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HOUSE OF REPRESENTATIVES
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS

BILL #: CS/HB 851
RELATING TO: Solid Waste Management
SPONSOR(S): Council for Ready Infrastructure and Representative(s) Dockery & others
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 15 NAYS 0
- (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 17 NAYS 0
- (4)
- (5)

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I. SUMMARY:

The bill:

- Transfers certain sales tax proceeds, beginning in fiscal year 2003-2004, to the Ecosystem Management and Restoration Trust Fund to create a water quality improvement and water restoration grant program;
- Rewrites laws pertaining to the creation and use of the Solid Waste Management Trust Fund (SWMTF);
- Removes a series of local government mandates relating to administration and reporting requirements that are part of existing solid waste law;
- Provides additional flexibility for counties in determining their recycling rate;
- Rewrites an existing grant program for solid waste management;
- Creates a water quality improvement and water restoration grant program; and
- Repeals a series of outdated provisions concerning, disposal of certain food by-products, the creation of an applications demonstration center solid waste, fund transfers, and the waste tire grant program.

The bill would have a neutral impact to overall state expenditures but substantially alters disbursements with the existing solid waste program. There is both a negative and positive impact for revenues received by local governments. In addition, these funding changes will take effect July 1, 2003.

Except as otherwise provided the bill becomes effective July 1, 2002.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government: The bill creates a new grant program targeted to water quality improvement and water restoration programs. The bill reduces government through a series of changes to local government mandates associated with administering and reporting on solid waste activities.

B. PRESENT SITUATION:

Solid waste management is a local government responsibility. Before 1988, local governments in Florida did not receive ongoing grants to subsidize and assist in recycling and other solid waste management problems. Pollution problems at existing landfills, long delays in siting new landfill sites, and forecasts that one-third of the landfill space available in the state in 1985 would be closed by 1996 prompted the Legislature to help local governments meet their solid waste management responsibilities. Thus, in 1988 the Solid Waste Management Act (SWMA) was created to address the growing costs and environmental problems associated with solid waste disposal in Florida.

The SWMA contained comprehensive provisions that established an overall 30 percent recycling goal to be met by 1994. The act also established a number of new programs for the management of special waste, as well as requiring training of landfill operators, financial responsibility for landfill closure, full-cost accounting for local government solid waste services, packaging requirements, litter control, and, most importantly, a recycling and education grant program for governments to help them reach the 30 percent recycling goal. Another major feature of the SWMA was the creation of a Waste Tire Grant Program to assist counties in solving problems stemming from the large number of waste tires in the state. This grant program is funded from a \$1 fee imposed on each new motor vehicle tire sold at retail.

To fund provisions of the SWMA, the Solid Waste Management Trust Fund (SWMTF) was created (see s. 403.709, F.S.) The two major revenue sources for this fund are:

- A distribution of two-tenths of 1 percent of the sale tax proceeds transferred directly to the SWMTF, amounting to approximately \$30 million annually; and
- The waste tire fees that produce annual revenue of approximately \$20 million.

To assist counties in recycling, the Legislature established the Recycling and Education Grant Program (see s. 403.7095, F.S.) This program, funded from the SWMTF, was intended to provide seed money to counties for establishing required programs. Counties were awarded grants for initial capital costs and, if justified, temporary operating subsidies. Other possible uses include

operations, recycling education, market development, and special projects. The Legislature also provided local governments several other grants for solid waste management activities. These grants include Waste Tire, Used Oil, Litter Control and Prevention, and Small County grants for counties with populations under 100,000 that may be used for any solid waste management activity, including recycling.

Solid Waste Management Trust Fund Allocations

The Legislature annually appropriates money from the SWMTF for several grant programs administered by the Department of Environmental Protection (DEP), including recycling and education grants. These grants for county solid waste programs have been reduced from a high of \$35 million in the mid-1990s to the current appropriation of \$5.8 million that was made available only to those counties with a population of 100,000 or less (see 2001-2002 General Appropriations Implementing Bill). Corresponding with this reduction in grants have been legislative efforts to statutorily reallocate the sales tax revenues that are going to the SWMTF and to use the money for other priority needs. These legislative efforts have not been successful. However, every year since 1995, significant amounts of revenues have been diverted from the SWMTR to other uses in the General Appropriations Act. Moneys have been diverted to the Working Capital Fund, the Invasive Plant Control Trust Fund, and the Ecosystem Management and Restoration Trust Fund to be used for aquatic and invasive plant control and various water projects.

