

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1363 w/CS Phosphate Mining

**SPONSOR(S):** Paul

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Environmental Regulation (Sub)</u>	<u>6 Y, 0 N</u>	<u>McKinnon</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>15 Y, 0 N</u>	<u>McKinnon</u>	<u>Lotspeich</u>
3) <u>Agriculture &amp; Environment Apps. (Sub)</u>	<u></u>	<u>Dixon</u>	<u>Dixon</u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill provides for a redistribution of the Nonmandatory Lands Reclamation Trust Fund (NMLRTF). The bill changes provisions for use of funds from the NMLRTF and financial responsibility requirements for mine reclamation and construction and operation of phosphogypsum stack systems. The bill increases the tax on phosphate rock and provides for a \$5 million surety bond be purchased in the event a phosphate owner or operator declares bankruptcy. The bill provides that upon the declaration of the Governor and Cabinet of an impending environmental emergency that any person acting under the direction of or providing assistance to DEP shall be immune from civil liability not constituting gross negligence in the course of rendering assistance. The bill provides for an additional \$800,000 for a Florida Institute of Phosphate Research to research the use of clay and reduce the use of clay settling ponds. The bill exempts the Nonmandatory Land Reclamation Trust Fund, Minerals Trust Fund, and the Phosphate Research Trust Fund from a 7% service fee that is deposited into General Revenue. HB 1363 changes cumulative impact review and mitigation provisions for environmental resource permit (ERP) applications. The bill provides additional cumulative impact review criteria for phosphate mining projects and requires mining ERP applicants within watersheds and drainage basins to conduct cumulative impact studies.

The bill is expected to have a fiscal impact on phosphate mining companies due to a higher severance tax on phosphate rock.

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

**STORAGE NAME:** h1363c.ap.doc

**DATE:** April 15, 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 checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" 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:

The bill provides for additional regulation for phosphogypsum stack management and for higher phosphate severance tax.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **History**

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. Ninety percent of the phosphate rock mined in Florida 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 DEP 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 where 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.

The DEP is currently awaiting a decision from the US EPA for a permit to ocean discharge the water from the Piney Point stack system. The plan is to load the water onto barges, which can hold from 2 to 10 million gallons, and in turn discharge it over a wide area in the central Gulf of Mexico. A decision by the EPA is expected any day. The decision to use ocean barging was selected because of its ability to quickly relieve engineering concerns with the stack. Barges can move 2 to 10 million gallons a trip, trucks can only carry thousands of gallons. The situation at Piney Point is considered time-critical, especially with the wet season approaching.

To date, the DEP has spent a total of \$35 million from the Nonmandatory Land Reclamation Trust Fund (NMLRTF) on both sites. Additionally, there was \$60 million appropriated for maintenance and closure costs for this fiscal year. The DEP's estimate to complete the closure of both sites is \$119 million; \$100 million for Piney Point and \$19 million for Mulberry. These closure costs will be spread over the next 10 years with a significant portion due over the next four years.

## **Nonmandatory Lands Reclamation Trust Fund**

The NMLRTF 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 NMLRTF 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 (\$1.4M annually) and interest earnings. The estimated fund balance for July 1, 2003 is between \$77.5M and \$82.6M, \$50M of which is statutorily required reserve for use should an imminent hazard situation arise. The DEP estimates that \$90M is needed to finish reclaiming 20,000 acres of mined phosphate lands, and an additional \$119M 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 2001, the severance tax rate was \$1.30 per ton with 25.1 million tons of rock mined. The total tax distribution was \$32.7 million. Statutorily the distribution is as follows:

\$10 million, off the top, to the Conservation and Recreation Lands Trust Fund (CARL) for use by state agencies for land management.

Of the remaining funds:

55.15 percent	to General Revenue
12.5 percent	to the Florida Institute of Phosphate Research
18 percent	to Local Counties with mining activities
14.35 percent	to the Minerals Trust Fund

## **Financial Responsibility**

In the permitting program regulating the construction and operation of phosphogypsum stack systems under Ch. 403.4154, F.S., the applicant is required by Rule 62-673.640, Florida Administrative Code (FAC), to provide financial responsibility for the cost of stack system closure. The applicant may use a variety of financial instruments, or meet a financial test. Currently, all permittees have used the financial test to meet these provisions. In the past, only the cost of physical closure of the stack and long term maintenance was included in the cost estimates for stack closure, and not treatment and disposal of the process water in the stack.

