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Title XXVIII

NATURAL RESOURCES; CONSERVATION,
RECLAMATION, AND USE

Chapter 378

LAND RECLAMATION

CHAPTER 378
LAND RECLAMATION

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PART I

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378.021 Master reclamation plan.—

(1) The Department of Environmental Protection shall amend the master reclamation plan that provides guidelines for the reclamation of lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211. In amending the master reclamation plan, the Department of Environmental Protection shall continue to conduct an onsite evaluation of all lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211. The master reclamation plan when amended by the Department of Environmental Protection shall be consistent with local government plans prepared pursuant to the Community Planning Act.

(2) The amended master reclamation plan shall identify which of the lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, meet the following criteria:

(a) The quality of surface waters leaving the land does not meet applicable water quality standards, if any; or, health and safety hazards exist on the land; or, the soil has not stabilized and revegetated; or, the remaining natural resources associated with the land are not being conserved;

(b) The environmental or economic utility or aesthetic value of the land would not naturally return within a reasonable time, and reclamation would substantially promote the environmental or economic utility or the aesthetic value of the land;

(c) The reclamation of the land is in the public interest because the reclamation, when combined with other reclamation under the master plan, would provide a substantial regional benefit; and

(d) The reclamation of the land is in the public interest because the reclamation, when combined with other reclamation under the master plan, will provide significant benefits to surface water bodies supplying water for environmental and public purposes in those areas of the state where phosphate mining has been permitted.

(3) Lands evaluated by the department under subsection (1) which meet the criteria set forth in subsection (2) shall be identified with specificity in the master reclamation plan. Lands evaluated by the department under subsection (1) which do not meet the criteria set forth in subsection (2) shall also be identified with specificity in the master reclamation plan as lands which are acceptable in their present form.

(4) Upon adoption of the amendments to the master reclamation plan as a rule, such plan shall provide the guidelines for approval of reclamation programs for lands covered in the plan, recognizing that reclamation of such lands is not mandatory, but that any payment of costs expended for reclamation paid under s. 378.031 shall be contingent upon conformity with the guidelines set forth in the master reclamation plan.

History.—s. 4, ch. 78-136; s. 32, ch. 85-55; s. 2, ch. 2003-423; s. 38, ch. 2009-21; s. 52, ch. 2011-139.

378.031 Reclamation or acquisition of nonmandatory lands; legislative intent.— It is the intent of the Legislature to provide an economic incentive to encourage the reclamation of the maximum number of acres of eligible nonmandatory lands in the most timely and efficient manner or the donation or purchase of nonmandatory lands, especially those lands for which reclamation activities will result in significant improvements to surface water bodies of regional importance in those areas of the state where phosphate mining has been permitted. The Legislature recognizes that certain lands mined or disturbed prior to July 1, 1975, have been naturally reclaimed.

History.—s. 5, ch. 78-136; s. 3, ch. 82-184; s. 1, ch. 83-23; s. 31, ch. 83-216; s. 17, ch. 83-339; s. 1, ch. 84-330; s. 3, ch. 2003-423.

378.032 Definitions.— As used in ss. 378.032-378.038, the term:

(1) “Approved reclamation program” means a reclamation program which has been approved by the Secretary of Environmental Protection.

(2) “Clay settling area” for purposes of the reimbursement provisions of s. 378.037 means an area completely enclosed by an earthen dam and used for waste clay disposal.

(3) “Committee” means the Nonmandatory Land Reclamation Committee.

(4) “Department” means the Department of Environmental Protection.

(5) “Eligible lands” means those lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, and included as eligible lands in the master reclamation plan adopted pursuant to s. 378.021.

(6) “Master reclamation plan” means the standards, criteria, and guidelines for nonmandatory land reclamation adopted pursuant to s. 378.021 and contained in chapter 16C-17, Florida Administrative Code.

(7) “Mined-out area” for purposes of the reimbursement provisions of s. 378.037 means all eligible lands other than clay settling areas.

(8) “Nonmandatory lands” means those lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under s. 211.32(1). However, such lands which are put into use as a clay settling area, or a dam for use with a clay settling area, after July 1, 1984, shall be subject to the reclamation provisions of s. 211.32(1).

