

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Committee on Community Affairs offered the following:

Amendment (with title amendment)

remove from the bill: everything after the enacting clause
and insert in lieu thereof:

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

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

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

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

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

b. Provides the local government with a material

Amendment No. 01 (for drafter's use only)

1 advantage in its ability to compete with a private company in
2 terms of cost or ability to promptly or efficiently provide
3 such collection services. Nothing in this sub-subparagraph
4 shall apply to any zoning, land use, or comprehensive plan
5 requirement.

6 (b)1. A private company with which a local government
7 is in competition may bring an action to enjoin a violation of
8 paragraph (a) against any local government. No injunctive
9 relief shall be granted if the official action which forms the
10 basis for the suit bears a reasonable relationship to the
11 health, safety, or welfare of the citizens of the local
12 government unless the court finds that the actual or potential
13 anticompetitive effects outweigh the public benefits of the
14 challenged action.

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

Amendment No. 01 (for drafter's use only)

1 3. The court may, in its discretion, award to the
2 prevailing party or parties costs and reasonable attorneys'
3 fees.

4 (c) This subsection does not apply when the local
5 government is exclusively providing the specific solid waste
6 management services itself or pursuant to an exclusive
7 franchise.

8 (2) SOLID WASTE COLLECTION SERVICES OUTSIDE
9 JURISDICTION.--

10 (a) Notwithstanding s. 542.235, Florida Statutes, or
11 any other provision of law, a local government that provides
12 solid waste collection services outside its jurisdiction in
13 direct competition with private companies is subject to the
14 same prohibitions against predatory pricing applicable to
15 private companies.

16 (b) Any person injured by reason of violation of this
17 subsection may sue therefor in the circuit courts of this
18 state and shall be entitled to injunctive relief and to
19 recover the damages and the costs of suit. The court may, in
20 its discretion, award to the prevailing party or parties
21 reasonable attorneys' fees. An action for damages under this
22 subsection must be commenced within 4 years. No person may
23 obtain injunctive relief or recover damages under this
24 subsection for any injury that results from actions taken by a
25 local government in direct response to a natural disaster or
26 similar occurrence for which an emergency is declared by
27 executive order or proclamation of the Governor pursuant to s.
28 252.36, Florida Statutes, or for which such a declaration
29 might be reasonably anticipated within the area covered by
30 such executive order or proclamation.

31 (c) As a condition precedent to the institution of an

Amendment No. 01 (for drafter's use only)

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

12 (d) For the purposes of this subsection, the
13 jurisdiction of a county, special district, or solid waste
14 authority shall include all incorporated and unincorporated
15 areas within the county, special district, or solid waste
16 authority.

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

18 (a) As used in this subsection, the term
19 "displacement" means a local government's provision of a
20 collection service which prohibits a private company from
21 continuing to provide the same service that it was providing
22 when the decision to displace was made. The term does not
23 include:

24 1. Competition between the public sector and private
25 companies for individual contracts;

26 2. Actions by which a local government, at the end of
27 a contract with a private company, refuses to renew the
28 contract and either awards the contract to another private
29 company or decides for any reason to provide the collection
30 service itself;

31 3. Actions taken against a private company because the

Amendment No. 01 (for drafter's use only)

- 1 company has acted in a manner threatening to the public health
2 or safety or resulting in a substantial public nuisance;
- 3 4. Actions taken against a private company because the
4 company has materially breached its contract with the local
5 government;
- 6 5. Refusal by a private company to continue operations
7 under the terms and conditions of its existing agreement
8 during the 3-year notice period;
- 9 6. Entering into a contract with a private company to
10 provide garbage, trash, or refuse collection which contract is
11 not entered into under an ordinance that displaces or
12 authorizes the displacement of another private company
13 providing garbage, trash, or refuse collection;
- 14 7. Situations in which a majority of the property
15 owners in the displacement area petition the governing body to
16 take over the collection service;
- 17 8. Situations in which the private companies are
18 licensed or permitted to do business within the local
19 government for a limited time and such license or permit
20 expires and is not renewed by the local government. This
21 subparagraph does not apply to licensing or permitting
22 processes enacted after May 1, 1999, or to occupational
23 licenses; or
- 24 9. Annexations, to the extent that the provisions of
25 s. 171.062(4), Florida Statutes, apply.
- 26 (b) A local government or combination of local
27 governments may not displace a private company that provides
28 garbage, trash, or refuse collection service without first:
- 29 1. Holding at least one public hearing seeking comment
30 on the advisability of the local government or combination of
31 local governments providing the service.

