

STORAGE NAME: h1425s1z.ca
DATE: May 12, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 00-304, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: CS/3RD ENG/HB 1425
RELATING TO: Governmental Operations
SPONSOR(S): Committee on Environmental Protection;
Representative Garcia and Others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
- (2) ENVIRONMENTAL PROTECTION (RLC) YEAS 13 NAYS 0

I. SUMMARY:

This bill subjects local governments that provide solid waste management services to the same requirements as private industry and imposes certain requirements on local governments providing services out of jurisdiction.

This legislation clarifies that an injured party may recover in circuit court for injunctive relief, attorney fees, and damages in certain situations, including predatory pricing.

This bill protects contracts to newly annexed areas, and incorporated municipalities. This bill also imposes requirements on local governments when a company is displaced, including a three year notice or a "pay out" of funds, based on fifteen months' worth of gross receipts.

This bill addresses mergers between municipalities and unincorporated areas, by protecting existing contracts for a five year term or for the term of the contract, whichever is shorter.

This bill addresses recovered materials. It limits the local government registration fee for recovered materials dealers and clarifies application of certain permit fees, authorizes counties and cities to grant solid waste fee waivers, and specifies the permitting process.

This bill includes municipal annexation issues. A municipality can continue to provide services following annexation. Interlocal agreements for transfers are encouraged and a procedure is provided absent an agreement. This bill authorizes imposition of certain ad valorem taxes.

This bill provides for the continued existence of CDDs formed before a certain date and clarifies that this act does not alter any outstanding indebtedness of a CDD.

This bill addresses citrus juice processing facilities in several ways, effective July 1, 2002. The bill mandates compliance with the emission limits standards promulgated by the EPA or according to the facility's Title V permit. This bill specifies emission limits, allowances, and testing, requires certified annual reports of emissions levels and payment of fees, directs DEP to advise the Legislature and to research alternative methods of regulatory permitting.

This bill repeals the advisory committee of the Applications Demonstration Center for Resource Recovery from Solid Organic Materials and repeals the Florida Packaging Council.

This bill raises potential concerns relating to a constitutional impairment of contract.

This bill may have a significant fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates new requirements for government as follows: local government compliance with the same mandates imposed on private companies, displacement procedure, and three year notice/payout of funds.

B. PRESENT SITUATION:

Solid Waste

Currently, local governments provide solid waste management services or provide services through contracts with private waste management companies, or a combination of both. While most landfills in the state are owned by counties, there are several privately owned regional landfills which accept waste from a growing number of counties. Most construction and demolition debris disposal facilities and materials recovery facilities, other than those co-located at landfills, are privately owned. Many large cities use both city collection equipment and crews for some parts of the city and franchise collection in other parts of the city. In many cases, cities or counties permit government solid waste departments to compete with private sector companies for specific contracts. Private companies complain that in these situations, public entities subsidize their costs with funds from other city operations or through a "hidden tax," unfairly competing for contracts.

Private waste management companies express concern that there are instances where local governments annex an unincorporated area of a county, where a private waste management company currently has contracts for waste management services, and then extend the local government's waste management services into the annexed area on an exclusive basis, with little consideration for existing private contracts.

Currently, in Florida, individuals conducting hazardous and solid waste clean up must obtain a permit prior to closing down the hazardous waste site. Individuals conducting hazardous and solid waste clean up must also comply with federal hazardous and solid waste clean up programs. One federal clean up program in particular, the Risk-Based Corrective Action (RBCA), provides for a post closure permit or a clean closure plan approval to be obtained, instead of a "pre-closure" permit, in order to close down a hazardous solid waste site.

Recovered Materials

Section 403.703(7), F.S., defines "recovered materials" to mean:

"metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste."

Section 403.7045, F.S., provides that recovered materials or recovered materials processing facilities shall not be regulated pursuant to Part IV, except as provided in section 403.7046, F.S., if:

- A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within 1 year.
- The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of such facility so that such recovered materials, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.
- The recovered materials handled by the facility are not hazardous wastes as defined under s. 403.703, F.S., and rules promulgated pursuant thereto.
- The facility is registered as required in s. 403.7046, F.S.

State Regulation

Section 403.7046(1), F.S., provides that after January 1, 1994, any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually certify to DEP on forms provided by the department. DEP may, by rule, exempt from this requirement, generators of recovered materials, persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person, or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities, as defined by the department.

DEP must adopt rules for the certification of and reporting by such persons and must establish criteria for revocation of such certification. Such rules must be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. Such rules may provide for the department to conduct periodic inspections. DEP may charge a fee of up to \$50 for each registration, which must be deposited into the Solid Waste Management Trust Fund for implementation of the program. DEP has adopted Chapter 62-722, F.A.C., to implement this section.

