

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 987 Solid Waste Management

**SPONSOR(S):** Drake

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 922

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Moore	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee		Helping	Massengale
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) is responsible for the implementation and enforcement of the state's solid waste management program. DEP also administers the Solid Waste Management Trust Fund (SWMTF) for the solid waste management grant program and the solid waste landfill closure account.

The solid waste management grant program consists of two grant programs: a consolidated grant program, which is responsible for solid waste management, litter prevention and control, and recycling and education programs for counties with populations fewer than 100,000; and a waste tire grant program.

The bill amends the SWMTF to:

- Include and provide funding for a waste tire abatement program that is to receive no more than 5 percent of the 37 percent traditionally used for the solid waste management grant program; and
- Expand the use of funds from the solid waste landfill closure account, as follows:
  - Allows funds from the account to be used on a facility that was not required to obtain a DEP permit to operate;
  - Allows a permittee to provide proof of financial assurance for closure by using an alternative form of financial assurance;
  - Allows DEP to accept sufficient documentation, rather than written documentation, as confirmation that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse funds required to complete closing and long-term care;
  - Allows DEP to use funds from the SWMTF to pay for or reimburse additional expenses needed for performing or completing closure or long-term care if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance; and
  - Removes the account's expiration date of July 1, 2016.

The bill amends the solid waste management grant program by adding waste tire abatement as an allowable use of funds awarded under the consolidated grant program, and removes the waste tire grant program.

The bill appears to have a significant fiscal impact on the state, no impact on local government, and a positive impact on the private sector.

Except as otherwise expressly provided in the act, which shall take effect upon becoming law, the act takes effect on July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Department of Environmental Protection (DEP) is responsible for the implementation and enforcement of the state's solid waste management program.<sup>1</sup> DEP is authorized to adopt rules to implement and enforce the state's solid waste management program, which includes a waste tire<sup>2</sup> management program,<sup>3</sup> administration of solid waste grant programs,<sup>4</sup> and the classification, construction, operation, maintenance and closure<sup>5</sup> of solid waste management facilities<sup>6,7</sup>.

##### Solid Waste Management Trust Fund

The Solid Waste Management Trust Fund (SWMTF) is funded from registration fees, fines, and penalties imposed relating to used oil,<sup>8</sup> penalties for littering,<sup>9</sup> and waste tire fees.<sup>10</sup> Annual revenues deposited into the SWMTF, unless otherwise specified in the General Appropriations Act, are to be administered by DEP as follows:

- Up to 40 percent for solid waste activities of DEP and other state agencies, including providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management and other organizations that can reasonably demonstrate the capability to carry out the projects;
- Up to 14 percent to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- Up to 37 percent for a solid waste management grant program for activities relating to recycling and waste reduction, including waste tires requiring final disposal.<sup>11</sup>

DEP must recover funds used from the SWMTF for the management of tires at illegal waste tire sites<sup>12</sup> from owners or persons responsible for the accumulation of the tires.<sup>13</sup> DEP may decline to pursue

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<sup>1</sup> Chapter 403, Part IV, F.S., Resource and Recovery Management; Section 403.705, F.S.

<sup>2</sup> Section 403.717(1)(e), F.S., defines a "waste tire" to mean a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. It includes used tires and processed tires. It does not include solid rubber tires and tires that are inseparable from the rim.

<sup>3</sup> Section 403.717, F.S.; ch. 62-701, F.A.C.

<sup>4</sup> Section 403.7095, F.S.; ch. 62-716, F.A.C.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Section 403.709(9), F.S.; chs. 62-701 through 62-722, F.A.C.

<sup>8</sup> Section 403.759, F.S.; Section 403.75(7), F.S., defines "used oil" as any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become contaminated and unsuitable for its original purpose due to the presence of physical or chemical impurities or loss of original properties.

<sup>9</sup> Section 403.413(6), F.S.

<sup>10</sup> Section 403.718, F.S.

<sup>11</sup> Section 403.709(1)(a)-(e), F.S.

<sup>12</sup> Section 403.717(1)(g), F.S., defines a "waste tire site" as a site where 1,500 or more waste tires are accumulated.

