

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 Environmental Preservation and Conservation

BILL: SB 1288

INTRODUCER: Senator Baxley

SUBJECT: Recovered Materials

DATE: March 27, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1288 defines “organic materials” to mean any vegetative or animal materials or byproducts that will decompose through aerobic or anaerobic processes. The term does not include materials that have been chemically treated or coated to resist decomposition.

The bill also adds wood, asphalt, concrete, and organic materials to the list of recovered materials defined in statute. Recovered materials must have known recycling potential and be removed from the waste stream.

These changes in statutory definitions exempt wood, asphalt, concrete, and organic materials and facilities that store, process, resale, or reuse them from solid waste regulations if they meet criteria in statute. Facilities storing, processing, reselling, or reusing these materials would not have to meet the criteria, if applicable, for construction and demolition debris facilities or organic processing and recycling facilities. Further, this change would prohibit certain local government regulation of these materials and facilities.

II. 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

¹ Section 403.703(32), F.S.

The Department of Environmental Protection (DEP) implements and enforces the state's solid waste management program.² The solid waste management program 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

Solid waste regulations typically require:

- That a solid waste management facility obtain a permit to store, process, or dispose of solid waste;
- That a permit be obtained to construct, operate, maintain, modify, or close a solid waste management facility;
- Siting restrictions that prohibit the storage or disposal of solid waste in certain areas;
- Burning restrictions that place stringent controls on open burning of solid waste and prohibit controlled burning except in a permitted incinerator or at a facility authorized by a site certification order;
- That a solid waste management facility obtain a specific permit to dispose of hazardous waste;
- That certain materials may not be disposed in waste-to-energy facilities;⁶
- Leachate control systems; and
- Closure conditions for facilities, including financial assurance of closure cost coverage.⁷

Solid waste management facility construction and operation permit fees range from \$500 to \$10,000. Operation permits are valid for 5 years, but may be obtained for longer periods of time by paying a pro-rated fee amount for the number of years in the permit length beyond the 5-year term.⁸

Section 403.7045(1), F.S., exempts certain wastes and activities from solid waste regulations.⁹ This includes exemption of recovered materials and recovered materials processing facilities from solid waste regulations if they meet certain criteria.¹⁰

“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

² Section 403.705, F.S.

³ Section 403.717, F.S.; Fla. Admin. Code Ch. 62-701.

⁴ Section 403.7095, F.S.; Fla. Admin. Code Ch. 62-716.

⁵ Section 403.704(9), F.S.; Fla. Admin. Code Chs. 62-701 through 62-722; 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 Fla. Admin. Code R. 62-701.300 and Fla. Admin. Code R. 62-701.320.

⁷ Fla. Admin. Code R. 62-701.710.

⁸ Fla. Admin. Code R. 62-701.315.

⁹ Chapter 88-130, Laws of Fla.; ch. 403, F.S.; *See* 99-60 Fla. Op. Att’y Gen. 3 (1999).

¹⁰ Section 403.7045(1)(e), F.S.; *see also* Fla. Admin. Code R. 62-701.220(2)(c).

materials are not solid waste.¹¹ A “recovered materials processing facility” is a facility engaged solely in the storage, processing, resale, or reuse of recovered materials.¹² “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.¹³

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 1 year;
- The recovered materials handled by the facility or the byproducts of operations that process recovered materials are not discharged or deposited upon any land or water by the owner or operator of such facility so that such recovered materials 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;¹⁴ and
- The facility is registered with DEP.¹⁵

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 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.¹⁶

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.¹⁷

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

¹¹ Section 403.703(24), F.S.

¹² Section 403.703(25), F.S.

¹³ Section 403.703(27), F.S.

¹⁴ “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.

¹⁵ Section 403.7045(1)(e), F.S.; Fla. Admin. Code R. 62-701.220(2)(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 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 Fla. Admin. Code R. 62-722.400(2).

¹⁶ Section 403.7046(3), F.S.

¹⁷ Section 403.7046(3)(a), F.S.

facilities, landfills, or incineration facilities by 2020.¹⁸ 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.¹⁹

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;
- 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.²⁰

Construction and demolition debris makes up approximately 30 percent of Florida's waste stream, approximately 8.9 million tons.²¹ Florida recycles approximately 55 percent, approximately 5.3 million tons, of its construction and demolition debris.²² 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.²³

Section 403.707(9), F.S., requires 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 DEP.²⁴ Applicants must meet certain

¹⁸ Section 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 24, 2017).

¹⁹ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited March 24, 2017).

²⁰ Section 403.703(6), F.S.

²¹ DEP, *Presentation on Increasing Construction and Demolition Debris Recycling*, 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 24, 2017).

²² *Id.* at 7.

²³ *Id.* at 72 – 76.

²⁴ Section 403.707(9)(a), F.S.; Fla. Admin. Code R. 62-701.730(1)(a).

construction, operation, monitoring, recordkeeping, financial assurance, closure, and training requirements for such facilities to receive a permit.²⁵ 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.²⁶

Organic Processing and Recycling Facilities

Section 403.7043(1), F.S., requires that compost²⁷ produced, utilized, or disposed of by the composting process at solid waste management facilities in Florida must meet criteria established by DEP. DEP must adopt rules addressing standards for the production of compost, including:

- Requirements necessary to produce hygienically safe compost products for varying applications; and
- A classification scheme for compost based on the types of waste composted, the maturity of the compost, and the levels of organic and inorganic constituents in the compost.