Local Government Regulation

Section 403.7046(3), F.S., outlines the authority of local governments to regulate the commercial collection and processing of certain recovered materials. The statute states:

Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designed by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

The term "commercial establishment" is defined to mean:

a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single family residential or multifamily residential uses.

This section provides that local governments may require that recovered materials generated at such a commercial establishment be source-separated at the business premises.

Section 403.7046(3)(b), F.S., allows local governments to establish a registration procedure:

[T]he local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. All counties, and municipalities whose population exceeds 35,000 . . . may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. . . . The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules promulgated pursuant thereto.

As stated, the subsection authorizes local governments to impose a registration fee on recovered materials dealers that is "commensurate with and no greater than the cost incurred by the local government in operating its registration program."

Section 403.7046(3)(c), F.S., authorizes a local government to create a system for revoking the authority of recovered materials dealers to do business within the jurisdiction of the local government if it is found that the dealer has "consistently and repeatedly violated state or local laws, ordinances, rules, and regulations."

Section 403.7046(3)(c), F.S., authorizes a local government to enter into a non-exclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, but such an agreement may not prohibit a certified recovered materials dealer from entering into a contract with a commercial establishment. A local government may also prohibit a person or entity who is not certified under the statute from doing business within its jurisdiction. Specifically, the paragraph states:

"In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments provided that such franchise or provision does not prohibit a certified recovered materials dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties."

Finally, s. 403.7046(3)(e), F.S., provides: "Nothing in this section shall prohibit a local government from enacting ordinances designed to protect the public's general health, safety, and welfare."

Local Government Ordinances

An ordinance passed by the City of Coral Springs is illustrative of legislation that has been passed by a few other municipalities. This ordinance established a registration fee of \$250 and a franchise fee of 15% of the franchisee's annual gross receipts for all customers located within the city. Implementation of the ordinance has been delayed due to pending litigation challenging the City's authority to require a certified recovered materials dealer to enter into a franchise agreement with the city to operate within the city.

Department of Environmental Protection

DEP Secretary David Struhs wrote a December 17, 1999, letter to the Mayor of the City of Coral Springs opposing this ordinance in which he said:

"Like you, we are concerned with the illegal disposal (which often violates local solid waste franchises) of solid waste, under the guise of recycling -- so-called 'sham recycling.' It is for that reason that a state certification system was put in place for recovered materials dealers, and a similar registration program is authorized at the local level.

However, we are not clear why you are requiring a franchise for Certified Recovered Materials Dealers to contract for the collection of commercially generated recovered materials. The Department is concerned that the implementation of such a franchise system will impede legitimate recycling of recovered materials. We intend to support proposed House Bill 361 in the 2000 Legislative Session, which would prohibit such franchises, and urge you and the Commission to reconsider the portion of Ordinance 99-129 which requires franchises.”

In a subsequent letter, Secretary Struhs stated that DEP continues to agree with the DEP Policy Memorandum dated April 13, 1995, regarding local regulation of recovered materials dealers. This memorandum provides in part:

“All franchises involving the collection, transportation, and processing of recovered materials at commercial establishments must be truly non-exclusive. This means that if a business wishes to contract with a non-franchised recovered materials dealer, it must be allowed to do so. Furthermore, the local government must not restrict a dealer’s ability to pursue contracts with commercial establishments. Local governments may not require recovered materials dealers to enter into franchise agreements in order to do business.”

City of Coral Springs

In response to Secretary Struhs December 17, 1999, letter, the City Manager of the City of Coral Springs responded to the Secretary in a February 3, 2000, letter stating in part:

“The City administrator and professional staff carefully and considerately studied this issue prior to incorporating a franchise requirement in the Ordinance. The first issue addressed was whether a franchise would be allowable, since our franchised waste hauler and our solid waste franchise revenues are directly impacted by non-franchise waste handlers encroaching under the guise of recycling. Our attorneys researched and reviewed existing State law which allows local government to require a franchise, and you apparently agree since you are supporting legislation in the Year 2000 Legislative Session to prohibit such franchises by local government . . .”

“The City’s experience has been that registration alone is not sufficient to discourage ‘sham recycling’. Active enforcement is necessary, and is provided at significant personnel costs, which can be offset to some extent by franchise revenues. Franchise conditions will also assure the City that franchised operators are adequately insured while operating in the City.”

