

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 Environmental Preservation and Conservation

BILL: SB 1192
 INTRODUCER: Senator Hays
 SUBJECT: Waste Management
 DATE: February 8, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	Pre-meeting
2.			AGG	
3.			FP	

I. Summary:

SB 1192:

- Suspends weight limits in a county for solid waste or recyclable collection vehicles for 36 hours following measurable precipitation;
- Requires the identification and listing of all governmental taxes and fees on any invoice for solid waste collection, disposal, or recycling services;
- Amends provisions regulating local government competition with solid waste collection companies to include disposal and recycling;
- Revises the standard by which a local government can prevent an injunction for a violation of certain statutory requirements applicable when the local government is in competition with private companies providing solid waste collection, disposal, or recycling services.
- Authorizing private entities to sue for an injunction against the State of Florida for a violation of s. 403.70605(1), F.S., regulating competition between local governments and private companies;
- Requires local governments that provide solid waste collection, disposal, or recycling services outside their jurisdiction in direct competition with private companies to remit certain funds to the Solid Waste Management Trust Fund (SWMTF);
- Requires local governments to apply the corporate income tax rate to any revenues in excess of costs for services, to remit those funds to the SWMTF, and provides an exception;
- Requires a local government that provides solid waste collection, disposal, or recycling services outside its jurisdiction in direct competition with private companies to file a report with the Division of Waste Management and provides requirements for the report;
- Amends the definitions of “displacement,” “in competition,” and “in direct competition” to include disposal and recycling services;
- Creates the crime of theft of recyclable property:
 - Defines “recyclable property”;
 - Defines “theft” as it relates to recyclable property;

- Provides for punishment of theft of recyclable property;
- Provides for civil penalties for violations, provides a standard of proof, and provides for minimum damages.

II. Present Situation:

Federal Regulations Concerning Commercial Vehicular Weights

To preserve infrastructure and keep trucks and buses moving efficiently, states must ensure that commercial motor vehicles comply with federal size and weight standards. Federal commercial vehicle maximum standards on the Interstate Highway System are:

- Single axle: 20,000 pounds;
- Tandem axle: 36,000 pounds;
- Gross Vehicle Weight: 80,000 pounds; and
- Bridge formula weights, which are variable.¹

Waste management trucks are single unit specialty vehicles and operate under the weight restrictions in s. 316.535(6) F.S. The loads carried in these vehicles are divisible loads, so the load carried can be reduced to accommodate the additional weight of water from precipitation to avoid exceeding the current weight restriction.² The weight restrictions applied to these trucks are maximum axle load and a maximum vehicle gross weight. The maximum axle load, including the weight of the vehicle, is the lesser of 20,000 pounds plus scale tolerance or a tire load of 550 pounds per inch of tire width plus scale tolerance. The maximum vehicle gross weight including the weight of the vehicle is 70,000 pounds. The 70,000 pounds includes the scale tolerance.

A state is subject to the loss of a portion of its National Highway System apportionment if its laws or regulations establish weight limits for commercial motor vehicles operating on the Interstate Highway System that are either higher or lower than the federal weight standards.³ Florida's federal highway use funds are approximately \$570 million, annually.⁴

Bridge Formula Weights

The Bridge Formula establishes the maximum weight any set of axles on a motor vehicle may carry on the Interstate Highway System.⁵ Congress enacted the Bridge Formula in 1975 to limit the weight-to-length ratio of a vehicle crossing a bridge. This is accomplished either by spreading weight over additional axles or by increasing the distance between axles.⁶ Bridge

¹ U.S. Department of Transportation, Federal Highway Administration, *Commercial Vehicle Size and Weight Program*, available at <http://ops.fhwa.dot.gov/Freight/sw/overview/index.htm> (last visited Jan. 29, 2016).

