

LD6865160

HOUSE BILL NO. 1802

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on February 14, 1995)

(Patron Prior to Substitute—Delegate Cooper)

A BILL to amend and reenact §§ 15.1-28.1 and 15.1-1250.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.1-28.04, relating to displacement of private waste companies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-28.1 and 15.1-1250.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.1-28.04 as follows:

§ 15.1-28.04. Displacement of private waste companies.

No county, city or town or combination of counties, cities or towns 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 days' written notice of the hearing, delivered by first class mail to all private companies which provide the service in the locality or localities and which the locality or localities are able to identify through local government records; and (iii) providing public notice of the hearing. Following the final public hearing held pursuant to the preceding sentence, but in no event longer than one year after the 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 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 Sewer 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 of the property owners in the displacement area petition the governing body to take over such collection service.

§ 15.1-28.1. Regulation of garbage and refuse pickup and disposal services; contracting for such services.

A. The governing body of any county, city or town in this Commonwealth may, by ordinance, impose license taxes upon and otherwise regulate the services rendered by any business engaged in the pickup and disposal of garbage, trash or refuse, wherein service will be provided to the residents of any such county, city or town. Such regulation may include the delineation of service areas, the limitation of the number of persons engaged in such service in any such service area, including the creation of one or more exclusive service areas, and the regulation of rates of charge for any such service.

Such governing bodies are authorized to contract with any person, whether profit or nonprofit, for garbage and refuse pickup and disposal services in their respective jurisdiction.

B. Prior to enacting an ordinance pursuant to subsection A which displaces a private company engaged in the provision of pickup and disposal of garbage, trash or refuse in service areas, the

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governing body shall: (i) hold at least one public hearing seeking comment on the advisability of such ordinance; (ii) provide at least forty-five days' written notice of the hearing, delivered by first class mail to all private companies which provide the service in the locality and which the locality is able to identify through local government records; and (iii) provide public notice of the hearing. Following the final public hearing held pursuant to the preceding sentence, but in no event longer than one year after the hearing, a governing body may enact an ordinance pursuant to subsection A which displaces a private company engaged in the provision of pickup and disposal of garbage, trash or refuse in a service area if the ordinance provides that private companies will not be displaced until five years after its passage. As an alternative to delaying displacement five years, a governing body may pay a company an amount equal to the company's preceding twelve 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 an ordinance prohibiting a private company from providing the service it is providing at the time a 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 Sewer Authorities Act, or, following such competitive process, decides for any reason to provide such pickup and disposal service itself; (iii) situations where action is taken against a company because the company has acted in a manner threatening to the health and safety of the 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 period; (vi) entering into a contract with a private company to provide pickup and disposal of garbage, trash or refuse in a service area so long as such contract is not entered into pursuant to an ordinance which displaces or authorizes the displacement of another private company providing pickup and disposal of garbage, trash or refuse in such service area; or (vii) situations where at least fifty-five percent of the property owners in the displacement area petition the governing body to take over such collection service.

B.C. The governing body of any county with a population in excess of 800,000 may provide, by ordinance, civil penalties not exceeding \$500 per offense for persons willfully contracting with a solid waste collector or collectors not licensed or permitted to perform refuse collection services within that jurisdiction. For purposes of this section, evidence of a willful violation is the voluntary contracting by a person with a solid waste collector after having received written notice from the jurisdiction that the solid waste collector is not licensed or permitted to operate within that jurisdiction. Written notice may be provided by certified mail or by any appropriate method specified in Article 4 (§ 8.01-296 et seq.) of Chapter 8 of Title 8.01.

C.D. The governing body of any county with a population in excess of 800,000 may, by ordinance, authorize the local police department to serve a summons to appear in court on solid waste collectors operating within that jurisdiction without a license or permit. Each day the solid waste collector operates within the jurisdiction without a license or permit is a separate offense, punishable by a fine of up to \$500.

§ 15.1-1250.01. Public hearing for certain garbage and refuse collection.

No service authority formed under this chapter shall be permitted to operate itself or contract for the operation of a garbage and refuse collection and disposal system for any political subdivision, or to collect service charges therefor, unless the service authority finds, after public notice and forty-five days' written notice mailed first class to all private companies providing a garbage and refuse collection and disposal system in the political subdivision that can be identified through the political subdivision's records and hearing, and the participating governing body subsequently finds: (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 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 garbage and refuse collection and disposal for two or more units.

Upon such a finding by the service authority and the participating governing body, such service authority may itself operate or contract for the operation of a refuse collection and disposal system. However, a service authority formed under this chapter may not itself operate or contract for the operation of a garbage and refuse collection and disposal system which displaces a private company

engaged in the provision of garbage and 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 local governing body or service authority may pay a displaced company an amount equal to the company's preceding twelve 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.

No public service authority shall proceed under the preceding paragraph to seek to operate a garbage and refuse collection and disposal system for any political subdivision that would displace a private company providing the system without first: (i) holding at least one public hearing seeking comment on its intention to seek to operate such a system; (ii) providing at least forty-five days' written notice of the hearing, delivered by first class mail to all private companies providing such a service in the political subdivision that are identifiable through local government records; and (iii) providing public notice of the hearing. For purposes of this section, "displace" or "displacement" means a public service 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 where a public service 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 such service itself; (iii) situations where action is taken against a private company because the company has acted in a manner threatening to the public health and safety 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 political subdivision; (v) entering into a contract with a private company to provide garbage and refuse collection and disposal 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 and refuse collection and disposal; or (vi) situations where a private company refuses to continue operations under the terms and conditions of its existing agreement during the five-year notice period.

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

Notwithstanding the provisions of this section, no political subdivision shall be required to comply with the requirements of this section where the service authority proposes to contract with the private sector for services or systems involving discarded or waste materials removed from the nonhazardous solid waste stream for recycling or where the service authority proposes to contract with the private sector for services or systems involving collection and disposal of nonhazardous solid waste where the collected waste will be disposed of in a state-permitted waste management facility and where the service authority has a contract for services which shall be paid for through a supporting financial agreement approved by the participating political subdivision's governing body and where such action will not displace a private company engaged in garbage and refuse collection and disposal. For purposes of this section, "recycling" means the process of separating a given nonhazardous waste material from the waste stream and processing it so that it may be used again as a new material for a product which may or may not be similar to the original product or used in manufacturing any usable product.

2. Nothing in this section shall impair the authority of any county, city or town acting pursuant to § 15.1-28.01 to require the delivery of all or any portion of the garbage, trash and refuse generated or disposed of within such counties, cities and towns to specific waste disposal facilities.