

Bill No. SB 436  
Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator King moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 3, between lines 29 and 30,		
15			
16	insert:		
17	Section 2. <u>Solid waste collection services.--</u>		
18	<u>(1) SOLID WASTE COLLECTION SERVICES IN COMPETITION</u>		
19	<u>WITH PRIVATE COMPANIES.--</u>		
20	<u>(a) A local government that provides specific solid</u>		
21	<u>waste collection services in direct competition with a private</u>		
22	<u>company:</u>		
23	<u>1. Shall comply with the provisions of local</u>		
24	<u>environmental, health, and safety standards that also are</u>		
25	<u>applicable to a private company providing such collection</u>		
26	<u>services in competition with the local government.</u>		
27	<u>2. Shall not enact or enforce any license, permit,</u>		
28	<u>registration procedure, or associated fee that:</u>		
29	<u>a. Does not apply to the local government and for</u>		
30	<u>which there is not a substantially similar requirement that</u>		
31	<u>applies to the local government; and</u>		

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

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

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

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1 activity complained of.

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

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

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

11 (a) Notwithstanding section 542.235, Florida Statutes,  
12 or any other provision of law, a local government that  
13 provides solid waste collection services outside its  
14 jurisdiction in direct competition with private companies is  
15 subject to the same prohibitions against predatory pricing  
16 applicable to private companies under sections 542.18 and  
17 542.19, Florida Statutes.

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

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1 covered by such executive order or proclamation.

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

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

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

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

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

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

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1 service itself;

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

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

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

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

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

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

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

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

31 1. Holding at least one public hearing seeking comment

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1 on the advisability of the local government or combination of  
2 local governments providing the service.

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

6 3. Providing public notice of the hearing.

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

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

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

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

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

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1           171.062 Effects of annexations or contractions.--  
2           (5) A party that has a contract that was in effect for  
3 at least 6 months prior to the initiation of an annexation to  
4 provide solid waste collection services in an unincorporated  
5 area may continue to provide such services to an annexed area  
6 for 5 years or the remainder of the contract term, whichever  
7 is shorter. Within a reasonable time following a written  
8 request to do so, the party shall provide the annexing  
9 municipality with a copy of the pertinent portion of the  
10 contract or other written evidence showing the duration of the  
11 contract, excluding any automatic renewals or so-called  
12 "evergreen" provisions. This subsection does not apply to  
13 contracts to provide solid waste collection services to  
14 single-family residential properties in those enclaves  
15 described in s. 171.046.

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

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

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

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

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1 the contract, excluding any automatic renewals or so-called  
2 "evergreen" provisions, be provided to the municipality within  
3 a reasonable time following a written request to do so.

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

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

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

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

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

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

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

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- 1           a. Solid waste, construction permit.
- 2           b. Solid waste, operation permit.
- 3           c. Class I injection well, operation permit.
- 4           4. The permit fee for any of the following permits may
- 5 not exceed \$7,500:
  - 6           a. Air pollution, construction permit.
  - 7           b. Solid waste, closure permit.
  - 8           c. Drinking water, construction or operation permit.
  - 9           d. Domestic waste residuals, construction or operation
  - 10 permit.
  - 11           e. Industrial waste, operation permit.
  - 12           f. Industrial waste, construction permit.
- 13           5. The permit fee for any of the following permits may
- 14 not exceed \$5,000:
  - 15           a. Domestic waste, operation permit.
  - 16           b. Domestic waste, construction permit.
- 17           6. The permit fee for any of the following permits may
- 18 not exceed \$4,000:
  - 19           a. Wetlands resource management--(dredge and fill),
  - 20 standard form permit.
  - 21           b. Hazardous waste, research and development permit.
  - 22           c. Air pollution, operation permit, for sources not
  - 23 subject to s. 403.0872.
  - 24           d. Class III injection well, construction, operation,
  - 25 or abandonment permits.
  - 26           7. The permit fee for Class V injection wells,
  - 27 construction, operation, and abandonment permits may not
  - 28 exceed \$750.
  - 29           8. The permit fee for any of the following permits may
  - 30 not exceed \$500:
    - 31           a. Domestic waste, collection system permits.



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1 costs of review required for permit modification or  
2 construction engineering plans.

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

5 403.706 Local government solid waste  
6 responsibilities.--

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

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

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

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

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

26  
27 (Redesignate subsequent sections.)

28  
29

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

31 And the title is amended as follows:

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

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1            requiring post-closure permits and  
2            clean-closure-plan approvals;  
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