

Select Year: 2010 

The 2010 Florida Statutes

[Title XXIX](#)
PUBLIC HEALTH

[Chapter 403](#)
ENVIRONMENTAL CONTROL

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403.706 Local government solid waste responsibilities.—

(1) The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county. Unless otherwise approved by an interlocal agreement or special act, municipalities may not operate solid waste disposal facilities unless a municipality demonstrates by a preponderance of the evidence that the use of a county designated facility, when compared to alternatives proposed by the municipality, places a significantly higher and disproportionate financial burden on the citizens of the municipality when compared to the financial burden placed on persons residing within the county but outside of the municipality. However, a municipality may construct and operate a resource recovery facility and related onsite solid waste disposal facilities without an interlocal agreement with the county if the municipality can demonstrate by a preponderance of the evidence that the operation of such facility will not significantly impair financial commitments made by the county with respect to solid waste management services and facilities or result in significantly increased solid waste management costs to the remaining persons residing within the county but not served by the municipality's facility. This section shall not prevent a municipality from continuing to operate or use an existing disposal facility permitted on or prior to October 1, 1988. Any municipality which establishes a solid waste disposal facility under this subsection and subsequently abandons such facility shall be responsible for the payment of any capital expansion necessary to accommodate the municipality's solid waste for the remaining projected useful life of the county disposal facility. Pursuant to this section and notwithstanding any other provision of this chapter, counties shall have the power and authority to adopt ordinances governing the disposal of solid waste generated outside of the county at the county's solid waste disposal facility. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in s. [403.7049\(5\)](#). solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided countywide.

(2)

(a) Each county shall implement a recyclable materials recycling program that shall have a goal of recycling recyclable solid waste by 40 percent by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.

(b) In order to assist counties in attaining the goals set forth in paragraph (a), the Legislature finds that the recycling of construction and demolition debris fulfills an important state interest. Therefore, each county must implement a program for recycling construction and demolition debris.

(c) In accordance with applicable local government ordinances, newly developed property receiving a certificate of occupancy, or its equivalent, on or after July 1, 2012, that is used for multifamily residential or commercial purposes, must provide adequate space and an adequate receptacle for recycling by tenants and owners of the property. This provision is limited to counties and municipalities that have an established residential, including multifamily, or commercial recycling program that provides recycling receptacles to residences and businesses and regular pickup services for those receptacles.

(d) If, by January 1 of 2013, 2015, 2017, 2019, or 2021, the county, as determined by the department in accordance with applicable rules, has not reached the recycling goals as set forth in paragraph (a), the department may direct the county to develop a plan to expand recycling programs to existing commercial and multifamily dwellings, including, but not limited to, apartment complexes.

(e) If the state's recycling rate for the 2013 calendar year is below 40 percent; below 50 percent by January 1, 2015; below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, the department shall provide a report to the President of the Senate and the Speaker of the House of Representatives. The report shall identify those additional programs or statutory changes needed to achieve the goals set forth in paragraph (a). The report shall be provided no later than 30 days prior to the beginning of the regular session of the Legislature. The department is not required to provide a report to the Legislature if the state reaches its recycling goals as described in this paragraph.

(f) Such programs shall be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash. Local governments which operate permitted waste-to-energy facilities may retrieve ferrous and nonferrous metal as a byproduct of combustion.

(g) Local governments are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

(h) The department shall adopt rules establishing the method and criteria to be used by a county in calculating the recycling rates pursuant to this subsection.

(i) Each county is encouraged to consider plans for composting or mulching organic materials that would otherwise be disposed of in a landfill. The composting or mulching plans are encouraged to address partnership with the private sector.

(3) Each county shall ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements pursuant to s. 163.01 or other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(4)

(a) In order to promote the production of renewable energy from solid waste, each megawatt-hour produced by a renewable energy facility using solid waste as a fuel shall count as 1 ton of recycled

material and shall be applied toward meeting the recycling goals set forth in this section. If a county creating renewable energy from solid waste implements and maintains a program to recycle at least 50 percent of municipal solid waste by a means other than creating renewable energy, that county shall count 2 tons of recycled material for each megawatt-hour produced. If waste originates from a county other than the county in which the renewable energy facility resides, the originating county shall receive such recycling credit. Any county that has a debt service payment related to its waste-to-energy facility shall receive 1 ton of recycled materials credit for each ton of solid waste processed at the facility. Any byproduct resulting from the creation of renewable energy does not count as waste.

