

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: General Government Appropriations Committee

BILL: CS/CS/SB 2052

INTRODUCER: General Government Appropriations Committee, Environmental Preservation and Conservation Committee, and Environmental Preservation and Conservation Committee

SUBJECT: Environmental Protection

DATE: April 13, 2007

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Branning	Kiger	EP	Fav/CS
2. Molloy	Yeatman	CA	Fav/1 amendment
3. Kynoch	DeLoach	GA	Fav/CS
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The bill implements the recommendations of the Senate Environmental Preservation Committee's Interim Report 2006-121, *Review of the Solid Waste Management Act*, by making a number of technical amendments to correct cross-references, by deleting certain obsolete provisions and dates from the solid waste management statutes, and by addressing other issues which have arisen since the last major rewrite of the Solid Waste Management Act.

The bill amends the following sections of the Florida Statutes: 403.413, 403.4131, 403.41315, 403.4133, 320.08058, 403.703, 403.704, 403.7043, 403.7045, 403.707, 403.708, 403.709, 403.7095, 403.7125, 403.716, 403.717, 403.722, 403.7226, 403.724, 403.7255, 403.726, and 403.7265.

The bill amends, transfers, and renumbers section 403.7221, Florida Statutes, as section 403.70715, Florida Statutes.

The bill creates section 403.7071, Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 403.7075, 403.756, 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895.

II. Present Situation:

The Legislature enacted the Solid Waste Management Act (SWMA) to provide comprehensive programs to promote recycling and reduce the volume of materials going into landfills.¹ The SWMA mandated waste minimization, conservation of landfill space, litter control, and recycling, and required the involvement and cooperation of Florida's residents, businesses, and visitors.² Several state agencies were assigned responsibilities under the SWMA, with the Department of Environmental Regulation (now the Department of Environmental Protection) having the lead responsibility for developing the state program, adopting all regulations and standards, permitting solid waste facilities, and managing biohazardous waste.

The SWMA required that all counties initiate recycling programs to separate and offer for recycling a majority of aluminum cans, glass, newspaper, and plastic bottles. Local governments were encouraged to separate all plastics, metals, and all grades of paper for recycling prior to final disposal, and to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses. Counties were required to achieve a waste reduction goal of 30 percent by 1994. Not more than one-half of the goal was permitted to be met with yard trash, white goods³, construction and demolition (C&D) debris, and tires. The goal could be modified or reduced for any county that demonstrated that it would have an adverse impact on the financial obligations of the county regarding waste-to-energy facilities (WTE).

The SWMA established certain grant programs, including small county grants, recycling and education grants, waste tire grants, and litter and marine debris prevention grants, and also provided for a waste newsprint fee, a waste tire fee, and the implementation of an advance disposal fee (one cent per container with an increase to two cents on January 1, 1995) if certain recycling conditions were not met. The estimated proceeds of \$22 million were to be deposited into the Solid Waste Management Trust Fund (SWMTF), to be used to supplement recycling grants, the Surface Water Improvement and Management Program (SWIM), the Sewage Treatment Revolving Loan Program, and the Small Community Sewer Construction Assistance Program. The advance disposal fee and the waste newsprint fee provisions expired on October 1, 1995, as provided in ch. 88-130, L.O.F.

In 1993, the SWMA was updated to:

- Create the Recycling Markets Advisory Committee in the Department of Commerce.⁴
- Add new provisions relating to the advance disposal fee and statewide litter program.
- Create new requirements for permitting WTE facilities and commercial hazardous waste incinerators in the state.
- Establish the Florida Packaging Council and create a comprehensive litter and marine debris control and prevention program.
- Provide assistance to smaller counties to waste reduction and recycling responsibilities.

¹ Senate Staff Analysis Cs/CS/CS/SB 710, Feb. 2002.

² A Report on the Review of 1988 Solid Waste Management Act, Staff of the Senate Natural Resources and Conservation Committee.

³ "White goods" generally include discarded refrigerators, water heaters, freezers, and other similar domestic and commercial appliances.

⁴ The Department of Commerce was abolished in 1996 pursuant to ch. 96-320, L.O.F.

