

By the Committee on Environmental Protection and
Representatives Garcia, Eggelletion, Edwards, Ogles, Flanagan,
K. Smith, Minton, Rayson, Fuller, Cantens, Wise, Roberts,
Kelly and Villalobos

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 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 clarifying application of certain permit fees;
27 amending s. 403.706, F.S.; authorizing counties
28 and municipalities to grant certain solid waste
29 fee waivers under certain circumstances;
30 amending s. 403.722, F.S.; clarifying
31 requirements for obtaining certain hazardous

1 waste facility permits; providing an effective
2 date.

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

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

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

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

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

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

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

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

1 government unless the court finds that the actual or potential
2 anticompetitive effects outweigh the public benefits of the
3 challenged action.

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

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

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

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

30 (a) Notwithstanding s. 542.235, Florida Statutes, or
31 any other provision of law, a local government that provides

1 solid waste collection services outside its jurisdiction in
2 direct competition with private companies is subject to the
3 same prohibitions against predatory pricing applicable to
4 private companies under ss. 542.18 and 542.19.

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

20 (c) 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 subsection and setting forth the specific
24 facts upon which the complaint is based and the manner in
25 which the complaining party is affected. Within 30 days after
26 receipt of such complaint, the local government shall respond
27 in writing to the complaining party explaining the corrective
28 action taken, if any. If the local government denies that it
29 has engaged in conduct that is prohibited by this subsection,
30 its response shall include an explanation showing why the
31 conduct complained of does not constitute predatory pricing.

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

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

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

13 1. Competition between the public sector and private
14 companies for individual contracts;

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

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

23 4. Actions taken against a private company because the
24 company has materially breached its contract with the local
25 government;

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

29 6. Entering into a contract with a private company to
30 provide garbage, trash, or refuse collection which contract is
31 not entered into under an ordinance that displaces or

1 authorizes the displacement of another private company
2 providing garbage, trash, or refuse collection;
3 7. Situations in which a majority of the property
4 owners in the displacement area petition the governing body to
5 take over the collection service;
6 8. Situations in which the private companies are
7 licensed or permitted to do business within the local
8 government for a limited time and such license or permit
9 expires and is not renewed by the local government. This
10 subparagraph does not apply to licensing or permitting
11 processes enacted after May 1, 1999, or to occupational
12 licenses; or
13 9. Annexations, to the extent that the provisions of
14 s. 171.062(4), Florida Statutes, apply.
15 (b) A local government or combination of local
16 governments may not displace a private company that provides
17 garbage, trash, or refuse collection service without first:
18 1. Holding at least one public hearing seeking comment
19 on the advisability of the local government or combination of
20 local governments providing the service.
21 2. Providing at least 45 days' written notice of the
22 hearing, delivered by first-class mail to all private
23 companies that provide the service within the jurisdiction.
24 3. Providing public notice of the hearing.
25 (c) Following the final public hearing held under
26 paragraph (b), but not later than 1 year after the hearing,
27 the local government may proceed to take those measures
28 necessary to provide the service. A local government shall
29 provide 3 years' notice to a private company before it engages
30 in the actual provision of the service that displaces the
31 company. As an alternative to delaying displacement 3 years,

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

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

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

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

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

19 171.062 Effects of annexations or contractions.--

20 (5) A party that has a contract that was in effect for
21 at least 6 months prior to the initiation of an annexation to
22 provide solid waste collection services in an unincorporated
23 area may continue to provide such services to an annexed area
24 for 5 years or the remainder of the contract term, whichever
25 is shorter. Within a reasonable time following a written
26 request to do so, the party shall provide the annexing
27 municipality with a copy of the pertinent portion of the
28 contract or other written evidence showing the duration of the
29 contract, excluding any automatic renewals or so-called
30 "evergreen" provisions. This subsection does not apply to
31 contracts to provide solid waste collection services to

1 single-family residential properties in those enclaves
2 described in s. 171.046.

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

5 165.061 Standards for incorporation, merger, and
6 dissolution.--

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

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

22 Section 4. Paragraph (a) of subsection (6) of section
23 403.087, Florida Statutes, is amended to read:

24 403.087 Permits; general issuance; denial; revocation;
25 prohibition; penalty.--

26 (6)(a) The department shall require a processing fee
27 in an amount sufficient, to the greatest extent possible, to
28 cover the costs of reviewing and acting upon any application
29 for a permit or request for site-specific alternative criteria
30 or for an exemption from water quality criteria and to cover
31 the costs of surveillance and other field services and related

1 support activities associated with any permit or plan approval
2 issued pursuant to this chapter. However, when an application
3 is received without the required fee, the department shall
4 acknowledge receipt of the application and shall immediately
5 return the unprocessed application to the applicant and shall
6 take no further action until the application is received with
7 the appropriate fee. The department shall adopt a schedule of
8 fees by rule, subject to the following limitations:
9 1. The ~~permit~~ fee for any of the following ~~permits~~ may
10 not exceed \$32,500:
11 a. Hazardous waste, construction permit.
12 b. Hazardous waste, operation permit.
13 c. Hazardous waste, postclosure ~~closure~~ permit, or
14 clean closure plan approval.
15 2. The permit fee for a Class I injection well
16 construction permit may not exceed \$12,500.
17 3. The permit fee for any of the following permits may
18 not exceed \$10,000:
19 a. Solid waste, construction permit.
20 b. Solid waste, operation permit.
21 c. Class I injection well, operation permit.
22 4. The permit fee for any of the following permits may
23 not exceed \$7,500:
24 a. Air pollution, construction permit.
25 b. Solid waste, closure permit.
26 c. Drinking water, construction or operation permit.
27 d. Domestic waste residuals, construction or operation
28 permit.
29 e. Industrial waste, operation permit.
30 f. Industrial waste, construction permit.
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- 1 5. The permit fee for any of the following permits may
2 not exceed \$5,000:
- 3 a. Domestic waste, operation permit.
4 b. Domestic waste, construction permit.
- 5 6. The permit fee for any of the following permits may
6 not exceed \$4,000:
- 7 a. Wetlands resource management--(dredge and fill),
8 standard form permit.
9 b. Hazardous waste, research and development permit.
10 c. Air pollution, operation permit, for sources not
11 subject to s. 403.0872.
12 d. Class III injection well, construction, operation,
13 or abandonment permits.
- 14 7. The permit fee for Class V injection wells,
15 construction, operation, and abandonment permits may not
16 exceed \$750.
- 17 8. The permit fee for any of the following permits may
18 not exceed \$500:
- 19 a. Domestic waste, collection system permits.
20 b. Wetlands resource management--(dredge and fill and
21 mangrove alterations), short permit form.
22 c. Drinking water, distribution system permit.
- 23 9. The permit fee for stormwater operation permits may
24 not exceed \$100.
- 25 10. The general permit fees for permits that require
26 certification by a registered professional engineer or
27 professional geologist may not exceed \$500. The general
28 permit fee for other permit types may not exceed \$100.
- 29 11. The fee for a permit issued pursuant to s. 403.816
30 is \$5,000, and the fee for any modification of such permit
31 requested by the applicant is \$1,000.

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

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

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

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

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

24 403.706 Local government solid waste
25 responsibilities.--

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

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

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

5 403.722 Permits; hazardous waste disposal, storage,
6 and treatment facilities.--

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

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