

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 403

Short Title: Charlotte/Water & Sewer Facilities. (Local)

Sponsors: Senator Clodfelter.

Referred to: State & Local Government.

February 28, 2007

A BILL TO BE ENTITLED

AN ACT REPEALING THE SECTION OF THE CHARTER OF THE CITY OF CHARLOTTE THAT RELATES TO SLUDGE MANAGEMENT FACILITIES AND AUTHORIZING THE CITY TO USE THE DESIGN-BUILD AND DESIGN-BUILD-OPERATE METHODS OF CONSTRUCTION TO BUILD WATER AND SEWER FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8.85 of the Charter of the City of Charlotte, being S.L. 2000-26, as amended, is repealed.

SECTION 2. Article III of Chapter 8 of the Charter of the City of Charlotte, being S.L. 2000-26, as amended, is amended by adding the following new section to read:

"Section 8.90. Construction, Design, and Operation of Water and Sewer Facilities.

(a) Unless a different meaning is required by the context, the following definitions shall apply in this section:

(1) City. – The City of Charlotte.

(2) Person. – An individual, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity.

(3) Water and sewer facilities. – One or more water supply and distribution systems and one or more wastewater collection, treatment, and disposal systems of all types. The term also includes all or any part of a water and sewer facility.

(b) To acknowledge the desirability of a single point of responsibility for the development of water and sewer facilities, and the economic and technical utility of contracts for water and sewer facilities that include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the City to

1 award a contract on the basis of factors other than cost alone, including, but not limited
2 to, facility design, operational experience, system reliability, long-term operational
3 costs, compatibility with sludge management and other water and sewer facilities,
4 environmental impact, and operation guarantees, this section establishes special
5 procedures for the construction and design or the construction, design, and operation of
6 water and sewer facilities. Accordingly, and notwithstanding the provisions of Article 8
7 of Chapter 143 of the General Statutes, or any general, special, or local law, a contract
8 entered into between the City and any person pursuant to this section may be awarded in
9 accordance with the following provisions for the award of a contract based upon an
10 evaluation of proposals submitted in response to a request for proposals prepared by or
11 for the City. Nothing in this section shall be construed to exempt the City from the
12 provisions of G.S. 143-128.2.

13 The City shall give notice that it is requesting proposals as follows: proposals shall
14 be invited by advertisement at least one week before the time specified for the opening
15 of the proposals in a newspaper having general circulation in the City. The
16 advertisement shall state the time and place where the request for proposals may be had,
17 and the time and place for opening of the proposals, and shall reserve to the City the
18 right to reject any or all proposals. All proposals shall be opened in public. Proposals
19 shall be sealed if the invitation to propose so specifies. Nothing in this paragraph limits
20 the City from publicizing the request for proposals by other means or from directly
21 soliciting proposals.

22 (c) The City shall require in its request for proposals that each proposal to be
23 submitted shall include all of the following:

24 (1) Information relating to the experience of the proposer on the basis of
25 which the proposer purports to be qualified to carry out all work
26 required by a proposed contract; the ability of the proposer to secure
27 adequate financing; and proposals for project staffing, implementation
28 of work tasks, and the carrying out of all responsibilities required by a
29 proposed contract.

30 (2) A proposal clearly identifying and specifying all elements of cost that
31 would become charges to the City, in whatever form, in return for the
32 fulfillment by the proposer of all tasks and responsibilities established
33 by the request for the proposal for the full lifetime of a proposed
34 contract, including, as appropriate, but not limited to, the cost of
35 planning, design, construction, operation, management, and/or
36 maintenance of any facility; provided that the City may prescribe the
37 form and content of the proposal and that, in any event, the proposer
38 must submit sufficiently detailed information to permit a fair and
39 equitable evaluation of the proposal.

40 (3) Any other information the City may determine to have a material
41 bearing on its ability to evaluate any proposal in accordance with this
42 section.

43 (d) Proposals received in response to the request for proposals may be evaluated
44 on the basis of a technical analysis of facility design, operational experience of the

1 technology to be utilized in the proposed facility, system reliability and availability,
2 efficiency, environmental impact and protection, required staffing level during
3 operation, projection of anticipated revenues from the materials produced by the
4 facility, net cost to the City for operation and maintenance of the facility for the duration
5 of time to be established in the request for proposals, and any other factors and
6 information set forth in the request for proposals that the City determined to have a
7 material bearing on its ability to evaluate any proposal.

8 (e) The City may make a contract award to any responsible proposer selected
9 pursuant to this section based upon a determination that the selected proposal is more
10 responsive to the request for proposals and may thereupon negotiate a contract with the
11 proposer for the performance of the services set forth in the request for proposals and
12 the response thereto. The determination shall be deemed to be conclusive.
13 Notwithstanding other provisions of Article 8 of Chapter 143 of the General Statutes, or
14 any other general, local, or special law, a contract may be negotiated and entered into
15 between the City and any person selected as a responsible proposer hereunder that may
16 provide for, but not be limited to, the following:

17 (1) A contract, lease, rental, license, permit, or other authorization to
18 design, construct, operate, and/or maintain a water and sewer facility,
19 upon whatever terms and conditions, consideration, and term or
20 duration, not to exceed 40 years, that may be agreed upon by the City
21 and the person.

22 (2) An obligation on the part of the City to deliver or cause to be delivered
23 to a water and sewer facility guaranteed quantities of water and/or
24 wastewater.

25 (f) The construction work for any facility or structure that is ancillary to the
26 water and sewer facility and that can be constructed efficiently and without substantial
27 interference with the construction of the water and sewer facility, as determined by the
28 City, shall be procured through competitive bidding procedures as described in Article 8
29 of Chapter 143 of the General Statutes. The ancillary facilities shall include, but shall
30 not necessarily be limited to, the following: road and administration buildings."

31 **SECTION 2.** This act is effective when it becomes law.