HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 589 Environmental Control
SPONSOR(S): Pigman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1052

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill makes the following changes to chs. 373 and 403, F.S., regarding environmental control:

- Amends the licensure requirements for water well contractors;
- Provides that if the beneficial use of a constructed clay settling area (CSA) of a phosphate mine is extended, the rate of reclamation requirements and the financial responsibility requirements do not apply to the CSA until the beneficial use of the CSA is complete;
- Allows the use of land set-asides and land use modifications not otherwise required by state law or permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters to generate water quality credits for trading;
- Provides that the limitation on the granting of a variance does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency;
- Deletes the July 1, 2016 expiration date of the solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF);
- Provides that counties and municipalities may implement a flow control ordinance to ensure an adequate amount of solid waste is received at a resource recovery facility only after it owns, and actively uses a resource recovery facility, and proves the necessity of implementing flow control;
- Provides that a flow control ordinance does not limit other entities and districts to contract for waste management services;
- Specifies that for purposes of exercising flow control authority, a resource recovery facility does not include a landfill gas-to-energy system or facility; and
- Provides for an appropriation for fiscal year 2016-2017 of $2,399,764 from the SWMTF for the closure and long-term care of solid waste management facilities.

The bill may have a negative fiscal impact on the state and local governments and a positive fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Water Well Contractor Licensure

Present Situation

The practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment.[1] The Legislature finds that a threat to the public and the environment exists if water resources become contaminated as a result of wells drilled by incompetent or dishonest contractors, and that to prevent contamination it is necessary to regulate the construction, repair, and abandonment of wells, and the persons and businesses responsible.[2]

Every person who wishes to engage in business as a water well contractor must obtain a water well contractor license from the water management district (WMD).[3] Licensure by a WMD is the only water well contractor license required for the construction, repair, or abandonment of water wells in the state.[4]

Each person desiring to be licensed as a water well contractor must apply to take the licensure examination.[5] Application must be made to the WMD where the applicant resides or where his or her principal place of business is located.[6] A resident of another state must apply to the WMD where most of the business of the applicant will take place.[7] Application is made on forms provided by the WMD.[8]

In order to be entitled to take the water well contractor licensure examination, an applicant must:

- Be at least 18 years of age;
- Have at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience must be demonstrated by providing:
  - Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency.
  - A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), F.S., by the applicant. The list must also include:
    - The name and address of the owner or owners of each well.
    - The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.
    - The approximate date the construction, repair, or abandonment of each well was completed.
- Have completed the application form and remitted a nonrefundable application fee.[9]

[1] Section 373.302, F.S.
[2] *Id.*
[3] Section 373.323(1), F.S.
[4] *Id.*
[5] Section 373.323(2), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Section 373.323(3)(c), F.S.

Effect of Proposed Changes

The bill amends the requirements for water well contractor licensure examination in s. 373.323(3)(b), F.S., by requiring applicants to demonstrate 2 years of experience in constructing, repairing, or abandoning water wells by a letter from a water well contractor or letter from a water well inspector employed by a governmental agency.

Phosphate Mining Reclamation

Present Situation

Currently, phosphate mining occurs primarily in the central Florida area, consisting of Polk, Hillsborough, Manatee, and Hardee counties.[10] The central Florida phosphate-mining region covers approximately 1.3 million acres of land known as the "Bone Valley."[11] Currently, there are 27 phosphate mines covering more than 491,900 acres.[12] The smallest mine is approximately 5,000 acres and the largest is approximately 100,000 acres.[13] Of the commodities mined in Florida, mining phosphate is the most land intensive, disturbing between 5,000 to 6,000 acres annually, with approximately 25 to 30 percent of the lands consisting of isolated wetlands or wetlands connected to waters of the state.[14]

The extraction of phosphate is important to the economic well-being of Florida and to the needs of society.[15] It is primarily used to produce fertilizers for food production, but may also be used in animal feed supplements, food preservatives, and many industrial products.[16]

Since mining is a temporary land use that disturbs surface areas and produces waste materials, mined lands must be reclaimed[17] to a beneficial use in a timely manner and in a manner which recognizes the diversity among mines, mining operations, and types of lands which are mined.[18] Lands mined for phosphate on or after July 1, 1975, and lands initially used after July 1, 1984, as a clay settling area (CSA) or a dam for use with a CSA are subject to reclamation requirements.[19] Seventy-three percent of the lands mined or disturbed for phosphate since July 1, 1975, have been reclaimed.[20]

