

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 Community Affairs

BILL: CS/SB 326

INTRODUCER: Environment and Natural Resources Committee and Senator Perry

SUBJECT: Environmental Regulation

DATE: November 14, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 requires local governments to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential material. The bill applies to contracts between a local government and a residential recycling collector or recovered materials processing facility that are executed or renewed after October 1, 2020. Such contracts are required to define the term “contaminated recyclable material.” The bill specifies topics that must be addressed in local government contracts with both residential recycling collectors and recovered materials processing facilities.

The bill prohibits local governments from requiring a person claiming an exemption from environmental resource permitting requirements to provide further verification from the Department of Environmental Protection. The bill also changes the specific criteria for the replacement or repair of a dock or pier that is exempt from environmental resource permitting requirements.

II. Present Situation:

Local Government Solid Waste Responsibilities

Each Florida county has the responsibility and authority to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the

county.¹ Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county.² Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities.³ Under Florida law, “recycling” is defined as “any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.”⁴

Each Florida county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.⁵ These programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream before final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers.
- Aluminum cans.
- Steel cans.
- Glass.
- Plastic bottles.
- Cardboard.
- Office paper.
- Yard trash.⁶

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.⁷ Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.⁸ Certain activities are eligible for special credit towards achieving a county’s recycling goals, including the use of solid waste as a fuel in a renewable energy facility, the innovative use of yard trash or other clean wood waste or paper waste, and providing opportunities to recycle in counties with smaller populations.⁹ In order to assess progress, counties are required to provide information on their solid waste management programs and recycling activities to the Department of Environmental Protection (DEP) by April 1 of each year.¹⁰

¹ Section 403.706(1), F.S. Municipalities may also be authorized to construct and operate solid waste disposal facilities, if certain statutory requirements are met; Fla. Admin. Code Ch. 62-701.

² *Id.*

³ *Id.*

⁴ Section 403.703(31), F.S.

⁵ Section 403.706(2)(a), F.S. These are interim goals to help Florida reach the goal of recycling at least 75% of municipal solid waste by 2020; Ch. 2010-143, s. 7, Laws of Fla.; *see* s. 403.7032(2), F.S.

⁶ Section 403.706(2)(f), F.S.

⁷ Section 403.706(3), F.S.

⁸ Section 403.706(2)(a), F.S.

⁹ Section 403.706(4), F.S.

¹⁰ Section 403.706(7), F.S.; Fla. Admin. Code R. 62-716.450.

“Municipal solid waste” includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service.¹¹ The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations. DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would harm the financial obligations of the county that are directly related to the county’s waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.¹²

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county’s waste-to-energy facility.¹³

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality.¹⁴ Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government.¹⁵ A market must exist for the recyclable materials, and the local government must specifically intend for them to be recycled.¹⁶ Local governments are authorized to provide for the collection of recyclable materials. Such ordinances may include but are not limited to, prohibiting any person from knowingly disposing of recyclable materials that are designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.¹⁷

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or a facility designated by the local government;
- Restrict such a generator’s right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with DEP; or
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.¹⁸

¹¹ Section 403.706(5), F.S.

¹² Section 403.706(6), F.S.

¹³ *Id.*

¹⁴ Section 403.706(9), F.S.

¹⁵ Section 403.706(21), F.S.

¹⁶ *Id.*

¹⁷ Section 403.706(21), F.S.

¹⁸ Section 403.7046(3), F.S.

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.¹⁹

Florida's Recycling Goal

In 2008, in recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a statewide goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.²⁰ DEP has established numerous programs and initiatives to reach that goal.²¹ In 2010, the Legislature established the interim goals that counties must pursue leading up to 2020.²²

In those years, if the recycling rate does not meet the statutory thresholds for these interim goals, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives.²³ This report must identify those additional programs or statutory changes needed to achieve the state's recycling goals.²⁴ Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the interim recycling goal of 60 percent by 2017.²⁵ DEP submitted the most recent report in 2017.²⁶ The current practices in Florida are not expected to increase the recycling rate beyond the 56 percent rate significantly.²⁷ The most recent interim goal was 70 percent by January 1, 2019, and DEP is expected to submit a report before the 2020 session. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.²⁸

DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle."²⁹ The campaign addresses the need to educate Florida residents on how to reduce single-stream curbside recycling contamination. Plastic bags, cords, clothing, and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs, and paper and cardboard. DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes.

¹⁹ Section 403.7046(3)(a), F.S.

²⁰ Section 403.7032, F.S.; Ch. 2008-227, s. 95, Laws of Fla.; see DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 5 (2017), available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Oct. 29, 2019).

²¹ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited Oct. 29, 2019).

²² Section 403.706(2)(a), F.S.

²³ Section 403.706(2)(e), F.S.

