

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 Judiciary

BILL: CS/SB 694

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Private Property for Motor Vehicle Parking

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 694 amends s. 715.075, F.S., which authorizes the owners and operators of privately-owned parking facilities to establish rules and rates in connection with their use by consumers.

The bill provides that owners and operators of privately-owned parking facilities:

- Must send an invoice, by certified mail, to the registered owner of a vehicle for parking charges.
- May not assess a late fee for at least 30 days after the postmarked date of the mailing.

The bill also limits the scope of the existing statutory preemption to ordinances or regulations purporting to restrict the parking rates charged by owners and operators. Other ordinances or regulations will be permissible so long as they do not otherwise conflict with state law.

The bill also prohibits the owners and operators of privately-owned parking facilities from charging vehicle owners for merely entering their facilities, if such vehicle owners are on the property for less than 10 minutes and do not park.

The bill takes effect on July 1, 2023.

II. Present Situation:

Local and State Regulation of Private Parking Facilities

Over the past 5 years, some owners and operators of privately-owned parking facilities in south Florida have been accused of engaging in unscrupulous business practices.¹ This has prompted local governments to take a closer look at how such facilities are operated, and to enact ordinances regulating such facilities.

For example, the City of Miami passed an emergency ordinance in 2019 banning the operators of privately-owned parking facilities in the city from issuing citations for violations of facility rules, claiming that such citations caused confusion for the recipients who sometimes thought the citations were city-issued and could lead to civil or criminal penalties.²

However, 2 years later, in apparent response to lobbying from the parking industry, the city amended the ordinance to permit the issuance of private parking citations if they are not called a “violation, citation, or ticket” and include a notice informing the recipient that “[t]his invoice is privately issued, is not issued by a governmental entity, and is not subject to civil or criminal penalties.”³

And in 2021, Broward County enacted an ordinance making it “unlawful for any person, including a parking facility operator or agent, to issue a private ticket to a motor vehicle or to the owner of any such vehicle.”⁴ County commissioners originally enacted the ordinance in response to complaints similar to those cited by City of Miami commissioners in 2019.⁵

In response to these and similar ordinances, in 2022 the Legislature enacted chapter 2022-171, Laws of Fla., which among other things created s. 715.075, F.S.⁶

That statute creates a state preemption, which prohibits any county or municipal government from enacting an ordinance or regulation restricting or prohibiting the right of a private property owner or operator to establish rules, rates, and fines governing parking on the privately-owned

¹ See Local10.com, Hatzel Vela, *Consumer protection: Professional Parking Management faces another lawsuit*, May 4, 2022, <https://www.local10.com/news/local/2022/05/04/consumer-protection-professional-parking-management-faces-another-lawsuit/> (describing a class-action lawsuit filed against a parking company with a Better Business Bureau rating of “F” and 755 complaints).

² City of Miami, Fla., Ord. No. 13840 (enacted May 23, 2019); s. 35-292, City of Miami, Fla. Code of Ordinances; see also Terence Cantarella, *Sharking Lots: Private Businesses Can Now Legally Issue Parking Tickets in Miami*, Nov. 2, 2021, MIAMI NEW TIMES, <https://www.miaminewtimes.com/news/private-businesses-can-now-issue-parking-tickets-in-miami-13245504> (referencing and discussing this ordinance).

³ City of Miami, Fla., Ord. No. 13990 (enacted Apr. 22, 2021); s. 35-292, City of Miami, Fla. Code of Ordinances; see also Cantarella, *supra* note 1 (referencing and discussing this ordinance).

⁴ Broward County, Fla., Ord. No. 2021-43 (enacted Sept. 21, 2021); s. 20-164.2, Broward County, Fla. Code of Ordinances; see also Local10.com, Hatzel Vela, *‘It’s a scam’: Broward commissioners make private parking citations unlawful*, Sept. 21, 2021, <https://www.local10.com/news/local/2021/09/21/its-a-scam-broward-commissioners-make-private-parkings-citations-unlawful/> (referencing and discussing this ordinance).

⁵ See Local10.com, *‘It’s a scam’*, *supra* note 4 (citing, among other things, the confusion created by private owners’ giving out “citations that look like they’re from law enforcement”).

