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HOUSE BILL 2099

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Sprenkle, G. Fisher, Rust, D. Sommers and Pruitt.

Read first time February 22, 1991.      Referred to Committee on  
Environmental Affairs.

1            AN ACT Relating to the collection of solid waste by counties;  
2 amending RCW 36.58.090, 36.58.045, and 81.77.020; reenacting and  
3 amending RCW 36.58.040; adding new sections to chapter 36.58 RCW; and  
4 repealing RCW 36.58A.010, 36.58A.020, 36.58A.030, and 36.58A.040.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 36.58 RCW  
7 to read as follows:

8            (1) The legislature finds that:

9            (a) Cities and counties have the lead role in planning and  
10 implementing solid waste management programs;

11            (b) Cities, but not counties, have the option to collect solid  
12 waste, regulate the collection of solid waste, or delegate the  
13 authority to regulate rates to the utilities and transportation  
14 commission;

1 (c) The separation of planning decisions and rate-making decisions  
2 can reduce coordination and accountability;

3 (d) Not all cities and counties have the resources or expertise to  
4 collect solid waste or to regulate the collection of solid waste.

5 (2) The legislature therefore declares that counties shall have the  
6 option to collect solid waste, regulate the collection of solid waste,  
7 or delegate the authority to regulate rates to the utilities and  
8 transportation commission.

9 **Sec. 2.** RCW 36.58.040 and 1989 c 431 s 28 and 1989 c 399 s 9 are  
10 each reenacted and amended to read as follows:

11 The legislative authority of a county may by ordinance provide for  
12 the establishment of a system or systems of solid waste handling for  
13 all unincorporated areas of the county or for portions thereof. A  
14 county may designate a disposal site or sites for all solid waste  
15 collected in the unincorporated areas pursuant to the provisions of a  
16 comprehensive solid waste plan adopted pursuant to chapter 70.95 RCW.  
17 However for any solid waste collected by a private hauler operating  
18 under a certificate granted by the Washington utilities and  
19 transportation commission under the provisions of chapter 81.77 RCW and  
20 which certificate is for collection in a geographic area lying in more  
21 than one county, such designation of disposal sites shall be pursuant  
22 to an interlocal agreement between the involved counties.

23 A county may construct, lease, purchase, acquire, add to, alter, or  
24 extend solid waste handling systems, plants, sites, or other facilities  
25 and shall have full jurisdiction and authority to manage, regulate,  
26 maintain, utilize, operate, control, and establish the rates and  
27 charges for those solid waste handling systems, plants, sites, or other  
28 facilities. A county may enter into agreements with public or private  
29 parties to: (1) Construct, purchase, acquire, lease, add to, alter,

1 extend, maintain, manage, utilize, or operate publicly or privately  
2 owned or operated solid waste handling systems, plants, sites, or other  
3 facilities; (2) establish rates and charges for those systems, plants,  
4 sites, or other facilities; (3) designate particular publicly or  
5 privately owned or operated systems, plants, sites, or other facilities  
6 as disposal sites; (4) process, treat, or convert solid waste into  
7 other valuable or useful materials or products; and (5) sell the  
8 material or products of those systems, plants, or other facilities.

9       The legislative authority of a county may award contracts for solid  
10 waste handling that provide that a county provide for a minimum  
11 periodic fee or other method of compensation in consideration of the  
12 operational availability of those solid waste handling systems, plants,  
13 sites, or other facilities at a specified minimum level, without regard  
14 to the ownership of the systems, plants, sites or other facilities, or  
15 the amount of solid waste actually handled during all or any part of  
16 the contract. When a minimum level of solid waste is specified in a  
17 contract entered into under this section, there shall be a specific  
18 allocation of financial responsibility in the event the amount of solid  
19 waste handled falls below the minimum level provided in the contract.  
20 Solid waste handling systems, plants, sites, or other facilities  
21 constructed, purchased, acquired, leased, added to, altered, extended,  
22 maintained, managed, utilized, or operated pursuant to this section,  
23 whether publicly or privately owned, shall be in substantial compliance  
24 with the solid waste management plan applicable to the county adopted  
25 pursuant to chapter 70.95 RCW. Agreements relating to such solid waste  
26 handling systems, (~~plans~~) plants, sites, or other facilities may be  
27 for such term and may contain such covenants, conditions, and remedies  
28 as the legislative authority of the county may deem necessary or  
29 appropriate.

1 As used in this chapter, the terms "solid waste" and "solid waste  
2 handling" shall be as defined in RCW 70.95.030.

3 ~~((The legislative authority of a county may:~~

4 ~~(1) By ordinance award a contract to collect source separated  
5 recyclable materials from residences within unincorporated areas. The  
6 legislative authority has complete authority to manage, regulate, and  
7 fix the price of the source separated recyclable collection service.  
8 The contracts may provide that the county pay minimum periodic fees to  
9 a municipal entity or permit holder; or~~

10 ~~(2) Notify the commission in writing to carry out and implement the  
11 provisions of the waste reduction and recycling element of the  
12 comprehensive solid waste management plan.~~

13 ~~This election may be made by counties at any time after July 23,  
14 1989. An initial election must be made no later than ninety days  
15 following approval of the local comprehensive waste management plan  
16 required by RCW 70.95.090.~~

17 ~~Nothing in this section shall be construed to authorize the  
18 operation of a solid waste collection system by counties or to  
19 authorize counties to affect the authority of the utilities and  
20 transportation commission under RCW 81.77.020.~~

21 ~~The alternative selection process provided by this section may not  
22 be used in the selection of a person or entity to construct a publicly  
23 owned facility for the storage or transfer of solid waste or solid  
24 waste handling equipment unless the facility is either (a) privately  
25 operated pursuant to a contract greater than five years, or (b) an  
26 integral part of a solid waste processing facility located on the same  
27 site. Instead, the applicable provisions of RCW 36.32.250, and  
28 chapters 39.04 and 39.30 RCW shall be followed.))~~

1       **Sec. 3.** RCW 36.58.090 and 1989 c 399 s 10 are each amended to read  
2 as follows:

3       (1) Notwithstanding the provisions of any county charter or any law  
4 to the contrary, and in addition to any other authority provided by  
5 law, the legislative authority of a county may contract with one or  
6 more vendors for one or more of the design, construction, or operation  
7 of, or other service related to, the solid waste handling systems,  
8 plants, sites, or other facilities in accordance with the procedures  
9 set forth in this section. When a contract for design services is  
10 entered into separately from other services permitted under this  
11 section, procurement shall be in accord with chapter 39.80 RCW. For  
12 the purpose of this chapter, the term "legislative authority" shall  
13 mean the board of county commissioners or, in the case of a home rule  
14 charter county, the official, officials, or public body designated by  
15 the charter to perform the functions authorized therein.

16       (2) If the legislative authority of the county decides to proceed  
17 with the consideration of qualifications or proposals for services from  
18 vendors, the county shall publish notice of its requirements and  
19 request submission of qualifications statements or proposals. The  
20 notice shall be published in the official newspaper of the county at  
21 least once a week for two weeks not less than sixty days before the  
22 final date for the submission of qualifications statements or  
23 proposals. The notice shall state in summary form (a) the general  
24 scope and nature of the design, construction, operation, or other  
25 service, (b) the name and address of a representative of the county who  
26 can provide further details, (c) the final date for the submission of  
27 qualifications statements or proposals, (d) an estimated schedule for  
28 the consideration of qualifications, the selection of vendors, and the  
29 negotiation of a contract or contracts for services, (e) the location  
30 at which a copy of any request for qualifications or request for

1 proposals will be made available, and (f) the criteria established by  
2 the legislative authority to select a vendor or vendors, which may  
3 include but shall not be limited to the vendor's prior experience,  
4 including design, construction, or operation of other similar  
5 facilities; respondent's management capability, schedule availability  
6 and financial resources; cost of the services, nature of facility  
7 design proposed by the vendor; system reliability; performance  
8 standards required for the facilities; compatibility with existing  
9 service facilities operated by the public body or other providers of  
10 service to the public; project performance guarantees; penalty and  
11 other enforcement provisions; environmental protection measures to be  
12 used; consistency with the applicable comprehensive solid waste  
13 management plan; and allocation of project risks.

14 (3) If the legislative authority of the county decides to proceed  
15 with the consideration of qualifications or proposals, it may designate  
16 a representative to evaluate the vendors who submitted qualifications  
17 statements or proposals and conduct discussions regarding  
18 qualifications or proposals with one or more vendors. The legislative  
19 authority or representative may request submission of qualifications  
20 statements and may later request more detailed proposals from one or  
21 more vendors who have submitted qualifications statements, or the  
22 representative may request detailed proposals without having first  
23 received and evaluated qualifications statements. The representative  
24 shall evaluate the qualifications or proposals, as applicable. If two  
25 or more vendors submit qualifications or proposals that meet the  
26 criteria established by the legislative authority of the county,  
27 discussions and interviews shall be held with at least two vendors.  
28 Any revisions to a request for qualifications or request for proposals  
29 shall be made available to all vendors then under consideration by the

1 city or town and shall be made available to any other person who has  
2 requested receipt of that information.

3 (4) Based on criteria established by the legislative authority of  
4 the county, the representative shall recommend to the legislative  
5 authority a vendor or vendors that are initially determined to be the  
6 best qualified to provide one or more of the design, construction, or  
7 operation of, or other service related to, the proposed project or  
8 services. The legislative authority may select one or more qualified  
9 vendors for one or more of the design, construction, or operation of,  
10 or other service related to, the proposed project or services.

