

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 Environment and Natural Resources

BILL: CS/CS/SB 996

INTRODUCER: Environment and Natural Resources Committee; Community Affairs Committee; and Senator Albritton

SUBJECT: Local Government Waste Programs

DATE: February 10, 2020 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 996 exempts fiscally constrained counties from solid waste goals and requirements for local governments. The exemption expires July 1, 2035.

The bill creates a recycled materials management pilot project for Polk County, in coordination with the University of Florida. The bill contains requirements for the program. During the term of the program, Polk County is exempt from the solid waste goals and requirements for local governments. Polk County must submit a report on the pilot program to the Governor and Legislature by July 1, 2025. The pilot program expires July 1, 2025.

The bill revises the definition of “displacement” in requirements for local government collection services that displace private waste companies. The bill states that the term does not apply to certain government actions or situations at the end of a franchise granted to a private company.

The bill revises the process and procedures a local government must follow to displace a private waste company. The bill removes the discretion of the local government to pay a displaced company in lieu of providing a 3-year notice period. The bill makes the 3-year notice requirement mandatory before a local government engages in the actual provision of the service that displaces the company. In addition, the bill requires a local government to pay a displaced company an amount equal to the company’s gross receipts for the preceding 18 months at the end of the 3-year 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

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.

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 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

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, *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.

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 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, publicly 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

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

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 *Id.*

²⁶ Section 403.70605(3)(b), F.S.

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

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

Recycling in Florida

“Recycling” is any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.³² “Municipal solid waste” includes any solid waste (except for sludge) resulting from the operation of residential, commercial, or governmental establishments that would normally be collected, processed, and disposed of through a solid waste management service (this excludes waste from industrial, mining, or agricultural operations).³³

In 2008, the Legislature established a weight-based goal of recycling 75 percent of Florida’s municipal solid waste by 2020.³⁴ In 2010, the Legislature established interim goals that counties must pursue leading up to 2020.³⁵ The interim goals require each Florida county to implement a recyclable materials recycling program with a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.³⁶ These programs must be designed to recover a significant portion of at least four of the following

²⁷ Section 403.70605(3)(c), F.S.

²⁸ Section 403.70605(3)(a)5., F.S.

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.

³² Section 403.703(31), F.S.

³³ Section 403.706(5), F.S.

³⁴ Chapter 2008-227, s. 95, Laws of Fla.; s. 403.7032, F.S.; see DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 5, 7, 28 (2017)[hereinafter *DEP 2017 Report*], available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf. The 75% recycling goal is a weight-based recycling rate: for every 100 tons of municipal solid waste collected, the goal is to recycle (or recover energy from) at least 75 tons.

³⁵ Chapter 2010-143, s. 7, Laws of Fla.; s. 403.706(2)(a), F.S.

³⁶ Section 403.706(2)(a), F.S.

materials from the solid waste stream before final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers.
- Aluminum cans.
- Steel cans.
- Glass.
- Plastic bottles.
- Cardboard.
- Office paper.
- Yard trash.³⁷

Counties with a population of 100,000 or less, in lieu of achieving the interim goals, may instead provide residents with the opportunity to recycle.³⁸ Providing the “opportunity to recycle” must include both of the following:

- Either:
 - Providing a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or
 - Providing a system of places within the county for collection of source-separated recyclable materials.
- Providing a public education and promotion program that is conducted to inform residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling and composting materials.³⁹

According to a 2019 report by DEP, only 36 of Florida’s 67 counties have populations over 100,000.⁴⁰ These 36 counties contain approximately 95% of Florida’s population, and produced 45 million of the 47 million tons of municipal solid waste generated in Florida in 2018.⁴¹

In order to assess progress towards achieving the interim goals, counties are required to provide information on their solid waste management programs and recycling activities to DEP by April 1 of each year.⁴² Certain activities are eligible for special credit towards achieving a county’s recycling goals, including using solid waste as a fuel in a renewable energy facility and innovatively using yard trash or other clean wood waste or paper waste.⁴³ If DEP determines that a county has not reached the interim recycling goals in time, DEP is authorized to direct the county to develop a plan to expand recycling programs to existing commercial and multifamily dwellings, including apartment complexes.⁴⁴ Such a directive applies to the larger counties (with populations over 100,000), which are required to pursue the interim goals.⁴⁵

³⁷ Section 403.706(2)(f), F.S.

³⁸ Section 403.706(4)(c), F.S.

