~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 11, 2013

**H. 3290**

Introduced by Reps. Bingham, Bannister, Harrell, Simrill, Merrill, Rutherford, Norman, K.R. Crawford, Sottile, Herbkersman, Barfield, Clemmons, V.S. Moss, Hixon, D.C. Moss, Gambrell, Horne, Erickson, G.R. Smith, Sandifer, Forrester, Cole, Allison, Crosby, Murphy, Spires, Patrick, Hardwick, Putnam, H.A. Crawford, Southard, Henderson, Chumley, Bedingfield, Atwater, Goldfinch, Bowen, Funderburk, Gagnon, Long, Owens, Tallon, Thayer, Vick, Whitmire, Branham, Rivers, Bales and Anderson

S. Printed 4/11/13--S.

Read the first time January 31, 2013.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (H. 3290) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Business Freedom to Choose Act”, by amending Section 44‑96‑80, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. This act may be cited as the “Business Freedom to Choose Act”.

SECTION 2. Section 44‑96‑80(G) of the 1976 Code is amended to read:

“(G) Counties are strongly encouraged to pursue a regional approach to solid waste management. Nothing in this chapter, however, ~~shall~~ may be construed to require a county to participate in a regional plan or to prohibit two or more counties within the State which are not contiguous from preparing, approving, and submitting a regional solid waste management plan or one or more counties, including ~~industrial~~ solid waste generators located ~~therein~~ in these counties, from contracting with an in‑state solid waste disposal facility located outside of the county or region. ~~Not later than eighteen months after the date of enactment of this chapter, each county shall notify the department in writing whether it intends to submit a single county solid waste management plan or to participate in a regional plan.~~”

SECTION 3. Section 44‑96‑80(K) of the 1976 Code is amended to read:

“(K)(1) The governing body of a county is authorized to enact ~~such~~ ordinances ~~as may be~~ necessary to carry out its responsibilities under this chapter~~; provided, however, that the governing body of a county~~ but may not enact an ordinance inconsistent with the state solid waste management plan, with ~~any~~ a provision of this chapter, with ~~any other~~ another applicable provision of state law, or with ~~any~~ a regulation promulgated by the department providing for the protection of public health and public safety or ~~for protection of~~ the environment.

(2) An ordinance that requires disposal of waste at one or more designated solid waste management facilities or that requires recovered materials to be processed or recycled at one or more designated facilities is considered inconsistent with the provisions of this chapter. This subparagraph does not prohibit enactment or enforcement of (a) ordinances imposing solid waste user fees, (b) zoning or land use ordinances, or (c) ordinances authorizing a facility owned by a local government to refuse to accept solid waste or recovered materials generated outside the geographic boundaries of that local government.”

SECTION 4. Section 44‑55‑1210 of the 1976 Code is amended to read:

“Section 44‑55‑1210. (A) The governing body of ~~any~~ a county may by ordinance or resolution ~~provide that~~ require the county ~~shall~~ ~~engage in the collection and disposal~~ to collect and dispose of solid waste. ~~Such~~ This collection and disposal may be accomplished either by use of county employees and equipment or by contract with a private ~~agencies~~ entity or ~~municipalities~~ municipality of the county. ~~Service charges~~ A service charge may be levied against ~~persons~~ a person for whom a collection ~~services are~~ service is provided whether ~~such services are~~ this service is performed by the county, a municipality, or a private ~~agency~~ entity.

(B) To the extent that a county ordinance requires disposal of waste at one or more designated solid waste management facilities or requires recovered materials to be processed or recycled at one or more designated facilities, the ordinance is void. This subparagraph does not prohibit enactment or enforcement of (a) ordinances imposing solid waste user fees, (b) zoning or land use ordinances, or (c) ordinances authorizing a facility owned by a local government to refuse to accept solid waste or recovered materials generated outside the geographic boundaries of that local government.”

