

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 54th Legislature (2013)

4   COMMITTEE SUBSTITUTE  
5   FOR  
6   HOUSE BILL NO. 2003

By: McNiel of the House

and

Anderson of the Senate

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10                                   COMMITTEE SUBSTITUTE

11           An Act relating to cities and towns; amending 11 O.S.  
12           2011, Section 22-105.1, which relates to displacing a  
13           private company providing solid waste collection  
14           service; deleting references to collections; changing  
15           certain references to services; changing certain  
16           definition; and providing an effective date.

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

18           SECTION 1.        AMENDATORY        11 O.S. 2011, Section 22-105.1, is  
19   amended to read as follows:

20           Section 22-105.1   A.   Pursuant to Section 2-10-102 of Title 27A  
21   of the Oklahoma Statutes, it is the policy of this state to regulate  
22   the management of solid waste in order to protect the public health,  
23   safety and welfare. For this purpose and for purposes of this

1 section, the ~~collection~~ management of solid waste shall be a matter  
2 of statewide interest.

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

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

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

12 3. Providing public notice of the hearing.

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

20 C. A municipality shall have the authority to acquire by  
21 purchase, donation, or condemnation such interests in any private  
22 company providing solid waste ~~collection~~ services operating within  
23 the limits of the municipality. The municipality shall give the  
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UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

22 E. Immediately upon payment to the clerk of the court of the  
23 sum assessed by the commissioners, the municipality shall be  
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1 authorized to ~~collect~~ provide solid waste services in the area  
2 serviced by the owner of the business. If the owner refuses to  
3 cease ~~collection of~~ providing the solid waste services pursuant to  
4 this section, the court shall issue an order, upon proof, enjoining  
5 the owner from ~~collecting~~ providing the solid waste services in the  
6 areas subject to such condemnation.

7 F. The report of the commissioners may be reviewed by the  
8 district court, on written exceptions filed by either party in the  
9 clerk's office within thirty (30) days after the filing of the  
10 report. The court, after a hearing, shall make such order as right  
11 and justice may require, either by confirmation, rejection, or by  
12 ordering a new appraisement on good cause shown. In the event a new  
13 appraisement is ordered, the municipality shall have the continuing  
14 right of possession obtained under the first appraisal, unless and  
15 until its right to condemn has finally been determined otherwise.  
16 Either party may, within sixty (60) days after the filing of such  
17 report, file with the clerk a written demand for a trial by jury, in  
18 which case the amount of damages shall be assessed by a jury, and  
19 the trial shall be conducted and judgment entered in the same manner  
20 as civil actions in the district court. If the party demanding the  
21 trial does not recover a verdict more favorable to such party than  
22 the assessment of the commissioners, all costs in the district court  
23 shall be taxed against such party. If, after the filing of

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1 exceptions to the report of commissioners as provided in this  
2 section, the municipality shall fail to establish its right to  
3 condemn such business, the owner shall be restored to possession of  
4 the business, or part thereof, and the municipality shall pay the  
5 owner for any damages sustained through the occupation by the  
6 municipality. If such damages cannot be determined by amicable  
7 settlement, the damages shall be determined by jury trial in the  
8 same proceedings.

9 G. Either party aggrieved may appeal to the Supreme Court from  
10 the decision of the district court on exceptions to the report of  
11 commissioners, or jury trial. The review or appeal shall not delay  
12 the work of the municipality in question if the award of  
13 commissioners, or jury, as the case may be, has been deposited with  
14 the clerk for such owner. In no case shall the municipality be  
15 liable for the costs on the review or appeal unless the owner of the  
16 business shall be adjudged entitled, upon either review or appeal,  
17 to a greater amount of damages than was awarded by the  
18 commissioners. The municipality shall in all cases pay the cost of  
19 the commissioners' fees and expenses, for their services, as  
20 determined and ordered paid by the judge of the district court in  
21 which such case is pending. However, poundage fees and condemnation  
22 fees shall only be paid by the municipality in the event of appeal  
23 resulting in a jury verdict in excess of the commissioners' award.

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1 Under no circumstances shall any poundage fees or condemnation fees  
2 be assessed against the recipient of the award. In case of review  
3 or appeal, a certified copy of the final order or judgment shall be  
4 transmitted by the clerk of the court to the county clerk and be  
5 filed.

6 H. As used in this section:

7 1. "Displace" or "displacement" means a municipality's  
8 provision of a service which prohibits a private company from  
9 providing the same service and which the company is providing at the  
10 time the decision to displace is made. Displace or displacement  
11 does not mean:

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

14 b. situations where a municipality, at the end of a  
15 contract with a private company, does not renew the  
16 contract and either awards the contract to another  
17 private company, or, decides to provide for such  
18 services itself,

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

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

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

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

18 3. "Solid waste" ~~shall have the same meaning as provided in~~  
19 ~~Section 2-10-103 of Title 27A of the Oklahoma Statutes~~ means all  
20 putrescible and nonputrescible refuse in solid, semisolid, or liquid  
21 form including, but not limited to, garbage, rubbish, ashes or  
22 incinerator residue, street refuse, dead animals, demolition wastes,  
23 construction wastes, roofing material, solid or semisolid commercial

1 and industrial wastes including explosives, biomedical wastes,  
2 chemical wastes, herbicide and pesticide wastes, organics, scrap  
3 materials, and materials that are destined for recycling, reuse,  
4 conversion, or processing, whether source separated or not.

5 SECTION 2. This act shall become effective November 1, 2013.

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7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/13/2013 - DO  
8 PASS, As Amended and Coauthored.

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