² E-mail from Shannan Schuessler, Deputy Legislative Affairs Director, Florida Department of Transportation (Feb. 2, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

³ U.S. Department of Transportation, Federal Highway Administration, *Commercial Vehicle Size and Weight Program*, available at <http://ops.fhwa.dot.gov/Freight/sw/overview/index.htm> (last visited Jan. 29, 2016).

⁴ E-mail from Shannan Schuessler, Deputy Legislative Affairs Director, Florida Department of Transportation (Feb. 2, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁵ U.S. Department of Transportation, Federal Highway Administration, *Bridge Formula Weights*, available at http://ops.fhwa.dot.gov/Freight/publications/brdg_frm_wgths/index.htm (last visited Feb. 4, 2016).

⁶ *Id.*

weight capacities are generally not displayed on a bridge unless that capacity is less than what would be needed to accommodate vehicles complying with the federal and state weight restrictions.

Statistics for 2015 for Weight Violations

Single Unit Waste/Refuse Vehicle violations reported by Commercial Vehicle Enforcement (CVE) as a Motor Carrier Size and Weight Citation (MCSAW) for 2015 are as follows:

- CVE and MCSAW combined to issue 321 Axle Weight Violations in 2015. The average overweight was 4,005 pounds.
- CVE and MCSAW combined to issue 713 Tire Size Weight Violations (tire size is weight less than 22,000 pounds). The average overweight was 3,392 pounds.
- CVE and MCSAW issued 78 Gross Specialty Overweight Violations. The average overweight was 4,694 pounds.
- Registration Violations- CVE and MCSAW issued 41 Registration and Tax Violations. It was difficult to separate, but the average overweight was somewhere between 20,000-25,000 pounds. The bill did not propose to change this violation.
- External Bridge and Internal Bridge Violations do not apply to single unit specialty vehicles, so none were issued in 2015.⁷

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.⁸ Those 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.⁹ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.¹⁰

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law.¹¹ Local governments may levy special assessments or fees under their home rule authority. Many governments levy franchise fees on waste collection companies in exchange for the right to be the sole provider to a specific service area.¹² Others may levy special assessments on the property owner to ensure service for that area.¹³

Current law enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.¹⁴ Those powers include the provision of fire

⁷ *Id.*

⁸ FLA. CONST. art VIII, s. 1(f).

⁹ FLA. CONST. art VIII, s. 1(g).

¹⁰ FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

¹¹ FLA. CONST. art VII, s. 1(a).

¹² *See, e.g.,* City of Tampa, Resolution No. 2012-309.

¹³ *See, e.g.,* Orange County Code of Ordinances, Article IV, s. 32-157 (providing that all property entitled to full waste collection services shall be subject to special assessments).

¹⁴ Section 125.01, F.S.

protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitutions or law.¹⁵

Solid Waste

Counties are granted the power to provide and regulate waste and sewage collection and disposal.¹⁶ Counties are also allowed to require that any person within the county demonstrate the existence of some arrangement or contract by which such person will dispose of solid waste in a manner consistent with county ordinance or state or federal law.¹⁷ Counties have the power and authority to adopt ordinances governing the disposal of solid waste generated outside the county at the county's solid waste disposal facility.¹⁸ Counties and municipalities are expressly prohibited from discriminating against privately owned solid waste management facilities.¹⁹

The DEP is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.²⁰ The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.²¹

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county.²² 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.²³ 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.²⁴

Recycled and Recovered Materials

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources.²⁵ The Legislature has declared that the maximum recycling and reuse of resources are considered high-priority goals of the

¹⁵ Section 166.021, F.S.

¹⁶ Section 125.01(1)(k)1., F.S.

¹⁷ Section 125.01(1)(k)2., F.S.

¹⁸ Section 403.706(1), F.S.

¹⁹ *Id.*

²⁰ *See* s. 403.705, F.S.

²¹ Section 403.705(2)(a), F.S.

²² Section 403.706(1), F.S.

²³ Section 403.706(3), F.S.

