

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 951
Judiciary I Committee Substitute Adopted 5/31/05

Short Title: Public-Private Solid Waste Collection.

(Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO AND TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-37.3 and G.S. 160A-324 are repealed.

SECTION 2. G.S. 160A-49.3 reads as rewritten:

"§ 160A-49.3. Contract with private solid waste collection firm(s), firms.

(a) ~~If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:~~

(1) ~~On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-49(j) or~~

(2) ~~On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-49(i)~~

~~was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:~~

(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 adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, 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~~

1 ~~collection to those customers such that arrangements between the solid~~
2 ~~waste firm and the customers will be terminated, and~~
3 (5) ~~If such firm makes a written request that it wishes to contract, signed~~
4 ~~by an officer or owner of the firm, and delivered to the city clerk at~~
5 ~~least 10 days before the public hearing,~~
6 ~~unless other arrangements satisfactory to the private solid waste collection firm or firms~~
7 ~~have been made, the city shall either:~~

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

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

16 (a) If the area to be annexed described in a resolution of intent passed under
17 G.S. 160A-37(a) or G.S. 160A-49(a), or an act of the General Assembly, includes an
18 area where a firm, on the ninetieth day preceding the date of adoption of the resolution
19 of intent in accordance with G.S. 160A-37(i) or (j), or G.S. 160A-49(i) or (j), or the date
20 of introduction in the House of Representatives or the Senate of the bill which became
21 the act making the annexation, as applicable, was providing solid waste collection
22 services in the area to be annexed on the date of adoption of the resolution of intent or
23 the introduction of the bill making the annexation, and by reason of the annexation the
24 firm's franchise with a county or arrangements with third parties for solid waste
25 collection will be terminated, a firm that meets the requirements of subsection (a1) of
26 this section, shall be entitled to choose one of the following options:

27 (1) Contract with the city for a period of two years after the effective date
28 of the annexation ordinance to allow the firm to provide collection
29 services to the city in the area to be annexed for sums determined
30 under subsection (d) of this section.

31 (2) Be paid by the city for the firm's economic loss, with one-third of the
32 economic loss to be paid within 30 days of the termination and the
33 balance paid in five equal monthly installments during the next
34 succeeding five months.

35 (3) Make other arrangements satisfactory to the firm.

36 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
37 must have done one of the following:

38 (1) Subsequent to receiving notice of the annexation in accordance with
39 subsection (b) of this section, filed with the city clerk at least 10 days
40 prior to the public hearing a written request to contract with the city to
41 provided solid waste collection services containing a certification,
42 signed by an officer or owner of the firm, that the firm serves at least
43 50 customers within the county at that time.

1 (2) Contacted the city clerk pursuant to public notice published by the
2 city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing
3 and provide to the city clerk a written request to contract with the city
4 to provide solid waste collection services. The request must contain a
5 certification signed by an officer or owner of the firm that the firm
6 serves at least 50 customers within the county at that time.

7 Notices required under this subsection must be filed in accordance with subsection
8 (a2) of this section.

9 (a2) Notice of provision of solid waste collection service shall be filed with the
10 city clerk of all cities located in the firm's collection area or within five miles thereof.

11 (b) ~~The city shall make a good faith effort to provide at least 20 days before the~~
12 ~~public hearing a copy of the resolution of intent to each private firm providing solid~~
13 ~~waste collection services in the area to be annexed. At least four weeks prior to the date~~
14 ~~of the informational meeting, the city shall provide written notice of the resolution of~~
15 ~~intent to all firms serving the area to be annexed. The notice shall be sent to all firms~~
16 ~~that filed notice in accordance with subsection (a2) of this section by certified mail,~~
17 ~~return receipt requested, to the address provided by the firm under subsection (a2) of~~
18 ~~this section.~~

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

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

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

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

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

31 (5) A provision that the contract can be cancelled in writing, delivered by
32 certified mail to the firm in question with 30 days to cure for
33 substantial violations of the contract, but no contract may be cancelled
34 on these grounds unless the Local Government Commission finds that
35 substantial violations have occurred, except that the city may suspend
36 the contract for up to 30 days if it finds substantial violation of health
37 laws;

38 (6) Performance standards, not exceeding city ~~standards,~~standards existing
39 at the time of notice published pursuant to G.S. 160A-49(b) with
40 provision that the contract may be cancelled for substantial violations
41 of those standards, but no contract may be cancelled on those grounds
42 unless the Local Government Commission finds that substantial
43 violations have occurred;

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

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

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

20 ~~(f) As used in this section, "economic loss" is 12 times the average monthly~~
21 ~~revenue for the three months prior to the passage of the resolution of intent or resolution~~
22 ~~of consideration, as applicable under subsection (a) of this section, collected or due the~~
23 ~~private firm for residential, commercial, and industrial collection service in the area~~
24 ~~annexed or to be annexed.~~

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

36 (h) A firm which has given notice under subsection (a) of this section that it
37 desires to contract, and any firm that the city believes is eligible to give such notice,
38 shall make available to the city not later than ~~40~~30 business days following a written
39 request of the city, sent by certified mail return receipt requested, all information in its
40 possession or control, including but not limited to operational, financial and budgetary
41 information, necessary for the city to determine if the firm qualifies for the benefits of
42 this section and to determine the nature and scope of the potential contract and/or
43 economic loss. The firm forfeits its rights under this section if it fails to make a good
44 faith response within ~~40~~30 business days following receipt of the written request for

1 information from the city, provided that the city's written request so states by specific
2 reference to this section.

3 (i) As used in this section, the following terms mean:

4 (1) Economic loss. – A sum equal to 15 times the average gross monthly
5 revenue for the three months prior to the passage of the resolution of
6 intent or resolution of consideration, as applicable under subsection (a)
7 of this section, collected or due the firm for residential, commercial,
8 and industrial collection service in the area annexed or to be annexed.

9 (2) Firm. – A private solid waste collection firm."

10 **SECTION 3.** Part 1 of Article 16 of Chapter 160A of the General Statutes is
11 amended by adding a new section to read:

12 **"§ 160A-327. Displacement of private solid waste collection services.**

13 (a) A unit of local government shall not displace a private company that is
14 providing collection services for solid waste or recovered materials, or both, except as
15 provided for in this section.

16 (b) Prior to displacing a private company, the unit of local government shall
17 provide public notice of its intent to consider an action that will displace a private
18 company by publishing notice of intent once a week for at least four consecutive weeks
19 in at least one newspaper of general circulation in the area in which the unit of local
20 government and the proposed displacement area are located. The first public notice shall
21 be given 30 days prior to the displacement issues being placed on the agenda for
22 discussion or action at an official business meeting of the governing body of the unit of
23 local government. The notice shall specify each area in which the local government
24 proposes to change the solid waste collection services that would result in the
25 displacement of a private company. In addition, the unit of local government shall send
26 written notice by certified mail, return receipt requested, to all companies that have filed
27 notice with the unit of local government clerk pursuant to the provisions of subsection
28 (g) of this section. The unit of local government shall deposit notice in the U.S. mail at
29 least 30 days prior to the displacement issues being placed on the agenda for discussion
30 or action at an official business meeting of the governing body of the unit of local
31 government.

32 (c) Following the public notice required by subsection (b) of the section, but in
33 no event later than six months after the date of the first publication of the public notice
34 pursuant to subsection (b) of this section, the unit of local government may proceed to
35 take action to displace a private company. The unit of local government or other public
36 or private entity selected by the unit of local government may not commence the actual
37 provision of these services for a period of 18 months from the date of the vote by the
38 governing body of the unit of local government awarding a contract or exclusive
39 franchise to a private firm, or approving the final plan for the unit of local government
40 to deliver solid waste collection services, unless the unit of local government provides
41 compensation to the displaced private company as follows:

42 (1) Subject to subdivision (3) of this subsection, if the private company
43 has provided collection services in the displacement area prior to
44 announcement of the displacement action, the unit of local government

1 shall provide compensation to the displaced private company in an
2 amount equal to the total gross receipts for collection services
3 provided in the displacement area for the 12 months prior to the initial
4 public notice required under subsection (b) of this section.

5 (2) Subject to subdivision (3) of this subsection, if the displaced private
6 company has provided collection services in the displacement area for
7 less than 12 months, the unit of local government shall provide
8 compensation to the displaced private company in an amount equal to
9 the total gross receipts for the period of time that the private company
10 provided such services in the displacement area.

11 (3) If the displaced private company purchased an existing operation of
12 another private company providing such services, compensation shall
13 be for 12 months based on the monthly average of the immediate
14 preceding three month's total gross revenue.

15 (d) The amount due from the unit of local government to the displaced company
16 shall be paid as follows: one-third of the economic loss to be paid within 30 days of the
17 displacement and the balance paid in five equal monthly installments during the next
18 succeeding five months.

19 (e) If the unit of local government fails to change the provision of solid waste
20 services as described in the notices required under subsection (b) of this section within
21 six months of the date of the first publication of public notice, the unit of local
22 government shall not take action to displace without complying again with the
23 provisions of subsection (b) of this section.

24 (f) As used in this section, the following terms mean:

25 (1) Displacement. – Any action by a unit of local government that
26 prohibits or has the effect of prohibiting a private company from
27 providing all or a portion of the collection services for solid waste,
28 recovered materials, or recyclables that the company is providing in
29 the affected area at least 90 days prior to the date of the first
30 publication of notice required by subsection (b) of this section.
31 Displacement also means an action by a unit of local government to
32 use an availability fee, nonoptional fee, or taxes to fund competing
33 collection services for solid waste, recovered materials, or recyclables
34 that the private company is providing at the time that the first public
35 notice required under subsection (b) of this section is given.
36 Displacement does not include any of the following actions:

37 a. Failure to renew a franchise agreement or contract with a
38 private company.

39 b. Taking action against a private company because the private
40 company's operations present an imminent and substantial
41 threat to human health and safety or are causing a substantial
42 public nuisance.

- 1 c. Taking action against a private company because the private
2 company has materially breached its franchise agreement or the
3 terms of a contract with the local government.
4 d. Terminating an existing contract or franchise in accordance
5 with the provisions of the contract or franchise agreement.
6 e. Providing temporary collection services under a declared state
7 of emergency.

8 Displacement does not include circumstances when the local
9 government contracts with the private solid waste collection company
10 to continue service for a period of two years following the action that
11 would otherwise displace the company in accordance with
12 G.S. 160A-49.3(a)(1).

- 13 (2) Unit of local government. – A county, municipality, authority, or
14 political subdivision that is authorized by law to provide for collection
15 of solid waste or recovered materials, or both.

16 (g) Notice of the provision of solid waste collection service shall be filed with the
17 unit of local government clerk of all cities located in the private company's collection
18 area or within five miles thereof.

19 (h) This section shall not apply when a private company is displaced as the result
20 of an annexation under Article 4A of Chapter 160A of the General Statutes or an
21 annexation by an act of the General Assembly. The provisions of G.S. 160A-49.3 shall
22 apply.

23 (i) If a unit of local government intends to provide compensation under
24 subsection (c) of this section to a private company that has given notice under
25 subsection (b) of this section, the private company shall make available to the unit of
26 local government not later than 30 business days following a written request of the unit
27 of local government, sent by certified mail, return receipt requested, all information in
28 its possession or control, including operational, financial, and budgetary information
29 necessary for the unit of local government to determine if the private company qualifies
30 for the benefits of this section and to determine any potential compensation. The private
31 company forfeits its rights under this section if it fails to make a good faith response
32 within 30 business days following receipt of the written request for information from
33 the unit of local government provided that the unit of local government's written request
34 so states by specific reference to this section."

35 **SECTION 4.** This act becomes effective July 1, 2006, and applies to
36 annexations initiated and all actions taken on or after that date.