

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 Construction and Demolition Debris Recycling
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Pugh	Miller
2) Environmental Regulation Committee			
3) State Infrastructure Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

Construction and demolition (C&D) debris is generally defined as waste material that is produced in the process of construction, renovation, or demolition of structures. Concrete and wood are among the most common components of C&D debris. According to a 2000 report by the state Department of Environmental Protection (DEP), C& D debris accounted for a third of all solid waste generated in Florida in 1998, and about a third of all recycled materials. However, C&D debris is not defined in Florida Statutes as a recoverable material, which for all practical purposes, limits its recyclable use.

HB 1031 adds concrete and wood to the list of products defined as "recovered materials. The bill also reinforces that by classifying concrete and wood collected and transported directly to a DEP permitted waste processing facility for the purpose of recycling as "recovered materials." These changes to chapter 403, F.S., are intended to increase efforts to recycle these materials. But the changes also mean that local governments may lose the ability to enter into exclusive franchise agreements for the collection, transportation, and processing of concrete and wood, among other recyclable materials.

Concerns have been raised about whether HB 1031 violates the Contract Clause of the U.S. Constitution, which generally prohibits state laws from impairing contracts. Case law recognizes that not all such contractual impairments are illegal, particularly if a change in state law is a continuation of existing state regulation.

The bill has no fiscal impact to the state. It would take effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: HB 1031 may reduce some of DEP's regulation over C& D debris, if it is redefined as "recovered material" and thus not municipal solid waste, which has stricter state standards for disposal.

Ensure lower taxes: HB 1031 may create greater competition among solid-waste haulers in some communities, which could result in lower fees for consumers.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Section 403.703(17), F.S. defines "construction and demolition debris" as:

"...discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris. The term also includes:

- (a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- (b) Except as provided in s. 403.707(12)(j), unpainted, nontreated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted, nontreated wood pallets provided the wood scraps and pallets are separated from other solid waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other solid waste; and
- (c) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry."

According to report prepared by DEP in 2001¹, Florida generated about 29 million tons of solid waste in 1998, and an estimated 9.4 million tons (or 33 percent) could be classified as C&D debris. Of that 9.4 million tons of C&D debris, about 3.3 million tons (or 36 percent) was recycled; the majority was concrete debris, used as fill at construction sites, mixed with aggregate to make new concrete, mixed with asphalt for road construction, or as drainage material.

The Environmental Protection Agency reports that Florida has one-seventh of all the C&D landfills in the nation, due to relatively low disposal fees and the state's high rate of development. According to DEP, Florida has 94 active C&D disposal facilities, and 82 active facilities that accept land-clearing debris only. There are five registered C&D recycling facilities, but there are several other multi-purpose facilities and transfer stations that also engage in some C&D recycling, as specified in their permits. The C& D materials recovery facilities are inspected three times a year.

¹ C&D Debris Recycling Study: Final Report. 2001. Available at http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/candd/CD%20report%205-8.pdf

C&D materials that are not recycled can be disposed of in Class III landfills, which accept waste that does not leach into the groundwater. These landfills typically are not lined, but according to s. 403.707(12), F.S., must implement a groundwater monitoring system adequate to detect any possible contamination to groundwater. The owners of these landfills must maintain a proper training program for their operators, maintain records, and provide financial assurances.

Since the 1980s, Florida has promoted recycling as a way to reduce the amount of valuable land being used as landfills, to reduce groundwater contamination, and to promote a sustainable environment. Section 403.706, F.S., requires counties and cities to reduce by at least 30 percent the amount of solid waste they generate. Newsprint, aluminum and steel cans, glass, plastic bottles, cardboard, office paper, and yard trash are the waste materials listed for recycling credits. Recycling of C&D debris is not factored into the 30-percent reduction.

The state also regulates certain aspects of local governments' management of solid-waste hauling and disposal operations. Section 403.7046, F.S., for example, limits a local government's ability to regulate the collection of recovered material. It prohibits a local government from requiring a commercial generator of recovered materials to send those materials to any specific facility; instead, the generator may send them to any properly certified recovered materials dealer. The statute also prohibits a local government from requiring an exclusive franchise for the collection of commercially generated recovered materials.

There are no prohibitions against local governments entering into exclusive franchises with companies to collect, transport, and dispose of household garbage and other types of solid waste. Depending on the franchise terms, this solid waste is disposed of at the county- or city-owned landfill, or at landfills owned by the hauler or another private entity.

C&D haulers and recyclers have expressed concerns about C&D debris' exclusion as recoverable materials. More than two-thirds of the concrete and trash wood generated by construction projects clearly have recycling value, yet are being disposed of in landfills, which is a waste of money, landfill space, and existing natural resources, they claim. Also, because these materials are not defined as "recovered materials" they are part of a solid-waste stream monopolized by long-term franchised haulers.

