

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 18-E

SPONSOR: Appropriations Committee and Senators Alexander, Lynn and others

SUBJECT: Phosphate Mining

DATE: October 22, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/6 amendments</u>
2.	<u>DeLoach</u>	<u>Coburn</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute contains a series of changes to general laws governing the phosphate industry. These changes include:

- Increasing the tax rate paid for the severance of phosphate.
- Changes to the severance tax distribution formula.
- Providing for a study of the impacts of certain activities, including mining, within the Peace River Basin.
- Permitting phosphate reclamation variances for certain water supply and resource projects.
- Elimination of reserve requirements 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 phosphate lands.
- Creating criminal penalties for the violation of certain financial reporting requirements under certain conditions.
- Clarifying the department's rule making authority, specifically as it relates to financial responsibility, interim stack management, and stack closure.

The committee substitute will increase the receipts of phosphate severance tax revenues by \$1.96 million in FY 2003-04 and \$7.87 million in FY 2004-05.

This committee substitute substantially amends, creates, or repeals the following sections of the Florida Statutes: s. 211.3103, s. 378.021, s. 378.031, s. 378.035, s. 378.036, s. 378.212, s. 378.404, s. 403.4154, and s. 403.4155.

II. Present Situation:

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. Florida provides approximately 75 percent of the nation's phosphate supply and approximately 25 percent of the world supply. Phosphate companies own or have mineral rights to almost 450,000 acres in the state.

Nitrogen, phosphate, and potassium are the three primary nutrients in fertilizer. Of phosphate rock mined in Florida, 90 percent is used to make fertilizer. Of the remaining 10 percent, half is used in animal feed supplements. Phosphate is also used in a variety of products, including vitamins, soft drinks, toothpaste, light bulbs, film, bone china, flame resistant fabric, optical glass, and other consumer goods. There is no substitute or synthetic for phosphorus, which is essential for life in all growing things, plants and animals alike. (Phosphate Fact Sheet – Florida Phosphate Council)

There is an extensive history of regulation involving the industry. Significant regulatory efforts or laws have been passed, in brief:

1970's – Federal and State Clean Water Legislation and Rules imposed controls on stack system surface water discharges.

1983 – State Groundwater Rules established groundwater quality standards; prohibited violations by installations including stack systems; and required groundwater monitoring around stack systems.

1993 – Phosphogypsum Management Rules required liners for new and laterally expanded stack systems; established closure and long-term care requirements; and imposed financial responsibility demonstration requirements.

1996 – Mining Dams Memorandum of Agreement updated construction standards for new clay settling area dams and spillways; updated operational, maintenance, and inspection requirements; and established best management practices for non-clay impoundments.

1999 – DEP rules for earthen dams and dikes established construction and inspection standards for new stack system perimeter dikes; created procedures for raising stacks and decanting water; and established detailed water management and other operational requirements.

Phosphate operations produce gypsum, a sandy mineral by-product of phosphate fertilizer manufacturing. Gypsum is stored in stacks, commonly referred to as "gypstacks," of 150 feet or taller. 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 vast majorities of these stacks are located just south of Lakeland and are in various stages of their life-cycle, 10 are active, 12 are inactive, and 3 are closed.

Mulberry Phosphates in Polk County and Piney Point in Manatee County are both former phosphate fertilizer chemical processing plants that closed in December 1999. The Mulberry Corporation owned both Mulberry and Piney Point chemical plants. In 2001 the company notified the DEP that it did not have funds to maintain the facilities and would abandon both sites. To prevent environmental catastrophe, the US Environmental Protection Agency (EPA) assumed responsibility for the environmental security at the facilities until transferring that role to the Department of Environmental Protection (DEP) in February 2001. In the same month, the Mulberry Corporation filed for bankruptcy protection.

Shortly after the DEP assumed responsibility for securing the sites, bankruptcy proceedings were invoked, and the federal bankruptcy court appointed a receiver funded by the DEP. The department is responsible, in conjunction with the receiver, for managing and securing the stack systems and providing for long-term closure.

