

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: H0093B

SPONSOR(S): Paul

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance and Tax		Shamy	Diez-Arguelles
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill 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 distribution formula.
- Providing for the purchase of surety bonds.
- 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 2004 the deadline for phosphate companies to apply for reclamation funds.
- Creating a non-profit corporation to assist in developing recreational opportunities on phosphate lands; providing funding.
- 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 bill will increase receipts of phosphate severance tax revenues by \$1.93 million in 03-04 and \$7.88 million in 04-05.

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

STORAGE NAME h0093B.ft.doc
DATE June 17, 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 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:

More government oversight is required to ensure that abandoned phosphate facilities and existing phosphogypsum stacks are closed down correctly.

The phosphate severance tax rate will increase from \$1.31 to \$1.62.

B. EFFECT OF PROPOSED CHANGES:

Background

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. For 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, including the following major initiatives:

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 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 discharge the water from the Piney Point stack system in the ocean. 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 (NLRTF) on both sites. Additionally, there was \$60 million appropriated for maintenance and closure costs for this fiscal year. Department estimates to complete the closure of both sites is \$119 million, \$100 million for Piney Point and \$19 million for Mulberry. These closure costs are spread over the next 10 years with a significant portion due over the next four.

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. The tax 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. 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. The estimated fund balance for July 1, 2003 is between \$77.5M and \$82.6M, \$50M of which is a statutorily required reserve should an imminent hazardous situation arise. The department estimates that \$90M is needed to finish reclaiming 20,000 acres of mined phosphate lands, and an additional \$119M is needed 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. The current distribution of tax receipts 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
12.50 percent	to the Florida Institute of Phosphate Research
18.00 percent	to local counties with mining activities
14.35 percent	to the Minerals Trust Fund

Proposed Changes are discussed in the Section Directory.

C. SECTION DIRECTORY:

Section 1. Amends section 211.3103, F.S. – The bill deletes the current distribution and tax language and replaces it with the following: Beginning July 1, 2003,

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

Of the remaining funds:

18.75 percent	to local counties with mining activities
15.00 percent	to rural areas of economic concern
11.25 percent	Phosphate Research Trust Fund
11.25 percent	Minerals Trust Fund
43.75 percent	Nonmandatory Land Reclamation Trust Fund

Beginning July 1, 2004, the distribution of the tax will be as follows:

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

Of the remaining funds:

41.00 percent	to General Revenue
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16.50 percent	to local counties with mining activities
13.00 percent	to rural areas of economic concern
9.00 percent	Phosphate Research Trust Fund
9.00 percent	Minerals Trust Fund
11.50 percent	Nonmandatory Land Reclamation Trust Fund

Current law stipulates that payment to counties mining phosphate be distributed on a pro-rata basis according to the proportion of phosphate mined. This mining information will also be used to allocate funds to rural areas of economic concern.

Beginning July 1, 2003 and annually thereafter the Department of Environmental Protection 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 files bankruptcy or there it is determined that there is inadequate funds. The Department is authorized to adopt rules.

The funds that are distributed to rural areas of economic concern are to 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.

Beginning July 1, 2004, the tax rate is increased to a base rate of \$1.62 per ton served. In addition, the tax rate must not be lower than \$1.56 per ton served.

Beginning July 1, 2005, and annually thereafter, the tax rate shall be the base rate times the base rate adjustment for the tax year as calculated by the Department of Revenue. The adjustment will be the change in the unadjusted producer price index for chemical and fertilizer mining.

Section 2. Amends section 378.0211, F.S.

This section pertains to the Master reclamation plan (i.e., guidelines for reclamation of lands mined or disturbed by the severance of rocks prior to July 1, 1975). Changes are made to refer to the Department of Environmental Resources rather than Natural Resources and more clearly state the benefits of land reclamation.

Section 3. Amends section 378.031, F.S.

This section more clearly defines the types of lands that need to be reclaimed, (i.e., reclamation that will lead to cleaner surface water).

Section 4. Amends subsection (5), (6), (7), (8), and (9) of section 378.035, F.S.