Attorney General’s Advisory Legal Opinion

In AGO 99-60, the Attorney General was asked the following question:

“Is the City of Pompano Beach authorized by Part IV, Chapter 403, Florida Statutes (1998 Supplement), to adopt and enforce an ordinance requiring recovered materials dealers to enter into a non-exclusive franchise and pay a fee to the municipality in order to conduct business within the municipality?”

The Attorney General responded in sum:

“Section 403.7046(3), Florida Statutes, authorizes the City of Pompano Beach to adopt an ordinance requiring recovered materials dealers to enter into a non-exclusive

franchise for the collection, transportation, and processing of recovered materials at commercial establishments and to pay a registration fee to the municipality for the privilege of doing business within the municipality. The registration fee permitted by the statute may not exceed the cost of administering the program.”

After summarizing relevant statutory provisions, the Attorney General concluded:

“Thus, it is my opinion that section 403.7046(3), Florida Statutes, authorizes the City of Pompano Beach to adopt an ordinance requiring recovered materials dealers to enter into a non-exclusive franchise for the collection, transportation, and processing of recovered materials at commercial establishments within the city and to pay a registration fee to the municipality for the privilege of doing business within the municipality. The registration fee authorized by the statute is one that is commensurate with but no greater than the costs incurred to operate the program. However, any ordinance adopted by the municipality may not prohibit such a dealer from entering into an independent contract with a commercial establishment for source-separated recovered materials.”

Municipal Annexation

Annexation

Section 2(c), Art. VIII of the State Constitution authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property by local action.

The Legislature established local annexation procedures by general law in 1974, with the enactment of chapter 171, Florida Statutes. Chapter 171, Florida Statutes, named the "Municipal Annexation or Contraction Act," describes the ways that property can be annexed or contracted by cities without passage of an act by the Legislature. There are two types of annexations in Florida, voluntary and involuntary. With voluntary annexations, all property owners in the area proposed for annexation formally seek the annexation by petition. For an involuntary annexation to occur, at least a majority of the electors in the area proposed for annexation and a majority of the electors in the annexing municipality must vote in favor of the annexation in a dual referendum election.

Statutory Requirements For Annexation

Before local annexation procedures may begin, the governing body of the annexing municipality must prepare a report containing the city's plans for providing urban services to the proposed area to be annexed. A copy of the report must be filed with the board of county commissioners. This report must include appropriate maps, timetables, and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality. This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. The specified exceptions are where the area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water.
- The area to be annexed must be reasonably compact.

- No part of the area to be annexed may fall within the boundary of another municipality.
- The majority of the land to be annexed must be developed for urban purposes. Urban purposes are defined as:
 - having a population of at least two persons per acre; or
 - if 60 percent of the subdivided lots are one acre or less, having a density of one person per acre; or
 - having at least 60 percent of the subdivided lots used for urban purposes; or
 - having at least 60 percent of the total urban residential acreage divided into lots of 5 acres or less.

Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas.

Annexation Procedures

Voluntary Annexation

If the property owners of a particular unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. The following procedures govern voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

Submission to the municipal governing body of a petition seeking annexation, signed by all property owners in the area proposed to be annexed.

Adoption of an ordinance by the governing body of the annexing municipality to annex the property after publication of notice at least once a week for 2 consecutive weeks, setting forth the proposed ordinance in full.

In addition, the annexation must not create enclaves. An enclave is:

- (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Upon publishing notice of the ordinance, the governing body of the municipality must provide a copy to the board of county commissioners of the county where the municipality is located.

Involuntary Annexation

A municipality may annex property where the property owners have not petitioned for annexation pursuant to section 171.0413(1) and (2), Florida Statutes. This process is called involuntary annexation. In general, the requirements for an involuntary annexation are:

- Adoption of an annexation ordinance of a "reasonably compact" area by the annexing municipality's governing body.
- Prior to the adoption of an annexation ordinance, the governing body of the municipality must hold at least two advertised public hearings, with the first meeting being held on a weekday at least seven days after the first advertisement and the second meeting being held on a weekday at least five days after the first advertisement.
- Submission of the ordinance to a vote of the registered electors of the area proposed to be annexed once the governing body has adopted the ordinance.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes a part of the city. If there is no majority vote, that area cannot be made the subject of another annexation proposal for 2 years from the date of the referendum.

Annexation by Special Act

Subsection 177.044(4), Florida Statutes, provides that the procedures for voluntary annexation shall be "supplemental to any other procedure provided by general law or special law." There are a number of special annexation laws that exist in Florida, and hence special laws should always be checked prior to beginning annexation procedures. The Legislature may allow municipalities to annex property and are empowered to waive any and all statutory requirements.

Annexation by Charter

Also provided in subsection 117.044(4), Florida Statutes, voluntary annexation procedures do not apply to municipalities and counties with charters that provide for an exclusive method of municipal annexation.