- Provide for the ownership of solid waste and flow control.
- Provide for the disposal of certain batteries.
- Authorize the use of the SWMTF for marketing development projects for recycled materials.
- Allow counties with a population of less than 50,000 to be eligible for annual solid waste grants of \$50,000.

The SWMA was revised again in 1996 to substantially revise provisions relating to C&D debris by requiring the Department of Environmental Protection (DEP) to establish a separate category for solid waste management facilities which accept C&D debris for disposal or recycling. Liners and leachate collection systems at individual facilities can not be required unless the DEP demonstrates that the facility is reasonably expected to result in violations of ground water standards. A permit is not required for disposal of C&D debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

For several years, approximately \$30 million was appropriated annually from the SWMTF and used for water quality and restoration projects. In 2002, the Legislature provided for the permanent reallocation of the sales tax proceeds that were being deposited into the SWMTF to the Ecosystem Management and Restoration Trust Fund to be used for those purposes. The SWMTF is now funded almost exclusively from the waste disposal fees imposed on tires purchased at retail. This fee generates approximately \$19 million annually and supports not only the grants program, but also the general solid waste activities of the Division of Waste Management in the DEP. Although the counties are no longer required to annually submit to the DEP certain solid waste and recycling information, the DEP may periodically seek the information from the counties to evaluate and report on the success of meeting the solid waste reduction goal.

Counties must still implement a recyclable materials recycling program but are no longer required to recover a majority of the minimum five.⁵ Instead, they are encouraged to recover a significant portion of at least four of the following materials: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.

The 2002 revisions to the SWMA also:

- Deleted specific language regarding the amount of C&D debris, yard trash, white goods, and tires that may be considered when determining the 30 percent waste reduction goal.
- Redefined “small county” from 75,000 to 100,000 for purposes of providing an opportunity to recycle in lieu of achieving the 30-percent goal.
- Required C&D debris to be separated from the solid waste stream in separate locations at a solid waste disposal facility or other permitted site.
- Created a new competitive and innovative solid waste management grant program.
- Maintained funding for the mosquito control activities in the Department of Agriculture and Consumer Services (DACS).
- Redistributed the funds in the SWMTF:

⁵ Aluminum cans, steel cans, newsprint, glass, and plastic.

- 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 the DACS 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.
- Provided for the distribution of the available solid waste management grants funds:
 - Up to 15 percent for the competitive and innovative grant program.
 - Up to 35 percent for the consolidated grant program for small counties.
 - Up to 50 percent for the waste tire program.

The most recent revisions to the SWMA were made in 2005 and included the following:

- Prior to the construction of a new WTE facility or the expansion of an existing WTE, the county must implement and maintain a solid waste management and recycling program designed to meet the 30 percent waste reduction goal. If a WTE is built in a county with a population of less than 100,000 that county would have to have a program designed to achieve the 30 percent waste reduction goal, and not just provide the opportunity to recycle.
- Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider the construction of a WTE facility as an alternative to additional landfill space.
- Clarified that local governmental entities are required to pay the waste tire fee and the lead-acid battery fee.
- Increased the penalty for a litter violation from \$50 to \$100. The \$50 increase is to be deposited into the SWMTF to be used for the solid waste management grant program.
- Provided for a pilot project to encourage the reuse or recycling of campaign signs. The recovered campaign signs are to be made available to schools and other entities that may have a use for them, at no cost.

In 2006, the Senate Environmental Preservation Committee was assigned an interim project to review the SWMA to make recommendations to the Legislature to update the act and address issues relating to recycling and disposal of vegetative and C&D debris. These two issues have been compounded by the fact that Florida was hit by four major hurricanes in 2004, and by Hurricanes Dennis, Katrina, and Wilma in 2005. Also, the statutes contain several solid waste provisions that need to be updated or deleted due to obsolescence or lack of use.

III. Effect of Proposed Changes:

Section 1 amends s. 320.08058, F.S., to provide that the annual use fees from the sale of the Wildflower license plates will be distributed to the Wildflower Foundation, Inc., (foundation) a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code. The fees must be used to establish native Florida wildflower research programs, wildflower educational programs, and wildflower grant programs to municipal, county, and community-based groups in the state. The foundation must develop procedures of operation, research contracts, education and marketing programs, and grants. A maximum of 15 percent of the proceeds from the sale of the license plates can be used for administrative costs and marketing.