⁶ Chapter 2022-171, s. 4, Laws of Fla., codifying s. 715.075, F.S.

property. Under the statute, any such ordinance or regulation is a violation of the statute, and is null and void.⁷

The statute also provides that the owner or operator of a privately-owned parking facility may establish rules and rates that govern private persons parking motor vehicles on such property.⁸ These rules and rates, which may include parking charges for violating the property owner's or operator's rules, must be posted and be clearly visible to persons parking motor vehicles on such private property.⁹ Moreover, any invoice for parking charges issued under the statute must include the following statement in uppercase type:

THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A
GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL
PENALTIES.¹⁰

Following enactment of the statute in 2022, Broward County repealed its ordinance due to the state preemption.¹¹

Local Government Authority

The State Constitution grants local county and municipal 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.¹² Those counties operating under a county charter have all powers of self-government not inconsistent with general or with special law approved by the vote of the electors.¹³ Likewise, municipalities¹⁴ have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.¹⁵

There are two ways that a local enactment can be inconsistent with state law and therefore unconstitutional. First, a local government cannot legislate in a field if the subject area has been preempted to the state. Second, in a field where both the state and local government can legislate concurrently, a local government cannot enact an ordinance that directly conflicts with the state statute.¹⁶

⁷ Section 715.075(2), F.S.

⁸ Section 715.075(1), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Local10.com, *Consumer protection*, *supra* note 1 (noting that if Gov. Ron DeSantis signed the legislation, "Broward County would have to repeal the ordinance"); see also Broward County, Fla., Ord. No. 2022-33 (enacted Jun. 15, 2022) and s. 20-164.2, Broward County Code of Ordinances (repealing Ord. No. 2021-43 in response to ch. 2022-171, s. 4, Laws of Fla.).

¹² FLA. CONST. art. VIII, s. 1(f).

¹³ FLA. CONST. art. VIII, s. 1(g).

¹⁴ A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

¹⁵ FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.

¹⁶ *Orange County v. Singh*, 268 So. 3d 668, 673 (Fla. 2019) (citing *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008)); see also James Wolf & Sarah Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict*

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.¹⁷ In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.¹⁸ Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.¹⁹

State law currently preempts to the state the regulation of privately-owned parking facilities.²⁰ Therefore, local governments may not regulate such facilities.

III. Effect of Proposed Changes:

CS/SB 694 amends a recently-enacted statute, s. 715.075, F.S., which authorizes the owners and operators of privately-owned parking facilities to establish rules and rates in connection with their use by consumers.

Under the bill, owners and operators of privately-owned parking facilities:

- Must send an invoice, by certified mail, to the registered owner of the vehicle for parking charges issued under the statute.
- May not assess a late fee for a period of at least 30 days after the postmarked date of the mailing.

The bill revises the provision preempting to the state all regulation of privately-owned parking facilities, by limiting its scope to ordinances or regulations that restrict, in any manner, the parking rates charged by owners and operators of privately-owned parking facilities, including the parking charges they impose for violating their rules. Accordingly, any local government ordinance or regulation purporting to restrict such parking rates and charges will be null and void, but any ordinance or regulation that does not restrict parking rates and charges will be permissible so long as it does not otherwise conflict with state law.

The bill also prohibits the owners and operators of privately-owned parking facilities from charging the registered owner, or other legally authorized person in charge of the vehicle, for merely entering their privately-owned parking facilities, if they are on the property for less than 10 minutes and do not park.

The bill takes effect on July 1, 2023.

Analysis, 83 FLA. BAR J. 92 (2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (discussing these concepts).

¹⁷ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Brevard, Inc.*, 3 So. 3d at 1018.

¹⁸ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

¹⁹ *See, e.g., National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (concluding that a City of South Miami local government ordinance, which purported to provide safety standards for firearms, was null and void because the Legislature expressly preempted the entire field of firearm and ammunition regulation when it enacted s. 790.33, F.S.).

²⁰ *See* s. 715.075(2), F.S. (providing that “such ordinance or regulation is a violation of this section and is null and void”).

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners and operators will incur new costs associated with sending invoices to vehicle owners by certified mail, which they are not currently required to do. They will also lose any revenue associated with either imposing late fees fewer than 30 days after the postmarked date of the certified mailing, or charging vehicle owners for entering their parking facilities and remaining there for fewer than 10 minutes without parking.

On the other hand, the requirement for the use of certified mail and a 30-day payment period will protect consumers from the imposition of accelerating late fees without having a reasonable time to pay them.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 715.075 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 4, 2023:

- Replaces the bill with its House companion, CS/HB 617.
- Provides that owners and operators of privately-owned parking facilities:
 - Must send an invoice, by certified mail, to the registered owner of a vehicle for parking charges.
 - May not assess a late fee for at least 30 days after the postmarked date of the mailing.
- Limits the scope of the existing statutory preemption to ordinances or regulations purporting to restrict the parking rates charged by owners and operators.
- Prohibits the owners and operators of privately-owned parking facilities from charging vehicle owners for merely entering their facilities, if such vehicle owners are on the property for less than 10 minutes and do not park.

- B. **Amendments:**

None.