

By the Committees on Fiscal Policy; and Environmental Preservation and Conservation; and Senator Hays

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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; 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 IN COMPETITION WITH PRIVATE COMPANIES.—

(a) A local government that provides specific solid waste

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32 collection, disposal, or recycling services in direct
33 competition with a private company:

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

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

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

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

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

58 2. As a condition precedent to the institution of an action
59 pursuant to this paragraph, the complaining party shall first
60 file with the local government a notice referencing this

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

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

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

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

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

88 (b) Any person injured by reason of violation of this
89 subsection may sue therefor in the circuit courts of this state

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

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

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

118 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

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

124 1. Competition between the public sector and private
125 companies for individual contracts;

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

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

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

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

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

144 7. Situations in which a majority of the property owners in
145 the displacement area petition the governing body to take over
146 the collection service;

147 8. Situations in which the private companies are licensed

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148 or permitted to do business within the local government for a
149 limited time and such license or permit expires and is not
150 renewed by the local government. This subparagraph does not
151 apply to licensing or permitting processes enacted after May 1,
152 1999, or to occupational licenses; or

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

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

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

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

164 3. Providing public notice of the hearing.

165 (c) Following the final public hearing held under paragraph
166 (b), but not later than 1 year after the hearing, the local
167 government may proceed to take those measures necessary to
168 provide the service. A local government shall provide 3 years'
169 notice to a private company before it engages in the actual
170 provision of the service that displaces the company. As an
171 alternative to delaying displacement 3 years, a local government
172 may pay a displaced company an amount equal to the company's
173 preceding 15 months' gross receipts for the displaced service in
174 the displacement area. The 3-year notice period shall lapse as
175 to any private company being displaced when the company ceases
176 to provide service within the displacement area. Nothing in this

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177 paragraph prohibits the local government and the company from
178 voluntarily negotiating a different notice period or amount of
179 compensation.

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

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

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

188 Section 3. Section 812.0141, Florida Statutes, is created
189 to read:

190 812.0141 Theft of recyclable property.—

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

194 (2) A person commits theft if he or she knowingly obtains
195 or uses, or endeavors to obtain or to use, the recyclable
196 property of another with intent to, either temporarily or
197 permanently:

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

200 (b) Appropriate the recyclable property for his or her own
201 use or to the use of a person not entitled to the use of the
202 recyclable property.

203 (3) A person who violates this section is guilty of a
204 misdemeanor of the first degree, punishable as provided in s.
205 775.082 or s. 775.083. Prosecution for a violation of subsection

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206 (2) does not preclude prosecution for theft pursuant to s.
207 812.014.

208 (4) A person who commits a third or subsequent violation of
209 subsection (2) within 3 years after the date of a prior
210 violation that resulted in a conviction for a violation of
211 subsection (2) commits a felony of the third degree, punishable
212 as provided in s. 775.082 or s. 775.083.

213 (5) A person who proves by clear and convincing evidence
214 that he or she has been injured in any manner by reason of a
215 violation of this section may pursue a civil remedy under s.
216 772.11. However, notwithstanding s. 772.11, the minimum damage
217 award under this subsection is \$5,000, plus reasonable attorney
218 fees and costs in the trial and appellate courts.

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