

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1241 Local Government Solid Waste and Recycling Collection Services
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Local Administration & Veterans Affairs Subcommittee, Hawkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 1944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	15 Y, 2 N, As CS	Mwakyanjala	Miller
2) Civil Justice & Property Rights Subcommittee	17 Y, 0 N, As CS	Mawn	Jones
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties have the authority and responsibility to provide and regulate solid waste collection and disposal. Counties are responsible for operating solid waste disposal facilities in order to meet the needs of the incorporated and unincorporated areas of the county and may contract with other persons to fulfill some or all of these solid waste responsibilities. Each county must also 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. In providing solid waste management services or programs, local governments are encouraged to use the most cost-effective means and contract with private entities for such services or programs to assure that the services or programs are provided on the most cost-effective basis. Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.

When a contract is breached, the nonbreaching party may generally seek damages against the breaching party. These damages may include administrative fees or charges and, if provided for in the contract, liquidated damages. Liquidated damages are amounts specified in a contract to which a contracting party may be entitled if the other party breaches the contract; such damages are typically specified where actual damages are difficult or impossible to prove.

CS/CS/HB 1241 provides that a local government may not assess liquidated damages or impose administrative penalties for missed collections pursuant to a solid waste or recyclable materials collection contract if:

- The person collecting solid waste or recyclable materials for the local government fails to provide timely collection service to a residential customer as a direct result of a declared local, state, or federal emergency that is in effect with the local government's jurisdiction;
- The person notifies the local government that its failure was due to the emergency; and
- The person provides the necessary collection service no later than 36 hours after the time when the service should have been provided.

The bill also:

- Specifies how a person facing liquidated damages or penalties for missed collections may obtain relief.
- Establishes if and when a local government must pay for certain missed collection services.
- Provides applicability.

The bill does not appear to have a fiscal impact on state government but may have a fiscal impact on local governments. See II.D. Fiscal Comments.

The bill provides an effective date of July 1, 2022.

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

Solid Waste Responsibilities

Counties have the authority and responsibility to provide and regulate solid waste⁴ collection and disposal.⁵ 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 will be disposed of in a manner consistent with county ordinance or state or federal law.⁶ Counties may also adopt ordinances governing the disposal of solid waste generated outside the county at the county's solid waste disposal facility.⁷

Counties are responsible for operating solid waste disposal facilities, which are permitted through the Department of Environmental Protection, in order to meet the needs of the incorporated and unincorporated areas of the county and may contract with other persons to fulfill some or all of these solid waste responsibilities.⁸ Each county must also ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements⁹ or other means.¹⁰

In providing solid waste management services or programs, local governments are encouraged to use the most cost-effective means and contract with private entities for such services or programs to assure that the services or programs are provided on the most cost-effective basis.¹¹ Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.¹²

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ Art VIII, s. 2(b); s. 166.021(1), F.S.

⁴ 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.

⁵ Ss. 125.01(1)(k)1. and 403.706, F.S.

⁶ S. 125.01(1)(k)2., F.S.

⁷ S. 403.706(1), F.S.

⁸ S. 403.706(1) and (8), F.S.; R. 62-701, F.A.C.

⁹ "Interlocal agreement" means a contract providing for a joint exercise of power by local governmental units. S. 163.01, F.S.

¹⁰ S. 403.706(3), F.S.

¹¹ S. 403.7063, F.S.

¹² *Id.*

Storm-Generated Yard Trash

“Storm-generated yard trash” is vegetative matter that:

- 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;
- Is eligible for federal reimbursement under 42 U.S.C. ss. 5121 et seq.;¹³ and
- Is placed curbside or on public property or a public right-of-way within the 15-day period after the weather event that is the subject of the federally declared disaster.¹⁴

The term includes storm-generated debris under s. 403.7071, F.S. – that is, solid waste generated as a result of a storm event that is the subject of an emergency order issued by the Department of Environmental Protection.¹⁵

Liquidated Damages

When a contract is breached, the nonbreaching party may seek damages against the breaching party. These damages may include administrative fees or charges and, if provided for in the contract, liquidated damages. Liquidated damages are amounts specified in a contract to which a contracting party may be entitled if the other party breaches the contract; such damages are typically specified where actual damages are difficult or impossible to prove.¹⁶

A local government’s contract with a solid waste management or recycling entity under which the entity provides residential municipal solid waste or recycling services to the local government may provide for liquidated damages and other fees or charges for the entity’s breach of the contract.¹⁷

Effect of the Bill

CS/CS/HB 1241 provides that a local government may not assess liquidated damages or impose administrative penalties for missed collections pursuant to a solid waste or recyclable materials collection contract if:

- The person collecting solid waste or recyclable materials for the local government fails to provide timely collection service to a residential customer as a direct result of a declared local, state, or federal emergency that is in effect within the local government’s jurisdiction;
- The person notifies the local government that its failure was due to the emergency; and
- The person provides the necessary collection service within 36 hours after the time when the service should have been provided.

However, to obtain relief from liquidated damages or penalties under the bill, the person providing collection services must prove to the local government that it complied with the above requirements.

The bill also requires a local government to pay for any collection services provided within the 36-hour window described above but specifies that the local government does not have to pay the applicable fee for a specific collection service for a residential customer until that service is actually provided.

The bill applies to contracts for the collection of residential solid waste or recyclable materials that are executed or renewed after July 1, 2022, but does not apply to:

¹³ These sections contain Congressional findings on Federal Government assistance given to state and local governments in order to alleviate suffering and damage resulting from disasters.

¹⁴ S. 403.703(42), F.S.

¹⁵ *Id.*

¹⁶ *Lefemine v. Baron*, 573 So. 2d 326, 328 (Fla. 1991), (citing *Hyman v. Cohen*, 73 So. 2d 393 (Fla. 1954)); Legal Information Institute, *Liquidated Damages*,

https://www.law.cornell.edu/wex/liquidated_damages#:~:text=Liquidated%20Damages%20are%20a%20variety,difficult%20or%20impossible%20to%20prove (last visited Feb. 16, 2022).

¹⁷ See, e.g., “Amended Residential Solid Waste and Recycling Collection Franchise Agreement,” art. 23 (July 9, 2020), between Santa Rosa County and Waste Pro, Inc., <https://www.santarosa.fl.gov/DocumentCenter/View/5350/Amended-Residential-Solid-Waste-and-Recycling-Collection-Franchise-Agreement?bidId> (last visited Feb. 16, 2022).

- A contract or contractual provision for the collection of storm-generated yard trash.
- Collections of solid waste or recyclable materials missed due to the fault of the person providing collection services.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.706, F.S., relating to local government solid waste responsibilities.

Section 2: Provides an effective date of July 1, 2022.

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:

See II.D. Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person that contracts with a local government for solid waste or recyclable materials collection may have reduced liability exposure under such a contract because such person will not be required to pay liquidated damages or administrative penalties when collection services are missed in certain situations.

D. FISCAL COMMENTS:

A local government would no longer be able to assess liquidated damages or impose administrative penalties against a person with whom the local government contracted for solid waste or recyclable materials collection when collection services are missed in certain situations. However, this only applies to contracts for the collection of residential solid waste or recyclable materials that are executed or renewed after July 1, 2022, except contracts for the collection of storm-generated yard trash, and does not apply where the missed collection services were due solely to the fault of the person responsible for providing the services.

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 expenditures 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 requires nor provides authority for administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Local Administration and Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided that a local government may not seek liquidated damages from a solid waste management or recycling entity that provides residential municipal solid waste or recycling services when a local, state, or federal emergency is in effect and such emergency materially affects the ability of the entity to provide residential municipal solid waste or recycling services.
- Specified that the bill applies to all contracts between a county or municipality for the collection or transport of solid waste or recyclable material executed or renewed on or after July 1, 2022, except contracts for the collection or disposal of storm-generated yard trash.

On February 16, 2022, the Civil Justice and Property Rights Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided that a local government may not assess liquidated damages or impose administrative penalties for missed collections pursuant to a solid waste or recyclable materials collection contract if:
 - The person collecting solid waste or recyclable materials for the local government fails to provide timely collection service to a residential customer as a direct result of a declared local, state, or federal emergency that is in effect within the local government's jurisdiction;
 - The person notifies the local government that its failure was due to the emergency; and
 - The person provides the necessary collection service within 36 hours after the time when the service should have been provided.
- Specified how a person facing liquidated damages or penalties for missed collections may obtain relief.
- Established if and when a local government must pay for certain missed collection services.
- Provided applicability.

This analysis is drafted to the committee substitute adopted by the Civil Justice & Property Rights Subcommittee.