

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 975 Solid Waste Management  
**SPONSOR(S):** Local Administration, Federal Affairs & Special Districts Subcommittee, Holcomb  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	11 Y, 5 N, As CS	Burgess	Darden
2) Civil Justice Subcommittee			
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.

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. In addition, 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 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.

The bill prevents municipalities or counties from prohibiting private entities from providing recycling or solid waste management services to commercial, industrial, or multifamily residential properties, including condominiums, within the municipality or county. A municipality or county may require the private entity to obtain a permit, license, or nonexclusive franchise equivalent, but the permit, license or nonexclusive franchise equivalent may not cost more than the administrative cost to issue the permit, license, or nonexclusive franchise equivalent. The bill requires a county or municipality to change a uniform franchise fee to all permit, license, or nonexclusive franchise equivalent holders. Contracts or franchises in place as of January 1, 2023, will be recognized and protected until the contract expires. A municipality or county may recognize a renewal option on an existing contract during 2023, but may not recognize an evergreen contract or an additional renewal or extension of a contract. For the duration of any existing contract (including any authorized renewal period), a municipality or county may charge a franchise fee in excess of administrative costs, as long that franchise fee is uniform among all service providers.

The provisions of the bill do not apply to a municipality or county that is the sole provider of solid waste collection services in its jurisdiction performed by employees of municipality or county using municipal or county-owned equipment.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0975a.LFS

DATE: 3/20/2023

## 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

##### Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

The Department of Environmental Protection (DEP) is responsible for developing a state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.<sup>7</sup> 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 county and may contract with other persons to fulfill some or all of its solid waste responsibilities.<sup>8</sup> 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.<sup>9</sup>

In providing services or programs for solid waste management, local governments 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.<sup>10</sup> Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.<sup>11</sup>

##### *Competition with Private Companies*

Current law addresses competition between private waste management companies and local government solid waste departments for third party service contracts.<sup>12</sup> Private companies have had

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<sup>1</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>2</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>3</sup> Art VIII, s. 2(b). See also s. 166.021(1), F.S.

<sup>4</sup> S. 125.01(1)(k)1., F.S.

<sup>5</sup> S. 125.01(1)(k)2., 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. S. 403.703(35), F.S.

<sup>6</sup> S. 403.706(1), F.S.

<sup>7</sup> See s. 403.705, F.S.

<sup>8</sup> Ss. 403.706(1), (8), F.S. R. 62-701, F.A.C.

<sup>9</sup> S. 403.706(3), F.S.

<sup>10</sup> S. 403.7063, F.S.

<sup>11</sup> S. 403.7063, F.S.

<sup>12</sup> S. 403.70605, F.S. See ch. 2000-304, s. 1, Laws of Fla.

concerns that public entities were able to subsidize their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.<sup>13</sup> To address those concerns, the law provides that 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.<sup>14</sup> In addition, 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.<sup>15</sup>

When providing solid waste collection services outside of its jurisdiction in competition with private companies, a local government is prohibited from instituting predatory pricing schemes.<sup>16</sup> The law provides private companies with legal remedies against local governments that violate these statutory prohibitions.<sup>17</sup>

### *Displacement of Private Garbage, Trash, and Refuse Collection Services*

A local government, or group of local governments, may not displace a private company that provides garbage, trash, or refuse collection without following certain statutory requirements. The term “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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup> 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. At the end of the three years 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.<sup>21</sup> The local government and the private company are not prohibited from agreeing to a different notice period or compensation amount.<sup>22</sup>

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

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<sup>13</sup> CS/HB 1425 (2000) Final Bill Analysis, *available at* [https://flsenate.gov/Session/Bill/2000/1425/Analyses/20001425HCA\\_HB1425S1Z.CA.pdf](https://flsenate.gov/Session/Bill/2000/1425/Analyses/20001425HCA_HB1425S1Z.CA.pdf) (last visited Mar. 15, 2023).

<sup>14</sup> S. 403.70605(1)(a), F.S.

<sup>15</sup> S. 403.70605(1)(a)2., F.S.

<sup>16</sup> S. 403.70605(2), F.S.; *see also* ss. 542.18 and 542.19, F.S.

<sup>17</sup> S. 403.70605(1)(b) and (2)(c), F.S.; *see also* ss. 542.18 and 542.19, F.S.

<sup>18</sup> S. 403.70605(3)(a), F.S.

<sup>19</sup> S. 403.70605(3)(a), F.S.

<sup>20</sup> S. 403.70605(3), F.S.

<sup>21</sup> S. 403.70605(3)(c), F.S.

<sup>22</sup> S. 403.70605(3)(c), F.S.

displaced.<sup>23</sup> In addition, the notice period is deemed to have run as of the date the private company stops providing services within the displacement area.<sup>24</sup>

### *Other Restrictions on Terminating Private Solid Waste Collection Services*

A newly-formed municipality must honor any existing solid waste contracts for five years or the remainder of the contract term, whichever is shorter.<sup>25</sup> Similarly, municipalities cannot annex additional land subject to existing solid waste contracts without honoring the existing contracts for five years or the remainder of the contract term, whichever is shorter.<sup>26</sup> If an exclusive franchisee has provided services in an area to be annexed for at least the preceding six months, the franchisee may continue to provide service in the area for the shorter of five years or the expiration of its service contract as long as it meets certain conditions including providing the service at a reasonable cost.<sup>27</sup>

### **Effect of Proposed Changes**

The bill prevents municipalities or counties from prohibiting private entities from providing recycling or solid waste management services to commercial, industrial, or multifamily residential properties, including condominiums, within the municipality or county. A municipality or county may require the private entity to obtain a permit, license, or nonexclusive franchise equivalent, but such permit, license or nonexclusive franchise equivalent may not cost more than the administrative cost to issue the permit, license, or nonexclusive franchise equivalent. The cost of the fees should be commensurate to fees charged to other industries.

The bill requires any franchise fee to be paid by all permit, license, or nonexclusive franchise equivalent holders. Contracts or franchises in place as of January 1, 2023, will be recognized and protected until the contract expires. A municipality or county may recognize a renewal option during 2023 on an existing contract, but may not recognize an evergreen contract or an additional renewal or extension of a contract. For the duration of any existing contract (including any authorized renewal period), a municipality or county may charge a franchise fee in excess of administrative costs, as long that franchise fee is uniform among all service providers.

The provisions of the bill do not apply to a municipality or county that is the sole provider of solid waste collection services in its jurisdiction performed by employees of the municipality or county using municipal or county-owned equipment.

#### **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, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>23</sup> S. 403.70605(3)(a)5., F.S.

<sup>24</sup> S. 403.70605(3)(c), F.S.

<sup>25</sup> See s. 165.061(1)(f), F.S.; see also art. I, s.10, Fla. Const.

<sup>26</sup> See s. 171.062(4), F.S.; see also art. I, s.10, Fla. Const.

<sup>27</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may have a negative impact on the local government revenues to the extent those local governments currently charge a franchise fee in excess of administrative costs.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate positive impact on solid waste companies to the extent franchise fees may be reduced to comply with the bill. The bill may also have an indeterminate positive impact on all private entities to the extent increased competition for solid waste services results in lower costs.

**D. FISCAL COMMENTS:**

None.

**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 provides authority for nor requires rulemaking by executive branch agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment allows a municipality or county to charge a franchise fee in excess of administrative costs for the duration of any existing contract (including any authorized renewal period), as long the franchise fee is uniform among all service providers. The amendment also provides the bill does not apply to a municipality or county that is the sole provider of solid waste collection services in its jurisdiction performed by employees of municipality or county using municipal or county-owned equipment.

The analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs & Special Districts Subcommittee.