

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1153

Short Title: Solid Waste Firm Annexations.

(Public)

Sponsors: Representatives Blue; and H. Hunter.

Referred to: Infrastructure.

April 10, 1989

A BILL TO BE ENTITLED

AN ACT TO GIVE PRIVATE SOLID WASTE COLLECTION FIRMS THE SAME PROTECTIONS AFTER LEGISLATIVE ANNEXATION THAT THEY HAVE AFTER INVOLUNTARY ANNEXATION BY LOCAL ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-324. Contract with private solid waste collection firm(s).

(a) This section applies to any area to be annexed by an act of the General Assembly which includes an area where a private solid waste collection firm or firms on the 90th day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation was:

(1) Providing solid waste collection services in the area to be annexed;

(2) Is still providing such services on the date of enactment of the act;

(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated; and

(4) During the 90-day period preceding the date of introduction, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that

1 arrangements between the solid waste firm and the customers will be
2 terminated,
3 and if such firm makes a written request that it wishes to contract, signed by an officer
4 or owner of the firm, and delivered to the city clerk at least 20 days before the effective
5 date of the annexation provided in the act, unless other arrangements satisfactory to the
6 private solid waste collection firm or firms have been made, the city shall either:

7 (1) Contract with such solid waste collection firm(s) for a
8 period of two years after the effective date of the annexation act to
9 allow the solid waste collection firm(s) to provide collection services
10 to the city in the area to be annexed for sums determined under
11 subsection (d) of this section, or

12 (2) Pay to the solid waste collection firm(s) in lieu of a contract
13 a sum equal to the economic loss determined under subsection (f) of
14 this section.

15 (b) The city shall make a good faith effort to provide at least 30 days before the
16 effective date of the annexation a copy of the act to each private firm providing solid
17 waste collection services in the area to be annexed.

18 (c) The city may require that the contract contain:

19 (1) A requirement that the private firm post a performance bond
20 and maintain public liability insurance coverage;

21 (2) A requirement that the private firm agree to service
22 customers in the annexed area that were not served by that firm on
23 the effective date of annexation;

24 (3) A provision that divides the annexed area into service areas
25 if there were more than one firm being contracted within the area,
26 such that the entire area is served by the private firms, or by the city
27 as to customers not served by the private firms;

28 (4) A provision that the city may serve customers not served by
29 the firm on the effective date of annexation;

30 (5) A provision that the contract can be cancelled for substantial
31 violations of the contract, but no contract may be cancelled on these
32 grounds unless the Local Government Commission finds that
33 substantial violations have occurred, except that the city may
34 suspend the contract for up to 30 days if it finds substantial violation
35 of health laws;

36 (6) Performance standards, not exceeding city standards, with
37 provision that the contract may be cancelled for substantial
38 violations of those standards, but no contract may be cancelled on
39 those grounds unless the Local Government Commission finds that
40 substantial violations have occurred;

41 (7) A provision for monetary damages if there are violations of
42 the contract or of performance standards.

43 (d) If the services to be provided to the city by reason of the annexation are
44 substantially the same as rendered under the franchise with the county or arrangements

1 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the
2 amount paid or required under the existing franchise or arrangements. If such services
3 are required to be adjusted to conform to city standards or as a result of changes in the
4 number of customers and as a result there are changes in disposal costs (including
5 mileage and landfill charges), requirements for storage capacity (dumpsters and/or
6 residential carts), and/or frequency of collection, the amount paid by the city for the
7 service shall be increased or decreased to reflect the value of such adjusted services as if
8 computed under the existing franchise or arrangements. In the event agreement cannot
9 be reached between the city and the private firm under this subsection, such matters
10 shall be determined by the Local Government Commission.

11 (e) The city may, at any time after one year's operation thereunder, terminate a
12 contract made with the solid waste collection firm under subsection (a) of this section
13 upon payment to said firm of an amount equal to the economic loss determined in
14 subsection (f) of this section, but discounted by the percentage of the contract which has
15 elapsed prior to the effective date of the termination.

16 (f) As used in this section, 'economic loss' is 12 times the average monthly
17 revenue for the three months prior to the introduction of the bill, collected or due the
18 private firm for residential, commercial, and industrial collection service in the area
19 annexed or to be annexed.

20 (g) If the city fails to offer a contract to the private firm within 30 days following
21 the effective date of the annexation act, the private firm may appeal within 60 days
22 following the effective date of the annexation act to the Local Government Commission
23 for an order directing the city to offer a contract. If the Local Government Commission
24 finds that the city has not made an offer which complies with this section, it shall order
25 the city to pay to the private firm a civil penalty of one hundred fifty percent (150%) of
26 the amount of payments it finds that the city would have had to make under the contract,
27 during the noncompliance period until the contract offer is made. Either the private firm
28 or the city may obtain judicial review in accordance with Chapter 150B of the General
29 Statutes.

30 (h) A firm which has given notice under subsection (a) of this section that it
31 desires to contract, and any firm that the city believes is eligible to give such notice,
32 shall make available to the city not later than five days following a written request of the
33 city all information in its possession or control, including but not limited to operational,
34 financial and budgetary information, necessary for the city to determine if the firm
35 qualifies for the benefits of this section and to determine the nature and scope of the
36 potential contract and/or economic loss."

37 Sec. 2. G.S. 160A-49.3(g) reads as rewritten:

38 "(g) If the city fails to offer a contract to the private firm within 30 days following
39 the passage of an annexation ordinance, the private firm may appeal to the Local
40 Government Commission. The private firm may appeal to the Local Government
41 Commission within 60 days following the passage of an annexation ordinance for an
42 order staying the operation of the annexation ordinance pending the outcome of the
43 review. The Commission may grant or deny the stay upon such terms as it deems
44 proper. If the Local Government Commission finds that the city has not made an offer

1 which complies with this section, it shall remand the ordinance to the municipal
2 governing board for further proceedings, and the ordinance shall not become effective
3 until the Local Government Commission finds that such an offer has been made. Either
4 the private firm or the city may obtain judicial review in accordance with Chapter 150B
5 of the General Statutes."

6 Sec. 3. G.S. 160A-37.3(g) reads as rewritten:

7 "(g) If the city fails to offer a contract to the private firm within 30 days following
8 the passage of an annexation ordinance, the private firm may appeal to the Local
9 Government Commission. The private firm may appeal to the Local Government
10 Commission within 60 days following the passage of an annexation ordinance for an
11 order staying the operation of the annexation ordinance pending the outcome of the
12 review. The Commission may grant or deny the stay upon such terms as it deems
13 proper. If the Local Government Commission finds that the city has not made an offer
14 which complies with this section, it shall remand the ordinance to the municipal
15 governing board for further proceedings, and the ordinance shall not become effective
16 until the Local Government Commission finds that such an offer has been made. Either
17 the private firm or the city may obtain judicial review in accordance with Chapter 150B
18 of the General Statutes."

19 Sec. 4. Section 1 of this act shall become effective with respect to all
20 annexations by act of the General Assembly where the effective date of that act is on or
21 after June 30, 1989. Sections 2 and 3 of this act shall become effective with respect to
22 all annexation ordinances adopted on or after October 1, 1989.