(b) A county may receive credit for one-half of the recycling goal set forth in subsection (2) from the use of yard trash, or other clean wood waste or paper waste, in innovative programs including, but not limited to, programs that produce alternative clean-burning fuels such as ethanol or that provide for the conversion of yard trash or other clean wood waste or paper waste to clean-burning fuel for the production of energy for use at facilities other than a waste-to-energy facility as defined in s. 403.7061. The provisions of this paragraph apply only if a county can demonstrate that:

1. The county has implemented a yard trash mulching or composting program, and
2. As part of the program, compost and mulch made from yard trash is available to the general public and in use at county-owned or maintained and municipally owned or maintained facilities in the county and state agencies operating in the county as required by this section.

(c) A county with a population of 100,000 or less may provide its residents with the opportunity to recycle in lieu of achieving the goal set forth in this section. For the purposes of this section, the "opportunity to recycle" means that the county:

1.
 - a. Provides a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or
 - b. Provides a system of places within the county for collection of source-separated recyclable materials.
2. Provides a public education and promotion program that is conducted to inform its residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling, and composting materials.

(5) As used in this section, "municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.

(6) The department may reduce or modify the municipal solid waste recycling goal that a county is required to achieve pursuant to subsection (2) if the county demonstrates to the department that:

- (a) The achievement of the goal set forth in subsection (2) would have an adverse effect on the financial obligations of a county that are directly related to a waste-to-energy facility owned or operated by or on behalf of the county; and
- (b) The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility. The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a county's waste-to-energy facility. Nothing in this subsection shall exempt a

county from developing and implementing a recycling program pursuant to this act.

(7) In order to assess the progress in meeting the goal set forth in subsection (2), each county shall, by April 1 each year, provide information to the department regarding its annual solid waste management program and recycling activities.

(a) The information submitted to the department by the county must, at a minimum, include:

1. The amount of municipal solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;
2. The amount and type of materials from the municipal solid waste stream that were recycled; and
3. The percentage of the population participating in various types of recycling activities instituted.

(b) Beginning with the data for the 2012 calendar year, the department shall by July 1 each year post on its website the recycling rates of each county for the prior calendar year.

(8) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste on October 1, 1988, to undertake to fulfill some or all of the county's or municipality's responsibilities under this section.

(9) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.

(10) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this act.

(11) A county and the municipalities within the county's boundaries may jointly develop a recycling program, provided that the county and each such municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goal for municipal solid waste reduction is being achieved.

(12) It is the policy of the state that a county and its municipalities may jointly determine, through an interlocal agreement pursuant to s. 163.01 or by requesting the passage of special legislation, which local governmental agency shall administer a solid waste management or recycling program.

(13) The county shall provide written notice to all municipalities within the county when recycling program development begins and shall provide periodic written progress reports to the municipalities concerning the preparation of the recycling program.

(14) Nothing in this act shall be construed to prevent the governing body of any county or municipality from providing by ordinance or regulation for solid waste management requirements which

are stricter or more extensive than those imposed by the state solid waste management program and rules, regulations, and orders issued thereunder.

(15) Nothing in this act or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management or regional resource recovery program until the governing body of such county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this act or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the department, unless the municipality is included within a solid waste management program created by interlocal agreement or special or local act. If bonds had been issued to finance a resource recovery or management program or a solid waste management program in reliance on state law granting to a county the responsibility for the resource recovery or management program or a solid waste management program, nothing herein shall permit any governmental agency to withdraw from said program if said agency's participation is necessary for the financial feasibility of the project, so long as said bonds are outstanding.

(16) Nothing in this chapter or in any rule adopted by any state agency hereunder shall require any person to subscribe to any private solid waste collection service.

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

(a) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.

(b) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing such services or operating such facilities.

(c) To waive sovereign immunity and immunity from suit in federal court by vote of the governing body of the county or municipality to the extent necessary to carry out the authority granted in paragraphs (a) and (b), notwithstanding the limitations prescribed in s. 768.28.

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

(18) Each operator of a solid waste management facility owned or operated by or on behalf of a county or municipality shall weigh all solid waste when it is received. The scale used to measure the solid waste shall conform to the requirements of chapter 531 and any rules promulgated thereunder.