Effect of Proposed Changes

HB 1031 would:

- o Add concrete and wood to the definition of "recovered materials" in s. 403.703, F.S.
- o Amend s. 403.7046(3), F.S., by specifying that for the purposes of this subsection, C&D debris collected and transported directly to a permitted waste processing facility for recycling is considered "recovered material." Any person or entity handling these materials pursuant to a DEP permit or other authorization would be considered certified. Not affected by these changes is a local government's authority to require that recovered materials generated at a commercial establishment be separated by source on the premises, and its authority to charge a registration fee that is no greater than the cost incurred to run the registration program.

As written, HB 1031 requires that the collection, transportation, and disposal of concrete and wood (and other C&D debris) be treated the same way as that of other recovered materials. It would prevent a local government from:

- o requiring a commercial establishment that generates source-separated C&D debris to sell or otherwise convey its materials to the local government or to a facility designated by the local government;
- o restricting that generator's right to sell or otherwise convey the C&D materials to any properly permitted waste processing facility for the purpose of recycling;
- o enacting any ordinance that prevents such a waste processing facility from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated C&D debris;

- o entering into exclusive franchise agreements for the collection, transportation, and processing of C&D debris at commercial establishments; and
- o requiring a permitted waste processing facility to enter into a franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated C&D debris.

The League of Cities has raised a number of concerns about the impact HB 1031 will have on their solid-waste franchises and operations. A discussion of these concerns is in **Section III. COMMENTS D. "Drafting and Other Comments"** below.

C. SECTION DIRECTORY:

Section 1: Amends s. 403.703, F.S., to add "wood" and "concrete" to the definition of "recovered materials."

Section 2: Amends s. 403.7046, F.S., to specify conditions under which construction and demolition debris is recovered materials.

Section 3: Specifies this act shall take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1031 may create competition for solid-waste haulers. This may have the effect of reducing revenues for solid waste haulers with exclusive franchises. It also may reduce overall costs for consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1031 because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

Article I, Section 10, of the U.S. Constitution, commonly called the "Contract Clause," prohibits states from passing laws that substantially impair contract rights. Article 1, Section 10, of the Florida Constitution mirrors the federal constitutional provisions on impairment of contracts. Additionally, common law provides that a government cannot adversely affect substantive rights once such rights have vested. To determine whether a particular regulation violates the Contract Clause, courts use a balancing test. Courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation and also look at whether the regulation is reasonable and narrowly tailored to the state's interest.

One interpretation of HB 1031 is that the bill may substantially impair existing contractual rights – in this case, exclusive franchises some local governments have signed with solid-waste haulers – because construction and demolition debris likely would have to be transported and disposed of differently than is currently being done under the terms of those franchises.

Another interpretation is that since HB 1031 advances one of the state's important public interests – greater recycling of reusable materials and thus less waste in landfills – the legislation could be construed as narrowly tailored to balance the state's interest with the loss of control by local governments to franchise waste pickup and the potential loss of revenue by solid-waste haulers already under contract.

B. RULE-MAKING AUTHORITY:

None is specified in the bill, but DEP has the possible need for rulemaking authority to clarify some of the terms used in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Local government responses

The Florida League of Cities has said it opposes HB 1031 bill for a number of reasons. The primary points of opposition are: the bill could invalidate existing franchise agreements many cities have with solid-waste haulers; it restricts how cities may regulate, contractually, C&D haulers and processing facilities; and it could reduce the revenues some cities receive from landfill tipping fees or other solid-waste disposal fees.

The Florida Association of Counties is continuing to evaluate the bill, but the franchising issues have raised some concerns, according to a spokesman.

DEP

The agency assisted in drafting the bill. DEP staff said the bill is not likely to have a major statewide impact, but could increase recycling opportunities in some markets. The staff also has raised the issue that rulemaking authority may be necessary to define some terms to help prevent so-called "sham recyclers" who would recycle only a small percentage of concrete and wood, and dump the rest in landfills.

Transportation Committee staff

C&D debris, as defined in s. 403.703(17), F.S., includes many more materials than concrete and wood, yet the proposed change to the definition of "recovered materials"; in s. 403.703 (7), F.S., adds only concrete and wood.

By then amending s. 403.7046, F.S., which relates directly to Regulation of Recovered Materials” to describe C&D debris that is collected and transported directly to a permitted waste processing facility for the purpose of recycling as a “recovered material” may be confusing.

Also, the term “permitted waste processing facility” is not defined in statute, but in DEP rule. Staff recommends either adding the term’s definition to s. 403.703, F.S., or replacing the reference with a term already defined in chapter 403, F.S., either “materials recovery facility” or “recovered materials processing facility.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES