

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 Community Affairs Committee

BILL: CS/CS/SB 570

INTRODUCER: Community Affairs Committee, Environmental Preservation and Conservation Committee, and Senator Constantine

SUBJECT: Environmental Protection

DATE: April 13, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiggins</u>	<u>Kiger</u>	<u>EP</u>	Fav/CS
2.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>RU</u>	Withdrawn
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) deletes a provision in current law concerning an air registry that emitters have previously used, which is now unnecessary because federal regulations specify reporting requirements. The CS amends s. 403.7032, F. S., to require all cities, county, state entities, and public schools to report to their county their recycling rates on all recyclable materials. Businesses are encouraged to report. The CS directs the Department of Management Services (DMS) to modify their procurement system to track the state's purchases of green and recycled materials. The CS revises s. 288.9015, F.S., and directs the Department of Environmental Protection (DEP) to create the Recycling Business Assistance Center to coordinate between state agencies and the private sector to develop new markets for recyclable materials.

The CS deletes an obsolete requirement that the DEP appoint a technical advisory committee to assist in developing rules governing the regulation of recovered materials. The CS amends s. 403.705, F.S., to require the DEP to report to the Legislature the state's recycling rates every two years. The CS outlines the state's incremental recycling goals and specific benchmarks that must be reached by 2020. The CS also outlines state recycling goals for construction and demolition

debris and commercial and multi-family dwellings. If the state does not reach its recycling benchmarks by specified dates, the CS tasks the DEP with investigating and reporting to the Legislature programmatic changes that could assist in achieving the recycling goal.

The CS details that solid waste for the production of renewable energy can count toward the recycling goals if the county in which a waste to energy facility is located has a program that is designed to recycle at least forty percent of the municipal solid waste by means other than gasification or combustion. The CS specifies that local governments may enact ordinances to require multi-family dwellings and apartment complexes to allot space and receptacles for the separation of recyclable materials.

The CS revises s. 403.7145, F.S. to replace the terms “aluminum” and “cans” with “beverage containers”. The Capitol building must report its recycling rates to Leon County and those rates will be posted on DEP’s website. The CS requires all public airports to collect recyclables from airlines and businesses operating at the airport.

The CS establishes recycling benchmarks in addition to the requirement that all construction and demolition debris be processed prior to disposal.

Finally, the CS repeals s. 288.1185, F.S., the Recycling Markets Advisory Committee in the Office of Tourism, Trade, and Economic Development.

The CS amends, ss. 403.44, 403.7032, 288.9015, 403.7046, 403.705, 403.706, 403.7061, 403.707, 403.7095, 403.7145, 553.77 and 403.7049, F.S. The CS repeals s. 288.1185, F.S.

II. Present Situation:

In 1988, the Florida Legislature passed the Solid Waste Management Act (SWMA) which included a 30% recycling goal. According to the DEP as of 2007 Florida generates more than 32 million tons of municipal solid waste annually and the state’s average recycling rate is 28%. The Energy, Climate Change and Economic Security Act of 2008 described the long term goals for state and local governments, companies, and the general public to reduce the amount of recyclable solid waste disposed of by a statewide average of at least 75 percent by 2020. The bill directed the DEP to conduct public hearings and submit a report, by January 1, 2010, with recommendations on how to reach the goal. DEP’s report to the Legislature recommended the following:

- each state agency should report to the Department of Management Services (DMS) its total expenditures on materials with recycled content,
- an increase in recycling education opportunities in K-12 public schools,
- development of statewide recognition programs to reward citizens, schools, cities and municipalities recycling efforts,
- that the Legislature direct DEP to review in five years the number of local governments that have implemented pay as you throw (PAYT) to determine if additional measures are needed to increase the adoption of PAYT,
- that the Legislature require all construction and demolition (C&D) be processed at a materials recovery facility prior to disposal,

- that the Legislature require commercial recycling in counties with over a 100,000 population and cities with over 50,000 population,
- that the Legislature should consider the creation of a landfill disposal fee,
- that the Legislature should consider enacting a bottle bill to increase recycling of beverage containers,
- that the Legislature should allow DEP to reduce or modify the composting goal,
- that the Legislature should create a Recycling Business Assistance Center to promote markets for the entire spectrum of recyclable municipal solid waste materials, and
- encourage the flow of materials such as food waste, yard trash, and paper to organic recycling centers, etc.

Composting Requirements

Currently local governments have been directed to develop and implement a plan to achieve a goal to compost organic materials that would otherwise be disposed of in a landfill. The goals provide that up to 10 percent and no less than 5 percent of organic materials would be composted within the county. DEP can reduce the counties compost goal if the county can demonstrate that due to their unique demographics or other factors they have an inability to separate compostable materials.

