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Committee on Natural Resources

Senator Ginny Brown-Waite, Chairman

REVIEW OF THE LEGISLATIVE REQUIREMENTS FOR SOLID WASTE MANAGEMENT

SUMMARY

Solid waste management is a local government responsibility. In 1980, Florida had 500 open dumps, one small waste-to-energy plant and virtually no local governments recycling programs. Prior to 1988, local governments in Florida did not receive ongoing grants to subsidize and assist in recycling and other solid waste management problems. In 1988 the Florida Legislature responded to help local governments meet their solid waste management responsibilities stemming from pollution problems at existing landfills, long delays in siting new landfill sites, forecasts that one-third of the landfill space available in the state in 1985 would be closed by 1996, and other related issues.

The Solid Waste Management Act was enacted in 1988. The comprehensive programs provided for in the act were designed to promote recycling and reduce the volume of materials going to landfills.

During the last 10 years, solid waste disposal has changed from being mainly a local issue to becoming a regional issue (requiring local governments to cooperate in meeting their responsibilities) in most parts of the state. The trend has been to consolidate toward fewer, larger landfills, and waste-to-energy plants taking waste from larger geographic areas.

While Florida's program of assistance to local governments to promote recycling and solve problems with waste tires has been largely successful, recent funding trends from the Solid Waste Management Trust Fund suggest that it may be time for the Legislature to consider making permanent statutory fund shifts from the Solid Waste Management Trust Fund rather than making these changes on a year-to-year basis through the General Appropriations Act. Recent trends suggest it may be time for local governments to resume full responsibility for solid

waste management and state government should refocus its activities to review of permitting requirements for solid waste management facilities, research and technical assistance, and compliance and enforcement functions. The latest example of funding other activities from the Solid Waste Management Trust Fund is found in the General Appropriations Act for FY 2001-2002 in which \$33.8 million was transferred from the Solid Waste Management Trust Fund to the Working Capital Fund to be used to fund a variety of sewer improvement projects and water restoration projects.

For the 2001 legislative session, Governor Bush recommended that the Department of Environmental Protection conduct a comprehensive review of the waste reduction goals in Chapter 403, F.S., in view of reduced available funding for these purposes. As a result, the Legislature enacted CS/HB 9 to implement that recommendation. The legislation required the department to submit a report to the Governor and the Legislature by October 31, 2001.

If there is a return to the state's core responsibilities in solid waste management, consideration should be given to reallocating the largest revenue source in the Solid Waste Management Trust Fund to another appropriate trust fund from which the Legislature could make direct annual appropriations. The current major funding source is a distribution of two-tenths of one percent of sale tax proceeds (see s. 212.20(6), F.S.) that are transferred directly to the Solid Waste Management Trust Fund. Annually, these proceeds amount to approximately \$30 million. Options for redistributing these proceeds could include depositing one-half of the amount into the Solid Waste Management Trust Fund and one-half into the Save Our Everglades Trust Fund, or depositing one-half into the Solid Waste Management Trust Fund and one-half into the Ecosystem Management Trust Fund.

Also, currently approximately \$20 million is generated annually from the Waste Tire Fees pursuant to s. 403.418, F.S., and is deposited into the Solid Waste Management Trust Fund. These funds have been used to clean up waste tire piles and the collection, management, recycling and proper disposal of waste tires. As the need for managing waste tires has decreased, the revenues from the Waste Tire Fees have been diverted to other program areas. One option would be to reduce the fee from \$1 to 50 cents and use it exclusively for waste tire management problems, including mosquito control. Another option would be to reduce the fee to 50 cents and transfer the proceeds directly to the Department of Agriculture and Consumer Services to be used exclusively for mosquito control, especially in view of the recent problems Florida has been experiencing with the West Nile Virus.

If these program financial policy changes are made to the Solid Waste Management Trust Fund, it would allow the Legislature to make normal annual appropriations directly from trust funds intended to serve specified programs rather than continuing the recent seven-year trend of diverting funds from the Solid Waste Management Trust Fund to other program areas and then changing substantive law in an annual appropriations implementing bill. In addition, if these changes are made, there would need to be a number of substantive changes that need to be made in the Solid Waste Management law to reflect the permanent reduction of funds for local government solid waste grants and the need to reduce the mandates imposed on local governments in the Solid Waste Management Act.

BACKGROUND

According to annual reports to the Legislature by the Department of Environmental Protection, in 1980, Florida had 500 open dumps, one small waste-to-energy plant and virtually no local government recycling programs. By 1990, Florida had 150 permitted landfills, most of which were lined, 11 waste-to-energy plants, and one of the largest recycling programs in the United States. These significant changes resulted from passage of the 1988 Solid Waste Management Act (SWMA.) This act 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 local governments to help them reach the 30 percent recycling goal.

