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HOUSE BILL NO. 2268

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact § 15.2-5121 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-5102.2, relating to solid waste management authorities.

Patron—Morgan

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-5121 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-5102.2 as follows:

§ 15.2-5102.2. Virginia Peninsula area solid waste management authority.

Any authority, or any subsidiary thereof, organized pursuant to § 15.2-5102 to operate a refuse collection and disposal system that has among its members the Cities of Hampton, Poquoson, and Williamsburg, the Counties of Essex, James City, King and Queen, King William, Mathews, Middlesex, and York, and the Towns of Tappahannock, Urbanna, and West Point shall, notwithstanding any other law to the contrary, be overseen by a Board of Directors with members appointed as follows:

Each locality that is a member of the authority shall be entitled to nominate individuals to fill one position on the Board of Directors (the Board) by submitting a list of three potential directors, each of whom shall possess general business knowledge and shall not be an elected official, to the Governor. The Governor shall then select and appoint one director from each of the lists of nominees prepared by the member localities. In addition, each member locality shall be authorized to directly appoint, upon a majority vote of the governing body of the member locality, one ex officio, non-voting, member of the Board who shall be an employee of the member locality. The members of the Board shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. No member shall serve for more than two consecutive four-year terms, except that any member appointed to the unexpired term of another shall be eligible to serve two consecutive four-year terms.

§ 15.2-5121. Operation of refuse collection systems; displacement of private companies.

A. No authority shall operate or contract for the operation of a refuse collection and disposal system for any political subdivision, or collect service charges therefor, unless the authority, and subsequently the locality's governing body, find: (i) that privately owned and operated refuse collection and disposal services are not available on a voluntary basis by contract or otherwise, (ii) that the use of such privately owned services has substantially endangered the public health or has resulted in substantial public nuisance, (iii) that the privately owned refuse collection and disposal service is not able to perform the service in a reasonable and cost-efficient manner, or (iv) that operation by such authority or the contract for such operation, in spite of any potential anti-competitive effect, is important in order to provide for the development and/or operation of a regional system of refuse collection and disposal for two or more units. Additionally, prior to the authority operating or contracting for the operation of a refuse collection and disposal system, the authority, and subsequently the locality's governing body, must find that the proposed market to be served by the authority is not already adequately and competitively served by private industry.

B. Notwithstanding the provisions of subsection A, an authority formed under this chapter shall not operate or contract for the operation of a refuse collection and disposal system which displaces a private company engaged in the provision of refuse collection and disposal unless it provides the company with five years' notice of its decision to operate such a system. As an alternative to delaying displacement five years, the governing body or authority 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.

C. For purposes of this section, "displace" or "displacement" means an authority's provision of a system which prohibits a private company from providing the same service and which it is providing at the time the decision that will result in the displacement is made. Displace or displacement does not mean: (i) competition between the public sector and private companies for individual contracts; (ii) situations in which an authority, 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 provide

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59 such service itself; (iii) situations in which action is taken against a private company because the
60 company has acted in a manner threatening to the public health and safety or resulting in a substantial
61 public nuisance; (iv) situations in which action is taken against a private company because the company
62 has materially breached its contract with the political subdivision; (v) entering into a contract with a
63 private company to provide refuse collection and disposal so long as such contract is not entered into
64 pursuant to an ordinance which displaces or authorizes the displacement of another private company
65 providing refuse collection and disposal; or (vi) situations in which a private company refuses to
66 continue operations under the terms and conditions of its existing agreement during the five-year notice
67 period.

68 D. An authority shall not make the findings required by subsection A or proceed to seek to operate a
69 refuse collection and disposal system for any political subdivision that would displace a private company
70 pursuant to subsection B until it has provided (i) public notice; (ii) a public hearing; and (iii) no less
71 than ~~forty-five~~ 45 days prior to the public hearing, written notice mailed first class to all private
72 companies providing a refuse collection and disposal system in the political subdivision that can be
73 identified through the political subdivision's records.

74 E. The requirements and restrictions of this section shall not apply in any political subdivision
75 wherein refuse collection and disposal services are being operated or contracted for by any sanitary
76 district located therein, as of July 1, 1983.

77 F. Notwithstanding the provisions of this section, a political subdivision need not comply with the
78 requirements of this section if:

79 1. The authority proposes to contract with the private sector for services or systems involving
80 discarded or waste materials removed from the nonhazardous solid waste stream for recycling; or

81 2. The authority proposes to contract with the private sector for services or systems involving
82 collection and disposal of nonhazardous solid waste and (i) the collected waste will be disposed of in a
83 state-permitted waste management facility; (ii) the authority has a contract for services which shall be
84 paid for through a supporting financial agreement approved by the participating locality's governing
85 body; and (iii) such action will not displace a private company engaged in refuse collection and
86 disposal. For purposes of this section, "recycling" means the process of separating a particular
87 nonhazardous waste material from the waste stream and processing it so that it may be used again as a
88 new material.