

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 149

Florida Institute of Phosphate Research

SPONSOR(S): General Government Policy Council, State Universities & Private Colleges Appropriations Committee, Agriculture & Natural Resources Committee, McKeel

TIED BILLS:

IDEN./SIM. BILLS:

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|------------------|----------|----------------|
| 1) | Agriculture & Natural Resources Policy Committee | 12 Y, 0 N, As CS | Thompson | Reese |
| 2) | State Universities & Private Colleges Appropriations Committee | 12 Y, 0 N, As CS | Smith | Trexler |
| 3) | General Government Policy Council | 13 Y, 0 N, As CS | Thompson | Hamby |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

The bill replaces section 378.101, Florida Statutes, with section 1004.346, Florida Statutes, establishing the Florida Institute of Phosphate Research (FIPR) within the University of South Florida (USF) Polytechnic and providing for a revised name, the Florida Industrial and Phosphate Research Institute (FIPR), to reflect said affiliation. The bill, in part:

- Provides for a type two transfer, pursuant to section 20.06(2), Florida Statutes, of the FIPR to the proposed FIPR within the USF Polytechnic.
- Revises the membership of the board of directors; names it the "Phosphate Research and Activities Board"; and directs the board to monitor the expenditure of funds.
- Provides for administrative rules of procedure for the Phosphate Research and Activities Board.
- Provides for an institute executive director.
- Provides for specific duties and authority of the proposed FIPR.
- Repeals section 378.102, Florida Statutes, and amends section 211.31, Florida Statutes, to make conforming changes.

Many of the bill's provisions will have no direct fiscal impact. Some of the provisions are expected to have an indirect fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

The bill will take effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Institute of Phosphate Research

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, providing 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 Florida. Ninety percent of the phosphate rock mined in the state 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.¹

In 1978, the Florida Legislature created the Florida Institute of Phosphate Research (FIPR)² to study phosphate issues and to provide phosphate information to the industry and the general public. Current law³ directs the FIPR to conduct, or cause to be conducted, studies that would improve phosphate industry efficiency, reduce its use of water and energy resources, and enhance efforts to reclaim the land that mining and processing affects. The law requires the FIPR to educate and inform Florida citizens about the industry, its effects, and the FIPR's research findings as well as general scientific knowledge concerning the industry.

The FIPR is a state research organization located in Bartow, Florida, and is administratively attached to the University of South Florida (USF). USF provides administrative services to the Institute, including accounting, payroll, personnel, and legal and travel services; in return, the FIPR pays a fee to USF for these services. Oversight of the Institute is a function of the FIPR Board of Directors.

The FIPR has a staff of 25 full-time and part-time employees and is governed by a 5-member board of directors appointed by the Governor. The membership of the board is as follows:

- One member from the faculty of a university within the State University System;

¹ Phosphate Fact Sheet – Florida Phosphate Council

² s. 378.101, F.S.

³ Id.

- One member from a major conservation group in Florida;
- One member from state government, and
- Two members from the phosphate mining or processing industry.

Current law⁴ requires the Governor to make these appointments on the basis of their ability to set priorities for phosphate research. The appointees are tasked with giving direction to phosphate research efforts that address problems of the industry in which the public has substantial interest. Members serve 3-year terms and may be reappointed.

The FIPR also serves as a phosphate-related information clearinghouse. The FIPR's research concentrates on: chemical processing of phosphate rock into fertilizer (including studies on the byproduct phosphogypsum), beneficiation or mineral processing to separate clay and sand from the phosphate rock, reclamation of mined lands, mining processes, and public and environmental health (including radiation) issues.⁵ Other FIPR activities include holding intensive summer workshops for teachers, hosting conferences and seminars, maintaining an extensive library of information on phosphate, providing mini-grants to develop phosphate teaching units, and conducting various other strategic projects and technical advisory committees.⁶

The University of South Florida Polytechnic

The 2008 Legislature designated the Lakeland campus of USF as the "University of South Florida Polytechnic."⁷ The USF Polytechnic is the newest of the four campuses in the USF system. According to the USF Polytechnic website, it is the state's only polytechnic and provides upper level undergraduate and graduate students with an opportunity for applied learning and research in a personalized setting.

The USF Polytechnic model offers degrees and certificates in many different degree programs and certificate programs, providing a multi-disciplinary focus with real-world application.⁸

Under current law,⁹ USF Polytechnic is a separate organizational and budget entity from USF. The USF Polytechnic is required to have a campus board and a campus executive director. The campus board is comprised of four residents of the Lakeland campus service area who are appointed by the president of USF and one member of the USF board of trustees who is selected by the campus board. Members of the campus board serve 4-year terms and may be reappointed for one term. USF Polytechnic is administered by a campus executive officer appointed by the USF president.

