

STORAGE NAME: h0497a.sgc.doc
DATE: January 31, 2002

**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: HB 497
RELATING TO: Solid Waste Collection
SPONSOR(S): Representative Needelman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 8 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill addresses new municipal incorporations by protecting existing solid waste collection contracts. Further, the bill provides that an incorporation plan may provide that such contract will be honored for a five-year term or for the term of the contract whichever is shorter.

This bill further excludes a solid waste or recovered materials collection vehicle from the prohibition against leaving the engine running in an unattended motor vehicle.

This bill appears to have a beneficial impact on the private sector by preserving, for the lesser of five years or the contract term, existing contractual rights for solid-waste collection services.

This bill does not impact state revenues but may have a minimal impact on local revenues for a limited time.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. This bill does not lower taxes; it merely provides for a temporary continuance of solid-waste collection contracts upon the occurrence of a new municipal incorporation.

B. PRESENT SITUATION:

Chapter 165, F.S., addresses local government formation. Section 165.061, F.S., addresses standards for incorporation, merger, and dissolution of municipalities.

Chapter 00-304, Laws of Florida, created s. 165.061(2)(d), F.S., which provides that the plan for merger of existing municipalities or associated unincorporated areas must honor existing solid waste contracts in the affected geographical area for five years or the remainder of the contract term whichever is less.

The standards for incorporation may be clouded by the adoption of chapter 00-304, Laws of Florida. It is not clear if s. 165.061(2)(d), F.S., an incorporation standard for municipal incorporations resulting from mergers also applies to new municipal incorporations as provided for in s. 165.061(1), F.S. If the provision is applicable, then a new municipal incorporation must honor existing solid waste contracts in the affected geographic subject area. However, the city may provide that the existing contracts be honored only for 5 years or the remainder of the contract term, whichever is shorter. In addition, if the city requests written evidence of the contract duration, excluding any automatic renewals or "evergreen provisions," such evidence must be provided within a reasonable time.

C. EFFECT OF PROPOSED CHANGES:

This bill applies to new municipal mergers the same protection for existing solid waste collection contracts that the law currently provides to new municipal incorporations resulting from municipal mergers. The bill provides that the plan of incorporation must honor existing solid-waste collection services contracts in the affected geographical area for a period of five years or for the duration of the contract term, whichever is less. This bill also provides an exclusion from the prohibition against leaving the engine running in unattended motor vehicles while collecting solid waste or recovered materials.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. A new paragraph (f) is added to s. 165.061(1), F.S., to provide that the plan for a new municipal incorporation, other than one resulting from a merger, must honor existing solid-waste contracts in the affected geographic area consistent with the provisions of s. 10, Article I, Florida Constitution, that prohibits the passing of laws impairing contractual obligations. However, the paragraph also provides that the plan may limit the period of time during which such contract is honored to five years or the remainder of the contract term, whichever is less. Further, the paragraph provides that the plan may require that a copy of the pertinent portion of such contract or other written evidence of the duration of the contract, excluding any automatic renewals or evergreen provisions, be provided to the municipality within a reasonable time following a written request.

Amends s. 165.051(2)(d), F.S., providing for grammatical changes.

Section 2. A new subsection (2) is added to s. 316.1975, F.S., to exclude a solid-waste or recovered-materials collection vehicle, while collecting such items, from the prohibition against leaving the engine run in an unattended motor vehicle.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill is not revenue producing and has no impact on state revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill is not revenue producing and could result in no gain in revenues that some local governments derive from the provision of solid-waste collection services, at least for the lesser of five years or the contract term.

2. Expenditures:

Solid-waste collection, a government responsibility, is usually provided directly or contracted out by municipal governments. This bill appears to provide for maintaining the status quo for the lesser of five years or the contract term where a contract for solid-waste collection exists upon the occurrence of a new municipal incorporation. The particular costs for such services are included in the economic impact statement provided in conjunction with such incorporation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to preserve existing contractual rights for the lesser of five years or the contract term, for individuals or entities engaged in existing solid-waste collection contracts upon the occurrence of a new municipal incorporation.

D. FISCAL COMMENTS:

This bill appears to be fiscally neutral.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Several constitutional concerns regarding the impairment of contracts are discussed. Article I, s. 10, Florida Constitution provides, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." This bill provides that the plan for municipal incorporation, resulting from other than municipal mergers, must honor existing solid-waste collection contracts in the affected geographic area subject to the incorporation. However, the plan may provide that such contracts will only be honored for the lesser of five years or the remainder of the contract term. Such limitation may raise the concern for contractual impairment.

This constitutional concern may be addressed in different ways by viewing these contracts as either franchises or private contracts.

Solid-waste collection is a quasi-governmental function regulated by part V, ch 403, F.S. Government may grant a franchise, or special privilege conferred on individuals or corporate franchise holders not belonging to citizens by common right, to perform quasi-governmental functions. A franchise, being a privilege in which the public has an interest not exercisable without authority derived from the government, is distinguished from a private right. 27 Fla. Jur. 2d s. 1.

The Florida Supreme Court has addressed franchise rights in the case State v. Dade County, 142 So.2d 79 (Fla. 1962). In that proceeding regarding Dade County's establishment of a countywide transit system to replace individual municipal systems, the Court held that "neither the municipality nor any taxpayer thereof has any vested right in a franchise granted by the City [of Miami].

The legislature (in this instance the Board of County Commissioners) having the power to authorize the granting of franchises is also vested with the power of withdrawing such authority from an affected municipality. Such rights are basically political rights and such privileges are basically political privileges. Such rights and privileges are not protected by the constitutional provisions mentioned, which have reference only to those contracts which involve property rights. 142 So.2d at 87.

Even if the solid-waste contract were considered a private contract right, "laws, which impair the obligations of private contracts, may be constitutional if they are reasonable and necessary to serve

an important public purpose.” *Yellow Cab Co. Of Dade County v. Dade County*, 412 So.2d 395, 397 (Fla. 3d DCA 1982). In *Yellow Cab Co.*, the Third District Court of Appeal employed a balancing test in analyzing the issue of contract impairment. There, the Court balanced the nature and extent of impairment with the level of importance of the state’s interest and offered a detailed inquiry:

- (a) Was the law enacted to deal with a broad generalized economic or social problem?
- (b) Does the law operate in an area which was already subject to state regulation at the time the parties’ contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by this state?
- (c) Does the law affect a temporary alteration of the contractual relationship...or does it work a severe, permanent, and immediate change...irrevocably and retroactively?

Here, this legislation addresses a specific type of contract that of solid-waste collection services. Under the *Yellow Cab Co.* analysis, if challenged, the state must first show that this legislation addresses an economic or social issue. Arguably, the bill addresses the continued provision of solid-waste collection services, a public health concern, within the context of the orderly subdivision of local government to ensure among other things the adequate quality and quantity of local public services consistent with the intent of the Formation of Municipalities Act, found at s. 165.021, F.S. Under the second prong, it does not appear that any regulation currently exists which limits local government’s ability to choose a provider for these services. Regarding the last factor, change to the contractual relationship, this bill provides for the continuation (for up to five years) rather than termination of previous contractual rights for the collection of solid-waste. Thus, two public purposes are served: assurance against the impairment of contractual rights and the solid-waste collection to protect the public health.

Therefore, the constitutional concern relating to contractual impairment would appear to be adequately addressed by virtue of either the more limited rights of a franchise or by virtue of the reasonableness of the law and important public purpose served.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to staff of the Department of Highway Safety & Motor Vehicles (DHS), the DHS supports the exemption for solid waste collection vehicles from the prohibition against leaving an engine running in an unattended vehicle.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

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