²⁴ Section 403.7063, F.S.

²⁵ Section 403.7032, F.S.

state.²⁶ In 2014, 12,684,860 tons of municipal solid waste was recycled in Florida.²⁷ Section 403.7032(2), F.S., provides that by the year 2020, the long-term goal for the recycling efforts of state and local governmental entities, private companies and organizations, and the general public is to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities.

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;²⁸ waste tire fees;²⁹ and oil related fees, fines and penalties.³⁰ DEP must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control.
- Up to 4.5 percent for funding to the Department of Transportation (DOT) for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.³¹

Competition with Private Companies

Section 403.70605, F.S., was created in 2000³² to require local governments that provide solid waste management services to be subject to the same requirements as private industry and to impose requirements on local governments providing services out of their jurisdictions.³³ In 2000, a concern of private waste management companies involved cities and counties that allowed government solid waste departments to compete with private sector companies for specific contracts. Private companies were concerned that in instances where the companies were competing for services, public entities were able to subsidize their costs with funds from other city operations, allowing them to unfairly compete for contracts.³⁴

²⁶ *Id.*

²⁷ DEP, *Solid Waste Management in Florida 2014 Annual Report: Florida Municipal Solid Waste Collected and Recycled (2014)*, available at ftp://ftp.dep.state.fl.us/pub/reports/Recycling/Reports/2014AnnualReport/MSW-Composition_2014.pdf (last visited Feb. 1, 2016).

²⁸ Section 403.413(6)(a), F.S.

²⁹ Section 403.718(2), F.S.

³⁰ Section 403.759, F.S.

³¹ Section 403.709(1), F.S.

³² Ch. 00-304, s. 1, Laws of Fla.

³³ CS/HB 1425 Staff Analysis, (May 12, 2000), available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited Jan. 28, 2016).

³⁴ *Id.*

Section 403.70605(1)(a), F.S., states that a local government that provides specific solid waste collection services in direct competition with a private company:

- Shall comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such collection services in competition with the local government; and
- Shall not enact or enforce any license, permit, registration procedure, or associated fee that:
 - Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
 - Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services. This does not apply to any zoning, land use, or comprehensive plan requirement.

Section 403.70605(1)(b), F.S., authorizes a private company with which a local government is in competition may bring an action to enjoin violations of these requirements against any local government. However, injunctive relief will not be granted if the official action that forms the basis of the suit forms 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 challenged action. This paragraph also sets forth requirements for the complaining party to notify the local government of the violation prior to commencement of the suit.

Relief for Persons Injured due to Restraint of Trade or Monopolization on the Part of a Local Government

Under current law, a local government that provides solid waste collection services outside its jurisdiction in direct competition with private companies is subject to the same prohibitions against predatory pricing that is applicable to private companies under ss. 542.18 and 542.19, F.S., which provide that restraint of trade or commerce and monopolization, respectively, is unlawful.

Section 403.70605(2)(b), F.S., provides for injunctive relief and recovery of damages and costs of a suit brought for violations of ss. 542.18 and 542.19, F.S. To this effect:

- Any person injured for violations may sue in circuit court and is entitled to injunctive relief and to recovery of damages and costs of the suit;
- A court may award to the prevailing party or parties reasonable attorneys' fees;
- An action for damages must be commenced within four years;
- No person may obtain injunctive relief or recover damages for any injury that results from actions taken by a local government in direct response to a natural disaster or similar occurrence for which an emergency is declared by executive order of proclamation of the Governor, or for which such a declaration might be reasonably anticipated within the area covered by such executive order or proclamation.

Section 403.70605(2)(c), F.S., states that before a suit may be brought, a complaining party must first file a notice with the local government that states the specific facts upon which the complaint is based and the manner in which they are affected. Within 30 days after receipt of the

complaint, the local government must respond in writing to the party explaining the corrective action taken, if any. If the local government denies that it has engaged in prohibited conduct, its response must include an explanation showing why the conduct complained of does not constitute predatory pricing.

