

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 951
Judiciary I Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 7/13/06

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 OR TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-37.3 reads as rewritten:

"§ 160A-37.3. Contract with private solid waste collection firm(s).

(a) ~~If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(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-37(j) or~~

(2) ~~On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-37(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, unless other arrangements~~
6 ~~satisfactory to the private solid waste collection firm or firms have~~
7 ~~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) includes an area where a firm meets the requirements of subsection
18 (a1) of this section, on the ninetieth day preceding the date of adoption of the resolution
19 of intent or resolution of consideration, was providing solid waste collection services in
20 the area to be annexed and on the date of adoption of the resolution of intent is still
21 providing such services and by reason of the annexation the firm's franchise with a
22 county or arrangements with third parties for solid waste collection will be terminated,
23 the city shall do one of the following:

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

28 (2) Pay to the firm the firm's economic loss, with one-third of the
29 economic loss to be paid within 30 days of the termination and the
30 balance paid in 12 equal monthly installments during the next
31 succeeding 12 months. Any remaining economic loss payment is
32 forfeited if the firm terminates service to customers in the annexation
33 area prior to the effective date of the annexation.

34 (3) Make other arrangements satisfactory to the parties.

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

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

43 (2) Contacted the city clerk pursuant to public notice published by the
44 city, pursuant to G.S. 160A-37(b), at least 10 days before the hearing

1 and provided to the city clerk a written request to contract with the city
2 to provide solid waste collection services. The request must contain a
3 certification signed by an officer or owner of the firm that the firm
4 serves at least 50 customers within the county at that time.

5 (a2) Firms shall file notice of provision of solid waste collection service with the
6 city clerk of all cities located in the firm's collection area or within five miles thereof.

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

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

- 16 (1) A requirement that the ~~private~~-firm post a performance bond and
17 maintain public liability insurance coverage;
- 18 (2) A requirement that the ~~private~~-firm agree to service customers in the
19 annexed area that were not served by that firm on the effective date of
20 annexation;
- 21 (3) A provision that divides the annexed area into service areas if there
22 were more than one firm being contracted within the area, such that the
23 entire area is served by the ~~private~~-firms, or by the city as to customers
24 not served by the ~~private~~-firms;
- 25 (4) A provision that the city may serve customers not served by the firm
26 on the effective date of annexation;
- 27 (5) A provision that the contract can be cancelled in writing, delivered by
28 certified mail to the firm in question with 30 days to cure for
29 substantial violations of the contract, but no contract may be cancelled
30 on these grounds unless the Local Government Commission finds that
31 substantial violations have occurred, except that the city may suspend
32 the contract for up to 30 days if it finds substantial violation of health
33 laws;
- 34 (6) Performance standards, not exceeding city ~~standards,~~standards existing
35 at the time of notice published pursuant to G.S. 160A-37(b), with
36 provision that the contract may be cancelled for substantial violations
37 of those standards, but no contract may be cancelled on those grounds
38 unless the Local Government Commission finds that substantial
39 violations have occurred;
- 40 (7) A provision for monetary damages if there are violations of the
41 contract or of performance standards.

42 (d) If the services to be provided to the city by reason of the annexation are
43 substantially the same as rendered under the franchise with the county or arrangements
44 with the parties, the amount paid by the city shall be at least ninety percent (90%) of the

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

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

15 ~~(f) As used in this section, "economic loss" is 12 times the average monthly~~
16 ~~revenue for the three months prior to the passage of the resolution of intent or resolution~~
17 ~~of consideration, as applicable under subsection (a) of this section, 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) The private firm may, if it contends that no contract has been offered, appeal~~
21 ~~to the Local Government Commission within 30 days following passage of an~~
22 ~~annexation ordinance. The private firm may appeal to the Local Government~~
23 ~~Commission for an order staying the operation of the annexation ordinance pending the~~
24 ~~outcome of the review. The Commission may grant or deny the stay upon such terms as~~
25 ~~it deems proper. If the Local Government Commission finds that the city has not made~~
26 ~~an offer which complies with this section, it shall remand the ordinance to the municipal~~
27 ~~governing board for further proceedings, and the ordinance shall not become effective~~
28 ~~until the Local Government Commission finds that such an offer has been made. Either~~
29 ~~the private firm or the city may obtain judicial review in accordance with Chapter 150B~~
30 ~~of the General Statutes.~~

31 ~~(h) A firm which has given notice under subsection (a) of this section that it~~
32 ~~desires to contract, and any firm that the city believes is eligible to give such notice,~~
33 ~~shall make available to the city not later than 10 business 30 days following a written~~
34 ~~request of the city, sent by certified mail return receipt requested, all information in its~~
35 ~~possession or control, including but not limited to operational, financial and budgetary~~
36 ~~information, necessary for the city to determine if the firm qualifies for the benefits of~~
37 ~~this section and to determine the nature and scope of the potential contract and/or~~
38 ~~economic loss. The firm forfeits its rights under this section if it fails to make a good~~
39 ~~faith response within 10 business 30 days following receipt of the written request for~~
40 ~~information from the city, provided that the city's written request states that statutory~~
41 ~~rights will be forfeited in the absence of a timely response and includes a specific~~
42 ~~reference to this section.~~

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

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenue shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

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

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 collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and~~

(5) ~~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 10 days before the public hearing,~~

~~unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:~~

(6) ~~Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance 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~~

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

4 (a) If the area to be annexed described in a resolution of intent passed under
5 G.S. 160A-49(a) includes an area where a firm that meets the requirements of
6 subsection (a1) of this section, on the ninetieth day preceding the date of adoption of the
7 resolution of intent was providing solid waste collection services in the area to be
8 annexed on the date of adoption of the resolution of intent or the resolution of
9 consideration and on the date of adoption of the resolution of intent is still providing
10 such services and by reason of the annexation the firm's franchise with a county or
11 arrangements with third parties for solid waste collection will be terminated, the city
12 shall do one of the following:

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

17 (2) Pay the firm for the firm's economic loss, with one-third of the
18 economic loss to be paid within 30 days of the termination and the
19 balance paid in 12 equal monthly installments during the next
20 succeeding 12 months. Any remaining economic loss payment is
21 forfeited if the firm terminates service to customers in the annexation
22 area prior to the effective date of the annexation.

23 (3) Make other arrangements satisfactory to the parties.

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

26 (1) Subsequent to receiving notice of the annexation in accordance with
27 subsection (b) of this section, filed with the city clerk at least 10 days
28 prior to the public hearing a written request to contract with the city to
29 provide solid waste collection services containing a certification,
30 signed by an officer or owner of the firm, that the firm serves at least
31 50 customers within the county at that time.

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

38 (a2) Firms shall fill notice of provision of solid waste collection service with the
39 city clerk of all cities located in the firm's collection area or within five miles thereof.

40 ~~(b) The city shall make a good faith effort to provide at least 20 days before the~~
41 ~~public hearing a copy of the resolution of intent to each private firm providing solid~~
42 ~~waste collection services in the area to be annexed. At least four weeks prior to the date~~
43 ~~of the informational meeting, the city shall provide written notice of the resolution of~~
44 ~~intent to all firms serving the area to be annexed. The notice shall be sent to all firms~~

1 that filed notice in accordance with subsection (a2) of this section by certified mail,
2 return receipt requested, to the address provided by the firm under subsection (a2) of
3 this section.

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

- 5 (1) A requirement that the ~~private~~-firm post a performance bond and
6 maintain public liability insurance coverage;
- 7 (2) A requirement that the ~~private~~-firm agree to service customers in the
8 annexed area that were not served by that firm on the effective date of
9 annexation;
- 10 (3) A provision that divides the annexed area into service areas if there
11 were more than one firm being contracted within the area, such that the
12 entire area is served by the ~~private~~-firms, or by the city as to customers
13 not served by the ~~private~~-firms;
- 14 (4) A provision that the city may serve customers not served by the firm
15 on the effective date of annexation;
- 16 (5) A provision that the contract can be cancelled in writing, delivered by
17 certified mail to the firm in question with 30 days to cure for
18 substantial violations of the contract, but no contract may be cancelled
19 on these grounds unless the Local Government Commission finds that
20 substantial violations have occurred, except that the city may suspend
21 the contract for up to 30 days if it finds substantial violation of health
22 laws;
- 23 (6) Performance standards, not exceeding city ~~standards,~~standards existing
24 at the time of notice published pursuant to G.S. 160A-49(b) with
25 provision that the contract may be cancelled for substantial violations
26 of those standards, but no contract may be cancelled on those grounds
27 unless the Local Government Commission finds that substantial
28 violations have occurred;
- 29 (7) A provision for monetary damages if there are violations of the
30 contract or of performance standards.