Additional annual expenditures from the SWMTF include:

- \$9.4 million for DEP solid waste activities, such as salaries, insurance, laboratory operations, and waste tire abatement;
- \$3 million for biomedical waste management, education, hazardous waste compliance efforts, and mercury and lead recycling;
- \$2.3 million for research and training efforts; and
- \$2.2 million for mosquito control.

Water Project Funding

As discussed above, SWMTF dollars have been used for many water projects over the past few years. A review of expenditures shows that some \$40 million has been transferred from the SWMTF for these purposes. In addition to these transfers, the DEP has several existing programs to fund water projects, including:

- "Clean Water" State Revolving Fund (SRF) loan program for wastewater, storm water, and other nonpoint source projects (ss. 403.1835-.1837, F.S.);
- Drinking Water SRF loan/grant program for drinking water systems (ss. 403.8532-.8533, F.S.);
- Disadvantaged community wastewater grant program with a waiting list of more than 60 projects totaling more than \$200 million in funding requests (s. 403.1838, F.S.);

- Surface Water Improvement and Management program (SWIM) under chapter 373, F.S., which, if funded, would address high priority surface water restoration projects (s. 373.453, F.S.); and
- Florida Forever, which permits water management districts to use a portion of bond proceeds for restoration projects (ss. 259.105-.1051, F.S.).

C. EFFECT OF PROPOSED CHANGES:

The bill transfers two-tenths of 1 percent of state sales tax proceeds to the Ecosystem Management and Restoration Trust Fund (EMRTF), beginning in fiscal year 2003-2004, to fund water quality improvement and restoration projects. Presently, those funds go to the SWMTF for solid waste activities. (The estimated proceeds for FY 2002-03 are about \$33.2 million.) The bill funds these water projects through a competitive grant program. The grant program addresses:

- Eligible entities: counties, municipalities, water management districts and other districts having responsibility for water quality improvement and management, wastewater and stormwater management, and lake and river restoration.
- Priorities: the DEP is to review the proposals and determine if they: protect public health and the environment; and implement plans developed pursuant to the Surface Water Improvement and Management Act (part IV, chapter 373, F.S.) or other legally required plans, including those under s. 403.067, F.S. (implementation of total maximum daily loads); and local government plans.
- Action: The DEP is required to submit the list of eligible projects to the Governor and Legislature in its annual budget request. It is not clear whether this action is *pro forma* or whether the Legislature and Governor would take specific action on individual projects on the DEP's prioritized list.

Additional provisions of the water projects grant program would:

- Set aside at least 20 percent of the funds for "financially disadvantaged small local governments." These are defined as municipalities having a population of 7,500 or less, a county with a population of 35,000 or less if their per capita income was less than the state's average, or the county is in a designated rural area of critical economic concern.
- Direct the Legislature to assemble a list of member projects addressing water projects and submit the list to the DEP for review and eligibility determination. The list would be submitted by February 1, and reviewed by March 1. This provision is designed to deal with those projects that are identified after the DEP submits its budget request in September.

The bill substantially rewrites s. 403.709, F.S., relating to uses of funds within the SWMTF. Specific provisions would describe the appropriate use of the funds and create an allocation. The allocations and their uses are:

- Up to 40 percent for activities of the department, such as providing technical assistance, performing regulatory and enforcement functions, preparing documents, and implementing education programs;
- Up to 4.5 percent for research and training programs;
- Up to 11 percent for mosquito control efforts overseen by the Department of Agriculture and Consumer Services;

- Up to 4.5 percent for litter prevention and control programs coordinated by Keep Florida Beautiful, Inc.; and
- A minimum of 40 percent for implementing a competitive and innovative grant program for activities relating to recycling and waste reduction, including waste tire disposal.

