

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 724

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Local Government Recycling Programs

DATE: January 30, 2020 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Schreiber	Rogers	EN	Fav/CS
2. Paglialonga	Ryon	CA	Pre-meeting
3. _____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 724 provides an exemption for fiscally constrained counties from recycling goals required for county recycling programs. The bill creates within the Department of Environmental Protection (DEP) the Florida Recycling Working Group, consisting of members from eleven public and private organizations. The working group must submit a report to the Legislature. The working group is repealed on July 1, 2021.

II. Present Situation:

Recycling in Florida

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

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.*

processed and reused or returned to use in the form of raw materials or intermediate or final products.”⁴ “Municipal solid waste” includes any solid waste (except for sludge) resulting from the operation of residential, commercial, or governmental establishments that would normally be collected, processed, and disposed of through a solid waste management service (this excludes waste from industrial, mining, or agricultural operations).⁵

In 2008, the Legislature established a weight-based goal of recycling 75 percent of Florida’s municipal solid waste by 2020.⁶ In 2010, the Legislature established interim goals that counties must pursue leading up to 2020.⁷ The interim goals require each Florida county to have a recyclable materials recycling program with 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, 2020.⁸ 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.⁹

Counties with a population of 100,000 or less, in lieu of achieving the interim goals, may provide residents with the opportunity to recycle.¹⁰ Providing the “opportunity to recycle” must include both of the following:

- Either:
 - Providing a system for separating and collecting recyclable materials before disposal that is located at a solid waste management facility or solid waste disposal area; or
 - Providing a system of places within the county for collection of source-separated recyclable materials.
- Providing a public education and promotion program to inform residents of the opportunity to recycle, encourage source separation of recyclable materials, and teach the benefits of reducing, reusing, recycling and composting materials.

⁴ Section 403.703(31), F.S.

⁵ Section 403.706(5), F.S.

⁶ 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).

⁷ Section 403.706(2)(a), F.S.

⁸ 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.

⁹ Section 403.706(2)(f), F.S.

¹⁰ Section 403.706(4)(c), F.S.

According to DEP's report, only 36 of Florida's 67 counties have populations over 100,000.¹¹ These 36 counties contain approximately 95% of Florida's population and produced 45 million of the 47 million tons of municipal solid waste generated in Florida in 2018.¹²

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.¹³ Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.¹⁴ 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 and the innovative use of yard trash or other clean wood waste or paper waste.¹⁵ To assess progress towards achieving the interim goals, the Department of Environmental Protection (DEP) requires counties to provide information on their solid waste management programs and recycling activities to the DEP by April 1 of each year.¹⁶ If DEP determines that a county has not reached the required recycling goals, DEP is authorized to direct the county to develop a plan to expand recycling programs to existing commercial and multifamily dwellings, including apartment complexes.¹⁷ Such an authorized directive applies to larger counties (with populations over 100,000), which are required to pursue the interim goals.¹⁸

In those years when the state's recycling rate does not meet the statutory thresholds for the interim goals, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives.¹⁹ This report must identify those additional programs or statutory changes needed to achieve the state's recycling goals.²⁰ Florida achieved the interim recycling goals established for 2012 and 2014.²¹ However, Florida's recycling rate for 2016 was 56 percent, falling short of 60 percent by 2017.²² Florida's recycling rate declined from 52 percent in 2017 to 49 percent in 2018, both of which fall short of the interim targets.²³ This decrease can largely be attributed to a reduction in the reported amount of construction and demolition (C&D) debris recycled in 2018.²⁴ DEP submitted the most recent status report in 2019.²⁵ Without significant changes to the current approach, the 2020 goal of 75% will not be achieved.²⁶

¹¹ DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 1*, 3, 9 (2019)[hereinafter *DEP 2019 Report*], available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf.

¹² *Id.* at 29.

¹³ Section 403.706(3), F.S.

¹⁴ Section 403.706(2)(a), F.S.

¹⁵ Section 403.706(4), F.S.