Annexation of Enclaves

As previously described, an enclave is any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

With the passage of section 171.046, Florida Statutes, the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. The intent of the legislation was to make it easier to eliminate enclaves of small land areas.

In order to expedite the process of annexing enclaves, there is a separate process for annexing enclaves of 10 acres or less. Using this process, a municipality may annex an

enclave by interlocal agreement with the county having jurisdiction of the enclave. It may also annex an enclave with fewer than 25 registered voters by municipal ordinance, when the annexation is approved in a referendum by at least 60 percent of the voters in the enclave. These procedures do not apply to undeveloped or unimproved real property.

Section 171.061, F.S.

Upon annexation, the annexed area is subject to the taxes and debts of the municipality upon the effective date of the annexation. However, the annexed area is not subject to the municipal ad valorem tax if the annexation date is after the municipality has levied such tax. There are no current statutory protections for special districts' budgets that may be affected by municipal annexations.

Community Development Districts

Palms of Terra Ceia Community Development District

Excerpt from letter by Ernie C. Lisch, Attorney, to House Community Affairs Staff, dated August 30, 1999:

....I need to clarify the concerns of the Palms of Terra Ceia Community Development District regarding Chapter 190.

It has been the District's position that it was formed by the enacting ordinance of the City of Palmetto, that it was formed under Chapter 190 and its amendments, and has operated from the time of its inception in 1982 to the present under the guidelines of Chapter 190 and its amendments.a disgruntled resident of the District adamantly maintains that because of language contained in Chapter 190.004 (2), the District is governed only by the language of Chapter 80-407 (Chapter 190 in its 1980 edition) and no amendments to the statute apply. The District was formed in 1982 and, as you stated in your correspondence, the enacting ordinance provides that the District is to be governed by the provision of Chapter 190, Florida Statutes.

I have advised the District's Board of Supervisors that the language contained in Chapter 190.004 (2) is problematic. On its face it seems to indicate that districts formed before 1984 shall be governed by Chapter 80-407 despite the fact that these districts were, in fact, enacted under Chapter 190. In reviewing the list of community development districts, it appears that there is currently more than one district operating which had been formed before 1984 and all of these districts have been operating under the belief that they are governed by the provisions of Chapter 190 and its amendments. That is the reason the Board of Supervisors of the Palms of Terra Ceia believes that the statute should at least be amended to reflect the position set out in your correspondence, i.e., that there is an exemption for districts existing on October 1, 1980 and all districts formed from 1980 are governed by Chapter 190.

Florida Statutes

Chapter 190, F.S., addresses Community Development Districts.

Section 190.004, F.S., reads as follows:

- (1) This act constitutes the sole authorization for the future establishment of independent community development districts which have any of the specialized functions and powers provided by this act. (Emphasis added)
- (2) This act does not affect any community development district or other special district existing on June 29, 1984; and existing community development districts will continue to be subject to the provisions of chapter 80-407, Laws of Florida. (Emphasis added)

Section 190.004 (2), F.S., was adopted in 1984.

Currently, there are concerns that some community development districts are claiming that they are not bound by the provisions of Chapter 190, as amended in 1984. Further, some CDDs claim that they are only bound by the provisions of Chapter 80-407, F.S.

Citrus Processing

In 1990, a series of amendments to the Clean Air Act were signed into law by the President. These amendments represented significant changes designed to achieve enhanced air quality goals and cover a wide range of air pollution issues.

In 1992 and 1993, the Legislature passed legislation which enabled the state to administer the federal Clean Air Title V program pursuant to 42 U.S.C. s. 7661a. Section 403.0872, F.S., allows the DEP to issue operation permits for major sources of air pollution. Each permitted source of air pollution must pay an annual operation license fee in an amount determined by the DEP that is sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program.

Currently thousands of facilities, operations, or sources are subject to air permitting either by the EPA or the DEP or both. Most are subject to Title V permitting because they have air emissions of 100 tons per year or more. Essentially all citrus processing plants in Florida have some type of air permit and most need Title V permits. Many of these need to obtain retroactive Prevention of Significant Deterioration permits (PSD) and perform case-by-case Best Available Control Technology determinations (BACT) for Volatile Organic Compound emissions (VOC). This involves extensive permitting work for both the industry and the department. A comprehensive air sampling study was conducted in 1997 to determine the quantity of VOC emissions from peel dryers. The VOC emissions were over 100 tons per year from the smaller dryers and over 1,000 tons per year for the large plants.