This rewrite, while keeping much of the original language creating the trust fund, differs in the following manner. Priority funding for aseptic packaging recycling programs is removed and requirements that waste tire funds be segregated are removed. Original provisions allowing the DEP to recover costs associated with cleaning up waste tire sites are retained.

The bill also substantially rewrites s. 403.7095, F.S., which created the solid waste management grant program. The new provisions re-create the grant program and direct the DEP to award funds to programs that:

- Demonstrate technologies or processes that are not common, represent a novel application of technology, or provide innovative methods for overcoming obstacles related to recycling or waste reduction;
- Demonstrate innovative processes to collect, recycle, or reduce materials targeted by the DEP; and
- Demonstrate effective solutions to solving waste tire problems, particularly in the areas of enforcement and abatement.

The grants are awarded by the DEP on a competitive basis, and criteria for their award is developed in consultation with the waste management industry.

Provisions related to specific expenditure directives contained in existing law are substantially changed. The bill would provide funding levels, beginning in fiscal year 2003-2004, as follows:

- Up to 15 percent for grant program described above.
- Up to 35 percent to be split evenly between the 34 counties with a population under 100,000. These funds may be used for general solid waste expenses.
- Up to 50 percent for a waste tire grant program. Of these funds, 25 percent shall be distributed to those counties with a population under 100,000.

Additional provisions of the bill:

- Direct that waste tire fees be deposited directly into the SWMTF and no longer be kept in a segregated account.
- Reduce solid waste management reporting requirements for counties.
- Change the requirement that counties recycle a "majority" of certain materials to recycle a "significant portion" of materials. Additionally, the list of materials is expanded from five to eight. The original five, newspaper, aluminum cans, steel cans, glass, and plastic bottles are expanded to include cardboard, office paper, and yard trash.
- Amends and deletes language for formulating the municipal solid waste reduction goal.
- Changes the small county population threshold from 75,000 to 100,000 to make it consistent with current law.
- Removes a mandate that counties "must" consider plans for composting/mulching organic materials and partnering with the private sector to "encouraging" plans or partnering.
- Moves a provision in s. 403.706, F.S., that directs construction and demolition debris be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.

- Creates a provision to provide that no facility, solely by the virtue of the fact that it uses processed yard trash or clean wood or paper waste as a fuel source, shall be deemed a solid waste disposal facility.
- Repeal s. 403.7085, F.S., which dealt with the disposal of certain animal by-products in landfills. The provision is outdated and superseded by other law.
- Repeal s. 403.7165, F.S., which created an Applications Demonstration Center for Resource Recovery from solid organic materials. The center has completed its work.
- Repeal s. 403.7175, F.S., to remove language that directed specific appropriations be made from General Revenue to the Water Quality Assurance Trust Fund. The provision is no longer needed.
- Repeal s. 403.719, F.S., which created a separate waste tire grant program. This provision is made obsolete by the bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1- Amends s. 212.20 (2), F.S., effective July 1, 2003, to provide that two-tenths of 1 percent of sales tax proceeds is to be transferred to the Ecosystem Management Trust Fund, rather than to the SWMTR.

Section 2- Amends s. 403.703, F.S., to provide technical changes.

Section 3- Amends s. 403.705, F.S., to remove reporting mandates.

Section 4- Amends s. 403.706, F.S., to: strike a provision that directs construction and demolition debris be separated and segregated (this language is reinstated elsewhere), provide for the counting of additional material for determining the recycling rate, change "majority" to "significant portion" as used to determine recycling goals, remove mandates concerning composting and mulching, strike provisions that detailed how portions of the recycling goal may be determined, and strike a provision that exempted certain facilities from being defined as a solid waste facility (this language is reinstated elsewhere).

Section 5- Amends s. 403.7061, F.S., to correct cross-references.

Section 6- Amends s. 403.707, F.S., to reinstate provisions removed under Section 4. Specific provisions relate to separating and segregating construction and demolition debris at solid waste facilities and an exemption for certain facilities from being defined as a solid waste facility.

