

1989

Session Law 89-143

Florida Senate & House of Representatives

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S 284 GENERAL BILL/CS/1ST ENG by Natural Resources and Conservation; Brown and others (Similar CS/H 751, Compare CS/H 14, H 1012, H 1325, CS/S 361)

Environmental Regulation; redefines term "pollution" for purposes of Environmental Control law & rules adopted thereunder; specifies prohibited acts under said laws & prohibited acts applicable to biohazardous waste & hazardous waste generators, transporters, & facility owners or operators; provides civil & criminal penalties for such violations; provides for certain immunity for generators who contract with certain transporters, etc. Amends F.S. Effective Date: 10/01/89.

02/17/89 SENATE Prefiled

03/24/89 SENATE Referred to Natural Resources and Conservation; Judiciary-Criminal; Appropriations

04/04/89 SENATE Introduced, referred to Natural Resources and Conservation; Judiciary-Criminal; Appropriations -SJ 32

04/14/89 SENATE Extension of time granted Committee Natural Resources and Conservation

04/27/89 SENATE On Committee agenda—Natural Resources and Conservation, 05/01/89, 10:00 am, Room-2C-(301)

04/28/89 SENATE Extension of time granted Committee Natural Resources and Conservation

05/01/89 SENATE Comm. Report: CS by Natural Resources and Conservation -SJ 257

05/03/89 SENATE CS read first time -SJ 261; Now in Judiciary-Criminal -SJ 257

05/04/89 SENATE On Committee agenda—Judiciary-Criminal, 05/08/89, 3:15 pm; Room-2C-(301)

05/08/89 SENATE Comm. Report: Favorable by Judiciary-Criminal -SJ 292

05/09/89 SENATE Now in Appropriations -SJ 292

05/16/89 SENATE On Committee agenda—Appropriations, 05/18/89, 12:00 noon, Room-A-(LL-37)

05/18/89 SENATE Comm. Report: Favorable with 2 amendment(s) by Appropriations, placed on Calendar -SJ 402

06/01/89 SENATE Placed on Consent Calendar -SJ 686; CS passed as amended; YEAS 35 NAYS 0 -SJ 760

06/01/89 HOUSE In Messages

06/03/89 HOUSE Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 92 NAYS 22 -HJ 1552

06/03/89 Ordered enrolled -SJ 1406

06/12/89 Signed by Officers and presented to Governor

06/27/89 Approved by Governor; Chapter No. 89-143

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NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

| <u>ANALYST</u> | <u>STAFF DIRECTOR</u> | <u>REFERENCE</u> | <u>ACTION</u> |
|-------------------|-----------------------|------------------|---------------------|
| 1. <u>Ross</u> | <u>Voigt</u> | 1. <u>NRC</u> | <u>Fav/CS</u> |
| 2. <u>Shanley</u> | <u>Liepshutz</u> | 2. <u>JCR</u> | <u>Favorable</u> |
| 3. <u>Revell</u> | <u>Smith</u> | 3. <u>AP</u> | <u>Fav/2 amend.</u> |
| 4. _____ | _____ | 4. _____ | _____ |

SUBJECT:

Environmental Regulation

BILL NO. AND SPONSOR:

CS/SB 284 by
Committee on NRC and
Senator BrownI. SUMMARY:

A. Present Situation:

The Department of Legal Affairs asserts that, currently, the state's ability to enforce environmental regulations in chapter 403, Florida Statutes, is limited. In addition, it is difficult to prove a case where the offender is not actually discharging into waters of the state, but is engaged in activities that threaten pollution, or is allowing a pollution situation to persist without taking any corrective action.

It is purported that the statutory definition of "pollution", is too restrictive. To alleviate this problem it is contended that the term "earth" should be included in the definition of "pollution" in order to facilitate criminal actions against contamination of the earth, and not to limit enforcement only to cases where it is proved that noxious chemicals have leached into the water supply.

The Department of Environmental Regulation states that except for major littering or hazardous waste violations, which are felonies, all other environmental criminal violations are misdemeanors. It is alleged that the civil and criminal penalties are insufficient and inconsistent with other sections of the Florida Statutes. Also, it is believed that the Statute of Limitations for environmental crimes, is too short to detect and investigate the environmental damage prior to initiating prosecution.

Furthermore, courts have strictly interpreted section 403.161, F.S., to require proof of the actual affirmative act causing pollution, while rejecting negligence as an unconstitutional standard of proof for criminal liability. It is stated by the courts that a standard of "willful or culpable negligence" would be constitutional.

