

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 Judiciary

BILL: SB 694

INTRODUCER: Senator Gruters

SUBJECT: Private Property for Motor Vehicle Parking

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 694 amends a recently-enacted statute, s. 715.075, F.S., which authorizes the owners and operators of privately-owned parking facilities to establish rules and rates in connection with their use by consumers.

Specifically, the bill repeals the preemption of the regulation of privately-owned parking facilities to the state, thereby allowing local governments to regulate such facilities again to the extent their ordinances do not directly conflict with the statute. The bill also amends the statute to include additional requirements regarding physical location, fines and penalties, signage, and invoices.

The bill takes effect on July 1, 2023.

II. Present Situation:

Local and State Regulation of Private Parking Facilities

Over the past 5 years, some owners and operators of privately-owned parking facilities in south Florida have been accused of engaging in unscrupulous business practices.¹ This has prompted local governments to take a closer look at how such facilities are operated, and to enact ordinances regulating such facilities.

For example, the City of Miami passed an emergency ordinance in 2019 banning the operators of privately-owned parking facilities in the city from issuing citations for violations of facility rules,

¹ See Local10.com, Hatzel Vela, *Consumer protection: Professional Parking Management faces another lawsuit*, May 4, 2022, <https://www.local10.com/news/local/2022/05/04/consumer-protection-professional-parking-management-faces-another-lawsuit/> (describing a class-action lawsuit filed against a parking company with a Better Business Bureau rating of “F” and 755 complaints).

claiming that such citations caused confusion for the recipients who sometimes thought the citations were city-issued and could lead to civil or criminal penalties.²

However, 2 years later, in apparent response to lobbying from the parking industry, the city amended the ordinance to permit the issuance of private parking citations if they are not called a “violation, citation, or ticket” and include a notice informing the recipient that “[t]his invoice is privately issued, is not issued by a governmental entity, and is not subject to civil or criminal penalties.”³

And in 2021, Broward County enacted an ordinance making it “unlawful for any person, including a parking facility operator or agent, to issue a private ticket to a motor vehicle or to the owner of any such vehicle.”⁴ County commissioners originally enacted the ordinance in response to complaints similar to those cited by City of Miami commissioners in 2019.⁵

In response to these and similar ordinances, in 2022 the Legislature enacted chapter 2022-171, Laws of Fla., which among other things created s. 715.075, F.S.⁶

That statute creates a local government preemption, which prohibits any county or municipal government from enacting an ordinance or regulation restricting or prohibiting the right of a private property owner or operator to establish rules, rates, and fines governing parking on the privately-owned property. Under the statute, any such ordinance or regulation is a violation of the statute, and is null and void.⁷

The statute also provides that the owner or operator of a privately-owned parking facility may establish rules and rates that govern private persons parking motor vehicles on such property.⁸ These rules and rates, which may include parking charges for violating the property owner’s or operator’s rules, must be posted and be clearly visible to persons parking motor vehicles on such private property.⁹ Moreover, any invoice for parking charges issued under the statute must include the following statement in uppercase type:

² City of Miami, Fla., Ord. No. 13840 (enacted May 23, 2019); s. 35-292, City of Miami, Fla. Code of Ordinances; *see also* Terence Cantarella, *Sharking Lots: Private Businesses Can Now Legally Issue Parking Tickets in Miami*, Nov. 2, 2021, MIAMI NEW TIMES, <https://www.miaminewtimes.com/news/private-businesses-can-now-issue-parking-tickets-in-miami-13245504> (referencing and discussing this ordinance).

³ City of Miami, Fla., Ord. No. 13990 (enacted Apr. 22, 2021); s. 35-292, City of Miami, Fla. Code of Ordinances; *see also* Cantarella, *supra* note 1 (referencing and discussing this ordinance).

⁴ Broward County, Fla., Ord. No. 2021-43 (enacted Sept. 21, 2021); s. 20-164.2, Broward County, Fla. Code of Ordinances; *see also* Local10.com, Hatzel Vela, *‘It’s a scam’: Broward commissioners make private parking citations unlawful*, Sept. 21, 2021, <https://www.local10.com/news/local/2021/09/21/its-a-scam-broward-commissioners-make-private-parkings-citations-unlawful/> (referencing and discussing this ordinance).

