

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Goodson

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Deslatte	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

### 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 five years, except for certain long-term care permits for closed facilities that may last up to 10 years.

The bill provides 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 provides 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, to provide funding for the closing and long-term care of solid waste management facilities, if certain requirements are met. The bill also provides that the DEP has reasonable expectations 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. If the insurance company reimburses the DEP for the costs of closing or long-term care of the facility, the DEP must deposit the funds into the solid waste landfill closure account.

Lastly, the bill provides 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 could have an upfront negative fiscal impact to state government for rulemaking and for the creation of a solid waste landfill closure account, and an upfront negative fiscal impact to local governments that operate lined solid waste management facilities and choose to apply for the 20-year permit authorized in the bill. The bill does not appear to have a fiscal impact on state government over the long term, and appears to have an indeterminate positive fiscal impact over the long term on local governments that operate lined solid waste management facilities and choose to apply for the 20-year or 10-year permit authorized in the bill. (See Fiscal Analysis Section below)

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

STORAGE NAME: h0663a.ANRS

DATE: 1/17/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

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

403.707(1), F.S., provides 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., provides 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, 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 divided into the following:

- 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 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.

## **Financial Assurance**

To minimize the threat to public health and the environment, Solid Waste Financial Assurance requirements were adopted in 1984 to secure the proper closing of solid waste management facilities operating in the state of Florida. Owners or operators when demonstrating proof of financial assurance, can choose from a list of approved financial mechanisms that best meet their individual needs. The dollar amount of financial assurance required is directly tied to DEP's approved closure cost estimate. DEP's primary responsibility is to ensure that the facility is in full compliance with all solid waste financial assurance requirements. This is accomplished by providing any assistance necessary to facility owners and operators as well as provider companies attempting to meet rule requirements<sup>1</sup>.

DEP allows the use of insurance policies to provide financial assurance for closure of solid waste management facilities. Some procedural difficulties arise when DEP has to contract with a third party to close an abandoned facility. In order to enter into a contract, DEP must encumber funds to pay for the third party. There is no fund available for DEP to encumber the expenses even if the insurance company is expected to reimburse the expenses.

## **Effect of Proposed Changes**

The bill amends s. 403.707, F.S., to provide 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 provides 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 four and a half years 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.
  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, 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..

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<sup>1</sup>DEP's Bureau of Solid and Hazardous Waste, Solid Waste Financial Assurance  
<http://www.dep.state.fl.us/waste/categories/swfr/default.htm>

- 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 reasonable expectations 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. If the insurance company reimburses the DEP for the costs of closing or long-term care of the facility, the DEP must deposit the funds 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.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 403.707, F.S., extending the permit term for a solid waste management facility that is designed with a leachate control system meeting the requirements of the DEP; requiring that existing permit fees be adjusted to the permit term; providing applicability; specifying a permit term for a solid waste management facility that does not have a leachate control system meeting the requirements of the DEP under certain conditions; authorizing the DEP to adopt rules; providing that the DEP is not required to submit the rules to the Environmental Regulation Commission for approval; requiring that permit fee caps for solid waste management facilities be prorated to reflect the extended permit term.

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., providing that the DEP must require, by rule, that the owner or operator of a solid waste management facility receiving waste after a specified date provide financial assurance for the cost of completing corrective action for violations of water quality standards.

Section 4. Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

See Fiscal Comments Section below.

#### 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, meaning that the total amount of permit fees would be the same, while the costs associated with filing renewal applications would drop approximately 4-fold. In the long run such local governments should see significant cost savings. Of course, 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, meaning that the total amount of permit fees would be the same, while the costs associated with filing renewal applications would drop approximately 4-fold. Owners and operators of solid waste management facilities without 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 10 years, meaning that the total amount of permit fees would be the same, while the costs associated with filing renewal applications would drop approximately 2-fold. 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 five years the cost savings from not having to apply for and receive permit renewals will 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 could be forced to amend those regulations which could have the effect of making insurance either more expensive or unobtainable.

Authorizing the DEP to continue to require financial assurance for corrective actions assures that the state program will remain approved in accordance with EPA regulations. Without that authorization, there is a chance that EPA could withdraw the state approval, meaning that permit applicants would have to comply with both state and Federal regulations, increasing the cost of such applications and leading to potential conflict between regulations.

## D. FISCAL COMMENTS:

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.

The creation of a solid waste landfill closure account will require that budget authority be authorized in the appropriations act to allow the DEP to encumber existing funds within the Solid Waste Management Trust Fund to enter into contracts for closure activities. The DEP fully expects that the insurance company insuring landfill closure will either pay the third party directly (in which case no state money

would actually be used) or will reimburse the DEP for any payments it makes to the third party. In either case, the closure activities would end up costing the taxpayers nothing. There may be some cases where the actual closure costs exceed the face value of the insurance policy, in which case Trust Fund money actually would be expended for closure activities and would not be reimbursed for all of those expenses.

### **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.
- Provides 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.
- Provides 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.