

Bill No. SB 436  
Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator King moved the following amendment:

**Senate Amendment (with title amendment)**

On page 3, between line 29 and 30,

insert:

Section 2. (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

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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.

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

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

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

10          (a) Notwithstanding section 542.235, Florida Statutes,  
11 or any other provision of law, a local government that  
12 provides solid waste collection services outside its  
13 jurisdiction in direct competition with private companies is  
14 subject to the same prohibitions against predatory pricing  
15 applicable to private companies under sections 542.18 and  
16 542.19, Florida Statutes.

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

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

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

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

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

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

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

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

4           4. Actions taken against a private company because the  
5 company has materially breached its contract with the local  
6 government;

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

10           6. Entering into a contract with a private company to  
11 provide garbage, trash, or refuse collection which contract is  
12 not entered into under an ordinance that displaces or  
13 authorizes the displacement of another private company  
14 providing garbage, trash, or refuse collection;

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

18           8. Situations in which the private companies are  
19 licensed or permitted to do business within the local  
20 government for a limited time and such license or permit  
21 expires and is not renewed by the local government. This  
22 subparagraph does not apply to licensing or permitting  
23 processes enacted after May 1, 1999, or to occupational  
24 licenses; or

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

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

30           1. Holding at least one public hearing seeking comment  
31 on the advisability of the local government or combination of

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1 local governments providing the service.

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

5 3. Providing public notice of the hearing.

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

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

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

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

29 Section 3. Subsection (5) is added to section 171.062,  
30 Florida Statutes, to read:

31 171.062 Effects of annexations or contractions.--

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

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

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

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

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

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1 "evergreen" provisions, be provided to the municipality within  
2 a reasonable time following a written request to do so.

3 Section 5. Paragraph (a) of subsection (6) of section  
4 403.087, Florida Statutes, is amended to read:

5 403.087 Permits; general issuance; denial; revocation;  
6 prohibition; penalty.--

7 (6)(a) The department shall require a processing fee  
8 in an amount sufficient, to the greatest extent possible, to  
9 cover the costs of reviewing and acting upon any application  
10 for a permit or request for site-specific alternative criteria  
11 or for an exemption from water quality criteria and to cover  
12 the costs of surveillance and other field services and related  
13 support activities associated with any permit or plan approval  
14 issued pursuant to this chapter. However, when an application  
15 is received without the required fee, the department shall  
16 acknowledge receipt of the application and shall immediately  
17 return the unprocessed application to the applicant and shall  
18 take no further action until the application is received with  
19 the appropriate fee. The department shall adopt a schedule of  
20 fees by rule, subject to the following limitations:

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

- 23 a. Hazardous waste, construction permit.  
24 b. Hazardous waste, operation permit.  
25 c. Hazardous waste, postclosure closure permit, or  
26 clean closure plan approval.

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

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

- 31 a. Solid waste, construction permit.



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1           b. Solid waste, operation permit.

2           c. Class I injection well, operation permit.

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

5           a. Air pollution, construction permit.

6           b. Solid waste, closure permit.

7           c. Drinking water, construction or operation permit.

8           d. Domestic waste residuals, construction or operation  
9 permit.

10          e. Industrial waste, operation permit.

11          f. Industrial waste, construction permit.

12          5. The permit fee for any of the following permits may  
13 not exceed \$5,000:

14          a. Domestic waste, operation permit.

15          b. Domestic waste, construction permit.

16          6. The permit fee for any of the following permits may  
17 not exceed \$4,000:

18          a. Wetlands resource management--(dredge and fill),  
19 standard form permit.

20          b. Hazardous waste, research and development permit.

21          c. Air pollution, operation permit, for sources not  
22 subject to s. 403.0872.

23          d. Class III injection well, construction, operation,  
24 or abandonment permits.

25          7. The permit fee for Class V injection wells,  
26 construction, operation, and abandonment permits may not  
27 exceed \$750.

28          8. The permit fee for any of the following permits may  
29 not exceed \$500:

30          a. Domestic waste, collection system permits.

31          b. Wetlands resource management--(dredge and fill and

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1 mangrove alterations), short permit form.

2 c. Drinking water, distribution system permit.

3 9. The permit fee for stormwater operation permits may  
4 not exceed \$100.

5 10. The general permit fees for permits that require  
6 certification by a registered professional engineer or  
7 professional geologist may not exceed \$500. The general  
8 permit fee for other permit types may not exceed \$100.

9 11. The fee for a permit issued pursuant to s. 403.816  
10 is \$5,000, and the fee for any modification of such permit  
11 requested by the applicant is \$1,000.

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

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

23 b. The annual fees for industrial waste facilities  
24 shall not exceed \$11,500. The department shall establish a  
25 sliding scale of fees based upon the volume, concentration, or  
26 nature of the industrial waste discharge and shall ensure  
27 smaller industrial waste dischargers do not bear an inordinate  
28 share of costs of the program.

29 c. The department may establish a fee, not to exceed  
30 the amounts in subparagraphs 4. and 5., to cover additional  
31 costs of review required for permit modification or

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1 construction engineering plans.

2 Section 6. Paragraph (d) is added to subsection (17)  
3 of section 403.706, Florida Statutes, to read:

4 403.706 Local government solid waste  
5 responsibilities.--

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

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

13 Section 7. Subsection (1) of section 403.722, Florida  
14 Statutes, is amended to read:

15 403.722 Permits; hazardous waste disposal, storage,  
16 and treatment facilities.--

17 (1) Each person who intends to construct, modify,  
18 operate, or close a hazardous waste disposal, storage, or  
19 treatment facility shall obtain a construction permit,  
20 operation permit, postclosure ~~or closure~~ permit, or clean  
21 closure plan approval from the department prior to  
22 constructing, modifying, operating, or closing the facility.  
23 By rule, the department may provide for the issuance of a  
24 single permit instead of any two or more hazardous waste  
25 facility permits.

26 Section 8. Section 171.093, Florida Statutes, is  
27 created to read:

28 171.093 Municipal annexation within independent  
29 special districts.--

30 (1) The purpose of this section is to provide an  
31 orderly transition of special district service

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1 responsibilities in an annexed area from an independent  
2 special district which levies ad valorem taxes to a  
3 municipality following the municipality's annexation of  
4 property located within the jurisdictional boundaries of an  
5 independent special district, if the municipality elects to  
6 assume such responsibilities.

7 (2) The municipality may make such an election by  
8 adopting a resolution evidencing the election and forwarding  
9 the resolution to the office of the special district and the  
10 property appraiser and tax collector of the county in which  
11 the annexed property is located. In addition, the municipality  
12 may incorporate its election into the annexation ordinance.

13 (3) Upon a municipality's election to assume the  
14 district's responsibilities, the municipality and the district  
15 may enter into an interlocal agreement addressing the orderly  
16 transfer of service responsibilities, real assets, equipment,  
17 and personnel to the municipality. The agreement shall address  
18 allocation of responsibility for special district services,  
19 avoidance of double taxation of property owners for such  
20 services in the area of overlapping jurisdiction, prevention  
21 of loss of any district revenues which may be detrimental to  
22 the continued operations of the independent district,  
23 avoidance of impairment of existing district contracts,  
24 disposition of property and equipment of the independent  
25 district and any assumption of indebtedness for it, the status  
26 and employee rights of any adversely affected employees of the  
27 independent district, and any other matter reasonably related  
28 to the transfer of responsibilities.

29 (4)(a) If the municipality and the district are unable  
30 to enter into an interlocal agreement pursuant to subsection  
31 (3), the municipality shall so advise the district and the

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1 property appraiser and tax collector of the county in which  
2 the annexed property is located and, effective October 1 of  
3 the calendar year immediately following the calendar year in  
4 which the municipality declares its intent to assume service  
5 responsibilities in the annexed area, the district shall  
6 remain the service provider in the annexed area for a period  
7 of 4 years. During the 4-year period, the municipality shall  
8 pay the district an amount equal to the ad valorem taxes or  
9 assessments that would have been collected had the property  
10 remained in the district.

11 (b) By the end of the 4-year period, or any extension  
12 mutually agreed upon by the district the municipality, the  
13 municipality and the district shall enter into an agreement  
14 that identifies the existing district property located in the  
15 municipality or primarily serving the municipality that will  
16 be assumed by the municipality, the fair market value of such  
17 property, and the manner of transfer of such property and any  
18 associated indebtedness. If the municipality and district are  
19 unable to agree to an equitable distribution of the district's  
20 property and indebtedness, the matter shall proceed to circuit  
21 court. In equitably distributing the district's property and  
22 associated indebtedness, the taxes and other revenues paid the  
23 district by or on behalf of the residents of the annexed area  
24 shall be taken into consideration.

25 (c) During the 4-year period, or during any mutually  
26 agreed upon extension, district service and capital  
27 expenditures within the annexed area shall continue to be  
28 rationally related to the annexed area's service needs.  
29 Service and capital expenditures within the annexed area shall  
30 also continue to be rationally related to the percentage of  
31 district revenue received on behalf of the residents of the

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1 annexed area when compared to the district's total revenue. A  
2 capital expenditure greater than \$25,000 shall not be made by  
3 the district for use primarily within the annexed area without  
4 the express consent of the municipality.

