

Article 16.

Public Enterprise.

Part 1. General Provisions.

**§ 160A-311. Public enterprise defined.**

As used in this Article, the term "public enterprise" includes:

- (1) Electric power generation, transmission, and distribution systems.
- (2) Water supply and distribution systems.
- (3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
- (4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.
- (5) Public transportation systems.
- (6) Solid waste collection and disposal systems and facilities.
- (7) Cable television systems.
- (8) Off-street parking facilities and systems.
- (9) Airports.
- (10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1971, c. 698, s. 1; 1975, c. 549, s. 2; c. 821, s. 3; 1977, c. 514, s. 2; 1979, c. 619, s. 2; 1989, c. 643, s. 5; 1991 (Reg. Sess., 1992), c. 944, s. 14; 2000-70, s. 3.)

**§ 160A-312. Authority to operate public enterprises.**

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise. (1971, c. 698, s. 1; 1973, c. 426, s. 51; 1975, c. 821, s. 5; 1979, 2nd Sess., c. 1247, s. 29; 1991 (Reg. Sess., 1992), c. 836, s. 1.)

**§ 160A-313. Financing public enterprise.**

Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a city shall have full authority to finance the cost of any public enterprise by levying taxes,

borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source on behalf thereof. (1971, c. 698, s. 1.)

**§ 160A-314. Authority to fix and enforce rates.**

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished or to be furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

- (a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.
- (2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, stormwater control measures in use by the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.
- (3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.
- (4) A city may adopt an ordinance providing that any fee imposed under this subsection may be billed with property taxes, may be payable in the same

manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

This subdivision applies only to the Cities of Creedmoor, Durham and Winston-Salem, the Towns of Bolton, Butner, Fairmont, Garner, Kernersville, Knightdale, La Grange, Morrisville, Pembroke, Proctorville, Rowland, St. Pauls, Stem, Wendell, and Zebulon, and the Village of Clemmons.

- (5) A city shall not impose a stormwater utility fee on a runway or taxiway located on military property.
- (6) For all airports other than those covered by the exemption in subdivision (5) of this subsection, a city shall list separately the amount of a stormwater utility fee levied on airport runways and taxiways from the amount levied on the remainder of the airport property. An airport shall be exempt from paying a stormwater utility fee levied on its runways and taxiways. To qualify for an exemption under this subdivision, an airport shall use the amount of savings realized from this exemption for attracting business to the airport and shall provide certification to the city that the savings realized shall be used for this purpose. Except as otherwise prohibited under federal law, and upon request, an airport shall provide the levying city with evidence that the full amount of savings realized from the exemption authorized under this subdivision has been used or encumbered for the purpose set forth in this subdivision. Any amount of savings realized from the exemption authorized under this subdivision that is not used or encumbered for the purpose set forth in this subdivision shall be remitted to the city to be used in accordance with applicable law governing the use of stormwater utility fee proceeds. Savings realized from the exemption authorized under this subdivision shall be in addition to, and not in lieu of, any local funding provided by the city to the airport.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. A city may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds accruing due to imposition of a surcharge imposed on another local government located within the State for use of the disposal facility, as authorized by G.S. 160A-314.1, to be used to support the other services supported by the city's general fund.

(a3) Revisions in the rates, fees, or charges for electric service for cities that are members of the North Carolina Eastern Municipal Power Agency must comply with the public hearing provisions applicable to those cities under G.S. 159B-16.1.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person

other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(b1) A city shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

- a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
- b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.
- c. The person is or becomes responsible for the bill for the service to the customer.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

- a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
- b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the city shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer.

(b3), (b4) Reserved.

(b5) **(Applicable to certain localities)** Except as provided in subsections (a1) and (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

This subsection applies only to the Cities of Creedmoor, Durham and Winston-Salem, the Towns of Butner, Garner, Kernersville, Knightdale, Morrisville, Stem, Wendell, and Zebulon, and the Village of Clemmons.

(c) **(Applicable to other localities)** Except as provided in subsection (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Notwithstanding subsection (b1) of this section, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

- (1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.
- (2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith.

