ENROLLED HOUSE
BILL NO. 1073

By: Thornbrugh of the House

and

Long of the Senate

An Act relating to cities and towns; amending Section 1, Chapter 18, O.S.L. 1998 (11 O.S. Supp. 1998, Section 22-105.1), which relates to displacing private company providing solid waste collection service; modifying definition; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 18, O.S.L. 1998 (11 O.S. Supp. 1998, Section 22-105.1), is amended to read as follows:

Section 22-105.1 A. Pursuant to Section 2-10-102 of Title 27A of the Oklahoma Statutes, it is the policy of this state to regulate the management of solid waste in order to protect the public health, safety and welfare. For this purpose and for purposes of this section, the collection of solid waste shall be a matter of statewide interest.

B. No municipality shall displace or pass an ordinance to displace a private company providing solid waste collection service without first:

1. Holding at least one public hearing seeking comment on the advisability of the municipality providing such service;

2. Providing at least forty-five (45) days written notice of the hearing, delivered by first-class mail to all private solid waste collection companies which provide service in the municipality; and

3. Providing public notice of the hearing.

Following the final public hearing held pursuant to this section, but in no event longer than one (1) year after the date of the hearing, if the municipality elects to provide such solid waste collection services and displace the private solid waste collection company, the municipality shall purchase by condemnation the private solid waste collection services as set forth in this section.

C. A municipality shall have the authority to acquire by purchase, donation, or condemnation such interests in any private company providing solid waste collection services operating within the limits of the municipality. The municipality shall give the

owner of the displaced private solid waste collection company the opportunity to sell the displaced private solid waste collection services to the municipality at an agreed upon or negotiated price or the municipality may acquire the business by condemnation as provided in this section.

D. If the municipality seeks to condemn the displaced private solid waste collection services, the district judge of the county in which the displaced services are located, upon petition of either party, shall direct the sheriff of the county to summon three disinterested freeholders, to be selected by the judge as commissioners, and who shall not have a conflict of interest. The commissioners shall be sworn to perform their duties impartially and justly. The commissioners shall inspect the company and the displaced services and consider the injury which the owner may sustain by reason of the condemnation, and they shall assess the just compensation to which the owner is entitled. The commissioners shall make a report in writing to the clerk of the court, setting forth the quantity, boundaries, and just compensation for the property or services taken, and amount of injury done to the business, either directly or indirectly, which they assess to the owner. The report shall be filed and recorded by the clerk.

E. Immediately upon payment to the clerk of the court of the sum assessed by the commissioners, the municipality shall be authorized to collect solid waste in the area serviced by the owner of the business. If the owner refuses to cease collection of solid waste pursuant to this section, the court shall issue an order, upon proof, enjoining the owner from collecting solid waste in the areas subject to such condemnation.

F. The report of the commissioners may be reviewed by the district court, on written exceptions filed by either party in the clerk's office within thirty (30) days after the filing of the report. The court, after a hearing, shall make such order as right and justice may require, either by confirmation, rejection, or by ordering a new appraisement on good cause shown. In the event a new appraisement is ordered, the municipality shall have the continuing right of possession obtained under the first appraisal, unless and until its right to condemn has finally been determined otherwise. Either party may, within sixty (60) days after the filing of such report, file with the clerk a written demand for a trial by jury, in which case the amount of damages shall be assessed by a jury, and the trial shall be conducted and judgment entered in the same manner as civil actions in the district court. If the party demanding the trial does not recover a verdict more favorable to such party than the assessment of the commissioners, all costs in the district court shall be taxed against such party. If, after the filing of exceptions to the report of commissioners as provided in this section, the municipality shall fail to establish its right to condemn such business, the owner shall be restored to possession of the business, or part thereof, and the municipality shall pay the owner for any damages sustained through the occupation by the municipality. If such damages cannot be determined by amicable settlement, the damages shall be determined by jury trial in the same proceedings.

G. Either party aggrieved may appeal to the Supreme Court from the decision of the district court on exceptions to the report of commissioners, or jury trial. The review or appeal shall not delay

the work of the municipality in question if the award of commissioners, or jury, as the case may be, has been deposited with the clerk for such owner. In no case shall the municipality be liable for the costs on the review or appeal unless the owner of the business shall be adjudged entitled, upon either review or appeal, to a greater amount of damages than was awarded by the commissioners. The municipality shall in all cases pay the cost of the commissioners' fees and expenses, for their services, as determined and ordered paid by the judge of the district court in which such case is pending. However, poundage fees and condemnation fees shall only be paid by the municipality in the event of appeal resulting in a jury verdict in excess of the commissioners' award. Under no circumstances shall any poundage fees or condemnation fees be assessed against the recipient of the award. In case of review or appeal, a certified copy of the final order or judgment shall be transmitted by the clerk of the court to the county clerk and be filed.

H. As used in this section:

1. "Displace" or "displacement" means a municipality's 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:

a. competition between the municipality and private companies for individual contracts,

b. situations where a municipality, 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, decides to provide for such services itself,

c. situations where action is taken against the private company because the company has acted in a manner threatening to the public health, safety and welfare of the citizens of the municipality or resulting in a substantial public nuisance,

d. situations where action is taken against the private company because the company has materially breached its contract with the municipality, or

e. entering into a contract with a private company to provide solid waste collection so long as the contract is not entered into pursuant to an ordinance which displaces or authorizes the displacement of another private company providing solid waste collection;

2. "Just compensation" means the value of the business taken, and in addition, any injury to any part of the business not taken. Any special and direct benefits to the part of the business not taken may be offset only against any injury to the business not taken~~. If only a part of the business is taken, just compensation shall be ascertained by determining the difference between the fair market value of the whole business immediately before the taking and the fair market value of that portion left remaining immediately after the taking~~; and

3. "Solid waste" shall have the same meaning as provided in Section 2-10-103 of Title 27A of the Oklahoma Statutes.

SECTION 2. This act shall become effective November 1, 1999.

Passed the House of Representatives the 24th day of February, 1999.

Speaker of the House of Representatives

Passed the Senate the 29th day of March, 1999.

President of the Senate