

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1321 w/CS Phosphate Mining Restoration, Reclamation, and Cleanup  
**SPONSOR(S):** Spratt  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Natural Resources</u>	<u>16 Y, 0 N w/CS</u>	<u>Camechis</u>	<u>Lotspeich</u>
2) <u>Finance &amp; Tax</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

Currently, the first \$10 million in annual revenues collected from the phosphate severance tax is paid to the credit of the Conservation and Recreation Lands Trust Fund, and 40.1% of remaining revenues is credited to the General Revenue Fund. This bill redistributes phosphate severance tax revenues for FY2005-06 through FY2011-12 by transferring the first \$10 million in phosphate severance tax revenues, and the first \$10 million from the General Revenue Fund allocation, to the Nonmandatory Land Reclamation Trust Fund to be used to close the phosphogypsum stacks at Mulberry and Piney Point and to reclaim lands disturbed by the severance of phosphate rock prior to July 1, 1975. The distribution formula is modified as follows:

RECIPIENT	Current Distribution	FY2005-2006 through FY2011-2012 Distribution	Distribution after FY2011-2012*
<b>CARL Trust Fund</b>	<b>\$10 million</b>	Zero (transferred to the NMLRTF)	\$10 million
<b>General Revenue</b>	<b>40.10%</b> of revenues remaining after first \$10 million is credited to CARL	40.10% but first \$10 million is transferred to the NMLRTF	40.10%
<b>Nonmandatory Land Reclamation Trust Fund (NMLRTF)</b>	<b>10.40%</b> of revenues remaining after first \$10 million is credited to CARL	10.40% plus \$10 million transferred from CARL and 10 million transferred from GR	10.40%
<b>Counties in which phosphate is mined</b>	<b>16.50%</b> of revenues remaining after first \$10 million is credited to CARL	Same	Same
<b>Counties of Critical Economic Concern in which phosphate is mined</b>	<b>13.0%</b> of revenues remaining after first \$10 million is credited to CARL (in addition to the 16.50% above)	Same	Same
<b>Phosphate Research Trust Fund</b>	<b>9.30%</b> of revenues remaining after first \$10 million is credited to CARL	Same	Same
<b>Minerals Trust Fund</b>	<b>10.70%</b> of revenues remaining after first \$10 million is credited to CARL	Same	Same

\* The distribution formula reverts back to the formula in effect for FY 2004-2005.

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

**STORAGE NAME:** h1321a.nr.doc  
**DATE:** March 29, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input 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:

#### B. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

##### **Phosphate Mining Generally**

Florida has a rich phosphate deposit that was formed millions of years ago when seas covered the state. The phosphate deposit is 20 to 25 feet underground and is one of the world’s more accessible deposits. As such, Florida supplies 25 percent of the world and 75 percent of the U.S. demand for phosphate.<sup>1</sup> Florida continued to lead the nation in phosphate rock mining in 2002, producing about seven times as much as the next highest producing state.<sup>2</sup> In 2003, more than 30 million metric tons of phosphate rock were extracted from 1,968 hectares (ha) of land.<sup>3</sup> Approximately 90% of the phosphate produced is used to make fertilizer to increase the quality and yield of crops, 5% is used to make animal feed, and 5% is used to make various products such as Coca-Cola, chemicals, toothpaste, and light bulbs.<sup>4</sup>