³⁹ *Id.*

⁴⁰ DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 1*, 3, 9 (2019)[hereinafter *DEP 2019 Report*], available at <https://floridadep.gov/sites/default/files/Final%20Strategic%20Plan%202012-13-2019%201.pdf>.

⁴¹ *Id.* at 18, 29.

⁴² Section 403.706(7), F.S.; Fla. Admin. Code R. 62-716.450.

⁴³ Section 403.706(4), F.S.

⁴⁴ Section 403.706(2)(d), F.S.

⁴⁵ *DEP 2019 Report*, at 3.

Florida achieved the interim recycling goals established for 2012 and 2014.⁴⁶ However, Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent.⁴⁷ Florida's recycling rate declined from 52 percent in 2017 to 49 percent in 2018, both of which fall short of the interim targets.⁴⁸ This decrease can largely be attributed to a reduction in the reported amount of construction and demolition (C&D) debris recycled in 2018.⁴⁹ In those years when the state's recycling rate does not meet the statutory thresholds for the interim goals, DEP must provide a report to the President and Legislature, identifying those additional programs or statutory changes needed to achieve the state's recycling goals.⁵⁰ DEP submitted the most recent status report in 2019.⁵¹ Without significant changes to the current approach, DEP does not expect the 75% by 2020 goal will be achieved.⁵²

In 2018, of Florida's 36 large counties (with populations over 100,000), four met the 70% interim recycling goal.⁵³ Recycling credits received for renewable energy and C&D debris were the primary factors for success in these four counties.⁵⁴ In August of 2019, DEP requested each of the 32 large counties not reaching the interim goals to develop a plan to expand current recycling programs to existing commercial and multifamily dwellings.⁵⁵ As of November 21st, DEP has received all 32 county recycling plans.⁵⁶

DEP may reduce or modify the municipal solid waste recycling goal if necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.⁵⁷

DEP has been working to increase recycling rates through grant programs, educational opportunities, and the development of a statewide outreach campaign called "Rethink. Reset. Recycle."⁵⁸ DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management⁵⁹ processes.
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020 to market-specific goals such as a food diversion goal or an organics recycling goal.

⁴⁶ *DEP 2017 Report*, at 5, available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf.

⁴⁷ *Id.*

⁴⁸ *DEP 2019 Report*, at 3.

⁴⁹ *Id.* at 9; *see* s. 403.706(2)(b), F.S. Each county must implement a program for recycling C&D debris.

⁵⁰ Section 403.706(2)(e), F.S.

⁵¹ *DEP 2019 Report*, at 3.

⁵² *Id.* at 29.

⁵³ *Id.* at 3.

⁵⁴ *Id.*

⁵⁵ *Id.* at 9.

⁵⁶ *Id.*; DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 2, Appendices*, Appendix B (2019), available at https://floridadep.gov/sites/default/files/Final%20Appendix%20Strategic%20Plan%2012-13-2019_for_upload_test.pdf.

⁵⁷ *Id.*

⁵⁸ *DEP 2019 Report*, at 22, available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf; Rethink. Reset. Recycle., *About*, <https://floridarecycles.org/> (last visited Jan. 31, 2020).

⁵⁹ *See* EPA, *Sustainable Materials Management Basics*, <https://www.epa.gov/smm/sustainable-materials-management-basics> (last visited Jan. 31, 2020); *see* *DEP 2019 Report*, at 26-29, available at https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf. The report contains a discussion of Sustainable Materials Management.

- Requesting that Florida’s state universities and Department of Education review potential K-12 curriculum programs emphasizing waste reduction and recycling practices.
- Continuing to work with state agencies to identify recycling/cost-saving measures specific to their operations.
- Providing counties not achieving the interim recycling goals with assistance in analyzing, planning, and executing opportunities to increase recycling.⁶⁰

Contamination

Many counties and municipalities have instituted single stream recycling programs.⁶¹ Single stream curbside recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling paper, plastic bottles, metal cans, and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the number of materials collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recovered materials, resulting in increased contamination originating in the curbside recycling cart.⁶²

Contamination hinders processing at recovered materials processing facilities (RMPFs) when unwanted items are placed into recycling carts.⁶³ For example, plastic bags are harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While RMPFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process and result in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair, or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recovered materials, and increased rejection and landfilling of materials. Although some local governments have implemented successful single-stream recycling programs with low contamination rates, contamination rates for other programs have continued to increase.⁶⁴

Recycling Markets

Until 2017, China consumed over 50 percent of the recycled paper and plastic in the world, including 70 percent of the plastics collected for recycling in the U.S.⁶⁵ In 2017, China announced a ban on the import of 24 recyclable materials, such as post-consumer plastics and mixed paper, as well as a 0.5 percent contamination standard for most recyclables not named in

⁶⁰ *DEP 2019 Report*, at 10.