(19) In the event the power to manage solid waste has been granted to a special district or other entity by special act or interlocal agreement, any duty or responsibility or penalty imposed under this part on a county or municipality shall apply to such special district or other entity to the extent of the grant of such duty or responsibility or imposition of such penalty. To the same extent, such special district or other entity shall be eligible for grants or other benefits provided pursuant to this part.

(20) In addition to any other penalties provided by law, a local government that does not comply with the requirements of subsections (2) and (4) shall not be eligible for grants from the solid waste Management Trust Fund, and the department may notify the Chief Financial Officer to withhold payment of all or a portion of funds payable to the local government by the department from the General Revenue Fund or by the department from any other state fund, to the extent not pledged to

retire bonded indebtedness, unless the local government demonstrates that good faith efforts to meet the requirements of subsections (2) and (4) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

(21) Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government, which recyclable materials are specifically intended for purposes of recycling and for which a market exists, and to provide for their collection. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.

(22) Nothing in this act shall limit the authority of the state or any local government to regulate the collection, transportation, processing, or handling of recovered materials or solid waste in order to protect the public health, safety, and welfare.

History.—s. 1, ch. 74-342; s. 142, ch. 77-104; s. 1, ch. 77-466; s. 3, ch. 78-329; s. 1, ch. 79-118; s. 7, ch. 80-302; s. 2, ch. 87-107; s. 11, ch. 88-130; s. 15, ch. 93-207; s. 15, ch. 98-258; s. 32, ch. 2000-153; s. 20, ch. 2000-211; s. 6, ch. 2000-304; s. 4, ch. 2002-291; s. 42, ch. 2003-1; s. 429, ch. 2003-261; s. 97, ch. 2008-227; s. 112, ch. 2010-102; s. 7, ch. 2010-143.



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West's Florida Statutes Annotated Currentness

Title XXIX. Public Health (Chapters 381-408)

Chapter 403. Environmental Control (Refs & Annos)

Part IV. Resource Recovery and Management (Refs & Annos)

→ **403.706. Local government solid waste responsibilities**

(1) The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county. Unless otherwise approved by an interlocal agreement or special act, municipalities may not operate solid waste disposal facilities unless a municipality demonstrates by a preponderance of the evidence that the use of a county designated facility, when compared to alternatives proposed by the municipality, places a significantly higher and disproportionate financial burden on the citizens of the municipality when compared to the financial burden placed on persons residing within the county but outside of the municipality. However, a municipality may construct and operate a resource recovery facility and related onsite solid waste disposal facilities without an interlocal agreement with the county if the municipality can demonstrate by a preponderance of the evidence that the operation of such facility will not significantly impair financial commitments made by the county with respect to solid waste management services and facilities or result in significantly increased solid waste management costs to the remaining persons residing within the county but not served by the municipality's facility. This section shall not prevent a municipality from continuing to operate or use an existing disposal facility permitted on or prior to October 1, 1988. Any municipality which establishes a solid waste disposal facility under this subsection and subsequently abandons such facility shall be responsible for the payment of any capital expansion necessary to accommodate the municipality's solid waste for the remaining projected useful life of the county disposal facility. Pursuant to this section and notwithstanding any other provision of this chapter, counties shall have the power and authority to adopt ordinances governing the disposal of solid waste generated outside of the county at the county's solid waste disposal facility. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in s. 403.7049(5). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided countywide.

(2)(a) Each county shall implement a recyclable materials recycling program that shall have a goal of recycling recyclable solid waste by 40 percent by December 31, 2012, 50 percent by December 31, 2014, 60 percent by December 31, 2016, 70 percent by December 31, 2018, and 75 percent by December 31, 2020. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.

(b) In order to assist counties in attaining the goals set forth in paragraph (a), the Legislature finds that the recycling of construction and demolition debris fulfills an important state interest. Therefore, each county must implement a program for recycling construction and demolition debris.

(c) In accordance with applicable local government ordinances, newly developed property receiving a certificate of occupancy, or its equivalent, on or after July 1, 2012, that is used for multifamily residential or commercial purposes, must provide adequate space and an adequate receptacle for recycling by tenants and owners of the property.

This provision is limited to counties and municipalities that have an established residential, including multifamily, or commercial recycling program that provides recycling receptacles to residences and businesses and regular pick-up services for those receptacles.

(d) If, by January 1 of 2013, 2015, 2017, 2019, or 2021, the county, as determined by the department in accordance with applicable rules, has not reached the recycling goals as set forth in paragraph (a), the department may direct the county to develop a plan to expand recycling programs to existing commercial and multifamily dwellings, including, but not limited to, apartment complexes.