The largest economic phosphate deposits and production facilities in the United States are located in the Bone Valley formation in the central part of the State, in Hardee, Hillsborough, Manatee, and Polk Counties. Most of the mined phosphate is used to make the phosphoric acid that provides the phosphorus in fertilizer. However, before the phosphate can be processed into the phosphoric acid it must be mined and go through a process known as “beneficiation.” This process uses chemicals, energy, and water to separate the phosphate from the clay and sand that is found in the matrix that is mined. A by-product of the beneficiation process is settling ponds where the clay is stored. These ponds cover approximately 120,000 Florida acres, and take years to dry. Even then, the instability of the clay makes them difficult to reclaim for most purposes.<sup>5</sup> Phosphate operations also produce gypsum, a sandy mineral by-product of phosphate fertilizer manufacturing. Gypsum is stored in stacks, commonly referred to as “gypstacks,” which can be up to 200 feet tall. The gypsum goes on to the stack and mixes with water. Rain also adds water to the stacks. Because the water in the stacks is acidic, it must be contained on the site or recycled into the plant for cooling, and the stacks must be continuously monitored to ensure that the water does not seep into the environment. There are currently 25 stacks in Florida, located in Polk, Hillsborough, Manatee, and Hamilton Counties.

##### **Mulberry and Piney Point Phosphate Facilities**

In 2001, DEP assumed financial responsibility for stabilizing and closing the Mulberry and Piney Point Phosphate facilities after being notified by the owner of its intent to file bankruptcy and abandon both sites. At that time, 2.4 billion gallons of acidic wastewater were stored on the Mulberry site in 100-foot gypstacks. In May 2002, the DEP and Cargill Fertilizer, Inc., entered into an agreement whereby

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

<sup>2</sup> USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic), <http://minerals.er.usgs.gov/minerals/pubs/state/2002/flstmyb02.pdf>; Accessed October 19, 2003.

<sup>3</sup> USGS, 2002 Minerals Yearbook (Volume II. -- Area Reports: Domestic).

<sup>4</sup> Florida Institute of Phosphate Research, 1997-1999, Annual Report, <http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm>; Accessed October 19, 2003.

<sup>5</sup> Florida Institute of Phosphate Research, 1997-1999, Annual Report, <http://www.fipr.state.fl.us/ar99/miningandbeneficiation.htm>; Accessed October 19, 2003.

Cargill will manage and close the Mulberry facility. The DEP will reimburse Cargill up to \$25 million for the Mulberry closure work, and Cargill will provide the labor and expertise. Closure of the stack system at the Mulberry facility is expected to be complete by 2008, after which Cargill will continue long-term care for approximately 50 years. Cargill is the only operating phosphate company that has successfully closed a phosphogypsum stack.

Prior to 2000, Piney Point Phosphates operated as a phosphate fertilizer-manufacturing complex ("Piney Point") along U.S. Highway 41, approximately six miles north of the city of Palmetto in Manatee County, Florida. The complex includes a phosphoric acid plant with an associated old and new phosphogypsum stack system, each incorporating two 50-70 foot high stacks with deep impoundments on top, process water ponds, and a network of seepage and stormwater runoff collection ditches encompassing a watershed of approximately 452 acres.<sup>6</sup>

In 2001, DEP also assumed financial responsibility for stabilizing and closing the Piney Point facility. At that time, 1.2 billion gallons of acidic wastewater were stored on site in seven 70-foot gypstacks. Since February 2001, the DEP and the court appointed receiver have maintained the Piney Point gypsum stack system. The primary problem that is being addressed, in addition to ongoing maintenance of the system, is treatment, movement and disposal of hundreds of millions of gallons of water from the stack system. The existing inventory to be disposed of is approximately 295 million gallons, including treatment sludges (or 166 million gallons of ponded water excluding the treatment sludges). In addition, there are approximately 400-500 million gallons of process wastewater, or "pore water," saturating the stacks themselves.

Since 2001, DEP has utilized various methods in an attempt to reduce the amount of wastewater on the Piney Point site, including: treatment by reverse osmosis; trucking to other phosphate companies for processing; trucking to stormwater treatment facilities for reuse; and barging water 120 to 190 miles offshore for slow dispersal after treatment to remove arsenic, heavy metals, radioactive material and nitrogen. On April 9, 2003, the United States Environmental Protection Agency (USEPA) issued an emergency permit to DEP to disperse up to 534.7 million gallons of treated wastewater from the Piney Point facility into the Gulf of Mexico via barges.<sup>7</sup> DEP disposed of 248 million gallons under the permit.

