

STORAGE NAME: h3701.ep
DATE: March 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3701
RELATING TO: Pollution Control
SPONSOR(S): Representative(s): Fuller, King, Wise and others
COMPANION BILL(S): SB 1390(I) by Senator Horne

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill would prohibit the Department of Environmental Protection (DEP) from permitting any hazardous waste facility within Duval County if such facility:

- emits lethal concentrations of substances the could accumulate at any residence or residential subdivision unless such home or subdivision is served by at least one arterial road or urban minor arterial road that would allow for safe egress;
- is not located within 1,000 yards of the roads described above;
- is located within 1,500 yards of any hospital, prison, school, nursing home facility, day care facility, stadium, place of assembled worship, or any other site were individuals may assemble;
- is located within 1,000 yards of any residence; and
- is located inconsistently with Part IV, Section 403, F.S., (permitting statute)

These permitting requirements would apply to any facility whose permit applications have not been issued or are pending on the effective date of the act.

Additionally the bill creates the presumption that lethal concentrations of substances would occur within a radius of 3 miles of any hazardous waste transfer, disposal, storage, or treatment facility. Lethal concentrations are defined by the bill to those that could cause susceptible or sensitive individuals to experience irreversible or other serious long-lasting effects.

The bill would take effect upon becoming law.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Facilities which treat, store, or dispose of hazardous waste (TSD's) are required to obtain construction and operation permits from the DEP under Part IV, Chapter 403, F.S. The DEP is also delegated authority from the U.S. Environmental Protection Agency (EPA) to implement certain portions of the Resource Conservation and Recovery Act (RCRA), including the permitting of TSD's.

TSD's vary in operation, and can manage different types of hazardous waste based upon the marketing plan of each owner. A TSD can be authorized to store hazardous waste in quantities that, if released, may have a harmful effect on human health and safety to persons at the facility and at some distance from the facility. Historically, scenarios of greatest concern include spills of volatiles, toxic materials, or release of hazardous substances by fire.

There are two general types of TSD's which are required to obtain RCRA permits: centralized TSD's, which receive hazardous waste from other generators; and industries which, by virtue of their operations, trigger permitting thresholds by storing their hazardous waste which is generated on-site.

The DEP, under ss. 403.721 and 403.722, F.S., has express authority to adopt rules governing the location, design, and construction and permitting of hazardous waste facilities. Consideration is to be given to the:

- Reporting, monitoring, and inspection systems being utilized.
- Methods used for the treatment, storage, or disposal of the waste.
- Location, design, and construction of the facilities.
- Contingency plans for the handling of any accidental release.
- Maintenance or operation of the facilities.
- Corrective actions that shall be taken beyond a facilities boundary where necessary to protect human health and the environment.
- Need for additional requirements to ensure the cleanup of wastes.
- Necessity for groundwater monitoring, unsaturated zone monitoring, and corrective action requirements for land disposal facilities.

In addition, to those rules promulgated under statutory authority, the DEP has incorporated by reference EPA rules concerning the siting of these facilities. Specifically, 40 CFR 264.18, limits the siting near certain seismic faults, within a 100 year floodplain, in salt bed formations, or other miscellaneous geologic features.

Currently, the state of Florida, has 95 facilities that qualify as a TSD. Though uncommon, accidental releases have occurred. Within the past three years, there have

been three major incidents, according to information provided by the DEP, at least one of which required some local evacuation.

B. EFFECT OF PROPOSED CHANGES:

The proposed bill would create prohibitions on the siting of new facilities, only within Duval County, which do not meet specific requirements.

The DEP would be prohibited from issuing any permit for the construction of any TSD proposed to be located in the following:

- Areas where lethal concentrations of hazardous substances may accumulate as a result of a worst case catastrophic event at the facility unless such area is served by at least one arterial road or urban minor arterial road that provides safe and direct egress by land to an area of safety. Such road could not be located within 1,000 yards of the facility.
- Within 1,500 yards of a hospital, prison, school, nursing home, day care center, stadium, place of assembled worship, or any other site where individuals are routinely confined or assembled.
- Within 1,000 yards of any residence.
- Areas inconsistent with existing rules of the department under Part IV, Chapter 403, F.S. (DEP's authority to issue permits for TSD's)

The bill establishes a rebuttable presumption as to the distance for which consideration must be given to the egress requirement described above. The bill presumes that lethal concentrations could occur within a 3 mile radius of a TSD under worst case scenarios. Applicants may rebut this by demonstrating that such concentrations could accumulate at a greater or lesser distance due to the composition, quantity, and concentration of the waste being handled.

In addition, the bill defines that a lethal concentration of hazardous substances when concentrations are present that could cause a susceptible or sensitive individual(s) to experience irreversible or other serious, long-lasting effects or impaired ability to escape. This standard is taken from the Emergency Response Planning Guideline drafted by the American Industrial Hygiene Association which is a standard utilized by regulatory agencies for assessing exposure to toxic substances in the event of accidental releases.

The requirements of the bill would apply to any permit applications pending the effective date of the act for which the DEP has not issued a final order or for any facilities that have not commenced operation.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The DEP would be given additional authority for rules governing the siting of TSD's within Duval County.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Part I, Chapter 403, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 403.08701, F.S., to provide requirements for the siting of TSD's within Duval County.

Section 2: Details those facilities for which the act applies.

Section 3: Provides that the act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The cost of siting these facilities, in Duval County, would rise due to the additional siting requirements.

2. Direct Private Sector Benefits:

N/A

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3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

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