

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 393

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

Sponsors: Representatives Saunders, Samuelson (Primary Sponsors); Alexander, Carney, Earle, and Killian.

Referred to: Local Government I.

February 28, 2007

A BILL TO BE ENTITLED

1
2 AN ACT REPEALING THE SECTION OF THE CHARTER OF THE CITY OF
3 CHARLOTTE THAT RELATES TO SLUDGE MANAGEMENT FACILITIES
4 AND AUTHORIZING THE CITY TO USE THE DESIGN-BUILD AND
5 DESIGN-BUILD-OPERATE METHODS OF CONSTRUCTION TO BUILD
6 WATER AND SEWER FACILITIES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Section 8.85 of the Charter of the City of Charlotte, being S.L.
9 2000-26, as amended, is repealed.

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

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

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

17 (1) City. – The City of Charlotte.

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

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

25 (b) To acknowledge the desirability of a single point of responsibility for the
26 development of water and sewer facilities, and the economic and technical utility of
27 contracts for water and sewer facilities that include in their scope combinations of
28 design, construction, operation, management, and maintenance responsibilities over

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

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

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

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

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

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

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

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

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

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

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

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