JUST COMPENSATION AND HAULER DISPLACEMENT

WHAT IS JUST COMPENSATION AND HAULER DISPLACEMENT?

When government entities decide to expand their jurisdictional boundaries and provide waste services in the new areas, private solid waste collection companies can be displaced, often without compensation for their lost business. This occurs when:

- A city or town annexes an unincorporated area. Typical annexation statutes require that the new area receive substantially the same services as residents within the city or town. These provisions usually terminate existing arrangements with the private sector for those services that will be provided by the city or town, including solid waste collection. Private companies are not compensated for lost revenue. They also may include the imposition of taxes and fees for government-provided service regardless of who provides that service. Arrangements with the private sector then become financially burdensome and private companies are displaced.

- A local government (city, town, borough, county, solid waste authority, etc.) decides to grant one private firm an exclusive franchise or contract, displacing all other firms with solid waste collection arrangements without compensation.

- A local government decides to begin providing solid waste collection services or expand such services to other areas within the government's jurisdiction using its own equipment and personnel, displacing all private firms with prior collection arrangements without compensation.

When private firms are displaced, significant business losses can occur. For these companies, the years of building a competitive business are lost. A private firm cannot plan for the potential losses caused by displacement. A company that has set reasonable prices based on the market and that complies fully with applicable regulations will not be protected against lost revenue. Management expertise cannot prevent displacement. Insurance and other types of protection are not available to compensate for losses. In addition, the likelihood of displacement occurring has increased with the growth of special districts, regional authorities, and county waste management plans.

Easily quantifiable losses include investment in trucks, equipment, and physical plants. Equipment purchased to honor contracts and franchises become surplus, lowering their market value often below indebted worth. There also are less quantifiable losses such as the value of goodwill with a customer base and the loss of expertise when personnel are laid off. For small waste service firms, these losses may cause bankruptcy. For a large firm, the sizable debt can jeopardize operations in other communities.

IS LITIGATION THE ANSWER?

Court decisions on hauler displacement have offered mixed results for the private waste industry. Because the cases were decided by courts in different states, their application in other states is not binding, even where the courts have referenced other states' decisions. In addition, decisions favoring the private waste industry were based on different grounds.

The first case was *Mohave Disposal, Inc. v. City of Kingman* (Arizona, 1995), where the court relied on an interpretation of a government non-compete provision in the state's public utility law to offer the private hauler relief. Most states do not define garbage collection as a utility service. Where utility law does apply, there are not clear provisions for a just compensation claim.

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Interpretation of Arizona's utility law was challenged again in 2002. In *Waste Management of Arizona, Inc. v. City of Kingman*, a hauling company filed suit against the City of Kingman seeking compensation for lost business as a result of being displaced following annexation. The company asserted that it was a public utility in Arizona with an existing agreement in the unincorporated area annexed by the city. The lower court ruled in favor of the hauling company. On appeal, the city attempted to change the court's interpretation of Arizona's public utility law. The court denied the petition. During the appeal process, the parties agreed that adequate service was provided by the company for a loss of $61,000.

More recently, in *American Eagle Industries LLC, et al. v. St. Louis County, Missouri* (2012), the Supreme Court of Missouri agreed that haulers had a right to claim damages when the county began providing collection services in violation of state law that requires notice of two years before a county can begin providing collection services. The court affirmed the lower court decision that haulers were entitled to damages under the state statute and that the county breached an "implied in-law contract" because of the statute. The case was sent back to the lower court to determine appropriate damages. The claim by haulers that the county violated antitrust laws was rejected as was the county's claim that the state law was unconsitutional.

The other cases are based on "takings" of property clauses in United States and state constitutions. In *Laidlaw Waste Systems, Inc. v. City of Phoenix* (Arizona, 1991), and *Coeur d'Alene Garbage Service v. City of Coeur d'Alene* (Idaho, 1988), the courts used a balancing test to weigh business interests (property rights) against state police power (advancing a public purpose). However, the courts reached different conclusions. In *Laidlaw*, the court focused on business interests and held that property was not taken because the city was acting as a competitor even if the competition was unfair. In *Coeur d'Alene*, the court focused on police power and found that the city's actions were unjustified because excluding a private hauler did not advance the public purpose of protecting the health of residents.