- (f) (1) A city may adopt an ordinance providing that a fee charged by the city for sewer services and remaining unpaid for a period of 90 days may be collected in any manner by which delinquent personal or real property taxes can be collected. If the ordinance states that delinquent fees may be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property owned by the person contracting with the city for the service, and the ordinance shall provide for an appeals process. If a lien is placed on real property, the lien shall be valid from the time of filing in the office of the clerk of superior court of the county in which the service was provided and shall include a statement containing the name and address of the person against whom the lien is claimed, the name of the city claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service. A lien on real property is not effective against an interest in real property conveyed after the fees become delinquent if the interest is recorded in the office of the register of deeds prior to the filing of the lien for delinquent water or sewer services. No lien under this act shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service or availability fees and within 180 days of the date of the failure to pay for the service or fees. The lien may be discharged as provided in G.S. 44-48.

The city shall adopt an appeals process providing notice and an opportunity to be heard in protest of the imposition of such liens. The county tax office, once notified of the city's lien, shall include the lien amount on any tax bills printed subsequent to the notification. The county tax office shall add or remove liens from the tax bill at the request of the city (such as in the case of an appeal where the city decides to cancel the lien).

- (2) This section [subsection] applies only to the City of Locust and to the Towns of Bolton, Fairmont, La Grange, New London, Pembroke, Proctorville, Rowland, St. Pauls, and Stanfield.

(g) A city may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes. (1971, c. 698, s. 1; 1991, c. 591, s. 1; c. 652, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 46; 1995 (Reg. Sess., 1996), c. 594, s. 28; 2000-70, s. 4; 2005-441, ss. 3(a), (b), 4; 2009-302, s. 3(a), (b); 2010-59, ss. 1, 2; 2011-109, s. 1; 2012-55, s. 2; 2012-167, s. 2; 2013-413, s. 59.4(d); 2017-44, ss. 1, 2(a)-(c); 2017-132, s. 2; 2017-138, s. 4(a); 2023-137, s. 3(a).)

**§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid waste fees.**

(a) A city may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

A city may impose a fee for the use of a disposal facility provided by the city. Except as provided in this subsection, the fee for use may not exceed the cost of operating the facility. The fee may exceed those costs if the city enters into a contract with another local government located within the State to accept the other local government's solid waste and the city by ordinance levies a surcharge on the fee. The fee authorized by this paragraph may only be used to cover the costs of operating the facility. The surcharge authorized by this paragraph may be used for any purpose for which the city may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal.

(a1) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee. (1991, c. 652, s. 5; 2007-550, s. 10(b); 2013-413, s. 59.4(c).)

#### **§ 160A-315. Billing and collecting agents for certain sewer systems.**

Any city that maintains and operates a sewage collection and disposal system but does not maintain and operate a water distribution system is authorized to contract with the owner or operator of the water distribution system operating within the area served by the city sewer system to act as the billing and collection agent of the city for any charges, rents, or penalties imposed by the city for sewer services. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

#### **§ 160A-316. Independent water companies to supply information.**

The owner or operator of any independent or private water distribution system operating within a city that maintains and operates a sewage collection and disposal system shall furnish to the city upon request copies of water meter readings and any other water consumption records and data that the city may require to bill and collect its sewer rents and charges. The city shall pay the reasonable cost of supplying this information. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

**§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.**

(a) Connections. – Except as provided in subdivisions (1) and (2) of this subsection, a city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. The following provisions apply to a city's authority to require connection of an owner's premises to a water or sewer line:

- (1) A property owner shall be exempt from mandatory connection to a city's sewer if:
  - a. The city has inadequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.
  - b. The costs of connection, including the costs of underground piping and connections to the dwelling or building, exceed the costs of installing an on-site wastewater system authorized pursuant to Article 11 of Chapter 130A of the General Statutes. Determination of the comparative costs of connection shall be assessed by (i) a licensed soil scientist, as defined in G.S. 89F-3, (ii) an on-site wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes, or (iii) a plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes. If a property owner elects to install an on-site wastewater system in lieu of connection to the city's sewer system pursuant to this subdivision, (i) the on-site wastewater system shall comply with all applicable requirements of Article 11 of Chapter 130A of the General Statutes, and rules adopted thereunder, and (ii) the owner shall have sole responsibility for the system and its use and performance.
- (2) A property owner shall be exempt from a mandatory connection to a city's water supply if adequate water pressure cannot be achieved using the same piping size as the meter provides to the owner's premises. A city is prohibited from requiring a property owner to install a larger meter and corresponding larger piping connection, or imposing an increased fee, to achieve adequate water pressure. For purposes of this subdivision, the term "adequate water pressure" shall mean the average water pressure delivered to all connected customers within a one-quarter mile radius in either direction of the owner's point of connection. In order to establish the adequacy or inadequacy of water pressure

