

## HOUSE BILL No. 3002

By Committee on Federal and State Affairs

2-21

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AN ACT concerning municipalities; relating to displacement of existing private solid waste services providers; prescribing procedures and conditions therefor.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) “Displace” means provide exclusive solid waste services in an area where a private solid waste services provider is actually providing solid waste services. “Displace” shall not include:

(1) Competition between a municipality and private solid waste services providers for individual customers;

(2) situations where a municipality already provides exclusive solid waste services and, at the end of a contract with a private solid waste services provider, the municipality does not renew the contract and either awards the contract to another private solid waste services provider or decides to provide the services itself;

(3) situations where action is taken against a private solid waste services provider because the provider has acted in a manner which threatens the public health, safety and welfare within the municipality and which results in a serious and continuing public nuisance;

(4) situations where action is taken against a private solid waste services provider because the provider has materially breached a contract with the municipality or its residents; or

(5) entering into a contract with a private solid waste services provider so long as the contract does not displace another private solid waste services provider.

(b) “Exclusive solid waste services” means provision of solid waste services by a municipality in a specified area, either directly or through a contract or contracts with a private or public solid waste services provider or providers, when all other private solid waste services providers are prohibited by the municipality from doing business within the specified area pursuant to K.S.A. 12-2101 *et seq.* or 12-5501 *et seq.*, and amendments thereto, or other similar statutes.

(c) “Municipality” means any city, county or other municipal or quasi-municipal entity organized under the laws of the state of Kansas.

(d) “Solid waste” has the meaning provided in K.S.A. 65-3402, and

1 amendments thereto.

2 (e) “Solid waste services” means the collection of solid waste or re-  
3 cyclables, or both, from business customers or residential customers, or  
4 both.

5 Sec. 2. (a) No municipality shall displace or enact an ordinance to  
6 displace a private solid waste services provider except as provided herein.  
7 The provisions of this act shall apply to municipalities which do not pro-  
8 vide exclusive solid waste services, to municipalities which annex land  
9 where solid waste services are being provided by a private solid waste  
10 services provider and to municipalities which plan to operate or expand  
11 solid waste services into an area where such services are being provided  
12 by a private solid waste services provider.

13 (b) In order to displace existing private solid waste services providers,  
14 the following conditions must be met:

15 (1) A municipality desiring to displace private solid waste services  
16 providers shall enact an ordinance declaring the intention of the munic-  
17 ipality to displace such providers in a specified area described with par-  
18 ticularity and to provide exclusive solid waste services in that area.

19 (2) Prior to enactment of the ordinance required by subsection (b)(1),  
20 the municipality shall hold a public hearing for taking comments on the  
21 advisability of the municipality providing exclusive solid waste services.  
22 The municipality shall provide at least 45-days notice of the hearing. Such  
23 notice shall be in writing and sent by certified mail, return receipt re-  
24 quested, to all private solid waste services providers to be displaced and  
25 shall be published at least once in a newspaper with general circulation  
26 in the area specified in the ordinance.

27 (3) Upon enactment of the ordinance, the municipality shall provide  
28 written notice by certified mail, return receipt requested, to each private  
29 solid waste services provider providing solid waste services within the area  
30 specified in the ordinance. Such notice shall be provided at least seven  
31 years in advance of displacing solid waste services providers within the  
32 specified area. The notice shall state that the municipality intends to pro-  
33 hibit the private solid waste services provider from providing solid waste  
34 services in the specified area and shall include a copy of the ordinance.

35 (4) If the municipality intends to proceed to displace private solid  
36 waste service providers within the area specified in the ordinance, the  
37 municipality, within one year after expiration of the notice period set out  
38 in subsection (b)(3), shall: (A) Commence operation of exclusive solid  
39 waste services within the specified area, using the municipality’s own  
40 equipment and personnel; or (B) enter into a contract with a private solid  
41 waste services provider or providers pursuant to the requirements of this  
42 section under which contract such provider or providers will provide ex-  
43 clusive solid waste services within the specified area on behalf of the

1 municipality.

2 (5) A request for proposals for a contract pursuant to subsection  
3 (b)(4)(B) shall be circulated among all private solid waste services pro-  
4 viders providing solid waste services in the area specified in the ordinance  
5 and to other private solid waste services providers providing solid waste  
6 services in any surrounding communities. Notice of the request for pro-  
7 posals shall be published at least once in a newspaper of general circu-  
8 lation in the specified area and the municipality shall take such other  
9 steps as may be necessary to provide a wide circulation of the request for  
10 proposals.

11 (6) The request for proposals shall be reasonably detailed in scope  
12 and define the services the municipality seeks to obtain. The methodol-  
13 ogies and practices for providing the services requested shall be suffi-  
14 ciently flexible to allow multiple bidders to provide the requested services.

15 (7) After the opening of the proposals received, the municipality may  
16 award a contract to provide exclusive solid waste services within the area  
17 specified in the ordinance.

18 (c) In lieu of the notice period and other procedures described in  
19 subsection (b), a municipality may acquire the interests of a private solid  
20 waste service provider by purchase, donation or condemnation. If a mu-  
21 nicipality condemns the business of a private solid waste service provider,  
22 it shall follow the procedural process in K.S.A. 26-501 et seq., and amend-  
23 ments thereto, as if the business interest being condemned were real  
24 estate; provided, however, the appraisers appointed by the court need  
25 not be residents of the county in which the service is provided, but shall  
26 be persons with experience in the purchase, sale and valuation of business  
27 interests. If a municipality acquires all or any portion of a business by  
28 condemnation, the municipality shall pay the fair market value of the  
29 business taken. In determining fair market value of the business taken,  
30 the appraisers shall take into consideration any lost revenue to or from  
31 services which are ancillary to the collection of solid waste and recyclables  
32 which losses occur or are likely to occur as a result of the condemnation  
33 action. Fair market value is the amount of money that a well informed  
34 buyer is justified in paying and a well informed seller is justified in ac-  
35 cepting for the business interests taken in an open and competitive mar-  
36 ket, assuming no undue compulsion.

37 (d) During the notice provision period described in subsection (b)(3)  
38 above, the municipality shall grant no new licenses for solid waste services  
39 within its boundaries without obtaining a written acknowledgment from  
40 such licensee that notice of the terms and conditions of the ordinance  
41 has been provided. Said written acknowledgment shall be on a separate  
42 form, shall not contain any other provisions, shall be notarized and shall  
43 be drafted to convey to such licensee the date after which said licensee

1 may no longer provide solid waste services within the municipality under  
2 the license.

3 Sec. 3. If any provision of this act or the application thereof to any  
4 person or circumstance is held invalid, the invalidity shall not effect other  
5 provisions or applications of this act which can be given effect without  
6 the invalid provisions or applications. To this end the provisions of this  
7 act are severable.

8 Sec. 4. This act shall take effect and be in force from and after its  
9 publication in the Kansas register.

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