11 (5) The legislative authority or its representative may attempt to  
12 negotiate a contract with the vendor or vendors selected for one or  
13 more of the design, construction, or operation of, or other service  
14 related to, the proposed project or services on terms that the  
15 legislative authority determines to be fair and reasonable and in the  
16 best interest of the county. If the legislative authority or its  
17 representative is unable to negotiate such a contract with any one or  
18 more of the vendors first selected on terms that it determines to be  
19 fair and reasonable and in the best interest of the county,  
20 negotiations with any one or more of the vendors shall be terminated or  
21 suspended and another qualified vendor or vendors may be selected in  
22 accordance with the procedures set forth in this section. If the  
23 legislative authority decides to continue the process of selection,  
24 negotiations shall continue with a qualified vendor or vendors in  
25 accordance with this section at the sole discretion of the legislative  
26 authority until an agreement is reached with one or more qualified  
27 vendors, or the process is terminated by the legislative authority.  
28 The process may be repeated until an agreement is reached.

29 (6) Prior to entering into a contract with a vendor, the  
30 legislative authority of the county shall make written findings, after

1 holding a public hearing on the proposal, that it is in the public  
2 interest to enter into the contract, that the contract is financially  
3 sound, and that it is advantageous for the county to use this method  
4 for awarding contracts compared to other methods.

5 (7) Each contract shall include a project performance bond or bonds  
6 or other security by the vendor that in the judgment of the legislative  
7 authority of the county is sufficient to secure adequate performance by  
8 the vendor.

9 (8) The provisions of chapters 39.12, 39.19, and 39.25 RCW shall  
10 apply to a contract entered into under this section to the same extent  
11 as if the systems and plants were owned by a public body.

12 (9) The vendor selection process permitted by this section shall be  
13 supplemental to and shall not be construed as a repeal of or limitation  
14 on any other authority granted by law. The alternative selection  
15 process provided by this section may not be used in the selection of a  
16 person or entity to construct a publicly owned facility for the storage  
17 or transfer of solid waste or solid waste handling equipment unless the  
18 facility is either (a) privately operated pursuant to a contract  
19 greater than five years, or (b) an integral part of a solid waste  
20 processing facility located on the same site. Instead, the applicable  
21 provisions of RCW 36.32.250, and chapters 39.04 and 39.30 RCW shall be  
22 followed.

23 **Sec. 4.** RCW 36.58.045 and 1989 c 431 s 15 are each amended to read  
24 as follows:

25 (1) The legislative authority of any county may impose a fee upon  
26 the solid waste collection services of a solid waste collection company  
27 operating within the unincorporated areas of the county, to fund the  
28 administration and planning expenses that may be incurred by the county  
29 in complying with the requirements in RCW 70.95.090. The fee may be in



1 addition to any other solid waste services fees and charges a county  
2 may legally impose.

3 (2) Each county imposing the fee authorized by this section shall  
4 notify the Washington utilities and transportation commission and the  
5 affected solid waste collection companies of the amount of the fee  
6 ninety days prior to its implementation.

7 (3) This section shall apply exclusively to counties delegating its  
8 rate-making authority for solid waste collection to the utilities and  
9 transportation commission pursuant to chapter 81.77 RCW.

10 NEW SECTION. Sec. 5. A new section is added to chapter 36.58 RCW  
11 to read as follows:

12 (1) The legislative authority of a county may, by ordinance,  
13 require property owners and occupants of premises to use the solid  
14 waste handling system provided under the comprehensive solid waste  
15 management plan. No such ordinance may include any area within the  
16 corporate limits of a city or town unless the governing body of a city  
17 or town adopts a resolution approving inclusion of the area within its  
18 limits.

19 (2) For the purposes of subsection (1) of this section, "solid  
20 waste handling" shall have the same meaning as in RCW 70.95.030.

21 **Sec. 6.** RCW 81.77.020 and 1989 c 431 s 18 are each amended to read  
22 as follows:

23 No person, his lessees, receivers, or trustees, shall engage in the  
24 business of operating as a solid waste collection company in this  
25 state, except in accordance with the provisions of this chapter:  
26 PROVIDED, That the provisions of this chapter shall not apply to the  
27 operations of any solid waste collection company under a contract of

1 solid waste disposal with any county, city, or town, nor to any county,  
2 city, or town which itself undertakes the disposal of solid waste.

3 NEW SECTION. **Sec. 7.** The following acts or parts of acts are  
4 each repealed:

5 (1) RCW 36.58A.010 and 1971 ex.s. c 293 s 2;

6 (2) RCW 36.58A.020 and 1971 ex.s. c 293 s 3;

7 (3) RCW 36.58A.030 and 1971 ex.s. c 293 s 4; and

8 (4) RCW 36.58A.040 and 1971 ex.s. c 293 s 6.