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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2016	.	
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The Committee on Environmental Preservation and Conservation
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 403.70491, Florida Statutes, is created
to read:

403.70491 Invoices for solid waste collection, disposal, or
recycling.—A local government may not prevent a private company
from listing separately on the company's invoice for solid waste
collection, disposal, or recycling any governmental taxes or



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11 fees, including, but not limited to, any franchise fee.

12 Section 2. Subsections (1) and (4) of section 403.70605,
13 Florida Statutes, are amended to read:

14 403.70605 Solid waste collection, disposal, or recycling
15 services in competition with private companies.-

16 (1) SOLID WASTE COLLECTION, DISPOSAL, OR RECYCLING SERVICES
17 IN COMPETITION WITH PRIVATE COMPANIES.-

18 (a) A local government that provides specific solid waste
19 collection, disposal, or recycling services in direct
20 competition with a private company:

21 1. Shall comply with the provisions of local environmental,
22 health, and safety standards that also are applicable to a
23 private company providing such collection, disposal, or
24 recycling services in competition with the local government.

25 2. May ~~shall~~ not enact or enforce any license, permit,
26 registration procedure, or associated fee that:

27 a. Does not apply to the local government and for which
28 there is not a substantially similar requirement that applies to
29 the local government; and

30 b. Provides the local government with a material advantage
31 in its ability to compete with a private company in terms of
32 cost or ability to promptly or efficiently provide such
33 collection, disposal, or recycling services. Nothing in this
34 sub-subparagraph shall apply to any zoning, land use, or
35 comprehensive plan requirement.

36 (b)1. A private company with which a local government is in
37 competition may bring an action to enjoin a violation of
38 paragraph (a) against any local government or state agency. No
39 injunctive relief shall be granted if the official action that



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40 ~~which~~ forms the basis for the suit bears a reasonable
41 relationship to the health, safety, or welfare of the citizens
42 of the local government unless the court finds that the actual
43 or potential anticompetitive effects outweigh the public
44 benefits of the challenged action.

45 2. As a condition precedent to the institution of an action
46 pursuant to this paragraph, the complaining party shall first
47 file with the local government a notice referencing this
48 paragraph and setting forth the specific facts upon which the
49 complaint is based and the manner in which the complaining party
50 is affected. The complaining party may provide evidence to
51 substantiate the claims made in the complaint. Within 30 days
52 after receipt of such a complaint, the local government shall
53 respond in writing to the complaining party explaining the
54 corrective action taken, if any. If no response is received
55 within 30 days or if appropriate corrective action is not taken
56 within a reasonable time, the complaining party may institute
57 the judicial proceedings authorized in this paragraph. However,
58 failure to comply with this subparagraph may ~~shall~~ not bar an
59 action for a temporary restraining order to prevent immediate
60 and irreparable harm from the conduct or activity complained of.

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

64 (c) This subsection does not apply when the local
65 government is exclusively providing the specific solid waste
66 collection, disposal, or recycling services itself or pursuant
67 to an exclusive franchise.

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



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69 (a) Notwithstanding s. 542.235, or any other provision of
70 law, a local government that provides solid waste collection
71 services outside its jurisdiction in direct competition with
72 private companies is subject to the same prohibitions against
73 predatory pricing applicable to private companies under ss.
74 542.18 and 542.19.

75 (b) Any person injured by reason of violation of this
76 subsection may sue therefor in the circuit courts of this state
77 and shall be entitled to injunctive relief and to recover the
78 damages and the costs of suit. The court may, in its discretion,
79 award to the prevailing party or parties reasonable attorneys'
80 fees. An action for damages under this subsection must be
81 commenced within 4 years. No person may obtain injunctive relief
82 or recover damages under this subsection for any injury that
83 results from actions taken by a local government in direct
84 response to a natural disaster or similar occurrence for which
85 an emergency is declared by executive order or proclamation of
86 the Governor pursuant to s. 252.36 or for which such a
87 declaration might be reasonably anticipated within the area
88 covered by such executive order or proclamation.

89 (c) As a condition precedent to the institution of an
90 action pursuant to this subsection, the complaining party shall
91 first file with the local government a notice referencing this
92 subsection and setting forth the specific facts upon which the
93 complaint is based and the manner in which the complaining party
94 is affected. Within 30 days after receipt of such complaint, the
95 local government shall respond in writing to the complaining
96 party explaining the corrective action taken, if any. If the
97 local government denies that it has engaged in conduct that is



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98 prohibited by this subsection, its response shall include an
99 explanation showing why the conduct complained of does not
100 constitute predatory pricing.

101 (d) For the purposes of this subsection, the jurisdiction
102 of a county, special district, or solid waste authority shall
103 include all incorporated and unincorporated areas within the
104 county, special district, or solid waste authority.