²⁴ *Id.*

²⁵ DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 5 (2017), available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Oct. 30, 2019).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 11.

- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020 to market-specific goals such as a food diversion goal or an organics recycling goal.
- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices.
- Continuing to work with state agencies to identify recycling/cost-saving measures specific to their operations.
- Providing counties not achieving the interim recycling goals with assistance in analyzing, planning, and executing opportunities to increase recycling.³⁰

Many counties and municipalities have instituted single-stream recycling programs.³¹ Single-stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single-stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the number of recyclables collected and residential participation. While there are many advantages to single-stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single-stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.³²

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts.³³ For example, plastic bags are often harmful to the automated equipment typically used to process and separate recyclable materials from single-stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair, or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling of unusable materials. Although some local governments have implemented successful single-stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some cases reaching contamination rates of more than 30-40 percent by weight.³⁴

Recycling Markets

Until 2017, China consumed over 50 percent of the recycled paper and plastic in the world, including 70 percent of the plastics collected for recycling in the U.S.³⁵ In 2017, China banned the import of 24 recyclable materials, such as post-consumer plastics and mixed paper, and also

³⁰ *Id.*

³¹ *Id.* at 13.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Important Recyclables*, 1 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China%27s_Changing_Policies_on.pdf (last visited Oct. 29, 2019); Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, *Yale Environment* 360 (March 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Oct. 29, 2019).

announced a 0.5 percent contamination standard for most recyclables not named in the ban.³⁶ In 2018, the ban was expanded to include post-industrial plastics and a variety of scrap metals, and China implemented pre-shipment inspection requirements for inbound loads of scrap material.³⁷ The ban has caused shipments of recyclables to other Southeast Asian countries to increase dramatically, resulting in nations including Malaysia, Indonesia, Thailand, and Vietnam enacting policies restricting the import of recyclable materials.³⁸

China's recycling ban has created substantial challenges around the world for the solid waste and recycling industry.³⁹ The loss of the Chinese export markets has caused recyclable materials to be sent to landfills or burned.⁴⁰ China's ban and higher standards for contamination are leading to higher costs and lower revenues for the U.S. recycling industry.⁴¹ In Florida, local governments are struggling with issues such as rising costs of processing and high contamination rates.⁴² DEP reports that these changes in the markets create challenges for Florida as it tries to increase its recycling rates because future growth is dependent on healthy markets.⁴³ The increased supply of recyclable materials and decreased demand from end markets has resulted in a depression of commodities priced in the recycling industry.⁴⁴ In response, DEP has utilized state programs and engaged various stakeholders to develop and grow Florida's recycling markets.⁴⁵

³⁶ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*, <https://resource-recycling.com/recycling/2018/02/13/green-fence-red-alert-china-timeline/> (last visited Oct. 29, 2019); National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Important Recyclables*, 1 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China%27s_Changing_Policies_on.pdf (last visited Oct. 29, 2019).

³⁷ *Id.*; see Resource Recycling, *China Reiterates Total Ban and Tries to Define "Solid Waste"* (Apr. 9, 2019), available at <https://resource-recycling.com/recycling/2019/04/09/china-reiterates-total-ban-and-tries-to-define-solid-waste/> (last visited Oct. 31, 2019). China is planning a total ban on virtually all recovered material imports.

³⁸ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*, <https://resource-recycling.com/recycling/2018/02/13/green-fence-red-alert-china-timeline/> (last visited Oct. 29, 2019); Christopher Joyce, *Where Will Your Plastic Trash Go Now That China Doesn't Want It?*, NPR (Mar. 13, 2019), <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it> (last visited Oct. 29, 2019).

³⁹ See Brooks et. al., *The Chinese Import Ban and Its Impact on Global Plastic Waste Trade*, SCIENCES ADVANCES (Jun. 20, 2019), available at <https://advances.sciencemag.org/content/advances/4/6/eaat0131.full.pdf> (last visited Oct. 29, 2019).

⁴⁰ Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, Yale Environment 360 (March 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Oct. 29, 2019).

⁴¹ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Important Recyclables*, 1-2 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China%27s_Changing_Policies_on.pdf (last visited Oct. 29, 2019).

⁴² Waste Dive, *How Recycling is Changing in All 50 States* (June 5, 2019), <https://www.wastedive.com/news/what-chinese-import-policies-mean-for-all-50-states/510751/> (last visited Oct. 31, 2019).

⁴³ DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 15 (2017), available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Oct. 29, 2019).

⁴⁴ *Id.*

⁴⁵ *Id.* at 15-17.

