

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2142

SPONSOR: Senator Dyer

SUBJECT: Solid Waste Collection

DATE: April 12, 2001 REVISED: 04/17/01 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------------|
| 1. | <u>Bowman</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/1 amendment</u> |
| 2. | <u>Johnson</u> | <u>Johnson</u> | <u>JU</u> | <u>Fav/1 amendment</u> |
| 3. | _____ | _____ | <u>NR</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill clarifies provisions regarding the treatment of existing solid waste contracts in areas affected by the creation by the merger or incorporation of municipalities, requires facilities where construction and demolition debris is processed to keep certain records of the materials received and processed, and grants any private company that is a party to a solid-waste-collection franchise agreement to enforce that agreement against a third party by filing an action for injunctive relief.

This bill amends sections 165.061, 403.706, and 403.7063 of the Florida Statutes.

II. Present Situation:

Chapter 2000-304, Laws of Florida, amended s. 165.061(2), F.S., regarding the incorporation of a new municipality through the merger of existing municipalities and associated unincorporated areas to provide in paragraph (d) that:

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

Given the placement of this language as an amendment to s. 165.061(2), F.S., regarding merger, it is unclear whether the requirements of paragraph (d) apply to municipalities created through incorporation as set forth in s. 165.061(1), F.S., the incorporation of a new municipality, other than through the merger of existing municipalities.

Section 403.706, F.S., sets forth local government solid waste responsibilities, including the responsibility of counties to provide for the operation of solid waste management facilities to meet the needs of all incorporated and unincorporated areas of the county. In addition, each county must undertake a recyclable materials recycling program. As part of this program, s. 403.706(2)(a), F.S., requires that “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(18), F.S., requires each operator of a solid waste facility owned or operated on behalf of a county or municipality to weigh all solid waste when it is received.

Construction and Demolition Debris is defined pursuant to s. 403.703(17), F.S., to include:

- ...discarded materials generally considered to be not water soluble and nonhazardous in nature, including but not limited to, steel, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris. The term also includes:
- (a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project.
 - (b) ...unpainted, nontreated wood scraps from facilities manufacturing materials used for construction of structures and their components and unpainted, nontreated wood pallets...
 - (c) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

The courts have found that a franchise is a property right with respect to its enjoyment and protection.¹ The parties have the right to use an injunction to prevent the unlawful infringement of a franchise.² Further, the holder of the franchise can enforce the provisions of the franchise in court action.³

¹ West Coast Disposal Service, Inc. v. Smith, (Fla. App. 2 Dist. 1962).

² Id at 354.

³ See West Coast Disposal Service and Central Waterworks, Inc. v. Town of Century, 754 so. 2d 814 (Fla. Appl 1 Dist. 2000)

III. Effect of Proposed Changes:

Section 1 of the bill requires that a plan for incorporation for a municipality to be created through incorporation must honor existing solid-waste contracts in the geographic area subject to the incorporation. The plan for incorporation may provide for existing contracts for solid-waste-collection services to be honored for 5 years or the remainder of the contract term, whichever is less.

Section 2 of the bill requires that solid waste management facilities owned or operated on behalf of a county at which construction and demolition debris is sorted, recovered, recycled or processed for reuse must keep monthly records that disclose:

- The total weight of materials received for each category of material.
- The category and weight of each material reused, recovered, or recycled.
- The category and weight of each material not reused, recovered or recycled; and
- The name and location of any facility at which material not reused, recovered, or recycled is disposed.

By October 1, 2001, the Department of Environmental Protection is required to adopt rules specifying the categories of materials for which records must be kept, including materials defined as recoverable materials pursuant to s. 403.703(7), F.S., and those defined as construction and demolition debris pursuant to s. 403.703(17), F.S.

The bill also requires that material received by a waste processing facility that is not reused, recovered, or recycled must be disposed of at a solid waste disposal facility permitted by DEP and that such waste that is commingled with Class I waste must be disposed of in a Class I landfill.

These requirements do not apply to construction or demolition debris disposal facilities that are permitted by DEP and that accept such debris for disposal only, or to recovered materials processing facilities.

Section 3 of the bill creates a cause of action for a private company that is a party to a solid-waste-collection franchise agreement to enforce that agreement or the related ordinance against any third party by filing an action for injunctive relief or damages against a third party whose actions violate the terms of the agreement. The court must award prevailing party costs and attorney's fee and expert witness fees. In order to file such an action, the plaintiff must give 30 days notice to the government that granted the franchise.

Section 4 provides an effective date of July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other

While section 1 of the bill simply moves provisions related to honoring existing solid waste contracts when a new municipality is incorporated the provisions still raise a potential issue of impairment of contracts where the municipality only has to honor an existing contract for 5-years after incorporation if the existing contract has a term in excess of 5-years.

Additionally, subsection 2 of the bill will only impact contract entered on or after the effective date of the bill unless an amendment to an existing contract is negotiated to provide for the record keeping required in the bill.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill protects private waste franchise holders in several ways. First, in the event of incorporation, the incorporation plan must recognize existing franchise agreements for a period of 5 years or the remainder of the term of the franchise, whichever is less. Second, a private company holding a franchise could sue a competitor that attempts to provide service in violation of the terms of the franchise.

C. Government Sector Impact:

The bill imposes new reporting requirements for county owned or operated waste management facilities that process construction and demolition debris. Compliance with these requirements will increase the costs of operation of such facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary

The strike everything amendment requires that a plan for incorporation of a municipality must honor existing solid waste contracts in the area subject to incorporation. However, the plan may provide that the existing contracts will be honored for only 5 years or the remainder of the contract whichever is less. The length of the remaining contract will be determined excluding any “evergreen” provisions or any automatic renewals. The plan may require that a copy of the pertinent portion of an existing solid waste contract or other written evidence of the contract duration be provided to the municipality within a reasonable time following a request for the documents.

The amendment provides that a solid waste management facility must have a valid permit or registration from the department unless the entity is specifically exempted by department rule.

For any materials recovery facility required to have a permit the amendment clarifies the type of information the facility is required to report and provides rulemaking authority to the department to define the categories of material for which records must be kept. Materials that are not recovered, recycled or reused that are contaminated or commingled with Class I waste as well as Class III waste must be disposed of at a Class I or Class III landfill.

The amendment also authorizes a private company that is a party to a solid waste collection franchise agreement with a local government to sue a third party to enforce a franchise agreement or the local ordinance. If the company is going to file suit it must give notice to the local government 30 days prior to filing suit. The court is directed to award to the prevailing party in any suit under this section the costs of litigation, reasonable attorney’s fees, and expert witness fees. However, a local governmental entity will not be liable for these expenses or be able to recover from a third party. (WITH TITLE AMENDMENT)