

By the Committee on Community Affairs; and Senator Martin

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A bill to be entitled
An act relating to waste management; amending s.
403.703, F.S.; defining the term "auxiliary
container"; conforming cross-references; amending s.
403.7033, F.S.; deleting obsolete provisions that
provide legislative findings and require the
Department of Environmental Protection to review and
update a specified report; prohibiting the local
regulation of auxiliary containers; preempting such
regulation to the state; amending ss. 403.706 and
403.707, F.S.; prohibiting a local government and the
Department of Environmental Protection, respectively,
from issuing a construction permit for certain solid
waste disposal facilities in certain counties;
providing applicability; conforming a provision to
changes made by the act; conforming cross-references;
amending ss. 403.7049 and 403.705, F.S.; conforming
cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (2) through (48) of section
403.703, Florida Statutes, are redesignated as sections (3)
through (49), respectively, a new subsection (2) is added to
that section, and present subsections (6), (7), (21), and (35)
of that section are amended, to read:

403.703 Definitions.—As used in this part, the term:
(2) "Auxiliary container" means a reusable or single-use
bag, cup, bottle, can, or other packaging that meets both of the

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following requirements:

(a) Is made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; corrugated material; molded fiber; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates.

(b) Is designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a public food service establishment as defined in s. 509.013(5), a food establishment as defined in s. 500.03(1), or a retailer as defined in s. 212.02(13).

(7)~~(6)~~ "Construction and demolition debris" means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause the resulting mixture to be classified as other than construction and demolition debris. The term also includes:

(a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;

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(b) Except as provided in s. 403.707(10)(j) ~~s. 403.707(9)(j)~~, yard trash and unpainted, nontreated wood scraps and wood pallets from sources other than construction or demolition projects;

(c) Scrap from manufacturing facilities which is the type of material generally used in construction projects and which would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities; and

(d) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

(8) ~~(7)~~ "County," or any like term, means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution and, when s. 403.706(20) ~~s. 403.706(19)~~ applies, means a special district or other entity.

(22) ~~(21)~~ "Municipality," or any like term, means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution and, when s. 403.706(20) ~~s. 403.706(19)~~ applies, means a special district or other entity.

(36) ~~(35)~~ "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or

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other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (29) ~~(28)~~ and post-use polymers as defined in subsection (25) ~~(24)~~ are not solid waste.

Section 2. Section 403.7033, Florida Statutes, is amended to read:

403.7033 Preemption of regulation for auxiliary containers ~~Departmental analysis of particular recyclable materials. The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of Environmental Protection shall review and update its 2010 report on retail bags analyzing the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The updated report must include input from state and local government agencies, stakeholders, private businesses, and citizens and must evaluate the efficacy and necessity of both statewide and local regulation of these materials. To ensure consistent and effective implementation, the department shall submit the updated report with conclusions and recommendations to the Legislature no later than December 31, 2021. Until such time that the Legislature adopts the recommendations of the department,~~ A local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of ~~such~~ auxiliary containers. The regulation

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of auxiliary containers is expressly preempted to the state,
~~wrappings, or disposable plastic bags.~~

Section 3. Present subsections (2) through (23) of section 403.706, Florida Statutes, are redesignated as subsections (3) through (24), respectively, a new subsection (2) is added to that section, and present subsections (4), (6), (7), and (20) of that section are amended, to read:

403.706 Local government solid waste responsibilities.—

(2) A local government may not issue a construction permit pursuant to this section for a new solid waste disposal facility that uses an ash-producing incinerator or for a waste-to-energy facility, if the proposed location of such facility is sited within a one mile radius of any school or any property zoned for residential use which has a density of one or more dwelling units per acre. The one-mile radius must be measured from the stack of the facility. This subsection applies only to a county as defined in s. 125.011(1).

(5) (a) ~~(4) (a)~~ In order to promote the production of renewable energy from solid waste, each megawatt-hour produced by a renewable energy facility using solid waste as a fuel shall count as 1 ton of recycled material and shall be applied toward meeting the recycling goals set forth in this section. If a county creating renewable energy from solid waste implements and maintains a program to recycle at least 50 percent of municipal solid waste by a means other than creating renewable energy, that county shall count 1.25 tons of recycled material for each megawatt-hour produced. If waste originates from a county other than the county in which the renewable energy facility resides, the originating county shall receive such recycling credit. Any

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146 byproduct resulting from the creation of renewable energy that
147 is recycled shall count towards the county recycling goals in
148 accordance with the methods and criteria developed pursuant to
149 paragraph (3) (h) ~~(2) (h)~~.

150 (b) A county may receive credit for one-half of the
151 recycling goal set forth in subsection (3) ~~(2)~~ from the use of
152 yard trash, or other clean wood waste or paper waste, in
153 innovative programs including, but not limited to, programs that
154 produce alternative clean-burning fuels such as ethanol or that
155 provide for the conversion of yard trash or other clean wood
156 waste or paper waste to clean-burning fuel for the production of
157 energy for use at facilities other than a waste-to-energy
158 facility as defined in s. 403.7061. The provisions of this
159 paragraph apply only if a county can demonstrate that:

160 1. The county has implemented a yard trash mulching or
161 composting program, and

162 2. As part of the program, compost and mulch made from yard
163 trash is available to the general public and in use at county-
164 owned or maintained and municipally owned or maintained
165 facilities in the county and state agencies operating in the
166 county as required by this section.