Section 2 amends s. 403.413, F.S., to clarify who is liable for dumping under the litter law.

Section 3 amends s. 403.4131, F.S., to delete:

- Statutory provisions relating to Keep Florida Beautiful, Inc., and the Wildflower Advisory Council that was created within Keep Florida Beautiful, Inc.
- Obsolete language relating to recycling and education grants which were incorporated into the small county consolidated grants in s. 403.7095, F.S.

Section 4 amends s. 403.41315, F.S., to conform to the changes made in s. 403.4131, F.S.

Section 5 amends s. 403.4133, F.S., to place the Adopt-a-Shore Program that was created within Keep Florida Beautiful, Inc., in the DEP.

Section 6 amends s. 403.703, F.S., to:

- Alphabetize the definitions used in the Solid Waste Management Act.
- Amend the definitions for: “clean debris,” “closure,” “construction and demolition debris,” “white goods,” and “yard trash.”
- Delete definitions for “biomedical waste generator” and “pelletized paper waste.”
- Relocate the definition of “landfill” from s. 403.7125, F.S.

Section 7 amends s. 403.704, F.S., to delete obsolete language and duties relating to the DEP’s powers and duties to:

- Hold rule development public hearings for implementing the state’s solid waste management program because the rulemaking provisions of s. 120.54, F.S., include workshops and hearings.
- Charge certain fees for certain solid waste management services, as the DEP does not provide solid waste management services.
- Acquire personal or real property to provide for solid waste management facilities, as sites are not provided by the DEP.
- Receive funds from the sale of certain products, materials, fuel, or energy from any state-owned or operated solid waste facility, as the DEP does not operate solid waste management facilities.
- Delete certain requirements for Class II landfills, which are no longer permitted in Florida.
- Conduct solid waste research for use in implementing certain landfill closure rules, which have been in place for nearly 20 years.
- Authorize variances from the solid waste closure rules, which are already authorized in ss. 403.201 and 120.54, F.S.

Section 8 amends s. 403.7043, F.S., to delete obsolete language relating to compost standards rulemaking.

Section 9 amends s. 403.7045, F.S., to:

- Clarify that industrial byproducts are not regulated under the SWMA if those byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that they constitute a threat of environmental contamination or pose a significant threat to public health.
- Provide that certain dredged material that is generated as part of a project permitted under Part IV, ch. 373, F.S., or ch. 161, F.S., or authorized to be removed from sovereign submerged lands under ch. 253, F.S., must be managed in accordance with permit or authorization conditions, unless the dredged material is regulated as a hazardous waste. The routine testing of dredged material for hazardous substances may not be required, unless there is a reasonable expectation that such substances will be present.

Section 10 amends s. 403.705, F.S., to correct a cross reference.

Section 11 amends s. 403.7061, F.S., to allow, rather than require, the DEP to initiate certain rulemaking, if necessary, regarding WTE facilities, to address a rulemaking concern of the Joint Administrative Procedure Committee, as anticipated by the 2005 revisions to the SWMA.

Section 12 amends s. 403.707, F.S., to:

- Allow the DEP to exempt by rule certain facilities, such as yard trash processing facilities, from permit requirements if the construction or operation of a solid waste management facility is not expected to create any significant environmental or public health threat.
- Delete provisions relating to biomedical incinerators which are currently regulated under the DEP's air rules.
- Authorize counties to exempt certain material from the definition of "C&D debris" under certain conditions to promote an integrated solid waste management program.
- Clarify that a permit to operate a solid waste management facility may not be transferred by the permittee to any other entity without the consent of the DEP.
 - No permit may be transferred until proof of financial assurance as required by DEP rule is provided by the proposed new permittee.
 - If the existing permittee is under a continuing obligation to perform corrective actions as a result of a DEP enforcement action or consent order, the permit may not be transferred until the proposed new permittee agrees in writing to accept responsibility for performing such corrective actions.
 - Until the transfer is approved by the DEP, the existing permittee is liable for compliance with the terms of the permit, including the financial assurance requirements.
 - When the transfer of the permit to the new owner or operator is approved, the DEP shall return any means of proof of financial assurance held by the original permittee to the original permittee and he or she shall be released from his or her permit obligations.
 - An "Application for Transfer of Permit" shall clearly state in bold letters that the permit cannot be transferred without proof of financial assurance.
 - Until the permit is transferred, the new owner or operator may not operate the facility without the express consent of the original permittee.
 - The DEP is authorized to adopt rules relating to the transfer of permits.