Displacement of Private Waste Companies

Section 403.70605(3)(b), F.S., prohibits a local government, or combination of local governments, from displacing a private company that provides garbage, trash, or refuse collection service without first:

- Holding a public hearing;
- Providing 45 days written notice of the hearing; and
- Providing public notice of the hearing.

The term “displacement” is defined as a local government’s provision of a collection service which prohibits a private company from continuing to provide the same service that it was providing when the decision to displace was made. The term does not include:

- Competition for individual contracts;
- The decision not to renew a contract at the end of the contract’s term;
- Actions against a private company due to actions by the company threatening public health or safety or that result in a public nuisance;
- Actions due to material breach of contract by the company;
- Refusal by a private company to continue operations under the terms and conditions of its existing agreement during the 3-year notice period;
- Entering into a contract with a private company to provide garbage, trash, or refuse collection which contract is not entered into under an ordinance that displaced or authorizes the displacement of another private company providing garbage, trash, or refuse collection;
- When a majority of the property owners in the displacement area petition the governing body to take over collection service;
- When the private company is licensed or permitted to do business within the local government for a limited time and such license or permit expires and is not renewed by the local government;
- Annexations to the extent that the provisions of s. 171.062(4), F.S., regarding the effects of annexations or contractions, apply.³⁵

Following the final required public hearing, but no later than one year after the hearing, a local government may take measures necessary to provide the service. The local government has two options:

- It may provide three years notice to a private company before it engages in the actual provision of the service that displaces the company; or
- It may pay the displaced company an amount equal to the company’s preceding 15 months gross receipts for the displaced service in the displacement area.³⁶

³⁵ Section 403.70605(3)(a), F.S.

³⁶ Section 403.70605(3)(c), F.S.

The 3-year notice period lapses if the displaced company ceases to provide service within the displacement area.³⁷

Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.³⁸

Second degree petit theft, a second degree misdemeanor,³⁹ is theft of property valued at less than \$100.⁴⁰ First degree petit theft, a first degree misdemeanor,⁴¹ is theft of property valued at \$100 or more but less than \$300.⁴² Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is a prior conviction,⁴³ and a third degree felony⁴⁴ if there are two or more prior convictions.⁴⁵

Third degree grand theft, a third degree felony, is theft of property valued at \$300 or more but less than \$20,000 or theft of specified property (e.g., a firearm or fire extinguisher).⁴⁶ Theft of property from a dwelling or its unenclosed curtilage is third degree grand theft, a third degree felony, if the property is valued at \$100 or more, but less than \$300.⁴⁷

Second degree grand theft, a second degree felony,⁴⁸ is theft of:

- Property valued at \$20,000 or more but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or

³⁷ *Id.*

³⁸ Section 812.014(1), F.S.

³⁹ A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁴⁰ Section 812.014(3)(a), F.S.

⁴¹ A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁴² Section 812.014(2)(e), F.S.

⁴³ Section 812.014(3)(b), F.S.

⁴⁴ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding a third degree felony under ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

⁴⁵ Section 812.014(3)(c), F.S.

⁴⁶ Section 812.014(2)(c), F.S.

⁴⁷ Section 812.014(3)(d), F.S.

⁴⁸ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.⁴⁹

First degree grand theft, a first degree felony,⁵⁰ is:

- Theft of property valued at \$100,000 or more;
- Theft of a semitrailer deployed by a law enforcement officer;
- Theft of cargo valued at \$50,000 or more in specified circumstances; or
- Grand theft and, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.⁵¹

Civil Remedy for Theft

Section 772.11(1), F.S., provides that any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of statutes concerning theft or exploitation of an elderly person or disabled adult is entitled to three times the actual damages sustained and, in any such action, is entitled to minimum damages of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts.

