

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 663 Solid Waste Management Facilities

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee and Agriculture & Natural Resources Subcommittee and Goodson

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 738

| REFERENCE  | ACTION           | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|----------|--|
| 1) Agriculture & Natural Resources Subcommittee                | 15 Y, 0 N, As CS | Deslatte | Blalock                                  |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | 12 Y, 0 N, As CS | Helpling | Massengale                               |
| 3) State Affairs Committee                                     | 15 Y, 0 N        | Deslatte | Hamby                                    |

### SUMMARY ANALYSIS

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP). Current law also provides that permits are not required for certain solid waste disposal activities if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders. Currently, the DEP's rules limit a permit's duration to 5 years, except for certain long-term care permits for closed facilities that may last up to 10 years.

The bill specifies that a permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility must be prorated to the permit term authorized under this section of law. These provisions apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

The bill also specifies that a permit, including a general permit, but not including a registration, issued to a solid waste management facility that does not have a leachate control system must be renewed for 10 years, unless the applicant requests a shorter term, if certain conditions are met.

The bill creates a solid waste landfill closure account, within the Solid Waste Management Trust Fund. The bill specifies that the DEP may use the funds to contract with a third party to provide funding for the closing and long-term care of solid waste management facilities if certain requirements are met, including written documentation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility. Funds received as reimbursement from the insurance company by the DEP must be deposited into the solid waste landfill closure account.

Lastly, the bill states that the DEP must, by rule, require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and that is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

The bill may have an insignificant negative fiscal impact to state government for rulemaking. The bill provides a \$2.9 million appropriation in nonrecurring funds so the DEP can pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement. The bill appears to have an indeterminate positive fiscal impact on local governments over the long term. (See Fiscal Analysis section.)

The effective date for the bill is July 1, 2012, except for the appropriation, which takes effect upon the act becoming a law.

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

STORAGE NAME: h0663f.SAC

DATE: 2/8/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Solid Waste Management Facility Permits**

403.707(1), F.S., specifies that a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP). Currently the DEP's rules limit permit duration to 5 years, except certain long-term care permits for closed facilities may last up to 10 years.

Section 403.707(2), F.S., specifies that a permit is not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rental property, or property subject to a homeowner or maintenance association assessment, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP under chapter 403, F.S., or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.
- Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.
- Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning and state or federal ambient air quality standards are not violated.
- The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and does not affect a person's responsibility to dispose of clean debris appropriately if it is not to be used as fill material.
- Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

##### **Solid Waste Management Trust Fund**

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues deposited into the trust fund are used for the following activities:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 11 percent to Department of Agriculture and Consumer Services for mosquito control.

- A minimum of 40 percent for funding a competitive and innovative grant program relating to recycling and reducing the volume of municipal solid waste, including waste tires requiring final disposal.

## **Financial Assurance**

Section 403.704(9), F.S., requires the Department of Environmental Protection (DEP) to develop rules to require closure of solid waste management facilities. The rules currently require that all disposal facilities close within 6 months after they cease receiving waste by properly sloping the sides, covering the waste with 2 feet of dirt and in some cases a barrier layer, vegetating the dirt, and establishing a storm water system.<sup>1</sup> The rules also require that disposal facilities perform long-term care for between 5 and 30 years, which includes monitoring ground water and gas, maintaining the final cover, and maintaining the storm water system.<sup>2</sup>

Section 403.7125, F.S., requires that landfills provide financial assurance to cover closure costs. Section 403.707(9)(c), F.S., makes this requirement applicable to construction and demolition debris disposal facilities. Both sections allow the DEP to specify allowable financial mechanisms, but neither specifically requires that insurance be allowed. The DEP authorizes the use of insurance policies for financial assurance in rule 62-701.630, Florida Administrative Code. According to the DEP, this option is often selected because it is more cost-effective than other financial assurance mechanisms such as bonds or letters of credit.

The DEP has identified seven facilities that currently use insurance for their financial assurance that have been abandoned or were ordered closed, and pose or are expected to pose an environmental threat if closure is not completed. In all seven cases the owner/operator is a limited liability company that has no assets or is otherwise financially unable to pay for closure costs. The DEP needs a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.<sup>3</sup>

## **Effect of Proposed Changes**

The bill amends s. 403.707, F.S., to specify that a permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility must be prorated to the permit term authorized under this section of law. These provisions apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

The bill also specifies that a permit, including a general permit, but not including registration, issued to a solid waste management facility that does not have a leachate control system must be renewed for 10 years, unless the applicant requests a shorter term. The following conditions must be met:

- The applicant has conducted the activity at the same site for at least 4 years and 6 months before the permit application is received.
- At the time of applying for the renewal permit:
  1. The applicant is not subject to a notice of violation, consent order, or administrative order issued by the DEP for violation of an applicable law or rule
  2. The DEP has not notified the applicant that it is required to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or the applicant is completing corrective actions in accordance with applicable DEP rules.

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<sup>1</sup> Rule 62-701.600, Florida Administrative Code

<sup>2</sup> Rule 62-701.620, Florida Administrative Code

<sup>3</sup> January 23, 2012, e-mail on file with Agriculture and Natural Resources Appropriations Subcommittee staff.

3. The applicant must be in compliance with the applicable financial assurance requirements.

The bill authorizes the DEP to adopt rules to administer these provisions. However, the DEP is not required to submit rules to the Environmental Regulation Commission for approval. Permit fee caps for solid waste management facilities must be prorated to reflect the extended permit term.

