

**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 Appropriations

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BILL: SB 922

INTRODUCER: Senator Montford

SUBJECT: Solid Waste Management

DATE: February 17, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	<u>Howard</u>	<u>DeLoach</u>	<u>AP</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed for completing landfill closure and long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The DEP has requested \$1,000,000 in their Fiscal Year 2016-2017 Legislative Budget Request to cover costs for closures and long-term care of facilities, and the Senate has included this issue in SB 2500, the Fiscal Year 2016-2017 General Appropriations Bill. The bill authorizes the DEP to use funds from the solid waste landfill closure account to pay for costs not covered by insurance policies or alternative forms of financial assurances which could have a negative, indeterminate fiscal impact on the DEP's Solid Waste Management Trust Fund.

The bill provides an effective date of July 1, 2016.

## II. Present Situation:

### **Solid Waste Management Trust Fund**

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;<sup>1</sup> waste tire fees;<sup>2</sup> and oil related fees, fines and penalties.<sup>3</sup> The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.<sup>4</sup>

### **Landfill Closure**

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida's solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- 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 Florida Administrative Code Rule 62-701.630.

Section 403.7125, F.S., provides 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 of a federal, state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

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<sup>1</sup> Section 403.413(6)(a), F.S.

<sup>2</sup> Section 403.718(2), F.S.

<sup>3</sup> Section 403.759, F.S.

<sup>4</sup> Section 403.709(1), F.S.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.<sup>5</sup> To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.<sup>6</sup> The owner must update the cost estimate annually.<sup>7</sup> Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.<sup>8</sup> Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.<sup>9</sup>

Operators of solid waste disposal units must receive a closure permit to close a landfill.<sup>10</sup> Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.<sup>11</sup>

These facilities must also perform long-term care for 30 years.<sup>12</sup> This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.<sup>13</sup>

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds 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 facility;
- The permittee provided proof of financial assurance for 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 a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.<sup>14</sup>

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<sup>5</sup> Fla. Admin. Code R. 62-701.630(2).

<sup>6</sup> Fla. Admin. Code R. 62-701.630(3).

<sup>7</sup> Fla. Admin. Code R. 62-701.630(4).

<sup>8</sup> Fla. Admin. Code R. 62-701.630(2)(b)2.

<sup>9</sup> Fla. Admin. Code R. 62-701.630(2)(b)1.

<sup>10</sup> Fla. Admin. Code R. 62-701.600(2).

<sup>11</sup> Fla. Admin. Code R. 62-701.600(3)(f)2.

<sup>12</sup> Fla. Admin. Code R. 62-701.620(1)

<sup>13</sup> *Id.*

<sup>14</sup> Ch. 2015-222, s. 53, Laws of Fla.

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.<sup>15</sup> Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).<sup>16</sup>

### **Waste Tire Abatement**

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:

- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.<sup>17</sup>

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.<sup>18</sup> Grants may be used for activities such as:

- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;
- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and

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<sup>15</sup> DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>16</sup> *Id.*

<sup>17</sup> Section 403.7095(1), F.S.

<sup>18</sup> Section 403.7095(2), F.S.

- Performing or contracting for enforcement activities.<sup>19</sup>

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.<sup>20</sup> Funding for DEP's waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,<sup>21</sup> has not received funds since 2009.<sup>22</sup> The DEP has identified more than 440,000 tires located at 26 sites in Florida.<sup>23</sup> The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from \$2,704 to \$570,900. The DEP's preliminary abatement cost estimate for all 26 sites is \$961,390.<sup>24</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP's authority by:

- Authorizing 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 was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.
- Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise inaccessible to perform or complete the closing or long-term care of a facility, the DEP may use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed for performing or completing the

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<sup>19</sup> DEP, *Solid Waste Tire Grant Application*, (Dec. 17, 2013) available at [http://www.dep.state.fl.us/waste/quick\\_topics/forms/documents/62-716/716\\_3.pdf](http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-716/716_3.pdf), Incorporated by reference in Fla. Admin. Code R. 62-716.600.

<sup>20</sup> DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>21</sup> DEP, *Tires General Information* (Jul. 8, 2015) available at <http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm> (last visited Jan. 16, 2016).

<sup>22</sup> DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

**Section 2** amends s. 403.7095, F.S., to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award \$3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

**Sections 3 and 4** reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

**Section 5** provides an effective date of July 1, 2016.

#### **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:

None.

C. Government Sector Impact:

SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.

The bill authorizes the Department of Environmental Protection (DEP) to use funds from the solid waste landfill closure account to pay for facility closures or long-term care

activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested \$1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes \$1 million for this purpose.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

**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.