Recyclable Materials Markets

According to DEP's report, of the 32.3 million tons of municipal solid waste (MSW) generated in Florida, approximately 40% is organic materials such as food waste, yard trash and paper. The recycling rate for food waste is 1.4%, 37% for yard trash, and 27% for paper. Florida's counties play a crucial role in organics recycling because they handle large amounts of organic wastes from all sources. State regulations, market conditions and other economic circumstances all affect the potential success of organics recycling in Florida. State programs can stimulate technological advances and new uses through the market development and procurement policies. While existing school recycling programs generally address paper, aluminum cans and sometimes plastic bottles, the composting of food wastes at schools could allow students to increase the recycling rate, provide high quality soil to the school grounds, and present a real world learning opportunity for teachers.

Another aspect of market development that can be fine tuned to fit the needs of each region is the material recovery facilities. The cost associated with materials recovery facilities vary according to geographic location and the needs of the community. A north Florida facility processing 500 tons per day of construction and demolition debris reports an estimated capital cost of \$7.5 million to become operational, while a South Florida facility that processes 2,500 tons per day or more reports an estimated capital cost of \$13.6 million.

Solid Waste Management

DEP was directed in s. 403.7046, F.S., to create a technical advisory committee to include representatives from local waste management and recycling communities to develop rules and to elicit comment of the types of recovered materials handled at the disposal sites and waste facilities. DEP has stated that this committee has already fulfilled its requirements and the technical advisory committee has disbanded.

According to DEP's report, recycling operations at Florida's 12 WTE facilities could account for roughly 12 % of the 75% goal. Through the mass combustion of MSW (Municipal solid waste) and refuse-derived fuel Florida's WTE facilities generate 3.25 million megawatts of energy per year, which is enough electricity to fuel 300,000 households in Duval County for one year. Currently, the law allows renewable energy from solid waste to count toward the 75 % goal. However, according to DEP's report, measuring the contribution of the waste to energy facilities is challenging. DEP stated that they intend to appoint an advisory group to address what methodology needs to be utilized to calculate and credit WTE's production.

The commercial sector generates 67% of the MSW which is twice what is generated by single-family residents. The commercial sector has a current recycling rate of 30%. However, during the public hearings DEP conducted, recycling input from a variety of commercial entities indicates that their commercial rates are much higher. The commercial sector is not required to disclose their recycling rates to DEP so it is difficult, if not impossible, for DEP to know the commercial sector's recycling rate. The DEP recommends requiring the reporting of commercial recycling for those businesses in counties with a population greater than 100,000 and cities with a population greater than 50,000. This approach could cover approximately 95% of Florida's population and if the recycling rate in the commercial sector was at least 75%, the MSW recycling rate in Florida, according to the DEP, would bump from 28% to 59%.

Commercial buildings and multi-family dwellings offer recycling but the options vary from city to city and building to building. In some cases, a business would have to arrange for recycling pick up or in smaller rural communities the items would have to be hauled to a recycling center. Depending on the volume of recyclable materials the businesses generates, it may make it cost prohibitive for smaller businesses and rural communities to recycle when economically practical options are not made available. In some commercial buildings and multi-family dwellings like apartment complexes, the recycling options can depend on dumpster space limitations and parking space requirements. During DEP's public hearings on recycling, it was suggested that commercial buildings and multi-family dwellings need guidance from the state and their respective cities to secure recycling options in these locations. Rural communities are encouraged to regionally pool their resources together in order to make recycling options a reality. Many large facilities, such as schools and correctional facilities have recycling options in place but there was public testimony that due to employee complacency, sham recycling, and a lack of education, many recycling campaigns have fizzled out. Based on the reporting void and volume of recyclable materials in a concentrated building or area, the commercial sector has the potential of being an example of a significant underutilized recycling market.