⁶¹ *Id.* at 11.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ National Waste & Recycling Association, *Issue Brief: China’s Changing Policies on Imported Recyclables*, 1 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China's_Changing_Policies_on.pdf; Cheryl Katz, *Piling Up: How China’s Ban on Importing Waste Has Stalled Global Recycling*, *Yale Environment* 360 (Mar. 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Jan. 31, 2020).

the ban.⁶⁶ In 2018, the ban was expanded to include post-industrial plastics and a variety of scrap metals, and China implemented pre-shipment inspection requirements for inbound loads of certain material.⁶⁷ The ban has caused shipments of recyclables to other Asian countries to increase dramatically, resulting in nations including India, Malaysia, Indonesia, Thailand, and Vietnam enacting policies restricting the import of recyclable materials.⁶⁸

China's recycling ban has created substantial challenges around the world for the solid waste and recycling industry.⁶⁹ The loss of the Chinese export markets has caused recyclable materials to be sent to landfills or burned.⁷⁰ China's ban and higher standards for contamination are leading to higher costs and lower revenues for the U.S. recycling industry.⁷¹ In Florida, local governments are struggling with issues such as rising costs of processing and high contamination rates.⁷² DEP reports that these changes in the markets create challenges for Florida as it tries to increase its recycling rates because future growth is dependent on healthy markets.⁷³ The increased supply of recyclable materials and decreased demand from end markets has resulted in a depression of commodities prices in the recycling industry.⁷⁴ In response, DEP has utilized state programs and engaged various stakeholders to develop and grow Florida's recycling markets.⁷⁵

The reduction in global markets has forced many waste haulers and waste management companies to reduce the amount of contamination, i.e., unwanted items found in recycling bins, being transported and delivered to their processing facilities.⁷⁶ Reducing contamination increases the value of the recovered materials.⁷⁷ Due to decreases in the average price for mixed recovered materials, several counties have been asked to renegotiate their recycling contracts.⁷⁸ Many of

⁶⁶ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*, <https://resource-recycling.com/recycling/2018/02/13/green-fence-red-alert-china-timeline/> (last visited Jan. 31, 2020); National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1 (Apr. 2018).

⁶⁷ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*; see also Resource Recycling, *China Reiterates Total Ban and Tries to Define "Solid Waste"* (Apr. 9, 2019), available at <https://resource-recycling.com/recycling/2019/04/09/china-reiterates-total-ban-and-tries-to-define-solid-waste/> (last visited Jan. 31, 2020). China is planning a total ban on virtually all recovered material imports.

⁶⁸ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*; Christopher Joyce, *Where Will Your Plastic Trash Go Now That China Doesn't Want It?*, NPR (Mar. 13, 2019), <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it> (last visited Jan. 31, 2020).

⁶⁹ See Brooks et. al., *The Chinese Import Ban and Its Impact on Global Plastic Waste Trade*, SCIENCES ADVANCES (Jun. 20, 2019), available at <https://advances.sciencemag.org/content/advances/4/6/eaat0131.full.pdf> (last visited Jan. 31, 2020).

⁷⁰ Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, Yale Environment 360 (March 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Jan. 31, 2020).

⁷¹ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1-2 (Apr. 2018), available at https://c.ymcdn.com/sites/wasterecycling.site-ym.com/resource/resmgr/files/issue_brief/China's_Changing_Policies_on.pdf (last visited Jan. 31, 2020).

⁷² Waste Dive, *How Recycling is Changing in All 50 States* (June 5, 2019), <https://www.wastedive.com/news/what-chinese-import-policies-mean-for-all-50-states/510751/> (last visited Jan. 31, 2020).

⁷³ *DEP 2017 Report*, at 15, available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf.

⁷⁴ *Id.*

⁷⁵ *Id.* at 15-17; *DEP 2019 Report*, at 12-15, available at

https://floridadep.gov/sites/default/files/Final%20Strategic_Plan_2019%2012-13-2019_1.pdf.

