

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 Appropriations

BILL: CS/SB 816

INTRODUCER: Environment and Natural Resources Committee and Senator Perry

SUBJECT: Environmental Regulation

DATE: April 17, 2019

REVISED: 4/19/19

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Reagan</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 816 requires local governments to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential material. The bill applies to contracts between a local government and a residential recycling collector or recovered materials processing facility that are executed or renewed after October 1, 2019. Such contracts are required to define the term “contaminated recyclable material” based on certain factors. The bill specifies topics that must be addressed in local government contracts with both residential recycling collectors and recovered materials processing facilities.

The bill prohibits local governments from requiring a person claiming an exemption from environmental resource permitting requirements to provide further verification from the Department of Environmental Protection. The bill also changes the specific requirements for the replacement or repair of a dock or pier that is exempt from permitting requirements.

The bill has no fiscal impact on state government. The bill may have an indeterminate, negative fiscal impact on local governments that must negotiate new required contract terms, including defining “contaminated recyclable materials,” with residential recycling collectors and recovered materials processing facilities.

The bill takes effect October 1, 2019.

II. Present Situation:

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power 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 Each county must have a recyclable materials recycling program that has 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, 2020.⁴

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.⁵ Each county must implement a program for recycling construction and demolition debris.⁶ If the state's recycling rate is below 75 percent by January 1, 2021, the Department of Environmental Protection (DEP) must provide a report to the President of the Senate and the Speaker of the House of Representatives.⁷ The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals.⁸ The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to 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; and
- Yard trash.⁹

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.¹⁰

¹ Section 403.706(1), F.S.

² *Id.*

³ *Id.*

⁴ Section 403.706(2)(a), F.S.

⁵ *Id.*

⁶ Section 403.706(2)(b), F.S.

⁷ Section 403.706(2)(e), F.S.

⁸ *Id.*

⁹ Section 403.706(2)(f), F.S.

¹⁰ Section 403.706(3), F.S.

“Municipal solid waste” includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.¹¹ The DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to the DEP that:

- The achievement of the goal would have an adverse effect on 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.

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.¹²

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.¹³ 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.¹⁴ A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled.¹⁵ Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.¹⁶

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.¹⁷

¹¹ Section 403.706(5), F.S.

¹² Section 403.706(6), F.S.

¹³ Section 403.706(9), F.S.

¹⁴ Section 403.706(21), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 403.7046(3), F.S.

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.¹⁸

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 2020.¹⁹ The DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.²⁰

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent.²¹ The current practices in Florida are not expected to significantly increase the recycling rate beyond the 56 percent rate.²² Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.²³

The DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle."²⁴ The campaign addresses the need to educate Florida residents on how to reduce single stream curbside recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs, and paper and cardboard. The 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;
- 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;
- Engaging Florida's state universities and the Florida Department of Education to 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; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.²⁵

¹⁸ Section 403.7046(3)(a), F.S.

¹⁹ Section 403.7032(2), F.S.; 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 March 23, 2019).

²⁰ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited March 23, 2019).

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 March 23, 2019).

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 11.

²⁵ *Id.*

A number of counties and municipalities have instituted single stream recycling programs.²⁶ 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 amount 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.²⁷

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts.²⁸ Those items are often 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 increased costs due to equipment downtime, repair or replacement costs, and delays. 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, in some case reaching contamination rates of more than 30-40 percent by weight.²⁹

Exceptions to Requirements for Environmental Resource Permitting

The DEP's Environmental Resource Permitting (ERP) program regulates activities involving the alteration of surface water flows.³⁰ An ERP is required if a project exceeds certain thresholds for surface water management systems, such as for 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).³¹

However, for a number of low impact activities and projects that are narrow in scope, an environmental permit is not required under state law.³² Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.³³ A broad array of activities are expressly exempted from the ERP program, and these include, but are not limited to: the installation of overhead transmission lines; installation and maintenance of boat ramps; work on sea walls and mooring pilings, swales, and foot bridges; the removal of aquatic plants; construction and operation of floating vessel platforms; and work on

²⁶ *Id.* at 13.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Chapter 373, p. IV, F.S.; Fla. Admin. Code Ch. 62-330; DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Mar. 23, 2019).