Construction and Demolition (C&D) debris consists of materials that are generated from residential and commercial buildings, renovations and various types of demolition. C&D materials include wood, steel, glass, brick, concrete, asphalt, wallboard, rock, soils, tree remains, and other vegetative matter. Only non-water soluble and non-hazardous materials are considered C&D. C&D constitutes 25% of Florida's MSW waste stream. Currently only 27% or 2.1 million tons of Florida's C&D is recycled. According to the DEP the recycling potential of C&D remains a significant untapped resource. As evidenced by an April of 2005 study conducted by the Boston Society of Architects, Associated General Contractors of Massachusetts, and the Massachusetts Department of Environmental Protection which found that from almost any job

site, 90% to 95% of all waste materials can be recycled¹. In an effort to increase recycling of C&D other states such as Massachusetts, California, and Vermont have banned disposing of most C&D debris in landfills. Further, these states have established comprehensive recycling guides and have imposed penalties to ensure these recyclable materials are not placed in landfills and to preserve virgin materials whenever possible. Some cities have chosen to establish benchmarks to address their state's ban on placing C&D in the landfill. For example, Northbrook, Illinois, has specified the following: between January 1, 2009, and December 31, 2010, at least 50% of the construction and demolition debris must be recycled.

In order to help states increase their recycling efforts, the United States Environmental Protection Agency has detailed guidelines and definitions that outline what C&D materials can be recycled. The site describes commonly recovered materials including asphalt paving, land clearing residuals (trees, brush, and soil), wood, gypsum wallboard, metal, concrete, roofing, asphalt shingles, brick, etc². The site showcases cities that are utilizing zero waste policies in their C&D projects and outlines the importance of having a plan in place before demolition begins. Further it outlines the cost savings benefits and how much waste can be diverted from the landfill.

Florida has 83 landfills and 75 C&D disposal sites where C&D material can be disposed. Most C&D disposal sites are unlined and are not required to have daily cover like permitted landfills. DEP has indicated that unlined C&D landfills are environmentally problematic. There was public testimony at the recycling public hearings expressing concern about possible water contamination by unlined construction and demolition landfills.

Bottle Bill Option

Eleven states have beverage container deposits, also known as bottle bills. A bottle bill can be designed to increase recycling and use unredeemed deposits to fund various recycling programs at the state and local level. DEP, in their report to the Legislature stated that if Florida had a bottle bill with a 10 cent deposit, unredeemed deposits could amount to approximately \$35 million annually. Proponents of a bottle bill suggest that recycling on the whole will increase as the consumers becomes more conscientious when they collect and redeem their bottles. As a result, the awareness towards all recyclable materials will become heightened.

Landfill Disposal Surcharge

Approximately 35 of the 50 states have enacted landfill disposal surcharges. Based on 2007 data from Florida counties a surcharge of \$1 per ton on waste disposed at landfills would result in approximately \$23 million in revenue annually. If the surcharge would also apply to WTE plants, that would mean an additional \$4 million in revenue annually. Proponents of a landfill disposal surcharge maintain that a surcharge could potentially increase commercial recycling as businesses look for ways to reduce the cost of hauling waste to the landfill.

Retail Bag Report

Section 403.7033, F.S., states that no state or local retail bag regulation can be enacted until the Florida Legislature takes action. DEP presented their report to the Legislature on February 1,

¹ Recycling Construction and Demolition Wastes Guidebook, Massachusetts Department of Environmental Protection.

² <http://www.epa.gov/epawaste/consERVE/rrr/imr/cdm/bytype.htm> (last visited 3/7/010)

2010. DEP recommended an education program to inform the public of the environmental problems that plastic bags cause and to continue to encourage retailers to provide incentives for customers to reduce the use of plastic bags. Some retailers provide a store credit if you bring in a reusable bag or will sell you a reusable bag for a fee. Further, most large retailers offer recycling receptacles for plastic bags and have agreed to accept all plastic bags even if they are not from their store.

EPA Greenhouse Gas Reporting Rules

In 2009, the Environmental Protection Agency promulgated rules outlining emissions reporting requirements in detail.³ These federal laws would likely preempt the Florida reporting requirements, thereby making them obsolete.

III. Effect of Proposed Changes:

Section 1 deletes s. 403.44(3) and (4), F.S. These subsections relate to reporting emissions to the Climate Registry.

Section 2 revises s. 403.7032, F.S., to:

- Delete a provision that allows solid waste used for the production of renewable energy to county toward the section's long-term recycling goal.
- Require all cities, counties, state entities, and public schools to report all recycled materials to the county.
- Encourage businesses to report to their county their recycling rates on all recyclable materials collected;
- Specify that a business that fails to report their recycling rates will be reported as 0%;
- Direct the Department of Management Services to modify their online procurement system to track the state's purchases of green and recycled materials.
- Direct the DEP to create the Recycling Business Assistance Center to coordinate between state agencies and the private sector to develop new markets for recyclable materials, evaluate specific materials suitable for concentrated market-development efforts, develop incentive proposals for targeted materials, and provide guidance for a variety of recycling issues.
- Create a definition of "source-reduced" and tasks the Recycling Business Assistance Center with evaluating source-reduced products as they relate to state procurement policy.
- Task the center with evaluating grants and providing below-market financing for companies that use recycled materials.
- Require that the Recycling Business Assistance Center maintain an online directory of entities dealing with recycled materials and provide informational materials about recycled materials.
- Specify that the Recycling Business Assistance Center coordinate with the Agency for Workforce Innovation to provide job placement and job training services to job seekers.