(9) “Reclamation contract” means the agreement entered into between the department and an applicant to implement the applicant’s approved reclamation program.

(10) “Reclamation program application” means any application for reclamation, donation, or acquisition.

(11) “Year” means the fiscal year of the state.

History.—s. 2, ch. 84-330; s. 315, ch. 94-356.

378.033 Nonmandatory Land Reclamation Committee; creation; composition.—

(1) The Nonmandatory Land Reclamation Committee is created within the department to serve as an advisory body on matters relating to nonmandatory land reclamation. The committee shall be composed of five members appointed by the Governor and confirmed by the Cabinet. In making the appointments, the Governor shall consider the needs of the program for engineering, fiscal, reclamation, and environmental expertises. Three of the committee members shall be selected respectively from Hamilton County, Polk County, and Hillsborough County.

(2)(a) In order to achieve staggered terms, of those members first appointed, two members shall be appointed for terms of 2 years each, and three members shall be appointed for terms of 4 years each. Thereafter, a member of the committee shall serve a 4-year term or until his or her successor is appointed. A member of the committee is eligible for reappointment.

(b) A vacancy on the committee shall be filled for the remainder of the unexpired term in the same manner as the original appointment. A single vacancy on the committee will not impair the right of the remaining members to exercise the powers of the committee.

(3) The members of the committee shall select a chair, whose office shall rotate among the members of the committee annually.

(4) The committee shall meet at least annually at the call of the chair. The presence of four members is required to constitute a quorum; a vote of three members is necessary for committee action.

(5) Committee members shall serve without pay. However, members shall be reimbursed from the Nonmandatory Land Reclamation Trust Fund for per diem and travel expenses pursuant to ss. 20.05 and 112.061.

History.—ss. 3, 11, ch. 84-330; ss. 2, 3, ch. 85-65; s. 5, ch. 91-429; s. 316, ch. 94-356; s. 1023, ch. 95-148.

378.034 Submission of a reclamation program request; procedures.—

(1) The department shall establish by rule procedures for a nonbinding preapplication review to assist a landowner in submitting a reclamation program request.

(2) Landowners shall reclaim all nonmandatory lands which were put into use as clay settling areas after July 1, 1975, and on or before July 1, 1984, under the nonmandatory land reclamation program, pursuant to the provisions of this act. A landowner shall submit a reclamation program application within 180 days after the land ceases to be used as a clay settling area. The requirements of this subsection are expressly contingent upon the availability of sufficient funds in the Nonmandatory Land Reclamation Trust Fund established pursuant to s. 211.3103.

(3)(a) Landowners shall submit reclamation program applications to the department by November 1 of each year for funding consideration during the following year.

(b) Each reclamation program application shall include a timetable for completion of the program and a completion date.

(4) The department staff shall review each reclamation program application to determine whether it complies with the standards and criteria for a reclamation program or for land acquisition and to determine its consistency with the master reclamation plan.

(5)(a) The department staff shall, by February 1 of each year, present to the committee for its consideration those reclamation program applications received by the preceding November 1.

(b) The department staff shall recommend an order of priority for the reclamation program applications that is consistent with subsection (6).

(c) The recommendation of the department staff shall include an estimate of the cost of each reclamation program or land acquisition.

(6) The committee shall recommend approval, modification, or denial of the reclamation program applications, associated cost estimates, and the department staff's recommended prioritized list. Recommendations on the order of priority shall be based, among other criteria, on the following criteria; however, the committee may give greater weight to one or more of the criteria depending on the overall needs of the nonmandatory land reclamation program:

(a) Whether health and safety hazards exist; and, if so, such hazards shall be given the greatest weight;

(b) Whether the economic or environmental utility or the aesthetic value of the land will return naturally within a reasonable period of time;