³¹ 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.

³² Section 403.813, F.S.

³³ Fla. Admin. Code Rules 62-330.050(1) and 62-330.051(2).

county roads and bridges.³⁴ Included among activities exempt from the requirement to obtain an ERP is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.³⁵ 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.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 403.706, F.S., which establishes the responsibilities and authority of local governments to provide for the operation of solid waste disposal facilities.

The bill requires local governments to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential material and how this must be achieved. The requirements apply only to the collection and processing of material obtained from residential recycling activities. The bill applies to each contract between a local government and a residential recycling collector or recovered materials processing facility that is executed or renewed after October 1, 2019.

As used in the bill, the term “contaminated recyclable material” refers only to recyclable material that is comingled or mixed with solid waste or other nonhazardous material. The term does not include contamination as that term or a derivation of that term is used in chapter 376, F.S., and other sections of chapter 403, F.S., including, but not limited to, brownfield site cleanup, water quality remediation, drycleaning solvent-contaminated site cleanup, petroleum-contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

The bill states that a residential recycling collector is not required to collect or transport contaminated recyclable material, except pursuant to a contract consistent with the bill’s requirements. As used in the bill, the term “residential recycling collector” means: a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. The bill requires that each contract between a residential recycling collector and a local government for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for the collection of residential recyclable material, must define the term “contaminated recyclable material.” The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. Each contract and request for proposal or other solicitation must include:

- The respective strategies and obligations of the local government and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material;

³⁴ Section 403.813(1), F.S.; Fla. Admin. Code R. 62-330.051.

³⁵ Section 403.813(1)(d), F.S.

³⁶ Section 403.813(1), F.S.

- The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and
- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill states that a recovered materials processing facility is not required to process contaminated recyclable material, except pursuant to a contract consistent with the bill's requirements. The bill requires that each contract between a recovered materials processing facility and a local government for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. Each contract and request for proposal must include:

- The respective strategies and obligations of the local government and the facility to reduce the amount of contaminated recyclable material being collected and processed;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material; and
- The remedies authorized to be used if a container or truckload contains contaminated recyclable material.

Section 2 amends s. 403.813, F.S., which identifies certain activities for which an environmental resource permit is not required.

The bill prohibits a local government from requiring a person claiming an exemption under s. 403.813(1), F.S., to provide further verification from the DEP.

The bill exempts from environmental resource permitting requirements the replacement or repair of existing docks and piers, except that:

- The replacement or repaired dock or pier must be within five feet of the same location and no larger in size than the existing dock or pier; and
- No additional aquatic resources may be adversely and permanently impacted by such replacement or repair.

The bill deletes the existing requirement that the replacement or repaired dock or pier must be in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.

Section 3 states that this act shall take effect on October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature

has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature.” However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020 is approximately \$2.1 million or less.^{37,38,39}

The bill requires local governments to include provisions in their contracts requiring procedures for minimizing contamination and authorizing remedies if contamination exists. This may cause an indeterminate negative fiscal impact. It is unknown if the impact would be greater than the \$2.1 million insignificant threshold.

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 local governments to include provisions in their contracts requiring procedures for minimizing contamination and authorizing remedies if contamination exists. Requirements for local governments to perform additional procedures in the

³⁷ FLA. CONST. art. VII, s. 18(d).

³⁸ Based on the Demographic Estimating Conference’s population estimate adopted on Feb. 6, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 25, 2019).

³⁹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 25, 2019).

collection or transport of residential recyclable material, to establish and enforce new standards for contamination, or to be subject to remedies may cause local governments to incur additional costs. Therefore, this bill may result in an indeterminate, negative fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.706 and 403.813.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on March 26, 2019:

The committee substitute:

- Changes the date, from July 1, 2019 to October 1, 2019, after which section 1 of the bill applies to each contract executed or renewed between a local government and a residential recycling collector or a recovered materials processing facility; and
- Changes the effective date of the bill from July 1, 2019 to October 1, 2019.

- B. **Amendments:**

None.