In *Stillings v. City of Winston-Salem* (North Carolina, 1984); *City of Estacada v. American Sanitary Service, Inc.* (Oregon, 1979); and *Calcasieu Sanitation Service v. City of Lake Charles* (Louisiana, 1960), the courts essentially used a balancing test, but found that there was no business interest to protect. Instead, the courts held that the haulers should have known when contracting that the cities could annex their service areas and terminate the agreements. The ability of a city to annex territory without compensating displaced garbage collectors was an implied condition limiting the contracts. In addition, the court in *Stillings* narrowly defined "takings" to only those instances when government physically renders property unusable, such as when expanding highways. This is not a typical court view because many courts include in the definition of "takings" a situation when government action renders an individual's property valueless.

The courts in *Estacada* and *Calcasieu* also follow *Laidlaw* in finding that the cities were acting as competitors. The cities had not adopted ordinances that prohibited any of the haulers from conducting business. Instead, the courts found that the cities entered the market in a manner that prevented haulers from performing, e.g., charging fees that made the hauler's service more expensive than the city's service.

See Appendix A for more details on these cases.

WHAT LEGISLATIVE REMEDIES EXIST TO ADDRESS HAULER DISPLACEMENT?

With the limited favorable results in the lawsuits, the garbage industry has turned toward a legislative solution. At least sixteen states have recognized some level of property rights for displaced waste haulers -- California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, North Carolina, Oklahoma, Oregon, Texas, Virginia, and Washington.[1]

In each of these laws there are some common concepts, although not found in every state, that include:

- Notification before the government takes any action to change garbage collection services;
- A specified period of time when a hauler with existing accounts can continue providing service without government interference or unfair competition;
- Authority of the local government to take action should a hauler fail to perform; and
- A means for the local authority to displace existing garbage services by providing compensation or offering a new contract for service.

[1]Wisconsin has some protections for haulers and solid waste disposal and treatment facilities displaced by flow control ordinances designed to encourage recycling and resource recovery. Wisc. Stat. Ann. § 287.13.

Differences in the legislation include:

- Length of time that a private company is protected before the local government can make changes. Generally, this ranges from one to ten years;

- Ability of the local government to compete with the private sector. In some states, the local government may not provide services. This may include residential arrangements or commercial contacts or both. Others prevent the local government from creating unfair competition. Some states allow for managed competition such that the local government must compete on more equal terms with the private sector;

- A specific financial formula for determining a company's compensation. Some laws do not provide any details on compensation. Others include criteria to consider in determining the amount. A few include very detailed specifications for compensation, e.g., payment amounting to the preceding 12 months revenue;

- Some laws apply only to annexation. Others apply when a local authority decides to provide its own services or franchise selecting only one private company and displacing all others. The most protective laws are those that apply anytime a local government interferes with the solid waste service market;

- Procedures for local government when deciding to displace private collection companies, including requirements for public hearings, referendums, petitions by residents, formation of new contracts, continuation of existing franchises, and provisions for arbitration should negotiations between a private company and local government fail; and

- The definition of "existing business" for purposes of protection under the law, including prior contractual arrangements, a specific number of current customers, and conducting business for a specific time period before government action. Some states also require a showing that the company was providing a level of service equivalent to that provided by the government in other areas of government-provided waste service and, in some instances, that the company is charging a reasonable price for its waste collection services.

The Chart of State Legislative Protections in this bulletin (pages 4 through 6) highlights each state's current laws.

See Appendix B for more details on each state's legislation.