- (c) Whether there is a reasonable geographic and applicant diversity in light of previously awarded reclamation contracts, reclamation program applications before the committee, and the remaining eligible lands;
- (d) Whether reclamation is in the public interest;
- (e) Whether the land has been naturally reclaimed or is eligible for acquisition by the state for hunting, fishing, or other outdoor recreation purposes or for wildlife preservation;
- (f) Whether the land is to be reclaimed for agricultural use and the applicant has agreed to maintain the land in agricultural use for at least 5 years after the completion of the reclamation;
- (g) Whether the program, alone or in conjunction with other reclamation programs, will provide a substantial regional benefit;
- (h) Whether the program, alone or in conjunction with other reclamation programs, will benefit regional drainage patterns;
 - (i) Whether the land is publicly owned and will be reclaimed for public purposes;
 - (j) Whether the program includes a donation or agreement to sell a portion of the program application area to the state for outdoor recreational or wildlife habitat protection purposes;
 - (k) Whether the program is cost-effective in achieving the goals of the nonmandatory land reclamation program; and
 - (l) Whether the program will reclaim lands described in subsection (2).
- (7) The prioritized list approved by the committee may contain more reclamation program applications than there are funds available during the year.
- (8) Each year, 15 percent of the funds available for approved reclamation contracts, as set forth in subsection (7), shall be reserved for reclamation programs which are submitted by applicants other than corporations primarily engaged in the mining or processing of phosphate ores to create lands to be actively used for agricultural activities. In the event that, in any given year, there are insufficient applicants that meet the department criteria for approval to use the funds reserved under this subsection, the remaining moneys may be made available to other applicants.
- (9) The committee recommendations shall be submitted to the secretary by April 1 of each year for final agency action by June 1 of that year. The secretary shall approve, in whole or in part, the list of reclamation program applications in the order of priority in which the applications are presented.
- (10) Any approved reclamation program application that was not funded shall, at the request of the applicant, be considered by the committee at its next meeting called for that purpose, together with other reclamation program applications received by November 1 of the next year.
- (11)(a) After receiving the approval of the secretary, the department shall offer a reclamation contract to an applicant within 30 days after the applicant's reclamation program has been approved. The contracts shall be offered to the applicants in their approved order on the priority list to the extent funds are available. Each applicant shall have 30 days in which to execute a reclamation contract. If the contract is not executed within 30 days, the application shall be dropped from the approved list for the current year.
 - (b) Reclamation contracts may not be signed and available funds may not be committed after June 30 of the year in which a reclamation program application is approved by the secretary.
 - (c) The amount of reimbursement for reclamation activities allowed in the contract shall be a grant of money equal to the estimated cost of the program as approved by the secretary. In no event, however, shall the grant amount exceed the maximum amounts specified in s. 378.037(1)(b).
 - (d) After receiving the approval of the Governor and Cabinet, each reclamation program application for the acquisition of land shall be transferred to the Division of State Lands, which shall acquire the lands in compliance with the acquisition procedures of s. 253.025.
- (12) The department shall require by rule that owners of eligible properties who intend to seek approval of a reclamation program submit, not later than December 31, 1993, a notice of intent to file an application for approval, indicating the date upon which the application will be filed.

History.—s. 4, ch. 84-330; s. 5, ch. 86-294; s. 7, ch. 87-96; s. 5, ch. 91-305; s. 4, ch. 91-420; s. 317, ch. 94-356; s. 45, ch. 2005-2.

378.035 Department responsibilities and duties with respect to Nonmandatory Land Reclamation Trust Fund.—

(1) The department shall administer the Nonmandatory Land Reclamation Trust Fund.

(2)(a) The department shall verify that reclamation activities or portions thereof have been accomplished in accordance with the reclamation contract and shall certify the cost of such reclamation activities to the Chief Financial Officer for reimbursement.

(b) Beginning in 1985, the department shall determine the maximum dollar amount a landowner may be reimbursed per reclaimed acre under an approved reclamation program.

(c) Nothing in this act precludes a landowner from performing the reclamation pursuant to the approved reclamation program, provided the landowner complies with the provisions of this act.

(3) If an applicant who has signed a reclamation contract abandons the reclamation program prior to substantial completion of the program, the department may spend the remaining balance of funds not expended under the contract to complete the program.

(a) The contract amount and any amounts spent by the department in excess of the remaining balance of the funds under the contract become a lien upon the property, enforceable pursuant to chapter 85. The moneys received as a result of a lien foreclosure or as repayment shall be deposited into the trust fund.

