

By Senator Hays

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1 A bill to be entitled
2 An act relating to waste management; amending s.
3 316.535, F.S.; providing that the weight limits for
4 certain solid waste or recyclable collection vehicles
5 are suspended under certain circumstances; creating s.
6 403.70491, F.S.; requiring invoices for solid waste
7 collection to separately identify and list certain
8 governmental taxes and fees; amending s. 403.70605,
9 F.S.; revising provisions relating to solid waste
10 collection services to include disposal and recycling
11 services; providing that certain private companies may
12 bring an action against a state agency for specified
13 violations; deleting an exception for certain local
14 government waste collection services; requiring local
15 governments providing certain solid waste collection,
16 disposal, or recycling services outside their
17 jurisdiction to remit certain fees and taxes to the
18 Solid Waste Management Trust Fund; providing for
19 calculation of such fees and taxes; providing an
20 exception; requiring local governments to file a
21 report by a specified date with the Division of Waste
22 Management in the Department of Environmental
23 Protection, subject to certain requirements; creating
24 s. 812.0141, F.S.; defining a term; establishing the
25 crime of theft of recyclable property; providing
26 penalties; providing for a civil remedy; providing for
27 attorney fees and costs under certain conditions;
28 providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Subsection (6) of section 316.535, Florida

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33 Statutes, is amended to read:

34 316.535 Maximum weights.—

35 (6) (a) Dump trucks, concrete mixing trucks, trucks engaged
36 in waste or recyclable collection and disposal, and fuel oil and
37 gasoline trucks designed and constructed for special type work
38 or use, when operated as a single unit, shall be subject to all
39 safety and operational requirements of law, except that any such
40 vehicle need not conform to the axle spacing requirements of
41 this section provided that such vehicle shall be limited to a
42 total gross load, including the weight of the vehicle, of 20,000
43 pounds per axle plus scale tolerances and shall not exceed 550
44 pounds per inch width tire surface plus scale tolerances. No
45 vehicle operating pursuant to this section shall exceed a gross
46 weight, including the weight of the vehicle and scale
47 tolerances, of 70,000 pounds. Any vehicle violating the weight
48 provisions of this section shall be penalized as provided in s.
49 316.545.

50 (b) Notwithstanding paragraph (a), if measurable
51 precipitation occurs and is recorded by the National Weather
52 Service, or by a similar governmental meteorological agency, the
53 weight limits for solid waste or recyclable collection vehicles
54 are suspended for 36 hours after the termination of measurable
55 precipitation in the county.

56 Section 2. Section 403.70491, Florida Statutes, is created
57 to read:

58 403.70491 Invoices for solid waste collection.—Any invoice
59 for solid waste collection, disposal, or recycling services must
60 separately identify and list all governmental taxes and fees,
61 including, but not limited to, any franchise fee.

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62 Section 3. Section 403.70605, Florida Statutes, is amended
63 to read:

64 403.70605 Solid waste collection, disposal, or recycling
65 services in competition with private companies.—

66 (1) SOLID WASTE COLLECTION, DISPOSAL, OR RECYCLING SERVICES
67 IN COMPETITION WITH PRIVATE COMPANIES.—

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

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

75 2. May ~~Shall~~ not enact or enforce any license, permit,
76 registration procedure, or associated fee that:

77 a. Does not apply to the local government and for which
78 there is not a substantially similar requirement that applies to
79 the local government; and

80 b. Provides the local government with a material advantage
81 in its ability to compete with a private company in terms of
82 cost or ability to promptly or efficiently provide such
83 collection, disposal, or recycling services. ~~Nothing in~~ This
84 sub-subparagraph does not ~~shall~~ apply to any zoning, land use,
85 or comprehensive plan requirement.

86 (b)1. A private company with which a local government is in
87 competition may bring an action to enjoin a violation of
88 paragraph (a) against any local government or state agency. ~~No~~
89 Injunctive relief may not ~~shall~~ be granted if the official
90 action that ~~which~~ forms the basis for the suit bears a

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91 reasonable relationship to the immediate health, safety, or
92 welfare of the citizens of the local government unless the court
93 finds that the actual or potential anticompetitive effects
94 outweigh the public benefits of the challenged action.