105 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

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

111 1. Competition between the public sector and private
112 companies for individual contracts;

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

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

120 4. Actions taken against a private company because the
121 company has materially breached its contract with the local
122 government;

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

126 6. Entering into a contract with a private company to



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127 provide garbage, trash, or refuse collection which contract is
128 not entered into under an ordinance that displaces or authorizes
129 the displacement of another private company providing garbage,
130 trash, or refuse collection;

131 7. Situations in which a majority of the property owners in
132 the displacement area petition the governing body to take over
133 the collection service;

134 8. Situations in which the private companies are licensed
135 or permitted to do business within the local government for a
136 limited time and such license or permit expires and is not
137 renewed by the local government. This subparagraph does not
138 apply to licensing or permitting processes enacted after May 1,
139 1999, or to occupational licenses; or

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

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

145 1. Holding at least one public hearing seeking comment on
146 the advisability of the local government or combination of local
147 governments providing the service.

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

151 3. Providing public notice of the hearing.

152 (c) Following the final public hearing held under paragraph
153 (b), but not later than 1 year after the hearing, the local
154 government may proceed to take those measures necessary to
155 provide the service. A local government shall provide 3 years'



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156 notice to a private company before it engages in the actual
157 provision of the service that displaces the company. As an
158 alternative to delaying displacement 3 years, a local government
159 may pay a displaced company an amount equal to the company's
160 preceding 15 months' gross receipts for the displaced service in
161 the displacement area. The 3-year notice period shall lapse as
162 to any private company being displaced when the company ceases
163 to provide service within the displacement area. Nothing in this
164 paragraph prohibits the local government and the company from
165 voluntarily negotiating a different notice period or amount of
166 compensation.

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

168 (a) "In competition" or "in direct competition" means the
169 competition vying between a local government and a private
170 company to provide substantially similar solid waste collection
171 services to the same customer. For the purposes of subsection
172 (1), the term also refers to the competition between private
173 companies to provide disposal or recycling services to the same
174 customer.

175 (b) "Private company" means an ~~any~~ entity other than a
176 local government or other unit of government which ~~that~~ provides
177 solid waste collection services. For the purposes of subsection
178 (1), the term also includes entities other than a local
179 government or other unit of government which provide disposal or
180 recycling services.

181 Section 3. Section 812.0141, Florida Statutes, is created
182 to read:

183 812.0141 Theft of recyclable property.—

184 (1) As used in this section, the term "recyclable property"



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185 means recovered materials, as defined in s. 403.703, in addition
186 to wooden or plastic pallets.

187 (2) A person commits theft if he or she knowingly obtains
188 or uses, or endeavors to obtain or to use, the recyclable
189 property of another with intent to, either temporarily or
190 permanently:

191 (a) Deprive the other person of a right to possess the
192 recyclable property or of a benefit derived therefrom.

193 (b) Appropriate the recyclable property for his or her own
194 use or to the use of a person not entitled to the use of the
195 recyclable property.

196 (3) A person who violates this section is guilty of a
197 misdemeanor of the first degree, punishable as provided in s.
198 775.082 or s. 775.083. Prosecution for a violation of subsection
199 (2) does not preclude prosecution for theft pursuant to s.
200 812.014.

201 (4) A person who commits a third or subsequent violation of
202 subsection (2) within 3 years after the date of a prior
203 violation that resulted in a conviction for a violation of
204 subsection (2) commits a felony of the third degree, punishable
205 as provided in s. 775.082 or s. 775.083.

206 (5) A person who proves by clear and convincing evidence
207 that he or she has been injured in any manner by reason of a
208 violation of this section may pursue a civil remedy under s.
209 772.11. However, notwithstanding s. 772.11, the minimum damage
210 award under this subsection is \$5,000, plus reasonable attorney
211 fees and costs in the trial and appellate courts.

212 Section 4. This act shall take effect July 1, 2016.

213 ===== T I T L E A M E N D M E N T =====



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214 And the title is amended as follows:

215 Delete everything before the enacting clause
216 and insert:

217 A bill to be entitled

218 An act relating to waste management; creating s.
219 403.70491, F.S.; prohibiting a local government from
220 preventing a private company from listing separately
221 on an invoice for solid waste collection, disposal, or
222 recycling any governmental taxes and fees; amending s.
223 403.70605, F.S.; revising provisions relating to solid
224 waste collection services to include disposal and
225 recycling services; providing that certain private
226 companies may bring an action against a state agency
227 for specified violations; revising definitions;
228 creating s. 812.0141, F.S.; defining a term;
229 establishing the crime of theft of recyclable
230 property; providing penalties; providing for a civil
231 remedy; providing for attorney fees and costs under
232 certain conditions; providing an effective date.