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HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS

BILL #: HB 1425

RELATING TO: Solid Waste Management Services

SPONSOR(S): Representative Garcia and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COMMUNITY AFFAIRS (PRC)
(2) ENVIRONMENTAL PROTECTION (RLC)
(3)
(4)
(5)

I. SUMMARY:

This bill subjects local government providing solid waste management services to the same requirements as private industry and imposes certain requirements on local governments providing services out of jurisdiction.

This bill requires local government to maintain separate accounting where it provides its own services, and precludes it from using subsidies, except for grants.

This legislation clarifies that an injured party may recover in circuit court for injunctive relief, attorney fees, and damages in certain situations.

This bill requires that local government charge full cost for its services.

This bill imposes procedures on local government where a company is displaced, including specified notice or a “pay out” of funds.

This bill extends limitations to contracts, which currently apply to franchises that only provide solid waste services to newly annexed areas.

This bill, as introduced, may be subject to the provisions of Article VII, Section 18 (a) of the Florida Constitution. See Section IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION.

This bill, as introduced may raise issues relating to the provisions of Article I, Section 10 of the Florida Constitution. See Section V. A. CONSTITUTIONAL ISSUES .

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No [x]	N/A []
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

This bill creates new requirements for government in the following provisions: separate accounting of waste management services, local government compliance with the same mandates imposed on private companies, full cost charge for services provided by local government, displacement procedure, and 5 year notice/payout of funds.

Potentially, this bill eliminates an entitlement to government services, as it prohibits local government from maximizing the use of subsidies, unless they are available through grants.

B. PRESENT SITUATION:

Currently, local governments provide solid waste management services through contracts or franchises with themselves using city or county equipment and labor, with private waste management companies, or a combination of both. While most landfills in the state are owned by counties, there are several privately owned regional landfills which accept waste from a growing number of counties. Most construction and demolition debris disposal facilities and materials recovery facilities, other than those co-located at landfills, are privately owned. Many large cities use both city collection equipment and crews for some parts of the city and franchise collection in other parts of the city. In many cases, cities or counties permit government solid waste departments to compete with private sector companies for specific contracts. Private companies complain that in these situations, public entities subsidize their costs with funds from other city operations or through a “hidden tax,” unfairly competing for contracts.

Private waste management companies express concern that there are instances where local governments annex an unincorporated area of a county, where a private waste management company has contracts for waste management services, and then extend the local government’s waste management services into the annexed area on an exclusive basis, with no consideration of the existing private contracts.

C. EFFECT OF PROPOSED CHANGES:

This bill subjects local government providing solid waste management services to the same requirements as private industry and requires local governments providing services out of jurisdiction to charge full cost. This bill requires local government to maintain separate accounting where it provides its own services, and precludes it from using subsidies, except for grants.

This bill subjects local government to civil suits for injunctive relief and damages. The injunctive relief portion is already provided for in s. 542.235, F.S., which is heavily based on federal antitrust law. Section 542.235, F.S., provides an injunctive remedy for Florida antitrust violations. Consequently, this bill subjects local government to damages, which is not already provided for in statute.

This bill imposes procedures on local government where a company is displaced, including specified notice or a "pay out" of funds. This requires local government to give five years notice to a displaced company, or, alternatively, to pay eighteen months worth of gross receipts.

This bill extends limitations to contracts, which currently apply only to franchises providing solid waste services to newly annexed areas.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Provides that the following rules require municipalities, counties and other local governments providing solid waste management services in competition with private companies to:

(1) maintain separate accounts of related revenues, expenses and depreciation, property, and source of investment funds.

(2) use only public funds in the form of state awards or grants, in subsidizing solid waste management services for the public.

(3) abide by any local requirement, such as requiring payment of fees of any private company, if the requirement benefits local government in competition with a private company regarding costs, speed, or efficiency.

(4) Defines the following:

(a) Solid waste management services - how solid waste is collected, transported, stored, separated, processed, recycled, or disposed. Excludes recovered materials services as contained in S. 403.703, F.S.

(b) Source of investment funds - fund(s) used to pay for solid waste services.

(5) Clarifies that this section does not apply when local government either provides services not automatically but as requested or is itself the exclusive provider of the services or is under an exclusive franchise.

(6) Removes the separate accounting requirement where local government is itself exclusively providing the services.

(7) Provides that a plaintiff injured through violation of this section may seek injunctive relief and attorney's fees through circuit court action.

Section 2 -- Addresses the following regarding out-of-jurisdiction services:

(1) A local government providing solid waste management services outside its jurisdiction with private company competition is required to charge and prove that it charges full cost.

(2) An injured plaintiff harmed by violation of this section may pursue injunctive relief, damages and attorney fees in circuit court.

(3) Full cost is defined as all direct and indirect costs, plus depreciation, related to these services.

Section 3 -- Addresses displacement of private waste companies:

(1) Displacement is when a local government, in supplying a service, precludes a private company from providing service that it has provided up to this point. Excludes from this definition:

(a) Public sector and private sector competition for individual contracts.

(b) Refusal by local government to renew a contract with a private company or award it to a different private company or to itself.

(c) Action taken by local government against a private company through concern for public health, safety, or nuisance.

(d) Action taken by local government against a private company due to material breach of contract.

(e) Refusal by private company to fulfill contract during the 5-year notice period.

(f) Contract with private company to provide services, where the contracting is not pursuant to an ordinance that displaces or authorizes displacement of another private company.