Proposed Changes

The bill replaces section 378.101, Florida Statutes, with section 1004.346, Florida Statutes, establishing the FIPR within the USF Polytechnic and providing for a revised name, the Florida Industrial and Phosphate Research Institute (FIPR), to reflect said affiliation.

The bill provides for a type two transfer, pursuant to section 20.06(2), Florida Statutes, of the FIPR to the proposed FIPR within the USF Polytechnic. This includes the transfer of all powers, duties, functions, records, personnel, property, administrative authority, administrative rules, pending issues, and existing contracts of the FIPR. The transfer also includes unexpended balances of appropriations, allocations, and other funds.

⁴ Id.

⁵ Florida Senate Interim Report 2005-154, Activities Related to the Closure of Phosphate Mining Operations and the Uses of Phosphate Mining Byproducts and Closed Phosphate Lands, December 2004.

⁶ Florida Senate Interim Report 2009-316, The Florida Institute of Phosphate Research, October, 2008.

⁷ s. 1004.345, F.S.

⁸ <http://www.poly.usf.edu/>

⁹ s. 1004.345, F.S.

The bill creates the “Phosphate Research and Activities Board” and directs the board to ensure that funds appropriated to the university from the Phosphate Research Trust Fund are expended exclusively for the purpose of carrying out the phosphate-related activities specified in this section.

The bill requires the Governor to appoint two persons representing the phosphate mining or processing industry and one member representing a major environmental conservation group in the state. The Secretary of Environmental Protection, or his or her designee, and the Campus Executive Officer of USF Polytechnic shall also serve as board members.

The bill limits the terms of board members appointed by the Governor to three years and requires an annual election of the chairman of the board by the members. The bill also:

- Allows board members to serve until a successor is appointed, not to exceed 180 days beyond the expiration of his or her term;
- Provides that a board member is eligible for reappointment to subsequent terms; and
- Requires board members to serve without compensation but allows for reimbursement for per diem and travel expenses, as provided in section 112.061.

The bill provides for a FIPR Executive Director who is designated by, and serves at the pleasure of, the Campus Executive Officer of USF Polytechnic or his or her designee. The bill directs the FIPR Executive Director to be responsible for the daily administration of the Institute, including the expenditure of funds from all sources, and to consult with the Phosphate Research and Activities Board with regard to which projects to undertake and fund from the Phosphate Research Trust Fund.

The bill requires the proposed FIPR to:

- Establish methods for better and more efficient practices for phosphate mining and processing;
- Conduct or contract for studies on the environmental and health effects of phosphate mining and reclamation;
- Conduct or contract for studies of reclamation alternatives and technologies in phosphate mining and processing and wetlands reclamation;
- Conduct or contract for studies of phosphatic clay and phosphogypsum disposal and utilization as a part of phosphate mining and processing; and
- Provide the public with access to the results of its activities and maintain a public library related to the Institute's activities.

The bill allows the proposed FIPR to:

- Research and develop methods for better and more efficient processes and practices for commercial and industrial activities, including, but not limited to, mitigating the health and environmental effects of such activities as well as developing and evaluating reclamation alternatives and technologies;
- Secure funding from grants and other available sources for carrying out the activities authorized or required under this section;
- Enter into contracts with any firm, institution, corporation, or federal, state, local, or foreign governmental agency to carry out the activities authorized or required under this section;
- Promote the application, patenting, and commercialization of the institute's technologies, knowledge, and intellectual property in accordance with university policies and procedures;
- Educate the public about the science related to topics and issues that are within the Institute's scope of expertise;
- Hold public hearings;
- Establish public-private partnerships; and
- Provide consulting services.

The bill repeals section 378.102, Florida Statutes, and amends section 211.31, Florida Statutes, to make conforming changes.

B. SECTION DIRECTORY:

Section 1. Renumbers and amends s. 378.101, F.S.; creating s. 1004.346, F.S.; establishing the Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic; creating the Phosphate Research and Activities Board; providing for board duties, membership, and terms; providing for the administration of the Institute; requiring the Institute to conduct and contract for specified studies and to provide public access to certain information; authorizing the Institute to conduct phosphate-related activities, secure funding, and enter into agreements with public, private, foreign, and domestic entities.

Section 2. Amends s. 211.31, F.S.; conforming a cross-reference.