In May 2002, the DEP and Cargill Fertilizer, Inc., entered into an agreement under which Cargill will manage and close the Mulberry facility. The DEP will reimburse Cargill up to \$25 million for the closure work. Closure of the stack system is expected to be completed by 2008, after which Cargill will continue long-term care for approximately 50 years. Ownership of the stack system remains with the federal bankruptcy trustee.

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.

In July 2003, the DEP received an emergency federal ocean dumping permit from the United States EPA to discharge 537 million gallons of water from the Piney Point stack system into the Gulf of Mexico. Since that time, the department has been loading water onto barges and discharging it over a wide area in the central Gulf of Mexico. Approximately 117 million gallons have been discharged since October 2003. The permit deadline is November 30, 2003, and the department has requested a permit extension of six months.

From FY 2000-01 through 2003-04, the department estimates expenditures of \$85.7 million from the Nonmandatory Land Reclamation Trust Fund (NLRTF) for Mulberry and Piney Point. The department estimates the cost to complete the cleanup and closure of both sites of an additional \$78.7 million, \$66.7 million for Piney Point and \$12 million for Mulberry. These closure costs are spread over the next 8 years with a significant portion due over the next three years.

The 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 that time must be reclaimed by the owners. The revenue source for the trust fund is a tax on the severance of materials, which was enacted into law in 1971 and was paid by all phosphate companies on the basis of tons of phosphate rock produced. Revenues from the severance tax were no longer deposited into the NLRTF as of January 2000 when it was determined that funds were sufficient to reclaim the remaining lands.

Currently, revenues come solely from the phosphogypsum stack registration fees (\$1.4 million annually) and interest earnings. The estimated fund balance for July 1, 2004 is \$41.2 million of which \$37 million is statutorily required reserve for use should an imminent hazard situation arise and \$1.5 million is reserved for the Brownfield Loan Guarantee program. The department estimates that \$90 million is needed to finish reclaiming 20,000 acres of mined phosphate lands, and an additional \$78.7 million to complete the gypsum stack closures at Mulberry and Piney Point. With the projected funding needs, the NLRTF as currently structured will not be able to meet these responsibilities.

For 2003, the severance tax rate is \$1.31 per ton with 25.4 million tons of rock mined. The total tax distribution is \$33.3 million. Statutorily the distribution is as follows:

Severance Tax Distribution	Revenue	% Distribution
CARL TF	10.00	
Counties	4.07	18.00
Phosphate Research TF	2.62	12.50
Minerals TF	3.02	14.35
General Revenue	12.47	55.15
General Revenue Service Charge	1.13	
TOTAL	\$33.31	100.00

III. Effect of Proposed Changes:

Section 1: Section 211.3103, F.S., relating to the levy of tax on the severance of phosphate rock, is amended to delete obsolete language and revise the tax rate for phosphate and change the distribution formula.

Beginning July 1, 2003, the first \$10 million in revenue collected during each fiscal year shall be paid to the credit of the CARL Trust Fund. The remaining revenues collected from the tax shall be paid into the State Treasury as follows:

- 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. Any such proceeds received by a county shall be used only for phosphate related expenses.

- For payment to counties that have been designated a Rural Area of Critical Economic Concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 15 percent.
- To the credit of the Phosphate Research Trust Fund in the Department of Education, Division of Universities, 11.25 percent.
- To the credit of the Minerals Trust Fund, 11.25 percent.
- To the credit of the Nonmandatory Land Reclamation Trust Fund, 43.75 percent.

Beginning July 1, 2004, the first \$10 million in revenue collected during each fiscal year shall be paid to the credit of the CARL Trust Fund. The remaining revenues collected from the tax shall be paid into the State Treasury as follows:

- To the credit of the General Revenue Fund, 40.1 percent.
- 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. Such proceeds shall be used only for phosphate related expenses.
- For payment to counties that have been designated a Rural Area of Critical Economic Concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 13 percent. Such payments 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.
- To the credit of the Phosphate Research Trust Fund in the Division of Universities of the Department of Education, 9.3 percent.
- To the credit of the Minerals Trust Fund, 10.7 percent.
- To the credit of the Nonmandatory Land Reclamation Trust Fund, 10.4 percent.

Beginning July 1, 2003, and annually thereafter, the DEP 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 any 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 DEP shall adopt rules to implement this provision.

Funds distributed to counties that have been designated a rural area of critical economic concern, shall be used for:

- 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 certain specified public or public-private partnership facilities.
- 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.
- 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.

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

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 DEP.

On or before March 30, 2004, and annually thereafter the DEP 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.

For 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.

If the producer price index for chemical and fertilizer mineral mining is substantially revised, the DEP shall make appropriate adjustment in the method used to compute the base rate adjustment 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. However, the tax rate shall not be less than \$1.56 per ton severed.

Section 2: Section 378.021, F.S., concerning the master reclamation plan for phosphate, is amended to direct DEP to amend the existing master reclamation plan to address changes in the industry and to recognize the potential benefits for reclamation to water supply issues.

Section 3: Section 378.031, F.S., is amended to provide additional legislative intent to encourage the reclamation of lands that will result in improvements to surface water bodies.

Section 4: Section 378.035, F.S., is amended to repeal the provisions that created the \$50 million reserve in the Nonmandatory Lands Reclamation Trust Fund and provide that the reserved funds can be used for the abatement of imminent hazards. The DEP may not accept any applications for nonmandatory land reclamation programs after January 1, 2005. Currently, such applications can be accepted until November 1, 2008.

Deletes the requirement that the DEP submit a report for calendar year 2008 to the Governor, 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 DEP may not approve or encumber nonmandatory reclamation projects in amounts greater than \$15 million.

Section 5: Subsection (6) is added to s. 378.036, F.S., to provide for the creation of a nonprofit corporation for the purpose of assisting in the development of recreational opportunities on lands mined for phosphate. The Florida Wildlife Federation, Audubon of Florida, and Rails-to-Trails Conservancy in partnership with the Florida Phosphate Council are authorized to form such a nonprofit corporation pursuant to Chapter 617, F.S. The corporation's first plans must concentrate on recreational activities in Hardee and Hamilton Counties which will assist them in rural economic development.

The corporation's Board of Directors shall be composed of three members, one designated by the Florida Phosphate Council, one as the designee of the Florida Wildlife Federation, Audubon of Florida, and Rails-to-Trails Conservancy, and the third chosen by the other two designees.

The committee substitute provides direction concerning the operation and administration of the corporation, requires certain reports to be filed, and provides for its dissolution.

Section 6: Section 378.212, F.S., is amended to permit the DEP to grant variances for reclamation activities that provide for stormwater management, water supply or resource development, wildlife habitat, or recreational opportunities.

Section 7: Section 378.404, F.S., is amended to permit DEP to grant certain variances 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, F.S., 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: Section 403.4154, F.S., is amended to provide for criminal penalties for the violation of certain financial reporting requirements. Specifically, the committee substitute provides that:

- It is a third degree felony punishable by a fine of not more than \$50,000 and/or imprisonment for 5 years for anyone to misrepresent the financial condition or closure costs of a stack or stack system.
- It is a third degree felony punishable by a fine of not more than \$50,000 and/or imprisonment for 5 years for anyone to issue dividends or make other distributions from earnings in the event of a failure to meet financial responsibility tests for stack operations.

Creates a new provision that allows the DEP to declare an imminent hazard when companies fail to meet financial responsibility rules, and clarifies that when an imminent hazard exists, including those created by a financial concern, the DEP may go on site and ensure that proper environmental safeguards are operating.

Upon a declaration by the Governor of environmental emergency concerning the abatement of an 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 the provision of this limited immunity is in the public interest and necessary for the abatement of the imminent hazard.

Certain registration fee refunds 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.

Section 9: Section 403.4155, F.S., is amended to direct the DEP to initiate rulemaking to require stack system operation plans required by department rule be amended by adding an interim stack system management plan (ISSM) 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. Specifies what the ISSM plan must include.

The DEP must also initiate rulemaking to require general plans and schedules for the closure of stack systems. Specifies what the plans must include.

The DEP shall revise ch. 62-673, F.A.C., to require the owner or operator of a phosphogypsum stack system to demonstrate financial responsibility for the costs of terminal closure of the stack system in a manner that protects the environment and the public health and safety. Specifies what requirements the rules must include or address.

Section 10: 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. Specifies what the study shall include. Upon completion of the study, the DEP shall prepare and adopt a resource management plan for the Peace River Basin to minimize identified existing and future adverse cumulative impacts to water resources of the basin. 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.

Rulemaking authority is granted to the DEP and the Southwest Florida Water Management District to implement the regulatory recommendations identified in the study or the resource management plan.

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.

The DEP may use up to \$750,000 from the Nonmandatory Land Reclamation Trust Fund to prepare the study and plan.

The DEP 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 consist of representatives from Peace River interests, including 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 to be used by the Florida Institute of Phosphate Research to conduct a bench and pilot study of the FIPR/DIPR process for the purpose of determining its technical and economic feasibility. Specifies what the study must evaluate.

Section 13: For the 2003-04 fiscal year, \$460,000 is transferred from the Nonmandatory Land Reclamation Trust Fund to the Minerals Trust Fund in the Department of Environmental Protection, and \$60,000 is transferred from the Nonmandatory Land Reclamation Trust Fund to the Phosphate Research Trust Fund in the Department of Education.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The proposed fee increases and related distribution changes will have the follow impacts:

Fund	Current		FY 2003-2004		FY 2004-2005	
	Revenue	% Distr.	Revenue	% Distr.	Revenue	% Distr.
CARL TF	\$10.0 M		\$10.0 M		\$10.0 M	
Counties	\$ 4.07 M	18.00	\$ 4.61 M	18.75	\$ 5.03 M	16.50
Counties, Critical Econ. Concern			\$ 3.69 M	15.00	\$ 3.96 M	13.00
Phosphate Research TF	\$ 2.62 M	12.50	\$ 2.56 M	11.25	\$ 2.63 M	9.30
Minerals TF	\$ 3.02 M	14.35	\$ 2.56 M	11.25	\$ 3.02 M	10.70
GR	\$12.47 M	55.15			\$12.22 M	40.10
GR Service Charge	1.13 M		\$ 1.89 M		1.38 M	
NLRTF			\$ 9.96 M	43.75	\$2.94 M	10.40
-Less Surety Bonds			\$(2.00) M		\$(2.00)M	
-Less Hydo Study			\$(0.75) M			
-Less FIPR Research			\$(0.80) M			
-Less Phosphate Rsearch TF			\$(0.06) M			
-Less Minerals TF			\$(.46) M			
-Less GR			\$(11.71) M			
Subtotal NMLRTF			\$(5.82) M		\$0.94	
TOTAL	\$33.31M	100.00	\$35.27 M	100.00	\$41.18 M	100.00
TOTAL Rev. Inc			\$1.96 M		\$7.87 M	

Notes:

Phosphate severance tax rate will increase from \$1.31 to \$1.62 per ton
CARL TF receives \$10 M before other distribution. After distribution, \$700,000 GR service charge.
Phosphate Research TF assessed 7.3 % GR service charge. Amt reflects net service charge.
Minerals TF assessed 7.3 % GR service charge. Amt reflects net service charge.
NMLRTF assessed 7.3 % GR service charge. Amt reflects net service charge.
Negative amt. in FY 2003-04 reflects net amt. of rev. less appropriations contained in bill.
GR includes service charges and distributions. Amount will not equal percentage distributions.

B. Private Sector Impact:

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 number of tons mined.

Counties that have been designated a Rural Area of Critical Economic Concern and in which mining is taking place will see a revenue increase. The amount of the increase will be dependent on the amount of tons mined in their county. Distributions to the counties are based on the number of tons mined in each individual county.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.