

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 74

An Act to amend and reenact § 15.2-934 of the Code of Virginia, relating to displacement of private waste companies.

[H 456]

Approved March 10, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-934 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-934. Displacement of private waste companies.

No locality or combination of localities shall displace a private company providing garbage, trash or refuse collection service without first: (i) holding at least one public hearing seeking comment on the advisability of the locality or combination of localities providing such service; (ii) providing at least ~~forty-five~~ 45 days' written notice of the hearing, delivered by first class mail to all private companies ~~which~~ that provide the service in the locality or localities and ~~which~~ that the locality or localities are able to identify through local government records; ~~and~~ (iii) providing public notice of the hearing; ~~and~~ (iv) making a written finding of at least one of the following: (a) adequate or sufficient privately-owned refuse collection and disposal services are not available; (b) the use of privately-owned and operated services has substantially endangered the public health or created a public nuisance; (c) privately-owned services, although available, are not able to provide needed services in a reasonable and cost-efficient manner; or (d) displacement is necessary to provide for the development or operation of a regional system of refuse collection or disposal for two or more localities. ~~Following the final public hearing held pursuant to the preceding sentence, but in no event~~ After making the findings required by this section, and not longer than one year after the final public hearing, the locality or combination of localities may proceed to take measures necessary to provide such service. A locality or combination of localities shall provide five years' notice to a private company before the locality or combination of localities engages in the actual provision of the service that displaces the company. As an alternative to delaying displacement five years, a locality or combination of localities may pay a displaced company an amount equal to the company's preceding ~~twelve~~ 12 months' gross receipts for the displaced service in the displacement area. Such five-year period shall lapse as to any private company being displaced when such company ceases to provide service within the displacement area.

For purposes of this section, "displace" or "displacement" means a locality's or a combination of localities' provision of a service which prohibits a private company from providing the same service and which the company is providing at the time the decision to displace is made. Displace or displacement does not mean: (i) competition between the public sector and private companies for individual contracts; (ii) situations where a locality or combination of localities, at the end of a contract with a private company, does not renew the contract and either awards the contract to another private company or, following a competitive process conducted in accordance with the Virginia Public Procurement Act, decides for any reason to contract with a public service authority established pursuant to the Virginia Water and Waste Authorities Act, or, following such competitive process, decides for any reason to provide such collection service itself; (iii) situations where action is taken against a private company because the company has acted in a manner threatening to the health and safety of a locality's citizens or resulting in a substantial public nuisance; (iv) situations where action is taken against a private company because the company has materially breached its contract with the locality or combination of localities; (v) situations where a private company refuses to continue operations under the terms and conditions of its existing agreement during the five-year notice period; (vi) entering into a contract with a private company to provide garbage, trash or refuse collection so long as such contract is not entered into pursuant to an ordinance which displaces or authorizes the displacement of another private company providing garbage, trash or refuse collection; or (vii) situations where at least ~~fifty-five percent~~ 55% of the property owners in the displacement area petition the governing body to take over such collection service.