Section 3. Provides for a type two transfer, pursuant to s. 20.06(2), Florida Statutes, of the Florida Institute on Phosphate Research to the proposed Florida Industrial and Phosphate Research Institute within the University of South Florida Polytechnic.

Section 4. Repeals s. 378.102, F.S., to conform to administrative changes made by the act.

Section 5. Provides this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section, parts b), c), and d).

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments section, parts b), c), and d).

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section parts b), c), and d).

D. FISCAL COMMENTS:

a) The severance taxation of solid minerals, including phosphate, was enacted into law in 1971. The tax rates and the disposition of these revenues have been amended since that time. Currently, the FIPR is funded through the Phosphate Research Trust Fund (Trust Fund), which is established in Section 211.3103, F.S., as part of the distribution of severance tax revenues.

The law¹⁰ establishes the per ton severed tax rate at \$1.945 (9.3 percent of the severance tax revenues) and levies a surcharge of \$1.38 per ton severed until the surcharge revenue reaches a \$60 million threshold. Beginning July 1 of the fiscal year following the date on which the surcharge revenue

¹⁰ s. 211.3103, F.S.

reaches the \$60 million threshold, the per ton severed tax rate is to be reduced to \$1.51 (6.6 percent of the severance tax revenues). The surcharge revenue is designated for the closure of the Piney Point and Mulberry sites¹¹ and for approved reclamation of non-mandatory lands.

According to the Department of Environmental Protection (DEP), as of November 4, 2009, the surcharge revenues have not reached \$60 million. The DEP suggests that if mining continues at the current rate, the surcharge has a reasonable possibility of hitting \$60 million by June 30, 2010. According to the Department of Revenue, the total surcharge collected as of October 22, 2009, was \$32,752,059.50. It's anticipated that \$60 million will be reached around October, 2010.

Since fiscal year 2004-05, program expenditures have exceeded the Trust Fund revenues.¹² In order to cover the difference, the Trust Fund's cash balance is being depleted. According to the FIPR, the cash balance in the Trust Fund as of September 1, 2009, was \$9,603,489.56.

The bill directs the Phosphate Research Activities Board to monitor the expenditure of funds appropriated to the university from the Phosphate Research Trust Fund and makes the proposed FIPR Executive Director responsible for the expenditure of funds.

b) The bill authorizes the proposed FIPR to expand its mission to include commercial and industrial activity related research. This could create positive fiscal impacts on the private sector and state and local governments.

c) The bill authorizes the proposed FIPR to enter into contracts in carrying out the activities specified in this section and to secure funding from grants and other available sources for such activities. These methods could lead to developments that may create positive fiscal impacts on the private sector and state and local governments.

d) The bill authorizes the proposed FIPR to provide consulting services, hold public hearings, provide related scientific education to the public, and establish public-private partnerships. These practices could lead to developments that may create positive fiscal impacts on the private sector and state and local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

¹¹ Mulberry Phosphates in Polk County and Piney Point in Manatee County are both former phosphate fertilizer chemical processing plants that closed in December 1999. Each site contains a process water problem associated with phosphogypsum stacks. Phosphogypsum is the radioactive byproduct of phosphate production, thus, the water used in the process can be harmful to the environment and costly in the industrial and reclamation process.

¹² Florida Senate Interim Report 2009-316, The Florida Institute of Phosphate Research, October, 2008.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 3, 2010, the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment to this bill. The amendment:

- Changes the statute number, relocating the section;
- Rewords the bill for clarification purposes;
- Changes the name of the existing institute to the Florida Institute of Phosphate Research and Industrial Activities and establishes it within the University of South Florida Polytechnic;
- Provides for a type two transfer of the Florida Institute of Phosphate Research to the new proposed institute;
- Revises the criteria for the appointment of members to the board overseeing the Institute;
- Provides for an executive director to administer the activities of the Institute;
- Clarifies the duties and authority of the Institute; and
- Makes conforming changes.

On March 10, 2010, the State Universities and Private Colleges Appropriations Committee adopted a strike-all amendment to this bill. The amendment:

- Changes the name from Florida Institute for Industrial and Phosphate Research to Florida Industrial and Phosphate Research Institute;
- Requires that FIPR's study of phosphatic clay be an ongoing duty instead of just a one-time study; and
- Revises the membership and criteria for the appointment of members to the board overseeing the Institute.

On March 17, 2010, the General Government Policy Council adopted an amendment to CS/CS/HB 149. The amendment changed the effective date from July 1, 2010, to upon becoming law.