167 (c) A county with a population of 100,000 or less may
168 provide its residents with the opportunity to recycle in lieu of
169 achieving the goal set forth in this section. For the purposes
170 of this section, the "opportunity to recycle" means that the
171 county:

172 1.a. Provides a system for separating and collecting
173 recyclable materials prior to disposal that is located at a
174 solid waste management facility or solid waste disposal area; or

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b. Provides a system of places within the county for collection of source-separated recyclable materials.

2. Provides a public education and promotion program that is conducted to inform its residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling, and composting materials.

(7)~~(6)~~ The department may reduce or modify the municipal solid waste recycling goal that a county is required to achieve pursuant to subsection (3) ~~(2)~~ if the county demonstrates to the department that:

(a) The achievement of the goal set forth in subsection (3) ~~(2)~~ would have an adverse effect on the financial obligations of a county that are directly related to a waste-to-energy facility owned or operated by or on behalf of the county; and

(b) 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.

The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a county's waste-to-energy facility. Nothing in this subsection shall exempt a county from developing and implementing a recycling program pursuant to this act.

(8)~~(7)~~ In order to assess the progress in meeting the goal set forth in subsection (3) ~~(2)~~, each county shall, by April 1 each year, provide information to the department regarding its

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annual solid waste management program and recycling activities.

(a) The information submitted to the department by the county must, at a minimum, include:

1. The amount of municipal solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;

2. The amount and type of materials from the municipal solid waste stream that were recycled; and

3. The percentage of the population participating in various types of recycling activities instituted.

(b) Beginning with the data for the 2012 calendar year, the department shall by July 1 each year post on its website the recycling rates of each county for the prior calendar year.

(21)~~(20)~~ In addition to any other penalties provided by law, a local government that does not comply with the requirements of subsections (3) and (5) ~~is (2) and (4)~~ shall not be eligible for grants from the Solid Waste Management Trust Fund, and the department may notify the Chief Financial Officer to withhold payment of all or a portion of funds payable to the local government by the department from the General Revenue Fund or by the department from any other state fund, to the extent not pledged to retire bonded indebtedness, unless the local government demonstrates that good faith efforts to meet the requirements of subsections (3) and (5) ~~(2) and (4)~~ have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

Section 4. Present subsections (6) through (14) of section 403.707, Florida Statutes, are redesignated as subsections (7)

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through (15), respectively, a new subsection (6) is added to that section, and paragraph (j) of present subsection (9) of that section is amended, to read:

403.707 Permits.—

(6) The department may not issue a construction permit pursuant to this section for a new solid waste disposal facility that uses an ash-producing incinerator or for a waste-to-energy facility, if the proposed location of such facility is sited within a one mile radius of any school or any property zoned for residential use which has a density of one or more dwelling units per acre. The one-mile radius must be measured from the stack of the facility. This subsection applies only to a county as defined in s. 125.011(1).

(10)~~(9)~~ The department shall establish a separate category for solid waste management facilities that accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit that receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a

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262 hearing prior to April 30, 2008, that some or all of the
263 material described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~ shall be
264 excluded from the definition of "construction and demolition
265 debris" in s. 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction
266 of such county. The county may make such a determination only if
267 it finds that, prior to June 1, 2007, the county has established
268 an adequate method for the use or recycling of such wood
269 material at an existing or proposed solid waste management
270 facility that is permitted or authorized by the department on
271 June 1, 2007. The county is not required to hold a hearing if
272 the county represents that it previously has held a hearing for
273 such purpose, or if the county represents that it previously has
274 held a public meeting or hearing that authorized such method for
275 the use or recycling of trash or other nonputrescible waste
276 materials and that such materials include those materials
277 described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~. The county shall
278 provide written notice of its determination to the department by
279 no later than April 30, 2008; thereafter, the materials
280 described in s. 403.703(7) ~~s. 403.703(6)~~ shall be excluded from
281 the definition of "construction and demolition debris" in s.
282 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction of such county.
283 The county may withdraw or revoke its determination at any time
284 by providing written notice to the department.

285 Section 5. Subsection (5) of section 403.7049, Florida
286 Statutes, is amended to read:

287 403.7049 Determination of full cost for solid waste
288 management; local solid waste management fees.—

289 (5) In order to assist in achieving the municipal solid
290 waste reduction goal and the recycling provisions of s.

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291 403.706(3) ~~s. 403.706(2)~~, a county or a municipality which owns
292 or operates a solid waste management facility is hereby
293 authorized to charge solid waste disposal fees which may vary
294 based on a number of factors, including, but not limited to, the
295 amount, characteristics, and form of recyclable materials
296 present in the solid waste that is brought to the county's or
297 the municipality's facility for processing or disposal.

298 Section 6. Paragraph (c) of subsection (2) and subsection
299 (3) of section 403.705, Florida Statutes, are amended to read:

300 403.705 State solid waste management program.—

301 (2) The state solid waste management program shall include,
302 at a minimum:

303 (c) Planning guidelines and technical assistance to
304 counties and municipalities to aid in meeting the municipal
305 solid waste recycling goals established in s. 403.706(3) ~~s.~~
306 ~~403.706(2)~~.

307 (3) The department shall evaluate and report biennially to
308 the President of the Senate and the Speaker of the House of
309 Representatives on the state's success in meeting the solid
310 waste recycling goal as described in s. 403.706(3) ~~s.~~
311 ~~403.706(2)~~.

312 Section 7. This act shall take effect July 1, 2025.