Section 7- Amends s. 403.709, F.S., to revise the uses of moneys in the SWMTF, including waste tire fee revenues. Directs DEP to provide assistance to local governments and the private sector and to perform solid waste regulatory and enforcement duties. Provides that revenues from waste tire fees be transferred to the Operations Trust Fund in the Department of Agriculture and Consumer Services for mosquito control. Provides funding for litter prevention and control programs for Keep Florida Beautiful, Inc. Provides funding for a competitive and innovative grant program for activities relating to recycling, volume reduction of municipal solid waste, and waste tire disposal.

Section 8- Amends s. 403.7095, F.S., to revise requirements and procedures relating to the solid waste management grant program. Authorizes DEP to adopt rules to administer the solid waste management program. Requires DEP to cooperate with private sector entities to develop a process and define specific criteria for allowing their participation with grant recipients. Requires DEP to evaluate and prioritize grant proposals and submit a prioritized list to the Governor and Legislature

as part of its annual budget request. Creates a series of grant programs and provides direction for funding.

Section 9- Amends s. 403.717, F.S., to delete cross-references relating to the waste tire grants program.

Section 10- Amends s. 403.718, F.S., to eliminate the waste tire account within the SWMTF.

Section 11- Creates the water quality improvement and water restoration grant program to be administered by DEP. Specifies eligible grant recipients and minimum criteria for determining eligibility of grant proposals. Requires DEP to review grant proposals and submit a list of water restoration projects to the Governor and the Legislature as part of its annual budget request. Authorizes DEP to adopt rules to administer the program.

Section 12- Repeals ss. 403.7085, 403.7165, 403.7175, and 403.719, F.S., to eliminate obsolete and outdated provisions.

Section 13- Provides that unless otherwise specified the bill become will take effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill, effective July 1, 2003, transfers two-tenths of 1 percent of state sales tax proceeds to the Ecosystem Management and Restoration Trust Fund (EMRTF) to fund water quality improvement and restoration projects, estimated to be \$33.2 million in FY 2002-03. Future-year transfers are entirely dependent on sales tax receipts.

Absent the contribution from state sales tax proceeds, the waste tire fee becomes the primary source of money for the SWMTF. Changing the current transfer from SWMTF to the EMRTF reduces the annual recurring revenues into the SWMTF from about \$53 million to \$20 million.

2. Expenditures:

An additional \$30 million will be made available via the transfer of state sales tax to the EMRTF for the implementation of the water quality improvement and water restoration grant program.

Changes to the solid waste grant program would have the following effect (based on fiscal year 2002-2003 estimate of \$20 million in available funds):

- Up to 40 percent or approximately \$8 million for activities of the DEP related to implementing the solid waste program.
- Up to 4.5 percent or approximately \$900,000 for research and training programs.
- Up to 11 percent or approximately \$2.2 million for mosquito control.
- Up to 4.5 percent or approximately \$900,000 for litter prevention and control programs.

- A minimum of 40 percent or approximately \$8 million for implementing a competitive and innovative grant program described in s. 403.7095, F.S. (see Section 8 of the bill)

The \$8 million for implementing a competitive and innovative grant program shall be disbursed as follows:

- Up to 15 percent or approximately \$1.2 million for competitive and innovative grants.
- Up to 35 percent or approximately \$2.8 million to be split evenly between the 34 counties with a population under 100,000 for general solid waste expenditures.
- Up to 50 percent or approximately \$4 million for a waste tire grant program. Of these funds 25 percent shall be distributed to those counties with a population under 100,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

With the bill's proposed program for funding grants for water quality projects, local governments, including water management districts and other districts responsible for water management, could anticipate receiving collectively perhaps \$30 million each year through the grant program. There is no way to determine in advance which specific applicants and projects would qualify or be funded in any given year.

A provision within the water grants program would direct that at least 20 percent of the funds be directed to "financially disadvantaged small local governments." The bill defines this term to include: municipalities having a population of 7,500 or less; counties with populations of 35,000 or less provided that their per capita income is less than the state's average; or the county is in a designated rural area of critical economic concern.

During the previous 2 years, small counties, those under 100,000, have received \$5.8 million annually. This amount is not disbursed evenly among the counties and ranges from \$75,000 to just over \$280,000. This funding level is considered the hold-harmless amount. The provisions of the bill, based on fiscal estimates for 2002-2003, would reduce the amount directed to these counties by \$1.8 million. However, these small counties would be eligible to compete for competitive and innovative grants. Because of the language used in the bill and unknown growth rates for the Solid Waste Management Trust Fund the level of funding for small counties is difficult to project.

