

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 331 Displacement of Private Waste Companies

SPONSOR(S): Regulatory Reform Subcommittee, McClure

TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	14 Y, 4 N	Renner	Miller
2) Regulatory Reform Subcommittee	14 Y, 0 N, As CS	Brackett	Anstead
3) State Affairs Committee	19 Y, 1 N	Renner	Williamson

SUMMARY ANALYSIS

Counties and municipalities must provide and regulate waste disposal services, but may contract some or all of these services to others. If a private company provides waste disposal services for a local government, and the local government decides to provide the services and displace the private company from continuing to provide the service, the local government must:

- Hold at least one public hearing that is publically noticed, with separate notice provided to the private company providing the waste disposal service at least 45 days before the hearing;
- Take measures to provide waste disposal services within one year of the final public hearing; and
- Give the private company notice of the displacement at least three years before the local government provides the waste disposal services or pay the private company an amount equal to the company's preceding 15 months' gross receipts.

The requirement to provide three years' notice or pay the preceding 15 months' gross receipts does not apply if the local government and the private company agree to a different notice period or compensation amount.

The bill removes the discretion for the local government to pay a displaced company in lieu of providing a three-year notice period. The bill makes mandatory the three-years' notice requirement before local governments may provide actual service and requires local governments to pay displaced private waste companies an amount equal to the company's gross receipts for the preceding 18 months after the three-year waiting period ends.

The provisions of the bill do not apply to any displacement of a private company if the local government provided the three-years' notice to the private company on or before December 31, 2020.

The bill may have a negative insignificant fiscal impact on local governments. See FISCAL COMMENTS section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.³

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.⁴ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.⁵

Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.⁶ A county may require any person within the county to demonstrate the existence of some arrangement or contract by which the person's solid waste⁷ will be disposed of in a manner consistent with county ordinance or state or federal law.⁸ Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.⁹

The Department of Environmental Protection (DEP) is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.¹⁰ Counties are responsible for operating solid waste disposal facilities, which are permitted through DEP, in order to meet the needs of the incorporated and unincorporated areas of the county¹¹ and may contract with other persons to fulfill some or all of its solid waste responsibilities.¹² Each county must ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.¹³

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ Art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ S. 125.01, F.S.

⁵ S. 166.021, F.S.

⁶ S. 125.01(1)(k)1., F.S.

⁷ Section 403.703(36), F.S., defines solid waste as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

⁸ S. 125.01(1)(k)2., F.S.

⁹ S. 403.706(1), F.S.

¹⁰ *See* s. 403.705, F.S.

¹¹ S. 403.706(1), F.S.

¹² S. 403.706(8), F.S.

¹³ S. 403.706(3), F.S.

In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.¹⁴ Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.¹⁵

Competition with Private Companies

Current law¹⁶ addresses competition between private waste management companies and local government solid waste departments for third party service contracts. Private companies have had concerns about public entities subsidizing their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.¹⁷ Balancing those concerns, the law requires that local governments providing specific solid waste collection services in direct competition with a private company comply with local environmental, health, and safety standards applicable to private companies providing competitive collection services.¹⁸ Additionally, local governments may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is no substantially similar requirement applicable to the local government; and
- Provides the local government with a material advantage in competing with a private company on terms of cost or the prompt or efficient provision of such collection services, excluding zoning, land use, or comprehensive planning requirements.¹⁹

When providing solid waste collection services outside of its jurisdiction in competition with private companies, a local government is prohibited from instituting predatory pricing schemes.²⁰ Private companies have legal remedies against local governments that violate these statutory prohibitions.²¹

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company²² providing garbage, trash, or refuse collection without following certain statutory requirements. The term “displacement” refers to a local government deciding to provide a solid waste collection service and prohibiting a private company from continuing to provide the same service it was providing at the time the local government decision was made.²³

Displacement does not include situations such as public and private sector competition for individual contracts; a local government refusing to renew an expiring contract with a private company; local government action in response to any act by a private company that is a threat to public health or safety or a substantial public nuisance; contracts between local governments and private companies absent an ordinance that displaces another private company; a majority of property owners in the displacement area petitioning for the local governing body to take over collection services; municipal annexations honoring existing solid waste contracts pursuant to law; or a private company licensed to provide service for a limited time whose license expires and is not renewed by the local government.²⁴

¹⁴ S. 403.7063, F.S.

