

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  
Fourth Edition Engrossed 7/18/06

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~~

1 such calculation only if policies of the city will provide solid waste  
2 collection to those customers such that arrangements between the solid  
3 waste firm and the customers will be terminated, and

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

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

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

17 (a) If the area to be annexed described in a resolution of intent passed under  
18 G.S. 160A-37(a) includes an area where a firm (i) meets the requirements of subsection  
19 (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the  
20 resolution of intent or resolution of consideration was providing solid waste collection  
21 services in the area to be annexed, (iii) on the date of adoption of the resolution of intent  
22 is still providing such services, and (iv) by reason of the annexation the firm's franchise  
23 with a county or arrangements with third parties for solid waste collection will be  
24 terminated, the city shall do one of the following:

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

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

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

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 provide 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-37(b), at least 10 days before the hearing  
3           and provided 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           (a2)   Firms shall file notice of provision of solid waste collection service with the  
8           city clerk of all cities located in the firm's collection area or within five miles thereof.

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

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

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

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

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

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

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

36           (6)    Performance standards, not exceeding city ~~standards,~~ standards existing  
37           at the time of notice published pursuant to G.S. 160A-37(b), with  
38           provision that the contract may be cancelled for substantial violations  
39           of those standards, but no contract may be cancelled on those grounds  
40           unless the Local Government Commission finds that substantial  
41           violations have occurred;

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

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

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

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

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

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

1 rights will be forfeited in the absence of a timely response and includes a 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 provided that revenue shall be included in calculations under this  
10 subdivision only if policies of the city will provide solid waste  
11 collection to those customers such that arrangements between the firm  
12 and the customers will be terminated.

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

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

15 "**§ 160A-49.3. Contract with private solid waste collection firm(s).**firms.

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

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

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

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

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

27 (4) ~~During the 90 day period preceding the date of adoption of the~~  
28 ~~resolution of intent or resolution of consideration provided by~~  
29 ~~subdivisions (1) or (2) of this subsection, the firm had in such area an~~  
30 ~~average of 50 or more residential customers or a monthly average~~  
31 ~~revenue from nonresidential customers in such area of five hundred~~  
32 ~~dollars (\$500.00) or more; provided that customers shall be included in~~  
33 ~~such calculation only if policies of the city will provide solid waste~~  
34 ~~collection to those customers such that arrangements between the solid~~  
35 ~~waste firm and the customers will be terminated, and~~

36 (5) ~~If such firm makes a written request that it wishes to contract, signed~~  
37 ~~by an officer or owner of the firm, and delivered to the city clerk at~~  
38 ~~least 10 days before the public hearing,~~

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

41 (6) ~~Contract with such solid waste collection firm(s) for a period of two~~  
42 ~~years after the effective date of the annexation ordinance to allow the~~  
43 ~~solid waste collection firm(s) to provide collection services to the city~~

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

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

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

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

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

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

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

27 (1) Subsequent to receiving notice of the annexation in accordance with  
28 subsection (b) of this section, filed with the city clerk at least 10 days  
29 prior to the public hearing a written request to contract with the city to  
30 provide solid waste collection services containing a certification,  
31 signed by an officer or owner of the firm, that the firm serves at least  
32 50 customers within the county at that time.

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

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

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

1 intent to all firms serving the area to be annexed. The notice shall be sent to all firms  
2 that filed notice in accordance with subsection (a2) of this section by certified mail,  
3 return receipt requested, to the address provided by the firm under subsection (a2) of  
4 this section.

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

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

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

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

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

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

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

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

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

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

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



1 **"§ 160A-324. Contract with private solid waste collection firm(s).**

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

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

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

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

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

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

1           balance paid in 12 equal monthly installments during the next  
2           succeeding 12 months. Any remaining economic loss payment is  
3           forfeited if the firm terminates service to customers in the annexation  
4           area prior to the effective date of the annexation.

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

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

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

14           (b) The city shall make a good faith effort to provide at least 30 days before the  
15           effective date of the annexation a copy of the act to each private firm providing solid  
16           waste collection services in the area to be annexed. The notice shall be sent to all firms  
17           that filed notice in accordance with subsection (a2) of this section by certified mail,  
18           return receipt requested, to the address provided by the firm under subsection (a2) of  
19           this section.

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

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

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

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

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

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

39           (6) Performance standards, not exceeding city ~~standards,~~ standards existing  
40           at the time of notice provided pursuant to subsection (b) of this section,  
41           with provision that the contract may be cancelled for substantial  
42           violations of those standards, but no contract may be cancelled on  
43           those grounds unless the Local Government Commission finds that  
44           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.** Sections 1 and 2 of this act apply to annexations for which a  
9 resolution of intent is adopted on or after January 1, 2007, and Section 3 of this act  
10 applies to annexations for which the bill making the annexation is enacted on or after  
11 January 1, 2007. Section 4 of this act applies to actions taken on or after that date. This  
12 section is effective when it becomes law.