Section 13 creates s. 403.7071, F.S., to provide for the management of storm-generated debris resulting from a storm event that is the subject of an emergency order by the DEP.

- Recycling and reuse of storm-generated vegetative debris is encouraged to the greatest practicable extent.
 - Recycling and reuse must be conducted in accordance with applicable DEP regulations and may include, but is not limited to, chipping and grinding of the vegetative debris to be beneficially used as a ground cover or as a soil amendment, composting of the vegetative debris, and the burning of such chipped vegetative debris as fuel for any applicable commercial or industrial application.
- The DEP may issue field authorizations for staging areas in those counties affected by a storm event.
 - Staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris.
 - As much as is practicable, staging areas may not be located in wetlands or other surface waters
 - The area that is used or affected by a staging area must be fully restored upon cessation of the use of the area.
- Vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, a permitted or certified WTE facility, or a permitted C&D debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.
- C&D debris that is mixed with other storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill.
- C&D debris that is source-separated or separated from other hurricane-generated debris at an authorized staging area, or at another area specifically authorized by the DEP, may be managed at a permitted C&D debris disposal facility, a Class III landfill, or a recycling facility upon approval by the DEP of the methods and operations practices used to inspect the waste during segregation.
- Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance, can be disposed of in a permitted lined landfill.
 - Chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.
- Local governments or their agents may conduct the burning of storm-generated yard trash and other vegetative debris in air-curtain incinerators without prior notice to the DEP.
 - Demolition debris may also be burned in air-curtain incinerators if the material is limited to untreated wood.
 - Within ten days after commencing such burning, the local government must provide certain information to the DEP.
 - The operator of the air-curtain incinerator is subject to any requirement to obtain an open-burning authorization from the Division of Forestry of the DACS or any other agency empowered to grant such authorization.
- Any person conducting open burning of vegetative debris piles is subject to the requirements for obtaining authorizations from the Division of Forestry.

Section 14 amends s. 403.708, F.S., to delete obsolete dates and terms not used in the section.

Section 15 amends s. 403.709, F.S., to clarify that the funding for litter prevention and control will be used at the local level by certified Keep America Beautiful affiliates. Time restrictions are placed on real property liens imposed by the DEP for compliance costs associated with the use of the property as an illegal waste tire site.

Section 16 amends s. 403.7095, F.S., to broaden the innovative grants provisions:

- “Innovative” means that the process, technology, or activity for which funding is sought has not previously been implemented within the jurisdiction of the applicant.
- Grants must demonstrate technologies or processes that represent a novel application of an existing technology or process to recycle or reduce waste.

Section 17 amends s. 403.7125, F.S., to:

- Delete duplicative definitions of “landfill and “closure.”
- Limit the use of an escrow account for the closure of a landfill to those landfills owned or operated by a local or state government or the federal government.
 - Privately-owned or operated landfills must provide other means of financial responsibility for the closure of landfills.
 - Certain existing escrow accounts providing financial assurance for closure of a landfill are grandfathered in.
 - An owner or operator of a landfill owned or operated by a local or state government or by the federal government may provide other means of financial assurance to the DEP in lieu of the escrow account.

Section 18 amends s. 403.716, F.S., to delete provisions relating to the training of operators for WTE facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities, who are subject to the training requirements under the DEP’s air permits rules.

Section 19 amends s. 403.717, F.S., to:

- Revise the definition of “waste tire” to exclude solid rubber tires and tires that are inseparable from the rim, and which constitute a small percentage of the discarded tires, are not amenable to recycling, and pose little threat of fire, floating in standing water, or mosquito breeding.
- Revise the term “waste tire processing facility” to provide consistency with the term “processed tire.”
- Delete obsolete permit requirements for a tire retreading business where fewer than 1,500 waste tires are kept on the premises.

Section 20 transfers and renumbers s. 403.7221, F.S., as s. 403.70715, F.S., and amends that section to authorize the DEP to issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility, including any hazardous waste management facility, who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been adopted.