(g) Petitioning local government to provide collection, signed by 55 percent or more of property owners in displacement area

(h) Licensing or permitting private companies to do business within the local government for a fixed time and, after expiration, the local government does not renew; requires the local government to have enacted its licensing or permitting process as of May 1, 1999 for this provision to attach; excludes occupational licenses from this provision, or

(I) Annexations addressed by 171.062 (4), F.S.

(2) Before displacing a private company, a local government(s) must invite public input on the issue of the local government(s) providing the service, at a public hearing, send 45 days advance written notice to all private companies that provide service, and publish public notice of the hearing.

(3) A local government has one year from the date of the last hearing to begin to provide the service. A local government must give the private company 5 years notice before providing the service or pay the company an amount equal to what a company makes in 18 months. A company ceasing to provide service waives the 5 year notice requirement. The local government and private company are still free to negotiate a different arrangement.

Section 4 -- Creates a new provision in s.165.061, F.S., regarding incorporation and merger:

(2) Where a new municipality incorporates through merger of other municipalities and unincorporated areas, the plan to incorporate or merge must provide for continuation of existing contracts for services for 5 years or until the end of the contract period.

Section 5 -- Amends s.171.062, F.S.; extends 5 year notice/end of contract (in addition to franchises) provision to services provided through contracts (in addition to franchises) for annexed areas; additionally provides that where arbitration is necessary regarding cost, the service provider must produce the contract within a reasonable time upon request; allows the municipality to void a franchise/contract for lack of compliance with this section.

Section 6 -- Provides for an effective date October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is no positive fiscal impact on state government.

2. Expenditures:

There is no increase in expenditures for state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

It is not anticipated that this bill will generate additional revenue.

2. Expenditures:

There may be a fiscal impact on local government, in that this bill requires personnel to maintain separate accounting of revenues, expenses, etc. where a local government supplies waste management services.

This bill subjects local government to the same fees as private companies. Opponents to the bill suggest that many of these fees are duplicative.

This bill may impede local government from maximizing the use of subsidies in requiring that it charge “full cost.”

In providing 5 years notice to a displaced company, local government is unable to take advantage of potentially lower bids for this fixed period. In the alternative, local government may “pay out” a company for 18 months worth of work. This may impose a considerable hardship on the small county or city. However, it is not known at this time how many small counties or cities currently provide their own services.

There may be an increased cost in litigation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This should have a positive impact on private companies providing solid waste management services. Private companies will have increased opportunity for business.

Providing for notice or "pay out" enables the displaced company to anticipate and plan for economic losses.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

As the bill is currently drafted, it appears that it may trigger the mandates provision. At this time, it is not known how much it would cost cities and counties in the aggregate; however, this bill, if implemented, may potentially result in a significant cumulative cost to local governments. This cost may result from the provisions related to increased recordkeeping, payment of fees, provision of services at full cost, and the 5 year notice or payout of gross receipts requirement.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill may raise a constitutional concern as relates to potential interference with contracts. There is no exemption from the provisions of the bill for existing contracts. Article I, Section 10 of the Florida Constitution provides, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." In In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla.1987), the Court issued an advisory opinion (non-binding) addressing the application of a newly-created statute to an existing contract. In this case, the legislation required prime contractors to pay a tax on certain services provided. Though contract rights are certainly subject to state taxation, the Court conceded, retroactive application unconstitutionally impairs contracts.

Existing contract rights are not untouchable, however. Legislative action which alters existing remedies, such as statute of limitations, will most likely be found constitutional as applies to existing contracts. Ruhl v. Perry, 390 So.2d 353 (Fla. 1980). In this case, the Court did note the existence of a one-year savings clause, however.

The Third District Court of Appeal employed a balancing test in analyzing the issue of contract impairment. Yellow Cab Co. Of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d DCA 1982). Here, the Court balanced the nature and extent of impairment with the level of importance of the state's interest. Incorporating the language in the Pomponio decision, the Court offered a detailed inquiry:

> (a) Was the law enacted to deal with a broad generalized economic or social problem?
>
> (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by this state?
>
> (c) Does the law affect a temporary alteration of the contractual relationship...or does it work a severe, permanent, and immediate change...irrevocably and retroactively?

Pomponio v. Cladridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1980).

Here, this legislation addresses a specific type of contract, that of waste management services. As this bill does not alter a general provision, such as a statute of limitations time period, Ruhl may not be relevant. Under the Yellow Cab Co. analysis, if challenged, the state must first show that this legislation addresses an economic or social issue. Arguably, this bill cures local government's unfair economic advantage over private industry. However, this criteria likely refers to the economic concerns of the local government, not the private provider. Under the second prong, it does not appear that any regulation currently exists which limits local government's ability to choose a provider for these services. Regarding the last factor, change to the contractual relationship, the five year notice and pay out provisions provide a unilateral benefit to the provider, to the permanent detriment of local government.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Supporters state that this bill will provide a more level playing field. Through certain provisions, such as requiring separate recordkeeping, payment of certain fees, full cost, five year notice or eighteen month payout, and restricting subsidies, the state can maintain a check on local government to ensure fair competition industrywide. The provision specifically relating to advance notice or payout will provide a hedge against economic loss.

These same provisions, opponents argue, create undue financial burdens, and interfere with local government flexibility to provide service at maximum efficiency and lowest cost to the public. This bill may result in increased litigation, due to confusion over certain terms, such as "in competition," "outside its jurisdiction," "full cost," and "solid waste management."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Sponsor is proposing a strike-everything amendment, in an effort to resolve concerns raised by the bill.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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