Before a person may file an action for damages, the person claiming to be injured must make a written demand for \$200 or the treble damage amount of the person liable for the damages. If the person liable for damages complies with the demand within 30 days after the receipt of the demand, that person is released from further civil liability for the act of theft or exploitation by the person making the demand. The section provides that a defendant may recover reasonable attorney's fees and court costs in the trial and appellate courts if the claim raised was without substantial fact or legal support.⁵²

Clear and Convincing Standard

The clear and convincing standard of evidence requires that the evidence must be found to be credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts at issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.⁵³

⁴⁹ Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency. *Id.*

⁵⁰ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁵¹ Section 812.014(2)(a), F.S.

⁵² Section 772.11, F.S.

⁵³ Florida Bar Journal, *Considerations before Implementing Florida's Civil Theft Statute*, 77-MAR Fla. B.J. 28 (Mar. 2003).

Florida Corporate Income Tax

Florida levies corporate income tax on corporations at a rate of 5.5 percent on income earned in Florida.⁵⁴ The calculation of Florida corporate income tax starts with a corporation's federal taxable income.⁵⁵ After certain addbacks and subtractions to federal taxable income required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.⁵⁶ The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.⁵⁷ Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.⁵⁸

III. Effect of Proposed Changes:

Section 1 amends s. 316.535, F.S., to suspend weight limits for solid waste or recyclable collection vehicles if measurable precipitation occurs and is recorded by the National Weather Service, or by a similar governmental meteorological agency for 36 hours after the termination of measurable precipitation in the county in which the vehicle is operating.

Section 2 creates s. 403.70491, F.S., to provide requirements for invoices for solid waste collection. Any invoice for solid waste collection, disposal, or recycling services must separately identify and list all governmental taxes and fees, including, but not limited to, any franchise fee.

Section 3 amends s. 403.70605, F.S., to expand the scope of the statute, which currently applies only to solid waste collection, to include solid waste disposal and recycling services.

The bill includes state agencies as entities that private companies may bring action against to enjoin a violation of provisions subjecting local governments providing solid waste, disposal, or recycling services to the same requirements as private industry.

The bill limits a local government's defense from injunctive relief for violations of s. 403.70605(1)(a), F.S., if the official action that forms the basis of a suit bears a reasonable relationship to the immediate health, safety, or welfare of the citizens of the local government, rather than just the health, safety, or welfare of the citizens.

The bill removes s. 403.70605(1)(c), F.S., which provides that the provisions of s. 403.70605(1), F.S., do not apply when the local government is exclusively providing specific solid waste collection, disposal, or recycling services itself or pursuant to an exclusive franchise. This would have the effect of allowing a private entity to sue for injunctive relief for violations even when the local government is not in direct competition with a private entity because it is exclusively

⁵⁴ Section 220.11, F.S.

⁵⁵ Section 220.12, F.S.

⁵⁶ See s. 220.15, F.S.

⁵⁷ Section 220.15, F.S.

⁵⁸ Section 220.14, F.S.

providing the specific solid waste collection, disposal, or recycling services or pursuant to an exclusive franchise.

The bill requires a local government that provides solid waste collection, disposal, or recycling services outside its jurisdiction in direct competition with private companies to remit the applicable franchise fee and other applicable taxes or fees imposed by the local or state government in whose jurisdiction the competing local government is providing such services to the Solid Waste Management Trust Fund.

Additionally, the bill requires a local government providing those services outside its jurisdiction in direct competition with private companies to apply the corporate income tax rate (5.5 percent) to revenues in excess of costs when providing collection, disposal, or recycling services to those outside its jurisdiction and remit the those funds to the Solid Waste Management Trust Fund. This does not apply to non-commercial solid waste disposal or recycling services resulting from a single-family residence located outside a local government's jurisdiction that brings, by noncommercial means, solid waste or recyclable materials to a solid waste collection, disposal, or recycling facility within the local government's jurisdiction.

