

By the Committee on Environmental Preservation and Conservation;
and Senator Hays

592-03276-16

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A bill to be entitled

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

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

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

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

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

(1) SOLID WASTE COLLECTION, DISPOSAL, OR RECYCLING SERVICES

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32 IN COMPETITION WITH PRIVATE COMPANIES.—

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

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

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

42 a. Does not apply to the local government and for which
43 there is not a substantially similar requirement that applies to
44 the local government; and

45 b. Provides the local government with a material advantage
46 in its ability to compete with a private company in terms of
47 cost or ability to promptly or efficiently provide such
48 collection, disposal, or recycling services. Nothing in this
49 sub-subparagraph shall apply to any zoning, land use, or
50 comprehensive plan requirement.

51 (b)1. A private company with which a local government is in
52 competition may bring an action to enjoin a violation of
53 paragraph (a) against any local government or state agency. No
54 injunctive relief shall be granted if the official action that
55 ~~which~~ forms the basis for the suit bears a reasonable
56 relationship to the health, safety, or welfare of the citizens
57 of the local government unless the court finds that the actual
58 or potential anticompetitive effects outweigh the public
59 benefits of the challenged action.

60 2. As a condition precedent to the institution of an action

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61 pursuant to this paragraph, the complaining party shall first
62 file with the local government a notice referencing this
63 paragraph and setting forth the specific facts upon which the
64 complaint is based and the manner in which the complaining party
65 is affected. The complaining party may provide evidence to
66 substantiate the claims made in the complaint. Within 30 days
67 after receipt of such a complaint, the local government shall
68 respond in writing to the complaining party explaining the
69 corrective action taken, if any. If no response is received
70 within 30 days or if appropriate corrective action is not taken
71 within a reasonable time, the complaining party may institute
72 the judicial proceedings authorized in this paragraph. However,
73 failure to comply with this subparagraph may ~~shall~~ not bar an
74 action for a temporary restraining order to prevent immediate
75 and irreparable harm from the conduct or activity complained of.

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

79 (c) This subsection does not apply when the local
80 government is exclusively providing the specific solid waste
81 collection, disposal, or recycling services itself or pursuant
82 to an exclusive franchise.

83 (2) SOLID WASTE COLLECTION SERVICES OUTSIDE JURISDICTION.—

84 (a) Notwithstanding s. 542.235, or any other provision of
85 law, a local government that provides solid waste collection
86 services outside its jurisdiction in direct competition with
87 private companies is subject to the same prohibitions against
88 predatory pricing applicable to private companies under ss.
89 542.18 and 542.19.

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90 (b) Any person injured by reason of violation of this
91 subsection may sue therefor in the circuit courts of this state
92 and shall be entitled to injunctive relief and to recover the
93 damages and the costs of suit. The court may, in its discretion,
94 award to the prevailing party or parties reasonable attorneys'
95 fees. An action for damages under this subsection must be
96 commenced within 4 years. No person may obtain injunctive relief
97 or recover damages under this subsection for any injury that
98 results from actions taken by a local government in direct
99 response to a natural disaster or similar occurrence for which
100 an emergency is declared by executive order or proclamation of
101 the Governor pursuant to s. 252.36 or for which such a
102 declaration might be reasonably anticipated within the area
103 covered by such executive order or proclamation.

104 (c) As a condition precedent to the institution of an
105 action pursuant to this subsection, the complaining party shall
106 first file with the local government a notice referencing this
107 subsection and setting forth the specific facts upon which the
108 complaint is based and the manner in which the complaining party
109 is affected. Within 30 days after receipt of such complaint, the
110 local government shall respond in writing to the complaining
111 party explaining the corrective action taken, if any. If the
112 local government denies that it has engaged in conduct that is
113 prohibited by this subsection, its response shall include an
114 explanation showing why the conduct complained of does not
115 constitute predatory pricing.

116 (d) For the purposes of this subsection, the jurisdiction
117 of a county, special district, or solid waste authority shall
118 include all incorporated and unincorporated areas within the

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119 county, special district, or solid waste authority.

120 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

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

126 1. Competition between the public sector and private
127 companies for individual contracts;

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

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

135 4. Actions taken against a private company because the
136 company has materially breached its contract with the local
137 government;

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

141 6. Entering into a contract with a private company to
142 provide garbage, trash, or refuse collection which contract is
143 not entered into under an ordinance that displaces or authorizes
144 the displacement of another private company providing garbage,
145 trash, or refuse collection;

146 7. Situations in which a majority of the property owners in
147 the displacement area petition the governing body to take over

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148 the collection service;

149 8. Situations in which the private companies are licensed
150 or permitted to do business within the local government for a
151 limited time and such license or permit expires and is not
152 renewed by the local government. This subparagraph does not
153 apply to licensing or permitting processes enacted after May 1,
154 1999, or to occupational licenses; or

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

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

160 1. Holding at least one public hearing seeking comment on
161 the advisability of the local government or combination of local
162 governments providing the service.

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

166 3. Providing public notice of the hearing.

167 (c) Following the final public hearing held under paragraph
168 (b), but not later than 1 year after the hearing, the local
169 government may proceed to take those measures necessary to
170 provide the service. A local government shall provide 3 years'
171 notice to a private company before it engages in the actual
172 provision of the service that displaces the company. As an
173 alternative to delaying displacement 3 years, a local government
174 may pay a displaced company an amount equal to the company's
175 preceding 15 months' gross receipts for the displaced service in
176 the displacement area. The 3-year notice period shall lapse as

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177 to any private company being displaced when the company ceases
178 to provide service within the displacement area. Nothing in this
179 paragraph prohibits the local government and the company from
180 voluntarily negotiating a different notice period or amount of
181 compensation.

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

183 (a) "In competition" or "in direct competition" means the
184 competition ~~vying~~ between a local government and a private
185 company to provide substantially similar solid waste collection
186 services to the same customer. For the purposes of subsection
187 (1), the term also refers to the competition between private
188 companies to provide disposal or recycling services to the same
189 customer.

190 (b) "Private company" means an ~~any~~ entity other than a
191 local government or other unit of government which ~~that~~ provides
192 solid waste collection services. For the purposes of subsection
193 (1), the term also includes entities other than a local
194 government or other unit of government which provide disposal or
195 recycling services.

196 Section 3. Section 812.0141, Florida Statutes, is created
197 to read:

198 812.0141 Theft of recyclable property.—

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

202 (2) A person commits theft if he or she knowingly obtains
203 or uses, or endeavors to obtain or to use, the recyclable
204 property of another with intent to, either temporarily or
205 permanently:

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

208 (b) Appropriate the recyclable property for his or her own
209 use or to the use of a person not entitled to the use of the
210 recyclable property.

211 (3) A person who violates this section is guilty of a
212 misdemeanor of the first degree, punishable as provided in s.
213 775.082 or s. 775.083. Prosecution for a violation of subsection
214 (2) does not preclude prosecution for theft pursuant to s.
215 812.014.

216 (4) A person who commits a third or subsequent violation of
217 subsection (2) within 3 years after the date of a prior
218 violation that resulted in a conviction for a violation of
219 subsection (2) commits a felony of the third degree, punishable
220 as provided in s. 775.082 or s. 775.083.

221 (5) A person who proves by clear and convincing evidence
222 that he or she has been injured in any manner by reason of a
223 violation of this section may pursue a civil remedy under s.
224 772.11. However, notwithstanding s. 772.11, the minimum damage
225 award under this subsection is \$5,000, plus reasonable attorney
226 fees and costs in the trial and appellate courts.

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

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