Financial Responsibility for Phosphate Mine Reclamation

A mine operator must provide financial assurance to the state that the reclamation of lands will be completed in a timely manner.[21] A mine operator that is in compliance with the timing of reclamation[22] is deemed to have provided appropriate financial assurance to the state.[23] However, a mine operator who is not in compliance with the timing of reclamation is required to provide one or more of the following forms of security:

- A lien in favor of the state on unmined lands or on reclaimed and released real property owned in fee simple by the operator;
- A surety bond or letter of credit in either a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the security is purchased;

[10] DEP's Phosphate Mines, available at http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Jan. 22, 2016).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Section 378.202(1), F.S.
[16] DEP's Phosphate Mines, available at http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Jan. 22, 2016).
[17] Section 378.203(9), F.S., defines "reclamation" as the reshaping of lands in a manner that meets the reclamation criteria and standards of the Phosphate Land Reclamation Act, Part II, ch. 378, F.S.
[18] Section 378.202(1), F.S.
[19] Section 378.204, F.S.
[20] DEP's Rate of Reclamation Report July 1, 1975 through December 31, 2013, available at http://www.dep.state.fl.us/water/mines/docs/ROR-Report-2013.pdf. (last visited Jan. 22, 2016).
[21] Section 378.208(1), F.S.
[22] Provided in s. 378.209, F.S.
[23] Section 378.208(1), F.S.

- A donation of land acceptable to the state whereby every acre donated would relieve the company of the obligation to bond or otherwise provide security for the reclamation of acres mined, based on a ratio of 1 acre donated to cover the financial responsibility for 10 or more acres of mined lands. However, donation would not relieve the operator of the obligation to reclaim;
- A cash deposit or trust fund payable to the state in a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the cash deposit or trust fund is established; or
- Any combination of these financial assurance methods.[24]

The form of security provided is the operator's option, but must cover the number of acres for which the operator is delinquent in reclaiming and the number of acres the operator is to reclaim in the current 5-year period.[25] The security, other than the donation of land, is to be released upon completion of reclamation of delinquent acres.[26]

The amount of financial responsibility is established by the Department of Environmental Protection[27] (DEP) and must not exceed $4,000 per acre for each reclamation program, adjusted annually by the appropriate inflationary index for construction.[28] In establishing the amount of financial responsibility, DEP must consider:

- The amount and type of reclamation involved;
- The probable cost of proper reclamation;
- Inflation rates; and
- Changes in mining operations.[29]

Timing of Reclamation

Reclamation should be completed within 2 years after the completion of mining operations, exclusive of a growing season required to ensure establishment of vegetation.[30] Completion of reclamation occurs when initial revegetation is completed, not at the time of final release of the reclamation area.[31] For the purposes of financial responsibility requirements,[32] the schedule for complete reclamation is as follows:

- July 1, 1975, to December 31, 1980, for existing mines or the first 5-year period of mining for new mines, reclamation may not be required, and any reclamation that is completed must be credited forward;
- January 1, 1981, to December 31, 1985, for existing mines or the second 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 15 percent of the acres mined during the period July 1, 1975, to December 31, 1980, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;
- January 1, 1986, to December 31, 1990, for existing mines or the third 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 60 percent of the acres mined during the period January 1, 1981, to December 31, 1985, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;
- January 1, 1991, to December 31, 1995, for existing mines or the fourth 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 75 percent of the acres mined during the period January 1, 1986, to December 31,

[24] Section 378.208(2)(a)-(f), F.S.
[25] Section 378.208(2), F.S.
[26] *Id.*
[27] Section 378.208(3), F.S., requires the Office of Insurance Regulation of the Financial Services Commission to be available to assist DEP in making this determination.
[28] Section 378.208(3), F.S.
[29] *Id.*
[30] Section 378.209(1), F.S.
[31] *Id.*
[32] Section 378.208, F.S.