To date, the DEP has successfully treated and removed over 1 billion gallons of water from the facility. Since last December, engineers have drained one of four holding ponds and are lining the containment area. Drainage of two other ponds is underway to close as much of the site as possible before the next hurricane season.

#### **Estimated cost of closure and reclamation**

As of March 1, 2004, approximately \$69 million had been spent from the Nonmandatory Land Reclamation Trust Fund (NMLRTF) to stabilize and close both sites, including \$39 million dedicated to Piney Point and \$30 million to Mulberry.

The Legislature appropriated \$45 million for maintenance and closure costs in FY2003-04, of which approximately \$40 million will be dedicated to closure efforts at Piney Point and \$7.5 million to Mulberry. DEP's FY2004-05 legislative budget request of \$42.7 million will fund approximately \$33 million for closure of and site maintenance at Piney Point and \$5.5 million in closure work at Mulberry (~10 contingency).

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<sup>6</sup>EPA PROCESS OF ISSUING AN EMERGENCY PERMIT FOR OCEAN DISPOSAL OF TREATED WASTEWATER IN THE GULF OF MEXICO FROM THE PINEY POINT PHOSPHATE FACILITY IN MANATEE COUNTY, FLORIDA, FACT SHEET, April 3, 2003.

<sup>7</sup>USEPA, April 2, 2003 Notification and Assessment of Emergency Situation in accordance with the Interim Procedures and Criteria for Determining Emergency Situations adopted in 1980 under the London Convention 1972.

The DEP estimates future closure and reclamation costs of the Piney Point and Mulberry sites to be as follows:

<b>Estimated Future Costs of Closure/Reclamation of Piney Point and Mulberry</b> (in millions of dollars)			
<b>Fiscal Year</b>	<b>Piney Point</b>	<b>Mulberry</b>	<b>Total</b>
05/06	\$16.0	\$3.5	\$19.5
06/07	16.0	3.0	19.0
07/08	7.1	0	7.1
08/09	3.5	0	3.5
09/10	2.3	0	2.3
10/11	1.5	0	1.5
11/12	1.3	0	1.3
<b>TOTAL COST</b>	<b>47.7</b>	<b>6.5</b>	<b>54.2</b>

The following table illustrates the costs to date, the DEP's legislative budget request for FY2004-05, and estimated future closure/reclamation costs:

<b>TOTAL ESTIMATED COSTS OF CLOSURE/RECLAMATION OF PINEY POINT AND MULBERRY</b> (in millions of dollars)	
Expenditures as March 1, 2004	\$69 million
DEP LBR for FY 2004-05	\$45 million
FY2005-06 through FY2011-12	\$54.2 million
<b>TOTAL COST</b>	<b>\$168 million</b>

### Phosphate Severance Tax Distribution Formula

Section 211.3103, F.S., levies a tax on every person engaged in the business of severing phosphate rock from the soils or waters of this state for commercial use based upon the tonnage of phosphate rock mined. In 2003, the phosphate severance tax rate was \$1.31 per ton with 30.7 million tons of rock mined, resulting in phosphate severance tax revenues of \$40 million distributed in accordance with the formula set forth in s. 211.3103, F.S. As of January 1, 2004, the phosphate severance tax base rate increased from \$1.31 to \$1.62 per ton severed, and proceeds of the phosphate severance tax will be distributed as follows in FY2004-05:

<b>RECIPIENT</b>	<b>Allocation<sup>8</sup></b>	<b>Estimated FY04-05 Distribution<sup>9</sup></b> (in millions)
CARL Trust Fund	\$10 million	\$10 million
General Revenue	40.10%	\$12.22
NMLRTF	10.40%	\$2.94 (less \$2 million for surety bond if purchased)
Counties where phosphate is mined	16.50%	\$5.03
Counties of Critical Economic Concern where phosphate is mined (in addition to the 16.5% above)	13.0%	\$3.96
Phosphate Research Trust Fund	9.30%	\$2.63
Minerals Trust Fund	10.70%	\$3.02

<sup>8</sup> After distribution to the CARL TF, remaining revenues are allocated based upon the indicated percentages.

