

# HOUSE BILL REPORT

## SHB 1596

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### As Passed House

March 11, 1997

**Title:** An act relating to state-issued solid waste collection certificates in cities and towns.

**Brief Description:** Concerning the transfer of solid waste regulatory authority back and forth between cities and the utilities and transportation commission.

**Sponsors:** By House Committee on Government Administration (originally sponsored by Representatives D. Schmidt, Dunshee, Gardner, L. Thomas and Dunn).

### Brief History:

#### Committee Activity:

Government Administration: 2/12/97, 2/18/97 [DPS].

#### Floor Activity:

Passed House: 3/11/97, 97-0.

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### HOUSE COMMITTEE ON GOVERNMENT ADMINISTRATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives D. Schmidt, Chairman; D. Sommers, Vice Chairman; Scott, Ranking Minority Member; Gardner, Assistant Ranking Minority Member; Doumit; Dunshee; Murray; Reams; Smith; L. Thomas; Wensman and Wolfe.

**Staff:** Bill Lynch (786-7092).

**Background:** A person who operates a solid waste collection company in the state must have a certificate of convenience and necessity from the Utilities and Transportation Commission (UTC) if the company is operated in an unincorporated area, or is contracted by a city or town. A city or town may also handle its own solid waste collection.

If a city or town annexes property, or a new city or town incorporates, the franchise or permit authorizing the operation of garbage disposal in the area that was annexed or incorporated is canceled. The person who holds the franchise or permit which is canceled must be granted a franchise by the city or town to continue to do business within the area that was annexed or incorporated. The term of the franchise or permit

must be for a term of not less than the remaining term of the original franchise, or for five years, whichever is shorter.

The city or town is prohibited from extending similar or competing services to the area that was incorporated or annexed unless there is a showing of the inability or refusal of the franchise or permit holder to adequately provide service to the area at a reasonable price.

The city or town may purchase the franchise, business, or facilities at an agreed upon price, or may acquire it by condemnation. A reasonable amount for the loss of the franchise or permit must be included in the price or award. If the person who held the franchise or permit suffers any measurable damages as a result of the incorporation or annexation, the person may file an action against the city or town for damages.

Recent incorporations and annexations by cities and towns have created confusion over who is supposed to regulate the area subject to the garbage disposal franchise after an incorporation or annexation occurs; when does the five-year transition period begin to run; and what happens when a city or town changes its mind about providing its own collection service. Some concerns have also been expressed about the adequacy of the five-year transition period.

**Summary of Bill:** After a city or town incorporates or annexes territory that is included in a franchise or permit issued by the UTC for garbage disposal, the UTC is required to continue to regulate the solid waste collection in the area annexed or incorporated until the city or town notifies the UTC in writing that it will contract for solid waste collection or undertake the collection itself.

If the city or town decides to contract for solid waste collection or undertake the collection itself, the city or town must grant the holder of the franchise or permit that is canceled, a new franchise to continue the business within the area incorporated or annexed. The term of the new franchise must be for a term not less than the remaining term of the original franchise or permit, or not less than seven years, whichever is shorter.

The seven-year transition period begins to run upon the effective date specified by the city or town's ordinance or resolution to have the city or town contract for solid waste collection or undertake the collection itself.

A city, town, or combined city-county may reverse its decision to provide its own solid waste collection service at any time. If this occurs, the UTC is required to issue a certificate to the last holder of a valid UTC certificate of public convenience and necessity for the area that will again be regulated by the UTC. If no certificate

existed for the area, or the previous holder was compensated for the certificate property right, the UTC will consider applications to provide service to the area.

Cities and towns are still prohibited from extending similar or competing services to the area incorporated or annexed unless there is a showing of the inability or refusal of the franchise holder to adequately serve the area. Cities and towns may still acquire the franchise, business, and facilities at an agreed upon price or by condemnation. A franchise or permit holder may still bring an action against the city or town for any measurable damages as a result of the franchise or permit being canceled.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill clears up many uncertainties in existing law. Extending a franchise from five to seven years is reasonable because of the higher amount of capital expenditures for recycling, yard waste, and solid waste. Many states use an average of nine years for the franchise. Last year's bill provided 10 years for the franchise, so raising it to only seven years is a compromise. No payments of interest are provided under the bill.

**Testimony Against:** Extending the length of the franchise from five to seven years raises the cost to local governments who must pass the costs along to the citizens. Original five-year provision was added to reflect amortization practices. Many companies can redeploy equipment elsewhere to other franchises they hold. Haulers can already sue for economic losses. This will make negotiations harder and result in more litigation. Current negotiations work well. The seven-year franchise issue should not be separated from the issue on clarifying utility taxes.

**Testified:** (Con - seven-year extension) Stan Finkelstein, Association of Washington Cities; Steve DiJulio, city of Vancouver; Bob Beaumier, city of Spokane; and Tom Thefford, city of Everett.

(Pro:) Jim Boldt, RABANCO; Scott Nelson, Browning Ferris Industries; J.P. Jones, Washington Refuse and Recycling Association; and Teresa Osinski, Washington Utilities and Transportation Commission (neutral on seven-year extension).