

## CHAPTER 137

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**GOVERNMENT - COUNTY**

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**SENATE BILL 94-086**

BY SENATORS Bishop and Roberts;  
also REPRESENTATIVES Prinster, Foster, Acquafresca, and Hagedorn.

**AN ACT****CONCERNING THE PROVISION OF WASTE SERVICES WITHIN THE LIMITS OF A GOVERNMENTAL UNIT.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 30-15-401 (6) and (7), Colorado Revised Statutes, 1986 Repl. Vol., are amended, and the said 30-15-401 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**30-15-401. General regulations.** (6) If the board of county commissioners or the governing body of any other local governmental entity ~~shall not issue or enter into a contractual agreement for~~ IS PROVIDING WASTE SERVICES, INCLUDING the collection and transportation of ashes, trash, waste, rubbish, garbage, or industrial waste products or any other discarded materials, ~~in any area where a hauler or haulers are then providing service without first giving a six-month public notice to said hauler or haulers advising them of the intent to enter into said proposed contractual agreement~~ WITHIN THE LIMITS OF ANY COUNTY OR OTHER LOCAL SUBDIVISION ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6), AS AMENDED, ANY PRIVATE PERSON SEEKING ALSO TO OFFER THOSE SERVICES SHALL FIRST GIVE A ONE-YEAR PUBLIC NOTICE ADVISING OF THE INTENT TO OFFER THE SERVICES. IF A PRIVATE PERSON OR PERSONS ARE PROVIDING WASTE SERVICES WITHIN THE LIMITS OF ANY COUNTY OR OTHER LOCAL SUBDIVISION ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6), AS AMENDED, ANY BOARD OF COUNTY COMMISSIONERS OR THE GOVERNING BODY OF ANY OTHER LOCAL GOVERNMENTAL ENTITY SEEKING ALSO TO OFFER THOSE SERVICES SHALL FIRST GIVE A ONE-YEAR PUBLIC NOTICE ADVISING OF THE INTENT TO OFFER THE SERVICES. ~~Said~~ The public notice shall be given in a local newspaper of general circulation in the area served by ~~said haulers~~ THE WASTE SERVICE PROVIDER. THE REQUIREMENTS OF THIS SUBSECTION (6) SHALL NOT APPLY TO ANY MUNICIPALITY OR CITY AND COUNTY SUBJECT TO SUBSECTION (7.5) OF THIS SECTION.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(7) (a) Notwithstanding any other provision of law, nothing in this section shall prohibit the providing of waste services by a private person, ~~provided such~~ IF THAT person is in compliance with applicable rules and regulations, within the limits of any ~~city, county, MUNICIPALITY OR city and county town, or other local subdivision~~ if such service is also THOSE SERVICES ALSO ARE provided by a governmental body within the limits of such THAT governmental unit. ~~Such~~ THE governmental body may not compel industrial or commercial establishments or multifamily residences of eight or more units to use or pay user charges for waste services provided by the governmental body in preference to those services provided by a private person.

(b) SUBJECT TO THE LIMITATION SET FORTH IN SUBSECTION (6) OF THIS SECTION AND NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (7) AND SUBSECTION (7.5) OF THIS SECTION OR ANY OTHER PROVISION OF LAW, NOTHING IN THIS SECTION SHALL PROHIBIT THE PROVIDING OF WASTE SERVICES BY A PRIVATE PERSON WITHIN THE LIMITS OF ANY COUNTY OR OTHER LOCAL SUBDIVISION IF THAT PERSON IS IN COMPLIANCE WITH APPLICABLE RULES AND REGULATIONS. IF SERVICES ALSO ARE PROVIDED BY A GOVERNMENTAL BODY WITHIN THE LIMITS OF THE COUNTY OR OTHER LOCAL SUBDIVISION, THE GOVERNMENTAL BODY SHALL NOT COMPEL ANY RESIDENT, INCLUDING, BUT NOT LIMITED TO, AN OWNER OR TENANT OF INDUSTRIAL OR COMMERCIAL ESTABLISHMENTS OR MULTIFAMILY RESIDENCES, TO USE OR PAY USER CHARGES FOR WASTE SERVICES PROVIDED BY THE GOVERNMENTAL BODY IN PREFERENCE TO THOSE SERVICES PROVIDED BY A PRIVATE PERSON.

