

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1241 Local Government Solid Waste and Recycling Collection Services

**SPONSOR(S):** Local Administration & Veterans Affairs Subcommittee, Hawkins

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1944

| REFERENCE   | ACTION           | ANALYST     | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|------------------|-------------|--|
| 1) Local Administration & Veterans Affairs Subcommittee | 15 Y, 2 N, As CS | Mwakyanjala | Miller                                   |
| 2) Civil Justice & Property Rights Subcommittee         |                  |             |  |
| 3) State Affairs Committee                              |                  |             |  |

### SUMMARY ANALYSIS

Counties have the authority 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.

The bill amends the current statute on local government solid waste responsibilities and provides that no local government may seek liquidated damages, administrative fees, or other similar charges against a public or private solid waste management or recycling entity for any action or inaction of the entity when a local, state, or federal emergency is in effect and materially affects the ability of the solid waste management or recycling entity to provide residential municipal solid waste or recycling services. This condition would apply to all contracts except those for the collection or disposal of storm-generated yard trash executed or renewed on or after July 1, 2022.

The bill does not impact state revenues or expenditures. Local governments revenues may be affected to the extent amounts recoverable as liquidated damages for breaches of solid waste or recycling services contracts are reduced. See II.D. Fiscal Comments.

# 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.<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 Responsibilities

Counties have the authority and responsibility to provide and regulate solid waste 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<sup>5</sup> will be disposed of in a manner consistent with county ordinance or state or federal law.<sup>6</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>7</sup>

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<sup>8</sup> and may contract with other persons to fulfill some or all of these solid waste responsibilities.<sup>9</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>10</sup>

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.<sup>11</sup> Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.<sup>12</sup>

##### Storm-Generated Yard Trash

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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> Ss. 125.01(1)(k)1., 403.706, F.S.

<sup>5</sup> 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.

<sup>6</sup> S. 125.01(1)(k)2., F.S.

<sup>7</sup> S. 403.706(1), F.S.

<sup>8</sup> S. 403.706(1), F.S.

<sup>9</sup> S. 403.706(8), F.S.

<sup>10</sup> S. 403.706(3), F.S.

<sup>11</sup> S. 403.706(3), F.S.

<sup>12</sup> *Id.*

Storm-generated yard trash is vegetative matter that:

- 1) 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;
- 2) Is eligible for federal reimbursement under 42 U.S.C. ss. 5121 et seq.;<sup>13</sup> and
- 3) Is placed curbside or on public property or a public right-of-way within the 15-day period after the tropical storm, hurricane, tornado, or other significant weather event that is the subject of the federally declared disaster.<sup>14</sup>

### Liquidated Damages

When a contract is breached due to the action or inaction of a party, the nonbreaching party may seek damages against the breaching party. These damages can be in the form of administrative fees or charges. If provided in the contract, the nonbreaching party may also seek liquidated damages. Liquidated damages are specific amounts or a calculation of amounts provided in the contract to which a contracting party may be entitled upon a breach of the contract by the other party. The parties agree to specify these amounts where damages are not readily ascertainable or disproportionate for the type of contract breach.<sup>15</sup>

A local government agreement with a private party for solid waste collection and disposal services may be in the form of a franchise agreement and may provide for a fixed amount of damages, known as liquidated damages, for certain breaches of the agreement by the service provider.<sup>16</sup>

### **Effect of the Bill**

The bill amends the current statute on local government solid waste responsibilities and provides that no local government may seek liquidated damages other similar charges against a public or private solid waste management or recycling entity for any action or inaction of the entity when a local, state, or federal emergency is in effect and materially affects the ability of the solid waste management or recycling entity to provide residential municipal solid waste or recycling services.

The bill applies to contracts executed or renewed on or after July 1, 2022, between a county or municipality for the collection or transport of solid waste or recyclable material. However, contracts for the collection or disposal of storm-generated yard trash between a county or municipality for the collection or transport of solid waste or recyclable material are excluded.

### **B. SECTION DIRECTORY:**

Section 1: Renumbers subsection (23) of s. 403.706, F.S. to subsection (24) and creates a new subsection (23). Provides no local government may seek damages or similar charges against a public or private solid waste management or recycling entity for action or inaction when a local, state, or federal emergency is in effect and materially affects the ability of the solid waste management or recycling entity to provide residential municipal solid waste or recycling services. Provides the prohibition applies to all contracts except those for the collection or disposal of storm-generated yard trash executed or renewed on or after July 1, 2022.

Section 2: Provides that the act shall take effect July 1, 2022.

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<sup>13</sup> Contains the findings of Congress on the matter of assistance of the Federal Government to state and local governments in order to alleviate suffering and damage which result from disasters.

<sup>14</sup> S. 403.703(42), F.S.

<sup>15</sup> *Lefemine v. Baron*, 573 So. 2d 326, 328 (Fla. 1991), referencing *Hyman v. Cohen*, 73 So.2d 393 (Fla. 1954).

<sup>16</sup> 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., at <https://www.santarosa.fl.gov/DocumentCenter/View/5350/Amended-Residential-Solid-Waste-and-Recycling-Collection-Franchise-Agreement?bidId=> (last visited January 29, 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:

None.

2. Expenditures:

None.

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

Private waste management or recycling entities that have contracts with local governments for the collection or transport of solid waste or recyclable material may have reduced liability exposure under contracts with local governments because they will no longer be subject to liquidated damages or other similar charges action or inaction when a local, state, or federal emergency is in effect.

### D. FISCAL COMMENTS:

Local governments would no longer be able to seek liquidated damages or other similar charges against public solid waste management or recycling entities for action or inaction when a local, state, or federal emergency is in effect and materially affects the ability of the solid waste management or recycling entity to provide residential municipal solid waste or recycling services. This only applies to contracts for the collection of storm-generated yard trash executed or renewed on or after July 1, 2022.

## 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 could not seek liquidated damages if a local, state, or federal emergency must materially affects the ability of the solid waste management or recycling entity to provide residential municipal solid waste or recycling services. The amendment removed subsection (23)(b) from the bill and consolidated the bill into one subsection (23).

This analysis is drafted to the committee substitute adopted by the Local Administration and Veterans Affairs Subcommittee.