S T A T E O F N E W Y O R K

4312--A

2011-2012 Regular Sessions

I N S E N A T E

March 28, 2011

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to displacement subscription solid waste collection services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds that the waste transporting industry is a vital industry for the people of the state. The policy of this state should prefer longer contracts over shorter contracts and contracts that protect the health and welfare of the public. Such contracts also need to be somewhat uniform in nature to protect public health and safety. The process of selecting or discontinuing contracts should also be an open process involving public input.

S 2. The general municipal law is amended by adding a new section 97-a to read as follows:

S 97-A. DISPLACEMENT OF SUBSCRIPTION SOLID WASTE COLLECTION SERVICES. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "CONTRACT" MEANS AN AGREEMENT BETWEEN A MUNICIPALITY AND A SUBSCRIPTION SOLID WASTE COLLECTION SERVICE WHICH CREATES AN OBLIGATION ON THE PART OF THE SUBSCRIPTION SOLID WASTE COLLECTION SERVICE TO TRANSPORT SOLID WASTE WITHIN SUCH MUNICIPALITY OR WITHIN ANY PORTION OF SUCH MUNICIPALITY TO A SOLID WASTE DISPOSAL FACILITY.

(B) (I) "DISPLACE" OR "DISPLACEMENT" MEANS A MUNICIPALITY'S ASSIGNMENT OF PROVISION OF A SERVICE WHICH PROHIBITS A SUBSCRIPTION SOLID WASTE COLLECTION SERVICE FROM PROVIDING THE SAME SERVICE AND WHICH SUCH SUBSCRIPTION SOLID WASTE COLLECTION SERVICE IS PROVIDING AT THE TIME THE DECISION TO DISPLACE IS MADE.

(II) DISPLACE OR DISPLACEMENT SHALL NOT MEAN:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) COMPETITION BETWEEN THE PUBLIC SECTOR AND SUBSCRIPTION SOLID WASTE COLLECTION SERVICES FOR INDIVIDUAL CONTRACTS; OR

(B) SITUATIONS WHERE A MUNICIPALITY, AT THE END OF A CONTRACT WITH A SUBSCRIPTION SOLID WASTE COLLECTION SERVICE, DOES NOT RENEW THE CONTRACT AND EITHER AWARDS THE CONTRACT TO ANOTHER SUBSCRIPTION SOLID WASTE COLLECTION SERVICE OR FOLLOWING A COMPETITIVE PROCESS.

(C) "MUNICIPALITY" MEANS A MUNICIPAL CORPORATION AS DEFINED IN SECTION TWO OF THIS CHAPTER.

(D) "SOLID WASTE" MEANS ALL PUTRESCIBLE AND NON-PUTRESCIBLE SOLID WASTES, INCLUDING BUT NOT LIMITED TO GARBAGE, REFUSE, RUBBISH, ASHES, STREET CLEANINGS, DEAD ANIMALS, DEMOLITION AND CONSTRUCTION DEBRIS, AUTOMOBILE BODIES, OFFAL, AND OTHER DISCARDED AND SOLID MATERIALS; INCLUDING, BUT NOT LIMITED TO, THAT RESULTING FROM COMMERCIAL, INDUSTRIAL, CONSTRUCTION, DEMOLITION, AGRICULTURAL, GOVERNMENTAL, RESIDENTIAL, OR COMMUNITY PROCESSES OR ACTIVITIES.

(E) "SOLID WASTE DISPOSAL FACILITY" MEANS A FACILITY OR SITE FOR THE PURPOSE OF TREATING, COMPACTING, RECYCLING OR DISPOSING OF SOLID WASTE MATERIALS; INCLUDING TREATMENT, COMPACTING, RESOURCE RECOVERY OR DISPOSAL PLANTS; EQUIPMENT AND FURNISHINGS THEREOF USED FOR THE STORAGE, TREATMENT, COMPACTING, COMPOSTING, SHREDDING, CONVERTING, UTILIZATION, PROCESSING OR FINAL DISPOSAL OF SOLID WASTE; RESOURCE RECOVERY FACILITIES; MECHANICAL, CHEMICAL OR THERMAL PROCESSING SYSTEMS; INCINERATORS SANITARY LANDFILLS; OTHER FACILITIES FOR THE STORAGE, REDUCTION OR CONVERSION OF SOLID WASTE, USED SINGLY OR IN COMBINATION; APPURTENANCES, FURNISHINGS, EQUIPMENT AND MACHINERY DEEMED NECESSARY THERETO, WHETHER SUCH FACILITY OR SITE SERVES ONE OR MORE PURPOSE IN ADDITION TO THE PRIMARY PURPOSE OF DISPOSING OF SOLID WASTE MATERIALS; AND A FACILITY OR SITE FOR THE COLLECTION AND CONVEYANCE OF SOLID WASTES, INCLUDING TRANSFER STATIONS, BALING FACILITIES, RAILROAD AND MARITIME FACILITIES, MOTOR TRUCKS OR VEHICLES AND APPURTENANCES, FURNISHINGS, EQUIPMENT AND MACHINERY DEEMED NECESSARY THERETO, BUT NOT INCLUDING SERVICES NECESSARY FOR THE COLLECTION OF SOLID WASTES.

