

By the Committees on Governmental Oversight and Productivity;
Comprehensive Planning, Local and Military Affairs; and
Senators King, Grant, Dyer, Geller and Campbell

302-2129-00

1 A bill to be entitled
2 An act relating to solid waste; providing
3 requirements for local governments providing
4 solid waste collection services in competition
5 with private companies; providing remedies for
6 such private companies; providing procedures
7 and requirements; providing for award of
8 damages, costs, and attorney's fees; providing
9 application; providing limitations for local
10 government solid waste collection services
11 outside the jurisdiction of the local
12 government; providing remedies for certain
13 injured parties; providing requirements and
14 procedures; prohibiting local governments from
15 displacing private waste collection companies
16 under certain circumstances; providing
17 requirements; providing procedures and
18 requirements for such displacement; providing
19 definitions; amending s. 171.062, F.S.;
20 providing for continuation of certain solid
21 waste services in certain annexed areas;
22 providing an exception; amending s. 165.061,
23 F.S.; providing for certain merger plans to
24 honor certain solid waste contracts; providing
25 limitations; amending s. 403.087, F.S.;
26 prescribing maximum fees for post-closure
27 permits and clean-closure-plan approval;
28 amending s. 403.706, F.S.; authorizing solid
29 waste fee waivers for certain nonprofit
30 organizations; amending s. 403.722, F.S.;
31 requiring post-closure permits and

1 clean-closure-plan approvals; providing an
2 effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Solid waste collection services.--

7 (1) SOLID WASTE COLLECTION SERVICES IN COMPETITION
8 WITH PRIVATE COMPANIES.--

9 (a) A local government that provides specific solid
10 waste collection services in direct competition with a private
11 company:

12 1. Shall comply with the provisions of local
13 environmental, health, and safety standards that also are
14 applicable to a private company providing such collection
15 services in competition with the local government.

16 2. Shall not enact or enforce any license, permit,
17 registration procedure, or associated fee that:

18 a. Does not apply to the local government and for
19 which there is not a substantially similar requirement that
20 applies to the local government; and

21 b. Provides the local government with a material
22 advantage in its ability to compete with a private company in
23 terms of cost or ability to promptly or efficiently provide
24 such collection services. Nothing in this sub-subparagraph
25 shall apply to any zoning, land use, or comprehensive plan
26 requirement.

27 (b)1. A private company with which a local government
28 is in competition may bring an action to enjoin a violation of
29 paragraph (a) against any local government. No injunctive
30 relief shall be granted if the official action that forms the
31 basis for the suit bears a reasonable relationship to the

1 health, safety, or welfare of the citizens of the local
2 government unless the court finds that the actual or potential
3 anticompetitive effects outweigh the public benefits of the
4 challenged action.

5 2. As a condition precedent to the institution of an
6 action pursuant to this paragraph, the complaining party shall
7 first file with the local government a notice referencing this
8 paragraph and setting forth the specific facts upon which the
9 complaint is based and the manner in which the complaining
10 party is affected. The complaining party may provide evidence
11 to substantiate the claims made in the complaint. Within 30
12 days after receipt of such a complaint, the local government
13 shall respond in writing to the complaining party explaining
14 the corrective action taken, if any. If no response is
15 received within 30 days or if appropriate corrective action is
16 not taken within a reasonable time, the complaining party may
17 institute the judicial proceedings authorized in this
18 paragraph. However, failure to comply with this subparagraph
19 shall not bar an action for a temporary restraining order to
20 prevent immediate and irreparable harm from the conduct or
21 activity complained of.

22 3. The court may, in its discretion, award to the
23 prevailing party or parties costs and reasonable attorney's
24 fees.

25 (c) This subsection does not apply when the local
26 government is exclusively providing the specific solid waste
27 collection services itself or pursuant to an exclusive
28 franchise.

