

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1133 Recovered Materials
SPONSOR(S): Natural Resources & Public Lands Subcommittee; Toledo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 1 N, As CS	Gregory	Shugar
2) Government Accountability Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) implements and enforces the state's solid waste management program. The DEP may adopt rules to implement and enforce the state's solid waste management program, which includes a waste tire management program, administration of solid waste grant programs, and the classification, construction, operation, maintenance, and closure of solid waste management facilities.

Current law exempts certain wastes and activities from solid waste regulations. This includes recovered materials and recovered materials processing facilities if:

- A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within one year;
- The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of such facility so that such recovered materials, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwater, or otherwise enter the environment such that a threat of contamination in excess of the applicable DEP standards and criteria is caused;
- The recovered materials handled by the facility are not hazardous wastes; and
- The facility is registered with the DEP.

The bill adds wood, asphalt, and concrete materials to the list of materials that are "recovered materials." This change would exempt wood, asphalt, and concrete materials and facilities that store, process, resale, or reuse them from solid waste regulations if they meet the criteria in statute. Thus, facilities storing, processing, reselling, or reusing these materials would not have to meet the criteria, if applicable, for construction and demolition debris facilities. These facilities could only engage in the storage, processing, resale, or reuse of recovered materials to utilize the exemption.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Solid Waste Regulation

“Solid waste” is 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 other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.¹

The Department of Environmental Protection (DEP) implements and enforces the state’s solid waste management program.² The DEP may adopt rules to implement and enforce the state’s solid waste management program, which includes a waste tire management program,³ administration of solid waste grant programs,⁴ and the classification, construction, operation, maintenance, and closure of solid waste management facilities.⁵

Section 403.7045(1), F.S., exempts certain wastes and activities from solid waste regulations.⁶ This includes exemption of recovered materials and recovered materials processing facilities from solid waste regulations if they meet certain criteria.⁷

“Recovered materials” are metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other. The term does not include materials destined for any use that constitutes disposal. Recovered materials are not solid waste.⁸ A “recovered materials processing facility” is a facility engaged solely in the storage, processing, resale, or reuse of recovered materials.⁹ “Recycling” is any process that collects, separates, or processes and reuses or returns solid waste, or materials that would otherwise become solid waste, to use in the form of raw materials or products.¹⁰

Recovered materials or recovered materials processing facilities do not have to meet the solid waste regulations if:

- A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within one year;
- The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked,

¹ s. 403.703(32), F.S.

² s. 403.705, F.S.

³ s. 403.717, F.S.; ch. 62-701, F.A.C.

⁴ s. 403.7095, F.S.; ch. 62-716, F.A.C.

⁵ s. 403.704(9), F.S.; chs. 62-701 through 62-722, F.A.C.; s. 403.703(35), F.S., defines a “solid waste management facility” as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, that is used for the management of solid waste.

⁶ Ch. 88-130, Laws of Fla.; ch. 403, F.S.; *See* 99-60 Fla. Op. Att’y Gen. 3 (1999).

⁷ s. 403.7045(1)(e), F.S.; *see also* r. 62-701.220(2)(c), F.A.C.

⁸ s. 403.703(24), F.S.

⁹ s. 403.703(25), F.S.

¹⁰ s. 403.703(27), F.S.

or placed into or upon any land or water by the owner or operator of such facility so that such recovered materials, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwater, or otherwise enter the environment such that a threat of contamination in excess of the applicable DEP standards and criteria is caused;

- The recovered materials handled by the facility are not hazardous wastes;¹¹ and
- The facility is registered with the DEP.¹²

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 to 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 the DEP; and
- 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.¹³

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.¹⁴

Florida's Recycling Goal

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 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 2020.¹⁵ The DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate in 2015 was 54 percent, meeting the 50 percent target rate specified in statute.¹⁶

Construction and Demolition Debris Disposal and Recycling

"Construction and demolition debris" is discarded materials generally not water-soluble and are considered 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 the placement of the debris from construction of structures located at a site remote from the construction or demolition project site. The term also includes:

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

¹¹ "Hazardous waste" is solid waste, or a combination of solid wastes, that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. s. 403.703(13), F.S.

¹² s. 403.7045(1)(e), F.S.; r. 62-701.220(2)(c), F.A.C.; Any person in Florida who handles, purchases, receives, recovers, sells or is an end user of 600 tons or more of recovered materials must annually report to the DEP, and to all counties from which it received materials, certain information for the preceding calendar year, unless such person is exempt. s. 403.7046, F.S. and r. 62-722.400(2), F.A.C.

¹³ s. 403.7046(3), F.S.

¹⁴ s. 403.7046(3)(a), F.S.