⁷⁶ *DEP 2019 Report*, at 12.

⁷⁷ *Id.*

⁷⁸ *Id.*

the contracts have clauses that stipulate contamination must be below a certain percentage or the local government will be charged a much higher rate and/or penalized.⁷⁹ There is very little revenue, if any, generated and returned to municipalities for recovered materials that have been collected and processed, and many municipalities are left with decisions regarding which materials to include in curbside recycling programs or whether to continue the programs.⁸⁰

Fiscally Constrained Counties

Section 218.67, F.S., defines “fiscally constrained counties” as:

- Each county entirely within a rural area of opportunity⁸¹ as designated by the Governor pursuant to the Rural Economic Development Initiative in s. 288.0656, F.S.; or
- Each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to the calculations in s. 1011.62(4)(a)1.a., F.S., from the previous July 1.⁸²

For the 2019-20 fiscal year, the Department of Revenue determined the following 29 counties to be fiscally constrained: Baker, Bradford, Calhoun, Columbia, DeSoto, Dixie, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Suwannee, Taylor, Union, Wakulla, and Washington.⁸³

III. Effect of Proposed Changes:

The bill amends s. 403.706, F.S., which contains goals and requirements for county recycling programs. The bill exempts fiscally constrained counties⁸⁴ from solid waste goals and requirements for local governments in s. 403.706, F.S. The exemption expires July 1, 2035.

The bill contains legislative findings regarding challenges in meeting the state’s recycling goals and the need to investigate other options for the management of recyclable material resources. The bill creates a recycled materials management pilot project for Polk County, in coordination with the University of Florida. The pilot project must identify sustainable, environmentally responsible, and cost-effective collection, storage, and retention methods for recyclable materials which have limited economic or industrial utility but retain their potential to be reintroduced into the market through an economically viable recycling process. The pilot program expires July 1, 2025.

The bill states the following regarding the pilot program:

⁷⁹ *Id.* at 12-13.

⁸⁰ *Id.* at 13.

⁸¹ See s. 288.0656(2), F.S. A rural area of opportunity is a rural community (such as counties with a population of 75,000 or fewer), or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe/chronic distress, or a natural disaster, or which presents a unique economic development opportunity of regional impact.

⁸² Section 218.67(1), F.S.

⁸³ Office of Economic and Demographic Research, *2019 Local Government Financial Information Handbook*, 93 (2019), available at <http://edr.state.fl.us/Content/local-government/reports/lgfi19.pdf>; see also Department of Revenue, *Fiscally Constrained Counties*, available at <https://floridarevenue.com/property/Documents/fcco081210.pdf>.

⁸⁴ Section 218.67(1), F.S. The bill defines fiscally constrained counties using this subsection.

- Polk County may join or contract with one or more other public or private entities to finance or implement the pilot program. The contracts may provide for contributions by each party to the contract for the division and apportionment of resulting costs, including operations and maintenance, benefits, services, and products. The Legislature may not provide funding assistance for the pilot program. However, this does not limit the University of Florida or other state entities from providing in-kind services to the pilot program.
- During the term of the pilot program, Polk County is exempt from the solid waste goals and requirements for local governments.⁸⁵
- Polk County must periodically communicate and collaborate with the Department of Environmental Protection (DEP) regarding the program’s objectives, progress, and conclusions.
- Polk County must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2025, regarding the conclusions of the pilot program. The report must include all of the following:
 - A description of the pilot program, including its goals and an overview of the methodology used to identify the specific recyclable materials determined to provide the greatest environmental benefit and opportunity for recycling.
 - An overview of the methodology used to segregate the recyclable materials of greatest benefit while minimizing the processing of recyclable materials of low environmental benefit.
 - Progress made with the pilot program in comparison to other processes currently being used for the collection, disposal, or reuse of the same recyclable materials.
 - Capital and operating costs Polk County estimates it would expend to implement recycling and solid waste management practices revealed by the pilot program, in comparison to other alternatives local governments have implemented in Florida.
 - The source of funds used in developing and implementing the pilot program.
 - The benefits to Polk County and the state from implementing any recycling and solid waste management practices revealed by the pilot program.
 - A recommendation as to whether any recycling and solid waste management practices revealed by the pilot program should be available as an alternative to traditional processes used by local governments to manage recyclable materials and, if so, identification of the statutory changes necessary to do so.