SECTION 5. (A) The 1976 Code is amended by adding:

"Section 44-96-85. The provisions of the Business Freedom to Choose Act apply to ordinances that are in violation of Section 44-96-80(G) and (K) and which are enacted on or after the effective date of the Business Freedom to Choose Act. Any such ordinance enacted prior to the effective date of the Business Freedom to Choose Act is rendered invalid from the effective date of the Business Freedom to Choose Act forward. However, nothing in the Business Freedom to Choose Act shall be construed to impair in any respect the existing contractual obligations of any county, municipality, or other political subdivision, including a joint agency consisting of five or more counties formed prior to the effect date of the Business Freedom to Choose Act pursuant to Section 6-16-10, et seq., as amended, arising from, or incurred in connection with, any bonds, notes, or other evidences of indebtedness issued by the entity prior to the effective date of the Business Freedom to Choose Act, which are secured by, or payable from a solid waste user fee, or any amounts payable under a solid waste service agreement entered into by a member county with a joint agency as specifically described in this section."

(B) The 1976 Code is amended by adding:

"Section 44-55-1215. The provisions of the Business Freedom to Choose Act apply to ordinances that are in violation of Section 44-55-1210 and which are enacted on or after the effective date of the Business Freedom to Choose Act. Any such ordinance enacted prior to the effective date of the Business Freedom to Choose Act is rendered invalid from the effective date of the Business Freedom to Choose Act forward. However, nothing in the Business Freedom to Choose Act shall be construed to impair in any respect the existing contractual obligations of any county, municipality, or other political subdivision, including a joint agency consisting or five or more counties formed prior to the effective date of the Business Freedom to Choose Act pursuant to Section 6-16-10, et seq., as amended, arising from, or incurred in connection with, any bonds, notes, or other evidences of indebtedness issued by the entity prior to the effective date of the Business Freedom to Choose Act, which are secured by, or payable from a solid waste user fee, or any amounts payable under a solid waste service agreement entered into by a member county with a joint agency as specifically described in this section."

SECTION 6. Section 44-96-290(F) of the 1976 Code is amended to read:

"Section 44-96-290. (F) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility within a county or municipality may be issued by the department unless the proposed facility or expansion is consistent with local zoning, land use, and other applicable local ordinances, if any; the proposed facility or expansion is consistent with the local or regional solid waste management plan and the state solid waste management plan; and the host jurisdiction and the jurisdiction generating solid waste destined for the proposed facility or expansion can demonstrate that they are actively involved in and have a strategy for meeting the statewide goal of waste reduction established in this chapter. Consistency with local zoning, land use, and other applicable ordinances can be demonstrated by submitting to the department a letter from the local government indicating the proposed facility or expansion is consistent with local zoning, land use, and other applicable ordinances. This subsection must not apply to industrial facilities managing solid waste generated in the course of normal operations on property under the same ownership or control as the waste management facility. However, the facilities shall be consistent with the applicable local zoning and land use ordinances, if any; and provided further, that the industrial facility is not a commercial solid waste management facility. Consistency with local zoning, land use, and other applicable ordinances can be demonstrated by submitting to the department a letter from the local government indicating the proposed facility or expansion is consistent with local zoning, land use, and other applicable ordinances."

SECTION 7. Chapter 96, Title 44 of the 1976 Code is amended by adding:

“Section 44‑96‑195. (A) No person shall operate a recovered materials processing facility without being registered with the department.

(B) Recovered materials processing facilities must submit, in a format approved by the department, an annual report for the fiscal year beginning on July first and ending on June thirtieth. This report shall be submitted to the department on or before September first. The report shall identify the actual weight in tons or volume in cubic yards of materials received during the fiscal year and used, reused, recycled, or transferred to a different site for use, reuse, or recycling. Any records required by the department shall be retained at the facility for a period of no less than three years.

(C) Recovered materials processing facilities must provide financial responsibility mechanisms to cover the costs for the closure of the facility by a third party.

(D) The department shall promulgate regulations governing the registration, reporting, and financial responsibility requirements for recovered materials processing facilities.

(E) The Department may, by regulation, exempt certain facilities from this section."