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Chart of State Legislative Protections

State	Applicability	Criteria/Time When Law Applies	Type of Protection
CALIFORNIA Ann Cal. Codes §§ 49500-49524	Anytime local agency decides to provide exclusive services	3 years with franchise license, contract, or permit	5 years notice or end of agreement term, whichever comes first, or compensation
COLORADO Colo. Rev. Stat. § 30-15-401(7)	Anytime government competes using its own services Annexation	No specific provision describing prior agreements; however, the law only applies to commercial areas or residences of 8 or more units	Government cannot prohibit private waste collectors from conducting business Right to request an opportunity to submit a proposal
FLORIDA Fla. Stat. tit. XII §§ 165.061 and 171.062, and tit. XXIX § 403.70605	Annexation or merger with unincorporated area or merger between 2 cities Anytime government provides collection service and displaces a private company	Contract in effect for 6 months No specific provision describing prior arrangements; however, there is an implication of 45 days based on the notice requirement	5 years notice or end of contract term, whichever is shorter 3 years notice or compensation defined as 15 months gross receipts The law also provides very specific procedures when government competes with the private sector to assure fairness in the process
GEORGIA Official Ga. Code Ann. § 36-80-22	Annexation, de-annexation, or incorporation of a municipality	An agreement must be in place at least 30 days before the effective date of any government action	Only applies to commercial clients where an agreement is in place Notice is based on the effective date of government action
ILLINOIS Ill. Muni. Code § 11-19-1	Only applies to private firms conducting non-residential waste collection services and municipalities with less than 1 million residents wanting to franchise solid waste collection services	No specific provision describing prior arrangements,; however, the implication is 30 days based on a written notice requirement	Performance on a municipal franchise contract cannot take place until 15 months after date of ordinance or resolution approving the award
IOWA Iowa Code § 455B.306A	Annexation or expansion of government provided services	No specific provision describing prior arrangements; however, there is an implication of 60 days before annexation based on the notice requirement	1 year notice
KANSAS H.B. 2195 (May 19, 2011)	Applies when a municipality establishes organized collection service defined as a franchise, organized collection, or any process that arranges for a single hauler	No specific provision describing prior arrangements; however, there is an implication of 30 days based on the notice requirement	18 months following the adoption of an ordinance or resolution establishing organized collection

Chart of State Legislative Protections

State	Applicability	Criteria/Time When Law Applies	Type of Protection
MINNESOTA Minn. Rev. Stat. § 115A.94	Anytime a local authority decides to organize collection defined as a system for collecting solid waste by a specific collector in a defined geographic area	No specific provision describing prior arrangements; however, there is an implication of 90 days based on the notice requirement	Compensation is not offered directly; however, the local government must negotiate organized collection services with all licensed collectors operating in the jurisdiction and who have expressed an interest or, after 90 days without an agreement, can create an alternate method
MISSOURI Mo. Rev. Stat. § 260.247	Annexation or expansion of government provided services	50 or more residential accounts or any commercial accounts	2 years notice
MONTANA Mont. Code Ann. § 7-2-4736	Annexation	No specific provision describing prior arrangements	5 years notice and then petition by a majority of residents is required to change the service
NORTH CAROLINA N.C. Gen. Stat. §§ 160A-37-3, 160A-49.3, 160A-326	Annexation Anytime local governments displace a private company	50 residential customers in the county where annexation will occur in effect at least 90 days before the decision to consider annexation is made Arrangement with a municipality, county, or third party in effect at least 90 days before decision to consider any form of displacement	2 years notice or compensation defined as 15 times the average gross monthly revenue for 3 months before the decision to consider annexation or annexation actually occurs 15 months notice or 6 months compensation defined as equal to the total gross revenues for the period the hauler provided services in the displaced area
OKLAHOMA Okla. Stat. Ann. tit. 11 § 22-105.1	Anytime a government displaces a private provider except when government competes for contracts; contract period ends; hauler endangers public health, safety, or welfare; hauler breaches the contract; or a new contract arrangement is made that does not displace another hauler	No specific provision describing prior arrangements; however, there is an implication of 45 days before a city declares an interest in displacing a hauler based on the notice requirement	City must negotiate to purchase or purchase by condemnation the solid waste collection services
OREGON Or. Rev. Stat. § 459.085	Annexation	Franchise	City must attempt to negotiate an arrangement of up to 10 years with the franchisee or provide compensation
TEXAS Tex. Local Gov't Code Ann. §§ 43.056(n) and 43.056(o)	Annexation	A prior arrangement is not required	Government may not prohibit a private service provider from conducting business nor can fees be imposed on residents who continue to use private collection services