The SWMA directed counties with populations greater than 50,000 to reduce the disposal of municipal solid waste by 30 percent by the end of 1994. Counties with a population of 50,000 or less were exempt from the 30 percent goal as long as they provide their residents with an opportunity to recycle.

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 Florida. One tire site in Polk County contained over 4.5 million tires which posed significant threats for fire and mosquito control. This grant program was funded from a \$1-fee imposed on each new motor vehicle tire sold at retail.

The SWMA created the Solid Waste Management Trust Fund to finance the various activities authorized by the 1988 law. The major revenue sources in this trust fund come from a separate distribution of revenue from sales tax collections and the waste tire fee. Together, these revenue sources provide about \$50 million per year to the trust fund.

The Recycling and Education Grants Program has been successful in assisting counties in establishing and operating recycling programs. By late 1995, the Department of Environmental Protection noted that a majority of counties with populations greater than 50,000 (which was where most solid waste is generated) were recycling over 30 percent of their municipal solid waste. Therefore, the statutory goal established in 1988 was being met.

The Waste Tire Grant Program was also very successful. The large waste tire piles were cleaned up and management practices were put in place by local governments to prevent these build-ups from occurring again and appropriate disposal options were available to keep tires from being discarded randomly in the woods and rural locations.

METHODOLOGY

Staff reviewed the 1988 Solid Waste Management Act and the required annual legislative reports as they

related to the recycling goals and the establishment of the recycling grant program for local governments. Staff also reviewed the findings and recommendations that were contained in the Solid Waste Management Trust Fund Review Commission's report that was published in July, 1998.

Finally, staff reviewed and monitored the activities of the Department of Environmental Protection as they conducted the comprehensive review of solid waste management activities that were required by CS/HB 9 as passed by the 2001 Legislature.

FINDINGS

Solid waste management is a local government responsibility just like police and fire protection and providing drinking water and sewage treatment are all local government responsibilities. These latter activities do not receive ongoing state subsidies. Prior to 1988 local governments in Florida did not receive ongoing grants to subsidize and assist in recycling and other solid waste management problems. In 1988, the Florida Legislature enacted comprehensive legislation to help local governments meet their solid waste management responsibilities stemming from pollution problems at existing landfills, long delays in siting new landfill sites, forecasts that one-third of the landfill space available in the state in 1985 would be closed by 1996, and other related issues. The comprehensive programs approved by the Legislature were designed to promote recycling and reduce the volume of materials going to landfills.

During the last 10 years, solid waste disposal has changed from being mainly a local issue to becoming a regional issue (requiring local governments to cooperate in meeting their responsibilities) in most parts of the state. The trend has been toward consolidation with fewer, larger landfills, and waste-to-energy plants taking waste from larger geographic areas.

While Florida's program of assistance to local governments to promote recycling and solve problems with waste tires has been largely successful, recent funding trends from the Solid Waste Management Trust Fund suggest that it may be time for the Legislature to consider making permanent statutory fund shifts from the Solid Waste Management Trust Fund rather than making these changes on a year-to-year basis through the General Appropriations Act. Recent trends suggest it may be time for local

governments to resume full responsibility for solid waste management and state government should refocus its activities to review of permitting requirements for solid waste management facilities, research and technical assistance, and compliance and enforcement functions.

1995 Senate Natural Resources Committee Interim Project

In 1995, demands for state General Revenue Funds were greater than growth in those revenues. Each committee in the Senate was directed to review the programs in its jurisdiction which were funded largely by general revenue funds to determine if funding reallocations could be made to higher priority state programs. As a result, the Senate Natural Resources Committee reviewed the recycling grant programs to determine the effectiveness of these programs and to determine if continued funding by the state was still warranted in light of the more pressing fiscal demands of the state. A determination was made that the goals set for the recycling program had been met.

After much discussion in late 1995, the committee voted to introduce a bill to delete the requirement that counties must have recycling programs. This bill (CS/SB 120 was approved by the Natural Resources Committee but did not pass the Senate) would have provided that the proceeds from the sales tax dealer's registration fees which were imposed pursuant to s. 212.18, F.S., would be deposited in the Aquatic Plant Control Trust Fund instead of the Solid Waste Management Trust Fund. Further, the two-tenths of one percent of the sales tax which was currently being deposited in the Solid Waste Management Trust Fund would have been equally divided and deposited in the Solid Waste Management Trust Fund and the Aquatic Plant Control Trust Fund until June 30, 1999. After that date, the entire two-tenths of one percent would have been deposited into the Aquatic Plant Control Trust Fund. Again, these provisions did not pass.

