

**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: SB 912

INTRODUCER: Senator Bean

SUBJECT: Recycled and Recovered Materials

DATE: March 29, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	FP	_____

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**I. Summary:**

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:**

Section 403.727, F.S., provides the violations, defenses, penalties, and remedies for violations under Part IV of ch. 403, F.S. The law provides specific penalties for hazardous waste generators, transporters, or facility owners or operators that do not comply with the law, operate without a permit, do not comply with a valid permit, cause hazard to occur or continue to occur, or do not properly disclose the characteristics of the hazardous waste. The law specifies the owner or operator of a facility, a person who owned or operated a facility at the time a hazardous substance was disposed of, the person who arranged for the transport or disposal of the hazardous substance, and any person that accepts any hazardous substance for transport or disposal is liable for the costs associated with the damage and remediation of the hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.<sup>1</sup>

Section 403.727, F.S., provides defenses of liability for a person that may be in violation of the law including an act of war, an act of government, an act of God, and an act of omission by a third party. In addition, a generator or transporter of hazardous waste that has complied with the law and has contracted for the disposal of hazardous wastes with a licensed facility is relieved from liability for the hazardous wastes upon receipt of the certificate of disposal. A generator of

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<sup>1</sup> Pub. L. No. 96-510, s. 94 stat. 2767 (1980).

hazardous waste that has contracted for the transport of hazardous waste is relieved of liability to the extent that the liability is covered by the insurance or bond of the transporter.

### **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. The law provides broad federal authority to respond to releases or 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 when a responsible party cannot be identified.<sup>2</sup>

The Superfund Recycling Equity Act of 1999 exempts generators and transporters of recyclable materials from liability under CERCLA.<sup>3</sup> The law reduces waste and promotes natural resource conservation by promoting the reuse and recycling of scrap material.<sup>4</sup>

### **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 material 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.

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<sup>2</sup> *Id.*

<sup>3</sup> Pub. L. 106-113, s. 127 stat. 9627 (1999).

<sup>4</sup> Dept. of Energy, *Office of Health Safety and Security, CERCLA*, <http://homer.ornl.gov/sesa/environment/policy/cercla.html> (last visited Mar. 29, 2015).

**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:

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

## C. Government Sector Impact:

The state may incur the costs associated with the cost of cleanup if no viable responsible party exists as a result of the release of liability.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill includes the phrase “notwithstanding ss. 376.308 and 403.727.” This provision makes it unclear how the language will apply since the DEP interprets these statutes in light of one another. The bill also amends s. 403.727, F.S., which contains the “notwithstanding clause,” and to which the clause directly applies. Given how these statutes are currently interpreted and that the “notwithstanding clause” refers to the section it is drafted in, it is unclear how the new language will be applied.

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.<sup>5</sup>

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<sup>5</sup> DEP, *Senate Bill 914 Agency Analysis*, 3 (Feb. 25, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

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 management and handling of the recycled materials, or whether the arrangement for recycling was not reasonably expected to be legitimate.<sup>6</sup>

**VIII. Statutes Affected:**

This bill substantially amends section 403.727 of the Florida Statutes.

**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.

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

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<sup>6</sup> *Id.*