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

43 ~~(e) The city may, at any time after one year's operation thereunder, terminate a~~
44 ~~contract made with the solid waste collection firm under subsection (a) of this section~~

1 upon payment to said firm of an amount equal to the economic loss determined in
2 subsection (f) of this section, but discounted by the percentage of the contract which has
3 elapsed prior to the effective date of the termination.

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

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

20 (h) A firm which has given notice under subsection (a) of this section that it
21 desires to contract, and any firm that the city believes is eligible to give such notice,
22 shall make available to the city not later than ~~40 business~~ 30 days following a written
23 request of the city, sent by certified mail return receipt requested, all information in its
24 possession or control, including but not limited to operational, financial and budgetary
25 information, necessary for the city to determine if the firm qualifies for the benefits of
26 this section and to determine the nature and scope of the potential contract and/or
27 economic loss. The firm forfeits its rights under this section if it fails to make a good
28 faith response within ~~40 business~~ 30 days following receipt of the written request for
29 information from the city, provided that the city's written request so states by specific
30 reference to this section.

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

32 (1) Economic loss. – A sum equal to 15 times the average gross monthly
33 revenue for the three months prior to the passage of the resolution of
34 intent or resolution of consideration, as applicable under subsection (a)
35 of this section, collected or due the firm for residential, commercial,
36 and industrial collection service in the area annexed or to be annexed;
37 provided that revenues shall be included in calculations under this
38 subdivision only if policies of the city will provide solid waste
39 collection to those customers such that arrangements between the firm
40 and the customers will be terminated.

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

42 **SECTION 3.** G.S. 160A-324 reads as rewritten:

43 **"§ 160A-324. Contract with private solid waste collection firm(s).**

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

- 5 ~~(1) Providing solid waste collection services in the area to be annexed;~~
6 ~~(2) Is still providing such services on the date of enactment of the act;~~
7 ~~(3) By reason of such annexation any franchise with a county or~~
8 ~~arrangements with third parties for solid waste collection will be~~
9 ~~terminated; and~~
10 ~~(4) During the 90 day period preceding the date of introduction, the firm~~
11 ~~had in such area an average of 50 or more residential customers or a~~
12 ~~monthly average revenue from nonresidential customers in such area~~
13 ~~of five hundred dollars (\$500.00) or more; provided that customers~~
14 ~~shall be included in such calculation only if policies of the city will~~
15 ~~provide solid waste collection to those customers such that~~
16 ~~arrangements between the solid waste firm and the customers will be~~
17 ~~terminated,~~

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

- 22 ~~(1) Contract with such solid waste collection firm(s) for a period of two~~
23 ~~years after the effective date of the annexation act to allow the solid~~
24 ~~waste collection firm(s) to provide collection services to the city in the~~
25 ~~area to be annexed for sums determined under subsection (d) of this~~
26 ~~section, or~~
27 ~~(2) Pay to the solid waste collection firm(s) in lieu of a contract a sum~~
28 ~~equal to the economic loss determined under subsection (f) of this~~
29 ~~section.~~

30 (a) If the area to be annexed described in an act of the General Assembly
31 includes an area where a firm that meets the requirements of subsection (a1) of this
32 section, on the ninetieth day preceding the date of introduction in the House of
33 Representatives or the Senate of the bill which became the act making the annexation,
34 was providing solid waste collection services in the area to be annexed and is still
35 providing such services on the date the act becomes law, and by reason of the
36 annexation the firm's franchise with a county or arrangements with third parties for solid
37 waste collection will be terminated, the city shall do one of the following:

- 38 (1) Contract with the firm for a period of two years after the effective date
39 of the annexation ordinance to allow the firm to provide collection
40 services to the city in the area to be annexed for sums determined
41 under subsection (d) of this section.
42 (2) Pay the firm for the firm's economic loss, with one-third of the
43 economic loss to be paid within 30 days of the termination and the
44 balance paid in 12 equal monthly installments during the next

1 succeeding 12 months. Any remaining economic loss payment is
2 forfeited if the firm terminates service to customers in the annexation
3 area prior to the effective date of the annexation.