29 (2) SOLID WASTE COLLECTION SERVICES OUTSIDE
30 JURISDICTION.--

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1 (a) Notwithstanding section 542.235, Florida Statutes,
2 or any other provision of law, a local government that
3 provides solid waste collection services outside its
4 jurisdiction in direct competition with private companies is
5 subject to the same prohibitions against predatory pricing
6 applicable to private companies under sections 542.18 and
7 542.19, Florida Statutes.

8 (b) Any person injured by reason of violation of this
9 subsection may sue therefor in the circuit courts of this
10 state and shall be entitled to injunctive relief and to
11 recover the damages and the costs of suit. The court may, in
12 its discretion, award to the prevailing party or parties
13 reasonable attorney's fees. An action for damages under this
14 subsection must be commenced within 4 years. No person may
15 obtain injunctive relief or recover damages under this
16 subsection for any injury that results from actions taken by a
17 local government in direct response to a natural disaster or
18 similar occurrence for which an emergency is declared by
19 executive order or proclamation of the Governor pursuant to
20 section 252.36, Florida Statutes, or for which such a
21 declaration might be reasonably anticipated within the area
22 covered by such executive order or proclamation.

23 (c) As a condition precedent to the institution of an
24 action pursuant to this subsection, the complaining party
25 shall first file with the local government a notice
26 referencing this subsection and setting forth the specific
27 facts upon which the complaint is based and the manner in
28 which the complaining party is affected. Within 30 days after
29 receipt of such complaint, the local government shall respond
30 in writing to the complaining party explaining the corrective
31 action taken, if any. If the local government denies that it

1 has engaged in conduct that is prohibited by this subsection,
2 its response shall include an explanation showing why the
3 conduct complained of does not constitute predatory pricing.

4 (d) For the purposes of this subsection, the
5 jurisdiction of a county, special district, or solid waste
6 authority shall include all incorporated and unincorporated
7 areas within the county, special district, or solid waste
8 authority.

9 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.--

10 (a) As used in this subsection, the term
11 "displacement" means a local government's provision of a
12 collection service which prohibits a private company from
13 continuing to provide the same service that it was providing
14 when the decision to displace was made. The term does not
15 include:

16 1. Competition between the public sector and private
17 companies for individual contracts;

18 2. Actions by which a local government, at the end of
19 a contract with a private company, refuses to renew the
20 contract and either awards the contract to another private
21 company or decides for any reason to provide the collection
22 service itself;

23 3. Actions taken against a private company because the
24 company has acted in a manner threatening to the public health
25 or safety or resulting in a substantial public nuisance;

26 4. Actions taken against a private company because the
27 company has materially breached its contract with the local
28 government;

29 5. Refusal by a private company to continue operations
30 under the terms and conditions of its existing agreement
31 during the 3-year notice period;

1 6. Entering into a contract with a private company to
2 provide garbage, trash, or refuse collection which contract is
3 not entered into under an ordinance that displaces or
4 authorizes the displacement of another private company
5 providing garbage, trash, or refuse collection;

6 7. Situations in which a majority of the property
7 owners in the displacement area petition the governing body to
8 take over the collection service;

9 8. Situations in which the private companies are
10 licensed or permitted to do business within the local
11 government for a limited time and such license or permit
12 expires and is not renewed by the local government. This
13 subparagraph does not apply to licensing or permitting
14 processes enacted after May 1, 1999, or to occupational
15 licenses; or

16 9. Annexations, to the extent that the provisions of
17 section 171.062(4), Florida Statutes, apply.

18 (b) A local government or combination of local
19 governments may not displace a private company that provides
20 garbage, trash, or refuse collection service without first:

21 1. Holding at least one public hearing seeking comment
22 on the advisability of the local government or combination of
23 local governments providing the service.

24 2. Providing at least 45 days' written notice of the
25 hearing, delivered by first-class mail to all private
26 companies that provide the service within the jurisdiction.

27 3. Providing public notice of the hearing.