(e) If the state's recycling rate for the 2013 calendar year is below 40 percent, below 50 percent by January 1, 2015, below 60 percent by January 1, 2017, below 70 percent by January 1, 2019, or below 75 percent by January 1, 2021, the department shall provide a report to the President of the Senate and the Speaker of the House of Representatives. The report shall identify those additional programs or statutory changes needed to achieve the goals set forth in paragraph (a). The report shall be provided no later than 30 days prior to the beginning of the Regular Session of the Legislature. The department is not required to provide a report to the Legislature if the state reaches its recycling goals as described in this paragraph.

(f) Such programs shall be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash. Local governments which operate permitted waste-to-energy facilities may retrieve ferrous and nonferrous metal as a by-product of combustion.

(g) Local governments are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

(h) The department shall adopt rules establishing the method and criteria to be used by a county in calculating the recycling rates pursuant to this subsection.

(i) Each county is encouraged to consider plans for composting or mulching organic materials that would otherwise be disposed of in a landfill. The composting or mulching plans are encouraged to address partnership with the private sector.

(3) Each county shall ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements pursuant to s. 163.01 or other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(4)(a) In order to promote the production of renewable energy from solid waste, each megawatt-hour produced by a renewable energy facility using solid waste as a fuel shall count as 1 ton of recycled material and shall be applied toward meeting the recycling goals set forth in this section. If a county creating renewable energy from solid waste implements and maintains a program to recycle at least 50 percent of municipal solid waste by a means other than creating renewable energy, that county shall count 2 tons of recycled material for each megawatt-hour produced. If waste originates from a county other than the county in which the renewable energy facility resides, the originating county shall receive such recycling credit. Any county that has a debt service payment related to its waste-to-energy facility shall receive 1 ton of recycled materials credit for each ton of solid waste processed at the facility. Any by-product resulting from the creation of renewable energy does not count as waste. .

(b) A county may receive credit for one-half of the recycling goal set forth in subsection (2) from the use of yard trash, or other clean wood waste or paper waste, in innovative programs including, but not limited to, programs that produce alternative clean-burning fuels such as ethanol or that provide for the conversion of yard trash or other clean wood waste or paper waste to clean-burning fuel for the production of energy for use at facilities other than a waste-to-energy facility as defined in s. 403.7061. The provisions of this paragraph apply only if a county can demonstrate that:

1. The county has implemented a yard trash mulching or composting program, and
2. As part of the program, compost and mulch made from yard trash is available to the general public and in use at county-owned or maintained and municipally owned or maintained facilities in the county and state agencies operating in the county as required by this section.

(c) A county with a population of 100,000 or less may provide its residents with the opportunity to recycle in lieu of achieving the goal set forth in this section. For the purposes of this section, the "opportunity to recycle" means that the county:

1. a. Provides a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or
- b. Provides a system of places within the county for collection of source-separated recyclable materials.
2. Provides a public education and promotion program that is conducted to inform its residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling, and composting materials.

(5) As used in this section, "municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.

(6) The department may reduce or modify the municipal solid waste recycling goal that a county is required to achieve pursuant to subsection (2) if the county demonstrates to the department that:

- (a) The achievement of the goal set forth in subsection (2) would have an adverse effect on the financial obligations of a county that are directly related to a waste-to-energy facility owned or operated by or on behalf of the county; and
- (b) The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a county's waste-to-energy facility. Nothing in this subsection shall exempt a county from developing and implementing a recycling program pursuant to this act.

(7) In order to assess the progress in meeting the goal set forth in subsection (2), each county shall, by April 1 each year, provide information to the department regarding its annual solid waste management program and recycling activities.

(a) The information submitted to the department by the county must, at a minimum, include:

1. The amount of municipal solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;
2. The amount and type of materials from the municipal solid waste stream that were recycled; and
3. The percentage of the population participating in various types of recycling activities instituted.

(b) Beginning with the data for the 2012 calendar year, the department shall by July 1 each year post on its website the recycling rates of each county for the prior calendar year.

(8) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste on October 1, 1988, to undertake to fulfill some or all of the county's or municipality's responsibilities under this section.

(9) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.

(10) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this act.

(11) A county and the municipalities within the county's boundaries may jointly develop a recycling program, provided that the county and each such municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goal for municipal solid waste reduction is being achieved.