1990, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward; and

- January 1, 1996, to December 31, 2000, for existing mines or the fifth 5-year period of mining for new mines, and each 5-year period thereafter, reclamation of acres mined must be completed at the rate of an acreage equivalent of 100 percent of acres mined during the immediately preceding 5-year period. Reclamation in excess of the required percentage must be credited forward.[33]

The rate of mining during any 5-year period is to be determined solely by the operator and not the state.[34] The time periods and reclamation rates may be modified or waived for experimental reclamation programs to take into account the effect of temporary shutdown of mining operations or other physical restraints, for unreasonable delays in the processing of reclamation applications by DEP, or to relieve or prevent extreme economic hardship on the operator.[35]

Clay Settling Areas

The phosphate ore layer (matrix) comprises nearly equal parts of sand, clay, and phosphate minerals.[36] Separation of the matrix results in large quantities of sand and phosphatic clay. For instance, extracting one ton of phosphate rock creates one ton of phosphatic clay.[37] In Florida, approximately 100,000 tons of phosphatic clay is generated every day.[38]

Phosphatic clay is highly plastic, or moldable, and retains large quantities of water. The high moisture-induced shrink-swell characteristics of phosphatic clay make them unsuitable foundations for structures.[39] The low hydraulic conductivity of phosphatic clay leads to ponding.[40] Without drainage, wet phosphatic clays are difficult to traverse with most standard farm equipment, making them impractical for crop production.[41] Due to the properties and quantities of phosphatic clay, the conversion of phosphatic clay to a beneficial use following mining is likely the most significant problem in the reclamation of Florida phosphate mined lands.[42]

CSAs are the dominant method of storing phosphatic clay in Florida.[43] CSAs comprise 40 percent of the post-mining landscape, have dam walls between 20 and 60 feet in height, and remain irreclaimable for many years during active use. When no additional clays are to be added, CSAs must undergo a protracted process of draining and clay drying.[44]

DEP has encouraged prolonged use of CSAs to minimize the total acreage used for CSAs, reduce reclamation delays in areas of the mine that are not used as a CSA, and reduce the number of dams that are built.[45] Changes in mining practices to utilize CSAs for longer periods of time have resulted in delays in reclamation of these areas, which has resulted in the requirement for mine operators to provide financial assurance to the state to ensure that reclamation is completed in a timely manner.[46]

<u>Effect of Proposed Changes</u>

[33] Section 378.209(1)(a)-(e), F.S.
[34] Section 378.209(2), F.S.
[35] Section 378.209(3), F.S.
[36] *Sand-Clay Mix in Phosphate Mine Reclamation: Characteristics and Land Use*, available at https://edis.ifas.ufl.edu/ss636.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[46] *Id.*

The bill creates subsection 378.209(4), F.S., regarding the timing of reclamation for CSAs. The bill provides that if the beneficial use of a constructed CSA is extended, the rate of reclamation requirements[47] and the financial responsibility requirements[48] do not apply to the constructed CSA until the beneficial use of the area is complete.

Exempting CSAs from the rate of reclamation requirements will encourage mine operators to prolong the use of CSAs, minimize the construction of new CSAs, reduce reclamation delays in areas of the mine that are not used for clay settling, reduce the number of dams that need to be built, and decrease DEP's administrative process involved with variances for projects where the rate of reclamation is not being met due to extended use of CSAs.[49]

Water Quality Credit Trading

Present Situation

Water quality credit trading (WQCT, sometimes referred to as "pollutant trading") is a voluntary, market-based approach to promote the protection and restoration of Florida's rivers, lakes, streams, and estuaries.[50] Trading is based on the fact that businesses and industries, wastewater treatment facilities, urban stormwater systems and agricultural sites that discharge the same pollutants to a waterbody or a basin, watershed, or other defined geographic area, may face substantially different costs to control pollutants.[51] WQCT allows pollutant reductions to be environmentally valued in the form of credits,[52] which can then be traded on a local market to promote cost-effective water quality improvements, which results is better water quality protection for less money.[53]

The WQCT program is authorized statewide[54] as provided in s. 403.086(8), F.S., and:

- Requires WQCT to be consistent with federal law and regulation;
- Requires WQCT to be implemented through permits, including WQCT permits, other authorizations, or other legally binding agreements established by DEP rule;
- Requires DEP to establish the pollutant load reduction value of credits and provides that DEP is responsible for authorizing their use;
- Provides that DEP may not participate in the establishment of credit prices;
- Requires a person who acquires credits (buyer) to timely submit to DEP an affidavit, signed by the buyer and the credit generator (seller), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generated the credits;
- Provides that sellers of credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of DEP's authorization, and any trading agreements entered;
- Provides that buyers are responsible for complying with the terms of their DEP permit;
- Requires DEP to take action to address the failure of a seller to fulfill its obligations, including deeming the seller's credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time;
- Provides that if DEP determines credits to be invalid, in whole or in part, which causing the buyer to be unable to timely meet its pollutant reduction obligations, DEP must issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a