The bill amends s. 403.70605(3), F.S., which contains requirements for when a local government’s collection service displaces a private waste company. The bill revises the definition of the term “displacement,” as used in the subsection. The bill states that the term “displacement” does not include actions by which a local government, at the end of a franchise that the local government has granted to a private company, refuses to renew the franchise and either: grants a franchise or awards a contract to another company or companies, or decides to provide the collection service itself. The bill also states that the term “displacement” does not include situations where private companies are franchised to do business within a local

⁸⁵ See DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 2, Appendices*, 162-164 (2019), available at https://floridadep.gov/sites/default/files/Final%20Appendix%20Strategic%20Plan%202012-13-2019_for_upload_test.pdf. In 2019, Polk County submitted a recycling plan to DEP in accordance with s. 403.706, F.S. Polk County is working with the University of Florida’s Sustainable Materials Management Research Laboratory to update the county’s recycling data and explore future recycling initiatives that would have the greatest positive environmental impact.

government for a limited time and such franchise expires and is not renewed by the local government.

The bill revises the process and procedures a local government must follow to displace a private waste company. The local government must provide 3 years' notice to the private company before the local government engages in the actual provision of the service that displaces the company. At the end of the 3-year notice period, the local government must pay the displaced company an amount equal to the company's preceding 18 months' gross receipts for the displaced service in the displacement area. The bill also removes 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 takes effect on July 1, 2020.

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.

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 displaced private waste collection 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 a negative fiscal impact on local governments due to the required 3-year notice period for displacement of a private waste company and the payment of 18 months of gross receipts when the service ends.

The bill exempts fiscally constrained counties from solid waste goals and requirements for local governments, which could result in these counties avoiding expenditures on recycling programs. This may have an indeterminate, positive fiscal impact on fiscally constrained counties.

The bill creates a recycled materials management pilot project that Polk County must implement, which may cause Polk County to incur additional costs. The bill exempts Polk County from solid waste goals and requirements for local governments during the term of the pilot program, which may result in Polk County avoiding certain expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 39-41 and 79-81, the bill creates exemptions from all goals and requirements in s. 403.706, F.S. While s. 403.706, F.S., contains required recycling goals and related requirements for county governments, it also contains requirements pertaining to the solid waste responsibilities of local governments in general. Therefore, in order to create exemptions from the recycling goals in s. 403.706, F.S., revising the language to make the exemptions apply only to the recycling goals in s. 403.706, F.S., is recommended.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.70605 and 403.706.

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

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

CS/CS by Environment and Natural Resources on February 10, 2020:

- Exempts fiscally constrained counties from the solid waste goals and requirements for local governments. This exemption expires July 1, 2035.
- Creates a pilot project for Polk County, in coordination with the University of Florida, for recycled materials management. The project will identify collection, storage, and retention methods for recyclable materials. Regarding the pilot project, the bill provides the following: Polk County may join or contract with other entities to finance or implement the project, but the Legislature may not provide funding

assistance to the program; during the term of the pilot program, Polk County is exempt from solid waste goals and requirements for local governments; Polk County must periodically communicate and collaborate with DEP regarding the program's objectives and progress; and Polk County must submit a report to the Governor and Legislature by July 1, 2025, which must include the program's goals and progress, overviews of the methodologies used to identify and segregate the recyclable materials of greatest environmental benefit, funding sources for the program, estimated costs and benefits to Polk County of implementing practices revealed by the program, and a recommendation on practices revealed by the program.

- Repeals the pilot program on July 1, 2025.
- Revises the definition of "displacement" in requirements for local governments' collection services that displace a private waste company. The bill states that the term "displacement" does not include actions by which a local government, at the end of a franchise that the local government has granted to a private company, refuses to renew the franchise and either: grants a franchise or awards a contract to another company or companies, or decides to provide the collection service itself. The bill also states that the term "displacement" does not include situations where private companies are franchised to do business within a local government for a limited time and such franchise expires and is not renewed by the local government.

CS by Community Affairs on January 27, 2020:

The committee substitute:

- Removes the discretion of a local government to pay a displaced private waste company in lieu of providing a 3-year notice period and makes the 3-year notice mandatory.
- Requires a local government to pay a displaced private waste company an amount equal to the company's preceding 18 months' gross receipts for the displaced service at the end of the 3-year notice period.
- Removes a provision stating that a local government and a private waste company are not prohibited from voluntarily negotiating a different notice period or amount of compensation.

B. Amendments:

None.