<sup>13</sup> Section 403.709(2), F.S.

recovery if it determines that the amount involved is too small or the likelihood of recovery is too uncertain.<sup>14</sup> A court may authorize DEP to take possession and control of a waste tire site to protect the health, safety, and welfare of the community and the environment if the court determines that the owner is unable or unwilling to comply with waste tire requirements<sup>15</sup>.<sup>16</sup> DEP may impose a lien on the real property where the waste tire site is located equal to the estimated cost to bring the tire site into compliance, including attorney's fees and court costs.<sup>17</sup>

### Waste Tire Abatement Program

DEP's waste tire abatement program is used to identify, evaluate, and cleanup waste tire sites.<sup>18</sup> Funding for DEP's waste tire abatement program has not been funded since the 2009 Legislative Session.<sup>19</sup> DEP has a list of more than 440,000 tires located at 26 waste tire sites within Florida. The number of tires at these sites range from 1,500 to more than 250,000. Preliminary abatement cost estimates per site range from \$2,704 to \$570,900. DEP's preliminary abatement cost estimate for the 26 sites is \$961,390.<sup>20</sup>

### Solid Waste Management Consolidated Grant Program and Waste Tire Grant Program

The consolidated grant program serves small counties with populations fewer than 100,000, in solid waste management, litter prevention and control, and recycling and education programs.<sup>21</sup> The consolidated grant program serves 33 counties.<sup>22</sup>

The waste tire grant program provides for the operation and construction of facilities and other activities related to the removal of waste tires and is available to all counties; however, at least 25 percent of grant funding is to be equally distributed to each county having a population fewer than 100,000.<sup>23</sup> Remaining funds are to be distributed to counties having a population of 100,000 or greater, based on population.<sup>24</sup>

SWMTF funds for the grant programs are to be distributed as follows:

- Up to 50 percent to the consolidated grant program; and
- Up to 50 percent to the waste tire grant program.<sup>25</sup>

Funding for the waste tire grant program was last appropriated during the 2003 Legislative Session.<sup>26</sup>

### Closure and Long-term Care of Solid Waste Management Facilities

An owner or operator<sup>27</sup> of a landfill,<sup>28</sup> or any other solid waste management facility, must provide financial assurance to DEP for closure of the facility.<sup>29</sup> Financial assurance may include surety bonds,

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<sup>14</sup> *Id.*

<sup>15</sup> Section 403.717, F.S.; ch. 62-701, F.A.C.

<sup>16</sup> Section 403.709(2), F.S.

<sup>17</sup> Section 403.709(3), F.S.

<sup>18</sup> DEP's Tires General Information, available at <http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm> (last visited Jan. 26, 2016).

<sup>19</sup> DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>20</sup> *Id.*

<sup>21</sup> Section 403.7095(1), F.S.; chs. 62-701 and 62-716, F.A.C.

<sup>22</sup> DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>23</sup> Section 403.7095(2), F.S.; chs. 62-701 and 62-716, F.A.C.

<sup>24</sup> *Id.*

<sup>25</sup> Sections 403.709(1)(e) and 403.7095(3), F.S.

<sup>26</sup> DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>27</sup> 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.

<sup>28</sup> 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. It does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.

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.<sup>30</sup> An owner or operator must estimate costs to the satisfaction of DEP.<sup>31</sup>

Section 403.709(5), F.S.,<sup>32</sup> provides for a solid waste landfill closure account within the SWMTF for the closure and long-term care<sup>33</sup> of certain solid waste management facilities.<sup>34</sup> 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 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.<sup>35</sup>

DEP is required to 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.<sup>36</sup> The solid waste landfill closure account is scheduled for repeal on July 1, 2016.<sup>37</sup>

For Fiscal Year 2015-2016, \$2.34 million in nonrecurring funds were appropriated to DEP from the solid waste landfill closure account within SWMTF for the closing and long-term care of solid waste management facilities.<sup>38</sup> DEP is using these funds to enter into contracts with a third party to close the following facilities:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).<sup>39</sup>

## Effect of Proposed Changes

The bill amends s. 403.709, F.S., regarding the SWMTF, to include and provide funding for a waste tire abatement program. The bill provides that no more than 5 percent of the 37 percent traditionally used for the solid waste management grant program may be used for the waste tire abatement program.

The bill also expands the areas in which DEP can use funds from the solid waste landfill closure account within the SWMTF on closure and long-term care, as follows:

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<sup>29</sup> Sections 403.707(9) and 403.7125(3), F.S.; Rule 62-701.630, F.A.C.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 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.

