

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 2003

By: McNiel

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5  
6 AS INTRODUCED

7 An Act relating to cities and towns; amending 11 O.S.  
8 2011, Section 22-105.1, which relates to displacing a  
9 private company providing solid waste collection  
10 service; deleting references to collections; changing  
11 certain references to services; changing certain  
12 definition; and providing an effective date.

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

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

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

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

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

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

7 3. Providing public notice of the hearing.

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

15 C. A municipality shall have the authority to acquire by  
16 purchase, donation, or condemnation such interests in any private  
17 company providing solid waste ~~collection~~ services operating within  
18 the limits of the municipality. The municipality shall give the  
19 owner of the displaced private solid waste ~~collection~~ company the  
20 opportunity to sell the displaced private solid waste ~~collection~~  
21 services to the municipality at an agreed upon or negotiated price  
22 or the municipality may acquire the business by condemnation as  
23 provided in this section.

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

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

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

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

23 H. As used in this section:  
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1        1. "Displace" or "displacement" means a municipality's  
2 provision of a service which prohibits a private company from  
3 providing the same service and which the company is providing at the  
4 time the decision to displace is made. Displace or displacement  
5 does not mean:

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

8            b. situations where a municipality, at the end of a  
9                    contract with a private company, does not renew the  
10                   contract and either awards the contract to another  
11                   private company, or, decides to provide for such  
12                   services itself,

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

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

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

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

12 3. "Solid waste" ~~shall have the same meaning as provided in~~  
13 ~~Section 2-10-103 of Title 27A of the Oklahoma Statutes~~ means all  
14 putrescible and nonputrescible refuse in solid, semisolid, or liquid  
15 form including, but not limited to, garbage, rubbish, ashes or  
16 incinerator residue, street refuse, dead animals, demolition wastes,  
17 construction wastes, roofing material, solid or semisolid commercial  
18 and industrial wastes including explosives, biomedical wastes,  
19 chemical wastes, herbicide and pesticide wastes, organics, scrap  
20 materials, and materials that are destined for recycling, reuse,  
21 conversion, or processing, whether source separated or not.

22 SECTION 2. This act shall become effective November 1, 2013.  
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24 54-1-5375 KB 01/15/13