In addition, section 403.727, F.S., requires the state to prove that a hazardous waste generator, transporter, or facility owner or operator "knowingly" violated the hazardous waste regulations in chapter 403, Florida Statutes. It is contended that this standard should be broadened. It is also suggested that biological wastes, as well as biohazardous wastes, should be covered under regulations in chapter 403, Florida Statutes.

The Department of Legal Affairs asserts that, currently, the authority of the Attorney General to bring civil actions for violations of pollution statutes is arguably subject to challenge, despite certain existing case law support. Furthermore, the Department of Legal Affairs can now only seek injunctive relief for civil violations of chapter 403 after first giving 30 days notice to the Department to give it the opportunity to take appropriate action, as provided in s.

403.412, F.S. Legal Affairs cannot itself pursue other relief available to the DER, such as damages, cost recovery and penalties.

Currently, RICO remedies cannot be applied to environmental crimes, in chapter 403, F.S., and the statewide prosecutor does not have the authority to prosecute environmental criminals engaging in multi-jurisdictional crimes. It is also alleged that current civil and criminal sanctions for environmental criminals are not equal to the threat presented to human life and the environment.

B. Effect of Proposed Changes:

Section 1

The bill amends the definition of "pollution" in ch. 403, F.S., to also include any man-induced or manmade impairment of the air or waters of the state that are potentially injurious to human health and welfare, to plant and animal life, or property, unless authorized by applicable law.

Section 2

Subsection 403.161(3), F.S., is amended to prohibit the willfull violation of subsection (1)(a), prohibiting harmful or injurious pollution. Such actions will be punishable for a felony of the third degree, by a fine of no more than \$50,000 and/or by imprisonment of no more than 5 years for each offense.

Existing subsection (4) of s. 403.161, F.S., which is renumbered as (5) by the bill, is amended to provide that any person who willingly violates subsection (1)(b), relating to unpermitted activities, is guilty of a misdemeanor of the 1st degree. The "willingly" standard will also be applicable to actions which violate subsection (1)(c), relating to the knowing misrepresentation of false statement of facts to the department.

A new subsection (4) in s. 403.161, F.S., is created to provide that a violation of subsection (1)(a), relating to pollution which harms or injures human health, animal, plant or aquatic life or property, resulting from reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree. Such violations are punishable by a fine not exceeding \$5,000 and/or by less than 60 days imprisonment.

Section 3

The bill makes biohazardous waste generators, transporters, and facility owners or operators subject to the existing hazardous waste provisions in subsections (1), (3)(b), (5), (6), and (7), of section 403.727, F.S.

In addition, the standard to prove a violation of subsection (3)(b) of section 403.727, F.S., relating to biohazardous and hazardous wastes, is broadened to include actions exhibiting reckless indifference or gross careless disregard for human health. The transportation of all biohazardous and hazardous wastes listed under section 403.703, F.S., to an unpermitted facility required to have a permit pursuant to s. 403.707 or s. 403.722, F.S., would be prohibited by s. 403.727, F.S. The bill adds that a person who with the requisite intent disposes, treats, or stores biohazardous waste in a place other than a facility with an updated and valid permit for those purposes is violating the statute. Violations of subsection (3)(b)2.a. and b. of section 403.727, F.S., occur if a person knowingly violates material conditions in permits, rules, and standards in a way which has a substantial likelihood of endangering human health, animal or plant life, or property.

Section 4

The bill provides a five year Statute of Limitation period from the date of discovery of a violation in which to commence an action pursuant to ch. 403, F.S.

Section 5

The bill makes "racketeering activities" involving a violation of section 403.727(3)(b), F.S., which are chargeable by indictment or information from the Attorney General, subject to the provisions in the Florida Racketeer Influenced and Corrupt Organization Act.

Section 6

The bill reenacts certain sections of the Florida Statutes which refer to enforcement provisions in s. 403.161, F.S., in order to incorporate the amendment to that section. These sections relate to enforcement of the Florida Industrial Siting Act, enforcement of regulations pertaining to pollution of surface and ground waters, enforcement of local pollution control programs, enforcement of provisions in the Henderson Wetlands Act, and enforcement provisions relating to mangroves.

Section 7

The act takes effect on October 1, 1989.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

The Department of Environmental Regulation reports that the bill will benefit the public in general, but could increase costs to those liable under the extended environmental protection, increased associated penalties, and permitting costs provided by the bill in ch. 403, F.S. The Department of Corrections states that the bill is not likely to produce a noticeable impact to the offender population.

