

By Senator King

8-632-00

1                                   A bill to be entitled  
2           An act relating to solid waste; requiring local  
3           governments providing solid-waste-management  
4           services to be subject to the same requirements  
5           as private companies; providing exceptions;  
6           providing requirements for a local government  
7           providing solid-waste-management services  
8           outside its jurisdiction; providing procedures  
9           for the displacement of private  
10          solid-waste-management companies; amending s.  
11          165.061, F.S.; providing for the disposition of  
12          existing contracts for solid-waste-management  
13          services when a new municipality is  
14          incorporated; amending s. 171.062, F.S.;  
15          providing for the disposition of solid-waste  
16          franchises or contracts in areas that are  
17          annexed; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21           Section 1. Solid-waste-management services in  
22 competition with private companies.--A municipality, county,  
23 or other local government that provides solid-waste-management  
24 services in competition with private companies must, with  
25 respect to the provision of the services:

26           (1) Separately account for revenues, expenses and  
27 depreciation, property, and source of investment funds  
28 associated with the provision of the services.

29           (2) Provide solid-waste-management services to its  
30 customers without using other public moneys, other than state  
31 awards or grants, including, but not limited to, state

1 recycling grants, innovative grants, and waste tire grants, to  
2 subsidize these services.

3 (3) Comply with any local requirement, including the  
4 requirement to pay any fee, specifically applicable to any  
5 private company that provides solid-waste-management services  
6 if the requirement gives the local government an advantage in  
7 its ability to compete with a private company in terms of cost  
8 or ability to promptly or efficiently provide the services.

9 (4) As used in this section, the term:

10 (a) "Solid-waste-managment services" means the process  
11 by which solid waste is collected, transported, stored,  
12 separated, processed, recycled, or disposed of in any way. The  
13 term does not include services relating to recovered materials  
14 as defined in section 403.703, Florida Statutes.

15 (b) "Source of investment funds" means the fund or  
16 funds from which the money used to provide the solid waste  
17 services is derived or expended.

18 (5) This section does not apply when the local  
19 government:

20 (a) Provides the solid-waste-management services only  
21 upon request and does not in any way seek to market these  
22 services; or

23 (b) Is exclusively providing the  
24 solid-waste-management services itself or under an exclusive  
25 franchise.

26 (6) Subsection (1) does not apply in a fiscal year if,  
27 at the beginning of that fiscal year, the local government is  
28 exclusively providing the solid-waste-management services  
29 itself.

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1           (7) Any person injured by reason of violation of this  
2 section may sue therefor in circuit court and is entitled to  
3 injunctive relief and to reasonable attorney's fees.

4           Section 2. Solid-waste-management services outside  
5 jurisdiction.--

6           (1) A local government that provides  
7 solid-waste-management services outside its jurisdiction in  
8 competition with private companies must charge no less than  
9 full cost for these services, and, upon request of an affected  
10 person, must demonstrate that it is charging full cost for  
11 these services.

12           (2) Any person injured by reason of violation of this  
13 section or section 1 may sue therefor in circuit court and is  
14 entitled to injunctive relief and to recover the damages and  
15 the costs of the suit. The prevailing party is entitled to  
16 recover reasonable attorney's fees.

17           (3) As used in this section, the term "full cost"  
18 includes all direct and indirect costs, including  
19 depreciation, associated with the provision of the  
20 solid-waste-management services.

21           Section 3. Displacement of private waste companies.--

22           (1) As used in this section, the term "displacement"  
23 means a local government's provision of a service that  
24 prohibits a private company from continuing to provide the  
25 same service that it was providing when the decision to  
26 displace was made. The term does not include:

27           (a) Competition between the public sector and private  
28 companies for individual contracts;

29           (b) Actions by which a local government, at the  
30 conclusion of a contract with a private company, refuses to  
31 renew the contract and either awards the contract to another

