

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: SB 1572

INTRODUCER: Senator Albritton

SUBJECT: Displacement of Private Waste Companies

DATE: March 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			EN	
3.			RC	

I. Summary:

SB 1572 revises the process and procedures by which local governments may displace private waste companies when local governments have decided to provide waste collections services themselves. The bill provides that a local government may displace a private company that provides collection service only by adopting an ordinance or resolution. Before doing so, the local governments must adopt a resolution of intent 180-days prior which provides goals for the action, justification for any franchise fees, notice of a public hearing, and invitations to service providers to participate in the planning and establishment of the collection service. A plan for providing collections service is required, with the assistance of the affected private waste companies, during a 90-day period after providing the initial notice. A 30 days' notice is required before a public hearing on this proposed plan.

The bill also extends the 3-year waiting period prior to displacement to 5 years, and requires local governments to restart the process if they fail to pass an ordinance or resolution within 12 months of providing notice to affected private waste companies. Definitions are provided to clarify the meaning of waste collection services.

The provisions of the bill replace the existing process and procedures for displacement including an option for local governments to compensate a private waste company for a displacement occurring earlier than the current 3-year waiting period.

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 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 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

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)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 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.

¹² Section 403.706(1), F.S.

¹³ Section 403.706(8), F.S.

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 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

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. 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

¹⁴ Section 403.706(3), F.S.

¹⁵ Section 403.7063, F.S.

¹⁶ *Id.*

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 March 29, 2019).

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.

²² See ss. 403.70605(1)(b) & (2)(c), F.S. for information for this entire paragraph..

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.

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;
- A material breach of contract by a private company;
- 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 hold 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

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

²⁴ Section 403.70605(3)(a), F.S.

²⁵ Section 403.70605(3)(a), F.S.

²⁶ Section 403.70605(3)(b), F.S.

²⁷ Section 403.70605(3)(c), F.S.

²⁸ Section 403.70605(3)(a)5., F.S.

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.²⁹ 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.³⁰ 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.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 403.70605, F.S., to provide revised procedures on the displacement of private waste companies (see the analysis present situation for the current displacement process which is ostensibly deleted by the bill). Specifically, a local government may displace a private company that provides garbage, trash, or refuse collection service only by adopting an ordinance or a resolution. Before adopting such an ordinance or a resolution, the local government must do all of the following:

- At least 180 days before adopting an ordinance or a resolution under this subsection, announce its intent to consider the adoption of an organized collection service by a resolution of intent. The resolution of intent must:
 - Include specific goals to be achieved, a detailed justification for any franchise fees, and all other reasons the local government has for considering such a service;
 - Be published once in the official newspaper of the county or municipality;
 - Give notice of a public hearing to be held at least 30 days before consideration of the adoption of the resolution of intent; and
 - Invite interested persons to participate in the planning and establishing of the organized collection service, including all licensees and other persons operating solid waste or recyclables collection services in the county or municipality as of the date of announcement of its intent to organize collection in the county or municipality.
- Within 90 days after adopting the resolution of intent, develop a plan for organized collection service. The local government shall invite and employ the assistance of all licensees and other persons operating solid waste or recyclables collection services in the county or municipality. All licensees and other persons operating solid waste or recyclables collection in the county or municipality must be allowed to participate in the planning meetings.
- Provide 30 days' notice before a hearing on the proposed plan to all licensees or other persons operating solid waste or recyclables collection services in the county or municipality.

A local government's plan for organized collection service must:

- Describe in detail the procedures used for development of the plan;
- Include evidence of compliance with all notice provisions;
- Evaluate the proposed plan in regard to achieving the stated goals, to minimizing displacement and economic impact to current solid waste collectors, to ensuring participation

²⁹ See s. 165.061(1)(f); see also FLA. CONST., art. I, s. 10.

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

³¹ Section 171.062(4)(a)2., F.S.

in the decision-making process of all interested parties, and to maximizing efficiency in solid waste collection; and

- Provide detailed justification for any proposed tax, franchise fee, or similar fee.

A local government may not commence organized collection service for at least 5 years after the adoption of an ordinance or resolution establishing such service. During this period, the local government may not displace any person licensed to operate solid waste collection services in the county or municipality.

If for any reason a local government does not implement an organized collection service by adoption of an ordinance or resolution within one year after the passage of a resolution of intent, the process must be started over.

The term “organized collection service” means a system for collecting solid waste, recyclables, or both. The term includes franchise, organized collection, or a process in which a municipality goes from multiple haulers to one single contracted hauler whereby a specified collector, or a member of a collectors’ organization, is authorized to collect from a defined geographic service area some or all of the solid waste or recyclables that are released by generators.

Section 2 provides an effective date of July 1, 2019.

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 a positive economic impact on the private sector because private waste collection companies will have a longer waiting period before being displaced by a local government.

C. Government Sector Impact:

There may be a negative fiscal impact on local governments due to the extension of the three year notice period to five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.70605 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.