

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 951

Short Title: Public-Private Solid Waste Collection.

(Public)

Sponsors: Senators Hoyle; and Apodaca.

Referred to: Judiciary I.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-309.09E. Limit on units of local government regarding certain collection services.

(a) Notwithstanding any other provision of law, a unit of local government shall not displace a private company that is providing collection services for solid waste or recovered materials, or both, unless the unit of local government complies with the requirements of this section.

(b) Prior to displacing a private company, the unit of local government shall provide public notice of its intent to take an action that will displace a private company by publishing notice of such intent once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given 30 days prior to the first vote by the governing body of the unit of local government on approval of the action to displace a private company. The notice shall specify each area in which a private company would be displaced. The unit of local government shall also provide written notice to all collection companies that may be displaced at least 90 days prior to the first vote by the governing body of the unit of local government on approval of the action to displace a private company.

(c) Following the public notice required by subsection (b) of this section, but in no event longer than six months after the first public notice pursuant to subsection (b) of this section, the unit of local government may proceed to take measures necessary to

1 provide collection services for solid waste or recovered materials or both. The unit of
2 local government or other public or private entity selected by the unit of local
3 government may not commence the actual provision of these services, unless the unit of
4 local government provides two years' notice from the date of the first public notice
5 under subsection (b) of this section or the unit of local government provides
6 compensation to the displaced private company as follows:

7 (1) Subject to subdivision (3) of this subsection, if the private company
8 has provided collection services in the displacement area for 18
9 months or longer, the unit of local government shall provide
10 compensation to the displaced private company in an amount equal to
11 the gross receipts for collection services provided in the displacement
12 area for the 18 months previous to the initial public notice required
13 under subsection (b) of this section.

14 (2) Subject to subdivision (3) of this subsection, if the displaced private
15 company has provided collection services in the displacement area for
16 less than 18 months, the unit of local government shall provide
17 compensation to the displaced private company in an amount equal to
18 the gross receipts for the period of time that the private company
19 provided such services in the displacement area.

20 (3) If the displaced private company purchased an existing operation of
21 another private company providing such services, compensation shall
22 be based on the sum of the periods of time that the displaced private
23 company and the previous company provided such services, up to a
24 maximum of 18 months.

25 (d) The unit of local government shall pay the displaced private company in full
26 within 30 days of the displacement or, if the displacement occurs in phases, within 30
27 days of the initial phase of the displacement.

28 (e) If the unit of local government fails to give final approval to the action
29 described in the notices required under subsection (b) of this section within six months
30 of the date of the first public notice, the unit of local government shall issue new public
31 notices pursuant to subsection (b) of this section before it may proceed to displace a
32 private company in accordance with the requirements under subsection (c) and
33 subsection (d) of this section.

34 (f) The following definitions apply to this section:

35 (1) 'Displace' means any action by a unit of local government that
36 prohibits or has the effect of prohibiting a private company from
37 providing all or a portion of the collection services for solid waste,
38 recovered materials, or recyclables that the company is providing at
39 the time that the first public notice required by subsection (b) of this
40 section is given. Displace also means an action by a unit of local
41 government to use nonoptional fees or taxes to fund competing
42 collection services for solid waste, recovered materials, or recyclables
43 that the private company is providing at the time that the first public

1 notice required under subsection (b) of this section is given. 'Displace'
2 does not include any of the following actions:

3 a. At the end of a franchise agreement or contract with a private
4 company, the unit of local government does not renew the
5 franchise agreement or contract and, following a competitive
6 procurement process, either awards the contract to another
7 private company or public entity or decides to provide these
8 collection services itself.

9 b. A unit of local government takes action against a private
10 company because the private company's operations present an
11 imminent and substantial threat to human health and safety or
12 are causing a substantial public nuisance.

13 c. A unit of local government takes action against a private
14 company because the private company has materially breached
15 its franchise agreement or contract with the local government.

16 d. A unit of local government legally terminates an existing
17 contract or franchise in accordance with the provisions of that
18 contract or franchise agreement.

19 e. A unit of local government takes action against a private
20 company that refuses to continue operations under the terms
21 and conditions of its existing franchise agreement or contract
22 with the local government during the remaining term of that
23 franchise agreement or contract.

24 (2) 'Unit of local government' means a county, municipality, authority, or
25 political subdivision that is authorized by law to provide for collection
26 of solid waste or recovered materials, or both."

27 **SECTION 2.** This act becomes effective October 1, 2005, and applies to
28 contracts entered on or after that date.