The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 738

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Solid Waste Management Facilities

DATE: January 13, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.	Wiggins	Yeatman	CA	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The CS/SB 738 extends the duration of solid waste management facility permits that meet specified criteria from 5 years to 20 years. The extension will 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 CS/SB 738 also provides renewal options for solid waste management facilities that do not have leachate control systems to renew their permits for a term of 10 years if certain conditions are met.

CS/SB 738 clarifies that Florida Department of Environmental Protection (DEP) has the authority to adopt rules for permitting solid waste management facilities and does not have to submit the rules for approval to the Environmental Regulation Commission (ERC).

The CS/SB 738 allows DEP to utilize funds within the Solid Waste Management Trust Fund to facilitate the closing of a solid waste management facility, if DEP expects the funds to be replenished upon receipt of payment from the designated insurance company.

The CS/SB 738 amends ss. 403.709 and 403.7125 of the Florida Statutes.

II. Present Situation:

The Department of Environmental Protection (DEP) provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Section 403.707, F.S., requires that a solid waste management facility must obtain a permit from DEP in order to operate.

Section 403.707(3), F.S., limits permit duration to 10 years for a potential source of water pollution, which includes most solid waste management facilities. DEP rules currently limit permit duration to 5 years, except for certain long-term care permits for closed facilities which may last up to 10 years. The fees for most solid waste permits are limited to $10,000.

Leachate from a landfill varies widely in composition depending on the age of the landfill and the type of waste it contains. It can usually contain both dissolved and suspended material. The generation of leachate is caused principally by precipitation percolating through waste deposited in a landfill. Once in contact with decomposing solid waste, the percolating water becomes contaminated and if it then flows out of the waste material it is termed leachate.

The risks of leachate generation can be mitigated by properly designed and engineered landfill sites, such as sites that are constructed on geologically impermeable materials or sites that use impermeable liners made of geomembranes or engineered clay.

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 insure 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.[1]

DEP allows the use of insurance policies to provide financial assurance for closure of solid waste management facilities. According to DEP, 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.

The Environmental Protection Agency (EPA) adopted rules for solid waste management facilities in 1991. According to DEP, if a state's program was determined to be at least equivalent to the federal program, the state program would be approved and the federal regulation would not apply in that state. Florida's program was approved in 1993, but one of the conditions for approval was that DEP amend existing rules to require financial assurance for

[1] Florida Department of Environmental Protection, Bureau of Solid and Hazardous Waste, Solid Waste Financial Assurance, http://www.dep.state.fl.us/waste/categories/swfr/default.htm.

corrective actions at landfills. DEP created Rules 62-701.630 and 62-701.730, to include provisions requiring permitees that have an approved corrective action plan to put up financial assurance for the costs of the corrective actions. The Joint Administrative Procedures Committee has stated that DEP does not have the statutory authority for these rules. If DEP had to repeal the existing rules, there is a risk that EPA could determine that Florida's program is no longer equivalent and disapprove it, in which case owners of solid waste management facilities would be required to comply with all of EPA's regulations in addition to all of Florida's rules. This would create a burden on the regulated community and could create a conflict since Florida's rules are not identical to EPA's.[2]

III. Effect of Proposed Changes:

Section 1 amends s. 403.707 (3), F.S., to provide that a permit issued after October 1, 2012, to a solid waste management facility with a leachete control system that is in compliance will be valid for up to 20 years. This change will allow DEP to prorate existing fees for these longer permits. For example, a Class I landfill operation permit fee is currently $10,000 for a 5-year permit. If the CS/SB 738 becomes law, the permit fee will increase to a maximum of $40,000 for a 20-year permit.

The CS/SB 738 also allows a permit to be issued to a solid waste management facility that does not have a leachate control system for 10 years if the applicant meets certain criteria. The applicant seeking renewal must:

- have regularly utilized the site for at least 4 and a half months before the application;
- not be subject to a notice, at the time of applying for the renewal permit, by DEP, or be in violation of an applicable rule;
- not have been notified to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or completing corrective actions in accordance with applicable DEP rules;
- be in compliance with the applicable financial assurance requirements.

This section also authorizes DEP to adopt rules. The provisions of Chapter 120, which require a statement of estimated regulatory cost and legislative ratification, do not apply to this rulemaking, and DEP is not required to submit such rules to the Environmental Regulation Commission for approval.

Section 2 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. CS/SB 738 enables DEP to activate a closure of a facility in compliance with the closure plan approved by DEP. This can only happen if the facility has been issued a permit by DEP to operate the facility, the permittee has provided proof of financial assurance for closure in the form of an insurance certificate, and the facility has been deemed abandoned or has been ordered closed by DEP.

[2] Conversation with Florida Department of Environmental Protection representative (DEP) (Jan. 6, 2012).

Section 3 amends s. 403.7125, F.S., to clarify that DEP may enforce already established rules which require an owner or operator of a solid waste management facility that receives waste to undertake corrective actions for violations of water quality standards and provide financial assurance for the cost of completing such corrective actions. The financial assurances requirements for closure costs will also be available for costs associated with undertaking corrective actions.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners and operators of lined 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.

Solid waste management facilities will have more flexibility when preparing to apply for permits as the life of the permit will be increased by 15 years. Further, the costs associated with filing renewal applications will decrease.

Owners and operators of unlined solid waste management facilities that meet DEP's requirements may opt for longer-term permits and may benefit from the increased predictability such longer permits provide.

C. Government Sector Impact:

DEP anticipates an increase in the amount of fees collected due to the extended length of the permit. This increase will level out, as the new permits will not need to be renewed as often.

There may be some cases when the costs associated with closing a facility would exceed the face value of the insurance policy. In this instance, Solid Waste Trust Fund dollars would need to be spent and would not be reimbursed by the insurance company.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 9, 2012:
The CS/SB 738 allows a permit to be issued to a solid waste management facility that does not have a leachate control system for 10 years if the applicant meets certain criteria. The CS/SB 738 specifies that the provisions of Chapter 120, which require a statement of estimated regulatory cost and legislative ratification do not apply to this rulemaking. The CS/SB 738 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. CS/SB 738 enables DEP to activate a closure of a facility in compliance with the approved closure plan. CS/SB 738 amends s. 403.7125, F.S., to clarify that DEP may enforce already established rules which require an owner or operator of a solid waste management facility that receives waste to undertake corrective actions for violations of water quality standards and provide financial assurance for the cost of completing such corrective actions.

B. Amendments:

None.