

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senators King, Grant, Dyer, Geller and Campbell

316-1951-00

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; defining the terms "in competition"
18 and "private company"; providing an effective
19 date.

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

23 Section 1. Solid waste collection services in
24 competition with private companies.--

25 (1) A local government that provides specific solid
26 waste collection services in direct competition with a private
27 company:

28 (a) Shall comply with the provisions of local
29 environmental, health, and safety standards that also are
30 applicable to a private company providing such collection
31 services in competition with the local government.

1 (b) Shall not enact or enforce any license, permit,
2 registration procedure, or associated fee:

3 1. That does not apply to the local government and for
4 which there is not a substantially similar requirement that
5 applies to the local government and

6 2. That provides the local government with a material
7 advantage in its ability to compete with a private company in
8 terms of cost or ability to promptly or efficiently provide
9 such collection services. Nothing in this section shall apply
10 to any zoning, land use, or comprehensive plan requirement.

11 (2)(a) A private company with which a local government
12 is in competition may bring an action to enjoin a violation of
13 this section against any local government. No injunctive
14 relief shall be granted if the official action that forms the
15 basis for the suit bears a reasonable relationship to the
16 health, safety, or welfare of the citizens of the local
17 government unless the court finds that the actual or potential
18 anticompetitive effects outweigh the public benefits of the
19 challenged action.

20 (b) As a condition precedent to the institution of an
21 action pursuant to this subsection, the complaining party
22 shall first file with the local government a notice
23 referencing this section and setting forth the specific facts
24 upon which the complaint is based and the manner in which the
25 complaining party is affected. The complaining party may
26 provide evidence to substantiate the claims made in the
27 complaint. Within 30 days after receipt of such a complaint,
28 the local government shall respond in writing to the
29 complaining party explaining the corrective action taken, if
30 any. If no response is received within 30 days or if
31 appropriate corrective action is not taken within a reasonable

1 time, the complaining party may institute the judicial
2 proceedings authorized in this subsection. However, failure to
3 comply with this paragraph shall not bar an action for a
4 temporary restraining order to prevent immediate and
5 irreparable harm from the conduct or activity complained of.

6 (c) The court may, in its discretion, award to the
7 prevailing party or parties costs and reasonable attorney's
8 fees.

9 (3) This section does not apply when the local
10 government is exclusively providing the specific solid waste
11 management services itself or pursuant to an exclusive
12 franchise.

13 Section 2. Solid waste collection services outside
14 jurisdiction.--

15 (1) Notwithstanding section 542.235, Florida Statutes,
16 or any other provision of law, a local government that
17 provides solid waste collection services outside its
18 jurisdiction in direct competition with private companies is
19 subject to the same prohibitions against predatory pricing
20 applicable to private companies.

21 (2) Any person injured by reason of violation of this
22 section may sue therefor in the circuit courts of this state
23 and shall be entitled to injunctive relief and to recover the
24 damages and the costs of suit. The court may, in its
25 discretion, award to the prevailing party or parties
26 reasonable attorney's fees. An action for damages under this
27 section must be commenced within 4 years. No person may
28 recover damages under this section for injury that results
29 from actions taken by a local government in direct response to
30 a natural disaster or similar occurrence for which an
31 emergency is declared by executive order or proclamation of

1 the Governor pursuant to section 252.36, Florida Statutes,
2 within the area covered by such executive order or
3 proclamation.

4 (3) As a condition precedent to the institution of an
5 action pursuant to this section, the complaining party shall
6 first file with the local government a notice referencing this
7 section and setting forth the specific facts upon which the
8 complaint is based and the manner in which the complaining
9 party is affected. Within 30 days after receipt of such
10 complaint, the local government shall respond in writing to
11 the complaining party explaining the corrective action taken,
12 if any. If the local government denies that it has engaged in
13 conduct that is prohibited by this section, then its response
14 shall include an explanation showing why the complained-of
15 conduct does not constitute predatory pricing.

16 (4) For the purposes of this section, the
17 "jurisdiction" of a county, special district, or solid waste
18 authority shall include all incorporated and unincorporated
19 areas within the county, special district, or solid waste
20 authority.

21 (5) When two or more local governments have entered
22 into an interlocal agreement to provide solid waste disposal
23 services, then, for the purposes of this section, their
24 "jurisdiction" with respect to such services includes the
25 collective jurisdiction of the participating local
26 governments.

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

28 (1) As used in this section, the term "displacement"
29 means a local government's provision of a service which
30 prohibits a private company from continuing to provide the
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1 same service that it was providing when the decision to
2 displace was made. The term does not include:
3 (a) Competition between the public sector and private
4 companies for individual contracts;
5 (b) Actions by which a local government, at the end of
6 a contract with a private company, refuses to renew the
7 contract and either awards the contract to another private
8 company or decides for any reason to provide the collection
9 service itself;
10 (c) Actions taken against a private company because
11 the company has acted in a manner threatening to the public
12 health or safety or resulting in a substantial public
13 nuisance;
14 (d) Actions taken against a private company because
15 the company has materially breached its contract with the
16 local government;
17 (e) Refusal by a private company to continue
18 operations under the terms and conditions of its existing
19 agreement during the 3-year notice period;
20 (f) Entering into a contract with a private company to
21 provide garbage, trash, or refuse collection which contract is
22 not entered into under an ordinance that displaces or
23 authorizes the displacement of another private company
24 providing garbage, trash, or refuse collection;
25 (g) Situations in which a majority of the property
26 owners in the displacement area petition the governing body to
27 take over the collection service;
28 (h) Situations in which the private companies are
29 licensed or permitted to do business within the local
30 government for a limited time and such license or permit
31 expires and is not renewed by the local government. This

1 paragraph does not apply to licensing or permitting processes
2 enacted after May 1, 1999, or to occupational licenses; or

3 (i) Annexations, to the extent that the provisions of
4 section 171.062(4), Florida Statutes, apply.