Because of the shortfalls in the General Revenue Fund, the General Appropriations Act for 1996 reallocated funds from the Solid Waste Management Trust Fund to other environmental programs that needed funding – namely, the Aquatic Weed Management Program and the Surface Water Improvement and Management (SWIM) Program. Once the precedent was established for reallocating funds from the Solid Waste Management Trust Fund to other environmental programs, the trend continued over the next several years. Table 1 illustrates the amount of funds

reallocated over the past several years to programs not normally funded from the Solid Waste Management Trust Fund.

Table 1

**Transfers from the
Solid Waste Management Trust Fund**

| | | |
|---------|--------------|---------------------------------|
| 1996-97 | \$25,000,000 | Working Capital Fund |
| 1997-98 | 6,000,000 | Invasive Plant Control TF |
| | 6,000,000 | Ecosystem Mgmt & Restoration TF |
| 1998-99 | 8,000,000 | Invasive Plant Control TF |
| | 11,157,988 | Ecosystem Mgmt & Restoration TF |
| 1999-00 | 10,000,000 | Invasive Plant Control TF |
| | 11,040,000 | Ecosystem Mgmt & Restoration TF |
| 2000-01 | 6,500,000 | Invasive Plant Control TF |
| | 13,700,000 | Ecosystem Mgmt & Restoration TF |
| 2001-02 | 33,800,000 | Working Capital Fund |

1996 Report by the Office of Program Policy
Analysis and Government Accountability

On April 1, 1996, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued its report on the review they conducted regarding the Recycling and Education Grants Program. In its report, OPPAGA concluded that:

- The Recycling and Education Grants Program had been successful in assisting counties in establishing recycling programs by providing the needed seed funds to assist counties in establishing recycling programs at a time when markets for recyclable materials were underdeveloped;
- Statewide, more than 30 percent of municipal solid waste is being recycled, and expanded recycling markets have reduced the need for state-level funding for county programs;
- The recycling programs in the counties generating 99 percent of the state's recycled solid waste would not be significantly affected by the loss of recycling and education grant revenues.

OPPAGA presented three options for the Legislature to consider. The first option was to continue funding the Recycling and Education Grants Program. The second option was to phase out the program over a reasonable period of time. And the third option was to eliminate the program at the end of FY 1995-1996. As a result of their findings, OPPAGA recommended that the Legislature eliminate the program at the end of FY 1995-1996. Based on the Legislature's previous year's budget (FY 1994-1995), OPPAGA concluded that the state could save about \$22.7 million per year.

1997 Solid Waste Management Trust Fund Review
Commission

In light of the actions by the Legislature to reallocate monies from the Solid Waste Trust Fund to uses other than recycling and the core responsibilities authorized in the 1988 SWMA, concerns were raised that perhaps it was time to have a study commission review these emerging trends and make recommendations for changes in the law to address alternative funding strategies for meeting the needs of solid waste management, the surface water improvement and management program, and the aquatic weed control program. The Solid Waste Management Trust Fund Review Commission was created and required to make a report to the Governor and the Legislature by January 30, 1998. The Commission recommended that recycling, aquatic plant management, and surface water improvement and management, are all essential to protecting Florida's environment, quality of life and economy, and all three programs should be continued and adequately funded.

Funding Allocation Trends

In spite of the study commission recommendations, no new revenues were provided for these programs in 1998 and the trend continued to reallocate funds from the Solid Waste Management Trust Fund for other program purposes. The latest example of these trends is found in the General Appropriations Act for FY 2001-2002 in which \$33.8 million was transferred from the Solid Waste Management Trust Fund to the Working Capital Fund. Subsequently, those funds were used to fund a variety of sewer improvement projects and water restoration projects. As part of Governor Bush's Legislative Budget Recommendations for the Department of Environmental Protection, the Governor recommended legislation in the 2001 legislative session to direct the Department of Environmental Protection to conduct a comprehensive review of the waste reduction goals in Chapter 403, F.S., in view of

reduced available funding for these purposes.¹ The department issued its report to the Governor and the Legislature on October 31, 2001, as required by CS/HB 9.

The report from the Department of Environmental Protection addresses:

- Review of the water reduction goals in Chapter 403, F.S., in view of reduced available funding;
- The appropriateness of maintaining, extending, or revising the goals;
- The effectiveness of current programs for meeting the goals;
- The role of Keep Florida Beautiful, Inc.;
- The need to continue those programs;
- Alternative techniques for improving those programs; and
- Other issues related to resource recovery and management.