95 2. As a condition precedent to the institution of an action
96 pursuant to this paragraph, the complaining party shall first
97 file with the local government a notice referencing this
98 paragraph and setting forth the specific facts upon which the
99 complaint is based and the manner in which the complaining party
100 is affected. The complaining party may provide evidence to
101 substantiate the claims made in the complaint. Within 30 days
102 after receipt of such a complaint, the local government shall
103 respond in writing to the complaining party explaining the
104 corrective action taken, if any. If no response is received
105 within 30 days or if appropriate corrective action is not taken
106 within a reasonable time, the complaining party may institute
107 the judicial proceedings authorized in this paragraph. However,
108 failure to comply with this subparagraph may ~~shall~~ not bar an
109 action for a temporary restraining order to prevent immediate
110 and irreparable harm from the conduct or activity complained of.

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

114 ~~(c) This subsection does not apply when the local~~
115 ~~government is exclusively providing the specific solid waste~~
116 ~~collection services itself or pursuant to an exclusive~~
117 ~~franchise.~~

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

119 (a) A local government that provides solid waste

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120 collection, disposal, or recycling services to those outside its
121 jurisdiction in direct competition with private companies must
122 remit to the Solid Waste Management Trust Fund the applicable
123 franchise fee and other applicable taxes or fees imposed by the
124 local or state government in whose jurisdiction the competing
125 local government is providing such services. For the purposes of
126 this paragraph, a local government that generates revenues in
127 excess of costs when providing collection, disposal, or
128 recycling services to those outside its jurisdiction must apply
129 the corporate income tax rate set forth in s. 220.11(2) to the
130 local government's revenues in excess of costs resulting from
131 providing collection, disposal, or recycling services to those
132 outside its jurisdiction and remit the resulting moneys to the
133 Solid Waste Management Trust Fund. This paragraph does not apply
134 to noncommercial solid waste disposal or recycling services
135 resulting from a single-family residence that is located outside
136 a local government's jurisdiction and that brings, by
137 noncommercial means, solid waste or recyclable materials to a
138 solid waste collection, disposal, or recycling facility located
139 within the local government's jurisdiction.

140 (b) A local government that provides solid waste
141 collection, disposal, or recycling services outside its
142 jurisdiction in direct competition with private companies must,
143 by January 15 of each year, file a report with the Division of
144 Waste Management which provides the following information:

145 1. Tons of solid waste collected from outside the local
146 government's jurisdiction;

147 2. Tons of solid waste disposed of within the local
148 government's jurisdiction which originated from outside its

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149 jurisdiction;

150 3. The average disposal fee charged for solid waste that
151 originated from outside the local government's jurisdiction and
152 how this average disposal fee compares with the average disposal
153 fee charged for solid waste originating within the local
154 government's jurisdiction;

155 4. Tons of recyclable material collected from outside the
156 local government's jurisdiction;

157 5. Tons of recyclable material processed within the local
158 government's jurisdiction which originated from outside its
159 jurisdiction;

160 6. The average recycling fee charged for recyclable
161 materials that originated from outside the local government's
162 jurisdiction and how this average recycling fee compares with
163 the average disposal fee charged for solid waste originating
164 within the local government's jurisdiction; and

165 7. Audited financial statements for revenues in excess of
166 costs resulting from the provision of collection, disposal, or
167 recycling services to those persons outside its jurisdiction.

168 (c) Notwithstanding s. 542.235, or any other provision of
169 law, a local government that provides solid waste collection,
170 disposal, or recycling services outside its jurisdiction in
171 direct competition with private companies is subject to the same
172 prohibitions against predatory pricing applicable to private
173 companies under ss. 542.18 and 542.19.

174 (d) ~~(b)~~ Any person injured by reason of violation of this
175 subsection may sue therefor in the circuit courts of this state
176 and shall be entitled to injunctive relief and to recover the
177 damages and the costs of suit. The court may, in its discretion,

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178 award to the prevailing party or parties reasonable attorney
179 ~~attorneys'~~ fees. An action for damages under this subsection
180 must be commenced within 4 years. A ~~No~~ person may not obtain
181 injunctive relief or recover damages under this subsection for
182 any injury that results from actions taken by a local government
183 in direct response to a natural disaster or similar occurrence
184 for which an emergency is declared by executive order or
185 proclamation of the Governor pursuant to s. 252.36 or for which
186 such a declaration might be reasonably anticipated within the
187 area covered by such executive order or proclamation.