The bill requires a local government that provides solid waste collection, disposal, or recycling services outside its jurisdiction in direct competition with private companies to file a report by January 15, yearly, with the Division of Waste Management providing the following information:

- Tons of solid waste collected from outside the local government's jurisdiction;
- Tons of solid waste disposed of within the local government's jurisdiction which originated from outside its jurisdiction;
- The average disposal fee charged for solid waste that originated from outside the local government's jurisdiction and how this average disposal fee compares with the average disposal fee charged for solid waste originating within the local government's jurisdiction;
- Tons of recyclable material collected from outside the local government's jurisdiction;
- Tons of recyclable material processed within the local government's jurisdiction which originated from outside its jurisdiction;
- The average recycling fee charged for recyclable materials that originated from outside the local government's jurisdiction and how this average recycling fee compares with the average disposal fee charged for solid waste originating within the local government's jurisdiction; and
- Audited financial statements for revenues in excess of costs resulting from the provision of collection, disposal, or recycling services to those persons outside its jurisdiction.

The bill includes "disposal and recycling services" in a provision subjecting local governments that provide solid waste collection services outside their jurisdictions in direct competition with private companies to the same prohibitions against predatory pricing applicable to private companies under ss. 543.18 and 542.19, F.S., concerning restraint of trade or commerce and monopolization, respectively.

The bill amends the terms "displacement" and "in competition" or "in direct competition" to include disposal and recycling services.

The resulting definition for “displacement” is, “a local government’s provision of a collection, disposal, or recycling service which prohibits a private company from continuing to provide the same service that it was providing with the decision to displace was made.”

The resulting definition of, “in competition” or “in direct competition,” as used in s. 403.70605, F.S., is, “the vying between a local government and a private company to provide substantially similar solid waste collection, disposal, or recycling services to the same customer.”

Section 4 creates s. 812.0141, F.S., to create the crime of theft of recyclable property.

For the purposes of the new section, the bill defines “recyclable property” to mean recovered materials, as defined in s. 403.703, F.S.,⁵⁹ in addition to wooden or plastic pallets.

The bill provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the recyclable property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to possess the recyclable property or of a benefit derived therefrom; or
- Appropriate the recyclable property for his or her own use or to the use of a person not entitled to the use of the recyclable property.

A first or second violation of this section is punished as a first degree misdemeanor, punishable by a term of imprisonment not to exceed 1 year and a fine not to exceed \$1,000. A third or subsequent violation within 3 years of a prior conviction is punishable as a third degree felony, which is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000. Prosecution for violation of the provision does not preclude prosecution for theft pursuant to s. 812.014, F.S.

The bill provides that a person who proves by clear and convincing evidence that he or she has been injured in any manner by reason of a violation of the provisions of this section may pursue a civil remedy, however, the minimum damage award is \$5,000 in addition to reasonable attorney fees and costs in the trial and appellate courts.

Section 5 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply due to provisions that (1) require local governments to remit fees

⁵⁹ Section 403.703, F.S., defines “recovered materials” as metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.

and other taxes when a local government is in direct competition with a private entity for the provision of solid waste collection, disposal, or recycling services outside of its jurisdiction and (2) require local governments that provide certain services outside their jurisdiction to file a report. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In instances where a local government is required to pay the equivalent of the corporate income tax rate on revenues in excess of costs, along with applicable franchise fees and other applicable taxes or fees, increases in the costs of collection, disposal, or recycling services may be passed along to the rate payers.

Individuals found to be guilty of theft of recyclable property would be subject to new penalties in addition to punishment for the crime of theft.

C. Government Sector Impact:

If the Federal Government determines that the State is not in compliance with federal regulations concerning commercial vehicle weight standards, the State could lose all or part of its National Highway System apportionment, which could amount to up to approximately \$570 million annually.

Allowing solid waste or recyclable collection vehicles to run over weight during precipitation events will cause increased wear on roads which will lead to increased costs for road maintenance.