(F) "SUBSCRIPTION SOLID WASTE COLLECTION SERVICE" MEANS ANY ENTITY INVOLVED IN TRANSPORTING SOLID WASTE FROM A LOCATION TO A SOLID WASTE DISPOSAL FACILITY BY CONTRACT WITH A MUNICIPALITY.

2. NO MUNICIPALITY SHALL DISPLACE A SUBSCRIPTION SOLID WASTE COLLECTION SERVICE WHICH HAS BEEN PROVIDING SOLID WASTE COLLECTION SERVICES WITHIN SUCH MUNICIPALITY FOR MORE THAN EIGHTEEN MONTHS, WHETHER PURSUANT TO AN EXISTING CONTRACT OR IN CONJUNCTION WITH THE EXISTING CONTRACT AND PRIOR CONTRACTS, WITHOUT FIRST:

(A) HOLDING AT LEAST ONE PUBLIC HEARING SEEKING COMMENT ON THE ADVISABILITY OF THE MUNICIPALITY PROVIDING SUCH SERVICE. THE MUNICIPALITY SHALL CONSIDER AT SUCH PUBLIC HEARING THE TERMS OF THE CONTRACT WITH THE SUBSCRIPTION SOLID WASTE COLLECTION SERVICE WHICH PROVIDE FOR THE TERMINATION OF SUCH CONTRACT, THE LENGTH OF THE TERM OF SUCH CONTRACT AND THE TOTAL PERIOD SUCH CONTRACT AND PRIOR CONTRACTS WITH THE SUBSCRIPTION SOLID WASTE COLLECTION SERVICE HAVE BEEN IN EFFECT, THE EFFECT SUCH DISPLACEMENT WOULD HAVE ON THE HEALTH AND SAFETY OF THE MUNICIPALITY, AND ALTERNATIVES TO THE DISPLACEMENT OF SUCH CONTRACT;

(B) PROVIDING AT LEAST FORTY-FIVE DAYS WRITTEN NOTICE OF THE HEARING, DELIVERED BY FIRST CLASS MAIL TO ALL SUBSCRIPTION SOLID WASTE COLLECTION SERVICES THAT PROVIDE SOLID WASTE COLLECTION SERVICES IN THE MUNICIPALITY AND THAT THE MUNICIPALITY IS ABLE TO IDENTIFY THROUGH LOCAL GOVERNMENT RECORDS; AND

(C) PROVIDING PUBLIC NOTICE OF THE HEARING.

3. AFTER MAKING THE FINDINGS REQUIRED BY THIS SECTION, AND NOT LONGER THAN ONE YEAR AFTER THE FINAL PUBLIC HEARING, THE MUNICIPALITY MAY PROCEED TO TAKE MEASURES NECESSARY TO PROVIDE SUCH SERVICE. ALL FINDINGS MADE AND PROCEEDINGS HAD PURSUANT TO THIS SECTION SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

4. (A) A MUNICIPALITY SHALL PROVIDE SIX MONTHS NOTICE TO A SUBSCRIPTION SOLID WASTE COLLECTION SERVICE BEFORE IT ENGAGES IN THE ACTUAL PROVISION OF THE SERVICE THAT DISPLACES THE SUBSCRIPTION SOLID WASTE COLLECTION SERVICE.

(B) AS AN ALTERNATIVE TO DELAYING DISPLACEMENT SIX MONTHS, A MUNICIPALITY MAY PAY A DISPLACED SUBSCRIPTION SOLID WASTE COLLECTION SERVICE AN AMOUNT EQUAL TO SUCH SUBSCRIPTION SOLID WASTE COLLECTION SERVICE'S PRECEDING TWELVE MONTHS GROSS RECEIPTS FOR THE DISPLACED SUBSCRIPTION SERVICE IN THE DISPLACEMENT AREA. SUCH SIX MONTH PERIOD SHALL LAPSE AS TO ANY SUBSCRIPTION SOLID WASTE COLLECTION SERVICE BEING DISPLACED WHEN SUCH ENTITY CEASES TO PROVIDE SERVICE WITHIN THE DISPLACEMENT AREA.

5. ANY MUNICIPALITY WHICH VIOLATES THE PROVISIONS OF THIS SECTION, SHALL BE CIVILLY LIABLE TO THE DISPLACED SUBSCRIPTION SOLID WASTE COLLECTION SERVICE IN AN AMOUNT EQUAL TO THREE TIMES SUCH SOLID WASTE COLLECTION SERVICE'S PRECEDING TWELVE MONTHS GROSS RECEIPTS FOR THE DISPLACED SUBSCRIPTION SERVICE IN THE DISPLACEMENT AREA.

S 3. This act shall take effect immediately.