for purposes of this subdivision, a property owner shall submit to the city a determination of [the] same prepared by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes. In the event water pressure is determined to be inadequate, a property owner may elect, in lieu of connection to the city's water supply, to install a private drinking water well, as that term is defined under G.S. 87-85, which well shall be approved by the city if the well meets the requirements of Chapter 87 of the General Statutes and rules adopted thereunder. A city, however, shall have no liability for the quality or quantity of water, or water pressure, from a private drinking water well installed pursuant to this subdivision.

(a1) through (a3) Reserved for future codification purposes.

(a4) System Development Fees. – A city may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes.

(b) Solid Waste. – A city may require an owner of improved property to do any of the following:

- (1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.
- (2) Separate materials before the solid waste is collected.
- (3) Participate in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A city may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the city or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the city or its designee, then ownership of these materials is transferred to the city or its designee.
- (4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

(c) A city may impose a fee for the solid waste collection service provided under subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of collection.

(d) In accordance with G.S. 87-97.1, when developed property is located so as to be served by a city water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the city water line and the city shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well.

(e) The owner of real property subject to an agreement under Part 6 of Article 4A or Article 20 of Chapter 160A of the General Statutes that is denied connection to water or sewer by a city may, notwithstanding the agreement, seek to obtain water or sewer from any other unit of local government. If a court order impacts the provision of water or sewer to real property, the owner of real property denied the provision of water or sewer shall have standing to petition the court for an order for appropriate relief and the court shall, as promptly as possible, set any such petition for hearing. For purposes of this subsection, "impacts" shall include any effect or ramification that



prevents the owner of real property from seeking voluntary annexation by a city capable of providing water or sewer to that real property. (1917, c. 136, subch. 7, s. 2; C.S., s. 2806; 1971, c. 698, s. 1; 1979, c. 619, s. 14; 1981, c. 823; 1989, c. 741, s. 2; 1991, c. 698, s. 2; 1993, c. 165, s. 2; 1995, c. 511, s. 4; 2015-246, s. 3.5(f); 2017-138, s. 4(b); 2022-49, s. 5(a); 2023-90, s. 10(a); 2023-108, s. 12(a); 2023-137, s. 50.)

#### **§ 160A-318. Mutual aid contracts.**

(a) Any two or more cities, counties, water and sewer authorities, metropolitan sewage districts, sanitary districts, or private utility companies or combination thereof may enter into contracts with each other to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies under such terms and conditions as may be agreed upon. Mutual aid contracts may include provisions for furnishing personnel, equipment, apparatus, supplies and materials; for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid; for delegating authority to a designated official or employee to send aid upon request; and any other provisions not inconsistent with law.

(b) Officials and employees furnished by one party in aid of another party pursuant to a mutual aid contract entered into under authority of this section shall be conclusively deemed for all purposes to remain officials and employees of the aiding party. While providing aid to another and while traveling to and from another city or county pursuant to giving aid, they shall retain all rights, privileges, and immunities, including coverage under the North Carolina Workers' Compensation Act, as they enjoy while performing their normal duties.

(c) Notwithstanding any other provisions of law to the contrary, any party to a mutual aid contract entered into under authority of this section, may sell or otherwise convey or deliver to another party to the contract personal property to be used in restoring utility services pursuant to the contract, without following procedures for the sale or disposition of property prescribed by any general law, local act, or city charter.

(d) Nothing in this section shall be construed to deprive any party to a mutual aid contract of its discretion to send or decline to send its personnel, equipment, and apparatus in aid of another party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send personnel, equipment, or apparatus to another party to the contract, whether or not obligated by contract to do so. (1967, c. 450; 1971, c. 698, s. 1; 1991, c. 636, s. 3.)