5 (2) A local government or combination of local
6 governments may not displace a private company that provides
7 garbage, trash, or refuse collection service without first:

8 (a) Holding at least one public hearing seeking
9 comment on the advisability of the local government or
10 combination of local governments providing the service;

11 (b) Providing at least 45 days' written notice of the
12 hearing, delivered by first-class mail to all private
13 companies that provide the service within the jurisdiction;
14 and

15 (c) Providing public notice of the hearing.

16 (3) Following the final public hearing held under
17 subsection (1) but not later than 1 year after the hearing,
18 the local government may proceed to take those measures
19 necessary to provide the service. A local government shall
20 provide 3 years' notice to a private company before it engages
21 in the actual provision of the service that displaces the
22 company. As an alternative to delaying displacement 3 years, a
23 local government may pay a displaced company an amount equal
24 to the company's preceding 15 months' gross receipts for the
25 displaced service in the displacement area. The 3-year notice
26 period shall lapse as to any private company being displaced
27 when the company ceases to provide service within the
28 displacement area. Nothing herein shall prohibit the local
29 government and the company from voluntarily negotiating a
30 different notice period or amount of compensation.

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1 Section 4. Subsection (4) of section 171.062, Florida
2 Statutes, is amended, and subsection (5) is added to that
3 section, to read:

4 171.062 Effects of annexations or contractions.--

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

11 1. The franchisee provides, if the annexing
12 municipality requires, a level of quality and frequency of
13 service which is equivalent to that required by the
14 municipality in other areas of the municipality not served by
15 the franchisee, and

16 2. The franchisee provides such service to the annexed
17 area at a reasonable cost. The cost must include the
18 following as related to providing services to the annexed
19 area:

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

22 b. Operating and maintenance costs for solid waste
23 management;

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

26 d. Disposal costs; and

27 e. A reasonable profit.

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29 If the municipality and the franchisee cannot enter into an
30 agreement as to such cost, they shall submit the matter of
31 cost to arbitration.

1 (b) A municipality, at its option, may allow the
2 franchisee to continue providing services pursuant to the
3 existing franchise agreement.

4 (c) A municipality may terminate any franchise if the
5 franchisee does not agree to comply with the requirements of
6 paragraph (a) within 90 days after the effective date of the
7 proposed annexation.

8 (5)(a) A party that has a contract that was in effect
9 for at least 6 months before the initiation of an annexation
10 to provide solid waste collection services in an
11 unincorporated area may continue to provide such services to
12 an annexed area for 5 years or the remainder of the contract
13 term, whichever is shorter. Within a reasonable time following
14 a written request to do so, the party shall provide the
15 annexing municipality with a copy of the pertinent portion of
16 the contract or other written evidence showing the duration of
17 the contract, excluding any automatic renewals or so-called
18 "evergreen" provisions.

19 (b) Paragraph (a) does not apply to contracts to
20 provide solid waste collection services to single-family
21 residential properties in those enclaves described in s.
22 171.046.

23 Section 5. Paragraph (d) is added to subsection (2) of
24 section 165.061, Florida Statutes, to read:

25 165.061 Standards for incorporation, merger, and
26 dissolution.--

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

30 (d) In accordance with Article I, Section 10 of the
31 State Constitution, the plan for merger or incorporation must

1 honor existing solid waste contracts in the affected
2 geographic area subject to merger or incorporation; however,
3 the plan for merger or incorporation may provide that existing
4 contracts for solid waste collection services shall be honored
5 only for 5 years or for the remainder of the contract term,
6 whichever is shorter, and may require that a copy of the
7 pertinent portion of the contract or any other written
8 evidence of the duration of the contract, excluding any
9 automatic renewal or so-called "evergreen" provision, be
10 provided to the municipality within a reasonable time
11 following a written request to do so.

12 Section 6. As used in this act, the term:

13 (1) "In competition" or "in direct competition" means
14 the vying between a local government and a private company to
15 provide substantially similar solid waste collection services
16 to the same customer or market.

17 (2) "Private company" means any entity other than a
18 local government or other unit of government which provides
19 solid waste management services.

20 Section 7. This act shall take effect July 1, 2000.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1290
4 Requires local governments that provide solid waste collection
5 services in competition with a private company to comply with
6 similar health and safety standards imposed on local
7 governments. Deletes requirement that local governments
8 provide a cost accounting for its provision of solid waste
9 management services and refrain from subsidizing waste
10 management services.
11 Creates a new cause of action for predatory pricing against a
12 local government that provides solid waste services outside of
13 its jurisdiction, notwithstanding the government antitrust
14 liability shield of s. 542.235, F.S.
15 Defines displacement of solid waste collection service from a
16 private company by local government. A local government must
17 give 3 rather than 5 years notice to a private company before
18 it can displace it or, alternatively, pay a displaced company
19 an amount equal to the preceding 15 months rather than 18
20 months gross receipts.
21 Defines "in competition" and "private company."
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