5 (5) If the municipality elects not to assume the  
6 district's responsibilities, the district shall remain the  
7 service provider in the annexed area, the geographical  
8 boundaries of the district shall continue to include the  
9 annexed area, and the district may continue to levy ad valorem  
10 taxes and assessments on the real property located within the  
11 annexed area. If the municipality elects to assume the  
12 district's responsibilities in accordance with subsection (3),  
13 the district's boundaries shall contract to exclude the  
14 annexed area at the time and in the manner provided in the  
15 agreement.

16 (6) If the municipality elects to assume the  
17 district's responsibilities and the municipality and the  
18 district are unable to enter into an interlocal agreement, and  
19 the district continues to remain the service provider in the  
20 annexed area in accordance with subsection (4), the  
21 geographical boundaries of the district shall contract to  
22 exclude the annexed area on the effective date of the  
23 beginning of the 4-year period provided for in subsection (4).  
24 Nothing in this section precludes the contraction of the  
25 boundary of any independent special district by special act of  
26 the Legislature. The district shall not levy ad valorem taxes  
27 or assessments on the annexed property in the calendar year in  
28 which its boundaries contract and subsequent years, but it may  
29 continue to collect and use all ad valorem taxes and  
30 assessments levied in prior years. Nothing in this section  
31 prohibits the district from assessing user charges and impact

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1 fees within the annexed area while it remains the service  
2 provider.

3 (7) In addition to any other authority provided by  
4 law, a municipality is authorized to levy assessments on  
5 property located in an annexed area to offset all or a portion  
6 of the costs incurred by the municipality in assuming district  
7 responsibilities pursuant to this section. Such assessments  
8 may be collected pursuant to and in accordance with applicable  
9 law.

10 (8) This section does not apply to districts created  
11 pursuant to chapter 190 or chapter 373.

12 Section 9. Subsection (5) of section 403.7165 and  
13 section 403.7199, Florida Statutes, are repealed.

14  
15 (Redesignate subsequent sections.)

16  
17  
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 On page 1, lines 1 and 2, delete those lines

21  
22 and insert:

23 An act relating to governmental operations;  
24 providing requirements for local governments  
25 providing solid waste collection services in  
26 competition with private companies; providing  
27 remedies for such private companies; providing  
28 procedures and requirements; providing for  
29 award of damages, costs, and attorney fees;  
30 providing application; providing limitations  
31 for local government solid waste collection

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1 services outside the jurisdiction of the local  
2 government; providing remedies for certain  
3 injured parties; providing requirements and  
4 procedures; prohibiting local governments from  
5 displacing private waste collection companies  
6 under certain circumstances; providing  
7 requirements; providing procedures and  
8 requirements for such displacement; providing  
9 definitions; amending s. 171.062, F.S.;  
10 providing for continuation of certain solid  
11 waste services in certain annexed areas;  
12 providing an exception; amending s. 165.061,  
13 F.S.; providing for certain merger plans to  
14 honor certain solid waste contracts; providing  
15 limitations; amending s. 403.087, F.S.;  
16 clarifying application of certain permit fees;  
17 amending s. 403.706, F.S.; authorizing counties  
18 and municipalities to grant certain solid waste  
19 fee waivers under certain circumstances;  
20 amending s. 403.722, F.S.; clarifying  
21 requirements for obtaining certain hazardous  
22 waste facility permits; creating s. 171.093,  
23 F.S.; providing for the assumption of an  
24 independent special district's service  
25 responsibilities in an area that is within the  
26 district's boundaries and that is annexed by a  
27 municipality; providing that the municipality  
28 may elect to assume such responsibilities;  
29 providing for an interlocal agreement regarding  
30 the transfer of such responsibilities;  
31 providing for the provision of services and



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1           payment therefor during a specified period if  
2           the municipality and district are unable to  
3           enter into an interlocal agreement; specifying  
4           effect of a municipality's election not to  
5           assume such responsibilities; providing for  
6           contraction of the district's boundaries if the  
7           municipality elects to assume such  
8           responsibilities; providing for levy of ad  
9           valorem taxes and assessments, user charges,  
10          and impact fees; providing exceptions;  
11          repealing s. 403.7165(5), F.S., relating to the  
12          Applications Demonstration Center for Resource  
13          Recovery from Solid Organic Materials;  
14          repealing s. 403.7199, F.S., relating to the  
15          Florida Packaging Council; amending s.  
16          403.7046, F.S.; revising

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