Chart of State Legislative Protections

State	Applicability	Criteria/Time When Law Applies	Type of Protection
VIRGINIA Va. Code Ann. §§ 15.2-934 and 15.2-5121	Anytime	No specific provision describing prior arrangements; however, there is an implication of 45 days before the local government declares an interest in displacing a hauler based on the notice requirement	Government may not enter the market unless certain conditions exist, i.e., public health risk, and then private companies must be given 5 years notice or be compensated for the preceding 12 months receipts
WASHINGTON Wash. Rev. Code § 35.13.280	Annexation	Franchise or permit	7 years notice or compensation and the government may not compete with the franchisee or permittee during those 7 years

APPENDIX A - COURT CASES

***Missouri v. St. Louis County,* No. SC92072 (July 31, 2012):** Following St. Louis County's decision to create eight districts with a single hauler in each district, three displaced collection companies (American Eagle Waste Industries, Meridian Waste Services, and Waste Management of Missouri) filed suit for failure to provide the two-years notice required by state law. In 2008, a circuit court judge dismissed the haulers' claims, but on appeal in September 2010, the Missouri Court of Appeals found in favor of the haulers. The haulers were awarded damages of $1.16 million in September 2011 (American Eagle -- $261,086, Meridian -- $99,224, and Waste Management -- $799,593); however, the claim was filed for significantly more at $23 milion.

A separate lawsuit was filed by opponents of districting against St. Louis County and the haulers who won the bids, but in July 2011, the Missouri Supreme Court dismissed the claim stating that St. Louis County had jurisdiction to create the districts.

On appeal of the first lawsuit to the Missouri Supreme Court, the haulers filed additional claims for antitrust violations. The county appealed claiming that the state statute providing the haulers with the notice was unconstitutional and that the damages awarded should have been adjusted for expenses the haulers would have paid during the notice period. The court found that there was not an antitrust violation that the county was authorized under state law to offer trash services. The court also found that the unjust compensation statute was constitutional and that haulers were entitled to protection. The case was remanded back to the trial level to consider damages more accurately.

***Waste Management of Arizona, Inc. v. City of Kingman,* No. CV-2001-462 (Nov. 4, 2002):** The City of Kingman in 2001 annexed territory and displaced a private company without offering compensation. The displaced private company filed a lawsuit in Arizona's Superior Court seeking damages for lost business basing the company claims on *Mohave Disposal, Inc*. The court agreed with the private company using the guidance provided in *Mohave Disposal, Inc.*, i.e., existence of an enforceable contract, clearly defined geographic area, substantial investment by the company, and a fair showing of performance on the contract. On appeal, the city attempted to change the court's interpretation of utility law to deny claims by garbage collectors. The Arizona Appellate Court in Phoenix denied the city's petition.

While the court was considering the petition, the parties stipulated that from November 4, 1996 to the time of the lawsuit, the hauler provided "adequate" service at all times in the unincorporated area of Mohave County and that the value of the displaced service was $61,000.

One of the arguments by the city and supporting groups, i.e., the League of Arizona Cities and Towns, is that the case created uncertainty for growing cities as to the cost of annexation. They argued that the Arizona utility law was designed to protect small utilities that made investments that they could lose not multinational companies that can simply move their trucks somewhere else. In addition, the city argued that it put trash collection service out for bid and that the displaced hauler could have applied.

The hauler stated that the law was intended to protect private businesses from cities imposing a monopoly. Growing cities should not be allowed to cherry-pick profitable communities at the expense of legitimate business interests.

***Mohave Disposal, Inc. v. City of Kingman,* 184 Ariz. 368 (App. 1995):** The city annexed a portion of a private company's service area. The city then imposed garbage collection and disposal fees on the residents to pay for the city's competing garbage service, regardless of whether they were using the city's services.