188 (e) ~~(e)~~ As a condition precedent to the institution of an
189 action pursuant to this subsection, the complaining party shall
190 first file with the local government a notice referencing this
191 subsection and setting forth the specific facts upon which the
192 complaint is based and the manner in which the complaining party
193 is affected. Within 30 days after receipt of such complaint, the
194 local government shall respond in writing to the complaining
195 party explaining the corrective action taken, if any. If the
196 local government denies that it has engaged in conduct that is
197 prohibited by this subsection, its response shall include an
198 explanation showing why the conduct complained of does not
199 constitute predatory pricing.

200 (f) ~~(d)~~ For the purposes of this subsection, the
201 jurisdiction of a county, special district, or solid waste
202 authority shall include all incorporated and unincorporated
203 areas within the county, special district, or solid waste
204 authority.

205 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

206 (a) As used in this subsection, the term "displacement"

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207 means a local government's provision of a collection, disposal,
208 or recycling service which prohibits a private company from
209 continuing to provide the same service that it was providing
210 when the decision to displace was made. The term does not
211 include:

212 1. Competition between the public sector and private
213 companies for individual contracts;

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

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

221 4. Actions taken against a private company because the
222 company has materially breached its contract with the local
223 government;

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

227 6. Entering into a contract with a private company to
228 provide garbage, trash, or refuse collection which contract is
229 not entered into under an ordinance that displaces or authorizes
230 the displacement of another private company providing garbage,
231 trash, or refuse collection;

232 7. Situations in which a majority of the property owners in
233 the displacement area petition the governing body to take over
234 the collection service;

235 8. Situations in which the private companies are licensed

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236 or permitted to do business within the local government for a
237 limited time and such license or permit expires and is not
238 renewed by the local government. This subparagraph does not
239 apply to licensing or permitting processes enacted after May 1,
240 1999, or to occupational licenses; or

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

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

246 1. Holding at least one public hearing seeking comment on
247 the advisability of the local government or combination of local
248 governments providing the service.

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

252 3. Providing public notice of the hearing.

253 (c) Following the final public hearing held under paragraph
254 (b), but not later than 1 year after the hearing, the local
255 government may proceed to take those measures necessary to
256 provide the service. A local government shall provide 3 years'
257 notice to a private company before it engages in the actual
258 provision of the service that displaces the company. As an
259 alternative to delaying displacement 3 years, a local government
260 may pay a displaced company an amount equal to the company's
261 preceding 15 months' gross receipts for the displaced service in
262 the displacement area. The 3-year notice period shall lapse as
263 to any private company being displaced when the company ceases
264 to provide service within the displacement area. Nothing in this

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265 paragraph prohibits the local government and the company from
266 voluntarily negotiating a different notice period or amount of
267 compensation.

268 (4) DEFINITIONS.—As used in this section:

269 (a) "In competition" or "in direct competition" means the
270 vying between a local government and a private company to
271 provide substantially similar solid waste collection, disposal,
272 or recycling services to the same customer.

273 (b) "Private company" means any entity other than a local
274 government or other unit of government that provides solid waste
275 collection services.

276 Section 4. Section 812.0141, Florida Statutes, is created
277 to read:

278 812.0141 Theft of recyclable property.—

279 (1) As used in this section, the term "recyclable property"
280 means recovered materials, as defined in s. 403.703, in addition
281 to wooden or plastic pallets.

282 (2) A person commits theft if he or she knowingly obtains
283 or uses, or endeavors to obtain or to use, the recyclable
284 property of another with intent to, either temporarily or
285 permanently:

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

288 (b) Appropriate the recyclable property for his or her own
289 use or to the use of a person not entitled to the use of the
290 recyclable property.

291 (3) Any person who violates this section is guilty of a
292 misdemeanor of the first degree, punishable as provided in s.
293 775.082 or s. 775.083. Prosecution for a violation of subsection

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294 (2) does not preclude prosecution for theft pursuant to s.
295 812.014.

296 (4) Any person who commits a third or subsequent violation
297 of subsection (2) within 3 years after the date of a prior
298 violation that resulted in a conviction for a violation of
299 subsection (2) commits a felony of the third degree, punishable
300 as provided in s. 775.082 or s. 775.083.

301 (5) Any person who proves by clear and convincing evidence
302 that he or she has been injured in any manner by reason of a
303 violation of this section may pursue a civil remedy under s.
304 772.11. However, notwithstanding s. 772.11, the minimum damage
305 award under this subsection is \$5,000 in addition to reasonable
306 attorney fees and costs in the trial and appellate courts.

307 Section 5. This act shall take effect July 1, 2016.