This section eliminates the \$50 million reserve that is maintained in the Nonmandatory Land Reclamation Trust Fund for the reclamation of disturbed lands and imminent hazards. It also removes interest income restrictions. Funds can still be used for reclaiming land, the abatement of imminent hazards, funding basic management or protection of reclaimed lands. In addition the bill removes the restriction that fees deposited into the Fund can only be used at stack systems if closure or imminent hazard-abatement activities initially commence on or after July 1, 2002.

In this section, funds can also be used for permitting, the regulation of dams in accordance with department rule 62-672, and phosphogypsum management.

This section changes the date that the department may no longer accept applications for nonmandatory land reclamation program (July 1, 2004 instead of November 1, 2008).

This section also provides that, during the 2003-04 fiscal year, the Department may not approve or encumber nonmandatory reclamation projects in amounts greater than \$15 million.

Section 5. Adds subsection (6) to section 378.036, F.S.

This section authorizes the Florida Wildlife Federation, Audubon Florida, and Rails-to-Trails Conservancy in conjunction with the Florida Phosphate Council, to form a nonprofit corporation for the purpose of creating plans and assisting in the development of recreational opportunities on land mined for phosphate in the state. The first plans must concentrate on recreational activities in Hardee and Hamilton Counties which will assist them in rural economic development.

This section provides for the corporation's organization. The corporation will dissolve on January 1, 2009. In addition, \$200,000 is appropriated from the Nonmandatory Land Reclamation Trust Fund to the corporation for creating plans and assisting in the development of the projects.

Section 6. Amends subsection (1) of section 378.212, F.S.

This subsection expands the list of reasons for which variances may be granted in phosphate land reclamation statutes.

Section 7. Adds subsection (9) to section 378.404, F.S.

This subsection grants the department the authority to grant variance to accommodate reclamation providing for water supply or resource development.

Section 8. Amends subsections (2), (3), and (4) of section 403.4154, F.S.

This section makes it a felony of the third degree, punishable by a fine of not more than \$50,000 and 5 years imprisonment for each offense, for willfully, knowingly, or with reckless indifference or gross carelessness misstate or misrepresents the financial condition or closure costs of an entity engaged in managing, owning, or operating a phosphogypsum stack or stack system. Similar language also applies for the failure to comply with Department rules.

In addition, modifications are made to the section on Abatement of Imminent Hazard. First, failure of an owner or operator of a phosphogypsum stack system to comply with Department rules requiring demonstration of closure financial responsibility may be considered by the department as evidence that a phosphogypsum stack poses an imminent hazard for purposes of initiating penalties. Second, upon a declaration by the Governor of an environmental emergency concerning the abatement of a imminent hazard involving a phosphogypsum stack or stack system, the state and any agent under contract with the state for the provision of services directly related to the abatement of such hazard shall not become liable under state laws for environmental protection for any costs, damages, or penalties associated with the abatement of the imminent hazard.

Finally, this section makes changes to the provision for the refund of registration fees. New language states that no refund shall be paid until such time as the Mulberry and Piney Point Phosphogypsum stack systems have been closed and a satisfactory reserve has been established in the Nonmandatory Reclamation Trust Fund.

Section 9. Amends section 403.4155, F.S.

This section expands the rule making authority granted to the Department. Additional changes include, by October 1, 2003, the implementation of an interim stack system management (ISSM) plan. The plan shall include, water management procedures; descriptions of daily operations and maintenance of the stacks; identification of all machinery, equipment and material necessary to implement the plan; identification of the power or fuel necessary to implement the plan; and, identification of the personnel necessary to implement the plan. The plan shall be updated annually.

Also, by October 1, 2003, the Department shall initiate rulemaking to require that general plans and schedules for the closure of phosphogypsum stack systems include: 1. A description of the physical configuration of the phosphogypsum stack system anticipated at the time of closure at the end of useful life of the system. 2. A site-specific water management plan describing the procedures to be employed at the end of the useful life of the system to manage the anticipated volume of process water in an environmentally sound manner. 3. An estimate of the cost of management of the anticipated volume of process water in accordance with the site-specific water management plan. 4. A description of all construction work necessary to properly close the system in accordance with department rules. 5. An estimate of all costs associated with long-term care of the closed system, including maintenance and monitoring, in accordance with department rules.