SECTION 8. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

HARVEY S. PEELER, JR. FLOYD NICHOLSON

For Majority. For Minority.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “BUSINESS FREEDOM TO CHOOSE ACT”, BY AMENDING SECTION 44‑96‑80, RELATING TO COUNTY SOLID WASTE PROGRAMS, INCLUDING A COUNTY’S AUTHORITY TO ENACT ORDINANCES CONSISTENT WITH THE STATE PLAN, LAW, AND REGULATIONS, SO AS TO MAKE TECHNICAL CORRECTIONS, TO DELETE OBSOLETE LANGUAGE, AND TO PROVIDE THAT AN ORDINANCE THAT RESTRICTS SOLID WASTE DISPOSAL AT A PERMITTED FACILITY OR IMPEDES THE DEVELOPMENT OR IMPLEMENTATION OF A RECYCLING PROGRAM IS INCONSISTENT WITH THE PROVISIONS OF CHAPTER 96 OF TITLE 44; AND TO AMEND SECTION 44‑55‑1210, RELATING TO A COUNTY’S AUTHORITY TO REQUIRE THE COLLECTION AND DISPOSAL OF SOLID WASTE, SO AS TO PROVIDE THAT A COUNTY ORDINANCE IS VOID TO THE EXTENT THAT THE ORDINANCE RESTRICTS OR PROHIBITS SOLID WASTE DISPOSAL AT A PERMITTED FACILITY OR IMPEDES THE DEVELOPMENT OR IMPLEMENTATION OF A RECYCLING PROGRAM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Business Freedom to Choose Act”.

SECTION 2. Section 44‑96‑80(G) of the 1976 Code is amended to read:

“(G) Counties are strongly encouraged to pursue a regional approach to solid waste management. Nothing in this chapter, however, ~~shall~~ may be construed to require a county to participate in a regional plan or to prohibit two or more counties within the State which are not contiguous from preparing, approving, and submitting a regional solid waste management plan or one or more counties, including ~~industrial~~ solid waste generators located ~~therein~~ in these counties, from contracting with an in‑state solid waste disposal facility located outside of the county or region. ~~Not later than eighteen months after the date of enactment of this chapter, each county shall notify the department in writing whether it intends to submit a single county solid waste management plan or to participate in a regional plan.~~”

SECTION 3. Section 44‑96‑80(K) of the 1976 Code is amended to read:

“(K) The governing body of a county is authorized to enact ~~such~~ ordinances ~~as may be~~ necessary to carry out its responsibilities under this chapter~~; provided, however, that the governing body of a county~~ but may not enact an ordinance inconsistent with the state solid waste management plan, with ~~any~~ a provision of this chapter, with ~~any other~~ another applicable provision of state law, or with ~~any~~ a regulation promulgated by the department providing for the protection of public health and public safety or ~~for protection of~~ the environment. An ordinance that requires disposal of waste at one or more designated solid waste management facilities or that requires recovered materials to be processed or recycled at one or more designated facilities is considered inconsistent with the provisions of this chapter.”

SECTION 4. Section 44‑55‑1210 of the 1976 Code is amended to read:

“Section 44‑55‑1210. The governing body of ~~any~~ a county may by ordinance or resolution ~~provide that~~ require the county ~~shall~~ ~~engage in the collection and disposal~~ to collect and dispose of solid waste. ~~Such~~ This collection and disposal may be accomplished either by use of county employees and equipment or by contract with a private ~~agencies~~ entity or ~~municipalities~~ municipality of the county. ~~Service charges~~ A service charge may be levied against ~~persons~~ a person for whom a collection ~~services are~~ service is provided whether ~~such services are~~ this service is performed by the county, a municipality, or a private ~~agency~~ entity. To the extent that a county ordinance requires disposal of waste at one or more designated solid waste management facilities or requires recovered materials to be processed or recycled at one or more designated facilities, the ordinance is void.”

SECTION 5. This act takes effect upon approval by the Governor and applies to ordinances in existence on or after the effective date of this act. An ordinance enacted prior to the effective date of this act is rendered invalid from the effective date of this act forward. Nothing in this act shall be construed to impair the contractual obligations of any county, municipality, or other political subdivision arising from, or incurred in connection with, any bonds, notes, or other evidences of indebtedness issued by such entity prior to the effective date of this act, which are secured by, and payable from, a solid waste user fee imposed by such entity.

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