¹⁶ Section 403.706(7), F.S.; Fla. Admin. Code R. 62-716.450.

¹⁷ Section 403.706(2)(d), F.S.

¹⁸ *DEP 2019 Report*, at 3.

¹⁹ Section 403.706(2)(e), F.S.

²⁰ *Id.*

²¹ 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).

²² *Id.*

²³ *DEP 2019 Report*, at 3.

²⁴ *Id.* at 9.

²⁵ *Id.* at 3.

²⁶ *Id.* at 29.

In 2018, of Florida's 32 large counties (with populations over 100,000), four met the 70% interim recycling goal.²⁷ Recycling credits received for renewable energy and C&D debris were the primary factors in their success.²⁸ In August of 2019, DEP requested each of the 32 large counties not reaching the interim goals to develop a plan to expand current recycling programs to existing commercial and multifamily dwellings.²⁹ As of November 21st, DEP has received all 32 county recycling plans.³⁰

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.³¹

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.³²

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.³³ 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.³⁴ A market must exist for the recyclable materials, and the local government must specifically intend for them to be recycled.³⁵ 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.³⁶

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

²⁷ *Id.* at 3.

²⁸ *Id.*

²⁹ *Id.* at 9.

³⁰ *Id.*

³¹ Section 403.706(6), F.S.

³² *Id.*

³³ Section 403.706(9), F.S.

³⁴ Section 403.706(21), F.S.

³⁵ *Id.*

³⁶ Section 403.706(21), F.S.

- 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.³⁷

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.³⁸

DEP has been working to increase recycling rates through grant programs, educational opportunities, and the development of a statewide outreach campaign called “Rethink. Reset. Recycle.”³⁹ 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.⁴⁰
- 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.
- Requesting that Florida’s state universities and the Florida Department of Education 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.⁴¹

Contamination

Many counties and municipalities have instituted single-stream recycling programs.⁴² 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.⁴³

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts.⁴⁴ For example, plastic bags are 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

³⁷ Section 403.7046(3), F.S.

³⁸ Section 403.7046(3)(a), F.S.

³⁹ *DEP 2019 Report*, at 22; Rethink. Reset. Recycle., *About*, <https://floridarecycles.org/> (last visited Dec. 20, 2019).

⁴⁰ See EPA, *Sustainable Materials Management Basics*, <https://www.epa.gov/smm/sustainable-materials-management-basics> (last visited Dec. 20, 2019).

⁴¹ *DEP 2019 Report*, at 10, available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf.

⁴² *Id.* at 11.

⁴³ *Id.*

⁴⁴ *Id.*

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.⁴⁵

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.⁴⁶ In 2017, China banned the import of 24 recyclable materials, such as post-consumer plastics and mixed paper, and also announced a 0.5 percent contamination standard for most recyclables not named in the ban.⁴⁷ 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.⁴⁸ The ban has caused shipments of recyclables to other Asian countries to increase dramatically, resulting in nations including India, Malaysia, Indonesia, Thailand, and Vietnam enacting policies restricting the import of recyclable materials.⁴⁹

China's recycling ban has created substantial challenges around the world for the solid waste and recycling industry.⁵⁰ The loss of the Chinese export markets has caused recyclable materials to be sent to landfills or burned.⁵¹ China's ban and higher standards for contamination are leading to higher costs and lower revenues for the U.S. recycling industry.⁵² In Florida, local governments are struggling with issues such as rising costs of processing and high contamination

⁴⁵ *Id.*

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ *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.

⁴⁹ 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).

⁵⁰ 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).

⁵¹ 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).