Those accused of organized environmental criminal activity will also be subject to additional defense costs.

B. Government:

The DER foresees the need to acquire additional personnel for compliance evaluation, and subsequent prosecution of violators. For the biohazardous waste section only, required personnel will include four solid waste and air quality professionals at an approximate cost of \$144,000 each year for the next three years. Representatives of the State Attorneys and Public Defenders indicate the impact on their programs is insignificant.

DER reports that increased civil penalties may be collected and used for incident response and environmental restoration and that increased penalties could result in increased funds going into the Pollution Recovery Fund. Additional revenues to be derived from RICO provisions is unknown.

III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by Appropriations:

Provides that a generator of biohazardous waste who has contracted

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for the transportation of the waste with a registered transporter, shall not be jointly and severally liable for any actions of the transporters.

#2 by Appropriations:
Title Amendment.

STORAGE NAME: CS/HB751f.er
DATE: June 19, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON ENVIRONMENTAL REGULATION
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 751

RELATING TO: Environmental Regulation

SPONSOR(S): Committee on Environmental Regulation, Rep. Peter Wallace

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): SB 284

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. - SUMMARY:

A. PRESENT SITUATION:

Chapter 403, Florida Statutes, Environmental Control, is the main statutory authority for civil, criminal and administrative actions taken with regard to environmental regulation. This bill addresses a number of problems raised by the Department of Legal Affairs, that have surfaced in pursuing these legal actions. Specifically, it addresses problems that have arisen in the prosecution of polluters.

Currently, the Department of Environmental Regulation (DER) has authority to enforce chapter 403, F.S., through civil and administrative proceedings. The State Attorney's office in each circuit is called upon for criminal prosecution of any violation of this law. The Office of the Attorney General has authority to seek injunctive relief for civil violations of chapter 403, F.S., after giving 30 days notice to DER, and general authority to bring any civil action on behalf of the State of Florida.

"Pollution" is currently defined by section 403.031(7), F.S. The definition has presented problems for prosecutors due to its restrictive nature. In addition, the prohibitions against pollution contained in 403.161, F.S., are dependent upon the same definition of pollutant, which has also caused difficulties in prosecution.

Chapter 403.161, F.S., provides the basic prohibition against pollution and the civil and criminal penalties for violations. Paragraph 3 specifies that any person who willfully or negligently pollutes or fails to obtain the required permits is guilty of a misdemeanor of the first degree, punishable by up to a year in jail and/or fines of not less than \$2,500 or more than \$25,000. The current prohibition is against causing pollution so as to harm or injure. The statute has been judicially

interpreted to require actual harm, and to require proof of affirmative acts causing pollution. The section also prohibits the negligent commission of pollution. The Florida Supreme Court in State vs. Hamilton, 338 So. 2d 561 (FLA 1980), has held that "negligence" is an unconstitutional standard for criminal liability.

Section 403.727, F.S., provides the basic prohibitions against the mishandling of hazardous wastes. Medical wastes are not currently included in the statutory prohibition and penalties. Biohazardous wastes are now the subject of special regulation by DER pursuant to s. 403.704(31) F.S. Rules established by the department are specific to biohazardous wastes and differ distinctly from general hazardous wastes regulations. The criminal penalties section of the hazardous waste provisions requires that a person be in "knowing violation" of the law in order to be prosecuted, which may allow violators who exhibit reckless indifference to be free from sanctions.

The State Statute of Limitations for a felony crime is currently three years from the time the crime was committed. The Department of Legal Affairs asserts that this does not provide adequate time to fully investigate environmental damage and suggests a five year limit, tolled from the time of discovery of the violation.

Violations of Section 403.727(3)(b) F.S., relating to hazardous waste, are not currently on the list of crimes covered under the Florida Racketeer Influenced and Corrupt Organization Act (RICO), and are not enforceable by the Statewide Prosecutor.

B. EFFECT OF PROPOSED CHANGES:

The bill redefines pollution to include man-induced impairment of air or waters, and clarifies that those discharges allowed by law are not considered pollution. It expands the prohibitions in section 403.161, F.S., to include willfully permitting pollution to occur, and replaces "negligently" with "reckless indifference or gross careless disregard", a term recognized by the Florida Supreme Court.

The bill increases penalties for willful violations of 403.161(1)(a), F.S., from a first degree misdemeanor to a felony of the third degree, establishes a second degree misdemeanor for violations of 403.161(1)(a), F.S., due to reckless indifference or gross careless disregard, and provides that willful violations of 403.161(1)(b) and (1)(c) are first degree misdemeanors.