C. EFFECT OF PROPOSED CHANGES:

Solid Waste

This bill is thought to better level the playing field between local government and private competition, regarding the provision of solid waste collection services. This bill subjects local government providing solid waste management services to the same requirements as private industry.

This bill subjects local government to civil suits for injunctive relief and damages, for violations of unfair competition and predatory pricing. The injunctive relief portion is already provided for in s. 542.235, F.S., which is heavily based on federal antitrust law. Section 542.235, F.S., provides an injunctive remedy for Florida antitrust violations.

Consequently, this bill subjects local government to damages, which is not already provided for in statute.

This bill imposes procedures on local government where a company is displaced, including specified notice or a "pay out" of funds. This requires local government to give three years notice to a displaced company, or, alternatively, to pay fifteen months worth of gross receipts.

This bill protects, to some extent, existing contracts, in the event of a merger.

Recovered Materials

This bill limits local government fees, in clarifying that the registration fee charged to a recovered materials dealer by a local government must be equal to and not exceed costs incurred by a local government that are associated with the local government's registration program.

This bill also prohibits a local government from requiring a certified recovery dealer to enter into certain franchise agreements, thereby lessening government control and possibly negatively impacting a potential source of fees.

Municipal Annexation

This bill provides additional instruction in the area of municipal annexation within independent special districts.

Community Development Districts

This bill ensures statewide uniformity among CDDs, in explicitly providing that all CDDs are subject to the provisions of Chapter 190, F.S., as amended in 1984.

Four CDDs are directly affected, as these were established prior to 1984. These are the following: Port 95 Commerce Park CDD (Date of Creation: 9/9/47), Tampa Palms CDD (Date of Creation: 6/13/82), Port Labelle CDD (Date of Creation: 10/24/82), and Terra Ceia Bay CDD (Date of Creation: 12/28/82).

The Department of Community Affairs acknowledges this problem and assisted in drafting the language contained in these provisions.

Citrus Processing

This bill establishes a new method for regulating air emissions from citrus juice processing facilities. These facilities, as defined in the bill, include all units at a plant that processes citrus fruit to produce single-strength or frozen concentrated juice and other related products or byproducts. If covered by this bill, a facility is subject to the new provisions instead of current provisions relating to obtaining air pollution construction and operation permits required under current law.

ADC/FPC

This bill repeals the advisory committee of the Applications Demonstration Center for Resource Recovery from Solid Organic Materials and also repeals the Florida Packaging Council, in its entirety.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates new law.

(1) Solid Waste In Competition With Private Companies

Requires local government to comply with the same environmental, health, and safety provisions as private companies regarding collection services; precludes local government from enacting the same or a substantially similar license, permit or fee that does not apply to itself, when local government enjoys a material advantage; authorizes an action for injunctive relief, including litigation costs, against local government under certain circumstances and outlines the procedure relating to such action; exempts local government from liability when the local government is the exclusive provider.

(2) Solid Waste Outside Jurisdiction

Imposes predatory pricing limitations on a local government providing solid waste collection services out of jurisdiction; authorizes injunctive relief for predatory pricing, including damages and costs of litigation, and outlines procedure, including a four year statute of limitations; exempts local government from liability where the Governor issues an executive order based on a natural disaster or where an order is reasonably anticipated; defines jurisdiction to include all incorporated and unincorporated county areas, special districts, or solid waste authority.

(3) Displacement of Private Waste Companies

Defines displacement as local government intervention through provision of a collection service which precludes a private company from continuing to provide the same services; provides exclusions, such as when the public and private sector is competing for contracts, local government refusal to renew, intervention due to public safety or health concerns, intervention due to a private company's material breach, refusal of a private company to continue operations under contract terms during the three year notice period; an action by a majority of the property owners to petition for local government to assume service, the existence of a limited term contract, or a five year notice period where an annexation occurs with an exclusive franchise (pursuant to statute); outlines displacement procedure, including three years notice or a fifteen month payout, based on gross receipts.

(4) Definitions

Defines "in competition" and "in direct competition" as including when local government and a private company compete for substantially similar collection services for the same client; defines private company as other than government.

Section 2: Creates a new subsection in s. 171.062, F.S. regarding annexations; provides pay out requirements for annexations, which attach when a party has an existing contract at least six months prior to the initiation of the annexation to provide solid waste services in an unincorporated area; authorizes party to continue services for five years or the remainder of the contract, whichever is shorter; excludes certain single-family residence contracts.

Section 3: Creates a new paragraph in s. 165.061, F.S. regarding mergers; provides that pursuant to Florida Constitution Contract Clause, merger must honor existing contracts for at least five years or the remainder of the contract term, whichever is shorter.

