

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 Fiscal Policy

BILL: CS/SB 912

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Bean

SUBJECT: Recycled and Recovered Materials

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	Fav/CS
2.	<u>Procaccini</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides relief from liability for a person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of the materials. The bill defines “recycled and recovered materials” and provides the applicable dates for a cause of action.

II. Present Situation:

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources.¹ The Legislature declared that the maximum recycling and reuse of resources are considered high-priority goals of the state.² In 2013, a little over a third of municipal solid waste was recycled in Florida.³ However, these activities may be discouraged and impeded as an unintended consequence of the hazardous substance liability provisions of Florida law.

A “hazardous substance” is a substance, element, compound, mixture, solution, hazardous waste, or toxic pollutant listed by the Environmental Protection Agency (EPA) which, when released

¹ Section 403.7032(1), F.S.

² *Id.*

³ Florida Department of Environmental Protection, *Florida Municipal Solid Waste Collected and Recycled (2013)*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/2013AnnualReport/MSW-Composition_2013.pdf (last visited April 10, 2015).

into the environment may present substantial danger to the public health or welfare or the environment.⁴

If a hazardous substance is released or there is a threat of its release, the following persons can be held liable for all of the costs of removal or remedial action incurred by the Department of Environmental Protection (DEP) and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance:

- The owner and operator of a facility;
- Any persons who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;
- Any person who by contract arranged for the disposal of a hazardous substance; and
- Any person who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites.⁵

Section 403.727, F.S., also provides defenses of liability which include an:

- Act of war;
- Act of government;
- Act of God;
- Act or omission by a third party.⁶

In addition, a generator or transporter of hazardous waste that complies with the law and contracts for disposal of hazardous wastes with a licensed facility is relieved from liability for the hazardous wastes upon receipt of a certificate of disposal from the facility.⁷ A generator of hazardous waste that complies with the law and contracts for the transport of the hazardous waste to a licensed facility is relieved of liability to the extent that the liability is covered by the insurance or bond of the transporter.⁸

The Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress on December 11, 1980.⁹ The law provides broad federal authority to respond to releases or the threatened release of hazardous substances that may endanger public health or the environment. CERCLA establishes prohibitions and requirements for closed and abandoned hazardous waste sites, makes responsible persons liable for the release of hazardous waste, and establishes a trust fund to provide for cleanup if a responsible party cannot be identified.¹⁰

⁴ Section 403.703(12), F.S., citing 42 U.S.C. 9601(14); 42 U.S.C. 9602(a).

⁵ Section 403.727(4), F.S. *See also* s. 376.308, F.S.

⁶ Section 403.727(5), F.S.

⁷ Section 403.727(6), F.S.

⁸ Section 403.727(7), F.S.

⁹ Pub. L. No. 96-510, (1980).

¹⁰ *Id.*

The Superfund Recycling Equity Act of 1999 generally exempts generators and transporters of recyclable materials from liability under CERCLA.¹¹ The law reduces waste and promotes natural resource conservation by promoting the reuse and recycling of scrap material.¹² However, the transporter may be liable under CERCLA if the transporter fails to use reasonable care with the management and handling of recycled and recovered material.¹³ Whether a transporter uses reasonable care is based upon the following criteria:

- The price paid in the recycling transaction;
- The ability of an individual to detect the nature of the consuming facility's operations; and
- The history and current compliance of the facility with state, federal, or local environmental laws in the handling, processing, reclamation, or other management activity associated with recyclable materials.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 403.727, F.S., to provide relief from liability to any person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse, and the hazardous substance is released or threatened to be released from the receiving facility.

The relief from liability does not apply if the person fails to exercise reasonable care in managing and handling the recycled and recovered material. It also does not apply if the arrangement for the reclamation, recycling, manufacturing, or reuse of the material was not expected to be legitimate based on the information available to the person at the time of the arrangement.

The bill defines "recycled and recovered material" as scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid or nickel-cadmium batteries or other spent batteries. The bill specifies the term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste.

The bill specifies that the relief from liability applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ Pub. L. No. 106-113, (1999).

¹² U.S. Dept. of Energy, *Office of Health Safety, and Security, CERCLA*, available at <http://homer.ornl.gov/sesa/environment/policy/cercla.html> (last visited April 10, 2015).

¹³ 42 U.S.C. 9627(c)

¹⁴ *Id.*

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:

There is an indeterminate positive fiscal impact to a person released from liability that may have been liable for cleanup costs.

C. Government Sector Impact:

The bill may have a potential negative fiscal impact, because if there is a release of hazardous substances and no liable party exists, the state may incur costs associated with the hazardous waste cleanup.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Part of the definition of “recycled and recovered materials” specifies it does not include hazardous waste. According to the DEP, it is unclear what this phrase adds to the meaning of recycled and recovered materials.¹⁶

In its bill analysis, the DEP states that the bill is similar in concept to the liability defense found in the Superfund Recycling Equity Act. The federal law is more specific on how the liability defense can be claimed and when an individual is excluded from relying on the defense. In order to qualify for the federal defense, persons who arrange for recycling are required to demonstrate they took reasonable care to determine the material was sent to a facility that was in compliance. The bill also requires reasonable care in the handling and management of recycled and recovered materials but is not as specific as federal law. It is not clear what a court may require to determine whether a person has failed to exercise reasonable care with respect to the

¹⁵ DEP, *Senate Bill 914 Agency Analysis*, 3 (Feb. 25, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁶ *Id.*

management and handling of the recycled materials, or whether the arrangement for recycling was not reasonably expected to be legitimate.¹⁷

VIII. Statutes Affected:

This bill substantially amends section 403.727 of the Florida Statutes.

IX. 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 March 31, 2015:

The CS provides clarity by removing the conflicting “notwithstanding clause.” It makes a technical correction to change the term “solid waste” to “hazardous substances.”

- B. **Amendments:**

None.

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

¹⁷ *Id.*