The bill amends s. 403.709, F.S., to create a solid waste landfill closure account, within the Solid Waste Management Trust Fund. The bill specifies that the DEP may use the funds to contract with a third part to provide funding for the closing and long-term care of solid waste management facilities. This is offered to facilities if:

- The facility had or has a DEP permit to operate the facility.
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate.
- The facility has been deemed to be abandoned or has been ordered to close by the DEP.
- Closure will be accomplished in substantial accordance with a closure plan approved by the DEP.
- The DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility.

Funds received as reimbursement from the insurance company by the DEP must be deposited into the solid waste landfill closure account.

The bill amends s. 403.7125, F.S., to provide that the DEP must require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

The bill provides the DEP an appropriation of \$2,888,460 from the Solid Waste Management Trust Fund to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement. The appropriation is effective upon the bill becoming a law.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 403.707, F.S., relating to the permit term for a solid waste management facility under certain conditions.

Section 2. Amends s. 403.709, F.S., creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to fund the closing and long-term care of solid waste facilities under certain circumstances; requiring that the DEP deposit funds that are reimbursed into the solid waste landfill closure account.

Section 3. Amends s. 403.7125, F.S., relating financial assurance requirements for the cost of completing corrective action for violations of water quality standards.

Section 4. Provides an appropriation.

Section 5. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The DEP will be required to adopt rules to implement the changes in permit duration and fees. This will require minor expenditures for publication of rulemaking notices.

Extending the length of some solid waste permits to 10 years and 20 years may, in the long run, result in reductions in the amount of time dedicated to permit review, and thus, a reduction in expenditures.

The creation of a solid waste landfill closure account requires that the DEP be appropriated budget authority from the Solid Waste Management Trust Fund (SWMTF) to pay third party contractors to perform closure and long-term care activities, if necessary.<sup>4</sup> The DEP expects that the insurance company insuring landfill closure will either pay the third party directly (in which case no state would actually be used) or will reimburse the DEP for any payments the DEP makes to the third party. DEP rules currently require the insurance company to reimburse closure and long-term care costs upon direction by the DEP,<sup>5</sup> and thus, the department will make every effort to require the insurer pay the contractors for work directly and avoid use of cash from the SWMTF.<sup>6</sup>

The bill provides the DEP an appropriation of \$2,888,460 from the Solid Waste Management Trust Fund to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement. The appropriation is effective upon the bill becoming law.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

Local governments that operate solid waste management facilities and opt for longer-term permits would see permit fees increased. For example, a Class I landfill operation permit fee is currently \$10,000 for a 5-year permit; if the bill becomes law, the permit fee will increase to a maximum of \$40,000 for a 20-year permit. However, the permit would not have to be renewed for 20 years, that is, the total amount of permit fees would be the same while there would be a 4-fold drop in costs associated with filing renewal applications. In the long run, such local governments should see significant cost savings. If the local government elects to continue to renew permits on a 5-year cycle, permit fees would not increase.

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

#### Direct Private Sector Costs:

Owners and operators of solid waste management facilities with a leachate control system that opt for longer-term permits will see a significant increase in permit fees in the near future. However, the permit would not have to be renewed for 20 years, that is, the total amount of permit fees would be the same, while there would be a 4-fold drop in the costs associated with filing renewal applications. Similarly, owners and operators of solid waste management facilities without a leachate control system that opt for

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<sup>4</sup> *Id.*

<sup>5</sup> Rule 62-701.630, Florida Administrative Code

<sup>6</sup> January 23, 2012, e-mail on file with the Agriculture and Natural Resources Appropriations Subcommittee staff.

longer-term permits will see a significant increase in permit fees in the near future. However, the permit would not have to be renewed for 10 years, that is, the total amount of permit fees would be the same, while there would be a 2-fold drop in costs associated with filing renewal applications. If the owners and operators elect to continue to renew permits on a 5-year cycle, permit fees would not increase.

Direct Private Sector Benefits:

Owners and operators of solid waste management facilities that opt for longer-term permits may benefit from the increased predictability such longer permits provide. For example, it may be easier to obtain financing for these projects and operational and design criteria are less likely to need updating and amending as frequently. After 5 years, the cost savings from not having to apply for permit renewals could be significant.

Authorizing the DEP to encumber funds from the Solid Waste Management Trust Fund to close facilities that use insurance policies for financial assurance will have the effect of allowing facilities to benefit from the continued use of insurance under current regulations. Without this authorization, the DEP may remove insurance from the list of available financial assurance mechanisms, or at least modify the rules in ways that will probably make financial assurance costs more expensive.

Authorizing the DEP to require financial assurance for corrective actions assures that the state program will remain approved in accordance with EPA regulations. Without this authorization, there is a chance that EPA could withdraw the state approval resulting in permit applicants having to comply with both state and federal regulations, which could increase the cost of such applications and lead to potential conflict between regulations.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DEP to adopt rules to administer 20-year permits for solid waste management facilities that are designed with a leachate control system and 10-year permits for solid waste management facilities that do not have leachate control systems if the applicant meets certain criteria. However, the DEP is not required to submit the rules to the Environmental Regulation Commission for approval.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 663 as a committee substitute (CS). The CS:

- Authorizes the DEP to issue 10-year permits for solid waste management facilities that do not have a leachate control system, if the applicant meets certain criteria.
- Authorizes the DEP to adopt rules to administer the permits.
- Specifies that the DEP is not required to submit the rules to the Environmental Regulation Commission for approval.
- Creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities; enables the DEP to activate a closure of a facility in compliance with the approved closure plan.
- Specifies that the DEP must require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

On January 31, 2012, the Agriculture & Natural Resources Appropriations Subcommittee adopted two amendments and passed CS/HB 663 as a committee substitute.

The first amendment amends the Solid Waste Management Trust Fund to allow the Department of Environmental Protection to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement.

The second amendment provides an appropriation to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement.

This analysis is drawn to CS/CS HB 663.