



HOUSE BILL 831: Cities/Prohibited Service Agreements.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 9, 2021
Introduced by:	Rep. Iler	Prepared by:	Jennifer McGinnis
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *House Bill 831 would prohibit cities from entering into agreements with public water or sewer systems that condition the provision or extension of water or sewer services upon the annexation of the area to be served by the city or water or sewer service district.*

CURRENT LAW AND BILL ANALYSIS: Part 6 of Article 4A of Chapter 160A of the General Statutes authorizes cities to enter into binding agreements concerning future annexation. These agreements designate one or more areas that are not subject to annexation by one or more of the participating cities.

A "public water or sewer system" is defined in G.S. 160A-58.56(a) as "a water or sewer authority formed under Article 1 of Chapter 162A of the General Statutes; a metropolitan water or sewerage district formed under Article 4 or Article 5 of Chapter 162A of the General Statutes; a county water or sewer district formed under Article 6 of Chapter 162A of the General Statutes; a sanitary district formed under Article 2 of Chapter 130A of the General Statutes; a county-owned water or sewer system; a municipal-owned water or sewer system; a water or sewer utility created by an act of the General Assembly; or a joint agency providing a water or sewer system by interlocal agreement under Article 20 of Chapter 160A of the General Statutes."

Section 1 of House Bill 831 would provide that no annexation agreement entered into under Part 6 of Article 4A of the General Statutes by a city and a "public water or sewer system," as that term is defined in G.S. 160A-58.56(a), could condition the provision or extension of water or sewer services, or both, upon the annexation of the area to be served by the city or by the public water or sewer service district.

Part 1 of Article 20 of Chapter 160A of the General Statutes generally allows any unit of local government in this State and any one or more other units of local government in this State or any other state, to the extent permitted by the laws of the other state, to enter into contracts or agreements with each other in order to execute any undertaking. G.S. 160A-464 sets forth the terms required to be specified in any such contract or agreement.

Section 2 would provide that no contract or agreement establishing an undertaking by a city and a "public water or sewer system," as that term is defined in G.S. 160A-58.56(a), could condition the provision or extension of water or sewer services, or both, upon the annexation of the area to be served by the city or by the public water or sewer service district.

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EFFECTIVE DATE: This act would become effective January 1, 2021, and would apply to agreements or contracts entered into on or after that date.

BACKGROUND:

Per the effective date, the limitation established by the PCS would be applicable to agreements or contracts entered into on or after January 1, 2021. Thus, if the bill is enacted, contracts may exist that would be subject to, and potentially run afoul, of the limitation. Where the terms of an existing contract between parties may be impacted by legislation, constitutional concerns may arise pursuant to Article I, Section 10, Clause 1 of the United States Constitution, which provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .". However, not all laws affecting pre-existing contracts violate the Contracts Clause. The North Carolina Supreme Court has established a three-part test for analyzing an alleged violation of the Contracts Clause. Under that test, the reviewing court considers "(1) whether a contractual obligation is present, (2) whether the state's actions impaired that contract, and (3) whether the impairment was reasonable and necessary to serve an important public purpose." *Bailey v. State*, 348 N.C. 130, 500 S.E.2d 54 (1998) (citing *U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977)). Other courts, including the Supreme Court, have examined whether the state law under review has "operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co.*, 438 U.S., at 244, 98 S.Ct. 2716. The gravity of the impairment and public purpose for the impairment aside, there is some question whether municipal corporations can assert that their "creator" state has violated the Contracts Clause, and whether other Constitutional protections, including Due Process Clause and Equal Protection Clause, extend to local governments.

Chris Saunders, Staff Attorney, substantially contributed to this summary.