

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 610
HOUSE BILL 941

AN ACT CONCERNING SOLID WASTE FIRMS IN AREAS PROPOSED FOR
ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-35(3)a. is amended by deleting "garbage", and substituting "solid waste".

Sec. 2. G.S. 160A-47(3)a. is amended by deleting "garbage", and substituting "solid waste".

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

"§ 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 fifty 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
- (7) pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.

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

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

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers, and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or

residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the private firm under this subsection, such matters shall be determined by the Local Government Commission.

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

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

(g) If the city fails to offer a contract to the private firm within 30 days following the passage of an annexation ordinance, the private firm may appeal to the Local Government Commission. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150A of the General Statutes.

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

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

"§ 160A-49.3. 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-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 fifty 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
 - (7) pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.

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

- (1) a requirement that the private firm post a performance bond and maintain public liability insurance coverage;
- (2) a requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
- (3) a provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;
- (4) a provision that the city may serve customers not served by the firm on the effective date of annexation;
- (5) a provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds

unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

- (6) performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
- (7) a provision for monetary damages if there are violations of the contract or of performance standards.

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

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

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

(g) If the city fails to offer a contract to the private firm within 30 days following the passage of an annexation ordinance, the private firm may appeal to the Local Government Commission. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150A of the General Statutes.

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

Sec. 5. G.S. 160A-35(3)a. is amended by adding the following at the end: "A contract with a private firm to provide garbage collection services shall be an acceptable method of providing solid waste collection services."

Sec. 6. G.S. 160A-47(3)a. is amended by adding the following at the end: "A contract with a private firm to provide garbage collection services shall be an acceptable method of providing solid waste collection services."

Sec. 7. The last sentence of G.S. 160A-35(3)a. and the last sentence of G.S. 160A-47(3)a., as added by Sections 5 and 6 of this act, are amended by deleting "garbage", and substituting "solid waste".

Sec. 8. This act applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes is adopted on or after September 1, 1985, except that Sections 5 and 6 are effective upon ratification.

In the General Assembly read three times and ratified, this the 4th day of July, 1985.