4 (3) Make other arrangements satisfactory to the parties.

5 (a1) To qualify for the options set forth in subsection (a) of this section, a firm
6 must have, subsequent to receiving notice of the annexation in accordance with
7 subsection (b) of this section, filed with the city clerk at least 10 days prior to the
8 effective date of the annexation a written request to contract with the city to provide
9 solid waste collection services containing a certification, signed by an officer or owner
10 of the firm, that the firm serves at least 50 customers within the county at that time.

11 (a2) Firms shall file notice of provision of solid waste collection service with the
12 city clerk of all cities located in the firm's collection area or within five miles thereof.

13 (b) The city shall make a good faith effort to provide at least 30 days before the
14 effective date of the annexation a copy of the act to each private firm providing solid
15 waste collection services in 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 provided pursuant to subsection (b) of this section,
40 with provision that the contract may be cancelled for substantial
41 violations of those standards, but no contract may be cancelled on
42 those grounds unless the Local Government Commission finds that
43 substantial 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 introduction of the bill, collected or due the~~
22 ~~private firm for residential, commercial, and industrial collection service in the area~~
23 ~~annexed or to be annexed.~~

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

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

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

1 (1) Economic loss. – A sum equal to 15 times the average gross monthly
2 revenue for the three months prior to the introduction of the bill under
3 subsection (a) of this section, collected or due the firm for residential,
4 commercial, and industrial collection service in the area annexed or to
5 be annexed; provided that revenues shall be included in calculations
6 under this subdivision only if policies of the city will provide solid
7 waste collection to those customers such that arrangements between
8 the firm and the customers will be terminated.

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

10 **SECTION 4.** 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 municipal solid waste or recovered materials, or both,
15 except as provided for in this section.

16 (b) Before a local government may displace a private company that is providing
17 collection services for municipal solid waste or recovered materials, or both, the unit of
18 local government shall publish notice of the first meeting where the proposed change in
19 solid waste collection service will be discussed. Notice shall be published once a week
20 for at least four consecutive weeks in at least one newspaper of general circulation in
21 the area in which the unit of local government and the proposed displacement area are
22 located. The first public notice shall be given no less than 30 days but no more than 60
23 days prior to the displacement issue being placed on the agenda for discussion or action
24 at an official meeting of the governing body of the unit of local government. The notice
25 shall specify the date and place of the meeting, the geographic location in which solid
26 waste collection services are proposed to be changed, and the types of solid waste
27 collection services that may be affected. In addition, the unit of local government shall
28 send written notice by certified mail, return receipt requested, to all companies that have
29 filed notice with the unit of local government clerk pursuant to the provisions of
30 subsection (f) of this section. The unit of local government shall deposit notice in the
31 U.S. mail at least 30 days prior to the displacement issues being placed on the agenda
32 for discussion or action at an official meeting of the governing body of the unit of local
33 government.

34 (c) Following the public notice required by subsection (b) of this section, but in
35 no event later than six months after the date of the first meeting pursuant to subsection
36 (b) of this section, the unit of local government may proceed to take formal action to
37 displace a private company. The unit of local government or other public or private
38 entity selected by the unit of local government may not commence the actual provision
39 of these services for a period of 15 months from the date of the first publication of
40 notice, unless the unit of local government provides compensation to the displaced
41 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 revenues for collection services
3 provided in the displacement area for the six months prior to the first
4 publication of 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 six months prior to the first publication of notice required
8 under subsection (b) of this section, the unit of local government shall
9 provide compensation to the displaced private company in an amount
10 equal to the total gross revenues for the period of time that the private
11 company provided such services in the displacement area.

