



**Ninety-Ninth Legislature - Second Session - 2006**  
**Committee Statement**  
**LB 226**

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**Hearing Date:** February 3, 2005  
**Committee On:** Natural Resources

**Introducer(s):** (Smith, Erdman, Dw. Pedersen)

**Title:** Change provisions relating to solid waste and provide requirements for condemnation of private waste collection

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - Advanced to General File with Amendments
  - X Indefinitely Postponed
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**Vote Results:**

8	Yes	Senators Hudkins, Kopplin, Kremer, Louden, McDonald, Schrock, Smith, Stuhr
0	No	
0	Present, not voting	
0	Absent	

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**Proponents:**

Senator Adrian Smith  
Korby Gilbertson  
John Christiansen  
John Bierd  
Steve Mossman  
Kelly Danielson

**Representing:**

Introducer  
Waste Connections  
Self  
Waste Connections  
Waste Connections  
Waste Connections

**Opponents:**

Gary Krumland  
Michael Nolan

**Representing:**

League of Nebraska Municipalities  
City of Norfolk

**Neutral:**

None

**Representing:**

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**Summary of purpose and/or changes:**

LB 226 does the following:

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Section 1 Prohibits a municipality from offering solid waste collection service for a period of one year after the resolution to do so is passed unless the private entity currently providing the service discontinues providing such service.

Section 2 Before a municipality can displace a private provider, the municipality must: provide public notice of a public hearing at least 45 days in advance of the hearing to all private providers in the municipality as well as providing notice to the general public and hold at least one public hearing on the topic.

No later than one year after the public hearing if the municipality elects to provide the service, the municipality is mandated to purchase or condemn the private entity providing solid waste collection.

Section 3 (1) Allows a municipality to acquire the interests in any entity providing solid waste collection and requires the municipality to give the provider the opportunity to sell the service to the municipality at an agreed upon price.

(2) Requires the district judge, if petitioned, to select three disinterested residents to act as commissioners to assess just compensation for the provider if the municipality seeks to use its powers of condemnation.

It requires the commissioners to prepare a written report setting forth the quantity, boundaries and just compensation for the property or services taken and the amount of injury to the provider.

(3) Allows a municipality to start collecting solid waste as soon as the assessed amount is paid to the clerk of the court by the municipality for payment to the provider. If the provider refuses to cease collection, the court, upon sufficient proof, shall enter an order enjoining the provider from collecting solid waste in the area.

(4) Allows the district court to review the commissioners' report upon request of either party within 30 days after the report has been filed in the clerk's office. The court, after a hearing, shall issue an order confirming, rejecting or ordering a new assessment. Pending a new assessment, the municipality shall have the continuing right of possession.

Allows either party, within 60 days of the filing of the report, may demand a jury trial to determine the amount of damages. If the party who requested the trial does not recover more than the assessment, the party shall bear the burden of the costs of the trial. If the municipality loses, the private provider is restored to possession and the municipality is required to pay damages either by settlement agreement or by jury trial in the same proceeding.

(5) Provides an appeal process to the Court of Appeals. The municipality shall not be liable for appellate costs unless the provider is entitled to an amount greater than the assessment. The municipality shall pay the cost of the

commissioners' fees, expenses and services as ordered by the judge of the district court in which such case is pending. Condemnation fees shall only be paid by the municipality if an appeal results in a jury verdict in excess of the commissioners' assessment.

Section 4      Definitional section

- (1) Displace or displacement – a municipality's provision of a service which prohibits a private entity from providing the same service and which prohibits a private entity from providing the same service and which the provider is providing at the time the decision to displace is made.
  - (a) Displacement does not mean competition between the municipality and the provider for individual contracts;
  - (b) Displacement does not mean a failure to renew the contract by the municipality or awarding the contract to a new provider or electing to provide such services itself upon the end of the existing contract;
  - (c) Displacement does not mean any activity chosen by the municipality to protect the public health, safety and welfare of its citizens against a provider that is acting in a manner threatening to the public or resulting in a substantial public nuisance;
  - (d) Displacement does not apply when the municipality takes action against the provider when the provider has materially breached its contract; or
  - (e) Displacement does not apply when the municipality enters into a contract with a provider so long as that contract is not to displace a current provider.
- (2) Just compensation – the value of the business taken and any injury to any part of the business not taken. If only a part of the business is taken, just compensation is the difference between the fair market value of the whole business immediately before the taking and the fair market value of the business remaining after the taking.
- (3) Solid waste – definition the same as contained in the Environmental Protection Act.

Section 5      Repealer

**Explanation of amendments, if any:**

None

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**Senator Ed Schrock, Chairperson**