¹⁵ s. 403.7032, F.S.; DEP, *75% Recycling Goal Report to the Legislature, January 4, 2010*,

http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/75percent/75_recycling_report.pdf (last visited March 9, 2017).

¹⁶ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited March 9, 2017).

- Yard trash and unpainted, nontreated wood scraps and wood pallets from sources other than construction or demolition projects, unless excluded from the definition by a county;
- Scrap from manufacturing facilities that is the type of material generally used in construction projects and would meet the definition of construction and demolition debris if it was 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
- De minimis amounts of other nonhazardous wastes generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.¹⁷

Construction and demolition debris makes up approximately 30 percent of Florida's waste stream, approximately 8.9 million tons. Florida recycles approximately 55 percent, approximately 5.3 million tons, of its construction and demolition debris.¹⁸ Recycling construction and demolition debris provides several benefits including landfill capacity savings, energy savings, reduction in greenhouse gas emissions, job creation, and direct and indirect economic benefits for local economies.¹⁹

Section 403.707(9), F.S., requires the DEP to establish a separate category of solid waste management facilities that accept only construction and demolition debris for disposal or recycling. Persons wishing to construct, operate, or close an off-site construction and demolition debris disposal facility must obtain a permit from the DEP.²⁰ Applicants must meet certain construction, operation, monitoring, recordkeeping, financial assurance, closure, and training requirements for such facilities to receive a permit.²¹ These requirements for construction and demolition debris may be less stringent than other solid waste regulations for facilities that accept only a segregated waste stream that is expected to pose a minimal risk to the environment and public health, such as clean debris.²²

EFFECT OF PROPOSED CHANGES

The bill amends s. 403.703(25), F.S., to add wood, asphalt, and concrete materials to the list of materials that are defined as "recovered materials."

This change would exempt wood, asphalt, and concrete materials and facilities that store, process, resale, or reuse them from solid waste regulations if:

- A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within one year;
- The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of such facility so that such recovered materials, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwater, or otherwise enter the environment such that a threat of contamination in excess of the applicable DEP standards and criteria is caused;
- The recovered materials handled by the facility are not hazardous wastes; and
- The facility is registered with the DEP.²³

¹⁷ s. 403.703(6), F.S.

¹⁸ DEP presentation on Increasing Construction and Demolition Debris Recycling, p. 7, November 17, 2016, available at: http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/CD-Debris-Bin-Webinar_22Nov16.pdf (last visited March 8, 2017).

¹⁹ *Id.* at pp. 72 – 76.

²⁰ s. 403.707(9)(a), F.S.; r. 62-701.730(1)(a), F.A.C.

²¹ s. 403.707(9)(a) – (d), F.S.; r. 62-701.730, F.A.C.

²² *Id.*

²³ s. 403.7045(1)(e), F.S.; r. 62-701.220(2)(c), F.A.C.

Thus, facilities storing, processing, reselling, or reusing these materials would not have to meet the criteria, if applicable, for construction and demolition debris facilities. These facilities could only engage in the storage, processing, resale, or reuse of recovered materials to utilize the exemption.²⁴

Further, this change would prohibit local governments from:

- Requiring a commercial establishment that generates source-separated wood, asphalt, or concrete waste to sell or otherwise convey its wood, asphalt, or concrete waste to the local government or to a facility designated by the local government;
- Restricting a generator's right to sell or otherwise convey wood, asphalt, or concrete waste to any properly certified recovered materials dealer who has registered with the DEP; and
- Enacting any ordinance that prevents a recovered materials dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated wood, asphalt, or concrete waste.

Lastly, the bill amends ss. 171.205(2), 377.709(2)(f), and 403.7045(1)(f), F.S., to make conforming changes.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.703, F.S., providing and revising definitions.

Section 2. Amends s. 171.205, F.S., conforming a cross reference.

Section 3. Amends s. 377.709, F.S., conforming a cross reference.

Section 4. Amends s. 403.7045, F.S., conforming a cross reference.

Section 5. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appears to have an insignificant negative fiscal impact on the DEP because the agency will likely need to revise its solid waste rules as a result of the statutory changes in the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on individuals or companies who operate facilities that store, process, resale, or reuse wood, asphalt, and concrete materials by exempting them from solid waste

²⁴ See s. 403.703(25), F.S.

regulations. Further, this bill may have a positive impact on generators of wood, asphalt, or concrete waste by prohibiting local governments from restricting the selling or conveyance of such materials.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DEP has sufficient rulemaking authority to amend its solid waste regulations to conform to changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Natural Resources and Public Lands Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the definition of "organic materials" from the bill and removed "organic materials" from the definition of "recovered materials." This analysis is drawn to the committee substitute reported favorably by the Natural Resources and Public Lands Subcommittee.