DEP is authorized to impose a lien on the real property underlying a phosphogypsum stack that is causing an imminent hazard, the real property underlying an abandoned phosphogypsum stack system, and other real property or assets associated with a fertilizer production facility equal to the amount required to be expended from the NMLTF for the above purposes. However, this lien does not have priority over any prior perfected lien.

In 2001, Mulberry Corporation filed for bankruptcy. Mulberry Corporation abandoned the phosphogypsum stack systems at two of its subsidiaries (Mulberry Phosphates, Inc., and Piney Point Phosphates, Inc.), and DEP and a state court appointed receiver have been managing the sites for environmental security and ultimate closure of the systems. To date, approximately \$35 million has been expended from the NMLRTF on these sites, and an additional \$129 million is estimated as needed to complete closure.

As a result of the above situation with Mulberry Corporation, the Legislature directed DEP, by January 31, 2003, to conduct a review of the existing financial responsibility provisions for phosphogypsum stack

system construction and operation contained in Rule 62-673, FAC, and subsequently to take any actions needed to ensure that the rules minimize risk to the environment and public health and safety from the business failure of a stack system (see s. 403.4154, F.S.). DEP has completed this review and is currently working on draft revisions to the financial responsibility provisions of the rule.

### **Cumulative Impacts**

S. 373.413, F.S., provides criteria to be applied to all ERP permit applications, whether the project is in uplands, or surface waters and wetlands. S. 373.414, F.S., provides additional criteria to be applied when the proposed project includes activities within surface waters and wetlands.

S. 373.414(6), F.S., provides that reclamation of mined lands approved under Ch. 378 satisfies the mitigation requirements of the ERP program (Part IV of Ch. 373) if the reclamation maintains or improves the water quality and the function of biological systems present at the site prior to mining.

S. 373.414(8), F.S., provides for a review of cumulative impacts to surface waters and wetlands of activities proposed by an applicant for an ERP permit. This review requires an analysis of the proposed impact along with existing projects, projects under construction, projects for which a permit has been requested, and reasonably expected future projects within the same *drainage basin* as the proposed impact. Drainage basins are specified in rule by each WMD pursuant to s. 373.403 (9), F.S.,. In some of the WMDs rules, drainage basins are defined to be the same as a watershed, while in others a watershed is a smaller subdivision of a drainage basin. If mitigation that fully offsets the impacts is conducted within the same drainage basin as the proposed impact, then the cumulative impact review will be considered satisfied.

### **Effect of Proposed Changes**

#### **Nonmandatory Land Reclamation Trust Fund**

The bill provides for a different distribution formula for phosphate rock severance tax. The proposed distribution formula will retain 1) \$10 million transfer to CARL; 2) \$5 million for a surety bond for land reclamation in the event an owner or operator goes bankrupt; and redistribute the remaining funds as follows:

- 51 percent to the Nonmandatory Land Reclamation Trust Fund (previously zero).
- 25 percent to the counties where mining activities occur (previously 18%).
- 9 percent to the Phosphate Research Trust Fund (previously 12.5%).
- 5 percent to the Minerals Trust Fund (previously 14.35%).
- 10 percent or \$12 million whichever is less to General Revenue (previously 55.15%).

The bill directs that the severance tax rate be set at \$1.62 per ton beginning July 1, 2003. For subsequent years, the tax rate is to be adjusted according to the producer price index. This has been the historical practice. In addition to establishing the current rate and adjustment methods, the bill directs that the tax rate shall not be less than \$1.56 per ton. The bill also exempts the Nonmandatory Land Reclamation Trust Fund, Minerals Trust Fund, and the Phosphate Research Trust Fund from a 7% service fee that is deposited into General Revenue. Liens imposed by the DEP to cover the cost of these emergency expenditures are given priority over all other liens.

The bill directs the 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. The bill provides additional legislative intent to encourage the reclamation of lands that will result in improvements to surface water bodies.

The bill repeals provisions that created the \$50 million reserve in the trust fund and provides that the reserved funds can be used for the abatement of imminent hazards. The acceptance date for applications to fund nonmandatory reclamation projects is changed from November 1, 2008, to July 1, 2004. Finally, a provision is added to allow the department to petition the Governor and Cabinet for bonding authority should an imminent hazard arise and existing trust funds be inadequate. The bond amount is capped at \$25 million and pledges the revenues of the trust fund for debt obligation. Lastly, the bill provides for an additional \$800,000 for a Florida Institute of Phosphate Research to research the use of clay and reduce the use of clay settling ponds.

### **Recreation Lands**

The bill provides for the creation of a non-profit corporation for the purpose assisting in the development of recreational opportunities on lands mined for phosphate. The corporation is to consist of a board of directors comprised of the following: Florida Wildlife Federation, Audubon of Florida, Rails-to-Trails Conservancy and the Florida Phosphate Council. The first plans are to concentrate on Hamilton and Hardee Counties (most impacted by mining) and shall assist them in rural economic development.

The bill provides direction concerning the operation and administration of the corporation, requires certain reports be filed, and provides for its dissolution. Funding for the corporation is at the discretion of the Legislature.

### **Variances**

The bill permits the DEP to grant variances for reclamation activities that provide for stormwater management, water supply or resource development, wildlife habitat, or recreational opportunities.

### **Penalties**

The bill provides for new provisions that add criminal penalties for the violation of certain financial reporting requirements. Specific provisions will:

- Establishes that it is a 3<sup>rd</sup> 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.
- Establishes that it is a 3<sup>rd</sup> 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.

### **Imminent Hazard**

The bill 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. The bill provides that no dividends or other distributions may be made until non compliance is corrected and a provision allowing for the rebate of stack registration fees upon closure of a stack be repealed.

### **Stack Management**

The bill creates an Interim Stack Management Plan that provides more detailed guidance for the DEP's rules concerning stack systems and company financial requirements. Specific provisions include:

- The financial costs for the closure of stack systems must be prepared by a professional engineer and adjusted annually. Accounting data must be prepared according to U.S. generally accepted accounting principles and audited statements be provided annually. Any defaults must be reported immediately. An option for companies to meet financial responsibility through corporate guarantees is provided.
- Stack systems are required to submit interim stack system management plans. Such plans shall include detailed descriptions of process water management, detailed descriptions of daily operation and routine maintenance, identification of all machinery and materials needed identification of power or fuel needed, and workforce requirements.
- General plans and schedules for the closure of stack systems must be developed. Such plans shall, have a physical description of the stack system at closure, a site specific water management plan, estimated costs of management, description of all construction work necessary, and an estimate of all costs associated for long-term care.

### **Environmental Good Samaritan**

The bill provides that upon the declaration of the Governor and Cabinet of an impending environmental emergency any person acting under the direction of or providing assistance to DEP shall be immune from civil liability not constituting gross negligence in the course of rendering assistance.

### **Cumulative Impacts**

The bill changes the title of s. 373.414, F.S., from “additional criteria for activities within surface waters and wetlands” to “additional criteria for activities within watersheds”. This change could be interpreted to mean that these additional criteria would be applied to activities within uplands, not just those within surface waters and wetlands.

The bill changes the cumulative impact review such that the proposed impacts are considered in conjunction with existing and proposed projects within a *drainage basin* (no change), but the reasonably anticipated future projects to be considered are those within the *watershed*, which may be a smaller area than a drainage basin in some cases.

The bill also changes “drainage basin” to “watershed” in the mitigation provision related to cumulative impacts. Therefore, providing mitigation within the same drainage basin, but not within the same watershed, would not automatically satisfy the cumulative impact review criteria, and would require that a cumulative impact analysis be done that was not previously required. This may result in more determinations that a project has a cumulative impact within a watershed such that the project cannot be permitted, or that the proposed mitigation outside the watershed but within the same basin is not acceptable. This may discourage the use of large, regionally significant mitigation sites, such as mitigation banks, that may be more environmentally sustainable over the long term.

