

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

**SPONSOR(S):** Regulatory Reform Subcommittee; McClure and others

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

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**FINAL HOUSE FLOOR ACTION:** 112 Y's

2 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 331 passed the House on April 27, 2021, as CS/CS/HB 694.

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 meet certain requirements, including giving 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. Instead, 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. These provisions do not apply to any displacement of a private company if the local government provided the three-year notice to the private company on or before December 31, 2020.

Current law describes how solid waste generated as a result of a storm event that is the subject of an emergency order by the Department of Environmental Protection (DEP) may be managed, including how local governments may conduct the burning of storm-generated yard trash.

The bill defines the term "storm-generated yard trash" to expressly include storm-generated debris. It further provides that a private solid waste or debris management service provider is not required to collect the debris unless such collection is otherwise specified in a contract or agreement with a local government.

In 2008, the Legislature required DEP to analyze the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. DEP was required to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010.

The bill requires DEP to review and update its 2010 Retail Bags Report and submit it to the Legislature by December 31, 2021.

The bill may have a negative insignificant fiscal impact on DEP and local governments.

The bill was approved by the Governor on June 21, 2021, ch. 2021-125, L.O.F., and will become effective on July 1, 2021.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

#### Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.<sup>6</sup> A county may require any person within the county to demonstrate the existence of some arrangement or contract by which the person's solid waste<sup>7</sup> will be disposed of in a manner consistent with county ordinance or state or federal law.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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 county<sup>11</sup> and may contract with other persons to fulfill some or all of its solid waste responsibilities.<sup>12</sup> 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.<sup>13</sup>

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

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<sup>1</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>2</sup> Art. VIII, s. 1(g), Fla. Const.

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

<sup>4</sup> S. 125.01, F.S.

<sup>5</sup> S. 166.021, F.S.

<sup>6</sup> S. 125.01(1)(k)1., F.S.

<sup>7</sup> 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.

<sup>8</sup> S. 125.01(1)(k)2., F.S.

<sup>9</sup> S. 403.706(1), F.S.

<sup>10</sup> *See* s. 403.705, F.S.

<sup>11</sup> S. 403.706(1), F.S.

<sup>12</sup> S. 403.706(8), F.S.

<sup>13</sup> S. 403.706(3), F.S.

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.<sup>14</sup> Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.<sup>15</sup>

### *Competition with Private Companies*

Current law<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> Private companies have legal remedies against local governments that violate these statutory prohibitions.<sup>21</sup>

### *Displacement of Private Garbage, Trash, and Refuse Collection Services*

A local government, or group of local governments, may not displace a private company<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup>

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

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<sup>14</sup> S. 403.7063, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> S. 403.70605. See ch. 2000-304, s. 1, Laws of Fla.

<sup>17</sup> 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).

<sup>18</sup> S. 403.70605(1)(a), F.S.

<sup>19</sup> S. 403.70605(1)(a)2., F.S.

<sup>20</sup> S. 403.70605(2), F.S.; see also ss. 542.18 and 542.19, F.S.

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

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

<sup>23</sup> S. 403.70605(3)(a), F.S.

<sup>24</sup> S. 403.70605(3)(a), F.S.

at least 45 days before the hearing.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> In addition, the notice period is deemed to have run as of the date the private company stops providing services within the displacement area.<sup>28</sup>

#### *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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

#### Department of Environmental Protection Retail Bag Report

In 2008, the Legislature enacted s. 403.7033, F.S., to require the Department of Environmental Protection (DEP) to analyze the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. DEP was required to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010.<sup>32</sup> The statute prohibits local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP's recommendations. To date, the Legislature has not adopted any recommendations contained in the report and the statutory prohibition remains in effect.

#### Management of Storm-generated Debris

Storm-generated debris that is the subject of an emergency order by DEP may be managed as follows:

- DEP may issue field authorizations for staging areas in counties affected by a storm event. These staging areas may be used for the temporary storage and management of storm-generated debris. A local government must avoid locating a staging area in wetlands and other surface waters to the greatest extent possible, and the area that is used or affected by a staging area must be fully restored upon cessation of its use.<sup>33</sup>
- Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, or a permitted

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<sup>25</sup> S. 403.70605(3), F.S.

<sup>26</sup> S. 403.70605(3)(c), F.S.

<sup>27</sup> S. 403.70605(3)(a)5., F.S.

<sup>28</sup> S. 403.70605(3), F.S.

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

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

<sup>31</sup> S. 171.062(4)(a)2., F.S.

<sup>32</sup> S. 403.7033, F.S.

<sup>33</sup> S. 403.7071(2), F.S.

construction and demolition debris (C&D debris) disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.<sup>34</sup>

- C&D debris that is mixed with other storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. C&D debris that is source-separated or separated from other hurricane-generated debris at an authorized staging area may be managed at a permitted C&D debris disposal or recycling facility upon approval by DEP of the methods and operations practices used to inspect the waste during segregation.<sup>35</sup>
- Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance, may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.<sup>36</sup>
- Local governments may burn storm-generated yard trash and other vegetative debris in air-curtain incinerators without prior notice to DEP. Within 10 days after commencing such burning, the local government must provide certain information to DEP. The operator of the air-curtain incinerator is subject to any requirement to obtain an open-burning authorization from the Division of Forestry of the Department of Agriculture & Consumer Services or any other agency empowered to grant such authorization. Any person conducting open burning of vegetative debris piles is subject to the requirements for obtaining authorizations from the Division of Forestry.<sup>37</sup>

## **Effect of the Bill**

### Displacement of Private Waste Companies

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.

### DEP Retail Bags Report

The bill requires DEP to review and update its 2010 Retail Bags Report and requires DEP to submit the updated report, with conclusions and recommendations, to the Legislature by December 31, 2021. The bill maintains the provision providing that until such time that the Legislature adopts DEP's recommendations, a local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

### Storm-generated Debris

The bill amends s. 403.703, F.S., to define the term "storm-generated yard trash" as vegetative matter that:

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<sup>34</sup> S. 403.7071(3), F.S.

<sup>35</sup> S. 403.7071(4), F.S.

<sup>36</sup> S. 403.7071(5), F.S.

<sup>37</sup> S. 403.7071(6), F.S.

- Results from a tropical storm, a hurricane, a tornado, or any other significant weather event and is located or placed within a federally designated disaster area on public property or a public right-of-way;
- The disposition of which is eligible for federal reimbursement; and
- Is placed curbside or on public property or a public right-of-way within the 15-day period after the tropical storm, hurricane, tornado, or other significant weather event that is the subject of the federally declared disaster.

The bill provides that the definition expressly includes storm-generated debris,<sup>38</sup> which is defined as solid waste generated as a result of a storm event and that is the subject of an emergency order issued by DEP.

Lastly, the bill provides that a private solid waste or debris management service provider is not required to collect storm-generated yard trash unless otherwise specified in a contract or franchise agreement between a local government and a private service provider.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

DEP may incur some costs in updating the 2010 report.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

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.

### **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:**

None.

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<sup>38</sup> See s. 403.7071, F.S.