<sup>9</sup> Trust fund service charges are assessed but not included on this table.

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

The Nonmandatory Land Reclamation Trust Fund (NMLRTF) was established by the Legislature to fund the reclamation of land mined before 1975, while reclamation of lands disturbed by phosphate mining after 1975 must be reclaimed by the landowner. However, in 2003, the Legislature expanded the purpose of the NMLRTF to include abatement of imminent hazards from, and closure of, any abandoned phosphogypsum stack system.

The NMLRTF receives approximately \$1.4M annually through phosphogypsum stack registration fees and annual interest earnings. In addition, beginning in FY 2004-05, 10.4 percent of tax proceeds remaining after the CARL distribution are allocated to the NMLRTF. Based upon the 2003 allocation, DEP estimates that the NMLRTF will receive \$12.54 million in FY2004-05 and \$3.65 million in FY2006-07.

The projected unreserved balance in the NMLRTF as of June 30, 2004 is approximately \$37.5 million. However, the FY2004-05 ending unreserved balance will be approximately \$285,000, accounting for trust fund interest, severance tax revenues, stack registration fee revenues, and the DEP's FY2004-05 legislative budget request of \$42.7 million.

### **Mineral Trust Fund**

Section 211.31, F.S., creates the Minerals Trust Fund and states that its purpose is to fund the administrative costs of programs of this state established to reclaim those lands disturbed by the severance of minerals; to fund the geological survey of the state; to fund the regulation of oil and gas exploration and production; to serve as a repository for funds that will enable the DEP to respond without delay to incidents that affect safety or threaten to cause environmental damage or contamination as a result of incidents involving petroleum exploration and production activities; and to make available immediately to the DEP funds sufficient to correct violations such as an operator's failure to adequately plug, abandon, or restore production sites or other test sites and facilities after operations cease, if the permittee or operator does not correct the violation within a reasonable time.

According to DEP, this trust fund supports the operations of the DEP's Bureau of Mine Reclamation, including more than 30 FTEs. In addition, the trust fund supports the Florida Geological Survey, including approximately 37 FTEs. The Minerals Trust Fund's primary source of funding is the 10.7% of the phosphate severance tax proceeds remaining after the distribution to the CARL trust fund as allocated by s. 211.3103, F.S.

### **The Phosphate Research Trust Fund**

Section 378.201, F.S., creates the Florida Phosphate Research Institute for the purpose of conducting research regarding the impacts of phosphate mining on the environment; reclamation of mined lands; more efficient methods of mining and processing; and disposal and utilization of phosphatic clay. The Institute administers the Phosphate Research Trust Fund, which funds administration costs of the Institute and research activities required by s. 378.201, F.S. This trust fund is supported by a 9.3% distribution of phosphate severance tax proceeds remaining after the distribution to the CARL trust fund as allocated by s. 211.3103, F.S.

### **Conservation and Recreation Lands Trust Fund**

The Conservation and Recreation Lands Trust Fund is created in s. 259.032, F.S., and administered by the DEP. The fund is used as a nonlapsing, revolving fund financed by proceeds from the excise taxes on documents and the excise tax on the severance of phosphate rock. In FY 2003-04, the CARL trust fund is projected to receive \$10 million in phosphate severance tax proceeds, and approximately \$89 million in documentary stamp tax proceeds. The projected ending unreserved balance for FY2003-04 is \$41 million.

The CARL trust fund may be used for the following purposes:

- Payment of debt service applicable to land acquisition bonds;
- Land management and related costs, functions, and activities;
- Payments in lieu of taxes;
- Land acquisition; and
- Initiation and maintenance of a natural areas inventory.

