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SENATE BILL NO. 1187

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 15.2-931 of the Code of Virginia, relating to solid waste disposal ordinances; disposal facilities.

Patrons—Blevins; Delegate: Howell, A.T.

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-931 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-931. Regulation of garbage and refuse pickup and disposal services; contracting for such services in certain localities.

A. Localities may adopt ordinances requiring the delivery of all or any portion of the garbage, trash or refuse generated or disposed of within such localities to waste disposal facilities located therein, or to waste disposal facilities located outside of such localities if the localities have contracted for capacity at or service from such facilities.

Such ordinances may not be adopted until the local governing body, following one or more public hearings, has made the following findings:

1. That other waste disposal facilities, including privately owned facilities and regional facilities, are: (i) unavailable; (ii) inadequate; (iii) unreliable; or (iv) not economically feasible, to meet the current and anticipated needs of the locality for waste disposal capacity; and

2. That the ordinance is necessary to ensure the availability of adequate financing for the construction, expansion or closing of the locality's facilities, and the costs incidental or related thereto.

No ordinance adopted by a locality under this subsection shall prevent or prohibit the disposal of garbage, trash or refuse at any facility: (i) which has been issued a solid waste management facility permit by an agency of the Commonwealth on or before July 1, 1991; or (ii) for which a Part A permit application for a new solid waste management facility permit, including local governing body certification, was submitted to the Department of Waste Management in accordance with § 10.1-1408.1 B on or before December 31, 1991. Such findings shall constitute a compelling governmental interest in preserving the right of the public to enjoy available, adequate, reliable, and economically feasible waste disposal capacity.

B. Localities may provide in any ordinance adopted under this section that it is unlawful for any person to dispose of his garbage, trash and refuse in or at any other place. No such ordinance making it unlawful to dispose of garbage, trash and refuse in any other place shall apply to the occupants of single-family residences or family farms disposing of their own garbage, trash or refuse if such occupants have paid the fees, rates and charges of other single-family residences and family farms in the same service area.

No ordinance adopted under this section shall apply to garbage, trash and refuse generated, purchased or utilized by an entity engaged in the business of manufacturing, mining, processing, refining or conversion except for an entity engaged in the production of energy or refuse-derived fuels for sale to a person other than any entity controlling, controlled by or under the same control as the manufacturer, miner, processor, refiner or converter. Nor shall such ordinance apply to (i) recyclable materials, which are those materials that have been source-separated by any person or materials that have been separated from garbage, trash and refuse by any person for utilization in both cases as a raw material to be manufactured into a product other than fuel or energy, (ii) construction debris to be disposed of in a landfill, or (iii) waste oil. Such ordinances may provide penalties, fines and other punishment for violations.

Such localities are authorized to contract with any person, whether profit or nonprofit, for garbage and refuse pickup and disposal services in their respective localities and to enter into contracts relating to waste disposal facilities which recover energy or materials from garbage, trash and refuse. Such contracts may make provision for, among other things, (i) the purchase by the localities of all or a portion of the disposal capacity of a waste disposal facility located within or outside the localities for their present or future waste disposal requirements, (ii) the operation of such facility by the localities, (iii) the delivery by or on behalf of the contracting localities of specified quantities of garbage, trash and refuse, whether or not such counties, cities, and towns collect such garbage, trash and refuse, and the making of payments in respect of such quantities of garbage, trash and refuse, whether or not such garbage, trash and refuse are delivered, including payments in respect of revenues lost if garbage, trash

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59 and refuse are not delivered, (iv) adjustments to payments made by the localities in respect of inflation,
60 changes in energy prices or residue disposal costs, taxes imposed upon the facility owner or operator, or
61 other events beyond the control of the facility operator or owners, (v) the fixing and collection of fees,
62 rates or charges for use of the disposal facility and for any product or service resulting from operation
63 of the facility, and (vi) such other provision as is necessary for the safe and effective construction,
64 maintenance or operation of such facility, whether or not such provision displaces competition in any
65 market. Any such contract shall not be deemed to be a debt or gift of the localities within the meaning
66 of any law, charter provision or debt limitation. Nothing in the foregoing powers granted such localities
67 includes the authority to pledge the full faith and credit of such localities in violation of Article X,
68 Section 10 of the Constitution of Virginia.

69 It has been and is continuing to be the policy of the Commonwealth to authorize each locality to
70 displace or limit competition in the area of garbage, trash or refuse collection services and garbage, trash
71 or refuse disposal services to provide for the health and safety of its citizens, to control disease, to
72 prevent blight and other environmental degradation, to promote the generation of energy and the
73 recovery of useful resources from garbage, trash and refuse, to protect limited natural resources for the
74 benefit of its citizens, to limit noxious odors and unsightly garbage, trash and refuse and decay and to
75 promote the general health and welfare by providing for adequate garbage, trash and refuse collection
76 services and garbage, trash and refuse disposal services. Accordingly, governing bodies are directed and
77 authorized to exercise all powers regarding garbage, trash and refuse collection and garbage, trash and
78 refuse disposal notwithstanding any anti-competitive effect.

79 C. The following localities may by ordinance require the delivery of all or any portion of the
80 garbage, trash and refuse generated or disposed of within such localities to waste disposal facilities
81 located therein or to waste disposal facilities located outside of such localities if the localities have
82 contracted for capacity at or service from such facilities: (i) Arlington County or the City of Alexandria,
83 singly or jointly, two or all of such counties and cities; (ii) Fairfax County, Fauquier County, Loudoun
84 County, Prince William County, or Stafford County and any town situated within or city wholly
85 surrounded by any of such counties, singly or jointly, two or more of such localities, that have by
86 resolution of the governing body committed the locality to own or operate a resource recovery waste
87 disposal facility; and (iii) localities which are members of the Richmond Regional Planning District No.
88 15 or Crater Planning District No. 19, singly or jointly, two or more of such localities, that by ordinance
89 of the governing body after a minimum of two public hearings, and after complying with applicable
90 provisions of the Public Procurement Act (Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2), have committed
91 the locality to own, operate or contract for the operation of a resource recovery waste disposal facility.