28 (c) Following the final public hearing held under
29 paragraph (b), but not later than 1 year after the hearing,
30 the local government may proceed to take those measures
31 necessary to provide the service. A local government shall

1 provide 3 years' notice to a private company before it engages
2 in the actual provision of the service that displaces the
3 company. As an alternative to delaying displacement 3 years,
4 a local government may pay a displaced company an amount equal
5 to the company's preceding 15 months' gross receipts for the
6 displaced service in the displacement area. The 3-year notice
7 period shall lapse as to any private company being displaced
8 when the company ceases to provide service within the
9 displacement area. Nothing in this paragraph prohibits the
10 local government and the company from voluntarily negotiating
11 a different notice period or amount of compensation.

12 (4) DEFINITIONS.--As used in this section:

13 (a) "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.

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

20 Section 2. Subsection (5) is added to section 171.062,
21 Florida Statutes, to read:

22 171.062 Effects of annexations or contractions.--

23 (5) A party that has a contract that was in effect for
24 at least 6 months prior to the initiation of an annexation to
25 provide solid waste collection services in an unincorporated
26 area may continue to provide such services to an annexed area
27 for 5 years or the remainder of the contract term, whichever
28 is shorter. Within a reasonable time following a written
29 request to do so, the party shall provide the annexing
30 municipality with a copy of the pertinent portion of the
31 contract or other written evidence showing the duration of the

1 contract, excluding any automatic renewals or so-called
2 "evergreen" provisions. This subsection does not apply to
3 contracts to provide solid waste collection services to
4 single-family residential properties in those enclaves
5 described in s. 171.046.

6 Section 3. Paragraph (d) is added to subsection (2) of
7 section 165.061, Florida Statutes, to read:

8 165.061 Standards for incorporation, merger, and
9 dissolution.--

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

13 (d) In accordance with s. 10, Art. I of the State
14 Constitution, the plan for merger or incorporation must honor
15 existing solid waste contracts in the affected geographic area
16 subject to merger or incorporation; however, the plan for
17 merger or incorporation may provide that existing contracts
18 for solid waste collection services shall be honored only for
19 5 years or the remainder of the contract term, whichever is
20 shorter, and may require that a copy of the pertinent portion
21 of the contract or other written evidence of the duration of
22 the contract, excluding any automatic renewals or so-called
23 "evergreen" provisions, be provided to the municipality within
24 a reasonable time following a written request to do so.

25 Section 4. Paragraph (a) of subsection (6) of section
26 403.087, Florida Statutes, is amended to read:

27 403.087 Permits; general issuance; denial; revocation;
28 prohibition; penalty.--

29 (6)(a) The department shall require a processing fee
30 in an amount sufficient, to the greatest extent possible, to
31 cover the costs of reviewing and acting upon any application

1 for a permit or request for site-specific alternative criteria
2 or for an exemption from water quality criteria and to cover
3 the costs of surveillance and other field services and related
4 support activities associated with any permit or plan approval
5 issued pursuant to this chapter. However, when an application
6 is received without the required fee, the department shall
7 acknowledge receipt of the application and shall immediately
8 return the unprocessed application to the applicant and shall
9 take no further action until the application is received with
10 the appropriate fee. The department shall adopt a schedule of
11 fees by rule, subject to the following limitations:

12 1. The ~~permit~~ fee for any of the following ~~permits~~ may
13 not exceed \$32,500:

- 14 a. Hazardous waste, construction permit.
15 b. Hazardous waste, operation permit.
16 c. Hazardous waste, post-closure ~~closure~~ permit, or
17 clean-closure-plan approval.

18 2. The permit fee for a Class I injection well
19 construction permit may not exceed \$12,500.

20 3. The permit fee for any of the following permits may
21 not exceed \$10,000:

- 22 a. Solid waste, construction permit.
23 b. Solid waste, operation permit.
24 c. Class I injection well, operation permit.

25 4. The permit fee for any of the following permits may
26 not exceed \$7,500:

- 27 a. Air pollution, construction permit.
28 b. Solid waste, closure permit.
29 c. Drinking water, construction or operation permit.
30 d. Domestic waste residuals, construction or operation
31 permit.

- 1 e. Industrial waste, operation permit.
2 f. Industrial waste, construction permit.
3 5. The permit fee for any of the following permits may
4 not exceed \$5,000:
5 a. Domestic waste, operation permit.
6 b. Domestic waste, construction permit.
7 6. The permit fee for any of the following permits may
8 not exceed \$4,000:
9 a. Wetlands resource management--(dredge and fill),
10 standard form permit.
11 b. Hazardous waste, research and development permit.
12 c. Air pollution, operation permit, for sources not
13 subject to s. 403.0872.
14 d. Class III injection well, construction, operation,
15 or abandonment permits.
16 7. The permit fee for Class V injection wells,
17 construction, operation, and abandonment permits may not
18 exceed \$750.
19 8. The permit fee for any of the following permits may
20 not exceed \$500:
21 a. Domestic waste, collection system permits.
22 b. Wetlands resource management--(dredge and fill and
23 mangrove alterations), short permit form.
24 c. Drinking water, distribution system permit.
25 9. The permit fee for stormwater operation permits may
26 not exceed \$100.
27 10. The general permit fees for permits that require
28 certification by a registered professional engineer or
29 professional geologist may not exceed \$500. The general
30 permit fee for other permit types may not exceed \$100.
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1 11. The fee for a permit issued pursuant to s. 403.816
2 is \$5,000, and the fee for any modification of such permit
3 requested by the applicant is \$1,000.

4 12. The regulatory program and surveillance fees for
5 facilities permitted pursuant to s. 403.088 or s. 403.0885, or
6 for facilities permitted pursuant to s. 402 of the Clean Water
7 Act, as amended, 33 U.S.C. ss. 1251 et seq., and for which the
8 department has been granted administrative authority, shall be
9 limited as follows:

10 a. The fees for domestic wastewater facilities shall
11 not exceed \$7,500 annually. The department shall establish a
12 sliding scale of fees based on the permitted capacity and
13 shall ensure smaller domestic waste dischargers do not bear an
14 inordinate share of costs of the program.

15 b. The annual fees for industrial waste facilities
16 shall not exceed \$11,500. The department shall establish a
17 sliding scale of fees based upon the volume, concentration, or
18 nature of the industrial waste discharge and shall ensure
19 smaller industrial waste dischargers do not bear an inordinate
20 share of costs of the program.

21 c. The department may establish a fee, not to exceed
22 the amounts in subparagraphs 4. and 5., to cover additional
23 costs of review required for permit modification or
24 construction engineering plans.

25 Section 5. Paragraph (d) is added to subsection (17)
26 of section 403.706, Florida Statutes to read:

27 403.706 Local government solid waste
28 responsibilities.--

29 (17) To effect the purposes of this part, counties and
30 municipalities are authorized, in addition to other powers
31 granted pursuant to this part:

1 (d) To grant a solid waste fee waiver to nonprofit
2 organizations that are engaged in the collection of donated
3 goods for charitable purposes and that have a recycling or
4 reuse rate of 50 percent or better.

5 Section 6. Subsection (1) of section 403.722, Florida
6 Statutes, is amended to read:

7 403.722 Permits; hazardous waste disposal, storage,
8 and treatment facilities.--

9 (1) Each person who intends to construct, modify,
10 operate, or close a hazardous waste disposal, storage, or
11 treatment facility shall obtain a construction permit,
12 operation permit, ~~or post~~ closure permit, or clean closure
13 plan approval from the department prior to constructing,
14 modifying, operating, or closing the facility. By rule, the
15 department may provide for the issuance of a single permit
16 instead of any two or more hazardous waste facility permits.

17 Section 7. This act shall take effect October 1, 2000.

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 CS/SB 1290

22 Redesignates the sections of the act.

23 Modifies the definition of the phrase "in competition" to
24 strike the words "or market."

25 Permits local governments to grant solid waste fee waivers to
26 nonprofit organizations that collect donated goods for
charitable purposes and have a recycling or reuse rate of 50%
or better.

27 Updates permitting language references.

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