¹⁵ *Id.*

¹⁶ S. 403.70605. *See* ch. 2000-304, s. 1, Laws of Fla.

¹⁷ *See* Florida House of Representatives, *CS/HB 1425 Final Analysis*, p. 2 (May 12, 2000), available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited Feb. 4, 2021).

¹⁸ S. 403.70605(1)(a), F.S.

¹⁹ S. 403.70605(1)(a)2., F.S.

²⁰ S. 403.70605(2), F.S.; *see also* ss. 542.18 and 542.19, F.S.

²¹ *See* s. 403.70605(1)(b) and (2)(c), F.S.; *see also* ss. 542.18 and 542.19, F.S.

²² “Private company” does not include another local government providing solid waste collection services. S. 403.70605(4)(b), F.S.

²³ S. 403.70605(3)(a), F.S.

²⁴ S. 403.70605(3)(a), F.S.

Before displacing a private company, a local government must first hold at least one public hearing, publically noticed, with separate notice by mail to private companies providing service in the jurisdiction at least 45 days before the hearing.²⁵ The local government must take measures to provide services within one year of the final public hearing, and give three years' notice to a private company before actually providing the service that displaces the company. To avoid the three years' notice requirement, the local government may pay the displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service in the displacement area. The local government and the private company are not prohibited from agreeing to a different notice period or compensation amount.²⁶

If a private company refuses to continue operations under the terms and conditions of its existing agreement during the three year notice period, the company no longer falls within the definition of displaced.²⁷ In addition, the notice period is deemed to have run as of the date the private company stops providing services within the displacement area.²⁸

Other Restrictions on Terminating Private Solid Waste Collection Services

A new municipality, not including the merger of existing municipalities, cannot incorporate without honoring any existing solid waste contract for five years or the remainder of the contract term, whichever is shorter.²⁹ Similarly, municipalities cannot annex additional land subject to existing solid waste contracts without honoring the existing contracts for five years or the remainder of the contract term, whichever is shorter.³⁰ If an exclusive franchisee has provided services in an area to be annexed for at least the preceding six months, the franchisee may continue to provide service in the area for the shorter of five years or the expiration of its service contract as long as it meets certain conditions including providing the service at a reasonable cost.³¹

Effect of the Bill

The bill removes the discretion for the local government to pay a displaced company in lieu of providing a three-year notice period. The bill makes the three years' notice to a private company mandatory and requires a local government to pay a displaced private waste company an amount equal to the company's preceding 18 months' gross receipts after the notice period ends.

The bill provides that a local government and a private company may still agree to a different notice period or compensation amount.

The bill specifies that the provisions do not apply to any displacement of a private company if the local government provided the three years' notice to the private company on or before December 31, 2020.

B. SECTION DIRECTORY:

- Section 1. Amends s. 403.70605, F.S., mandating local governments initiate a three years' notice period before displacing private waste companies, after which the local governments must pay displaced companies an amount equal to their gross receipts for the preceding 18 months.
- Section 2. Provides that certain requirements do not apply to displacements before December 31, 2020.
- Section 3. Provides an effective date of July 1, 2021.

²⁵ S. 403.70605(3), F.S.

²⁶ S. 403.70605(3)(c), F.S.

²⁷ S. 403.70605(3)(a)5., F.S.

²⁸ S. 403.70605(3), F.S.

²⁹ See s. 165.061(1)(f), F.S.; see also art. I, s.10, Fla. Const.

³⁰ See s. 171.062(4), F.S.; see also art. I, s.10, Fla. Const.

³¹ S. 171.062(4)(a)2., F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive economic impact on the private sector because private waste collection companies will receive an amount equal to their gross receipts for the preceding 18 months, instead of 15 months, after the three-year waiting period ends.

D. FISCAL COMMENTS:

There may be a negative fiscal impact on local governments because they will be required to pay displaced companies an amount equal to a company's preceding 18 months' of gross receipts after the three year waiting period ends.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Regulatory Reform Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Continues to allow local governments and private companies to negotiate displacement notice periods or buyout terms that are different from the ones in current law.
- Provides that the bill does not apply if a local government has provided the 3 years' notice of displacement to a private company on or before December 31, 2020.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.