The case was based on a state law where a city is not allowed to compete when adequate "public utility service under authority of law" is already being provided. The court held that, while garbage collection is not a public utility, a public service was being rendered because the public interest was affected by the business. In addition, the company acted under authority of law because it had an enforceable contract, the service area was clearly defined, the company had made a substantial investment in reliance on the contract, and the company had performed on the contract for a reasonable period of time while maintaining a reasonable performance record prior to annexation.

***Laidlaw Waste Systems, Inc. v. City of Phoenix,* 815 P.2d 932 (Ariz. App. 1991):** The city annexed a portion of several private waste haulers' service areas and began providing its own garbage collection service to residents. Residents were required to pay for that service regardless of whether the city's services were used.

At issue for the court was the definition of "takings" under the Arizona and United States Constitutions. The court found that takings could be physical interference with property or action that renders an individual's property valueless. However, the court held that the city's actions were reasonably necessary to

advance a substantial public purpose, i.e., ensuring garbage collection for residents. In addition, the city was merely engaging in competition, albeit unfair; therefore, the private companies were not denied the viable use of their property.

***Coeur d'Alene Garbage Service v. City of Coeur d'Alene,* 759 P.2d 879 (Idaho Sup. Ct. 1988):** The city annexed a portion of a private company's service area. Because of a city ordinance and a prior agreement, upon annexation, a different company was given exclusive right to perform garbage service in the annexed area.

The case was based on the "taking" of private property under the Idaho Constitution. The court found that the company had an interest because "property" in the constitution included the right to conduct business. Second, the court found that the city had an interest in ensuring that garbage collection was provided to residents in a manner that protected public health. Unlike the court in *Laidlaw*, when balancing the two interests, the court held that there must be a reasonable relationship between government action and public health. The city failed to show how excluding the private company preserved the health of the residents living in the annexed area; therefore, the private company was entitled to just compensation.

***Stillings v. City of Winston-Salem,* 319 S.E.2d 233 (N.C. Sup. Ct. 1984):** The city annexed a portion of a private company's service area that was franchised with the county and then offered free solid waste collection services to the residents in accordance with North Carolina law.

The court found that the passage of annexation legislation was an implied condition justifying franchise termination. The private company should have known when contracting with the county that the city could annex its service area.

In addition, the court found that the term "takings" in the United States Constitution only applied to interference with the physical condition of property and not when government interferes by adjusting the benefits and burdens of economic life to promote the common good.

***City of Estacada v. American Sanitary Service, Inc.,* 599 P.2d 1185 (Or. App. 1979):** The city annexed an area where a private hauler had a franchise agreement with the county. Upon annexation, another hauler claimed the right to serve the area based on a city contract.

The court, like in *Stillings*, held that annexation was an implied condition limiting the franchise agreement. The franchise only applied to areas under the jurisdiction of the county. After annexation by the city, the county no longer had control over the area; therefore, the franchise terminated. In addition, the court held that the other company was merely a competitor. The city never issued a prohibitory ordinance or discriminatory license.

***Calcasieu Sanitation Service v. City of Lake Charles,* 118 So. 2d 179 (La. 1960):** The city annexed an area where a private hauler had an exclusive franchise with the garbage district to collect garbage. Because of a state law, the city began providing free collection service to the residents in the annexed area. The court found that a limiting condition of the franchise was the right of the city to annex territory. In addition, the city had not adopted an ordinance preventing the hauler from performing. Instead, the city provided free service and out-competed the private company.

APPENDIX B - STATE LEGISLATION

California

ANN. CAL. CODES §§ 49500-49524. When a local agency (all political subdivisions) decides to provide exclusive solid waste handling services, either through its own services or through an agreement with a private company, it must first notify existing solid waste handlers. Companies that have provided services for at least three years in accordance with a franchise, contract, license, or permit may continue to provide services for up to five years after notification.

The companies must perform in accordance with their agreement and may be required to use rates that are comparable to those established by the local agency. The local agency also may negotiate with the solid waste company to terminate the agreement in advance.

Colorado

COLO. REV. STAT. § 30-15-401(7). A municipality or city and county may not prohibit a private waste service company from providing services within the limits of the government area as long as the company is in compliance with applicable rules and regulations. In addition, the local government cannot require use or charge user fees for its own waste services at commercial establishments and residences of eight or more units. The preference is given to private waste services.

