

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1169 Displacement of Private Waste Companies
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, McClure
TIED BILLS: IDEN./SIM. **BILLS:** SB 1572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 2 N, As CS	Rivera	Miller
2) Business & Professions Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties and municipalities must provide and regulate waste disposal services but may contract some or all of these services to others. To displace, or prohibit the continued provision of service by, a private company engaged in providing solid waste collection services in areas not presently served by the local government, the law requires the local government to first hold at least one public hearing giving 45 days' notice to all affected private companies. The local government then must begin efforts to provide services within 1 year of a final hearing. Before providing any actual service, a local government must provide 3 years' notice to the displaced private company or pay the company an amount equal to the company's gross receipts for the preceding 15 months. The law does not prohibit a local government from negotiating a different notice period and buyout price. The notice period lapses when the private company stops providing services in the displacement area.

Displacement does not include certain situations such as a petition by a majority of property owners in the displacement area for the local governing body to take over collection services or a local government refusing to renew the expiring contract for waste collection services by a private company.

The bill makes mandatory the 3 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 3-year waiting period ends.

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 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

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county¹² and may

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 S. 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. 403.705(2)(a), F.S.

¹² S. 403.706(1), F.S.

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 2000¹⁷ to address concerns of private waste management companies about competition with local government solid waste departments for third party service contracts. 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 section 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

A private company in competition with a local government has legal remedies against local government action that violates the statute, including injunctive relief. The private company must notify the local government of the violation and give them 30 days to respond. A local government may defend against these suits if the official action has a reasonable relationship to the health, safety, or welfare of the citizens of the local government or the action taken was in direct response to a natural disaster or emergency declaration order by the Governor. A court may still grant relief in cases where the official action was taken for public health and safety if the court finds that the actual or potential anticompetitive effects of the official action outweigh the public benefits.²²

¹³ S. 403.706(8), F.S.

¹⁴ S. 403.706(3), F.S.

¹⁵ S. 403.7063, F.S.

¹⁶ S. 403.7063, F.S.

¹⁷ Ch. 2000-304, s. 1, Laws of Fla.

¹⁸ 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 Mar. 6, 2019).

¹⁹ S. 403.70605(1)(a), F.S.

²⁰ S. 403.70605(1)(a)2., F.S.

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

²² S. 403.70605(1)(b) & (2)(c), F.S.; see also ss. 542.18 and 542.19, F.S.

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company²³ that provides garbage, trash, or refuse collection without following the requirements under s. 403.70605, F.S. “Displacement” refers to a local government deciding to provide a 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.²⁴

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.²⁵

Before displacing a private company, a local government must first holding at least one public hearing, publically noticed, with separate notice to private companies providing service in the jurisdiction by mail at least 45 days before the hearing.²⁶ The local government must take measures to provide services within 1 year of the final public hearing, and provide 3 years’ notice to a private company before it engages in the actual provision of the service that displaces the company. To avoid the 3 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.²⁷

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 no longer falls within the definition of displaced.²⁸ The notice period is deemed to have run as of the date the private company stops providing services within the displacement area.²⁹

Other Restrictions on Terminating Private Solid Waste Collection Services

A new municipality, except for the merger of existing municipalities, cannot incorporate without honoring any existing solid waste contracts for 5 years or the remainder of the contract term, whichever is shorter.³⁰ Similarly, municipalities cannot annex additional land subject to existing solid waste contracts without honoring the existing contracts for 5 years or the remainder of the contract term, whichever is shorter.³¹ If an exclusive franchisee has provided services in an area to be annexed for at least the preceding 6 months, the franchisee may continue to provide service in the area for the shorter of 5 years or the expiration of its service contract as long as it meets certain conditions including providing the service at a reasonable cost.³²

²³ “Private company” does not include another local government providing solid waste collection services. S. 403.70605(4)(b), F.S.

²⁴ S. 403.70605(3)(a), F.S.

²⁵ S. 403.70605(3)(a), F.S.

²⁶ S. 403.70605(3), F.S.

²⁷ S. 403.70605(3)(c), F.S.

²⁸ S. 403.70605(3)(a)5., F.S.

²⁹ S. 403.70605(3)(c), F.S.

³⁰ See s. 165.061(1)(f); see also art. I, s.10, Fla. Const.

³¹ See s. 171.062(4), F.S.; see also art. I, s.10, Fla. Const.

³² S. 171.062(4)(a)2., F.S.

Effect of Proposed Changes

The bill makes the 3 years' notice period mandatory and requires a local government to pay a displaced private waste company an amount equal to 18 months of the company's preceding gross receipts after the notice period ends. Local governments and private companies may no longer negotiate different notice period or buyout terms.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.70605, F.S., mandating local governments initiate 3 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 an effective date of July 1, 2019.

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 after the 3-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 18 months' of gross receipts after the 3-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 19, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted one strike all amendment and reported the bill favorably as a committee substitute. The amendment removes the added notice and planning requirements and makes the waiting period and buyout option mandatory.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.