[47] Section 378.209(1)(a)-(e), F.S.
[48] Section 378.208, F.S.
[49] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[50] DEP's *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature* (Oct. 2010), available at http://dep.state.fl.us/water/wqssp/docs/Water QualityCreditReport-101410.pdf (last visited Jan . 22, 2016).
[51] *Id.*
[52] Rule 62-306.200(3), F.A.C., defines "credit" as the amount of an entity's nutrient load reduction below the baseline that will be available for trading purposes, measured in units of pounds per year or kilograms per year.
[53] *Id.*
[54] Chapter 2013-146, Laws of Florida, expanded the original WQCT pilot program in the St. Johns River BMAP established in ch. 2008-189, Laws of Florida.

reasonable schedule for completing the actions. Provides that the invalidation of credits does not, in and of itself, constitute a violation of the buyer's permit;
- Provides that DEP may authorize WQCT in adopted basin management action plans (BMAP) and that participation in WQCT is voluntary; and
- Requires entities that participate in WQCT to timely report to DEP the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits.[55]

Activities that are potentially eligible to generate credits include:
- Installation or modification of water pollution control equipment or activities that are not required to meet technology-based effluent levels, water quality based effluent levels, or other pollution control obligations, and reduce nutrient loads below the baseline;
- Operational changes or the modification of a process or process equipment that reduces the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrients discharged. Credits may be generated when a permitted surface water discharge facility closes its operations or ceases discharging to surface waters, but the credits will only be valid while the permit remains in effect;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing by the Department of Agriculture and Consumer Services to reduce nutrient loads below the baseline;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below the baseline established in a BMAP or remedial action plan (RAP); or
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below the baseline land use in the total maximum daily load, BMAP or RAP.[56]

Effect of Proposed Changes

The bill amends s. 403.067(8), F.S., to allow the use of land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters in WQCT.

Variances

Present Situation

Upon application to DEP, a variance from the requirements of ch. 403, F.S., the Florida Air and Water Pollution Control Act (Act), or the rules and regulations adopted pursuant to the Act, may be granted, but only for the following circumstances:
- There is no practicable means known or available for the adequate control of the pollution;
- Compliance with the requirement(s) will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time; however, a variance granted for this reason must prescribe a timetable for the taking of the measures required; or
- To relieve or prevent hardship other than what is provided above.[57]

Variances are required to be limited to 24 months, unless the variance is granted pursuant to part II of the Act, the Florida Electrical Power Plant Siting Act, which may be for the life of the permit or certification.[58]

[55] Section 403.067(8)(a)-(h), F.S.
[56] Rule 62-306.400(1)(a)-(g), F.A.C.
[57] Section 403.201(1)(a)-(c), F.S.
[58] Section 403.201(1), F.S.

However, DEP cannot grant a variance for discharges of waste into waters of the state or hazardous waste management if it results in less stringent requirements than those required by federal law.[59] There is one exception for when DEP issues a research, development and demonstration permit to a solid waste management facility or hazardous waste management facility that proposes to use an innovative and experimental solid waste treatment technology or process where permit standards have not been promulgated.[60]

A moderating provision is a condition in a permit authorized under state and federal law and applied when natural conditions prevent attainment of the criterion or when existing technology is not available to achieve the criterion.[61]

Effect of Proposed Changes

The bill amends s. 403.201(2), F.S., to provide that the limitation on the granting of a variance does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

The bill reenacts s. 373.414(17), F.S., to incorporate the proposed changes to s. 403.201, F.S. made by the bill.

Solid Waste Landfill Closure and Long-term Care

Present Situation

DEP is responsible for the implementation and enforcement of the state's solid waste management program.[62] DEP is authorized to adopt rules to implement and enforce the state's solid waste management program, which includes the classification, construction, operation, maintenance and closure[63] of solid waste management facilities[64].[65]

An owner or operator[66] of any other landfill,[67] or any other solid waste management facility, must provide financial assurance to DEP for the closure of the facility.[68] Financial assurance may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with closure requirements.[69] An owner or operator must estimate costs to the satisfaction of DEP.[70]

[59] Section 403.201(2), F.S.
[60] *Id.*; Section 403.70715, F.S.
[61] DEP's Water Quality Q & A, available at http://www.dep.state.fl.us/evergladesforever/restoration/quality_qa.htm (last visited Jan. 22, 2016).
[62] Sections 403.703 and 403.705, F.S.
[63] Section 403.703(5), F.S., defines "closure" as the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment and includes long-term monitoring and maintenance of a facility if required by DEP rule.
[64] Section 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, which is used for the management of solid waste.
[65] Section 403.709(9), F.S.; chs. 62-701 through 62-722, F.A.C.
[66] Section 403.7125(1), F.S., defines an "owner or operator" as any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.
[67] Section 403.7125(17), F.S., defines a "landfill" as any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707, F.S., and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.
[68] Sections 403.707(9) and 403.7125(3), F.S.; rule 62-701.630, F.A.C.
[69] *Id.*
[70] *Id.*

Section 403.709(5), F.S.,[71] creates a solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF) to provide for the closure and long-term care[72] of solid waste management facilities.[73] DEP may use funds from the solid waste landfill closure account to contract with a third party for the closure and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed abandoned or was ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete the closure and long-term care of the facility.[74]

DEP must deposit funds received from an insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.[75] This law is scheduled for repeal on July 1, 2016.[76]

Effect of Proposed Changes

The bill deletes the scheduled repeal date of July 1, 2016. The bill also provides an appropriation for fiscal year 2016-2017 in the sum of $2,339,764 in nonrecurring funds to be appropriated to DEP from the SWMTF for the closing and long-term care of solid waste management facilities.

Solid Waste and Recovered Materials Flow Control Ordinances

Present Situation

Counties are responsible for operating solid waste disposal facilities[77] in incorporated and unincorporated areas of the county.[78] Unless otherwise approved by an interlocal agreement or special act, municipalities may not operate these facilities unless they demonstrate that the use of a county facility, when compared to alternatives proposed by the municipality, places a significantly higher and disproportionate financial burden on its citizens when compared to the financial burden placed on persons residing within the county but outside of the municipality.[79]

However, municipalities may construct and operate a resource recovery[80] facility and related onsite solid waste disposal facilities without an interlocal agreement with the county if the municipality can demonstrate that the operation of the facility will not significantly impair financial commitments made by the county with respect to solid waste management facilities or result in significantly increased solid waste management costs to the remaining persons residing within the county but not served by the municipality's facility.[81]

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[71] Section 53, ch. 2015-222, Laws of Florida, created s. 403.709(5), F.S., in order to implement Specific Appropriation 1689A of the 2015-2016 General Appropriations Act.
[72] Rule 62-701.620, F.A.C., provides for the long-term care of solid waste management facilities.
[73] Section 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, which is used for the management of solid waste.
[74] Section 403.709(5)(a), F.S.
[75] Section 403.709(5)(b), F.S.
[76] Section 403.709(5)(c), F.S.; Due to implementation of the section through the Implementing Bill.
[77] Section 403.703(33), F.S., defines a "solid waste disposal facility" as any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.
[78] Section 403.706(1), F.S.
[79] *Id.*
[80] Section 403.703(28), F.S., defines "resource recovery" as the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.
[81] Section 403.706(1), F.S.

Counties have the authority to adopt ordinances governing the disposal of solid waste[82] generated outside of the county at the county's solid waste disposal facility.[83] Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county.[84] Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities.[85]

Counties and municipalities who undertake resource recovery[86] from solid waste may institute a flow control ordinance to ensure that the resource recovery facility receives an adequate quantity of solid waste generated within its jurisdiction.[87] However, this authority does not extend to recovered materials[88] that are intended for recycling[89].[90]

Landfill Gas-to-Energy Systems

Landfills that receive degradable wastes[91] are required to have a gas management system designed to prevent explosions and fires, and to minimize off-site odors, lateral migration of gases and damage to vegetation.[92] Landfill gas contains methane that can be captured and used to fuel power plants, manufacturing facilities, vehicles, and homes.[93] Counties are encouraged to form multicounty regional solutions for the capture and reuse or sale of methane gas from landfills.[94]

Effect of Proposed Changes

The bill amends s. 403.713(2), F.S., to provide that counties and municipalities may implement a flow control ordinance for resource recovery only after it owns, and actively uses, a resource recovery facility and the county or municipality proves the necessity of implementing flow control to ensure sufficient material for that resource recovery facility. The bill also provides that a flow control ordinance does not limit other entities and districts to contract for waste management services.

The bill creates s. 403.713(3), F.S., to specify that for purposes of exercising flow control authority, a resource recovery facility does not include a landfill gas-to-energy system or facility.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.323, F.S., regarding licensure of water well contractors.

Section 2. Amends s. 378.209, F.S., regarding timing of reclamation.