Section 3 revises s. 288.9015, F.S., to require Enterprise Florida, Inc. to provide technical assistance to the DEP in the creation of the Recycling Business Assistance Center.

³ 40 C.F.R. 98.

Section 4 revises s. 403.7046, F.S., to delete an obsolete technical advisory committee. The bill requires recovered materials dealers to annually report to DEP and to all of the counties from which it receives materials.

Section 5 amends s. 403.705, F.S. to require the Department to report to the Legislature the state's recycling rates every two years.

Section 6 revises s. 403.706, F.S., to provide incremental recycling goals and specific benchmarks that must be reached by December 31, 2020.

The CS also outlines state recycling goals for construction and demolition debris, and commercial and multi-family dwellings. The CS requires that each county implement (1) a program to recycle and (2) a program that will reduce construction and demolition debris. Under each program, waste should be reduced by: forty percent by December 31, 2012; fifty percent by December 31, 2014; sixty percent by December 31, 2016; seventy percent by December 31, 2018; and seventy-five percent by December 31, 2020. Further all property for commercial and multi-family residential use that receives a certificate of occupancy on or after January 1, 2011, must provide designated space and an adequate receptacle for recycling.

The CS also specifies that if by January 1, of 2013, 2015, 2017, 2019, 2021, a county has not reached the previous year's recycling goals, DEP may direct the county to develop a plan to expand recycling programs to existing commercial and multi-family dwellings. Finally, if the state's recycling rate is below forty percent in 2010, fifty percent in 2015, 60 percent in 2017, or seventy percent by 2021, the DEP shall provide a report to the Legislature to identify the changes needed to correct this failure. DEP shall adopt rules establishing the method and criteria used by a county in calculating the recycling rates.

The CS deletes a requirement that all counties develop a goal to compost at least 5% of their organic materials. The CS deletes a provision in existing law that states that a county's solid waste management and recycling programs shall be designed to meet goals for the reduction of municipal solid waste prior to the disposal of such waste. A county may receive credit for one-half of its recycling goal from contributing wood/paper waste to programs that produce alternative clean-burning fuel. The CS specifies that a county may utilize the waste to energy facilities toward their goal as long as the county maintains a program that is designed to recycle forty percent of its municipal solid waste by means other than combustion or gasification. The CS specifies that all state entities and businesses that are required to report must utilize DEP's reporting format and the recycling rates will be posted on DEP's website annually. The CS revises s. 403.706(21), F.S., to provide that local governments may enact ordinances to require multi-family dwellings and apartment complexes to recycle.

Section 7 amends s. 403.7061, F.S., to require applicants for new waste-to-energy facilities to provide assurances that they are within a county that has a program designed to reduce recyclable solid waste by at least 40 percent by 2013. This requirement does not apply to counties having populations of 100,000 or fewer.

Section 8 amends s. 403.707(9), F.S., to require liners at disposal units and lateral expansions of existing disposal units, that have not received a department permit authorizing construction or

operation prior to July 1, 2010. The CS requires disposal facilities to report the amount of construction and demolition debris recycled prior to disposal. The DEP shall establish rules to govern these reporting requirements. The rules shall also provide that, to the extent economically feasible, all construction and demolition debris must be processed prior to disposal unless they have already been source separated and offered for recycling. The CS deletes language in existing law requiring the DEP to establish criteria and guidelines that encourage recycling.

Section 9 amends s. 403.7095, F.S., to delete an outdated solid waste management grant program. The funds available from the grant programs under s. 403.709(1)(e), F.S., are reallocated to give fifty percent to the consolidated grant program and fifty percent to the waste tire grant program.

Section 10 revises s. 403.7145, F.S. to replace the terms “aluminum” and “cans” with “beverage container”. The CS also creates a requirement that the Capitol complex report recycling rates to Leon County and that these rates be posted on the DEP’s website. DEP will also post the recycling rates of each state owned facility that is a part of DMS’s pool facility. The term “DMS pool facility” refers to the majority of state owned buildings that are a part of the Capitol complex and the Southwood office complexes located in Tallahassee, FL. The DEP is also provided authority to conduct a pilot program to test the effectiveness of innovative recycling practices and technologies.