(7.5) (a) ANY REQUIREMENT THAT MUNICIPAL RESIDENTS USE OR PAY USER CHARGES FOR RESIDENTIAL WASTE SERVICES PURSUANT TO PARAGRAPH (a) OF SUBSECTION (7) OF THIS SECTION MAY BE AFFECTED BY UTILIZATION OF THE INITIATIVE AND REFERENDUM POWER RESERVED TO THE MUNICIPAL ELECTORS IN SECTION 1 (9) OF ARTICLE V OF THE COLORADO CONSTITUTION.

(b) THE GOVERNING BODY OF ANY MUNICIPALITY OR CITY AND COUNTY THAT CHOOSES, AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (7.5), TO REQUIRE USE OF OR TO COMMENCE THE IMPOSITION OF A FEE FOR RESIDENTIAL WASTE SERVICES PURSUANT TO PARAGRAPH (a) OF SUBSECTION (7) OF THIS SECTION IN ALL OR ANY PORTION OF THE JURISDICTION, INCLUDING ANY PORTION OF THE JURISDICTION ANNEXED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (7.5), MAY DO SO SUBJECT TO THE FOLLOWING REQUIREMENTS:

(I) THE GOVERNING BODY SHALL PROVIDE WRITTEN NOTICE TO ANY PRIVATE PERSON WHO LAWFULLY PROVIDES WASTE SERVICES WITHIN THE JURISDICTION AND SHALL GIVE A SIX-MONTH PUBLIC NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE JURISDICTION PRIOR TO REQUIRING THE USE OR INITIAL IMPOSITION OF THE FEE. THE NOTICE SHALL INCLUDE:

(A) THE DATE UPON WHICH, AND THE AREA WITHIN THE JURISDICTION WHERE, REQUIRING USE OF OR BILLING FOR RESIDENTIAL WASTE SERVICES WILL COMMENCE; AND

(B) AN EXPLANATION OF THE OPTION TO REQUEST AN OPPORTUNITY TO SUBMIT A PROPOSAL TO PROVIDE RESIDENTIAL WASTE SERVICES TO THAT AREA.

(II) ANY PERSON MAY, WITHIN THIRTY DAYS FOLLOWING PUBLICATION OR RECEIPT OF THE NOTICE, REQUEST IN WRITING THE OPPORTUNITY TO SUBMIT A PROPOSAL TO PROVIDE RESIDENTIAL WASTE SERVICES WITHIN THE PORTION OF THE JURISDICTION WHERE REQUIRED USE OF THOSE SERVICES OR IMPOSITION OF THE FEE WILL COMMENCE. A REQUEST FOR AN OPPORTUNITY TO SUBMIT A PROPOSAL SHALL SUSPEND REQUIRED USE OF THE SERVICES OR IMPOSITION OF THE RESIDENTIAL WASTE SERVICES FEE UNTIL A REQUEST FOR PROPOSAL PROCESS, AS SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (7.5), IS COMPLETED. ANY PERSON WHO HAS REQUESTED IN WRITING AN OPPORTUNITY TO SUBMIT A PROPOSAL TO PROVIDE RESIDENTIAL WASTE SERVICES PURSUANT TO THIS SUBPARAGRAPH (II) IS ELIGIBLE TO PARTICIPATE IN THE PROPOSAL PROCESS. IF NO WRITTEN REQUEST IS RECEIVED WITHIN THE TIME PERMITTED, THE GOVERNING BODY MAY PROCEED TO REQUIRE USE OF OR IMPOSE A FEE FOR RESIDENTIAL WASTE SERVICES WITHOUT CONDUCTING A REQUEST FOR PROPOSAL PROCESS AS SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (7.5).

(III) ANY MUNICIPALITY OR CITY AND COUNTY THAT COMPLIES WITH PARAGRAPH (c) OF THIS SUBSECTION (7.5) SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION 31-12-119, C.R.S.

