

STORAGE NAME: h1263.ric.doc
DATE: April 13, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: HB 1263
RELATING TO: Phosphogypsum stack management
SPONSOR(S): Representative(s) Dockery

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 13 NAYS 0
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

Note: The following analysis reflects the contents of the strike-everything amendment adopted by the Committee on Natural Resources & Environmental Protection that is traveling with the bill.

The proposed legislation deals with the management of phosphogypsum stacks. Specific provisions of the bill:

- Provides authority for the Department of Environmental Protection (DEP) to use funds from the Nonmandatory Land Reclamation Trust Fund (the fund) for the abatement of imminent hazards from stack systems, and to close abandoned stack systems under certain circumstances.
- Provides for recovery of funds by the DEP from the owner/operator of the stack.
- Increases from \$30M to \$50M an existing reserve in the fund for reclamation of abandoned lands and adds abate of imminent hazards as an authorized use.
- Provides for a \$75,000 annual assessment for each existing or new stack for a period of five years to raise the necessary funds for hazard abatement. Stack operators who provide sufficient financial assurance will be exempt from this fee.
- Directs that funds collected from the fee shall only be used for abatement or closure activities that commence after July 1, 2002.
- Provides that beginning on July 1, 2009, annual assessments paid for a specific stack shall be refunded when such stack is closed.
- Directs that the DEP provide a report in 2009 regarding this program.
- Grants additional rulemaking authority to the DEP for these stacks.
- Closes the application period, effective 11/1/08, for the nonmandatory reclamation program.

The bill provides an effective date of July 1, 2001.

On April 11, 2001, the General Government Appropriations Committee adopted three amendments to the strike-everything amendment. These three amendments are explained in Section VI of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

The bill creates a new program to address imminent hazards associated with the closure of or abandonment of phosphogypsum stack systems. In addition, the program calls for imposition, on the industry, of a annual fee of \$75,000, for five years, for each operating stack. The fee is necessary to ensure that the state can cover the cost of operating abandoned stacks.

B. PRESENT SITUATION:

Phosphate mining started in central Florida some 100 years ago and it still has a major presence. Mines are located in Polk, Hillsborough, Manatee, Hardee, and Hamilton counties. Currently there are 14 active mines under the ownership of 5 different companies.

Approximately 300,000 acres of land have been disturbed by phosphate mining activities to date, of which some 150,000 acres have been reclaimed to some beneficial use. Annually an additional 5,000 to 6,000 acres are disturbed.

The product "phosphate" is used primarily for fertilizers but other uses include: animal feed supplements, vitamins, soft drinks, toothpaste, light bulbs, film, and optical glass. Raw phosphate undergoes a series of processing steps in order for it to be used. The final step takes place in chemical plants that produce phosphogypsum as waste. The disposal of this waste is associated with the storage of hundreds of millions of gallons of acidic process water in ponds at grade and on top of phosphogypsum stacks (at times over 200 feet high).

Florida supplies approximately 75 percent of the domestic phosphate requirements and approximately 25 percent of the world's requirements. The industry provides about 7,000 direct jobs and annually pays \$50 million in severance taxes to the state, \$35 million in property taxes to the counties, and \$25 million in sales taxes. The industry has annual purchases of equipment and supplies in excess of \$1 billion and in 1999 had exports valued at \$1.7 billion.

The demand for Florida phosphate is cyclical and is driven by the farm economy both domestically and internationally. Overseas competition also has a significant impact on the demand for the product. In general, phosphate mining and processing in Florida has not been on the increase over the past 10 years. The industry is currently in the third year of down cycle. New mines are being opened to replace old mines rather than to add new industry capacity.

Because of recent downward economic trends the ability of some companies to continue their operations has created the potential for environmental problems to exist as they relate to the storage and management of phosphogypsum stacks and the acidic process water.

The state requires each company operating a chemical plant to provide financial assurance for the closure of their phosphogypsum stack systems and historically all have met these requirements. However, in February 2001, the Mulberry Corporation informed the DEP that it did not have the finances to pay its employees and subsequently filed for bankruptcy under Chapter 11. With this occurrence the DEP discovered that though they had funds and authority to clean up any spill they did not have funds or authorization to undertake actions to abate an imminent hazard.

C. EFFECT OF PROPOSED CHANGES:

A series of changes are needed to s. 403.4154, F.S., to provide the DEP with necessary statutory authority to implement a program to address imminent hazards that may occur due to financial conditions of companies with phosphogypsum stacks. While the DEP has authority to operate a phosphogypsum management program, the proposed legislation would make the following changes.

Definitions

Two new definitions are added. "Phosphogypsum stack system" means that stack and all associated structures and systems needed to maintain and manage the stack. The term excludes items found within production plants or areas used for temporary storage as a result of high rainfall events. "Process wastewater" means any water that comes into direct contact with, or results from production or use of any raw material or products from the stack system.