### **EFFECT OF PROPOSED CHANGES**

Currently, the first \$10 million in revenue collected from the phosphate severance tax each year is paid to the credit of the Conservation and Recreation Lands Trust Fund, and 40.1% of remaining revenues is credited to the General Revenue Fund. This bill redistributes phosphate severance tax revenues for FY2005-06 through FY2011-12 by transferring the first \$10 million in phosphate severance tax revenues, and the first \$10 million from the General Revenue Fund allocation, to the Nonmandatory Land Reclamation Trust Fund to be used to close the phosphogypsum stacks at Mulberry and Piney Point and to reclaim lands disturbed by the severance of phosphate rock prior to July 1, 1975.

The bill modifies the current distribution formula as follows:

<b>RECIPIENT</b>	<b>Current Distribution</b>	<b>FY2005-2006 through FY2011-2012 Distribution</b>	<b>Distribution after FY2011-2012*</b>
<b>CARL Trust Fund</b>	<b>\$10 million</b>	Zero (transferred to the NMLRTF)	\$10 million
<b>General Revenue</b>	<b>40.10%</b> of revenues remaining after first \$10 million is credited to CARL	40.10% but first \$10 million is transferred to the NMLRTF	40.10%
<b>Nonmandatory Land Reclamation Trust Fund (NMLRTF)</b>	<b>10.40%</b> of revenues remaining after first \$10 million is credited to CARL	10.40% plus \$10 million transferred from CARL and 10 million transferred from GR	10.40%
<b>Counties in which phosphate is mined</b>	<b>16.50%</b> of revenues remaining after first \$10 million is credited to CARL	Same	Same
<b>Counties of Critical Economic Concern in which phosphate is mined</b>	<b>13.0%</b> of revenues remaining after first \$10 million is credited to CARL (in addition to the 16.50% above)	Same	Same
<b>Phosphate Research Trust Fund</b>	<b>9.30%</b> of revenues remaining after first \$10 million is credited to CARL	Same	Same
<b>Minerals Trust Fund</b>	<b>10.70%</b> of revenues remaining after first \$10 million is credited to CARL	Same	Same

\* The distribution formula reverts back to the formula in effect for FY 2004-2005.

#### C. SECTION DIRECTORY:

- Section 1. Amends s. 211.3103, F.S., to revise the allocation formula for phosphate severance tax proceeds.
- Section 2. Provides an effective date.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures:

Currently, the first \$10 million in revenue collected from the phosphate severance tax each year is paid to the credit of the Conservation and Recreation Lands Trust Fund, and 40.1% of remaining revenues is credited to the General Revenue Fund. This bill redistributes phosphate severance tax revenues for FY2005-06 through FY2011-12 by transferring the first \$10 million in phosphate severance tax revenues, and the first \$10 million from the General Revenue Fund allocation, to the Nonmandatory Land Reclamation Trust Fund to be used to close the phosphogypsum stacks at Mulberry and Piney Point and to reclaim lands disturbed by the severance of phosphate rock prior to July 1, 1975.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: This bill does not alter the distributions of phosphate severance tax revenues received by counties in which phosphate is mined.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** If the Legislature appropriates moneys allocated to the Nonmandatory Land Reclamation Trust Fund for the purpose of reclaiming lands disturbed by the severance of phosphate rock prior to July 1, 1975, private landowners may be eligible for financial assistance in reclaiming those lands pursuant to Chapter 378, Florida Statutes.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties on February 1, 1989.

2. Other: None.

**B. RULE-MAKING AUTHORITY:** This bill does not appear to impact the rulemaking authority of any state agency.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** Representatives of The Nature Conservancy and Audubon of Florida appeared before the Committee on Natural Resources on March 25, 2004, to express concern regarding the transfer to the NMLRTF of the \$10 million in phosphate severance tax revenues currently allocated to the CARL Trust Fund and used for state land management purposes.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2004, the Committee on Natural Resources adopted a "strike-all" amendment to revise the phosphate severance tax revenue distribution formula established in the original bill and correct drafting issues. This analysis has been revised to reflect the "strike-all" amendment.