(IV) THE REQUIREMENTS SET FORTH IN THIS SUBSECTION (7.5) SHALL NOT APPLY TO ANY MUNICIPALITY OR CITY AND COUNTY THAT IS LEGALLY REQUIRING USE OF OR IMPOSING A FEE FOR RESIDENTIAL WASTE SERVICES WITHIN ITS JURISDICTION PURSUANT TO PARAGRAPH (a) OF SUBSECTION (7) OF THIS SECTION ON THE EFFECTIVE DATE OF THIS SUBSECTION (7.5) AND, HAVING COMPLIED WITH THE NOTICE REQUIREMENTS OF SUBSECTION (6) OF THIS SECTION APPLICABLE AT THE TIME OF THE INITIATION OF SUCH RESIDENTIAL WASTE SERVICES, CHOOSES TO EXTEND THE REQUIREMENT FOR USE OF OR IMPOSITION OF THE FEE FOR RESIDENTIAL WASTE SERVICES TO AREAS WITHIN THE JURISDICTION THAT HAVE NOT BEEN ANNEXED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (7.5).

(c) THE GOVERNING BODY SHALL CONDUCT ANY REQUEST FOR A PROPOSAL PROCESS REQUIRED PURSUANT TO THIS SUBSECTION (7.5) AS FOLLOWS:

(I) THE GOVERNING BODY SHALL MAIL A REQUEST FOR PROPOSALS TO ALL PRIVATE PERSONS WHO ARE ELIGIBLE TO SUBMIT A PROPOSAL. THE REQUEST FOR PROPOSALS SHALL INCLUDE A DESCRIPTION OF THE PORTION OF THE JURISDICTION TO WHICH RESIDENTIAL WASTE SERVICES WILL BE PROVIDED AND SHALL REQUEST A PROPOSED PRICE OF PROVIDING THOSE SERVICES.

(II) WHEN THE JURISDICTION ISSUING THE REQUEST FOR PROPOSALS CHOOSES TO SUBMIT A PROPOSAL, A CERTIFICATION OF AN INDEPENDENT AUDITOR STATING THAT THE PUBLIC ENTITY'S PROPOSED PRICE IS NOT BASED ON SUBSIDIZATION FROM ENTITY REVENUE STREAMS OR OPERATIONS UNRELATED TO THE PROVISION OF WASTE SERVICES SHALL BE APPENDED TO THE PROPOSAL.

(III) FOLLOWING REVIEW OF ALL PROPOSALS PROPERLY SUBMITTED, THE GOVERNING BODY SHALL AWARD A CONTRACT FOR THE PROVISION OF RESIDENTIAL WASTE SERVICES BASED UPON THE CRITERIA SET FORTH IN THE REQUEST FOR PROPOSALS.

(d) AS USED IN THIS SUBSECTION (7.5), "RESIDENTIAL WASTE SERVICES" MEANS THE

COLLECTION AND TRANSPORTATION OF ASHES, TRASH, WASTE, RUBBISH, GARBAGE OR INDUSTRIAL WASTE PRODUCTS, OR ANY OTHER DISCARDED MATERIALS FROM SOURCES OTHER THAN INDUSTRIAL OR COMMERCIAL ESTABLISHMENTS OR MULTIFAMILY RESIDENCES OF EIGHT OR MORE UNITS.

(7.7) (a) IF THE GOVERNING BODY OF A JURISDICTION SELECTS A PROPOSAL SUBMITTED BY THE JURISDICTION, ANY PRIVATE PERSON WHO SUBMITTED A PROPOSAL MAY REQUEST A REVIEW OF THE SELECTION AS PROVIDED IN THIS SUBSECTION (7.7). A REQUEST FOR REVIEW SHALL BE SUBMITTED TO THE GOVERNING BODY IN WRITING WITHIN TEN DAYS FOLLOWING SELECTION OF THE JURISDICTION'S PROPOSAL. THE FILING OF A REQUEST SHALL SUSPEND THE AWARD UNTIL THE COMPLETION OF THE REVIEW PROVIDED IN THIS SUBSECTION (7.7).

(b) (I) UPON RECEIPT OF A REQUEST, THE GOVERNING BODY, OR ITS DESIGNEE, SHALL PROMPTLY SELECT A REVIEWING AUDITOR TO CONDUCT THE REVIEW. THE REVIEWING AUDITOR SHALL COMMENCE AND COMPLETE ITS REVIEW AS EXPEDITIOUSLY AS PRACTICABLE.

(II) AS A PART OF THAT REVIEW, THE REVIEWING AUDITOR SHALL AFFORD THE PERSON WHO SUBMITTED THE REQUEST FOR REVIEW THE OPPORTUNITY TO PRESENT THE REVIEWING AUDITOR HIS OR HER VIEWS WITH RESPECT TO THE GOVERNING BODY'S DETERMINATION, SUBJECT TO ANY REASONABLE PROCEDURES, GUIDELINES, AND LIMITATIONS AS THE REVIEWING AUDITOR MAY PRESCRIBE, INCLUDING BUT NOT LIMITED TO REQUIRING THAT THOSE VIEWS BE EXPRESSED IN WRITING AND SUBMITTED BY A SPECIFIC DATE AND TIME. NO PERSON SHALL BE PERMITTED TO ALTER ANY PREVIOUSLY SUBMITTED PROPOSAL IN ANY RESPECT.

(III) THE REVIEWING AUDITOR SHALL REVIEW EACH OF THE PROPOSALS SUBMITTED, BUT THE REVIEW SHALL BE LIMITED TO DETERMINING:

(A) WHETHER THE SELECTION OF THE JURISDICTION'S PROPOSAL WAS MADE IN A MANNER CONTRARY TO THE PROCEDURE SET FORTH IN SUBSECTION (7.5) OF THIS SECTION OR IN THE REQUEST FOR PROPOSALS;

(B) WHETHER THE SELECTION OF THE JURISDICTION'S PROPOSAL WAS CLEARLY ERRONEOUS IN LIGHT OF THE CRITERIA SET FORTH IN THE REQUEST FOR PROPOSALS; AND

(C) WHETHER THE CERTIFICATION OF AN INDEPENDENT AUDITOR PROVIDED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (7.5) OF THIS SECTION IS MATERIALLY INACCURATE.

(IV) SHOULD THE REVIEWING AUDITOR FIND THAT THE GOVERNING BODY'S SELECTION OF A PROPOSAL WAS IMPROPER, THE DETERMINATION OF THE GOVERNING BODY SHALL BE VOID, AND THE GOVERNING BODY SHALL RECONSIDER AS EXPEDITIOUSLY AS IS PRACTICABLE ALL PROPOSALS TIMELY SUBMITTED AND DETERMINE WHICH PROPOSALS IT WILL ACCEPT, GIVING DUE REGARD TO THE DETERMINATION OF THE REVIEWING AUDITOR. NO PERSON SHALL BE ENTITLED TO ALTER ANY PREVIOUSLY SUBMITTED PROPOSAL IN ANY RESPECT. IF THE REVIEWING AUDITOR FINDS THAT THE GOVERNING BODY'S SELECTION OF A PROPOSAL WAS PROPER, THE SELECTION SHALL BE VALID AND CONCLUSIVE AND SHALL NOT BE

SUBJECT TO FURTHER CHALLENGE OR REVIEW.

(V) THE REVIEWING AUDITOR'S FEE FOR PERFORMING A REVIEW PURSUANT TO THIS SUBSECTION (7.7) SHALL BE PAID BY THE PRIVATE PERSON REQUESTING THE REVIEW; EXCEPT THAT, IF THE GOVERNING BODY'S SELECTION OF A PROPOSAL IS FOUND TO BE IMPROPER BY THE REVIEWING AUDITOR, THE MUNICIPALITY OR CITY AND COUNTY SHALL PAY THE FEE.

(c) AS USED IN THIS SUBSECTION (7.7), A REVIEWING AUDITOR SHALL BE A QUALIFIED, LICENSED, INDEPENDENT PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTING FIRM SELECTED BY THE GOVERNING BODY AND SHALL CERTIFY TO THE GOVERNING BODY IN WRITING THAT IT IS NOT BEING RETAINED CURRENTLY, HAS NOT BEEN RETAINED WITHIN THE PREVIOUS FIVE YEARS, AND CURRENTLY HAS NO BASIS FOR BELIEVING IT WILL BE RETAINED IN THE FUTURE BY THE GOVERNING BODY, ANY PERSONS WHO HAVE SUBMITTED PROPOSALS, OR, TO THE ACCOUNTANT'S OR FIRM'S KNOWLEDGE AFTER DUE INQUIRY, ANY OF THE GOVERNING BODY'S OR PERSON'S AFFILIATES, PARTNERS, OR RELATIVES FOR THE PERFORMANCE OF ACCOUNTING OR OTHER SERVICES.

**SECTION 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 19, 1994