For reclamation approved under Ch. 378, F.S, to serve as appropriate ERP mitigation, an applicant must demonstrate that the cumulative impacts of the changes in water flows and levels from mining activities, phosphogypsum stack systems and reclamation activities will not adversely affect “surface water, ground water, wetland, upland, aquatic and estuarine habitats, and listed species and other natural features within the watershed” within the same watershed. The bill results, in expanding the scope of the cumulative impact assessment beyond the current DEP analysis which reviews cumulative impacts to the functions of surface waters and wetlands. The bill requires that ERP applicants for mining within the Peace River Watershed conduct a cumulative impact study including existing, permitted and prospective mines.

C. SECTION DIRECTORY:

Section 1. Amends s. 211.31, F.S., to provide that the first 1% of the phosphate severance tax be paid to the DEP.

Section 2. Amends s. 211.3103, F.S., to redistribute funds from the NMLRTF and adjusts the phosphate severance tax.

Section 3. Amends s. 215.20, F.S., to exempt the Nonmandatory Land Reclamation Trust Fund, Minerals Trust Fund, and the Phosphate Research Trust Fund from a 7% service fee that is deposited into General Revenue

Section 4. Amends s.215.20, F.S., to exempt the Nonmandatory Land Reclamation Trust Fund, and the Phosphate Research Trust Fund from a 7% service fee that is deposited into General Revenue

Section 5. Amends s. 215.22, F.S., to exempt certain income from certain trust funds.

Section 6. Amends s. 215.22, F.S., to exempt certain income from certain trust funds.\

Section 7. Amends s. 378.021, F.S., to provide for cumulative impacts to be addressed as a condition of mining permits.

Section 8. Amends s. 378.021, F.S., to provide for a master reclamation plan.

Section 9. Amends s. 378.031, F.S., to provide for the acquisition of nonmandatory lands for which reclamation activities will result in significant improvements in surface water bodies.

Section 10. Amends s. 378. 035, F.S., to provide for bonding authority for the Nonmandatory Reclamation Trust Fund.

Section 11. Amends s. 378.036, F.S., to provide for land acquisitions financed by the Nonmandatory Land Reclamation.

Section 12. Amends s. 378.101, F.S., to provide for a study by the Florida Institute of Phosphate Research to research the use of clay and reduce the use of clay settling ponds.

Section 13. Amends s. 378.101, F.S., to provide for an additional \$800,000 for a Florida Institute of Phosphate Research to research the use of clay and reduce the use of clay settling ponds.

Section 14. Amends s. 378.212, F.S., to provide for variances from mine reclamation standards under certain circumstances.

Section 15. Creates s. 403.0613, F.S., to provide that upon the declaration of the Governor and Cabinet of an impending environmental emergency any person acting under the direction of or providing assistance to DEP shall be immune from civil liability not constituting gross negligence in the course of rendering assistance.

Section 16. Creates s. 403.162, F.S., to provide for liens imposed by the DEP to cover the cost of these emergency expenditures are given priority over all other liens.

Section 17. Amends s. 403.4154, F.S., to provide for a interim stack management plan.

Section 18. Amends s. 403.4155, F.S., to provide for terminal closure for phosphate management stacks.



Section 19. Provides for severability.

Section 20. Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The proposed fee increase and related distribution changes will have the following annual impacts:

Severance tax revenue: \$40.73 million (\$1.62 x 25.14 tons)

Additional revenue (interest earnings, stack fees): \$7.5 million

In FY 2000, the phosphate severance tax was reduced from \$1.35 per ton to \$1.08 per ton or a 20% reduction due to the fact that the NMLRTF was fully funded. Currently, the NMLRTF is depleted due to Mullberry and Piney Point Plant cleanup as described in the above analysis. For this reason the severance tax decrease cannot be maintained.

#### 2. Expenditures:

The proposed distribution formula will retain 1) \$10 million transfer to CARL; 2) \$5 million for a surety bond for land reclamation in the event an owner or operator goes bankrupt; and redistribute the remaining \$33.23 million as follows:

- \$16.94 million to the Nonmandatory Land Reclamation Trust Fund (51 percent);
- \$8.31 million to the counties where mining activities occur (25 percent);
- \$2.99 million to the Phosphate Research Trust Fund (9 percent).
- \$1.66 million to the Minerals Trust Fund (5 percent).
- \$3.32 million to General Revenue (10 percent or \$12 million whichever is less).