#### **§ 160A-319. Utility franchises.**

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years. A franchise granted for a sanitary landfill shall be subject to all requirements pertaining thereto under G.S. 130A-294. A franchise for solid waste collection or disposal systems and facilities, other than sanitary landfills, shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

(b) For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives,

amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1975, c. 664, s. 11; 1991 (Reg. Sess., 1992), c. 1013, s. 2; 2006-151, s. 15; 2017-10, s. 3.2(c); 2018-114, s. 21(b).)

#### **§ 160A-320. Public enterprise improvements.**

(a) Authorization. – A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars (\$250,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project. (2005-426, s. 8(d).)

#### **§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.**

(a) A city is authorized to sell or lease as lessor any public enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274 or as provided in subsection (b) of this section, a city-owned public enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

(b) For the sale, lease, or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether such sale, lease, or discontinuance shall be undertaken. The referendum is to be conducted pursuant to the general and local laws applicable to special elections in such city. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959,

c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 489, s. 2; 2011-212, s. 1; 2018-5, s. 37.1(e).)

**§ 160A-322. Contracts for electric power and water.**

A city is authorized to enter into contracts for a period not exceeding 40 years for the supply of water, and for a period not exceeding 30 years for the supply of electric power or other public commodity or services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1.)

**§ 160A-323. Load management and peak load pricing of electric power.**

In addition and supplemental to the powers conferred upon municipalities by the laws of the State and for the purposes of conserving electricity and increasing the economy of operation of municipal electric systems, any municipality owning or operating an electric distribution system, any municipality engaging in a joint project pursuant to Chapter 159B of the General Statutes and any joint agency created pursuant to Chapter 159B of the General Statutes, shall have and may exercise the power and authority:

- (1) To investigate, study, develop and place into effect procedures and to investigate, study, develop, purchase, lease, own, operate, maintain, and put into service devices, which will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak demand threatens to overload the electric system or economies would result; and
- (2) To fix rates and bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the electric system. (1977, c. 232.)

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

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

- (1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.
- (2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

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

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

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

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

- (1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;
- (2) A requirement that the 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 firms, or by the city as to customers not served by the 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 in writing, delivered by certified mail to the firm in question with 30 days to cure, 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 existing at the time of notice provided pursuant to subsection (b) of this section, 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 firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which the bill making the annexation is enacted on or after January 1, 2007.

(g) If the city fails to offer a contract to the firm within 30 days following the effective date of the annexation act, the firm may appeal within 60 days following the effective date of the annexation act to the Local Government Commission for an order directing the city to offer a contract. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall order the city to pay to the firm a civil penalty of the amount of payments it finds that the city would have had to make under the contract, during the noncompliance period until the contract offer is made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B 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 30 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. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(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 introduction of the bill 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 revenues 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. (1989, c. 598, s. 1; 2006-193, s. 3.)

**§ 160A-325. Selection or approval of sites for certain sanitary landfills; solid waste defined.**

(a) The governing board of a city shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

- (1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).
- (2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.
- (3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(b) As used in this Part, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1991 (Reg. Sess., 1992), c. 1013, s. 3.)

**§ 160A-326. Limitations on rail transportation liability.**

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The City, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.2, or agent of: the City, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the City.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the City and all services performed by a railroad pursuant to a contract with the City in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right-of-way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail-related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the City or a railroad, or otherwise occupied by the City or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the City concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. – The City may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. –

(1) If the City enters into any contract authorized by subsection (b) of this section, the contract shall require the City to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the City, a liability insurance policy covering the liability of the parties to the contract, a

State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars (\$200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars (\$5,000,000).

- (2) If the City does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the City, the City shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) **Liability Limit.** – The aggregate liability of the City, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars (\$200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) **Effect on Other Laws.** – This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) **Applicability.** – This section shall apply only to municipalities with a population of more than 500,000 persons, according to the latest decennial census, or to municipalities that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 3; 2012-79, s. 1.14(f).)

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

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

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified

mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

- (1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.
- (2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.
- (3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

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

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

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

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



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

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

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

- (1) Collection. – The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.
- (2) Displacement. – Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:
  - a. Failure to renew a franchise agreement or contract with a private company.
  - b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.
  - c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.
  - d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.
  - e. Providing temporary collection services under a declared state of emergency.

