

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE DRS65269-LD-98A (03/15)

Short Title: Public-Private Solid Waste Collection.

(Public)

Sponsors: Senator Hoyle.

Referred to:

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A
2 PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR
3 SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS
4 INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE
5 DISPLACED PRIVATE COMPANY.
6

7 The General Assembly of North Carolina enacts:

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

10 **"§ 130A-309.09E. Limit on units of local government regarding certain collection**
11 **services.**

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

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

1 (c) Following the public notice required by subsection (b) of this section, but in
2 no event longer than six months after the first public notice pursuant to subsection (b) of
3 this section, the unit of local government may proceed to take measures necessary to
4 provide collection services for solid waste or recovered materials or both. The unit of
5 local government or other public or private entity selected by the unit of local
6 government may not commence the actual provision of these services, unless the unit of
7 local government provides two years' notice from the date of the first public notice
8 under subsection (b) of this section or the unit of local government provides
9 compensation to the displaced private company as follows:

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

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

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

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

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

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

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

1 collection services for solid waste, recovered materials, or recyclables
2 that the private company is providing at the time that the first public
3 notice required under subsection (b) of this section is given. 'Displace'
4 does not include any of the following actions:

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

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

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

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

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

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

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