<sup>33</sup> Rule 62-701.620, F.A.C., provides for the long-term care of solid waste management facilities.

<sup>34</sup> 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. It 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.

<sup>35</sup> Section 403.709(5)(a), F.S.

<sup>36</sup> Section 403.709(5)(b), F.S.

<sup>37</sup> Section 403.709(5)(c), F.S.; Due to implementation of the section through the Implementing Bill.

<sup>38</sup> DEP’s analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>39</sup> *Id.*

- Allows the use of funds from the account on a facility that was not required to obtain a DEP permit to operate;
- Allows a permittee, where required by rule or permit, to provide proof of financial assurance for closure by using an alternative form of financial assurance; and
- Allows DEP to accept sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care.

The bill specifies that DEP must deposit funds received from an insurer or other party for reimbursement into the solid waste landfill closure account. The bill specifies that if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance, DEP may use funds from the SWMTF to pay for or reimburse the additional expenses needed for performing or completing the facility closure or long-term care. The bill deletes the account's repeal date of July 1, 2016.

The bill amends s. 403.7095, F.S., regarding the solid waste management grant program to add waste tire abatement as an allowable use of grant funds awarded under the consolidated grant program. The bill removes the waste tire grant program and the requirement for grant funds to be divided between the consolidated grant program and the waste tire grant program. The bill also removes an expired appropriation.

The bill reenacts ss. 403.413 and 403.7032, F.S., to incorporate the changes made by the bill to s. 403.7095, F.S.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 403.709, F.S., regarding the Solid Waste Management Trust Fund.

Section 2. Amends s. 403.7095, F.S., regarding the solid waste management grant program.

Section 3. Reenacts s. 403.413, F.S., to incorporate the changes made to s. 403.7095, F.S.

Section 4. Reenacts s. 403.7032, F.S., to incorporate the changes made to s. 403.7095, F.S.

Section 5. Provides effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill modifies the authorized uses of funds under the SWMTF for solid waste management grants to include waste tire abatement and modifies the distribution of such funds. The House proposed General Appropriations Act for Fiscal Year 2016-2017 provides \$3 million for solid waste management grants and \$2.55 million for waste tire abatement from the SWMTF. Of the \$2.55 million for waste tire abatement, \$1.8 million is provided for Osborne Reef Waste Tire Removal Project in Broward County, and \$750,000 is for the waste tire abatement program.

Current law, and the bill, provides for reimbursement of funds expended from the solid waste landfill closure account within the SWMTF. The bill specifies that if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the

insurance policy or alternative form of financial assurance, then DEP can use funds from the SWMTF.<sup>40</sup>

DEP estimates \$1 million in additional funds from the SWMTF will be needed to complete closure of the 5 sites currently under contract and has identified one additional site for closure.<sup>41</sup> The Fiscal Year 2016-2017 House proposed General Appropriations Act includes \$1 million from the SWMTF for the closure and long-term care of solid waste management facilities.

The bill also removes the expiration date of the solid waste landfill closure account, allowing DEP to continue contracting with third parties for the closure and long-term care of solid waste management facilities.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill modifies the current distribution made available for waste tire grants and solid waste management grants. The modification provides that all such funds are made available to counties with a population less than 100,000 and removes the distribution to counties with a population more than 100,000. However, this modification codifies several years of legislative appropriation.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the expiration date on the solid waste landfill closure account within the SWMTF, allowing DEP to continue to contract with private entities for the closure and long-term care of solid waste management facilities. The bill also allows DEP to spend additional funds from the SWMTF for the same purpose.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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<sup>40</sup> *Id.*

<sup>41</sup> Florida Fiscal Portal, *Environmental Protection - Agency Legislative Budget Request for Fiscal Year 2016-2017*, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13845&DocType=PDF>, (Last visited Feb. 5, 2016).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comment: DEP

The expansion of the solid waste landfill closure account has the potential to increase the amount of land available for redevelopment and reuse, and expedite the process for closing landfills thereby minimizing potential environmental impacts from an abandoned landfill. The expansion would accomplish purposes that benefit the public while supporting the continued availability of insurance policies or other financial assurance instruments as cost effective mechanisms.<sup>42</sup>

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>42</sup> *Id.*