

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 41E
SPONSOR(S): Spratt
TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Natural Resources</u>		<u>Camechis</u>	<u>Lotspeich</u>
2) _____			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill contains a series of changes to the general laws governing the phosphate industry, including:

- Increasing the base rate of the phosphate severance tax from \$1.31 to \$1.62 per ton severed.
- Revising the formula for distribution of phosphate severance tax revenues.
- Providing for the purchase of surety bonds by the DEP at a cost of \$2 million.
- Requiring DEP to conduct a study of the cumulative impacts of certain activities, including mining, within the Peace River Basin.
- Authorizing phosphate land reclamation variances for certain water supply and resource projects.
- Eliminating a \$50 million reserve requirement for the Nonmandatory Land Reclamation Trust Fund.
- Changing from 2008 to 2005 the deadline for phosphate companies to apply for reclamation funds.
- Creating a non-profit corporation to assist in developing recreational opportunities on lands mined for phosphate.
- Creating criminal penalties for the violation of certain financial reporting requirements under certain conditions.
- Requiring DEP to conduct rulemaking regarding financial responsibility of phosphate company owners and operators, interim stack management, and stack closure.

The bill increases phosphate severance tax revenues by \$1.97 million in FY03-04 and \$7.88 million in FY04-05. In addition, the bill provides for the expenditure of state funds as follows:

- \$800,000 to fund a study of the FIPR/DIPR process.
- \$750,000 to fund a study of the cumulative impacts of certain activities, including mining, in the Peace River Basin.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: October 20, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

Does the bill reduce government? No, the bill increases the role of government by increasing governmental oversight of phosphate mining operations to ensure that phosphate facilities and phosphogypsum stacks are properly managed and closed by the owners or operators, and to ensure that the owners or operators have the financial ability to pay for the closure of facilities.

Does the bill lower taxes? No, the bill increases the base rate of the phosphate severance tax from \$1.31 to \$1.62.

Does the bill expand individual freedom? No, the bill constricts individual freedom by creating a criminal penalty for certain misstatements or misrepresentations of closure costs for a phosphogypsum stack system.

Phosphate and Phosphogypsum Facts

- ☼ Florida supplies 25 percent of the world and 75 percent of the U.S. demand for phosphate.
- ☼ Florida led the Nation in phosphate rock mining in 2002, producing more than 27 million metric tons of phosphate rock extracted from 1,968 hectares of land.
- ☼ About 90% of the phosphate produced is used to make fertilizer, 5% is used to make animal feed, and 5% is used to make various products such as Coca-Cola, chemicals, toothpaste and light bulbs.
- ☼ There are 27 mines, including active and inactive, located in Hillsborough, Polk, Hamilton, Hardee, and Manatee Counties.
- ☼ There are 14 chemical processing plants and 25 phosphogypsum stacks located in Polk, Hillsborough, Manatee, and Hamilton Counties.
- ☼ Phosphogypsum is a by-product created when sulfuric acid reacts with calcium phosphate to make the phosphoric acid used in fertilizer.
- ☼ More than 900 million tons of phosphogypsum are currently stock-piled in stacks due to environmental regulations banning its use.
- ☼ A phosphogypsum stack, or “gypstack”, can be as high as 200 feet and cover as many as 400 acres.
- ☼ About 30 million new tons of phosphogypsum are produced yearly, and about 1 billion metric tons are currently stockpiled in Central Florida.
- ☼ Estimated costs for closing the Piney Point and Mulberry facilities may exceed \$160 million.
- ☼ Fertilizer was one of the state’s leading export commodities with a 2002 value of \$1.188 billion.
- ☼ Phosphate companies employed 6,343 employees with a total payroll of \$408.3 million in 2002.
- ☼ By the end of 1999, about 300,000 acres of land, or more than 460 square miles, had been mined.
- ☼ Since 1975, 70% of the land mined for phosphate has been reclaimed.
- ☼ Phosphate companies own or have mineral rights to almost 450,000 acres in Florida.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

General Background Information

Phosphate is a source of the phosphorus that is critical to human, animal and plant growth.¹ The United States is the largest producer and consumer of phosphate rock in the world, and the leading producer and supplier of phosphate fertilizers in the world.² The principal commercial deposits of phosphate rock exist in Florida, North Carolina, and Idaho, and to a lesser degree in Montana and Utah.³

Phosphate rock, which eventually yields phosphogypsum, is recovered by open pit mining. The rock is transported to a washing facility, where it is separated from accompanying soil, stones, etc. and processed. The desired phosphorus content of the phosphate rock is in the form of calcium phosphate, which will not dissolve in water and so cannot be taken up by crops. As a result, phosphate processors must transform the calcium phosphate into a water-soluble form.⁴

The most common solution to the problem is converting the calcium phosphate to phosphoric acid, a valuable component of fertilizer which is water soluble. There are wet and dry conversion processes. U.S. production facilities utilize a wet process in which the prepared rock is treated with sulfuric acid to produce the phosphoric acid. Phosphogypsum is a waste by-product from processing phosphate rock using the "wet acid" method of fertilizer production. The leftover phosphogypsum has limited economic or environmental value, and is simply piled up, or "stacked."⁵

The phosphogypsum, filtered from the phosphoric acid, is in the form of a solid/water mixture, or "slurry," which is stored in open-air storage areas known as "gypstacks." The gypstacks form as the slurry containing the by-product phosphogypsum is pumped onto a disposal site. Over time the solids in the slurry build up and a stack forms. The stacks are generally built on unused or mined out land on the processing site, with no preparation of the land surface. As the stack grows, the phosphogypsum slurry begins to form a small pond on top of the stack. Workers dredge gypsum from the pond to build up the dike around it and the pond gradually becomes a reservoir for storing and supplying process water.⁶

The tops of operating phosphogypsum stacks are covered by ponds and ditches containing process water. According to DEP, the process water in the ponds is highly acidic. "Beaches," saturated land masses, protrude into the ponds. These surface features may cover up to 75 percent of the top of the stack. Other surface features include areas of loose, dry materials; access roads; and thinly crusted stack sides. The crust thickens and hardens when the stacks become inactive and no longer receive process slurry.⁷

Prior to processing, phosphate rock contains radium, uranium, thorium, polonium, and lead. Once the rock has been crushed and processed, the resulting waste has concentrated levels of these radioactive materials. Depending on the quality of the phosphate rock, the phosphogypsum could contain as much as 60 times the levels normally found prior to processing.⁸ Storing the material in stacks takes advantage of the tendency of phosphogypsum to form a crust when it is exposed to weather. This limits the radiation that would otherwise be emitted. As the stacks are exposed to high humidity and rain, the

¹ Florida Institute of Phosphate Research, 1997-1999, Annual Report, <http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm>; Accessed October 19, 2003.

² USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic), www.minerals.er.usgs.gov/minerals/pubs/state/2002/flstmyb02.pdf.

³ USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic), www.minerals.er.usgs.gov/minerals/pubs/state/2002/flstmyb02.pdf.

⁴ http://www.epa.gov/radiation/neshaps/subpartr/allfaqs.htm#question_one

⁵ http://www.epa.gov/radiation/neshaps/subpartr/allfaqs.htm#question_one

⁶ http://www.epa.gov/radiation/neshaps/subpartr/more.htm#where_does

⁷ http://www.epa.gov/radiation/neshaps/subpartr/more.htm#where_does

⁸ http://www.epa.gov/radiation/neshaps/subpartr/allfaqs.htm#question_one

crust that forms acts as a physical barrier against the radon. While the stacks do emit very low levels of gamma radiation, the levels are so low that they only present a significant risk when people are exposed continually over a long period of time.⁹

In addition to the radiation health hazards, phosphogypsum contains some trace metals in concentrations that may pose a chemical hazard to human health and the environment. Analysis of samples from various facilities contained arsenic, lead, cadmium, chromium, fluoride, zinc, antimony, and copper at concentrations that may pose significant health risks. The concentrations of these contaminants vary by more than three orders of magnitude among samples taken from various locations. These trace metals may also be leached from phosphogypsum and migrate to nearby surface and groundwater resources.¹⁰

Phosphate Mining in Florida

Florida has a rich phosphate deposit that was formed millions of years ago when seas covered the state. This phosphate is 20 to 25 feet underground and is one of the world's more accessible deposits. As such, Florida supplies 25 percent of the world and 75 percent of the U.S. demand for phosphate.¹¹ Florida continued to lead the Nation in phosphate rock mining in 2002, producing about seven times as much as the next highest producing State.¹² In 2002, more than 27 million metric tons of phosphate rock was extracted from 1,968 hectares (ha) of land.¹³

Approximately 90% of the phosphate produced is used to make fertilizer to increase the quality and yield of crops, 5% is used to make animal feed, and 5% is used to make various products such as Coca-Cola, chemicals, toothpaste and light bulbs.¹⁴

The largest economic phosphate deposits and production facilities in the United States are located in the Bone Valley formation in the central part of the State, in the counties of Hardee, Hillsborough, Manatee, and Polk. Three companies, Cargill Fertilizer, Inc., CF Industries, Inc., and IMC Phosphates MP Inc., operated seven mines in the central region of Florida. One mine operated by PCS Phosphate Co., Inc. is located in Hamilton County in the Northeastern part of the State. The following companies are no longer operating but continue to have reclamation responsibility: Agrifos L.L.C., Brewster Phosphates, Estech, Florida Power Co., Exxon/Mobil Co., Nu Gulf Industries Inc., TECO, USS Agrichemicals, and The Williams Co.¹⁵

Most of the mined phosphate is used to make the phosphoric acid that provides the phosphorus in fertilizer. However, before the phosphate can be processed into the phosphoric acid it must be mined and go through a process known as "beneficiation." This process uses chemicals, energy, and water to separate the phosphate from the clay and sand that is found in the matrix that is mined. A by-product of the beneficiation process is settling ponds where the clay is stored. These ponds cover approximately 120,000 Florida acres, and take years to dry. Even then, the instability of the clay makes them difficult to reclaim for most purposes.¹⁶

Phosphate operations also produce gypsum, a sandy mineral by-product of phosphate fertilizer manufacturing. Gypsum is stored in stacks, commonly referred to as "gypstacks," can be up to 200

⁹ http://www.epa.gov/radiation/neshaps/subpartr/more.htm#where_does

¹⁰ http://www.epa.gov/radiation/neshaps/subpartr/more.htm#where_does

¹¹ Florida Institute of Phosphate Research, 1997-1999, Annual Report, <http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm>; Accessed October 19, 2003.

¹² USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic),

¹³ USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic), <http://minerals.er.usgs.gov/minerals/pubs/state/2002/flstmyb02.pdf>; Accessed October 19, 2003.

¹⁴ Florida Institute of Phosphate Research, 1997-1999, Annual Report, <http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm>; Accessed October 19, 2003.

¹⁵ USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic), <http://minerals.er.usgs.gov/minerals/pubs/state/2002/flstmyb02.pdf>; Accessed October 19, 2003.

¹⁶ Florida Institute of Phosphate Research, 1997-1999, Annual Report, <http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm>; Accessed October 19, 2003.

feet tall. The gypsum goes on to the stack and mixes with water. Rain also adds water to these stacks. Because the water is acidic, it must be contained on the site or recycled into the plant for cooling. These stacks must be continuously monitored to ensure that the water does not seep into the environment. There are currently 25 stacks in Florida. The stacks are located in Polk, Hillsborough, Manatee, and Hamilton Counties and are in various stages of their life-cycle (10 are active, 12 are inactive, and 3 are closed).

Piney Point and Mulberry Generally

Mulberry Phosphates in Polk County and Piney Point Phosphates in Manatee County are former phosphate fertilizer chemical processing plants that closed in December 1999, both of which were owned by the Mulberry Corporation. In 2001, the company notified the DEP that it did not have funds to maintain the facilities and would abandon both sites. Shortly after the DEP assumed responsibility for securing the sites, bankruptcy proceedings were initiated, and the federal bankruptcy court appointed a receiver. The DEP is responsible, in conjunction with the receiver, for managing and securing the stack systems and providing for long-term closure.

Through October 15, 2003, the DEP had spent approximately \$49 million from the Nonmandatory Land Reclamation Trust Fund (NLRTF) to stabilize and close both sites. Additionally, there was \$45 million appropriated for maintenance and closure costs for FY2003-04. The DEP estimates that the cost to complete closure of both sites is \$120 million: \$100 million for Piney Point and \$20 million for Mulberry. DEP is seeking an appropriation of \$42.7 million for FY2004-05 to continue stabilization and closure efforts at the Piney Point and Mulberry sites.

The closure costs are spread over the next 10 years with a significant portion due over the next four. It should be noted, however, that DEP's closure cost estimates are based on the receipt of average amounts of rainfall over the next 10 years. Therefore, if the sites receive abnormally high amounts of rainfall for an extended period of time, the actual maintenance and closure costs may exceed \$120 million.

Mulberry Phosphates

In 2001, DEP assumed financial responsibility for stabilizing and closing the Mulberry Phosphates site. At that time, 2.4 billion gallons of acidic wastewater were stored on site in 100-foot gypstacks.

In May 2002, the DEP and Cargill Fertilizer, Inc., entered into an agreement whereby Cargill will manage and close the Mulberry facility, removing the estimated 7,600 megaliters of acidic process water from the stack. The DEP will reimburse Cargill up to \$25 million for the closure work, and Cargill will provide the labor and expertise. Closure of the stack system is expected to be complete by 2008, after which Cargill will continue long-term care for approximately 50 years. Cargill is the only operating phosphate company that has successfully closed a phosphogypsum stack. Cargill was expected to use the Mulberry facility to produce sulfuric acid for use in its other phosphate facilities in Florida.

Piney Point Phosphates

Prior to 2000, Piney Point Phosphates operated as a phosphate fertilizer manufacturing complex ("Piney Point") along U.S. Highway 41, approximately six miles north of the city of Palmetto, Manatee County, Florida. The complex includes a phosphoric acid plant with an associated old and new phosphogypsum stack system, each incorporating two 50-70 foot high stacks with deep impoundments on top, process water ponds, and a network of seepage and storm water runoff collection ditches encompassing a watershed of approximately 452 acres.¹⁷

¹⁷ EPA PROCESS OF ISSUING AN EMERGENCY PERMIT FOR OCEAN DISPOSAL OF TREATED WASTEWATER IN THE GULF OF MEXICO FROM THE PINEY POINT PHOSPHATE FACILITY IN MANATEE COUNTY, FLORIDA, FACT SHEET, April 3, 2003

In 2001, DEP assumed financial responsibility for stabilizing and closing the Piney Point facility. At that time, 1.2 billion gallons of acidic wastewater were stored on site in seven 70-foot gypstacks. Since February 2001, the DEP and the court appointed receiver have maintained the Piney Point gypsum stack system. The primary problem that is being addressed, in addition to ongoing maintenance of the system, is treatment, movement and disposal of hundreds of millions of gallons of water from the stack system. The existing inventory to be disposed of is approximately two billion gallons, which fluctuates due to the amount of rainfall. There have been no reasonable offers to purchase the site and assume responsibility for management and closure.

Since 2001, DEP has utilized various methods in an attempt to reduce the amount of wastewater on the Piney Point site, including: treatment by reverse osmosis; trucking to other phosphate companies for processing; trucking to stormwater treatment facilities for reuse; and barging water 120 to 190 miles offshore for slow dispersal after treatment to remove arsenic, heavy metals, radioactive material and nitrogen.

However, much of the work performed to dispose of the acidic water in the system was negated by abnormally high amounts of rainfall on the site over the last year, including 16.5 inches of rainfall in the Tampa Bay area in December 2002 which is an amount that does not occur in one month but once every 500 years. The excessive rainfall has caused the acidic wastewater to rise to dangerously high levels in spite of ongoing efforts to reduce the risk.

On April 9, 2003, the United States Environmental Protection Agency (USEPA) issued an emergency permit to DEP to disperse up to 534.7 million gallons of treated wastewater from the Piney Point facility into the Gulf of Mexico via barges.¹⁸ According to the USEPA, no adverse impact on the marine environment is expected from disposal of the treated wastewater under the current permit. According to the permit, the emergency decision to grant the permit was made to “prevent a catastrophic spill of hundreds of millions of gallons of untreated wastewater into Tampa Bay should heavy rains, predicted by the National Weather Service, cause the failure of the dikes at the facility. The potential failure poses an imminent health and safety threat to many area residents, including risking the lives of the workers on site and flooding Highway 41 - a major hurricane evacuation route for more than 300,000 people in South Florida.”¹⁹ The USEPA has noted that the untreated wastewater is a serious pollutant and that a catastrophic event at the site, which could release hundreds of millions of gallons of untreated acidic wastewater, would cause massive fish kills, loss of the Bay’s essential seagrass beds, harmful algal blooms, and potentially devastating the near-shore Gulf of Mexico.²⁰

The permit is scheduled to expire in November 30, 2003. DEP is currently seeking an extension of the permit; however, there is no guarantee that the permit will be renewed to allow for continued offshore dispersals of wastewater from Piney Point.

EFFECT OF PROPOSED CHANGES

Phosphate Severance Tax and Distribution Formula for Tax Proceeds

Section 211.3103, F.S., levies a tax on every person engaged in the business of severing phosphate rock from the soils or waters of this state for commercial use. In 2002, the phosphate severance tax rate was \$1.30²¹ per ton with 27.1 million tons of rock mined from 4,859 acres of land. The total 2002

¹⁸USEPA, April 2, 2003 Notification and Assessment of Emergency Situation in accordance with the Interim Procedures and Criteria for Determining Emergency Situations adopted in 1980 under the London Convention 1972. www.epa.gov/Region4/water/oceans/PineyPointNotification.pdf; Accessed October 19, 2003.

¹⁹ USEPA Press Release, April 3, 2003, www.epa.gov/region04/oeapages/03%20press/040303.html; Accessed October 19, 2003.