Removal of s. 403.70605(1)(c), F.S., could increase costs for local governments providing solid waste collection, disposal, or recycling services, or providing those services pursuant to an exclusive franchise, by expanding the conditions under which a private entity may bring suit for injunctive relief.

Expanding the applicability of s. 403.70605, F.S., could result in more litigation costs for local governments that are found to be in violation of the statute due to the addition of solid waste disposal and recycling services to the statute. Similarly, restricting the defenses available to local governments could also lead to increased costs of litigation.

Requiring local governments to submit reports and remit franchise fees and other applicable taxes or fees imposed by local or state governments, and applying the corporate income tax rate on revenues in excess of costs for provision of solid waste disposal and recycling will make provision of those services more expensive for local governments.

VI. Technical Deficiencies:

It is unclear why “or state agency” was included on line 88 of the bill with respect to solid waste collection, disposal, or recycling services as the State of Florida does not provide those services.⁶⁰

Section 403.70605(2), F.S., on line 118 of the bill is unamended and refers to “Solid Waste Collection Services Outside Jurisdiction.” The language that follows refers to solid waste collection, disposal, or recycling services.

Lines 119-125 state, “A local government that provides solid waste collection, disposal, or recycling services to those outside its jurisdiction in direct competition with private companies must remit to the Solid Waste Management Trust Fund the applicable franchise fee and other applicable taxes or fees imposed by the local or state government in whose jurisdiction the competing local government is providing such services.” In this statement it is unclear (1) who the tax or fee that must be remitted is imposed on, (2) what the applicable fee or tax would be, and (3) why state taxes or jurisdiction is being referred to.

The bill does not amend ss. 403.70605(3)(a)2., 6., and 7., F.S., at lines 214-217, 227-231, and 232-234 of the bill, respectively, to include solid waste disposal or recycling services. This could result in unintended exceptions to the restrictions on the term “displacement.” The result would be that the term “displacement” could include the following:

- Actions by which a local government, at the end of a contract with a private company, refuses to renew the contract and either awards the contract to another private company or decides for any reason to provide the disposal or recycling services itself;
- Entering into a contract with a private company to provide disposal or recycling services which contract is not entered into under an ordinance that displaces or authorizes the displacement of another private company providing disposal or recycling services; and
- Situations in which a majority of the property owners in the displacement area petition the governing body to take over disposal or recycling services.

Further, the bill does not amend s. 403.70605(3)(b), F.S., at lines 243-252 of the bill, which could result in a local government or combination of local governments not being precluded

⁶⁰ E-mail from Ricky Moulton, Deputy Director of Legislative Affairs, Department of Management Services (Feb. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

from displacing a private company that provides solid waste disposal or recycling services without regard to the restrictions listed in that paragraph. It is not clear if this is the intent of the sponsors of the bill.

“Noncommercial solid waste,” referred to on line 135, is not defined.

VII. Related Issues:

Section 1 of the bill refers to “measureable precipitation,” but the term is not limited in any way. This could lead to a situation where an almost negligible amount of rain that has virtually no effect on the weight of a collection vehicle would still lead to the suspension of weight limits for 36 hours. Additionally, during the wet season in Florida, rainfall is frequent and could lead to a long term suspension of weight limits.

DOT also provides that the total suspension of weight restrictions may increase the failure and fatigue of vehicle components, resulting in increased braking distances and tire and suspension wear, which could present a safety issue.⁶¹

DOT also provides that the amendment to the section would be very difficult to enforce. Determining measureable precipitation, the time the precipitation occurred, and the origin and destination of the vehicle will present enforcement challenges and could lead to prolonged periods of suspended weight restrictions.⁶²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.535, 403.70491, and 403.70605.

This bill creates the following section of the Florida Statutes: 812.0141.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁶¹ E-mail from Shannan Schuessler, Deputy Legislative Affairs Director, Florida Department of Transportation (Feb. 2, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁶² *Id.*