

# 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: CS/SB 2142

SPONSOR: Natural Resources Committee and Senator Dyer

SUBJECT: Solid Waste Collection

DATE: April 23, 2001                      REVISED: \_\_\_\_\_

	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>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill provides that a plan for incorporation of a new municipality must honor existing solid waste contracts in the affected geographic area subject to incorporation. Provides that the plan for incorporation may provide that existing contracts for solid waste collection services be honored for a specified period of time. Provides that certain materials recovery facilities must use scales and maintain certain records.

This bill amends ss. 165.061, 403.7063, and 403.707, F.S.

**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.<sup>1</sup> The parties have the right to use an injunction to prevent the unlawful infringement of a franchise.<sup>2</sup> Further, the holder of the franchise can enforce the provisions of the franchise in court action.<sup>3</sup>

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

<sup>2</sup> Id at 354.

<sup>3</sup> 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.** Section 165.061, F.S., is amended to provide 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.

**Section 2.** Section 403.707, F.S., is amended to provide that a solid waste management facility must have a valid permit or registration from the Department of Environmental Protection (DEP) unless the entity is specifically exempted by law or department rule.

Any materials recovery facility for which a permit is required, and any other facility designated by department rule at which a significant amount of construction and demolition debris is sorted, recovered, recycled, or processed for use or reuse shall use scales that conform with the requirements of ch. 531, F.S., and any rules adopted under that chapter. All such facilities shall keep monthly records of the following information:

- The total weight of materials received at the facility;
- The total weight of materials recovered, recycled, or reused, recorded by category; and
- The total weight of materials not recovered, recycled, or reused.

The DEP shall implement the requirements of this section by rule, and such requirements shall become effective only after the implementing rules become effective. The department shall establish a reasonable schedule for existing facilities to comply with this provision to avoid undue hardship to such facilities. The rules must designate the types of facilities and the categories of materials for which records must be kept and must specify requirements relating to reporting such information to the department.

The designated facilities also shall keep detailed records, including the name and location of the solid waste disposal facility at which material not recovered, recycled, or reused is ultimately disposed of. The implementing rules must specify the requirements relating to reporting this information to the department.

These provisions relating to record keeping do not apply to a recovered materials processing facility.

**Section 3.** This act takes effect July 1, 2001.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**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:**

None.