Section 4: Amends s. 403.087, F.S., regarding permits; clarifies that certain hazardous waste closure permits are “post” closure permits, or a “clean closure plan approval.”

Section 5: Creates a new paragraph in s. 403.706, F.S. relating to recovered materials; restricts registration costs; precludes local government from requiring a certified recovered materials dealer from entering into a franchise agreement in order to enter into a contract with a commercial establishment within local government jurisdiction.

Section 6: Authorizes local government to grant a solid waste fee waiver to certain nonprofit organizations that donate goods to charity, and have a recycling or reuse rate of 50 percent or better.

Section 7: Amends s. 403.722, F.S. regarding permits, adds postclosure permits or clean closure plan approvals to list of required permits.

Section 8: Creates new section regarding municipal annexation within independent special districts.

- (1) Expresses that legislative intent is to provide orderly transition of special district service responsibilities; authorizes municipality to elect assumption of provision of service.
- (2) Outlines procedure for municipal election of services.
- (3) Encourages interlocal agreements for transfers, to include allocation of service responsibilities and avoidance of existing contract impairment.
- (4) Provides procedure when municipality and district are unable to enter into interlocal agreement, including a four year continuation of service, starting from a specified date.
- (5) Outlines procedure when the municipality opts not to assume services.
- (6) Provides procedure regarding geographical boundaries, ad valorem taxes or assessments, and user charges and impact fees when a municipality elects to assume services and there is no interlocal agreement,
- (7) Authorizes providing municipality to levy assessments on property located within an annexed area to offset costs.
- (8) Excludes districts created pursuant to community development district or water resources statutory law.

Section 9: Amends s. 190.004 (2), F.S., regarding community development districts; clarifies that all community development districts are subject to the provisions of community development district statutory law, as amended.

Section 10: Creates s. 403.08725, F.S., regarding citrus juice processing facilities

- (1) Provides that effective July 1, 2002, citrus juice processing facilities must comply with this section instead of obtaining air pollution construction and operation permits; defines "existing juice processing facility" as a facility with a fruit processing capacity of 2 million boxes per year or more, "facility" as all emissions units at a plant that produces juice and other products identified by Major Group Standard Industrial Classification, "department" as the Department of Environmental Protection, "new sources" as emissions units constructed on or after July 1, 2000, and "existing sources" as units constructed before July 1, 2000.
- (2) Requires facilities to comply with Environmental Protection Agency standards and Title V permits, until October 31, 2002; provides that after this date, this act's requirements apply; further specifies emission limits, requires certified annual reports of emission levels, specifies testing standards, provides for emissions allowances, requires annual payment of emissions fees.
- (3) Provides that facility official must certify emissions information to the Department by a specified date; requires submission of annual operating report; sets time frames for testing; provides affirmative defense when emission limits violated.
- (4) Provides procedure for facility to follow when emission limits are exceeded, through a showing of sufficient allowances; defines real allowances.
- (5) Imposes the same emissions fees on facilities that are paid under the Department's Title V program and establishes new fees starting on a specified date.
- (6) Requires compliance with this act when a facility physically modifies the operation of the facility.
- (7) Provides that the Department must adopt rules to assure compliance with the Clean Air Act.
- (8) Requires the Department to advise the Legislature regarding this act, by March 2004.
- (9) Requires the Department to submit this act to the EPA by February 1, 2001, as a revision of the existing Title V program; provides that if the EPA does not approve this act within two years, this act is inapplicable regarding construction and operation requirements and all facilities are immediately required to comply with existing requirements.

Section 11: Amends s. 120.54, F.S. regarding the Department; precludes the Department from adopting the lowest regulatory cost alternative rules if implementation conflicts with federal requirements.

Section 12: Directs the Department to research alternative methods of regulatory permitting.

Section 13: Amends s. 403.0872, F.S., regarding operation permits for air pollution; requires Department to issue separate Acid Rain permit for a major source of air pollution that is a federally designated affected source.

Section 14: Repeals the advisory committee of the Applications Demonstration Center for Resource Recovery from Solid Organic Materials and also provides for the repeal of the Florida Packaging Council.

Section 15: Provides for an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

Citrus Juice Processing Facilities

The DEP estimates that provisions of the bill would save an estimated \$250,000 in one-time permit processing costs to the agency and an additional \$100,000 every five years in permit renewal work.

Applications Demonstration Center Advisory Committee and Florida Packaging Council

This bill may decrease incidental costs that are currently incurred through the operation of the Committee and Council.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Recovered Materials Dealers

This bill prohibits a local government from requiring a certified recovery dealer to enter into a franchise agreement in order to enter into a contract with a commercial establishment within the local government's jurisdiction. Franchise agreements can involve franchise fees which are a source of local government revenue. The exact amount of franchise fees derived from such agreements, however, is unknown. Therefore, this bill may have a detrimental impact on revenue, depending upon current circumstances.