- f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.
  - g. Contracting with a private company to continue its existing services or provide a different level of service at a negotiated price on terms agreeable to the parties.
- (3) Municipal solid waste. – As defined in G.S. 130A-290(18a).
  - (4) Unit of local government. – A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both. (2006-193, s. 4.)

**§ 160A-328. Local government landfill liaison.**

(a) A city that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

- (1) Ensure that the facility meets all local requirements.
- (2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.
- (3) Identify and notify the Department of potentially hazardous conditions at the facility.

(b) Entry pursuant to this section shall not constitute a trespass or taking of property. (2007-550, s. 11(b). )

**§ 160A-329. Provision of municipal services to certain properties.**

(a) A municipality shall provide municipal services as defined under subsection (b) of this section to any property if that property owner submitted a petition for voluntary annexation under Article 4A of this Chapter, and the municipal governing board voted on an annexation ordinance for that property but the annexation ordinance failed of adoption. This section applies if the property owner (i) submits to the governing board a notice exercising the provisions of this section within 60 days of this section becoming law and (ii) agrees in writing to all the requirements contained in any utility extension agreement that was presented to the governing board at the same meeting as the annexation that failed of adoption. The municipal governing board may not impose more burdensome requirements or commitments on the property owner that are inconsistent with the requirements and commitments that are contained in the utility extension agreement.

(b) For purposes of this section, prior to the effective date of the annexation of the property, the term "municipal services" only means water and sewer services, but only if the municipality has water and sewer capacity. For purposes of this section, prior to or after the effective date of annexation into a municipality, for any property subject to a declaration of covenants, conditions, and restrictions of a subdivision that permits an association to enter into agreement with utility providers prior to July 1, 2014, "municipal services" includes water service but not sewer service despite any language to the contrary in an executed and recorded utility extension agreement. For purposes of this section, prior to the effective date of annexation, the term "municipal services" specifically does not include any of the following services of the municipality: police protection, fire protection, solid waste services, or street maintenance services.

(c) Requirements and commitments contained in the utility extension agreement that was presented to the governing board at the same meeting as the annexation ordinance that failed of adoption shall continue as obligations of the agreement unless the city council relieves the property owner of the requirement or commitment. Those requirements and commitments include, but are not limited to, the committed elements of a development plan in a zoning map case approved by the county where the property is located. (2013-386, s. 1; 2014-47, s. 2.)

**§ 160A-330. Reserved for future codification purposes.**

Part 2. Electric Service in Urban Areas.

**§ 160A-331. Definitions.**

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

- (1) "Assigned area" means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.
- (1a) "Assigned supplier" means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.
- (1b) The "determination date" is
  - a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
  - b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
  - c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.
- (2) "Line" means any conductor located inside the city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, except as follows:
  - a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises.
  - b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (3) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

- (4) "Primary supplier" means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a city, or that has a conductor located within 300 feet of an area annexed by a city that is a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 52; 1997-346, s. 1; 1999-111, s. 1; 2003-24, s. 1; 2005-150, s. 2.)

**§ 160A-331.1: Repealed by Session Laws 2007-419, s. 3, effective August 21, 2007.**

**§ 160A-331.2. Agreements of electric suppliers.**

(a) The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries, or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city.

(b) Repealed by Session Laws 2007-419, s. 1, effective August 21, 2007.

(c) To the extent negotiations undertaken pursuant to subsection (b) of this section, as enacted by S.L. 2005-150, have not resulted in an agreement between a negotiating electric membership corporation and a negotiating city by May 31, 2007, jurisdiction shall immediately lie

in the North Carolina Utilities Commission to resolve all issues related to those negotiations. Either party to the negotiations may petition the Commission to exercise the jurisdiction conferred in this subsection upon the filing of a petition and the payment of a filing fee of five hundred dollars (\$500.00). In reaching its decision, the Commission shall include consideration of the public convenience and necessity. The Commission shall not consider rate differentials between the involved city and the involved electric membership corporation.