Exceptions to Requirements for Environmental Resource Permitting

DEP's Environmental Resource Permitting (ERP) program regulates activities involving the alteration of surface water flows.⁴⁶ The ERP program governs the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on, or over wetlands or other surface waters).⁴⁷

For some low impact activities and projects that are narrow in scope, an ERP permit is not required under state law.⁴⁸ Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to DEP.⁴⁹ A broad array of activities are expressly exempt from the ERP program, these include but are not limited to: the installation of overhead transmission lines; installation and maintenance of boat ramps; work on seawalls and mooring pilings, swales, and footbridges; the removal of aquatic plants; construction and operation of floating vessel platforms; and work on county roads and bridges.⁵⁰ Included among activities exempt from the requirement to obtain an ERP permit is the replacement or repair of existing docks and piers if fill material is not used and the replaced or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.⁵¹ Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.⁵²

III. Effect of Proposed Changes:

Section 1 amends s. 403.706, F.S., which establishes the responsibilities and authority of local governments to provide facilities and programs for solid waste management and recycling.

The bill defines a "residential recycling collector" as "a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality."

The bill states that after a contract is executed, a residential recycling collector is not required to collect or transport contaminated recycling material, except according to a contract consistent with the requirements below. The bill requires that each contract between a residential recycling collector and a county or municipality for the collection or transport of waste, and each request for proposal or other solicitation for the collection of residential recycling material, include all of the following:

- A definition of "contaminated recyclable material" that is appropriate for the local community.

⁴⁶ Chapter 373, p. IV, F.S.; Fla. Admin. Code Ch. 62-330; DEP, *DEP 101: Environmental Resource Permitting*, available at: <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Oct. 29, 2019).

⁴⁷ Fla. Admin. Code R. 62-330.010. The responsibilities for implementing the statewide ERP program are partially delegated by DEP to the water management districts and certain local governments.

⁴⁸ Section 403.813, F.S.

⁴⁹ Fla. Admin. Code Rules 62-330.050(1) and 62-330.051(2).

⁵⁰ Section 403.813(1), F.S.; Fla. Admin. Code R. 62-330.051.

⁵¹ Section 403.813(1)(d), F.S.

⁵² Section 403.813(1), F.S.

- The respective strategies and obligations of the local government and residential recycling collector to reduce the amount of contaminated recyclable material being collected.
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truckloads, carts, or bins containing contaminated recyclable material.
- The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material.
- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill states that after a contract is executed, a recovered materials processing facility is not required to process contaminated recyclable material, except according to a contract consistent with the requirements below. The bill requires that each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, include all of the following:

- A definition of “contaminated recyclable material” that is appropriate for the local community.
- The respective strategies and obligations of the local government and the facility to reduce the amount of contaminated recyclable material being collected and processed.
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truckloads, carts, or bins containing contaminated recyclable materials.
- The remedies authorized to be used if a container or truckload contains contaminated recyclable material.

These contractual requirements apply only to the collection and processing of material obtained from residential recycling activities. As used in the bill, the term “contaminated recyclable material” refers only to recyclable material that is commingled or mixed with solid waste or other nonhazardous material. Contaminated recyclable material, as used in the bill, does not include “contamination” as used in programs such as brownfield site cleanup, water quality remediation, drycleaning-solvent-contaminated site cleanup, petroleum-contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

The contractual requirements apply to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after October 1, 2020.

Section 2 amends s. 403.813, F.S., which identifies certain activities for which an environmental resource permit is not required.

The bill prohibits a local government from requiring a person claiming an exemption under s. 403.813(1), F.S., to provide further verification from the Department of Environmental Protection.

The bill revises the exemption in current law from environmental resource permitting for the replacement or repair of existing docks or piers. Rather than requiring that the replaced or repaired dock or pier be in the same location and of the same configuration and dimensions as

the dock or pier being replaced or repaired, the bill states that it must be within 5 feet of the same location and no larger than the existing dock or pier. No additional aquatic resources may be adversely and permanently impacted by such replacement or repair.

Section 3 states that this act shall take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides recycling collectors the right to refuse collection of recyclable materials that are deemed contaminated under the contract. This right may produce an indeterminate positive fiscal impact for private sector recycling collectors and facilities through a reduction of costs associated with removing contaminated material from recyclables.

The bill may also have a positive fiscal impact on the private sector by expanding the permit exception for the replacement or repair of existing docks and piers if it results in more docks being built or repaired.

C. **Government Sector Impact:**

The bill may have a negative fiscal impact on local governments that must negotiate new required contract terms, including defining “contaminated recyclable materials,” with residential recycling collectors and recovered materials processing facilities.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 403.706, 403.813

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 Environment and Natural Resources Committee on November 4, 2019:

- Deletes the requirement that the definition of “contaminated recyclable material” in certain local government contracts must take into consideration the available markets for recyclable material, available waste composition studies, and other relevant factors.
- Clarifies that after the execution of a contract is when a residential recycling collector or recycled material processing facility is not required to collect, transport, or process contaminated recyclable material except pursuant to specified contractual requirements.

B. **Amendments:**

None.