²⁰ EPA Process of issuing An Emergency Permit For Ocean Disposal of Treated Wastewater in the Gulf of Mexico From the Piney Point Phosphate Facility in Manatee County, Florida, Fact Sheet, www.epa.gov/region04/oeapages/03%20press/pineypointfactsheet.pdf; Accessed October 19, 2003; USEPA, April 2, 2003, Notification and Assessment of Emergency Situation in accordance with the Interim Procedures and Criteria for Determining Emergency Situations adopted in 1980 under the London Convention 1972; www.epa.gov/Region4/water/oceans/PineyPointNotification.pdf; Accessed October 19, 2003.

²¹ (\$1.08 base rate per ton)(1.2037 base rate adjustment)=\$1.30 tax per ton severed.

phosphate severance tax revenue was approximately \$39 million, which was distributed in accordance with the distribution formula set forth in s. 211.3103, F.S., This bill amends that section to revise the distribution formula and tax rate.

The current and proposed distribution schedules are as follows:

DISTRIBUTION OF PHOSPHATE SEVERANCE TAX

(\$ millions)

Fund	Current		FY 2003-04		FY 2004-05	
	Revenue	% Distribution	Revenue	% Distribution	Revenue	% Distribution
CARL TF	10.00		10.00		10.00	
Counties	4.07	18.00%	4.61	18.75%	5.03	16.50%
Critical Economic Concern, Counties			3.69	15.00%	3.96	13.00%
Phosphate Research TF	2.62	12.50%	2.56	11.25%	2.63	9.30%
Minerals TF	3.02	14.35%	2.56	11.25%	3.02	10.70%
General Revenue	12.47	55.15%			12.22	40.10%
General Revenue Service Charge	1.13		1.89		1.38	
Nonmandatory Land Reclamation TF			9.96	43.75%	2.94	10.40%
Less Surety Bonds - from NMLRTF			(2.00)		(2.00)	
Less Hydrology Study - from NMLRTF			(0.75)			
Less FIPR Research			(0.80)			
Less GR - from NMLRTF			(11.71)			
Less Minerals TF			(0.46)			
Less Phosphate ResearchTF			(0.06)			
Subtotal NLRTF			(5.82)		0.94	
TOTAL	\$33.31	100.00%	\$35.27	100.00%	\$41.18	100.00%
TOTAL Revenue Increase			1.96		7.87	

Notes:

Phosphate severance tax rate will increase from \$1.31 to \$1.62 per ton.

CARL TF - receives \$10 million before any other distribution is made. After \$10 million distribution, \$700,000 GR service charge is assessed.

Phosphate Research TF - assessed a 7.3% GR service charge. Amount reflects net service charge.

Minerals TF - assessed a 7.3% GR service charge. Amount reflects net service charge.

Nonmandatory Land Reclamation TF - assessed 7.3% GR service charge. Amount reflects net service charge. Negative amount in FY 2003-04 reflects net amount of revenues less appropriations contained in the bill.

General Revenue - amount includes service charges and distributions. Amount will not equal percentage distributions.

As of July 1, 2004, the phosphate severance tax rate is increased from \$1.31 to a base rate of \$1.62 per ton severed. As of July 1, 2005, and annually thereafter, the tax rate will be the base rate of \$1.62 times the base rate adjustment for the tax year as calculated by the Department of Revenue. The adjustment will be the change in the unadjusted producer price index for chemical and fertilizer mining. However, the bill requires the tax rate to be at least \$1.56 per ton severed.

Section 211.3103(2)(b)4, F.S., stipulates that phosphate severance tax revenues are allocated on a pro-rata basis to counties in proportion to the number of tons of phosphate rock produced from the phosphate rock matrix located within each county's political boundary. A pro-rata distribution will continue for all counties wherein phosphate is mined, and will also be used allocate funds to counties designated as rural areas of critical economic concern.

Pursuant to this bill, funds distributed to rural areas of critical economic concern must be used for planning, preparing, and financing of infrastructure projects for job creation and capital investment, especially those related to industrial and commercial sites. Also funds must be used for maximizing the use of federal, local, and private resources, and for projects that improve inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth. At this time, only Hamilton and Hardee Counties are eligible for funding as rural areas of critical economic concern because they are the only designated counties in which an active mine is located.

Nonmandatory Land Reclamation Trust Fund

The Nonmandatory Land Reclamation Trust Fund ("NLRTF") was established by the Legislature in 1978 to fund the reclamation of land that was mined before 1975. The Legislature declared that all lands disturbed by phosphate mining after 1975 must be reclaimed by the phosphate mine owners. The revenue source for the trust fund is a tax on the severance of materials. The tax was enacted into law in 1971 and is paid by all phosphate companies on the basis of tons of phosphate rock produced. However, as of January 2000, revenues from the severance tax were no longer deposited into the NLRTF when it was determined that funds were sufficient to reclaim the remaining lands that were mined prior to 1975. At the same time, the base tax rate was reduced by 20 percent.

Currently, revenues deposited into the NLRTF come solely from the phosphogypsum stack registration fees (\$1.4M annually) and interest earnings without any contribution from the proceeds of the phosphate severance tax. The fund balance as of June 30, 2003 was approximately \$82 million. The DEP estimates that \$90 million is needed to finish reclaiming 20,000 acres of mined phosphate lands, and approximately \$120 million is needed to complete the gypsum stack closures at Mulberry and Piney Point. With the projected funding needs, funds in the NLRTF as currently structured will not be sufficient to meet these responsibilities.

The bill amends s. 211.3103, F.S., to reinstate the distribution of phosphate severance tax proceeds to the NLRTF in FY2003-04. Although the bill allocates 43.75% of the phosphate severance tax revenues to the NLRTF (after the \$10 million distribution to CARL), the NLRTF will experience a \$5.82 million deficit balance in FY 2003-04 due to DEP expenditures to stabilize the Piney Point and Mulberry facilities. In FY 2004-05 and each year thereafter, the NLRTF will receive an allocation of 10.40% for a total dollar amount of \$940,000. Based upon the closure cost estimates for Piney Point and Mulberry facilities, it does not appear that funds in the NLRTF be sufficient to meet those needs in the near future under the proposed distribution formula.