2. Expenditures:

Some small counties would be required to make up funding deficits, while some would see an increase under the bills provisions. Based on fiscal year 2002-2003 estimates and the distributions described above the impact would range from an increase of \$35,000 to a deficit of \$170,000.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Statewide, businesses handling tires will pay increased disposal costs to the extent local jurisdictions pass on the loss of grant revenues to landfill users. All businesses, in counties with populations fewer than 100,000, will have increased fees to dispose of waste to the extent local jurisdictions pass on the loss of grant revenues to landfill users.

D. FISCAL COMMENTS:

Grant program disbursements described in Section 8 and Section 11 of the bill will take effect in fiscal year 2003-2004.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax revenues shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

Sections 8 and 11 of the bill provide the DEP with rulemaking authority for the implementation of a solid waste management grant program and a water quality and water restoration grant program.

C. OTHER COMMENTS:

None

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 6, 2002, the Committee on Natural Resources & Environmental Protection adopted a strike-everything amendment that made the following changes to the original bill:

- Reduces solid waste management reporting requirements for counties to the DEP.
- Changes the requirement that counties recycle a "majority" of certain materials to recycle a "significant portion" of materials (additionally, this provision expands the list of materials that may be counted for the purposes of determining the recycling rate).
- Amends and deletes language for formulating the municipal solid waste reduction goal.
- Changes the small county population threshold from 75,000 to 100,000 to make it consistent with current law.
- Removes a mandate that counties "must" consider plans for composting/mulching organic materials and partnering with the private sector to "encouraging" plans for composting/mulching and partnering with the private sector.

- Reduces the reporting requirements for counties and provides that DEP may be “provided information” regarding county solid waste management plans.
- Reinstates stricken provisions from s. 403.706, F.S., that construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.
- Provides that no facility, solely by virtue of the fact that it uses processed yard trash or clean wood or paper waste as a fuel source, shall be deemed a solid waste disposal facility.
- Amends a provision to deposit at least \$3 million from the SWMTF to General Inspection Trust Fund in Department of Agriculture and Consumer Services for mosquito control.
- Provides that a minimum of \$8 million from the Solid Waste Management Trust Fund be used for funding a competitive and innovative grant program for reducing municipal waste.
- Reinstates current law allowing DEP to impose a lien on real property on which to bring a waste tire site into compliance.
- Provides a minimum of \$1 million annually to develop an innovative solid waste management program.
- Provides a minimum of \$3 million annually (those with small counties with populations less than 100,000) shall be distributed funds equally to manage their recycling and solid waste management activities.
- Provides a minimum of \$4 million annually for DEP to develop a waste tire grant program for all Florida counties.
- Provides at least 25 percent or \$1 million of waste tire grants annually to those small counties with population less than a 100,000.
- Adds a provision that no later than February 1, of each year water quality improvement projects and water restoration projects submitted through the legislative process shall be submitted DEP by the appropriate fiscal committees of the House and Senate. The DEP shall review the projects for funding eligibility and must, no later than March 1 of each year, provide each fiscal committee with a list of projects that meet the eligibility requirements.
- Repeals sections 403.7085, 403.7165, 403.7175, F.S., that created and funded a center devoted to the study of resource recovery from organic materials. This study has been completed.

On February 14, 2002, the General Government Appropriations adopted a clarifying amendment to the traveling amendment, removing the words “food residues” and inserting in lieu thereof the words “yard trash.”

On February 20, 2002, the Council for Ready Infrastructure adopted a strike-everything amendment that contained many of the changes adopted by the Committee on Natural Resources & Environmental Protection. Changes made by the amendment include: changing the effective date for the fund transfer and new grant disbursements to July 1, 2003; changing distributions from amounts to percentages; adding additional clarifying and technical changes to reporting and mandate provisions; and creating of a specific funding level for impoverished communities under the water quality improvement and water restoration program. The bill was then adopted as council substitute.

VI. SIGNATURES:

COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Noah C. McKinnon III

Staff Director:

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

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