Both local government and private entities must give a one-year public notice before providing services. When annexation occurs and the local government plans to charge user fees, written notice must be provided to waste service companies doing business in the area and six-months public notice must be published in the newspaper.

Following notice, a private company may request an opportunity to submit a proposal to provide services. Should a request be made, the local government must suspend services or imposition of service fees until the proposal review process is completed. In addition, if a government entity wants to perform the service, that entity must submit a proposal that includes a certification by an independent auditor that the bid is not based on subsidies from government revenues unrelated to waste services.

Florida

FLA. STAT. tit. XII, §§ 165.061 and 171.062 and tit. XXIX § 403.70605. The law applies when a local government provides collection services in a manner that prohibits a private company from continuing to provide the same services. There are a number of exceptions to the law such as competition between the public and private sectors and breach of contract by the private company.

Before displacing a private company, a local government must hold a public hearing providing 45-days notice to all private companies already conducting business. A private company must be given three years notice before the local government begins providing services or the government can pay the company an amount equal to 15 months' gross receipts. When a local government merges with an unincorporated area, the merger plan must honor existing contracts for five years or the remainder of the contract term, whichever is shorter.

A solid waste collection company with a contract in effect at least six months before annexation may continue to provide that service in the annexed area for five years or the end of the term, whichever is shorter. The municipality may determine the level of quality and frequency of service based on the service provided to residents in areas not subject to the contract. In addition, the service must be provided at a reasonable cost. Upon request and within a reasonable time period, the private company must provide the annexing municipality with a copy of the contract.

A local government and company may voluntarily negotiate a different notice period or amount of compensation.

Georgia

OFFICIAL GA. CODE ANN. § 36-80-22. A county, municipal corporation, or any county-municipal consolidated government may not displace commercial solid waste collection services by a private solid waste collection firm with an agreement in place at least 30 days before the effective date of any government action or displacement. Commercial clients may discontinue service by their own choice. Governments may implement health and safety laws, rules, and regulations for the collection and disposal of solid waste and recyclables generated at commercial establishments. This law does not apply to government actions in an emergency.

Illinois

ILL. MUNI. CODE § 11-19-1. If a municipality with a popultion of less than one million people decides to consider franchising waste collection services for non-residential locations, the municipality must hold at least one public hearing seeking comments on whether it should award such a franchise. At least 30 days notice of the hearing must be provided in writing to all private entities on record providing non-residential service within the municipality. At the public hearing, the municipality must provide and discuss the franchise fee that

it plans to receive or the formula to which it will calculate the fee. If a franchise is awarded, performance may not be conducted for 15 months after the date the ordinance or resolution approving the award is adopted.

Iowa

IOWA CODE § 455B.306A. A city that plans to annex an area or operate or expand solid waste collection services must provide 60 days notice to any private entity already doing business in the area. The city cannot begin providing that service until one year from the annexation or notice date, unless the city contracts with the private entity to continue services for that period. The private entity must provide the collection service in accordance with the city's comprehensive plan.

Kansas

HOUSE BILL 2195, enrolled effective on May 19 2011. A municipality is authorized to establish an organized collection service by ordinance or resolution depending on the type of municipality. Organized collection is defined as a system where a municipality goes from multiple haulers to a single hauler for waste or recyclables. The municipality must pass a notice of intent 180 days before adopting the ordinance or resolution. That action must be published in the official newspaper of the municipality and a notice of public hearing is required at least 30 days before the meeting where the ordinance or resolution will be considered.

Within 90 days after adoption, the municipality must develop a plan inviting operators of solid waste or recyclables collection service to participate. Plan provisions include a description of how the municipality will minimize displacement and economic impacts on collectors and justification for any tax, franchise, or similar fees. The municipality must provide 30 days notice before the hearing on the plan and cannot begin service for 18 months after adoption of the ordinance or resolution. The municipality must start the process over if a plan is not implemented within one year of the notice of intent.