(b) If the land acquired pursuant to the lien foreclosure has recreational or wildlife value, the department may retain ownership as with other property acquired pursuant to s. 378.036. If the department sells the property, the department shall deposit the proceeds of the sale into the trust fund.

(4) Interest on moneys deposited in the Nonmandatory Land Reclamation Trust Fund shall accrue to that fund.

(5) Funds within the Nonmandatory Land Reclamation Trust Fund are also authorized for use by the department for the following purposes:

(a) To reclaim lands disturbed by the severance of phosphate rock on or after July 1, 1975, in the event that a mining company ceases mining and the associated reclamation prior to all lands disturbed by the operation being reclaimed. Moneys expended by the department to accomplish reclamation pursuant to this subsection shall become a lien upon the property enforceable pursuant to chapter 85. The moneys received as a result of a lien foreclosure or as repayment shall be deposited into the trust fund. In the event the money received as a result of lien foreclosure or repayment is less than the amount expended for reclamation, the department shall use all means available to recover, for the use of the fund, the difference from the affected parties. Paragraph (3)(b) shall apply to lands acquired as a result of a lien foreclosure.

(b) For the abatement of an imminent hazard as provided by s. 403.4154(3) and for the purpose of closing an abandoned phosphogypsum stack system and carrying out postclosure care as provided by s. 403.4154(5).

(c) For the purpose of funding basic management or protection of reclaimed, restored, or preserved phosphate lands:

1. Which have wildlife habitat value as determined by the Bureau of Mine Reclamation;
2. Which have been transferred by the landowner to a public agency or a private, nonprofit land conservation and management entity in fee simple, or which have been made subject to a conservation easement pursuant to s. 704.06; and
3. For which other management funding options are not available.

These funds may, after the basic management or protection has been assured for all such lands, be combined with other available funds to provide a higher level of management for such lands.

(d) For the sole purpose of funding the department's implementation of:

1. The NPDES permitting program authorized by s. 403.0885, as it applies to phosphate mining and beneficiation facilities, phosphate fertilizer production facilities, and phosphate loading and handling facilities;
2. The regulation of dams in accordance with department rule 62-672, Florida Administrative Code; and
3. The phosphogypsum management program pursuant to s. 403.4154 and department rule 62-673, Florida Administrative Code.

(6) Should the nonmandatory land reclamation program encumber all the funds in the Nonmandatory Land Reclamation Trust Fund except those reserved by subsection (5) prior to funding all the reclamation applications for

eligible parcels, the funds reserved by subsection (5) shall be available to the program to the extent required to complete the reclamation of all eligible parcels for which the department has received applications.

(7) The department may not accept any applications for nonmandatory land reclamation programs after January 1, 2005.

(8) The Bureau of Mine Reclamation shall review the sufficiency of the Nonmandatory Land Reclamation Trust Fund to support the stated objectives and report to the secretary annually with recommendations as appropriate.

History.—s. 5, ch. 84-330; s. 6, ch. 97-222; s. 1, ch. 2001-134; s. 401, ch. 2003-261; s. 51, ch. 2003-399; s. 4, ch. 2003-423; s. 46, ch. 2005-2; s. 27, ch. 2005-3.

378.036 Land acquisitions financed by Nonmandatory Land Reclamation Trust Fund moneys. —

(1) After July 1, 1986, moneys paid into the Nonmandatory Land Reclamation Trust Fund may be used by the department:

(a) For acquisition of those lands identified pursuant to subsection (5) for hunting, fishing, wildlife habitat restoration, or other outdoor recreational purposes, including the construction of trails, provided such land acquisition is consistent with this section; or

(b) For acquisition and reclamation of those lands which will serve the public interest because of the exceptional need to accomplish the particular reclamation and restoration if the owner is unable or unwilling to restore or reclaim the land in accordance with the master reclamation plan.

(2) The department may purchase an interest in land which is less than a fee interest, so long as the fee will vest in the state upon the occurrence of an event or date.

(3) An amount not to exceed 1 percent of the uncommitted trust fund balance, exclusive of funds available pursuant to s. 378.034(7), at the beginning of the fiscal year may be used by the designated manager of lands acquired by the state pursuant to this section for management purposes and for reclamation of such lands.