This section deletes old review language pertaining to 62-673 Florida Administrative Code (FAC) and requires the Department to revise chapter 62-673, FAC, to require the owner or operator of a phosphogypsum stack management system to demonstrate financial responsibility for the costs of terminal closure of the phosphogypsum stack system in a manner that protects the public health and safety (see bill for specific items).

Section 10.

This section requires that 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. Upon completion of the study, the department shall prepare and adopt a resource management plan for the Peace River Basin to minimize any identified existing and future adverse cumulative impacts to water resources of the basin, including surface waters, groundwaters, wetlands, fisheries, aquatic and estuarine habitat, and water supplies. Rulemaking authority is granted to the Department of Environmental Protection and the Southwest Florida Water Management District to implement the regulatory recommendations identified in the study or the resource management plan. The resource management plan shall be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate no later than January 1, 2005. The department may use up to \$750,000 from the Nonmandatory Land Reclamation Trust Fund to prepare the study and plan required in this section. The department may establish a technical advisory committee to assist the department in developing a plan of study, reviewing interim findings, and reviewing final recommendations. The technical advisory committee may include representatives from the following interests in the Peace River Basin: industrial, mining, agriculture, development, environmental, fishing, regional water supply, and local government.

Section 11.

This section states that for fiscal year 2003-2004, the sum of \$12.5 million is transferred from the Nonmandatory Land Reclamation Trust Fund to the General Revenue Fund.

Section 12.

This section states that for fiscal year 2003-2004, the sum of \$800,000 is appropriated to the Phosphate Research Trust Fund from the proceeds of the phosphate severance tax deposited into the Nonmandatory Land Reclamation Trust Fund. Such funds shall be used by the Florida Institute of

Phosphate Research to conduct a bench and pilot scale study of the FIPR/DIPR process for the purpose of determining its technical and economic feasibility.

Section 13.

This section states that if any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature or the 2003 Special Session A of the Legislature, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a positive fiscal impact of \$1.93 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

FUND <i>(millions)</i>	CURRENT		2003-04*		2004-05	
	Receipt	% Distribution	Receipt	% Distribution	Receipt	% Distribution
CARL ¹	\$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 ²	\$2.62	12.50%	\$1.76	11.25%	\$2.54	9.00%
MINERALS ³	\$3.02	14.35%	\$2.56	11.25%	\$2.54	9.00%
NONMANDATORY LAND REC. ⁴			(\$4.69)	43.75%	\$1.25	11.50%
GENERAL REVENUE ⁵	\$13.60	55.15%	\$14.39		\$13.85	41.00%
SURETY BONDS			\$2.00		\$2.00	
NON-PROFIT			\$0.20			
HYDROLOGY STUDY			\$0.75			
TOTAL	\$33.30	100.00%	\$35.27	100.00%	\$41.18	100.00%

- * The base tax rate is increased to \$1.62 on January 1, 2004.
- 1. The CARL TF receives money before any other distribution is made. The fund is assessed a 7.0 percent GR service charge. The charge is taken before the \$10 million distribution is made to the fund.
- 2. The Phosphate Research TF is assessed a 7.3 percent GR service charge and a DOR administrative cost of roughly \$285,000 (not calculated). The service charge is taken after the distribution is made to the fund. Future costs may be slightly higher. Also, \$800,000 is transferred to the NMLR TF in FY 03-04.
- 3. The Minerals TF is assessed a 7.3 percent GR service charge. The service charge is taken after the distribution is made to the fund.
- 4. The Nonmandatory Land Rec. TF distributes 15.45 million to other funds and programs in FY 03-04: GR, surety bonds, nonprofit org, and a hydrology study. The funding for the surety bonds continues indefinitely. The fund is assessed a 7.3 percent GR service charge. The service charge is taken after the distribution is made to the fund.
- 5. General Revenue amounts include service charges and distributions made from other funds, thus amounts will not equal percentage distributions.

June 18, 2003: 2:15 pm

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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 each county.

2. Expenditures:

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 number of tons mined.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.

2. Other:

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES