

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 598
HOUSE BILL 1153

AN ACT TO GIVE PRIVATE SOLID WASTE COLLECTION FIRMS THE SAME PROTECTIONS AFTER LEGISLATIVE ANNEXATION THAT THEY HAVE AFTER INVOLUNTARY ANNEXATION BY LOCAL ORDINANCE, REQUIRE MUNICIPALITIES TO PAY A PROPORTIONATE SHARE OF RURAL FIRE DEPARTMENT DEBT UPON VOLUNTARY ANNEXATION AND MAKE TECHNICAL AMENDMENTS TO THE ANNEXATION STATUTES.

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 arrangements between the solid waste firm and the customers will be terminated,

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

- (1) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation act to allow the solid waste collection firm(s) to provide collection services to the city in the

area to be annexed for sums determined under subsection (d) of this section, or

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

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

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

- (1) A requirement that the private firm post a performance bond and maintain public liability insurance coverage;
- (2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
- (3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;
- (4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
- (5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
- (6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
- (7) A provision for monetary damages if there are violations of the contract or of performance standards.

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

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

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

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

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

Sec. 2. Part 1 of Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-31.1. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

- (1) An insurance district defined under G.S. 153A-233;
- (2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes; or
- (3) A fire service district under Article 16 of Chapter 153A of the General Statutes,

then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

- (1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and
- (2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars (\$100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement."

Sec. 3. Part 4 of Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-58.2A. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

- (1) An insurance district defined under G.S. 153A-233;
- (2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes; or
- (3) A fire service district under Article 16 of Chapter 153A of the General Statutes,

then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

- (1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and

(2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars (\$100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement."

Sec. 4. G.S. 120-30.9F reads as rewritten:

"§ 120-30.9F. Municipalities; municipal attorney.

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days of ratification any local acts of the General Assembly, actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

Sec. 5. G.S. 160A-35(4) reads as rewritten:

"(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section."

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

"(g) ~~If the city fails to offer a contract to the private firm within 30 days following the passage of an annexation ordinance, the private firm may~~ The private firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes."

Sec. 7. G.S. 160A-38 reads as rewritten:

"§ 160A-38. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed or
- (2) That the provisions of G.S. 160A-35 were not met, or
- (3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. ~~The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Court of Appeals; provided, that the~~ The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event

of remand. For the purposes of this subsection, a denial of a petition for a rehearing or for discretionary review shall be treated as a final judgement.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g)."

Sec. 8. G.S. 160A-47(4) reads as rewritten:

"(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section."

Sec. 9. G.S. 160A-49.3(g) reads as rewritten:

"(g) ~~If the city fails to offer a contract to the private firm within 30 days following the passage of an annexation ordinance, the private firm may~~ The private firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes."

Sec. 10. G.S. 160A-50 reads as rewritten:

"§ 160A-50. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed, or
- (2) That the provisions of G.S. 160A-47 were not met, or
- (3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. ~~The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the appellate division; provided, that the~~ The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior ~~court or Court of Appeals court, Court of Appeals or Supreme Court~~ on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgement.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and ~~in either case~~ a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g)."

Sec. 11. G.S. 160A-37(i) reads as rewritten:

"§ 160A-37. Procedure for annexation.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year

period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution."

Sec. 12. G.S. 160A-49(i) reads as rewritten:

"§ 160A-49. Procedure for annexation.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution."

Sec. 12.1. Part 4 of Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-58.5A. Waiver of municipal services for satellite annexations.

(a) The owner of property for which a petition for annexation has been submitted under this Part may, prior to adoption of the annexation ordinance, execute a Covenant of Waiver and Release of the municipality from the obligation to provide one or more municipal services to that property for a period stated in the Covenant, but not to exceed ten years; provided the Covenant may provide for its automatic extension for a period of not to exceed five years unless both the property owner and the municipality agree to cancel the extension prior to the expiration of the initial time period.

(b) Upon acceptance by the municipality of the Covenant of Waiver and Release, the Covenant shall bind the property, the property owner, and any successors in title; and the municipality shall not be required to provide to the annexed property the services waived for the period provided in the Covenant.

(c) Any Covenant under this section is automatically terminated when the property to which it applies becomes part of the primary corporate limits of the municipality.

(d) The Covenant under this section shall be effective as to third parties only upon recordation in the office of the Register of Deeds of the county in which the property is located, and shall be indexed under the name of the property owner as 'Grantee' and 'Grantor'.

(e) This section applies only as to property within Iredell County and to municipalities located therein."

Sec. 13. Section 1 of this act is effective with respect to all annexations by act of the General Assembly where the effective date of that act is on or after January 1, 1990. Sections 2, 3, 6, and 9 of this act are effective with respect to all annexation ordinances adopted on or after January 1, 1990. Sections 4 and 12.1 of this act is effective upon ratification. Sections 5, 7, 8, and 10 shall become effective with respect

to annexations for which the resolution of intent is adopted on or after January 1, 1990. Sections 11 and 12 shall become effective with respect to annexations for which the resolution of consideration is adopted on or after January 1, 1990. This act does not affect pending litigation.

In the General Assembly read three times and ratified this the 7th day of July, 1989.