⁵ *See* Local10.com, *‘It’s a scam’*, *supra* note 4 (citing, among other things, the confusion created by private owners’ giving out “citations that look like they’re from law enforcement”).

⁶ Chapter 2022-171, s. 4, Laws of Fla., codifying s. 715.075, F.S.

⁷ Section 715.075(2), F.S.

⁸ Section 715.075(1), F.S.

⁹ *Id.*

THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES.¹⁰

Following enactment of the statute in 2022, Broward County repealed its ordinance due to the legislative preemption.¹¹

Local Government Authority

The State Constitution grants local county and municipal 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.¹² Those counties operating under a county charter have all powers of self-government not inconsistent with general or with special law approved by the vote of the electors.¹³ Likewise, municipalities¹⁴ have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.¹⁵

There are two ways that a local enactment can be inconsistent with state law and therefore unconstitutional. First, a local government cannot legislate in a field if the subject area has been preempted to the state. Second, in a field where both the state and local government can legislate concurrently, a local government cannot enact an ordinance that directly conflicts with the state statute.¹⁶

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.¹⁷ In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.¹⁸ Courts determining

¹⁰ *Id.*

¹¹ See Local10.com, *Consumer protection*, *supra* note 1 (noting that if Gov. Ron DeSantis signed the legislation, “Broward County would have to repeal the ordinance”); see also Broward County, Fla., Ord. No. 2022-33 (enacted Jun. 15, 2022) and s. 20-164.2, Broward County Code of Ordinances (repealing Ord. No. 2021-43 in response to ch. 2022-171, s. 4, Laws of Fla.).

¹² FLA. CONST. art. VIII, s. 1(f).

¹³ FLA. CONST. art. VIII, s. 1(g).

¹⁴ A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term “municipality” may be used interchangeably with the terms “town,” “city,” and “village.”

¹⁵ FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.

¹⁶ *Orange County v. Singh*, 268 So. 3d 668, 673 (Fla. 2019) (citing *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008)); see also James Wolf & Sarah Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 FLA. BAR J. 92 (2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (discussing these concepts).

¹⁷ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Brevard, Inc.*, 3 So. 3d at 1018.

¹⁸ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.¹⁹

State law currently preempts to the state the regulation of privately-owned parking facilities.²⁰ Therefore, local governments may not regulate such facilities.

III. Effect of Proposed Changes:

SB 694 amends a recently-enacted statute, s. 715.075, F.S., which authorizes the owners and operators of privately-owned parking facilities to establish rules and rates in connection with their use by consumers.

Specifically, the bill repeals the local government preemption language in the statute. Accordingly, under the bill, a county or municipality will again be able to enact an ordinance or a regulation that restricts or prohibits a right of a private property owner or operator established under the statute, provided the ordinance does not directly conflict with s. 715.075, F.S.

The bill also revises the statute to impose additional requirements upon owners and operators of privately-owned parking facilities. Under the bill, owners and operators:

- Must have a physical location in Florida.
- Must establish fines and penalties that are equal to the fines and penalties set for municipal parking.
- Must have posted signage that is clearly visible to persons parking motor vehicles on such private property, which includes:
 - Any rules established under the statute, including any parking charges for violations.
 - The fines and penalties established under the statute.
 - The name of the owner of the private property.
 - A customer service phone number and hours of operation.
- May not report an invoice to a credit bureau.

The bill further provides that any invoice issued under the statute may not resemble the citations used by local authorities.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁹ See, e.g., *National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (concluding that a City of South Miami local government ordinance, which purported to provide safety standards for firearms, was null and void because the Legislature expressly preempted the entire field of firearm and ammunition regulation when it enacted s. 790.33, F.S.).

²⁰ See s. 715.075(2), F.S. (providing that “such ordinance or regulation is a violation of this section and is null and void”).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill is anticipated to cause owners or operators of privately-owned parking facilities to incur some or all of the following costs:

- Owners and operators that do not already have a physical location in Florida will need to obtain one at their cost.
- To the extent owners and operators' fines and penalties currently exceed the fines and penalties set by municipal authorities, owners and operators will need to reduce those fines and penalties to match their municipal equivalents, resulting in less revenue.
- Owners and operators may need to commission and post, at their cost, new signage that includes the information required by the bill.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 715.075 of the Florida Statutes.

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.