The bill includes biohazardous wastes in the hazardous waste provisions, and subjects the mishandling of biohazardous wastes to civil and criminal penalties and strengthens hazardous waste

provisions. The bill also adds "reckless indifference or gross careless regard for human health" to the violations section and modifies references to "knowing" violations of rules, standards or permit conditions, by providing that such violations must have a substantial likelihood of endangering human health, animal or plant life, or property.

The bill provides that the statute of limitations for violations of chapter 403, F.S., is five years from the date of discovery of the violation. The bill also adds violations of paragraph (3)(b), chapter 403, F.S., to the list of crimes covered under the RICO Act, which allows the trebling of certain penalties and allows prosecution by the Statewide Prosecutor.

The bill reenacts a number of subsections in order to incorporate references to amendments made by this bill.

C. SECTION-BY-SECTION ANALYSIS:

Section 1: Expands the definition of pollution to include man-induced impairment of air or waters, and clarifies that if allowed by law, the presence of certain substances does not constitute pollution.

Section 2: Deletes "negligently" permitting pollution to occur from the prohibitions against pollution; replaces with references to "reckless indifference or gross careless disregard"; provides for penalties.

Section 3: Includes biohazardous wastes in the hazardous wastes provisions; includes references to "exhibiting reckless indifference or gross careless disregard for human health"; clarifies that violations of material conditions or requirements of permits or rules must have a substantial likelihood of endangering human health, animal or plant life to be punishable by this section.

Section 4: Extends the statute of limitations for violations of chapter 403, F.S., to five years and tolls from the date of discovery.

Section 5: Includes violations of paragraph (3)(b) of chapter 403, F.S., in the RICO provisions, allowing prosecution by the statewide prosecutor and under the RICO Act.

Section 6: Reenacts sections to incorporate references to amendments to s. 403.161, F.S.

Section 7: Provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

EXPENDITURES:

| | <u>FY 1989-90</u> | <u>FY 1990-91</u> |
|---|-------------------|-------------------|
| Department of Legal Affairs Operating Capital Outlay | \$ 13,122 | |

2. Recurring or Annualized Continuation Effects:

EXPENDITURES:

| | | |
|--|-------------------------|-------------------------|
| Department of Legal Affairs Salaries & Benefits (3 FTE) Expenses | 70,359 <u>15,120</u> | 93,812 <u>20,160</u> |
| Subtotal | 85,479 | 113,972 |

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

EXPENDITURES:

| | | |
|---|----------|-----------|
| Department of Legal Affairs General Revenue Fund | \$98,601 | \$113,972 |
|---|----------|-----------|

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

According to the Department of Environmental Regulations, by

including biohazardous wastes in the hazardous waste section of the law certain biohazardous waste generators and transporters would be required to be permitted. The exact impact is not available at this time.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

The Department of Corrections states that the bill is not likely to produce a noticeable impact on the offender population. The Department of Environmental Regulation indicates that the bill may increase workload due to permitting requirements relating to biohazardous wastes. The fiscal impact of such increases is not available at this time. Representatives of the State Attorneys and Public Defenders indicate the impact on their programs is insignificant.

III. LONG RANGE CONSEQUENCES:

The bill is consistent with the goals and policies outlined in the State Comprehensive plan as follows:

(7) Public Safety--

(a) Goal.--Florida shall protect the public by preventing, discouraging and punishing criminal behavior...

(b) Policies.--

13. Continue to implement coordinated and integrated strategies to combat organized crime, economic crime, and drug trafficking.

IV. COMMENTS:

This bill is consistent with the Speaker's Conference Policy Statement, Structural and Natural Resources Section IA.1, in that it seeks more stringent enforcement of environmental laws.

* * *

CS/HB 751 was withdrawn from the House Committee on Appropriations on May 25, 1989. The bill died on the House Calendar. A similar Senate bill, CS/SB 284 was passed by the Senate on June 1, 1989, and by the House on June 3, 1989. All provisions of CS/HB 751 were included in the Senate bill, as was an exclusion from joint and several liability

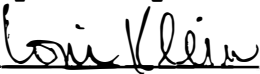
for biohazardous waste generators who have contracted with a registered transporter.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



SECOND COMMITTEE OF REFERENCE:

Prepared by:

APPROPRIATIONS:

Prepared by:



Staff Director:

Richard H. Wilhelm

Staff Director:

Staff Director:
