

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
 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.

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
 67 SERVICES 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
 72 environmental, health, and safety standards that also are
 73 applicable to a private company providing such collection,
 74 disposal, or recycling services in competition with the local
 75 government.

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

78 a. Does not apply to the local government and for which

79 | there is not a substantially similar requirement that applies to
80 | the local government; and

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

87 | (b)1. A private company with which a local government is
88 | in competition may bring an action to enjoin a violation of
89 | paragraph (a) against any local government or state agency. ~~No~~
90 | Injunctive relief may not shall be granted if the official
91 | action that ~~which~~ forms the basis for the suit bears a
92 | reasonable relationship to the immediate health, safety, or
93 | welfare of the citizens of the local government unless the court
94 | finds that the actual or potential anticompetitive effects
95 | outweigh the public benefits of the challenged action.

96 | 2. As a condition precedent to the institution of an
97 | action pursuant to this paragraph, the complaining party shall
98 | first file with the local government a notice referencing this
99 | paragraph and setting forth the specific facts upon which the
100 | complaint is based and the manner in which the complaining party
101 | is affected. The complaining party may provide evidence to
102 | substantiate the claims made in the complaint. Within 30 days
103 | after receipt of such a complaint, the local government shall
104 | respond in writing to the complaining party explaining the

105 corrective action taken, if any. If no response is received
 106 within 30 days or if appropriate corrective action is not taken
 107 within a reasonable time, the complaining party may institute
 108 the judicial proceedings authorized in this paragraph. However,
 109 failure to comply with this subparagraph may ~~shall~~ not bar an
 110 action for a temporary restraining order to prevent immediate
 111 and irreparable harm from the conduct or activity complained of.

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

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

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

120 (a) A local government that provides solid waste
 121 collection, disposal, or recycling services to those outside its
 122 jurisdiction in direct competition with private companies must
 123 remit to the Solid Waste Management Trust Fund the applicable
 124 franchise fee and other applicable taxes or fees imposed by the
 125 local or state government in whose jurisdiction the competing
 126 local government is providing such services. For the purposes of
 127 this paragraph, a local government that generates revenues in
 128 excess of costs when providing collection, disposal, or
 129 recycling services to those outside its jurisdiction must apply
 130 the corporate income tax rate set forth in s. 220.11(2) to the

131 local government's revenues in excess of costs resulting from
132 providing collection, disposal, or recycling services to those
133 outside its jurisdiction and remit the resulting moneys to the
134 Solid Waste Management Trust Fund. This paragraph does not apply
135 to noncommercial solid waste disposal or recycling services
136 resulting from a single-family residence that is located outside
137 a local government's jurisdiction and that brings, by
138 noncommercial means, solid waste or recyclable materials to a
139 solid waste collection, disposal, or recycling facility located
140 within the local government's jurisdiction.

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

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

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

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

156 4. Tons of recyclable material collected from outside the

157 local government's jurisdiction;

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

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

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

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

175 (d) ~~(b)~~ Any person injured by reason of violation of this
 176 subsection may sue therefor in the circuit courts of this state
 177 and shall be entitled to injunctive relief and to recover the
 178 damages and the costs of suit. The court may, in its discretion,
 179 award to the prevailing party or parties reasonable attorney
 180 attorneys' fees. An action for damages under this subsection
 181 must be commenced within 4 years. A ~~No~~ person may not obtain
 182 injunctive relief or recover damages under this subsection for

183 any injury that results from actions taken by a local government
184 in direct response to a natural disaster or similar occurrence
185 for which an emergency is declared by executive order or
186 proclamation of the Governor pursuant to s. 252.36 or for which
187 such a declaration might be reasonably anticipated within the
188 area covered by such executive order or proclamation.

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

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

206 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

207 (a) As used in this subsection, the term "displacement"
208 means a local government's provision of a collection, disposal,

209 or recycling service which prohibits a private company from
210 continuing to provide the same service that it was providing
211 when the decision to displace was made. The term does not
212 include:

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

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

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

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

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

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

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

235 over the collection service;

236 8. Situations in which the private companies are licensed
 237 or permitted to do business within the local government for a
 238 limited time and such license or permit expires and is not
 239 renewed by the local government. This subparagraph does not
 240 apply to licensing or permitting processes enacted after May 1,
 241 1999, or to occupational licenses; or

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

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

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

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

253 3. Providing public notice of the hearing.

254 (c) Following the final public hearing held under
 255 paragraph (b), but not later than 1 year after the hearing, the
 256 local government may proceed to take those measures necessary to
 257 provide the service. A local government shall provide 3 years'
 258 notice to a private company before it engages in the actual
 259 provision of the service that displaces the company. As an
 260 alternative to delaying displacement 3 years, a local government

261 may pay a displaced company an amount equal to the company's
 262 preceding 15 months' gross receipts for the displaced service in
 263 the displacement area. The 3-year notice period shall lapse as
 264 to any private company being displaced when the company ceases
 265 to provide service within the displacement area. Nothing in this
 266 paragraph prohibits the local government and the company from
 267 voluntarily negotiating a different notice period or amount of
 268 compensation.

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

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

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

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

279 812.0141 Theft of recyclable property.—

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

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

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

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

292 (3) Any person who violates this section is guilty of a
293 misdemeanor of the first degree, punishable as provided in s.
294 775.082 or s. 775.083. Prosecution for a violation of subsection
295 (2) does not preclude prosecution for theft pursuant to s.
296 812.014.

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

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

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