Regulatory Program

Removes legislative intent language, describing the desire to impose an annual fee on stacks for the purposes of providing the DEP with funding for a program related to stack management. The change is necessary to expand the stack management program to address imminent hazard situations.

Abatement of Imminent Hazards

This new subsection authorizes the DEP to implement a new program to address imminent hazards that may occur at stacks. Specific provisions of this subsection include:

Provide authorization to the DEP to take actions necessary to abate or substantially reduce any imminent hazard caused by the condition, maintenance, operation or closure of a stack system. Define an imminent hazard to be a stack system that poses an immediate and substantial danger to human health, safety, or welfare or to the environment.

Provides the DEP with specific powers if an imminent hazard exists, these include:

- The ability to request access to the site. If such access is not provided the ability to undertake legal actions determined to be necessary. If such legal actions would, because of time constraints, delay the necessary abatement actions, the DEP can obtain from the court, ex parte, an injunction without paying filing and service fees.
- The authority to use employees of the DEP, other state or federal employees, third-party contractors, or current employees of the company to perform the necessary work.

- The authority to recover from the owner or operator of the stack system all moneys, plus 30 percent interest per annum, expended from the fund used to abate the hazard. The DEP may also be entitled to recover reasonable attorney fees and costs if it prevails in any action to recover funds.
- The ability to impose a lien on the real property on which the stack is located and other associated property in an amount equal to the funds expended, including attorney's fees and court costs. The lien shall be released upon repayment of the costs to the DEP. Any lien used by the DEP shall not take priority over any other liens.

Registration Fees

Current language detailing stack fees is removed and a new fee system is established. The new fee structure provides for the following:

The imposition of a \$75,000 annual fee for each existing stack. The annual fee will be instituted beginning July 1, 2001, and run for a period of five years.

Owners or operators can avoid the fee provided they obtain sufficient financial assurance in the form of a performance bond, letter of credit, trust fund agreement, or closure insurance.

All fees collected shall be deposited into the fund for use by the program.

Closure of Abandoned Systems

A new subsection spells out conditions under which the DEP can perform closures. Specific provisions allow for the DEP to:

Use employees of the DEP, other state or federal agencies, private third-party contractors, or the owner or operator of the stack system to perform the necessary work.

Close a stack through agreement with the owner or by order of the court. If a court finds that closure is appropriate, it may appoint a receiver to oversee the closure and authorize the necessary personnel to enter all land owned by the owner.

Impose a lien on the real property on which the stack is located, any additional real property underlying the site, and other assets located at the site. Such lien shall be done to a degree sufficient to cover monies expended for closure and post-closure expenses. The lien may be released upon payment of sufficient funds. In addition, any lien imposed by the DEP shall not take priority over other perfected liens.

Other Provisions

The DEP is directed to review current rules (chapter 62-673, F.A.C.) to determine the adequacy of the financial responsibility provisions and to make any changes that are determined to be necessary.

Effective July 1, 2001, the reserve requirement in the fund is increased from \$30 million to \$50 million for the purposes of this program.

Effective November 1, 2008, the DEP will stop receiving applications for nonmandatory land reclamation programs. In addition, the Bureau of Mine Reclamation is directed to review the fund

annually and make any necessary recommendations. The final report in 2008 shall contain recommendations concerning the rebating of any excess funds.

The bill has an effective date of July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The state will receive approximately \$1,725,000 per year for deposit into the Nonmandatory Land Reclamation Trust Fund. The money will be used to guarantee the state's potential costs for the operation of stacks should a company declare itself insolvent and unable to continue operations.

Though not a direct revenue, the bill will also increase the reserve in the trust fund from \$30 million to \$50 million to be used for the reclamation of abandoned mandatory lands.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies with stacks will be required to pay an annual \$75,000 fee per stack for five years. The fee will generate \$1,725,000 per year. This represents 23 stacks multiplied by \$75,000. Companies may avoid the fee with evidence of sufficient financial assurance to guarantee closure of their stacks.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The DEP is granted additional rule-making authority to create a program to deal with imminent hazards from phosphogypsum stack systems.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2001, the Committee on Natural Resources & Environmental Protection adopted one strike-everything amendment that is traveling with the bill. This analysis was written to reflect that amendment.

On April 11, 2001, the General Government Appropriations Committee adopted the following three amendments to the strike everything amendment:

Amendment #1 added a Receiver or Trustee of the stack system to the list of those who could perform abatement of imminent hazards. Further, it provides for the DEP to recover costs of abatement plus a 30 percent penalty from the owner or operator of the stack system.

Amendment #2 added a \$16 million appropriation from the Nonmandatory Land Reclamation Trust Fund for the DEP to begin the closing process of two phosphogypsum stacks in Polk and Manatee counties.

Amendment #3 deleted language from s. 378.601, F.S. which has the effect of increasing the number of counties where heavy mineral mining can take place.

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VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

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Wayne Kiger

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Prepared by:

Staff Director:

Lynn Dixon

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AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

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