Amendment No. 01 (for drafter's use only)

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

4 3. Providing public notice of the hearing.

5 (c) Following the final public hearing held under
6 paragraph (b), but not later than 1 year after the hearing,
7 the local government may proceed to take those measures
8 necessary to provide the service. A local government shall
9 provide 3 years' notice to a private company before it engages
10 in the actual provision of the service that displaces the
11 company. As an alternative to delaying displacement 3 years,
12 a local government may pay a displaced company an amount equal
13 to the company's preceding 15 months' gross receipts for the
14 displaced service in the displacement area. The 3-year notice
15 period shall lapse as to any private company being displaced
16 when the company ceases to provide service within the
17 displacement area. Nothing in this paragraph prohibits the
18 local government and the company from voluntarily negotiating
19 a different notice period or amount of compensation.

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

21 (a) "In competition" or "in direct competition" means
22 the vying between a local government and a private company to
23 provide substantially similar solid waste collection services
24 to the same customer or market.

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

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

30 171.062 Effects of annexations or contractions.--

31 (5) A party that has a contract that was in effect for

Amendment No. 01 (for drafter's use only)

1 at least 6 months prior to the initiation of an annexation to
2 provide solid waste collection services in an unincorporated
3 area may continue to provide such services to an annexed area
4 for 5 years or the remainder of the contract term, whichever
5 is shorter. Within a reasonable time following a written
6 request to do so, the party shall provide the annexing
7 municipality with a copy of the pertinent portion of the
8 contract or other written evidence showing the duration of the
9 contract, excluding any automatic renewals or so-called
10 "evergreen" provisions. This subsection does not apply to
11 contracts to provide solid waste collection services to
12 single-family residential properties in those enclaves
13 described in s. 171.046.

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

16 165.061 Standards for incorporation, merger, and
17 dissolution.--

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

21 (d) In accordance with s. 10, Art. I of the State
22 Constitution, the plan for merger or incorporation must honor
23 existing solid waste contracts in the affected geographic area
24 subject to merger or incorporation; however, the plan for
25 merger or incorporation may provide that existing contracts
26 for solid waste collection services shall be honored only for
27 5 years or the remainder of the contract term, whichever is
28 shorter, and may require that a copy of the pertinent portion
29 of the contract or other written evidence of the duration of
30 the contract, excluding any automatic renewals or so-called
31 "evergreen" provisions, be provided to the municipality within

Amendment No. 01 (for drafter's use only)

1 a reasonable time following a written request to do so.

2 Section 4. This act shall take effect October 1, 2000.

3

4

5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 remove from the title of the bill: the entire title

8

9 and insert in lieu thereof:

10

A bill to be entitled

11

An act relating to solid waste; providing

12

requirements for local governments providing

13

solid waste collection services in competition

14

with private companies; providing remedies for

15

such private companies; providing procedures

16

and requirements; providing for award of

17

damages, costs, and attorney fees; providing

18

application; providing limitations for local

19

government solid waste collection services

20

outside the jurisdiction of the local

21

government; providing remedies for certain

22

injured parties; providing requirements and

23

procedures; prohibiting local governments from

24

displacing private waste collection companies

25

under certain circumstances; providing

26

requirements; providing procedures and

27

requirements for such displacement; providing

28

definitions; amending s. 171.062, F.S.;

29

providing for continuation of certain solid

30

waste services in certain annexed areas;

31

providing an exception; amending s. 165.061,

Amendment No. 01 (for drafter's use only)

1 F.S.; providing for certain merger plans to
2 honor certain solid waste contracts; providing
3 limitations; providing an effective date.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31