(4) Lands acquired under paragraph (1)(b) may be reclaimed by the department pursuant to this act. If the lands are not needed for a public purpose, the lands shall be sold at public sale for a price which is not less than the amounts expended for purchase and reclamation. The moneys received from the sale shall be deposited into the Nonmandatory Land Reclamation Trust Fund.

(5) By July 1, 1986, the department, in cooperation with the Fish and Wildlife Conservation Commission, shall develop a list identifying those nonmandatory lands which have been or may be naturally reclaimed or which the state may seek to acquire through purchase or donation for hunting, fishing, wildlife habitat restoration, or other outdoor recreational purposes, including the construction of trails. The list shall separately indicate which of the nonmandatory lands are eligible lands.

History.—s. 6, ch. 84-330; s. 318, ch. 94-356; s. 198, ch. 99-245; s. 3, ch. 2000-176; s. 5, ch. 2003-423; s. 13, ch. 2005-87.

378.037 Chief Financial Officer; responsibilities and duties with respect to reimbursement of reclamation costs.

(1) The Chief Financial Officer shall reimburse approved reclamation costs, less any amount reasonably retained to ensure completion of the approved reclamation program, subject to the following limitations:

(a) A landowner shall not be entitled to payments in excess of the funds available in the Nonmandatory Land Reclamation Trust Fund.

(b) Cost reimbursement shall not exceed the least of:

1. The amount actually expended and reasonably necessary to effect the reclamation consistent with the standards of the approved master reclamation plan;

2. The reclamation contract amount; or

3. The amount allowed based on prereclamation land form, to include mined-out areas at \$4,000 per reclaimed acre and clay settling areas and other land forms at \$2,500 per reclaimed acre adjusted annually by the appropriate inflationary index for construction.

(2) The Chief Financial Officer shall adopt rules to implement the payment provisions of the master reclamation plan and this section, including, but not limited to, periodic reimbursements and competitive procurement of services

and commodities to the extent practicable, unless a landowner elects to utilize his or her own personnel and equipment. The landowner may select a method of reimbursement from the alternatives adopted by the Chief Financial Officer.

History.—s. 7, ch. 84-330; s. 637, ch. 95-148; s. 402, ch. 2003-261.

378.038 Rulemaking.— The department shall adopt reasonable rules which recognize the cost reimbursement limitations of s. 378.037(1)(b) to implement the provisions of this act, including, but not limited to, size requirements for areas which are the subject of a reclamation program application, an appropriate inflationary index for construction, time limits for completing the approved reclamation, minimum standards and criteria for reclamation, and procedures to ensure that the trust fund is managed in accordance with good accounting principles and the provisions of this chapter.

History.—s. 8, ch. 84-330.

PART II

PHOSPHATE LAND RECLAMATION

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378.201 Short title.— This part may be cited as the “Phosphate Land Reclamation Act.”

History.—s. 1, ch. 86-294.

378.202 Legislative intent.— The Legislature finds that:

(1) Florida is endowed with varied natural resources that provide recreational, environmental, and economic benefit to the people of this state. The extraction of phosphate is important to the continued economic well-being of the state and to the needs of society. While it is not possible to extract minerals without disturbing the surface areas and producing waste materials, mining is a temporary land use. Therefore, it is the intent of the Legislature that mined lands be reclaimed to a beneficial use in a timely manner and in a manner which recognizes the diversity among mines, mining operations, and types of lands which are mined.

(2) The rules developed by the department for the regulation of mandatory land reclamation should be consistent with the goals of the state to simplify and coordinate regulation. The department shall enter into memoranda of understanding to eliminate duplication, to simplify the processing of reclamation applications, and to maximize the effectiveness of the regulatory process.

History.—s. 1, ch. 86-294.

378.203 Definitions.— As used in this part, the term:

(1) “Acres mined” means all acres on which mining operations have resulted in extraction of phosphate rock.

(2) “Annual report” means a detailed report, including maps and aerial photographs, submitted for each mine, which describes and delineates mining operations and reclamation or restoration activities undertaken in the previous calendar year.

(3) “Conceptual reclamation plan” means a graphic and written description of general activities to be undertaken across the whole mine to comply with the reclamation standards and criteria contained in this part.

(4) “Department” means the Department of Environmental Protection.