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DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 1793
RELATING TO: Solid Waste
SPONSOR(S): Representative Needelman
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 7 NAYS 0
 - (2) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION (RIC)
 - (3) FISCAL POLICY & RESOURCES (FRC)
 - (4) COUNCIL FOR SMARTER GOVERNMENT
 - (5)
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I. SUMMARY:

This bill clarifies provisions relating to protecting existing contracts, following an incorporation.

This bill requires facilities that receive and process construction and demolition debris to record specific information, and requires the Department of Environmental Protection to adopt rules regarding such record keeping, by October 1, 2001.

This bill excludes a recovered materials processing facility from having to comply with these requirements.

This bill grants a private company the right to enforce a solid waste collection franchise agreement, and provides for payment of certain fees and costs related to litigation.

On April 12, 2001, the Committee on Local Government & Veterans Affairs considered HB1793, adopted one amendment, and passed the bill. The amendment, which is traveling with the bill, is explained in this bill analysis. (See section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:").

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 directly creates the authority for the Department to make rules, regarding facility record keeping, and obligates providers to maintain certain records.

B. PRESENT SITUATION:

Construction and Demolition Debris

Construction and demolition (C & D) waste results from the construction, renovation and demolition of buildings, roadways, bridges, and other manmade structures. The types of materials found in C & D waste include not only the elements used as primary building materials (wood, concrete, metal, drywall, asphalt), but also various paints, sealants, adhesives and fasteners used in construction. C & D waste may include packaging material and land clearing debris.

Of the 260 million tons of non-industrial waste produced nationally each year, 136 million tons are a result of the C & D industry. This amounts to about 33 percent of the waste produced nationally. In Florida, approximately 23 percent of the waste produced is C & D debris.

According to a 1998 Federal Environmental Protection Agency report, 92 percent of C & D waste is from renovation and demolition. The remaining 8 percent is from new construction.

In 1992, it was estimated that one seventh of all C & D landfills in the United States are located in Florida. It is theorized that this is due to relatively low tipping fees and high rates of growth and development. This ranking is expected to increase, along with continued growth.

It is generally recognized that C & D wastes present a lower risk to human health and the environment relative to municipal solid wastes and that they do not merit the same level of control. The land disposal of C & D does present a threat of groundwater contamination because of trace amounts of hazardous constituents, however.

Florida has 178 active C & D disposal facilities. Of these, 118 are permitted as active C & D disposal facilities and 63 are permitted as land clearing facilities. Prior to 1997, Florida experienced a steady growth in the number of C & D facilities. Since that time, there has been a significant drop in the total number of permitted C & D disposal facilities, partially due to new C & D regulations.

Landfills, or solid waste disposal units, are classified according to the amount and types of waste received. They are categorized according to three different classes, which are defined as follows:

- Class I – those landfills that receive an average of 20 tons or more of solid waste per day;
- Class II – those landfills that receive an average of less than 20 tons of solid waste per day;
- Class III – those landfills which receive only yard trash, C & D debris, waste tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department which are not expected to produce leachate, which poses a threat to public health or the environment.

Class I and Class II landfills receive general, non-hazardous household, commercial, industrial, and agricultural wastes.

Today, Florida has 101 active Class I, Class II, and Class III landfills. As of 1985, all of the active Class I and II municipal solid waste landfills operate in lined cells. Of the 101 Class I and II municipal solid waste landfills in Florida, most of the facilities are county owned and operated. Four facilities are privately owned by Waste Management, Inc., and one is owned by USA Waste. Waste Management currently operates the four facilities they own, and the three municipally owned Class I landfills.

In the past, Florida regulation required a general permit for C & D waste disposal facilities that involved few requirements. Florida regulations do have a provision for Class III landfills, which, again, are landfills that accept waste which do not leach into the groundwater. Florida's more recent C & D landfill regulations require C & D facility operators to obtain a specific permit, provide groundwater monitoring, financial assurance, and to maintain a program of operator training.

Statutory Authority

Chapter 403, F.S., addresses environmental control. Part IV of Chapter 403, F.S., provides for resource recovery and management.

Section 403.703, F.S., defines the following terms:

- Department – the Department of Environmental Protection;
- Recyclable Material – those materials capable of being recycled and would otherwise be processed or disposed of as solid waste;
- Recovered Materials – metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted or source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, irrespective of whether the materials require subsequent processing or separation from each other, does not include materials intended for disposal, clarifies that these materials are not solid waste;
- Construction and Demolition Debris – discarded materials, generally considered to not be water-soluble, and non-hazardous, including steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, also including rocks, soils, tree debris, and other vegetation that results from land clearing or land development, also including clean cardboard, paper, plastic, wood and metal scraps from construction, unpainted, non-treated wood scraps from facilities manufacturing materials, and unpainted, non-treated wood pallets, clarifies that if C & D debris is mixed with solid waste, it will not be considered to be C & D debris;
- Materials Recovery Facility – a solid waste facility that extracts from the solid waste of recyclable materials, materials appropriate for use as a fuel or soil amendment;
- Recovered Materials Processing Facility – a facility operating exclusively in the storage, processing, resale, or reuse of recovered materials.

Section 403.7061 (4) explains a waste-to-energy facility as follows:

For the purposes of this section, the term "waste-to-energy facility" means a facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term also does not include facilities that burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

Section 403.706, F.S., imposes specific requirements on local governments, regarding solid waste, including, in part:

Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.
(Section 403.706 (2) (a), F.S.)

Section 403.7063, F.S., relating to the use of private services in solid waste management, encourages contracting between local governments and private industry, when it proves cost-effective.

Chapter 165, F.S., addresses local government formation.

Section 165.061, F.S, addresses standards for incorporation, merger, and dissolution. This section provides language which protects certain solid waste contracts, for a limited time period.

C. EFFECT OF PROPOSED CHANGES:

This bill corrects an error in solid waste language, contained in House Bill 1425, that passed in the 2000 Legislative Session. This language clarifies that the provision that protects existing contracts, up to a certain time, additionally applies to incorporations, and not just mergers.

This bill requires the Department of Environmental Protection to draft a rule relating to facility record keeping.

This bill requires certain facilities to maintain records on specific materials and their weights, including the final destination of disposed materials. It is unclear whether this bill also imposes a reporting, rather than just a recording, requirement.

This bill authorizes private companies to enforce franchise agreements, through injunctive relief and damages, and includes language providing for such costs to be paid by the prevailing party.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds paragraph (f) to subsection (1) of s. 165.061, F.S., and amends paragraph (d) of subsection (2) of s. 165.061, F.S., as follows: a plan for incorporation must honor existing solid waste contracts for the area included in the incorporation, but only for five years or until the contract expires, whichever is shorter, requires a copy of the language addressing contract duration (except for an evergreen provision), to be furnished to the municipality, upon written request, within a reasonable time; deletes incorrect language.

Section 2. Amends subsection (18) of s. 403.706, F.S., to require the following:

- Any materials recovery facility and any facility sorting, recovering, recycling, or processing C & D debris, is required to record, monthly, the total weight of materials received, recovered, recycled, reused, and not recovered, recycled, or reused. If the material is not recovered, recycled, or reused, these facilities also must keep detailed records of the name and location of the solid waste disposal facility that finally disposes the material. Additionally, those materials not recovered, recycled or reused that are contaminated or mixed with Class I waste or Class III waste, must be disposed of in a Class I or Class III landfill, accordingly.
- The Department is required to adopt by rule, by October 1, 2001, categories of materials to be included in the recorded data, to include, minimally, recovered materials, and C & D debris, as defined in statute.
- This section exempts recovered materials processing facilities from the recording requirements.

Section 3. Amends Section 403.7063, F.S., to provide that a private company can enforce a solid waste collection franchise agreement or ordinance, through litigation for injunctive relief or damages against a third party, requires the court to award such costs of litigation to the prevailing party, including reasonable attorney's fees and expert witness fees, also requires a private company, intending to litigate, to give notice to the government that granted the franchise at least 30 days before filing the action.

Section 4. Provides that this act takes effect July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has no fiscal impact on state revenues.

2. Expenditures:

This bill has no fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has no fiscal impact on local government revenues.

2. Expenditures:

This bill may adversely impact those local governments that provide solid waste services, as relates to the cost of maintaining records. Local governments involved in franchise agreements may be obligated to pay certain costs of litigation, according to the bill as introduced.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may adversely impact private industry providers of solid waste services, as relates to the cost of maintaining records. Also, providers that are parties to franchise agreements may have to pay certain litigation costs.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does necessitate additional rulemaking authority, as it requires the Department of Environmental Protection to adopt rules governing record keeping of certain categories of materials.

C. OTHER COMMENTS:

A representative with the Florida League of Cities indicates that the League opposes the bill as introduced. The League has negotiated with private providers, to suggest compromise language, through an amendment.

An analysis from the Department of Environmental Protection indicates that the Department is not taking a position on this bill. However, the Department is concerned with the requirement that the Department adopt specific rules, as follows:

The requirement to have the Department adopt rules implementing changes to Section 403.706, F.S., by October 1, 2001, is unworkable at best. Such a tight deadline does not allow time for any public workshops, which is contrary to how rulemaking is done. A suggested alternative would be to require the Department to "initiate" rulemaking by October 1, 2001. In the course of that rulemaking, we can sort out the record keeping requirements listed in this bill, many of which are already required by rule.

There is also a question concerning whether the way this bill is drafted would result in precluding the Department's authority to require reporting of construction and demolition debris disposal facilities.

This concern regarding the rule adoption date is addressed in the strike-everything amendment.

A spokesperson with the Florida Association of Counties has been contacted, and has not responded, to date.

This bill is supported by the National Solid Waste Management Association.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2001, the Committee on Local Government & Veterans Affairs adopted a strike-everything amendment, which represents compromise language, agreed to by the Florida League of Cities, the Florida Association of Counties, and the private solid waste industry. This amendment relocates certain language, clarifies that weight scales must conform to statutory law, and excludes certain materials from the Department rule governing categories of materials. This amendment also exempts local governments from having to pay the costs of litigation required under this section. This amendment changes the date that the Department must adopt rules, to satisfy the Department's request for more time.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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