The CS requires each airport and entities conducting business at the airport, to whenever possible, collect and recycle aluminum beverage cans and recyclable plastic. The airport may utilize any proceeds received from recycling to offset the costs of the recycling program.

Section 11 amends s. 553.77, F.S., to require the building commission to develop recommendations for expansion of recycling for construction, such as composting systems.

Section 12 amends s. 403.7049, F.S., to conform a cross reference.

Section 13 repeals s. 288.1185, F.S., the Recycling Markets Advisory Committee in the Office of Tourism, Trade, and Economic Development.

Section 14 provides an effective date of July, 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because local governments will have to expend funds for recycling purposes, this bill falls under subsection (a) of section 18 of Article VII, Florida Constitution. Subsection (a) provides that counties and municipalities are not bound by general laws that require them to spend funds or to take action that requires the expenditure of funds unless certain exemptions or exceptions are met.

As for applicable specified constitutional exceptions, the bill requires similar expenditures by all similarly situated persons (i.e. the state, local governments, and

private businesses); therefore, the only additional requirement necessary to remove the bill from the purview of this constitutional provision is a finding that the Legislature fulfills and important state interest.

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:

All new C&D landfills must be lined. Existing C&D landfills do not have to be retrofitted and will not incur any additional costs. Based on discussions with industry, construction of a new C&D landfill is recommended to be at least 40 acres. The cost is approximately \$150,000 per lined acre.

According to DEP, for privately owned landfills, the more materials recycled, means fewer materials disposed, which means less revenue for landfills. Also, requiring all C&D to be processed at a materials recovery facility or other similar facility will necessitate some capital costs if there is not a facility currently operational.

There may be some initial costs for businesses at airports to establish a collection infrastructure (bins and carts) if there isn't a system already in place. Also, there may be ongoing costs for a recyclables collection service in those areas where such services are provided. The CS does provide that these entities may retain and use any proceeds they receive from the sale of recyclable materials to offset their costs.

C. Government Sector Impact:

The smaller counties may have difficulty meeting the increased recycling goal as they tend to rely on the state to supplement their MSW budget and may be fiscally constrained from expanding their current efforts.

Based on discussions with the agencies the creation of the Recycling Business Assistance Center can be accomplished with current resources.

The mandate that all public facilities and airports shall be required to recycle may potentially have some fiscal impact. The impact is indeterminate and will be based on those changes that are needed to waste services currently being provided. It is anticipated

that most public buildings and airports already practice some form of recycling and that only an increase in employee education will be needed.

The cost of implementing the new recycling goals is difficult to determine. The CS establishes a series of recycling benchmarks but provides no mandates for how they are to be met or any consequences for a failure to achieve them. The cost factor will be dependent on the changes needed to current waste management practices. If markets are available it may be that businesses will seek entry into the marketplace, however, a lack of markets for the materials may impede a public entity from contracting with recyclers and thus their ability to deal with materials that should not be land filled.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Community Affairs on April 14, 2010:

- Deletes a provision in current law concerning an air registry that emitters have previously used, which is now unnecessary because federal regulations specify reporting requirements.
- Modifies recycling reporting requirements for businesses to make them voluntary and expands them to allow all businesses to report. A provision allowing procurement bonuses is eliminated.
- Clarifies that the DEP will be the lead in developing the recycling business assistance center.
- Drops specific mention of recycling practices to be evaluated.
- Provides rulemaking to the DEP for the development of the methods used to determine the state's recycling rate.
- Removes an exemption for fiscally constrained counties as it relates to how they count WTE in their recycling rate. (This was determined to be duplicative of existing law.)
- Drops from 50% to 40% the recycling rate that a program must be designed to achieve prior to including WTE data.
- Expands to include cities those that may be granted a waiver for use of WTE's due to fiscal issues, such as bonds.
- Increases from 30% to 40% the recycling goal that county programs must be designed to achieve before the expansion of or building of a WTE.
- Provides additional clarification regarding a requirement that C&D landfills have liners.

- Drops the facility specific recycling goals for those that deal with C&D and replaces with provision that directs they do it to the extent economically feasible.
- Drops a requirement for annual un-announced inspections of WTEs.
- Grants authority to the building commission to develop recommendations for expansion of recycling for construction, such as composting systems.

CS by Environmental Preservation and Conservation on March 17, 2010:

The CS broadens the Proposed Committee Substitute by requiring airports and entities conducting business at airports to, whenever possible, collect and recycle aluminum, glass, and plastic containers. The airport may utilize any proceeds received from recycling to offset the costs of the recycling program.

B. Amendments:

None.