12 (3) If the displaced private company purchased an existing operation of
13 another private company providing such services, compensation shall
14 be for six months based on the monthly average total gross revenues
15 for three months the immediate preceding the first publication of
16 notice required under subsection (b) of this section.

17 (d) If the local government elects to provide compensation pursuant to subsection
18 (c) of this section, the amount due from the unit of local government to the displaced
19 company shall be paid as follows: one-third of the compensation to be paid within 30
20 days of the displacement and the balance paid in six equal monthly installments during
21 the next succeeding six months.

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

27 (f) Notice of the provision of solid waste collection service shall be filed with the
28 unit of local government clerk of all cities and counties located in the private company's
29 collection area or within five miles thereof.

30 (g) This section shall not apply when a private company is displaced as the result
31 of an annexation under Article 4A of Chapter 160A of the General Statutes or an
32 annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3,
33 160-49.3, or 160A-324 shall apply.

34 (h) If a unit of local government intends to provide compensation under
35 subsection (c) of this section to a private company that has given notice under
36 subsection (f) of this section, the private company shall make available to the unit of
37 local government not later than 30 days following a written request of the unit of local
38 government, sent by certified mail, return receipt requested, all information in its
39 possession or control, including operational, financial, and budgetary information
40 necessary for the unit of local government to determine if the private company qualifies
41 for compensation. The private company forfeits its rights under this section if it fails to
42 make a good faith response within 30 days following receipt of the written request for
43 information from the unit of local government provided that the unit of local
44 government's written request so states by specific reference to this section.

1 (i) Nothing in this section shall affect the authority of a city or county to
2 establish recycling service where recycling service is not currently being offered.

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

4 (1) Collection. – The gathering of municipal solid waste, recovered
5 materials, or recyclables from residential, commercial, industrial,
6 governmental, or institutional customers and transporting it to a
7 sanitary landfill or other disposal facility. Collection does not include
8 transport from a transfer station or processing point to a disposal
9 facility.

10 (2) Displacement. – Any formal action by a unit of local government that
11 prohibits a private company from providing all or a portion of the
12 collection services for municipal solid waste, recovered materials, or
13 recyclables that the company is providing in the affected area at least
14 90 days prior to the date of the first publication of notice required by
15 subsection (b) of this section. Displacement also means an action by a
16 unit of local government to use an availability fee, nonoptional fee, or
17 taxes to fund competing collection services for municipal solid waste,
18 recovered materials, or recyclables that the private company is
19 providing in the affected areas at least 90 days prior to the date of the
20 first publication of notice required under subsection (b) of this section
21 is given. Displacement does not include any of the following actions:

22 a. Failure to renew a franchise agreement or contract with a
23 private company.

24 b. Taking action that results in a change in solid waste collection
25 services because the private company's operations present an
26 imminent and substantial threat to human health or safety or are
27 causing a substantial public nuisance.

28 c. Taking action that results in a change in solid waste collection
29 services because the private company has materially breached
30 its franchise agreement or the terms of a contract with the local
31 government, or the company has notified the local government
32 that it no longer intends to honor the terms of the franchise
33 agreement or contract. Notice of breach must be delivered in
34 writing, delivered by certified mail to the firm in question with
35 30 days to cure the violation of the contract.

36 d. Terminating an existing contract or franchise in accordance
37 with the provisions of the contract or franchise agreement.

38 e. Providing temporary collection services under a declared state
39 of emergency.

40 f. Taking action that results in a change in solid waste collection
41 services due to the existing providers' felony conviction of a
42 violation in the State of federal or State law governing the solid
43 waste collection or disposal.

1 g. Contracting with a private company to continue its existing
2 services or provide a different level of service at a negotiated
3 price on terms agreeable to the parties.

4 (3) Municipal solid waste. – As defined in G.S. 130A-290(18a).

5 (4) Unit of local government. – A county, municipality, authority, or
6 political subdivision that is authorized by law to provide for collection
7 of solid waste or recovered materials, or both."

8 **SECTION 5.** This act becomes effective January 1, 2007. Sections 1
9 through 3 of this act apply to annexations for which a resolution of intent is adopted on
10 or after that date. Section 4 of this act applies to actions taken on or after that date.