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[82] Section 403.703(32), F.S., defines "solid waste" as 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. Recovered materials are not solid waste.

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] Section 403.703(28), F.S., defines "resource recovery" as the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.

[87] Section 403.713(2), F.S.

[88] Section 403.703(24), F.S., defines "recovered materials" as 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, but the term does not include materials destined for any use that constitutes disposal. Recovered materials are not solid waste.

[89] Section 403.703(27), F.S., defines "recycling" as any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

[90] Section 403.713(2), F.S.

[91] Rule 62-701.200(26), F.A.C., defines "degradable waste" as waste that decomposes through chemical breakdown or microbiological activity. It includes materials such as food and vegetative wastes, but does not include materials like concrete and ash residue from the combustion of solid wastes and metals.

[92] Rule 62-701.530(1)(a), F.A.C.

[93] EPA's Landfill Methane Outreach Program, available at http://www3.epa.gov/lmop/ (last visited Jan. 22, 2016).

[94] Section 403.7055(1), F.S.

Section 3. Amends s. 403.067, F.S., regarding water quality credit trading.

Section 4. Amends s. 403.201, F.S., regarding variances.

Section 5. Amends s. 403.709, F.S., regarding the Solid Waste Management Trust Fund.

Section 6. Amends s. 403.713, F.S., regarding the ownership and control of solid waste and recovered materials.

Section 7. Reenacts s. 403.414(17), F.S., to incorporate the changes made to s. 403.201, F.S.

Section 8. Provides an appropriation.

Section 9. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   For fiscal year 2016-2017, the bill provides $2,339,764 in nonrecurring funds to be appropriated to DEP from the Solid Waste Management Trust Fund for the closing and long-term care of solid waste management facilities. The appropriation would allow DEP to execute contracts with a third party for the closure of five landfills.[95] The appropriation is identical to one that was adopted in the fiscal year 2015-2016 General Appropriations Act.[96] DEP has requested $1,000,000 for fiscal year 2016-2017 for similar closure activities.[97]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have a negative fiscal impact on local governments who are divested of implementing flow control ordinances to ensure adequate amounts of waste are received at resource recovery facilities because the bill requires local governments to own and actively use the resource recovery facility and prove the necessity of instituting the ordinance prior to enacting a flow control ordinance. The bill also provides that flow control ordinances cannot limit other entities and districts from contracting for waste management services. The bill also provides that flow control ordinances do not apply to landfill gas-to-energy systems or facilities, which could also decrease revenue.[98]

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector by extending the rate of reclamation and financial responsibility requirements of CSAs until the beneficial use of the CSA is

[95] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[96] *Id.*
[97] *Id.*
[98] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.

complete and by allowing land-set asides and land use modifications that reduce nutrient loads into impaired surface waters to be included in WQCT.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill may limit a local government's ability to raise revenue by limiting their ability to institute flow control ordinances for solid waste. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states that rate of reclamation and financial responsibility requirements do not apply to a CSA when the "beneficial use" of the CSA is extended, and does not become applicable until the "beneficial use" is complete, however, there is no provision in statute or rule that defines what "beneficial use" is in relation to a CSA for purposes of implementing the bills meaning.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute removed the following sections from the bill:

- Section 1. – Amending s. 373.227, F.S., regarding water conservation;
- Section 3. – Amending s. 373.467, F.S., regarding the Harris Chain of Lakes Restoration Council;
- Section 4. – Amending s. 373.705, F.S., regarding water resource development;
- Section 6. – Amending s. 403.061, F.S., creating a specific surface water classification; and
- Section 10. – Amending s. 403.861, F.S., creating certain powers and duties of the DEP.

In addition, the proposed committee substitute amended s. 403.709(2), F.S., relating to the SWMTF, s. 378.209(4), F.S., regarding timing of reclamation, to provide that if the beneficial use of a constructed CSA is extended, the rate of reclamation requirements and the financial responsibility requirements do not apply to the constructed CSA until the beneficial use of the area is complete, and s. 403.713(2), F.S., regarding ownership and control of solid waste and recovered material, to provide that counties and municipalities may implement a flow control ordinance for resource recovery only after it owns, and actively uses, a resource recovery facility and the county or municipality proves the necessity of implementing flow control to ensure sufficient material for that resource recovery facility. The bill also provides that a flow control ordinance does not limit other entities and districts to contract for waste management services.

This analysis is drafted to the committee substitute as approved by the subcommittee.