(12) It is the policy of the state that a county and its municipalities may jointly determine, through an interlocal agreement pursuant to s. 163.01 or by requesting the passage of special legislation, which local governmental agency shall administer a solid waste management or recycling program.

(13) The county shall provide written notice to all municipalities within the county when recycling program development begins and shall provide periodic written progress reports to the municipalities concerning the preparation of the recycling program.

(14) Nothing in this act shall be construed to prevent the governing body of any county or municipality from provid-

ing by ordinance or regulation for solid waste management requirements which are stricter or more extensive than those imposed by the state solid waste management program and rules, regulations, and orders issued thereunder.

(15) Nothing in this act or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management or regional resource recovery program until the governing body of such county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this act or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the department, unless the municipality is included within a solid waste management program created by interlocal agreement or special or local act. If bonds had been issued to finance a resource recovery or management program or a solid waste management program in reliance on state law granting to a county the responsibility for the resource recovery or management program or a solid waste management program, nothing herein shall permit any governmental agency to withdraw from said program if said agency's participation is necessary for the financial feasibility of the project, so long as said bonds are outstanding.

(16) Nothing in this chapter or in any rule adopted by any state agency hereunder shall require any person to subscribe to any private solid waste collection service.

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

(a) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.

(b) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing such services or operating such facilities.

(c) To waive sovereign immunity and immunity from suit in federal court by vote of the governing body of the county or municipality to the extent necessary to carry out the authority granted in paragraphs (a) and (b), notwithstanding the limitations prescribed in s. 768.28.

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

(18) Each operator of a solid waste management facility owned or operated by or on behalf of a county or municipality shall weigh all solid waste when it is received. The scale used to measure the solid waste shall conform to the requirements of chapter 531 and any rules promulgated thereunder.

(19) In the event the power to manage solid waste has been granted to a special district or other entity by special act or interlocal agreement, any duty or responsibility or penalty imposed under this part on a county or municipality shall apply to such special district or other entity to the extent of the grant of such duty or responsibility or imposition of such penalty. To the same extent, such special district or other entity shall be eligible for grants or other benefits provided pursuant to this part.

(20) In addition to any other penalties provided by law, a local government that does not comply with the requirements of subsections (2) and (4) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the department may notify the Chief Financial Officer to withhold payment of all or a portion of funds payable to the local government by the department from the General Revenue Fund or by the department from any other state

fund, to the extent not pledged to retire bonded indebtedness, unless the local government demonstrates that good faith efforts to meet the requirements of subsections (2) and (4) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

(21) Local governments are authorized to enact ordinances that require and direct all residential properties, multi-family dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government, which recyclable materials are specifically intended for purposes of recycling and for which a market exists, and to provide for their collection. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.

(22) Nothing in this act shall limit the authority of the state or any local government to regulate the collection, transportation, processing, or handling of recovered materials or solid waste in order to protect the public health, safety, and welfare.

CREDIT(S)

Laws 1974, c. 74-342, § 1; Laws 1977, c. 77-104, § 142; Laws 1977, c. 77-466, § 1; Laws 1978, c. 78-329, § 3; Laws 1979, c. 79-118, § 1; Laws 1980, c. 80-302, § 7; Laws 1987, c. 87-107, § 2; Laws 1988, c. 88-130, § 11; Laws 1993, c. 93-207, § 15. Amended by Laws 1998, c. 98-258, § 15, eff. July 1, 1998; Laws 2000, c. 2000-153, § 32, eff. July 4, 2000; Laws 2000, c. 2000-211, § 20, eff. July 1, 2000; Laws 2000, c. 2000-304, § 6, eff. July 1, 2000; Laws 2002, c. 2002-291, § 4, eff. July 1, 2002; Laws 2003, c. 2003-1, § 42, eff. July 1, 2003; Laws 2003, c. 2003-261, § 429, eff. June 26, 2003; Laws 2008, c. 2008-227, § 97, eff. July 1, 2008; Laws 2010, c. 2010-102, § 112, eff. May 26, 2010; Laws 2010, c. 2010-143, § 7, eff. July 1, 2010.

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

A reference to § 403.7049(5) was substituted for a reference to § 403.7049(4) in subsec. (1) by the division of statutory revision in Fla.St.1993 to conform to the redesignation of subunits caused by addition of a new subsec. (4) by Laws 1993, c. 93-207, § 13.