Minnesota

MINN. REV. STAT. § 115A.94. A city, town, or county may adopt an ordinance or resolution to organize collection following a notice of hearing provided to all solid waste collectors operating in the jurisdiction by mail two weeks before the hearing. The law does not apply to recycling. The local government must wait 180 days after passage of the notice before implementing organized collection. The law also requires a 90 day planning period after adoption of the intent and an additional negotiating period of 90 days with all licensed collectors who have expressed an interest in participating. If the municipality is not able to agree on a system with a majority of collectors or upon expiration of the 90-day period, an alternative method can be used.

Missouri

MO. REV. STAT. § 260.247. A city or political subdivision that plans to annex an area or operate or expand solid waste collection services must provide notice by certified mail to a private entity already servicing 50 or more residential accounts or any commercial accounts in the area. The city or political subdivision cannot begin solid waste services for two years from the annexation or notice date, unless it contracts with the private entity to continue services for that period. If the city or subdivision does not exercise its option to contract or provide services within three years of the notice, renotification is required.

If the services that the private entity under contract is providing are substantially the same as that provided before annexation or expansion, the amount paid by the city or subdivision must be at least equal to the amount the entity was receiving before government action.

In addition, the private entity must provide information to the city or subdivision on the nature of the services under contract within 30 days of a request by a city. However, according to one court case, the protections provided to private waste companies in the law do not end if the information is not provided or provided late (see *Christian Disposal, Inc. v. Village of Eolia*, No. 66012, Mo. Ct. App., E.D. N.D. (Mar. 28, 1995)).

Montana

MONT. CODE ANN. § 7-2-4736. A municipality may not provide competing or similar garbage collection services for five years after annexation, unless the existing hauler is unable or refuses to provide adequate service. The municipality may begin to provide services when the five-year term has expired if a majority of the residents in the annexed area submit a petition. According to the statute "adequate service" is defined as the service provided by the hauler prior to annexation.

North Carolina

Annexation: N.C. GEN. STAT. § 160A-37-3 (municipal) and 160A-49.3 (county). A private entity may make a written request for a contract at least ten days before a public hearing on annexation. The private entity must have a local government franchise or arrangement with third parties and be servicing an average of at least 50 residential customers in the county where annexation is planned. The hauler's arrangement must be in effect at least 90 days before a local

government adopts a resolution of intent or resolution of consideration to annex an area.

If a request is made, the municipality or county must either contract with that entity for two years after annexation or compensate that entity for the economic loss resulting from the annexation in an amount 15 times the average gross monthly revenue for the three months prior to passage of the resolution of intent or resolution of consideration, with one-third paid within 30 days of termination and the balance due over the next 12 months. The parties may negotiate other payment arrangements. In addition, the municipality or county must notify private entities doing business in the annexed area four weeks before the public hearing.

Under North Carolina law (N.C. GEN. STAT. §§ 160A-37 and 160A-49) a municipality or county that plans on annexing an area must first pass a resolution of consideration one year before adopting a notice of intent. The resolution of consideration must clearly identify the area to be annexed and explain the rights of anyone subject to the annexation. Once the year has passed, the municipality or county may adopt a resolution of intent that it plans to annex an area. A public informational meeting must be held 45 to 55 days and a public hearing 60 to 90 days after passage of the resolution of intent. Once all facts are presented, a municipality or county may adopt an annexation ordinance.

The solid waste law also establishes criteria to be considered in a contract for service should the municipality chose this option. These include posting a performance bond; maintaining liability insurance; an agreement to service residents in the annexed area not previously served by the franchise; a provision dividing the service area among all impacted private entities; a provision that allows the government to service residents in the annexed area not previously served by the franchise; etc. The municipality may terminate the two-year agreement after one year as long as it compensates the private entity for economic loss.

Any Form of Displacement: N.C. GEN. STAT. § 160A-327. A private company providing collection services cannot be displaced by a local government without notice published once a week for at least four consecutive weeks in local newspapers, prior to being placed on the agenda.

Companies providing collection service must file a notice with the local government. The local government considering displacement must provide notice to these collection companies by certified mail, return receipt requested.