⁵² 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).

rates.⁵³ 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.⁵⁴ The increased supply of recyclable materials and decreased demand from end markets has resulted in a depression of commodities priced in the recycling industry.⁵⁵ In response, DEP has utilized state programs and engaged various stakeholders to develop and grow Florida's recycling markets.⁵⁶

The reduction in global markets has forced many waste haulers and waste management companies to reduce the amount of contamination transported and delivered to their processing facilities.⁵⁷ As the value of mixed recovered materials decreases, several counties have been asked to renegotiate their recycling contracts.⁵⁸ Many of the contracts have clauses that stipulate contamination must be below a certain percentage or the local government will be charged a much higher rate and penalized.⁵⁹

Exceptions to Requirements for Environmental Resource Permitting

DEP's Environmental Resource Permitting (ERP) program regulates activities involving the alteration of surface water flows.⁶⁰ 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).⁶¹

For some low impact activities and projects that are narrow in scope, an ERP permit is not required under state law.⁶² Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to DEP.⁶³ 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.⁶⁴ 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

⁵³ 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).

⁵⁴ 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).

⁵⁵ *Id.*

⁵⁶ *Id.* at 15-17; DEP 2019 Report, at 12-15, available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf.

⁵⁷ DEP 2019 Report, at 12.

⁵⁸ *Id.*

⁵⁹ *Id.* at 12-13.

⁶⁰ 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).

⁶¹ 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.

⁶² Section 403.813, F.S.

⁶³ Fla. Admin. Code Rules 62-330.050(1) and 62-330.051(2).

⁶⁴ Section 403.813(1), F.S.; Fla. Admin. Code R. 62-330.051.

dock or pier being replaced or repaired.⁶⁵ 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.⁶⁶

III. Effect of Proposed Changes:

Section 1 amends s. 403.706, F.S., which contains recycling goals required for county government recycling programs.

The bill exempts from the required county recycling goals any fiscally constrained county, as defined in s. 218.67(1), F.S. This exemption expires on July 1, 2035.

The bill creates the Florida Recycling Working Group within the Department of Environmental Protection (DEP). The working group must be composed of eleven members, with each of the following eleven organizations appointing one representative member from within their respective organizations:

- DEP.
- The University of Florida's Engineering School of Sustainable Infrastructure and Environment.
- The Hinkley Center for Solid and Hazardous Waste Management.
- The Florida League of Cities.
- The Florida Association of Counties.
- The Florida Recycling Partnership.
- Keep Florida Beautiful.
- The Florida Beverage Association.
- Southern Waste Information eXchange, Inc.
- The Florida Chapter of the National Waste and Recycling Association.
- Recycle Florida Today, Inc.

The bill requires the working group to meet at least three times. A quorum must elect a chair and vice chair. A quorum will consist of a majority of the members. The chair of the working group must preside at all meetings and call meetings as often as necessary to carry out the working group's responsibilities. DEP must keep a complete record of the proceedings of each meeting, including the names of the members present at each meeting and the actions taken. The records are public records, according to ch. 119, F.S.

The bill requires the working group to compile a report recommending programs and statutory changes necessary for achieving future recycling goals based on current progress toward achieving the goals required of county recycling programs. The working group must submit the report to the President of the Senate and the Speaker of the House of Representatives by July 1, 2021.

The subsection creating the Florida Recycling Working Group expires on July 1, 2021.

⁶⁵ Section 403.813(1)(d), F.S.

⁶⁶ Section 403.813(1), F.S.

Section 2 states that the bill 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires DEP to administer and participate in the Florida Recycling Working Group, including producing a report to the Legislature. These responsibilities may cause DEP to incur additional costs.

The bill exempts fiscally constrained counties from required recycling goals for county recycling programs. This may have an indeterminate, positive fiscal impact on fiscally constrained counties in the short term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.706 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.)

CS by Environment and Natural Resources Committee on December 9, 2019:

- Removes all changes to the timeline regarding the goals required of county recycling programs, including DEP's reporting requirements related to the goals, but retains the exemption for fiscally constrained counties through July 1, 2035.
- Creates within DEP the Florida Recycling Working Group, which must produce a report recommending programs and statutory changes necessary for achieving future recycling goals based on current progress. The language establishes the working group's composition, administrative procedures, and obligations for submitting its report to the Legislature by July 1, 2021. The working group is repealed on July 1, 2021.

B. Amendments:

None.