- The time period for such permits is extended from one year to three years, renewable no more than three times.
- This removes a conflict with a similar U.S. Environmental Protection Agency rule.

Section 21 amends s. 403.722, F.S., to:

- Clarify who must obtain a permit to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility.
- Provide for DEP-issued authorizations to include permits and clean closure orders.
- Clarifies that, if an owner or operator of a hazardous waste facility being operated under a temporary operation permit intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.

Section 22 amends s. 403.7226, F.S., to delete a separate report on hazardous waste management which is already included in the DEP's *Solid Waste Management in Florida* report.

Section 23 amends s. 403.724, F.S., to provide that authorizations for hazardous waste facilities include both permits and clean closure plan orders, and provide that the amount of financial responsibility includes the probable costs of performing corrective action as well as properly closing the facility.

Section 24 amends s. 403.7255, F.S., to clarify that:

- Signs must be placed by the owner or operator at any site that is listed or proposed for listing on the Superfund Site List in the state, or at any site identified by the DEP as a site contaminated by hazardous waste, where this is a risk of exposure to the public.
- The DEP shall establish requirements and procedures for the placement of signs and may do so in rules, permits, orders, or other authorizations.

Section 25 amends s. 403.726, F.S., to allow the DEP to issue orders and permits to require the prompt abatement of an imminent hazard caused by a hazardous substance.

Section 26 amends s. 403.7265, F.S., to:

- Delete an obsolete requirement for a statewide hazardous waste management plan.
- Require a local government to only match 25 percent of the grant amount received for certain hazardous waste collection grants, and provide an exemption from match requirements.
 - Currently, eligible local governments may receive up to \$50,000 in grant funds for unique and innovative projects to improve hazardous waste collection and lower the incidence of improper management of conditionally-exempt or household waste, provided that they match the grant amount.

Sections 27 and 28 repeal the following sections:

- Section 403.7075, F.S., relating to the submission of plans, which conflicts with the provisions of ch. 471, F.S., regulating profession engineers.

- Section 403.756, F.S., relating to a used oil report, which is a duplicative report.
- Sections 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, F.S., relating to the never used Statewide Multipurpose Hazardous Waste Facility Siting Act, making it unlikely that a facility will ever be sited in Florida.

Section 29 provides that this act shall take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

No economic impact on the general public is anticipated, as many of the bill's provisions either remove outdated or obsolete provisions or clarify provisions relating to local governments and the DEP.

C. Government Sector Impact:

The bill deletes provisions relating to Keep Florida Beautiful, Inc., which is a nonfunctioning entity. The annual use fee proceeds from the sale of the Wildflower license plate will go to the Wildflower Foundation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to continue the wildflower planting program and market Florida wildflowers. In the event the Wildflower Foundation, Inc., ceases to be an active 501(c)(3) nonprofit corporation, the annual use fee proceeds from the sale of the Wildflower license plate will go to the DACS for administration of the wildflower planning program.

The DEP will no longer be required to submit separate reports regarding hazardous waste management and used oil which will be consolidated into the *Solid Waste Management in Florida* report, thereby potentially saving personnel time and publication costs.

Regarding grants, the bill makes changes to the innovative grant program, to allow additional projects to be eligible for funding. The DEP scores all submitted proposals and submits the list of eligible projects to the Legislature in priority order. The number of projects and the associated fiscal impact related to the projects that would now qualify under the provisions of the bill is unknown. For hazardous waste collection grants, the bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This will allow more local governments to take advantage of the grant program. The Senate budget (SB 2800) provides \$509,994 for these grants. There is no fiscal impact associated with the match reduction for the hazardous waste collection grants.

VI. Technical Deficiencies:

The bill contains several technical deficiencies:

On page 49, lines 10-11, the bill sponsor may want to consider deleting the sentence “Until the permit is compliance with financial-assurance requirements.”

On page 58, line 14, the bill sponsor may want to consider revising “A lien provided by this subsection may not” to “A lien imposed under this subsection may not.”

On page 59, line 2, the bill sponsor may want to consider revising the phrase “within the jurisdiction of the applicant,” as “applicant” refers to non-profit organizations as well as counties, municipalities and special districts.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
