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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
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Appropriations Subcommittee on General Government (Hays)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 53 - 195
and insert:
paragraph (a) against any local government. No injunctive relief shall be granted if the official action that ~~which~~ forms the basis for the suit bears a reasonable relationship to the health, safety, or welfare of the citizens of the local government unless the court finds that the actual or potential anticompetitive effects outweigh the public benefits of the



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11 challenged action.

12 2. As a condition precedent to the institution of an action
13 pursuant to this paragraph, the complaining party shall first
14 file with the local government a notice referencing this
15 paragraph and setting forth the specific facts upon which the
16 complaint is based and the manner in which the complaining party
17 is affected. The complaining party may provide evidence to
18 substantiate the claims made in the complaint. Within 30 days
19 after receipt of such a complaint, the local government shall
20 respond in writing to the complaining party explaining the
21 corrective action taken, if any. If no response is received
22 within 30 days or if appropriate corrective action is not taken
23 within a reasonable time, the complaining party may institute
24 the judicial proceedings authorized in this paragraph. However,
25 failure to comply with this subparagraph may ~~shall~~ not bar an
26 action for a temporary restraining order to prevent immediate
27 and irreparable harm from the conduct or activity complained of.

28 3. The court may, in its discretion, award to the
29 prevailing party or parties costs and reasonable attorney
30 ~~attorneys'~~ fees.

31 (c) This subsection does not apply when the local
32 government is exclusively providing the specific solid waste
33 collection, disposal, or recycling services itself or pursuant
34 to an exclusive franchise.

35 (2) SOLID WASTE COLLECTION SERVICES OUTSIDE JURISDICTION.-

36 (a) Notwithstanding s. 542.235, or any other provision of
37 law, a local government that provides solid waste collection
38 services outside its jurisdiction in direct competition with
39 private companies is subject to the same prohibitions against



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40 predatory pricing applicable to private companies under ss.
41 542.18 and 542.19.

42 (b) Any person injured by reason of violation of this
43 subsection may sue therefor in the circuit courts of this state
44 and shall be entitled to injunctive relief and to recover the
45 damages and the costs of suit. The court may, in its discretion,
46 award to the prevailing party or parties reasonable attorneys'
47 fees. An action for damages under this subsection must be
48 commenced within 4 years. No person may obtain injunctive relief
49 or recover damages under this subsection for any injury that
50 results from actions taken by a local government in direct
51 response to a natural disaster or similar occurrence for which
52 an emergency is declared by executive order or proclamation of
53 the Governor pursuant to s. 252.36 or for which such a
54 declaration might be reasonably anticipated within the area
55 covered by such executive order or proclamation.

56 (c) As a condition precedent to the institution of an
57 action pursuant to this subsection, the complaining party shall
58 first file with the local government a notice referencing this
59 subsection and setting forth the specific facts upon which the
60 complaint is based and the manner in which the complaining party
61 is affected. Within 30 days after receipt of such complaint, the
62 local government shall respond in writing to the complaining
63 party explaining the corrective action taken, if any. If the
64 local government denies that it has engaged in conduct that is
65 prohibited by this subsection, its response shall include an
66 explanation showing why the conduct complained of does not
67 constitute predatory pricing.

68 (d) For the purposes of this subsection, the jurisdiction



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69 of a county, special district, or solid waste authority shall
70 include all incorporated and unincorporated areas within the
71 county, special district, or solid waste authority.

72 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

73 (a) As used in this subsection, the term "displacement"
74 means a local government's provision of a collection service
75 which prohibits a private company from continuing to provide the
76 same service that it was providing when the decision to displace
77 was made. The term does not include:

78 1. Competition between the public sector and private
79 companies for individual contracts;

80 2. Actions by which a local government, at the end of a
81 contract with a private company, refuses to renew the contract
82 and either awards the contract to another private company or
83 decides for any reason to provide the collection service itself;

84 3. Actions taken against a private company because the
85 company has acted in a manner threatening to the public health
86 or safety or resulting in a substantial public nuisance;

87 4. Actions taken against a private company because the
88 company has materially breached its contract with the local
89 government;

90 5. Refusal by a private company to continue operations
91 under the terms and conditions of its existing agreement during
92 the 3-year notice period;

93 6. Entering into a contract with a private company to
94 provide garbage, trash, or refuse collection which contract is
95 not entered into under an ordinance that displaces or authorizes
96 the displacement of another private company providing garbage,
97 trash, or refuse collection;



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98 7. Situations in which a majority of the property owners in
99 the displacement area petition the governing body to take over
100 the collection service;

101 8. Situations in which the private companies are licensed
102 or permitted to do business within the local government for a
103 limited time and such license or permit expires and is not
104 renewed by the local government. This subparagraph does not
105 apply to licensing or permitting processes enacted after May 1,
106 1999, or to occupational licenses; or

107 9. Annexations, but only to the extent that the provisions
108 of s. 171.062(4) apply.

109 (b) A local government or combination of local governments
110 may not displace a private company that provides garbage, trash,
111 or refuse collection service without first:

112 1. Holding at least one public hearing seeking comment on
113 the advisability of the local government or combination of local
114 governments providing the service.

115 2. Providing at least 45 days' written notice of the
116 hearing, delivered by first-class mail to all private companies
117 that provide the service within the jurisdiction.

118 3. Providing public notice of the hearing.

119 (c) Following the final public hearing held under paragraph
120 (b), but not later than 1 year after the hearing, the local
121 government may proceed to take those measures necessary to
122 provide the service. A local government shall provide 3 years'
123 notice to a private company before it engages in the actual
124 provision of the service that displaces the company. As an
125 alternative to delaying displacement 3 years, a local government
126 may pay a displaced company an amount equal to the company's



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127 preceding 15 months' gross receipts for the displaced service in
128 the displacement area. The 3-year notice period shall lapse as
129 to any private company being displaced when the company ceases
130 to provide service within the displacement area. Nothing in this
131 paragraph prohibits the local government and the company from
132 voluntarily negotiating a different notice period or amount of
133 compensation.

134 (4) DEFINITIONS.—As used in this section, the term:

135 (a) "In competition" or "in direct competition" means the
136 competition ~~vying~~ between a local government and a private
137 company to provide substantially similar solid waste collection,
138 disposal, or recycling services to the same customer.

139 (b) "Private company" means an ~~any~~ entity other than a
140 local government or other unit of government which ~~that~~ provides
141 solid waste collection, disposal, or recycling services.

142
143 ===== T I T L E A M E N D M E N T =====

144 And the title is amended as follows:

145 Delete lines 9 - 11

146 and insert:

147 recycling services; revising definitions;