Overall, the report from the Department of Environmental Protection makes several recommendations for updating the statutes on solid waste management, but does not recognize the recent legislative trends of reallocating significant amounts of funds from the Solid Waste Management Trust Fund to other environmental programs. The report recommends continued grant funding for recycling and education, waste tires, litter and base grants at “appropriate” levels without suggesting what those appropriate levels should be. Clearly, the recent trends of reallocating funds by the Legislature from the Solid Waste Management Trust Fund (\$20-\$30 million per year) is not consistent with the department’s recommendations to maintain grant funding at appropriate levels. No consideration was given to returning most solid waste management responsibilities to local governments and have the state return to its core responsibilities in solid waste management limited to review of permitting requirements for solid waste management facilities, research and technical assistance, and compliance and enforcement functions, all of which could be carried out for approximately \$15-\$20 million per year. That

level of funding would then be consistent with recent legislative appropriation trends involving the Solid Waste Management Trust Fund.

RECOMMENDATIONS

If there is a return to state core responsibilities in solid waste management, consideration should be given to reallocating the largest revenue sources in the Solid Waste Management Trust Fund to another appropriate trust fund from which the Legislature could make direct annual appropriations. Currently, the major funding source is a distribution of two-tenths of one percent of sale tax proceeds (see s. 212.20(6), F.S.) that are transferred directly to the Solid Waste Management Trust Fund. Annually, these proceeds amount to approximately \$30 million.

Option 1 – Retain one-tenth of one percent of this distribution in the Solid Waste Management Trust Fund which would adequately fund the Department of Environmental Protection’s core responsibilities in solid waste management and provide for a very limited innovative and competitive solid waste grant program. The remaining one-tenth of one percent could be transferred to the Save Our Everglades Trust Fund as a way to provide a dedicated funding source for the Comprehensive Everglades Restoration Plan. This amount would still need to be supplemented to achieve the recommended \$100 million annual state funding level established in s. 373.470.F.S.

Option 2 – Retain one-tenth of one percent of the distribution in the Solid Waste Management Trust Fund for core department solid waste responsibilities. The remaining one-tenth of one percent could be transferred to the Ecosystem Management and Restoration Trust Fund as a way to provide ongoing annual funding for surface water restoration projects. This is consistent with recent transfers of funds from the Solid Waste Management Trust Fund.

The second largest funding source in the Solid Waste Management Trust Fund is the Waste Tire Fee imposed by s. 403.718, F.S., and amounts to approximately \$20 million annually. These funds have been used for cleaning up waste tire piles and the collection, management, recycling and proper disposal of waste tires. This funding has been successful in eliminating large accumulated tire piles in the state and it has helped local governments establish better management requirements for handling tire disposal problems. In recent years, with the Legislature reallocating large

¹ See CS/HB 9, 2001 legislative session.

sums of money from the Solid Waste Management Trust Fund to other program areas the Waste Tire Fee revenues have been used for general solid waste management activities and not exclusively for waste tire problems. Possible changes for this source of revenue are as follows:

Option 1 – The Waste Tire Fee could be reduced from \$1 per tire to 50 cents per tire and the proceeds retained in the Solid Waste Management Trust Fund to be used exclusively for waste tire management problems, including mosquito control. (The Department of Agriculture receives about \$2.2 million annually from this trust fund for mosquito control activities.)

Option 2 – The Waste Tire Fee could be reduced from \$1 per tire to 50 cents per tire and the proceeds could be transferred directly to the Department of Agriculture to be used exclusively for mosquito control. This would provide additional financial resources for mosquito control, especially in view of recent findings of the West Nile Virus in Florida. This would increase funding from the current \$2.2 million level to approximately \$10 million annually.

If these program financial policy changes are made to the Solid Waste Management Trust Fund, it would allow the Legislature to make normal annual appropriations directly from trust funds intended to serve specified programs rather than continuing the recent seven-year trend of diverting funds from the Solid Waste Management Trust Fund to other program areas and having to change substantive law in an annual appropriations implementing bill. Likewise, if these changes are made there would need to be a number of substantive changes made in the SWMA to reflect the permanent reduction and elimination of funds for local government solid waste grants and the need to reduce the mandates imposed on local governments in the SWMA. These changes should not be viewed as a lack of state interest in recycling and waste tire management programs, but instead should be viewed as a return to the recognition of solid waste management as primarily a local government responsibility brought on by the need for the state to redirect its financial resources to other more urgent program priorities.

Local governments are encouraged to continue the popular recycling programs and reduce the volumes of materials that must be disposed of at landfills and waste to energy plants.