(d) Notwithstanding an order of the Commission issued pursuant to subsection (c) of this section:

- (1) Any electric membership corporation or city may furnish electric service to any consumer who desires service from that electric membership corporation or city at any premises being served by another electric membership corporation or city, or at premises which another electric membership corporation or city has the right to serve pursuant to subsection (c) of this section, upon agreement of the affected electric membership corporation or city, subject to approval by the Commission.
- (2) The Commission shall have the authority and jurisdiction, after notice to all affected electric membership corporations and cities and after a hearing, if a hearing is requested by any affected electric membership corporation or city, or any other interested party, to order any electric membership corporation or city which may reasonably do so to furnish electric service to any consumer who desires service from that electric membership corporation or city at any premises being served by another electric membership corporation or city pursuant to subsection (c) of this section or subdivision (1) of this subsection, or which another electric membership corporation or city has the right to serve pursuant to subsection (c) of this section or subdivision (1) of this subsection, and to order the other electric membership corporation or city to cease and desist from furnishing electric service to such premises, upon finding that service to the consumer by the electric membership corporation or city which is then furnishing service, or which has the right to furnish service to those premises, is or will be inadequate or undependable, or that the rates, conditions of service, or service regulations, applied to such consumer, are unreasonably discriminatory.

(e) Assignments or reassignments made or approved by the Commission pursuant to subsection (c) or (d) of this section shall be deemed to be service area agreements approved pursuant to subsection (a) of this section. (2005-150, s. 3; 2007-419, s. 1.)

#### **§ 160A-332. Electric service within city limits.**

(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date, as defined in G.S. 160A-331(1b), shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.
- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and

- located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
  - (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.
  - (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
  - (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
  - (6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.
  - (6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier for the premises, shall not have the right to serve those premises.
  - (7) Except as provided in subdivisions (1), (2), (3), (5), (6), and (6a) of this section, a secondary supplier shall not furnish electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier.

(b) In any city that is first incorporated after April 20, 1965, in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect before the city was incorporated until there is a primary supplier within the city.

(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within 30 days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1997-346, s. 2; 1999-111, s. 1; 2003-24, s. 1; 2005-150, ss. 4, 5; 2017-102, s. 30.)

#### **§ 160A-333. Temporary electric service.**

No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this Part if such premises were already constructed. The construction of lines for, and the furnishing of, temporary electric service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier that furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 53.)

#### **§ 160A-334. Authority and jurisdiction of Utilities Commission.**

Notwithstanding G.S. 160A-332 and 160A-333, if the North Carolina Utilities Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will be inadequate or undependable, or that rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory, the Commission shall have the authority and jurisdiction, after notice to each affected electric supplier, and after hearing, if a hearing is requested by an interested party, to:

- (1) Order a primary supplier that is subject to the jurisdiction of the Commission to furnish electric service to any consumer who desires service from the primary supplier at any premises served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this Part,

and to order such secondary supplier to cease and desist from furnishing electric service to such premises, or

- (2) Order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it or to any premises which it has the right to serve pursuant to other sections of this Part, if the consumer desires service from a primary supplier that is not subject to the jurisdiction of the Commission and which is willing to furnish service to such premises. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 54.)

**§ 160A-335. Discontinuance of service and transfer of facilities by secondary supplier.**

A secondary supplier may voluntarily discontinue its service to any premises and remove any of its electric facilities located inside the corporate limits of a city or sell and transfer such facilities to a primary supplier in such city, subject to approval by the North Carolina Utilities Commission, if the Commission determines that the public interest will not thereby be adversely affected. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

**§ 160A-336. Electric service for city facilities.**

No provisions of this Part shall prevent a city that is a primary supplier from furnishing its own electric service for city facilities, or prevent any other primary supplier from furnishing electric street lighting service to a city inside its corporate limits. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

**§ 160A-337. Effect of Part on rights and duties of primary supplier.**

Except for the rights granted to and restrictions upon primary suppliers contained in the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in any way the rights and duties of a primary supplier to furnish electric service to premises within the corporate limits of a city. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

**§ 160A-338. Electric suppliers subject to police power.**

No provisions of this Part shall restrict the exercise of the police power of a city over the erection and maintenance of poles, wires, and other facilities of electric suppliers in streets, alleys, and other public ways. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

**§§ 160A-339 through 160A-340. Reserved for future codification purposes.**