

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 694

INTRODUCER: Community Affairs Committee and Senators Rodrigues and Perry

SUBJECT: Waste Management

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 694 amends the requirement that a local government must either provide three years' notice before its solid waste collection service displaces a private waste company or pay the displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service. The bill requires a local government that displaces a solid waste collection service to provide a three-year notice period *and* pay the displaced company an amount equal to the company's preceding 18 months' gross receipts at the end of the notice period. The bill deletes a provision stating that a local government and a private waste company may voluntarily negotiate a different notice period or amount of compensation.

The bill also requires the Department of Environmental Protection to review and update the department's 2010 Retail Bags Report. The department must submit the updated report with conclusions and recommendations to the Legislature by December 31, 2021. Until such time that the Legislature adopts the recommendations of the department, 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.

The bill takes effect July 1, 2021.

II. 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 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 as otherwise provided 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 that any person within the county 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 The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.¹¹

¹ FLA. CONST., art. VIII, s. 1.(f).

² FLA. CONST., art. VIII, s. 1.(g).

³ FLA. CONST., art. VIII, s. 2.(b); *see also* s. 166.021(1), F.S.

⁴ Section 125.01(1)(d)(e)(f) and (k)1., F.S.

⁵ Section 166.021(3), F.S.

⁶ Section 125.01(1)(k), F.S.

⁷ Section 403.703(36), F.S. "Solid waste" is defined 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 Section 125.01(1)(k)2., F.S.

⁹ Section 403.706(1), F.S.

¹⁰ Section 403.705, F.S.

¹¹ Section 403.705(2)(a), F.S.

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 county¹² and may contract with other persons to fulfill some or all of its solid waste responsibilities.¹³ 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.¹⁴ 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.¹⁵ Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.¹⁶

Competition with Private Companies

Section 403.70605, F.S., was enacted in 2000 to address concerns of private waste management companies regarding competition with local governments' solid waste departments for third party service contracts.¹⁷ Private companies were concerned that public entities were able to subsidize their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.¹⁸

Solid Waste Collection Services in Direct Competition

Under s. 403.70605, F.S., local governments providing specific solid waste collection services in direct competition with a private company must comply with local environmental, health, and safety standards applicable to private companies providing competitive collection services.¹⁹ 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 not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services, excluding zoning, land use, or comprehensive plan requirements.²⁰

When providing solid waste collection services outside of their jurisdiction in competition with private companies, local governments are prohibited from instituting predatory pricing schemes.²¹

¹² Section 403.706(1), F.S.

¹³ Section 403.706(8), F.S.

¹⁴ Section 403.706(3), F.S.

¹⁵ Section 403.7063, F.S.

¹⁶ *Id.*

¹⁷ Chapter 2000-304, s. 1, Laws of Fla.

¹⁸ See Florida House of Representatives, Committee on Community Affairs, *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. 5, 2021).

¹⁹ Section 403.70605(1)(a), F.S.

²⁰ Section 403.70605(1)(a)2., F.S.

²¹ Section 403.70605(2), F.S.; see also ss. 542.18 and 542.19, F.S.

A private company in competition with a local government has legal remedies against local government action that violates the statute, including injunctive relief.²² The private company must notify the local government of the violation and give them 30 days to respond.²³ No injunctive relief is granted if the official action has a reasonable relationship to the health, safety, or welfare of the citizens of the local government, unless a court finds the actual or potential anticompetitive effects outweigh the public benefits of the challenged action.²⁴

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company²⁵ that provides garbage, trash, or refuse collection without following the requirements under s. 403.70605, F.S. “Displacement” means a local government’s provision of a collection service which prohibits a private company from continuing to provide the same service it was providing when the decision to displace was made.²⁶

Displacement does not include:

- 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 an act by a private company that is a threat to public health or safety or results in a substantial public nuisance;
- Local government action in response to material breach by a private company of its contract with the local government;
- Refusal by a private company to continue operations under the terms and conditions of existing agreement during the three-year notice period;
- Contracts between local governments and private waste 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.²⁷

Before displacing a private company, a local government must first hold at least one public hearing, publicly noticed with a separate notice to private companies providing the service within the jurisdiction, on the advisability of the local government providing the service.²⁸ The local government must take measures to provide services within one year of the final public hearing.²⁹ The local governments must provide three years’ notice to a private company before it engages in the actual provision of the service that displaces the company.³⁰ As an alternative to delaying

²² Section 403.70605(1)(b) & (2)(c), F.S.

²³ Section 403.70605(1)(b), F.S.

²⁴ *Id.*

²⁵ Section 403.70605(4)(b), F.S. “Private company” is defined as “any entity other than a local government or other unit of government that provides solid waste collection services.”

²⁶ Section 403.70605(3)(a), F.S.

²⁷ *Id.*

²⁸ Section 403.70605(3)(b), F.S.

²⁹ Section 403.70605(3)(c), F.S.

³⁰ *Id.*

displacement three years, the local government may pay a displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service in the displacement area.³¹ The local government and the private company are not prohibited from voluntarily negotiating a different notice period or amount of compensation.³²

If a private company refuses to continue operations under the terms and conditions of its existing agreement during the 3-year notice period, the company is no longer considered displaced and the notice period lapses.³³

Department of Environmental Protection Retail Bag Report

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature enacted s. 403.7033, F.S., in 2008 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." Section 403.7033, F.S., required DEP to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010.³⁴

Additionally, s. 403.7033, F.S. includes a prohibition on 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.³⁵ To date, the Legislature has not adopted any recommendations contained in the report and the prohibition on any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags remains in effect.

III. Effect of Proposed Changes:

Section 1 amends s. 403.7033, F.S., to require the Department of Environmental Protection to review and update the department's 2010 Retail Bags Report. The department must submit the updated report with conclusions and recommendations to the Legislature by December 31, 2021. Until such time that the Legislature adopts the recommendations of the department, 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.

Section 2 amends s. 403.70605, F.S., which establishes the process a local government must follow when its provision of a solid waste collection service displaces a private waste company. Under current law, a local government must either provide three years' notice to the private company before beginning the displacing service, or, as an alternative to delaying displacement for three years, the local government may pay the displaced company an amount equal to the

³¹ *Id.*

³² *Id.*

³³ Section 403.70605(3)(a)5., F.S.

³⁴ Section 403.7033, F.S.

³⁵ *Id.*

company's preceding 15 months' gross receipts for the displaced service. The bill requires local governments to provide the three years' notice *and* pay the private company an amount equal to its preceding 18 months' gross receipts at the end of the three-year notice period.

The bill deletes a provision stating that a local government and a private waste company may voluntarily negotiate a different notice period or amount of compensation.

Section 3 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an indeterminate, positive economic impact on the private sector because the bill deletes the authorization in current law for local governments to pay the displaced company 15 months of gross receipts instead of providing three year's notice so that the displaced companies are assured 3 years' notice prior to displacement and 18 months of gross receipts when their service ends.

C. Government Sector Impact:

There may be an indeterminate, negative fiscal impact on local governments because the bill deletes the authorization in current law for local governments to pay the displaced

company 15 months of gross receipts instead of providing three year's notice so that the displaced companies are assured 3 years' notice prior to displacement and 18 months of gross receipts when their service ends.

The Department of Environmental Protection may incur nominal costs while reviewing and updating of its 2010 Retail Bags Report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.7033 and 403.70605.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 30, 2021:

The committee substitute adds the provision requiring the Department of Environmental Protection to review and update the department's 2010 Retail Bags Report and changes the title of the bill to "an act relating to waste management."

- B. **Amendments:**

None.