The bill provides for an additional \$800,000 for a Florida Institute of Phosphate Research to research the use of clay and reduce the use of clay settling ponds. Lastly, the bill exempts the Nonmandatory Land Reclamation Trust Fund, Minerals Trust Fund and the Phosphate Research Trust Fund from a 7% service fee that is deposited into General Revenue.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Counties in which mining is taking place will see their revenues increase from previous years. Distributions to the counties are based on the number of tons mined in each individual county.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs: Additional costs will be experienced by mining ERP permit applicants to conduct expanded cumulative impact analyses. Companies mining phosphate will see their annual tax

rate increase from \$1.32 to \$1.62 per ton. Specific impacts to an individual company are based on the annual number of tons mined.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the DEP must amend it's current rules to conform Interim Stack Management Plan.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In FY 2000, the phosphate severance tax was reduced from \$1.35 per ton to \$1.08 per ton or a 20% reduction due to the fact that the NMLRTF was fully funded. Currently, the NMLRTF is depleted due to Mullberry and Piney Point Plant cleanup as described in the above analysis. For this reason the severance tax decrease cannot be maintained.

### AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 9, 2003 the House Committee on Natural Resources favorably adopted a substitute strike all amendment and 6 amendments that did the following:

- The bill provides for a different distribution formula for phosphate rock severance tax. The proposed distribution formula will retain 1) \$10 million transfer to CARL; 2) \$5 million for a surety bond for land reclamation in the event an owner or operator goes bankrupt; and redistribute the remaining funds as follows:
  - 51 percent to the Nonmandatory Land Reclamation Trust Fund (previously zero).
  - 25 percent to the counties where mining activities occur (previously 18%).
  - 9 percent to the Phosphate Research Trust Fund (previously 12.5%).
  - 5 percent to the Minerals Trust Fund (previously 14.35%).
  - 10 percent or \$12 million whichever is less to General Revenue (previously 55.15%).
- The bill directs that the severance tax rate be set at \$1.62 per ton beginning July 1, 2003 and that the tax rate shall not be less than \$1.56 per ton.
- The bill exempts the Nonmandatory Land Reclamation Trust Fund, Minerals Trust Fund, and the Phosphate Research Trust Fund from a 7% service fee that is deposited into General Revenue.
- Liens imposed by the DEP to cover the cost of these emergency expenditures are given priority over all other liens.

- Provides that a phosphate mining applicant must demonstrate the direct and indirect cumulative impact of changes to water flow within the watershed or basin.
- Requires the DEP to amend the Master Reclamation Plan which identifies which parcels are eligible to apply for funding under the nonmandatory lands reclamation grant program.
- Revises legislative intent regarding the nonmandatory lands reclamation program to provide emphasis on reclaiming lands that will result in significant improvements to surface water bodies of regional importance in those areas where phosphate mining has been permitted.
- This section deletes a \$50 million reserve which is set aside for several purposes, including closure of abandoned stacks, and simply makes these purposes authorized uses of the fund. It also revises the final date for submittal of applications under the nonmandatory land reclamation program to July 1, 2004.
- Authorizes the formation of a non-profit corporation to create plans and assess recreational opportunities on mined lands. Corporation is to be formed by January 1, 2004 or within six months from the date funds become available from the legislature.
- Provides for variances from mine reclamation standards under certain circumstances.
- In the event that an owner or operator fails to abate a release or threatened release of any hazardous substance, pollutant, or other contaminant, or abate an imminent danger to the environment or to public health, and the Department expends in excess of one million dollars (\$1 Million) on such abatement. Then the Department may place a lien on the owner or operator.
- Provides for criminal penalties-dividends and distributions are still included.
- Provides for certain financial tests to insure financial responsibility by the phosphate mine owner. Provides for an escrow account and trustee to insure stack management closure completed.
- Requires the DEP to revised Rule 62-673 regarding financial responsibility for owners/operators of phosphogypsum stack systems, and provides minimum requirements to be included.
- Provides for an additional \$800,000 for a Florida Institute of Phosphate Research to research the use of clay and reduce the use of clay settling ponds.
- Provides that upon the declaration of the Governor and Cabinet of an impending environmental emergency any person acting under the direction of or providing assistance to DEP shall be immune from civil liability not constituting gross negligence in the course of rendering assistance.
- Becomes effective upon becoming law.