

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: SB 714

INTRODUCER: Senator Grimsley

SUBJECT: Environmental Control

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 714 allows the Department of Environmental Protection (DEP) to authorize water quality credit trading for land set-asides and land-use modifications that reduce nutrient loads into nutrient impaired surface waters. The bill also provides that the provisions of s. 403.201, F.S., do not prohibit the issuance of moderating provisions or requirements under state law. The bill creates a solid waste landfill closure account and authorizes the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility under certain conditions.

II. Present Situation:

Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.¹

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be environmentally valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.² Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for

¹ DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Apr. 6, 2015).

² *Id.*

the discharger.³ Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.⁴

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.⁵

Trading is authorized pursuant to s. 403.067, F.S., The DEP is in the process of rulemaking to amend the water quality credit trading rule to implement statewide trading and detail precisely how trades are to be conducted and tracked in the future.⁶ The DEP has conducted four public workshops on the rule, two in late August 2014 to review potential rule concepts, and two in mid-January 2015 to discuss draft rule language. The public comment period following the most recent workshops closed in early February, but the DEP has accepted some subsequent comments. The DEP will consider all comments received and produce a final proposed rule for adoption in the near future.⁷

Variations

The Florida and Water Pollution Control Act was enacted in 1967.⁸ The legislative declaration states, “[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water.”⁹

The act provides the DEP with authority to control and prohibit the pollution of water and air and to establish rules to carry out the act. Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution;
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required; or

³ Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), available at <http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf> (last visited Apr. 6, 2015).

⁴ *Supra* note 1, at 2.

⁵ *Supra* note 1, at 2.

⁶ Fla. Admin. Code R. 62-306 (2010).

⁷ DEP, *Senate Bill 714 Agency Analysis* (Feb. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁸ Chapter 67-436, Laws of Fla.

⁹ Section 403.21, F.S.

- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.

A variance is prohibited for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. Research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.¹⁰

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.¹¹

Solid Waste Management Trust Fund

The DEP is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.¹² Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county.¹³

Rule 62-701, F.A.C., establishes the standards for the construction, operation, and closure of a solid waste management facility. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Rule 62-701.630, F.A.C.

Section 403.7125, F.S., provides the statutory requirement that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator is required to establish a fee to ensure financial resources are available for the closure of the landfill. Section 403.707(9), F.S., requires the same financial assurance responsibilities for the owner or operator. Sections 403.7125 and 403.707(9), F.S., allow the DEP to establish

¹⁰ Section 403.201, F.S.

¹¹ Fla. Admin. Code R. 62-4.050 (2014).

¹² See s. 403.705, F.S.

¹³ See s. 403.706, F.S.

acceptable financial mechanisms that cover the cost of closure; however, neither section specifies that closure insurance is allowed.

Section 403.709, F.S., creates the Solid Waste Management Trust Fund, which is administered by the DEP. The trust fund requires that, of the money deposited:

- Up to 40 percent must be used for solid waste activities;
- Up to 4.5 percent must be for research and training programs;
- Up to 11 percent must be used for mosquito control, administered by the Department of Agriculture and Consumer Services;
- Up to 4.5 percent for Department of Transportation litter prevention control programs; and
- A minimum of 40 percent for funding a solid waste management grant program for activities related to recycling and waste reduction.

III. Effect of Proposed Changes:

Section 1 amends s. 403.067, F.S., to allow the DEP to authorize water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. Currently, land set-asides and land-use modifications may also include changes in crop type, conservation easements, term-limited contracts for environmental services, and other similar activities.

Section 2 amends s. 403.201, F.S., to provide that the issuance of moderating provisions or requirements under state law is not prohibited by s. 403.201(2), regarding the prohibition of variances from any provision or requirement concerning discharges of waste into state waters, or hazardous waste management.

Section 3 amends s. 403.709, F.S., creating 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. The bill authorizes the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate;
- The permittee provided proof of financial assurance for the closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with the closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete the closing and long-term care of the facility.

The bill requires the DEP to deposit funds received from an insurance company as reimbursement for the costs of closing or long-term care of the facility into the Solid Waste Landfill Closure Account.

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:

If the federal government rescinds a delegated authority from the state, a permittee may have to obtain both state and federal permits rather than only a state permit for certain activities. The fiscal impact and number or parties that may be affected is unknown.

C. Government Sector Impact:

The DEP states that it would need \$2,339,764 in budget authority from the Solid Waste Management Trust Fund in order to execute contracts with a third-party for the closure of five landfills.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DEP, Section 1 of the bill does not expand or clarify the authority of existing law. Rules are under development that contain provisions allowed by the bill.

According to the DEP, Section 2 of the bill is ambiguous and could lead to an interpretation that a “moderating provision or requirement” could be granted from a state law, even when that law is necessary for the state’s implementation of federally delegated or approved program. Such an interpretation could result in revocation of the state’s approval to implement a federally delegated or approved program. In instances where a regulated entity’s state approval operates as its federal license, such an interpretation could result in a regulated entity being unable to utilize a state-approval as a required federal license.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.067, 403.201, and 403.709.

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.

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