Laws 2003, c. 2003-261, § 1979, provides:

“In the event of a conflict between this act and any other legislation enacted during the 2003 Regular Session, the provisions of this act shall prevail.”

LAW REVIEW AND JOURNAL COMMENTARIES

Legislative history projects: Finding intent in solid waste and storm water management legislation. Ralph A. DeMeo and Scott E. Rogers, 64 Fla.B.J. 43 (Nov. 1990).

1988 Solid Waste Management Act--facing up to the “garbage” component of Florida's burgeoning growth. William D. Preston and Thomas M. DeRose, 16 Fla.St.U.L.Rev. 597 (1988).

1993 amendments to Florida's Solid Waste Management Act: The continuing search for solutions. Brian H. Bibeau, Kristin M. Conroy, Thomas N. DeRose and William D. Preston, 21 Fla.St.U.L.Rev. 529 (1993).

LIBRARY REFERENCES

Environmental Law ¶355.
 Westlaw Topic No. 149E.
C.J.S. Health and Environment § 169.

RESEARCH REFERENCES

Encyclopedias

Activities or Conduct Exempt from Act, FL Jur. 2d Monopolies & Restraints of Trade § 9.

UNITED STATES SUPREME COURT

Environmental regulation, solid waste, county flow control ordinances favoring public benefit corporation, Commerce Clause, see United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 2007, 127 S.Ct. 1786, 167 L.Ed.2d 655.

NOTES OF DECISIONS

Interlocal agreements 1
 Landfills 4
 Municipal ordinances 2
 Special assessment districts 3

1. Interlocal agreements

Interlocal agreement between city and **county** and enabling **county** ordinances, which directed flow of solid waste to **county**-owned facility, did not violate Commerce Clause; agreement and ordinances did not discriminate against interstate commerce, given public nature of facility, city and **county** had interest and obligation, under state law, to **provide** for operation of solid waste **disposal** facilities and for collection and transport of solid waste to facilities, and agreement and ordinances did not impose burden on interstate commerce that was clearly excessive in relation to putative local benefits. East Coast Recycling, Inc. v. City of Port St. Lucie, S.D.Fla.2002, 234 F.Supp.2d 1259, Commerce ¶52.10; Environmental Law ¶346(2)

Amendment to intercounty solid waste management agreement that eliminated landfill host county's right to veto acceptance of solid waste from outside the region was void ab initio, even though amendment was approved by three of the four participating counties as permitted under "amendment" section of intercounty agreement; provision requiring approval of solid waste management administration and host county to accept solid waste from outside region was specific provision that controlled over general amendment provision. Aucilla Area Solid Waste Admin. v. Madison County, App. 1 Dist., 890 So.2d 415 (2004), Environmental Law ¶375

The City of Miramar has authority pursuant to this section, to enter into interlocal agreements with other municipalities for the purpose of disposal of solid waste, subject to the regulatory requirements of the department of environmental regulation imposed pursuant to this chapter part pertaining to resource recovery and management. Op.Atty.Gen., 84-28, March 27, 1984.

2. Municipal ordinances

Detailed analysis to determine whether municipal ordinance taking over provision of waste collection and disposal services technically complied with Florida Solid Waste Management Act was unnecessary to determine whether municipality had antitrust immunity under state action doctrine; two other statutes provided state policy to displace competition with regard to garbage collection and disposal and, for purposes of state action doctrine, court would examine authority granted to municipality under a broader concept than what might be used to determine legality of municipality's actions under state law. Bennett Elec. Co. v. Village of Miami Shores, S.D.Fla.1998, 11 F.Supp.2d 1348. Antitrust And Trade Regulation 903

3. Special assessment districts

Dade County may not create a county-wide solid waste management special assessment district by ordinance without securing the consent or approval of the affected incorporate areas to be included within the district, although the consent may be obtained from each affected municipality without need for a referendum. Op.Atty.Gen. 95-08, Feb. 2, 1995.

4. Landfills

County could expend some of valid user fees collected from city for use of county's landfill to close down second landfill not used by city, and thus county was not unjustly enriched by such expenditure, as closing of second landfill was related to solid waste management services, since process of operating landfills constantly required opening of new sites and closing down of old ones. St. Lucie County v. City of Fort Pierce, App. 4 Dist., 676 So.2d 35 (1996). Counties 125; Counties 161

West's F. S. A. § 403.706, FL ST § 403.706

Current through Chapter 274 (End) of the 2010 Second Regular Session of the Twenty-First Legislature

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