on the immediately preceding July 1. Each owner shall remit the fee to the department on or before August 31 of each year.

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

403.4155 Phosphogypsum management; rulemaking authority.—

(1) 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)(a) By October 1, 2004, the department shall initiate rulemaking to require that phosphogypsum stack system operation plans required by department rule be amended by adding an interim stack system management (ISSM) plan that provides written instructions for the operation of the system, assuming that no phosphoric acid would be produced at the facility for a 2-year period. The initial ISSM plan must be completed as of the first July 1 following the adoption of the rule required by this section. The ISSM plan must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The department shall revise chapter 62-673, Florida Administrative Code, to require the owner or operator of a phosphogypsum stack management system to demonstrate financial responsibility for the costs of terminal closure of the phosphogypsum stack system in a manner that protects the public health and safety, and must include criteria to evaluate the adequacy of the demonstration of financial responsibility.

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

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

a. Bond.

b. Letter of credit.

c. Cash deposit arrangement.

- d. Closure insurance.
- e. Financial tests.
- f. Corporate guarantee.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(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 10. (1) The Department of Environmental Protection, in consultation with the Southwest Florida Water Management District, shall study cumulative impacts of changes in landform and hydrology in the Peace River Basin. The study shall evaluate cumulative impacts of activities conducted in the Peace River Basin prior to state regulation, or pursuant to an exemption, a permit, or a reclamation plan, on water resources of the basin, including surface waters, groundwaters, fisheries, aquatic and estuarine habitat, and water supplies. The study must also include an evaluation of the effectiveness of existing regulatory programs in avoiding, minimizing, mitigating, or compensating for cumulative impacts on water resources of the basin. In addition, the study shall evaluate the environmental benefits, legal issues, and economic impacts of limiting activities, including mining activities, on waters and environmentally sensitive areas around waterbodies by establishing a buffer within the 100-year floodplain of major perennial streams within the Peace River Basin, including the Peace River, Horse Creek, and the Myakka River. The study shall also recommend ways in which any buffer areas recommended as prohibited areas can be considered as mitigation under applicable permitting programs.

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

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

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

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

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

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

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

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

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

Approved by the Governor November 12, 2003.

Filed in Office Secretary of State November 12, 2003.