2. Expenditures

Solid Waste

In providing 3 years notice to a displaced company, local government is unable to take advantage of potentially lower bids for this fixed period. In the alternative, local government may "pay out" a company for 15 months worth of work. This cost is indeterminate at this time. There may also be an increased cost in litigation.

Municipal Annexation

For the first time, this bill provides express clarification of procedures relating specifically to municipal annexation within independent special districts. Therefore, this bill may decrease litigation costs by deterring the filing of suits from parties that would otherwise seek judicial interpretation of current law.

Community Development Districts

In clarifying that all community development districts are subject to Chapter 190, as amended, this bill may deter lawsuits, as parties will be less likely to seek judicial interpretation regarding the applicability of this statute.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Solid Waste

Providing for notice or “pay out” enables the displaced company to anticipate and plan for economic losses, or gains.

Recovered Materials Dealers

The direct economic impact on the private sector is difficult to quantify. The prohibition that a local government may not require a franchise agreement in order to enter into a contract with a commercial establishment within the local government’s jurisdiction could reduce the costs of doing business for recovered materials dealers.

Citrus Juice Processing Facilities

According to the DEP, the legislation would not add any additional costs to the industry. They would continue, as a whole, to be subject to \$250,000 in annual Title V fees. In addition, it is anticipated that the industry will expend in excess of \$10 million in updating and retrofitting to meet the air emissions standards.

The legislation eliminates the re-permitting costs and the initial cost of a PSD for the industry. Projected savings are \$25,000 per year for re-permitting and a one-time savings of up to \$500,000 for the PSD.

The creation of an emissions trading program allows the industry to use a market-based approach to reducing emissions and thus reduces costs for those operators performing below the emissions targets.

D. FISCAL COMMENTS:

Municipal Annexation

This bill is an effort to isolate, on a limited basis, independent special districts from the annexation activity going on in this state. Oftentimes, independent special districts receive no protection from annexing municipalities, even though the district continues to be liable for its debts. As an independent special district’s tax base continues to decrease due to annexations, the district may become economically inefficient and unstable. A situation may arise where an independent special district no longer has any property within its boundaries due to annexations. This bill provides a method to allow independent special districts to factor the decreased property base into its budget, while at the same time not restricting municipalities’ ability to annex.

IV. **CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

A. APPLICABILITY OF THE MANDATES PROVISION:

The CS/HB 1425, 3rd Eng., alleviates the constitutional concern which arose from the original bill relating to the mandate clause, in that: this bill, is exempt from the mandate clause under Article VII, Section 18 of the Florida Constitution for two reasons, the fiscal impact may be insignificant and it equally affects all local governments that are similarly situated. Also, the engrossed bill removes the provision relating to maintaining separate

accounts and provides that the payout of gross receipts is not a requirement and instead is an option for the local government.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Recovered Materials

Whether this bill reduces the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989, depends on whether s. 403.7046, F.S., currently prohibits local governments from requiring certified recovery materials dealers to enter into franchise agreements in order to do business in their jurisdiction.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Committee on Community Affairs:

This bill may raise a constitutional concern as relates to potential interference with contracts. There is no exemption from the provisions of the bill for existing contracts. Article I, Section 10 of the Florida Constitution provides, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla.1987), the Court issued an advisory opinion (non-binding) addressing the application of a newly-created statute to an existing contract. In this case, the legislation required prime contractors to pay a tax on certain services provided. Though contract rights are certainly subject to state taxation, the Court conceded, retroactive application unconstitutionally impairs contracts.

Existing contract rights are not untouchable, however. Legislative action which alters existing remedies, such as statute of limitations, will most likely be found constitutional as applies to existing contracts. Ruhl v. Perry, 390 So.2d 353 (Fla. 1980). In this case, the Court did note the existence of a one-year savings clause, however.

The Third District Court of Appeal employed a balancing test in analyzing the issue of contract impairment. Yellow Cab Co. Of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d DCA 1982). Here, the Court balanced the nature and extent of impairment with the level of importance of the state's interest. Incorporating the language in the Pompano decision, the Court offered a detailed inquiry:

- (a) Was the law enacted to deal with a broad generalized economic or social problem?
- (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by this state?
- (c) Does the law affect a temporary alteration of the contractual relationship...or does it work a severe, permanent, and immediate change...irrevocably and retroactively?
Pompano v. Cladrige of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1980).

Here, this legislation addresses a specific type of contract, that of waste management services. As this bill does not alter a general provision, such as a statute of limitations time period, Ruhl may not be relevant. Under the Yellow Cab Co. analysis, if challenged, the state must first show that this legislation addresses an economic or social issue. Arguably, this bill cures local government's unfair economic advantage over private industry. However, this criteria likely refers to the economic concerns of the local government, not the private provider. Under the second prong, it does not appear that any regulation currently exists which limits local government's ability to choose a provider for these services. Regarding the last factor, change to the contractual relationship, the three year notice and pay out provisions provide a unilateral benefit to the provider, to the permanent detriment of local government.

Committee on Environmental Protection:

The bill alleviates constitutional concerns relating to the contracts clause. In relation to incorporated areas, the bill provides that the plan for merger or incorporation must honor existing contracts. However, the plan for merger may include a provision that protects contracts for a period of five years, or the remainder of the contract term, whichever is shorter. This is agreed upon by the parties.

In relation to unincorporated areas, the party who has a contract to provide solid waste collection services is protected for a five year period, or the remainder of the contract, whichever is shorter. The statute is silent on services beyond five years. Therefore, this provision would probably not raise a contractual concern.

Additional Comments by Committee on Community Affairs:

CS/3RD ENG/HB 1425, continues to raise similar constitutional concerns as stated above.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Floor Amendments

Amendment Bar Code #271209: On April 25, 2000, Representative Gay offered this amendment, which addresses municipal annexation. This amendment provides an assumption that an affected independent special district is to provide services when annexation occurs, grants a municipality the authority to decide on continued provision of services, encourages interlocal agreements, and authorizes ad valorem levies. This amendment was adopted on the floor on second reading of the bill.

Amendment Bar Code #300553: On April 25, 2000, Representative Garcia offered this amendment, which is a clarifying amendment. The amendment was adopted on the floor on second reading of the bill.

Amendment Bar Code #933877: On April 25, 2000, Representative Garcia offered this amendment, which provides for the repeal of the advisory committee of the Applications Demonstration Center for Resource Recovery from Solid Organic Materials and also provides for the repeal of the Florida Packaging Council. The amendment was adopted on the floor on second reading of the bill.

Amendment Bar Code #135985: On April 25, 2000, Representative Gay offered this amendment, which changes the title of the bill to "Governmental Operations." The amendment was adopted on the floor on second reading of the bill.

Amendment Bar Code #843057: On April 25, 2000, Representative Garcia offered this amendment, which changes the bill's effective date from October 1, 2000 to July 1, 2000. The amendment was adopted on the floor on second reading of the bill.

Amendment Bar Code #313353: On May 1, 2000, Representative Eggelton offered this amendment, which limits the local government registration fee for recovered materials dealers and clarifies the application of certain permit fees. This amendment also authorizes counties and cities to grant certain solid waste fee waivers and details the hazardous waste permitting process. The amendment was adopted on the floor on third reading of the bill.

Amendment Bar Code #484835: On May 1, 2000, Representative Gay offered this amendment, which provides for the continued existence of Community Development Districts (CDD) formed before a certain date. This amendment clarifies that this act does not alter any outstanding indebtedness of a CDD. The amendment was adopted on the floor on third reading of the bill.

Amendment Bar Code #580233: On May 1, 2000, Representative Alexander offered this amendment, which addresses citrus juice processing facilities. This amendment mandates compliance with the emission limits standards promulgated by the Environmental Protection Agency or according to the facility's Title V permit. Upon a certain date, when this act's requirements apply, specifies emission limits, requires certified annual reports of emissions levels, specifies testing standards, provides for emissions allowances, requires annual payment of emissions fees, requires the Department of Environmental Protection to advise the Legislature regarding this act, by March 2004, and directs the Department to research alternative methods of regulatory permitting. This section takes effect July 1, 2002. The amendment was adopted on the floor on third reading of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Environmental Protection

The Committee on Environmental Protection adopted a substitute strike everything amendment and an amendment to the substitute, on April 12, 2000. The Committee then approved a committee substitute which provides the following changes:

- clarifies that certain hazardous waste closure permits are "post" closure permits or "clean closure plan approvals",
- provides that local governments are authorized to grant a solid waste fee waiver to certain nonprofit organizations that donate goods to charity and have a recycling or reuse rate of 50 percent or better, and
- makes additional technical clarifications.

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DATE: May 12, 2000

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Cindy M. Brown, J.D.

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Christine Hoke, J.D.

Staff Director:

Wayne Kiger

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Cindy M. Brown, J.D.

Staff Director:

Joan Highsmith-Smith