

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 Committee on Environmental Preservation and Conservation

BILL: SPB 7060

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Ratification of Department of Environmental Protection Rules

DATE: March 25, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Gudeman</u>	<u>Uchino</u>	_____	EP Submitted as Committee Bill

I. Summary:

SPB 7060 ratifies Rule 62-701.730, F.A.C., relating to construction and demolition (C&D) debris disposal facilities regulated by the Department of Environmental Protection (DEP), Division of Waste Management.

II. Present Situation:

Solid Waste Management

Florida began managing solid waste in 1946 under the Sanitary Code (code). The code provided definitions for the terms “garbage,” “rubbish,” “offal,” “dead animals,” and “manure,” as well as procedures for illegal dumping and the collection, storage, and dumping of solid waste. The code required municipalities to provide for, “adequate, efficient, and sanitary systems of collecting, transporting, and disposing of garbage and rubbish from all buildings and establishments creating garbage or rubbish throughout the municipality” in a manner approved by the State Board of Health.¹

In 1974, the Legislature enacted the Florida Resource Recovery and Management Act (act), which established procedures for the storage, collection, transport, separation, processing, recycling, and disposal of solid waste. The act required counties and municipalities to adopt local resource recovery and management programs and to implement the state program.²

The Legislature enacted the Solid Waste Management Act (SWMA) in 1988, which created the framework for the state’s recycling efforts. The SWMA set a goal to reduce the disposal of municipal solid waste by 30 percent by the end of 1994.³ The SWMA required the DEP to

¹ Florida State Sanitary Code, Chapter XXXI, Garbage and Rubbish, available at ftp://ftp.dep.state.fl.us/pub/reports/62-701/FloridaSWRegulations_eff02-16-1946.pdf (last visited Mar. 20, 2015).

² See ch. 74-342, Laws of Fla.

³ See ch. 88-130, Laws of Fla.

implement the solid waste program, adopt rules related to the program, and manage grant programs.

The Legislature created s. 403.7032, F.S., in 2008, which established the 75 percent recycling goal to be achieved by 2020 and required the DEP to develop a program to achieve this goal and submit a report to the Legislature for approval. The report:

- Encourages private businesses to report the amount they recycle annually to the county;
- Directs the DEP to recognize successful recycling efforts in schools, businesses, public groups, and of private citizens;
- Directs the DEP to create the Recycle Business Assistance center.
- Recommends all C&D debris⁴ be processed at a materials recovery facility prior to disposal; and
- Recommends the creation of a recycling grants or revolving loan program for local governments to aid in reaching the 75 percent recycling goal for their jurisdictions.⁵

Florida currently has 70 active C&D debris disposal sites and 83 landfills that will accept such material.⁶ Disposal at the C&D debris facilities is typically less expensive than at a Class I landfill, but more hazardous to the environment because most C&D sites are unlined and do not have daily covering requirements.⁷

C&D debris accounts for 25 percent of Florida's total municipal solid waste stream and consists of materials that are generated from residential and commercial building, renovations, and demolitions. C&D material include wood, steel, glass, brick, concrete, asphalt, wallboard, rocks, soils, tree remains, and other vegetative matter. The DEP estimates that approximately 27 percent, or 2.1 million tons of the C&D material disposed of in Florida is recycled annually and contributes to 12 percent of the 75 percent recycling goal.⁸

Section 403.707, F.S., specifies the permit requirements for solid waste management facilities and the regulatory exceptions provided for certain types of solid waste disposal. Section 403.707(9), F.S., requires the DEP to establish criteria for the construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for solid waste management facilities that only accept C&D debris for disposal or recycling.

In 2010, s. 403.707, F.S., was amended to require liner and leachate collection systems at individual C&D debris disposal sites permitted after July 1, 2010, and for the lateral expansion of sites. The law provides an exemption from this requirement if the facility owner is able to demonstrate, using groundwater modeling, that the facility will not result in a violation of groundwater standards and criteria.

⁴ For a description of what constitutes C&D debris, see Fla. Admin. Code R. 62-701.200(25) (2015).

⁵ DEP, *75% Recycling Goal Report to the Legislature*, 20-22 (2010), available at http://dep.state.fl.us/waste/quick_topics/publications/shw/recycling/75percent/75_recycling_report.pdf (last visited Mar. 20, 2014).

⁶ *Id.* at 12. See also DEP, *Statement of Estimated Regulatory Cost, Rule 62-701.730, Florida Administrative Code*, 2 (June 3, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁷ *Supra* note 5, at 11.

⁸ *Supra* note 5, at 12-13.

The law also required by January 1, 2012, C&D debris be processed and recycled at a materials recovery facility or any other permitted disposal facility prior disposal. The amount of material that is processed and recycled must be reported by the county of origin to the DEP and the county of disposal. The law provides an exemption for recovered material, material that has been source separated and offered for recycling, or material that has been previously processed.

Legislative Ratification of Agency Rules

In order to implement the requirements in s. 403.707, F.S., the DEP has proposed revisions to Rule 62-701.730, F.A.C., entitled “Construction and Demolition Debris Disposal and Recycling.”

Pursuant to s. 120.541(3), F.S., the Legislature must ratify a rule that:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.⁹

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rule 62-701.730, F.A.C., and determined the rule triggers a statutory threshold requiring ratification. The SERC estimates the total cost for the liner and associated components for a 20 acre site will be approximately \$3.2 million. The total cost of the leachate management system at a 20 acre site over a 10 year period will be approximately \$2.65 million.¹⁰

Currently, there are 70 active C&D debris disposal facilities in Florida, five of which are lined. Since 2009, the DEP has received two applications for new C&D debris disposal facilities, and three permit modification applications. To date, the DEP has not received any requests from facility owners to be exempt from the liner and leachate requirements.¹¹

III. Effect of Proposed Changes:

The bill ratifies Rule 62-701.703, F.A.C. The rule directs the DEP to require liners and leachate collection systems at new and expanded C&D debris disposal facilities.

⁹ Section 120.541(2)(a)1.-3., F.S.

¹⁰ DEP, *Statement of Estimated Regulatory Cost, Evaluations for Phase II Changes to Rule 62-701.730, Florida Administrative Code*, 5-6 (May 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹¹ DEP, *Statement of Estimated Regulatory Cost, Rule 62-701.730, Florida Administrative Code*, 2 (June 3, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

The bill also:

- Ratifies Rule 62-701.703, F.A.C., for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.;
- Requires the DEP to note its enactment and effective dates in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate;
- Does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

The bill will take effect upon becoming a law.

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:

The DEP estimates the cost of the liner and the leachate system to be approximately \$5.8 million for a 20 acre facility in operation for 10 years. The new requirements will have both a positive and negative fiscal impact on the private sector. The privately owned C&D debris disposal facilities may raise rates to offset the cost of the liner and leachate collection system. The increased rates of the C&D debris disposal facilities may result in increased utilization of recycling facilities if the recycling rates are lower than C&D debris disposal rates.

C. Government Sector Impact:

C&D debris disposal facilities owned by local governments will incur similar costs as the private sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.