

SUBJECT: Barring exclusive franchises for solid waste collection and removal

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Bonnen, Hancock, Lucio, T. King, Kuempel

0 nays

2 absent — Driver, West

WITNESSES: For — Lacy Scott Lowry, Aqua Zyme Disposal; Darrell Rogers, Southwaste Services, Inc. (*Registered, but did not testify*: Glen Garey, Texas Restaurant Association).

Against — Anthony Covacevich, City of Weslaco; Todd Ford and Victor Rodriguez, Liquid Environmental Solutions; Rudy Villarreal, City of Alamo;

On — Brian Sledge, Solid Waste Association of North American, Lone Star Chapter

BACKGROUND: Health and Safety Code, sec. 364.034 stipulates the powers of public agencies or counties regarding solid waste disposal services and fees. Under subsec. (a), public agencies or counties can offer and require the use of solid waste disposal services. These entities also can charge fees for the service of solid waste disposal and establish this service as an independent utility.

Under subsec. (b), fees for solid waste disposal services can be collected by a county or a public or private entity contracted by the county for service provision or fee collection.

Subsec. (c) includes certain provisions for fee collection. For instance, a fee collection contract may include the fee within a bill for other utility services. Also, fees can be charged for the utility's cost of billing and fee collection. Subsection (d) sets stipulations to aid in the enforcement of fee collection for solid waste disposal services.

Subsec. (e) states that provisions in section 364.034 do not apply to an individual with written documentation that the person is receiving solid

waste disposal services from another entity. It also stipulates that nothing in sec. 364.034 shall limit the authority of a municipality to enforce a franchise grant for solid waste collection and transportation services within the municipality's jurisdiction.

DIGEST: CSHB 1251 would add Health and Safety Code, sec. 364.034(f) to forbid a political subdivision from restrict an entity's ability to contract with a licensed waste hauler for solid waste collection and removal. The solid waste would include domestic septage, grease, grit, lint, or sand trap waste. This provision would be an exception to the prohibition in subsec. (e) against limiting the authority of a municipality to enforce a franchise grant in its jurisdiction.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY: CSHB 1251 would clarify a current point of dispute within Health and Safety Code, sec. 364.034(e). The original intent behind this law was to allow competition for solid waste disposal services as long as individuals could receive these services from entities other than a public agency or its contractor. However, subsection (e) has been misinterpreted and currently allows municipalities to create exclusive franchise contracts. CSHB 1251 would eliminate this confusion by prohibiting local governments from impinging upon a business's right to contract with a hauler for the disposal of grease, grit, lint or sand trap waste or domestic sewage.

Free market competition cannot function properly when a public agency or county holds the right to impose an exclusive contract favoring one service provider, as the current statute permits. Competition ensures better service and lower prices. CSHB 1251 would prevent a county or public agency from favoring one service provider and restricting the important process of competition in the private sector. The bill also would serve to limit the potential for a monopoly over solid waste disposal service provision, thereby helping various providers remain in business. These waste haulers would have to be licensed and would be subject to regulation and minimum standards.

CSHB 1251 would not affect the ability of local governments to create franchise agreements for solid waste disposal services. Instead, the bill would make it clear that waste generators would be exempt from franchise

agreements and could select haulers of their own choosing. These businesses could select from among many qualified haulers, with more than 1,000 sludge transporters licensed by the Texas Commission on Environmental Quality.

OPPONENTS
SAY:

Removal and proper disposal of illegally dumped solid waste is expensive for local governments. For example, grease from poorly maintained traps in restaurants is a common cause of blockages in city sewage systems, which can be expensive for local governments to clean. By franchising with a single contractor, cities better can monitor solid waste disposal. As such, franchise agreements result in cost-savings for local governments.

Local governments should be able to control what goes into sewer systems in order to protect public health. Businesses often hire incompetent or unlicensed waste haulers who dispose of solid waste in a manner that is not compliant with current ordinances. By establishing a franchise grant, a city can ensure that a capable and legal waste hauler adequately disposes of solid waste, thereby reducing potential blockages and contamination. In addition, franchise agreements level the playing field by assuring that all entities abide by the same pumping standards and pay the same fees.

NOTES:

The committee substitute would add subsection (f) to specifically prohibit a political subdivision from restricting an entity's ability to contract with a licensed waste hauler for solid waste collection and removal. The bill as introduced would have modified subsection (e) to state that nothing in subsections (a) – (d) would restrict a municipality's authority to enforce a franchise grant for solid waste collection and transportation services within its jurisdiction.

The companion bill, SB 594 by Wentworth, was reported favorably as substituted by the Intergovernmental Relations Committee on March 29 and recommended for the Local and Uncontested Calendar.