Government service may not commence for at least 15 months from the date of first publication or the local government must compensate haulers for lost business in an amount equal to six months gross revenue, with one-third paid within 30 days of termination and the balance due over the next six months. Haulers claiming lost business must respond within 30 days of a written request by local governments, if not, all rights are forfeited. A municipality or county may provide recycling services where not currently offered even if trash collection has been arranged.

The hauler's arrangement must be in effect at least 90 days before a local government adopts a resolution of intent or resolution of consideration to displace a hauler.

Oklahoma

OKLA. STAT. ANN. tit. 11, § 22-105.1. Before displacing a private company, a local government must hold a public hearing providing 45 days notice to all private companies already conducting business. If the municipality decides to displace a private company, compensation must by provided at a negotiated price or by condemnation. The law provides a detailed set of procedures determining the condemnation amount, including creating a panel of three judges to review the data and an appeal process. There also are a number of exceptions to the law such as competition between the public and private sectors and breach of contract by the private company.

Just compensation is defined as the value of the business taken plus any injury to the part of the business not taken. The amount may be offset by any benefits gained by the private company. If only part of the company is displaced, the amount of compensation is the difference between the fair market value of the whole business before displacement and the fair market value of the remaining portion of the business.

Oregon

OR. REV. STAT. § 459.085. When annexation occurs, the city must attempt to reach an agreement with the county and county franchisee to ensure quality of service in areas remaining outside and within the city. The city may continue the franchise agreement for at least ten years after annexation or may terminate the franchise in the annexed area and compensate the franchisee. If an agreement is not reached, the franchisee may continue to service the annexed area until the city provides compensation for the collection service or the franchise agreement term or current city license, contract, or franchise ends, whichever is longer. The term does not include renewals or extensions made after annexation and may not exceed ten years following annexation. Compensation

in the law is defined as the fair market value for services at the time of annexation plus severance damages.

Texas

TEX. LOCAL GOV'T CODE ANN. §§ 43.056(n) and 43.056(o). For two years following the date of annexation a municipality may not prohibit the collection of solid waste by a private service provider or impose fees for services when a resident is using the privately-owned services. Despite a section in the law on annexation that requires a municipality to provide residents in the annexed area with the same services as the rest of the municipality, a municipality is not required to provide services to anyone using a private service provider.

Virginia

VA. CODE ANN. § 15.2-5121. Authorities are not allowed to operate or contract to operate solid waste collection and disposal services or charge service fees, unless privately owned systems are unavailable on a reasonable and cost-efficient basis, use of privately-owned services would substantially endanger public health, or there is a need to develop and/or operate a regional system for garbage collection and disposal. A local government may not make any of these claims without providing public notice, a public hearing, and written notice to all operating private companies 45 days before the hearing.

A private company displaced by a local government's decision to provide services must be given five years notice or be paid for the preceding 12 months receipts for the displaced service. The law does not prevent the public sector from competing with the private sector nor does it automatically renew a contract that expires within the five year period. While competition is not defined in the law, the implication is that competition must be fair.

The law does not apply to recycling programs. In addition, the law does not apply when the authority plans to contract with the private sector for hauling of waste to a state-permitted, waste management facility paid through a supporting financial agreement, and where a private company will not be displaced.

Washington

WASH. REV. CODE § 35.13.280. Upon annexation, any existing franchise or permit to collect garbage automatically terminates. However, the city must grant the private company a new franchise or permit in the annexed area for not less than seven years. In addition, the annexing city or town may not provide similar or competing services in the annexed area unless the private entity fails to perform for a reasonable price or the city or town buys out and compensates the franchisee/permittee.

If the city or town decides within that seven-year period to change collection services either by contracting or providing its own services, the city or town must either continue the franchise agreement for the existing term or for seven years, whichever is shorter. Again, the annexing city or town may not provide similar or competing services unless there is a failure to perform or the private entity is compensated.

The National Solid Wastes Management Association (NSWMA) is the non-profit trade association representing for-profit companies providing solid and healthcare waste collection, recycling, and disposal services throughout North America.

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