1 private company or, following a competitive process, decides  
2 for any reason to provide the collection service itself;  
3 (c) Actions taken against a private company because  
4 the company has acted in a manner threatening to the public  
5 health or safety or resulting in a substantial public  
6 nuisance;  
7 (d) Actions taken against a private company because  
8 the company has materially breached its contract with the  
9 local government;  
10 (e) Refusal by a private company to continue  
11 operations under the terms and conditions of its existing  
12 agreement during the 5-year notice period;  
13 (f) Entering into a contract with a private company to  
14 provide garbage, trash, or refuse collection which contract is  
15 not entered into under an ordinance that displaces or  
16 authorizes the displacement of another private company  
17 providing garbage, trash, or refuse collection;  
18 (g) Situations in which at least 55 percent of the  
19 property owners in the displacement area petition the  
20 governing body to take over the collection service;  
21 (h) Situations in which the private companies are  
22 licensed or permitted to do business within the local  
23 government for a limited time and such license or permit  
24 expires and is not renewed by the local government; however,  
25 the local government must have enacted its licensing or  
26 permitting process as of May 1, 1999, for this paragraph to  
27 apply. This paragraph does not apply to occupational licenses;  
28 or  
29 (i) Annexations, to the extent that section  
30 171.062(4), Florida Statutes, applies.  
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1           (2) A local government or combination of local  
2 governments may not displace a private company that provides  
3 garbage, trash, or refuse collection service without first:

4           (a) Holding at least one public hearing seeking  
5 comment on the advisability of the local government or  
6 combination of local governments providing the service;

7           (b) Providing at least 45 days' written notice of the  
8 hearing, delivered by first class mail to all private  
9 companies that provide the service within the jurisdiction;  
10 and

11           (c) Providing public notice of the hearing.

12           (3) Following the final public hearing held under  
13 subsection (1) but not later than 1 year after the hearing,  
14 the local government may proceed to take measures necessary to  
15 provide the service. A local government must provide 5-years'  
16 notice to a private company before it engages in the actual  
17 provision of the service that displaces the company. As an  
18 alternative to delaying displacement for 5 years, a local  
19 government may pay a displaced company an amount equal to the  
20 company's preceding 18 months' gross receipts for the  
21 displaced service in the displacement area. The 5-year notice  
22 period lapses as to any private company being displaced when  
23 the company ceases to provide service within the displacement  
24 area. This subsection does not prohibit the local government  
25 and the company from voluntarily negotiating a different  
26 notice period or amount of compensation.

27           Section 4. Paragraph (d) is added to subsection (2) of  
28 section 165.061, Florida Statutes, to read:

29           165.061 Standards for incorporation, merger, and  
30 dissolution.--

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1           (2) The incorporation of a new municipality through  
2 merger of existing municipalities and associated  
3 unincorporated areas must meet the following conditions:

4           (d) In accordance with s. 10 of Art. I of the State  
5 Constitution, the plan for merger or incorporation must honor  
6 existing contracts for solid-waste-management services in the  
7 affected geographic area subject to merger or incorporation.  
8 However, the plan for merger or incorporation may provide that  
9 existing contracts for solid-waste-management services need be  
10 honored only for 5 years or the remainder of the contract  
11 term, whichever is shorter.

12           Section 5. Subsection (4) of section 171.062, Florida  
13 Statutes, is amended to read:

14           171.062 Effects of annexations or contractions.--

15           (4)(a) A party that has a ~~an exclusive~~ franchise or  
16 contract that ~~which~~ was in effect for at least 6 months prior  
17 to the initiation of an annexation to provide solid waste  
18 collection services in an unincorporated area may continue to  
19 provide such services to an annexed area for 5 years or the  
20 remainder of the franchise or contract term, whichever is  
21 shorter, if:

22           1. The party franchisee provides, if the annexing  
23 municipality requires, a level of quality and frequency of  
24 service which is equivalent to that required by the  
25 municipality in other areas of the municipality not served by  
26 the party franchisee, and

27           2. The party franchisee provides such service to the  
28 annexed area at a reasonable cost. The cost must include the  
29 following as related to providing services to the annexed  
30 area:

1 a. Capital costs for land, structures, vehicles,  
2 equipment, and other items used for solid waste management;

3 b. Operating and maintenance costs for solid waste  
4 management;

5 c. Costs to comply with applicable statutes, rules,  
6 permit conditions, and insurance requirements;

7 d. Disposal costs; and

8 e. A reasonable profit.

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10 If the municipality and the party franchisee cannot enter into  
11 an agreement as to such cost, they shall submit the matter of  
12 cost to arbitration.

13 3. The party provides the annexing municipality with a  
14 copy of the contract within a reasonable time following a  
15 written request to do so.

16 (b) A municipality, at its option, may allow the party  
17 franchisee to continue providing services pursuant to the  
18 existing franchise agreement.

19 (c) A municipality may terminate any franchise or  
20 contract if the party franchisee does not agree to comply with  
21 the requirements of paragraph (a) within 90 days after the  
22 effective date of the proposed annexation.

23 Section 6. This act shall take effect October 1, 2000.

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26 SENATE SUMMARY

27 Provides for the regulation of solid-waste-management  
28 services provided by local governments and private  
29 companies.  
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