Beginning July 1, 2003 and annually thereafter, the DEP may utilize up to \$2 million of the funds in the Nonmandatory Land Reclamation Trust Fund to purchase surety bonds which would pay for the costs of restoration, reclamation, and cleanup of any phosphogypsum stack system in the event that the owner or operator in files bankruptcy or there it is determined that there is inadequate funds. DEP estimates that the \$2 million may purchase approximately \$45 million in coverage for future costs of closure. However, the exact amount of coverage that may be purchased is uncertain due to the nature of the industry.

Section 378.035, F.S., currently reserves \$50 million of funds deposited into the NLRTF for certain purposes, including reclamation of lands mined after July 1, 1975, if a mining company ceases to operate or reclaim mined lands, to abate an imminent hazard, and to close abandoned gypstack systems. That section also includes the purposes for which DEP may utilize interest income on the reserve and certain limitations on the amounts expended. Section 378.035, F.S., is amended to remove the \$50 million reserve requirement in the NLRTF and the limitations on the use of interest income. However, the funds may still be used by DEP to reclaim lands mined after July 1, 1975, if the mining company ceases to operate or reclaim mined lands, to abate an imminent hazard, or to close abandoned gypstack systems.

Section 378.035(8), F.S., prohibits DEP from accepting applications for nonmandatory land reclamations after November 1, 2008. This bill shortens the time frame in which applications may be accepted by amending that section to allow DEP to accept applications only through July 1, 2005. Finally, for FY 2003-04, the DEP is not permitted to approve or encumber nonmandatory reclamation projects in amounts greater than \$15 million.

Section 378.036, F.S., is amended to authorize the Florida Wildlife Federation, Audubon Florida, and Rails-to-Trails Conservancy, in conjunction with the Florida Phosphate Council, to jointly form a nonprofit corporation for the purpose of creating plans and assisting in the development of recreational

opportunities on land mined for phosphate. The first plans must concentrate on recreational activities in Hardee and Hamilton Counties to assist in rural economic development.

This section provides for the corporation's organization and indicates that the corporation will dissolve on January 1, 2009 unless extended by the Legislature or previously dissolved by the corporation's board of directors.

Land Reclamation

The "master reclamation plan" provided for in s. 378.021, F.S., sets forth guidelines for the reclamation of lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975 that are not subject to mandatory reclamation under part II of Chapter 378, F.S. This bill amends s. 378.021(1), F.S., and requires DEP to adopt an amendment to the "master reclamation plan", continue to conduct onsite evaluations of all lands mined prior to July 1, 1975, and consider the plan prepared by the Land Advisory Committee and submitted prior to July 1, 1979. The bill requires the amended master reclamation plan to be consistent with the Local Government Comprehensive Planning and Land Development Regulation Act.

The bill also creates s. 378.021(2)(d), F.S., which includes a public interest statement asserting that land reclamation provides significant benefits to surface water bodies supplying water for environmental and public purposes in areas of the state where phosphate mining has been permitted. The bill also amends s. 378.031, F.S., to clarify the Legislature's intent to reclaim lands for which reclamation activities will result in significant improvements to surface water bodies of regional importance in areas where phosphate has been mined.

Section 378.212, F.S., authorizes the DEP to grant variances from the requirements of the mandatory land reclamation program applicable to lands mined after July 1, 1975, and provides a list of reasons for which variances may be granted, including a variance to accommodate projects that provide a significant regional benefit for wildlife and the environment. This bill amends s. 378.212, F.S., and authorizes DEP to grant a variance to accommodate reclamation that provides water supply or resource development, provided that the variance does not result in an adverse impact on water resources in the basin.

Section 378.404, F.S., sets forth the DEP's powers and duties with respect to the reclamation of lands mined for resources other than phosphate, such as limestone, heavy metals, or fuller's earth clay. Currently, DEP does not appear to have authority to grant a variance from the reclamation requirements applicable to these mining operations. This bill amends s. 378.404, F.S., and authorizes DEP to grant a variance to accommodate reclamation that provides water supply or resource development consistent with the regional water supply plan, appropriate stormwater management, wildlife habitat, or recreation, provided that water resources in the basin are not adversely impacted.

Phosphogypsum Stack and Stack System Regulations and Penalties

Section 403.4154(2), F.S., directs DEP to develop a program for the sound and effective regulation of gypstack systems in Florida, and requires DEP to adopt rules prescribing acceptable construction designs for new or expanded systems and that prescribe permitting criteria for operations, closure criteria, long-term-care requirements and closure financial responsibility requirements for stack systems.

This bill amends s. 403.4154(2), F.S., to provide that a person who 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 gypstack stack or stack system commits a felony of the third degree, punishable by a fine of not more than \$50,000 and 5 years imprisonment for each offense. The bill also prohibits distributions to shareholders of a company if the owner or operator of a stack fails to comply with DEP rules requiring demonstration of financial responsibility until noncompliance is corrected.

In addition, s. 403.4152(3), F.S., is amended to provide that if an owner or operator fails to comply with DEP rules requiring demonstration of closure financial responsibility, DEP may consider such failure evidence that a stack poses an imminent hazard for purposes of initiating actions necessary to abate an imminent hazard. Finally, if DEP determines that an owner or operator's failure to comply with DEP rules requiring demonstration of financial responsibility poses an imminent hazard, DEP is required to request access to the property for the purpose of taking action to abate or substantially reduce an imminent hazard, and may seek injunctive relief whenever serious harm to humans, the environment, or private property may occur prior to completion of an administrative proceeding.

The bill also amends s. 403.4152(3), F.S., to provide limited immunity for the state or its agents in the abatement of imminent hazards. 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 is not become liable under state laws for environmental protection for any costs, damages, or penalties associated with the abatement of the imminent hazard.

Section 403.4152(4), F.S., requires each owner or operator of an existing stack who has not provided a performance bond, letter of credit, trust fund agreement, or closure insurance in order to demonstrate financial responsibility to pay the DEP a registration fee of up to \$75,000 per year for five years for each stack. Once a stack is closed, the DEP is required to refund the registration fee to the owners or operators. This bill amends that section to provide that refunds will not be made until the Mulberry and Piney Point gypstacks are closed AND a satisfactory reserve has been established in the NLRTF.

Section 403.4155, F.S., requires DEP to adopt rules to ensure that impoundment structures and water conveyance piping systems used in phosphogypsum management are designed and maintained to meet critical safety standards and to avoid spills or discharges of materials that would adversely affect surface or ground waters. DEP rules must also require stack owners or operators to: track inspections of each stack system; maintain an emergency contingent plan; and demonstrate ability to adequately respond to emergency situations. This bill amends that section to also require DEP to initiate rulemaking to require that stack system operation plans include an annually updated interim stack system management plan that provides written instructions for the operation of the system assuming that no phosphoric acid would be produced at the facility for two years. The bill specifies that the contents of the interim plan must include: a detailed description of the process water management procedures; daily operation routine maintenance procedures; and identity of personnel, equipment, and fuel supply necessary to implement the plan.

The bill also amends s. 403.4155, F.S., to require DEP to require the inclusion of certain information in the general plans and schedules for the closure of gypstack systems, namely: a description of the physical configuration of the stack system at the time of closure; a water management plan to manage process water in an environmentally sound manner at the end of the stack's useful life and a cost estimate; a description of all construction work necessary to close the system; and, a cost estimate for the long-term-care of the system.

Financial Responsibility

Section 403.4154(2), F.S., directs DEP to develop a program for the sound and effective regulation of gypstack systems in Florida, and requires DEP to adopt rules prescribing closure financial responsibility requirements for stack systems. Chapter 62-673, Florida Administrative Code, contains DEP's rules related to demonstrations of financial responsibility for gypstack systems. As a condition for the issuance of a construction permit for a phosphogypsum stack system, or for approval of a closure permit or closure plan, current DEP rules require the owner or operator to post a bond with DEP equal to the estimated costs of closing and long-term care of the phosphogypsum stack system.²² However, the owner or operator may request an alternate proof of financial responsibility in lieu of, or in

²² 62-673-640(1), F.A.C.

combination with, the requirement to post a bond.²³ Alternate proof may include letters of credit, trust fund agreements, closure insurance or financial tests and corporate guarantees showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with all closure and long-term care requirements.²⁴ It has been noted that the financial tests used in Florida differ from the financial tests proposed by the US Environmental Protection Agency and are, therefore, less demanding.

According to DEP, the financial test option of the current financial assurance rule does not guarantee the availability of liquid assets in the event of a business failure such as that experienced by the Mulberry Corporation, owner of the Piney Point and Mulberry Phosphate facilities.²⁵ DEP asserts that the Mulberry Corporation ("Mulberry") case highlights the deficiencies in current legal authorities in addressing non-compliance at companies in financial distress. In January 2001, Mulberry notified DEP of its inability to provide financial security for its Mulberry Phosphates and Piney Point plants. However, Mulberry passed the financial tests in each of the three years preceding its bankruptcy.²⁶ The DEP is currently engaged in rulemaking to consider a proposed rule amendment which will address financial responsibility in cases of business failure. It appears that Mulberry would not have passed the financial test requirements under the proposed DEP rule.²⁷

According to DEP, its proposed rule regarding financial responsibility is needed to ensure environmental protections if the owner or operator of a gypstack system suffers a business failure.²⁸ DEP summarizes the proposed rule as follows²⁹:

- 1) The costs associated with the final cover system, the removal of water and the long term care have been separated. The cost of water removal is new and represents the most significant potential liability associated with closing the gyp stack.
- 2) The costs are estimated assuming a 5 year horizon (the length of the permit), as opposed to the useful life of the stack (as much as 30 years) which was used previously.
- 3) The financial standards to be met for self insurance have been made more rigorous. A cash flow from operations test has been added.
- 4) The financial test (self insurance) is phased out over 20 years.
- 5) Costs are based on third party estimates, rather than internal costing by the companies.
- 6) The cost of water disposal is phased in over 20 years (5%/year) and the ability to use the financial test (i.e. self insurance) is phased out over 20 years (5%/year).
- 7) Incentives:
 - a) The phase in and phase out periods above are generous at 20 years.
 - b) Companies that choose third party mechanisms (e.g. insurance, bond, letters of credit), receive a 25% discount of covered costs.
 - c) Companies that choose third party mechanisms are allowed to present value long term obligations (50 year long term care)
 - d) Companies may meet the financial test by satisfying a portion through the use of third party mechanisms (currently, failure to meet the test prohibits any self insurance).

This bill amends s. 403.4155, F.S., to require DEP to revise Rule 62-673, F.A.C., to require the owners or operator of a gypstack system to demonstrate financial responsibility for the costs of terminal closure of the stack system performed in a manner that protects the public health and safety. The bill provides that, at a minimum, the rules must include the following requirements:

²³ Id.

²⁴ Id.

²⁵ DEP document entitled "How Mulberry Happened-Financial"

²⁶ *Financial Responsibility for Costs of Closing and Long-Term Care of the Phosphogypsum Stack System*, Pamela P. Peterson, PhD, CFA, Jan. 2003, p. 14.

²⁷ Id.

²⁸ Id.

²⁹ DEP Summary of Proposed Rule Changes

1. Cost estimates for closure and long-term-care must be adjusted on an annual basis by an engineer and must include at least the following data:
 - a. Costs of treatment and appropriate disposal of all process wastewater in the system.
 - b. Construction work necessary to close the system in compliance with DEP rules.
 - c. Costs associated with long-term-care of the closed system, including maintenance and monitoring.
2. Financial statements and financial data must be prepared in accordance with United States Generally Accepted Accounting Principals and submitted to DEP on a quarterly basis.
3. Audited financial statements and a statement of financial assurance must be provided to DEP on an annual basis.
4. Owners or operators in default on any obligation must immediately report the default to DEP.

The bill requires the cost of terminal closure to be estimated based on the stack system configuration at the end of its useful life as determined by the owner or operator, and permits an owner or operator to choose one or more of the following methods to demonstrate financial responsibility for the costs of terminal closure:

1. Bond.
2. Letter of credit.
3. Cash deposit arrangement.
4. Closure insurance.
5. Financial tests.
6. Corporate guarantee.

The owner or operator has discretion to select any of the above methods at any point in the useful life of a stack system, which is typically 30 years. This is in contrast to the DEP's proposed rule, which phases out the financial test method after 20 years and requires some other form of assurance at that time.

The bill defines a "cash deposit arrangement" as a trust fund, business trust, escrow account or similar cash deposit entity whereby a fiduciary holds and invests funds deposited by the owner or operator of a stack system. The funds may be expended for the purpose of directly implementing all or a portion of stack closure requirements for that particular owner or operator. The bill releases the fiduciary from liability for any damage or loss of any kind arising out of the fiduciary agreement except where the loss is directly caused by the gross negligence or criminal act of the fiduciary. The bill also entitles the fiduciary to rely upon information and direction received by the owner, operator, or DEP without independently verifying the information unless the information is manifestly in error. Funds maintained in the "cash deposit arrangement" are protected from creditors' claims and are exempt from setoff, execution, levy, garnishment, and similar writs and proceedings. Funds remaining after closure of the stack system are refunded to the owner or operator.

Peace River Basin Study

The Peace River Basin extends from the Green Swamp Area of Critical State Concern in the north to and including the Charlotte Harbor Marine Estuary in the south, and from the Lake Wales Ridge in the East to the Tampa Bay Marine Estuary in the west.

The bill requires DEP, in consultation with the Southwest Florida Water Management District ("SWFWMD"), to study cumulative impacts of changes in landform and hydrology in the Peace River Basin. Upon completion of the study, DEP must 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. Rulemaking authority is granted to DEP and the SWFWMD to implement the recommendations identified in the study or the resource management plan.

The resource management plan must be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate no later than July 1, 2005. The bill authorizes DEP to use up to \$750,000 from the Nonmandatory Land Reclamation Trust Fund to prepare the plan and authorized DEP to establish a technical advisory committee to assist 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, and local government.

FIPR/DIPR Rapid Clay Dewatering Process

The Florida Institute of Phosphate Research (FIPR) was created by the Legislature in 1978 and empowered to conduct research supportive to the responsible development of the state's phosphate resources,³⁰ with specific reference to conducting research of phosphatic clay disposal and utilization.³¹

Because of their colloidal nature and finely divided size, the phosphatic clays settle extremely slowly. Mechanical dewatering or chemical treatment processes are too expensive. Development of a rapid dewatering/consolidation/reclamation technique, such as the FIPR/DIPR process, has been one of FIPR's major research priorities since its inception. Enhancing the consolidation process has three major benefits: 1) accelerating the water reuse process so that water loss by evaporation could be reduced, 2) maximizing the storage capacity of clay settling ponds, therefore limiting the number of new ponds needed, and 3) speeding up the reclamation process, thus restoring lands to a productive use more quickly.³²

Although FIPR has concluded that the FIPR/DIPR process does not appear to be an economically attractive alternative to the present impounding technique, FIPR noted that the process has found application in the clay industry as well as for cleaning the organic muck from lakes. It should be pointed that the economic evaluation in the FIPR project did not consider the benefits of the rapid reuse of water and more productive utilization of the lands which otherwise would be occupied by clay slurry for many years.³³

For fiscal year 2003-2004, \$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 for use 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.

C. SECTION DIRECTORY:

Section 1. Amending s. 211.3103, F.S., to revise phosphate severance tax distribution formula and increase the base rate of the tax.

Section 2. Amending s. 378.021, F.S., to require DEP to amend the master reclamation plan.

Section 3. Amending s. 378.031, F.S. to clarify legislative intent regarding reclamation of certain lands.

Section 4. Amending s. 378.035, F.S., to eliminate reserve requirement for the Non-mandatory Land Reclamation trust Fund and shorten the time period in which DEP may accept applications for non-mandatory land reclamation programs.

³⁰ Florida Institute of Phosphate Research, *Development and Evaluation of a Rapid Clay-Dewatering (FIPR/DIPR) Process as a Reclamation Technique*, Publication No. 02-093-120, Feb. 1996.

³¹ Section 378.101, Florida Statutes.

³² Florida Institute of Phosphate Research, *Development and Evaluation of a Rapid Clay-Dewatering (FIPR/DIPR) Process as a Reclamation Technique*, Publication No. 02-093-120, Feb. 1996.

³³ Florida Institute of Phosphate Research, *Development and Evaluation of a Rapid Clay-Dewatering (FIPR/DIPR) Process as a Reclamation Technique*, Publication No. 02-093-120, Feb. 1996.

Section 5. Amending s. 378.036, F.S., to authorize creation of a non-profit corporation that will create plans and assist in development of recreational opportunities on lands mined for phosphate.

Section. 6. Amending s. 378.212, F.S., to authorize DEP to grant variances from the mandatory land reclamation statutes under certain circumstances.

Section 7. Amending s. 378.404, F.S., to authorize DEP to grant variances from the mandatory land reclamation statutes under certain circumstances.

Section 8. Amending s. 403.4154, F.S., to create criminal penalties for misstating or misrepresenting closure costs of a phosphogypsum stack or stack system; to authorize the DEP to consider failure to comply with financial responsibility requirements as evidence of an imminent hazard; to provide limited immunity to entities providing services to abate an imminent hazard.

Section 9. Amending s. 403.4155, F.S., directing DEP to initiate rulemaking to require: interim stack management plans; certain information in general plans and schedules for the closure of stack systems; and demonstrations of financial responsibility.

Section 10. Requiring DEP to study cumulative impacts of changes in land form and hydrology in the Pearce River Basin; granting rulemaking authority to implement the plan.

Section 11. Transferring \$11.71 million from the Non-mandatory Land Reclamation Trust Fund to General Revenue in FY 2003-2004.

Section 12. Appropriating \$800,000 in FY 2003-2004 to the Phosphate Research Trust Fund to fund a study of the FIPR/DIPR process.

Section 13. Transferring \$460,000 from the NLRTF to the Minerals Trust Fund and \$60,000 from the NLRTF to the Phosphate Research Trust Fund in FY2003-04.

Section 14. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a positive fiscal impact of \$1.97 million in fiscal year 2003-04 and a positive fiscal impact of \$7.88 million in fiscal year 2004-05. Changes to the distribution of the phosphate severance tax are reflected in the following chart:

DISTRIBUTION OF PHOSPHATE SEVERANCE TAX

(\$ millions)

Fund	Current		FY 2003-04		FY 2004-05	
	Revenue	% Distribution	Revenue	% Distribution	Revenue	% Distribution
CARL TF	10.00		10.00		10.00	
Counties	4.07	18.00%	4.61	18.75%	5.03	16.50%
Critical Economic Concern, Counties			3.69	15.00%	3.96	13.00%
Phosphate Research TF	2.62	12.50%	2.56	11.25%	2.63	9.30%
Minerals TF	3.02	14.35%	2.56	11.25%	3.02	10.70%
General Revenue	12.47	55.15%			12.22	40.10%
General Revenue Service Charge	1.13		1.89		1.38	
Nonmandatory Land Reclamation TF			9.96	43.75%	2.94	10.40%
Less Surety Bonds - from NMLRTF			(2.00)		(2.00)	
Less Hydrology Study - from NMLRTF			(0.75)			
Less FIPR Research			(0.80)			
Less GR - from NMLRTF			(11.71)			
Less Minerals TF			(0.46)			
Less Phosphate ResearchTF			(0.06)			
Subtotal NLRTF			(5.82)		0.94	
TOTAL	\$33.31	100.00%	\$35.27	100.00%	\$41.18	100.00%
TOTAL Revenue Increase			1.96		7.87	

Notes:

Phosphate severance tax rate will increase from \$1.31 to \$1.62 per ton.

CARL TF - receives \$10 million before any other distribution is made. After \$10 million distribution, \$700,000 GR service charge is assessed.

Phosphate Research TF - assessed a 7.3% GR service charge. Amount reflects net service charge.

Minerals TF - assessed a 7.3% GR service charge. Amount reflects net service charge.

Nonmandatory Land Reclamation TF - assessed 7.3% GR service charge. Amount reflects net service charge. Negative amount in FY 2003-04 reflects net amount of revenues less appropriations contained in the bill.

General Revenue - amount includes service charges and distributions. Amount will not equal percentage distributions.

2. Expenditures:

Section 10 of the bill directs the DEP to conduct a study of the cumulative impacts of changes in landforms and hydrology in the Peace River Basin of certain activities, including mining, and to develop a resource management plan to minimize adverse cumulative impacts in the area. The bill permits the DEP to use up to \$750,000 from the NLRTF to prepare the study and plan.

Section 12 of the bill appropriates \$800,000 from the NLRTF to the Florida Institutes of Phosphate Research to conduct a study of the FIPR/DIPR process to determine its technical and economic feasibility.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Counties designated a "Rural Area of Critical Economic Concern" in which mining takes place will experience an increase in revenues due to the new allocation formula in the bill. In FY2003-04, the bill allocates to these counties 15% of the phosphate severance tax revenues, after deduction of \$10 million for the CARL Trust Fund, in addition to the 18.75% otherwise allocated to counties in which phosphate is mined. In FY2004-05 and thereafter, those counties will receive 13% of the phosphate severance tax revenues, after deduction of \$10 million for the CARL Trust Fund. However, the total amount allocated to rural counties will be distributed to each county on a pro rata basis, so the amount of tax revenues actually received by a county depends on the amount of phosphate mined in the county.

Funds distributed to counties designated as rural areas of critical economic concern must be used for planning, preparing, and financing of infrastructure projects for job creation and capital investment, especially those related to industrial and commercial sites. In addition, funds must be used for maximizing the use of federal, local, and private resources, and for projects that improve inadequate infrastructure that have resulted in regulatory action that prohibits economic or community growth.

To date, the Governor has declared twenty-seven Florida counties "rural areas of critical economic concern," including Hamilton, Hardee, and DeSoto Counties. Of those 27 counties, only Hamilton and Hardee Counties contain an active phosphate mine within their boundaries. Additionally, in the past, permit applications were submitted for a mine operation in DeSoto County but were withdrawn. Based upon information provided by DEP, it does not appear that any other rural county contains economically mineable deposits of phosphate rock within its boundaries. Therefore, it appears that only Hamilton, Hardee, and DeSoto Counties may ultimately benefit from the allocation to counties designated as a "rural area of critical economic concern."

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies mining phosphate will see their annual tax rate increase from \$1.31 to \$1.62 per ton. Specific impacts to an individual company are based on the annual amount of phosphate mined.

D. FISCAL COMMENTS: Section 11 of the bill transfers \$11.71 million from the Nonmandatory Land Reclamation Trust Fund to General Revenue in FY2003-04. The purpose of this transfer is to maintain General Revenue at its present funding levels. Section 13 of the bill transfers \$460,000 from the NLRTF to the Minerals Trust Fund and \$60,000 from the NLRTF to the Phosphate Research Trust Fund in FY2003-04 for the purpose of maintaining those trust funds at current funding levels.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY:

The bill amends s. 403.4155, F.S., and directs the DEP to initiate rulemaking in order to:

- Require each phosphogypsum stack system operation plan to include an interim stack system management plan containing specified information;
- Require each general plan and schedule for the closure of a phosphogypsum stack system to include specified information; and
- Require the owner or operator of a phosphogypsum stack system to demonstrate, using specified methods, financial responsibility for the costs of closure of the system.

The bill also directs the DEP to study the cumulative impacts of changes in land form and hydrology in the Peace River Basin, and grants the DEP and Southwest Florida Water Management District concurrent rulemaking authority to implement the regulatory recommendations identified in the study.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Phosphate Council, Florida Audubon, and the Florida Wildlife Federation support the bill.³⁴

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill has not been heard by a committee of reference, therefore, this section is inapplicable.

³⁴ Telephone conference with Eric Draper, Florida Audubon, and David Gluckman, Florida Wildlife Federation, on October 20, 2003.