

STORAGE NAME: h3701s1z.ep  
DATE: July 20, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

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

**BILL #:** CS/HB 3701

**RELATING TO:** Pollution Control

**SPONSOR(S):** Committee on Environmental Protection and Representative Fuller

**COMPANION BILL(S):** CS/SB 1390(s) by Senator Horne

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

- (1) ENVIRONMENTAL PROTECTION YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

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I. FINAL ACTION STATUS:

On April 13, the House heard CS/HB 3701 and adopted an amendment that provides definitions for the purpose of the act, and clarifies the permit conditions. This amendment provides factors for determining whether an egress is safe and direct in the event of a release of hazardous substances, and directs the Department of Environmental Protection, by rule, to adopt criteria to determine whether a facility has been substantially modified. On April 14, the Act was passed as amended by a vote of 113 to 0. The Senate then substituted CS/HB 3701 for CS/SB 1390 and passed it by a vote of 38 to 0. On May 30, CS/HB 3701 became law without the signature of the Governor, Chapter 98-334, L.O.F.

II. SUMMARY:

The act will prohibit the Department of Environmental Protection (DEP) from permitting any hazardous waste facility, which manages waste generated off-site if such facility:

- emits life-threatening concentrations of substances that 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, and such road is not located within 1,000 yards of the facility. (Factors are provided to determine a safe and direct egress);
- 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 where 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)

Construction and operation of a transfer facility for the management of hazardous waste is prohibited unless the facility meets these siting requirements. Existing transfer facilities that have commenced operation as of the effective date of this act will not be prohibited from operating if the facility is not relocated or if there is no substantial modification after the effective date of this act.

These requirements apply to facilities managing hazardous waste generated off-site. Manufacturers, power generators, or other industrial operations that have received, or apply for a permit or a modification to a permit for the treatment, storage, or disposal of hazardous waste generated only on-site or from other sites owned by the permittee are not affected.

The act will take effect upon becoming law.

III. 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. Some TSD's store quantities sufficient enough that if an accidental release were to occur persons living near the facility and workers on-site may be exposed to life-threatening conditions. 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 act will create prohibitions on the siting of facilities that manage or receive hazardous wastes generated off-site, including those that operate as a transfer facility, 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 life-threatening concentrations of hazardous substances may accumulate as a result of a 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.

To determine whether the egress proposed is safe and direct, the following factors are to be considered:

- natural barriers such as water bodies, and whether any road in the proposed evacuation route is impaired by a natural barrier;
  - potential exposure during egress and potential increases in the duration of exposure;
  - whether any road in a proposed evacuation route passes in close proximity to the facility; and,
  - whether any portion of the evacuation route is inherently directed toward 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)

All distances are to be measured from the outer limit of the active hazardous waste management area.

Construction and operation of a transfer facility for the management of hazardous waste is prohibited unless the facility meets these siting requirements. Existing transfer facilities that have commenced operation as of the effective date of this act will not be prohibited from operating if the facility is not relocated or if there is no substantial modification after the effective date of this act.

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These requirements apply to facilities managing hazardous waste generated off-site. Manufacturers, power generators, or other industrial operations that have received, or apply for a permit or a modification to a permit for the treatment, storage, or disposal of hazardous waste generated only on-site or from other sites owned by the permittee are not affected.

The act establishes a rebuttable presumption as to the distance for which consideration must be given to the egress requirement described above. The act presumes that life-threatening concentrations could occur within a 3 mile radius of a TSD under catastrophic event 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. Applicants would also be granted the authority to use demonstration methods described in Program 3 of the federal Accidental Release Prevention Program.

In addition, the act defines a "life-threatening" concentration of hazardous substances to be that level 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.

Substantial modification includes any physical change in, change in the operations of, or addition to a facility which could increase the potential off-site impact, or risk of impact, from a release at that facility. This does not include a change in operations, structures or permit conditions which does not substantially increase either the potential impact from, or the risk of a release. The DEP is to adopt criteria, by rule, to determine whether a facility has been substantially modified.

Initial operation means the initial commencement of operations at the facility.

#### 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 to promulgate rules governing the siting of TSD's. DEP is also given the authority to adopt rules determining when a facility has been substantially modified.

- (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 IV, Chapter 403, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 403.7211, F.S., to provide requirements for the siting of TSD's.

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

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

IV. 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 would rise due to the additional siting requirements.

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A



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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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

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

VI. COMMENTS:

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 12, 1998, the Committee on Environmental Protection considered and passed the bill as a committee substitute. One amendment was offered and approved. This strike everything amendment:

- Expanded the applicability of the bill's provisions from Duval County to the statewide.
- Provided an exemption for those privately owned or local government facilities that treat or store hazardous waste at off-site facilities they own or may acquire.
- Changed the terms "lethal concentrations" to "life-threatening concentrations" and "worst case catastrophic event" to "catastrophic event." These changes are to conform the bill to standard terminology used in the regulation of these facilities.
- Provided definitions for "substantial modification" and "initial operation."
- Allows facilities to demonstrate the rebuttable presumption using practices approved under current federal regulations.

VIII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Wayne S. Kiger

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**FINAL RESEARCH PREPARED BY COMMITTEE ON ENVIRONMENTAL PROTECTION:**

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