Owners or operators of yard trash²⁸ processing facilities, facilities composting vegetative waste,²⁹ animal byproducts³⁰ or manure³¹ with or without yard trash, and manure blending operations that meet certain criteria do not have to obtain a permit to operate a solid waste management facility, but must register annually with DEP.³² These criteria include:

- Compost disinfection requirements;³³
- Design and operation requirements;³⁴
- Record keeping requirements;³⁵
- Materials management requirements;³⁶ and

²⁵ Section 403.707(9)(a) – (d), F.S.; Fla. Admin. Code R. 62-701.730.

²⁶ *Id.*

²⁷ “Compost” is solid waste which has undergone biological decomposition of organic matter, has been disinfected using composting or similar technologies, and has been stabilized to a degree that is potentially beneficial to plant growth and that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment or other similar uses. Fla. Admin. Code R. 62-709.201(6).

²⁸ “Yard trash” is vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, and associated rocks and soils, Fla. Admin. Code R. 62-701.200(135) and Fla. Admin. Code R. 62-709.201(25).

²⁹ “Vegetative waste” is source-separated organic solid waste that is vegetative in origin; generated by commercial, institutional, agricultural, or industrial operations; and not considered yard trash. This term includes waste generated by grocery stores, prisons, restaurants, packing houses, and canning operations, as well as products removed from their packaging, such as out-of-date juice, vegetables, condiments, and bread. This term also includes packaging that is vegetative in origin such as paper or corn-starch based products. These wastes are putrescible waste as defined in this chapter, Fla. Admin. Code R. 62-709.201(24).

³⁰ “Animal byproducts” are source-separated organic solid waste that is animal in origin, such as meat, fat, dairy, or eggs, and is generated by commercial, institutional, agricultural, or industrial operations. This term includes waste generated by prison facilities, grocery stores, manufacturing or packaging plants, butcher shops, restaurants, and abattoirs. This term also includes packaging that has come into contact with animal byproducts. Fla. Admin. Code R. 62-709.201(2).

³¹ “Manure” is a solid waste composed of excreta of animals, and residual materials that have been used for bedding, sanitary or feeding purposes for such animals, Fla. Admin. Code R. 62-701.200(69) and Fla. Admin. Code R. 62-709.201(13).

³² Fla. Admin. Code R. 62-709.320(1)(a).

³³ Fla. Admin. Code R. 62-709.300(8) and Fla. Admin. Code R. 62-709.350(6).

³⁴ Fla. Admin. Code R. 62-709.320(2) and Fla. Admin. Code R. 62-709.350(7).

³⁵ Fla. Admin. Code R. 62-709.320(4).

³⁶ Fla. Admin. Code R. 62-709.330(2) and Fla. Admin. Code R. 62-709.350(2) and (3).

- Requirements restricting the type of waste accepted.³⁷

Facilities that do not meet the criteria must obtain a permit from DEP. These permitted facilities must meet certain stormwater management design standards, erect barriers to prevent unauthorized entry, provide all weather access roads, control dust, control litter, provide fire protection and control, control odor, meet certain setback requirements, meet certain waste management criteria, meet testing requirements, and meet reporting requirements.³⁸

In 2012, Florida diverted approximately 1.5 million tons of organic materials away from solid waste disposal.³⁹ There are 307 source-separated organic processing facilities registered in Florida.⁴⁰ Composting organic materials improves biological, chemical, and physical characteristics of soil; reduces stormwater runoff; creates jobs; and increases landfill capacity savings.⁴¹

III. Effect of Proposed Changes:

SB 1288 defines “organic materials” to mean any vegetative or animal materials or byproducts that will decompose through aerobic or anaerobic processes. The term does not include materials that have been chemically treated or coated to resist decomposition.

The bill also adds wood, asphalt, concrete, and organic materials to the list of recovered materials defined in statute. Recovered materials must have known recycling potential and be removed from the waste stream.

These changes exempt wood, asphalt, concrete, and organic 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 the facility so that the recovered materials, products or byproducts, or any constituent thereof enter other lands or are 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 DEP.⁴²

Facilities storing, processing, reselling, or reusing these materials in compliance with the above requirements would not have to meet the criteria, if applicable, for construction and demolition

³⁷ Fla. Admin. Code R. 62-709.330(3) and Fla. Admin. Code R. 62-709.350(5).

³⁸ Fla. Admin. Code R. 62-709.500, Fla. Admin. Code R. 62-709.510, and Fla. Admin. Code R. 62-709.530.

³⁹ DEP, *Presentation on Organic in Florida: Part II “Strategies and Directions”*, 8 (May 25, 2016) available at: http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/Organics_Webinar_01Jun16.pdf (last visited March 24, 2017).

⁴⁰ *Id.* at 61.

⁴¹ *Id.* at 87 – 88.

⁴² Section 403.7045(1)(e), F.S.; Fla. Admin. Code R. 62-701.220(2)(c).

debris facilities or organic processing and recycling facilities.⁴³ 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 DEP; or
- 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 conform cross-references.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

⁴³ See s. 403.703(25), F.S.

C. Government Sector Impact:

DEP will likely need to revise its solid waste rules as a result of the statutory changes in the bill, but such revisions are anticipated to have an insignificant fiscal impact. DEP has sufficient rulemaking authority to amend its solid waste regulations to conform to changes made in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.703 of the Florida Statutes.

This bill amends sections 171.205, 377.709, and 403.7045 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.)

None.

B. Amendments:

None.