

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 925
Committee Substitute Favorable 5/26/11
Senate Rules and Operations of the Senate Committee Substitute Adopted 5/16/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H925-PCS11300-STx-92

Short Title: Annexation Reform 2.

(Public)

Sponsors:

Referred to:

May 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A VOTE OF THE RESIDENTS PRIOR TO THE ADOPTION OF
3 AN ANNEXATION ORDINANCE INITIATED BY A MUNICIPALITY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 7 of Article 4A of Chapter 160A of the General Statutes is
6 amended by adding a new section to read:

7 "**§ 160A-58.64. Referendum prior to involuntary annexation ordinance.**

8 (a) After the adoption of the resolution of intent under this Part, the municipality shall
9 place the question of annexation on the ballot. The municipal governing board shall notify the
10 appropriate county board or boards of elections of the adoption of the resolution of intent and
11 provide a legible map and clear written description of the proposed annexation area.

12 (b) In accordance with G.S. 163-58.55, the municipal governing board shall adopt a
13 resolution setting the date for the referendum and so notify the appropriate county board or
14 boards of elections.

15 (c) The county board or boards of elections shall cause legal notice of the election to be
16 published. That notice shall include the general statement of the referendum. The referendum
17 shall be conducted, returned, and the results declared as in other municipal elections in the
18 municipality. Only registered voters of the proposed annexation area shall be allowed to vote
19 on the referendum.

20 (d) The referendum of any number of proposed involuntary annexations may be
21 submitted at the same election; but as to each proposed involuntary annexation, there shall be
22 an entirely separate ballot question.

23 (e) The ballots used in a referendum shall submit the following proposition:

24 " FOR AGAINST

25 The annexation of (clear description of the proposed annexation area)."

26 (f) If less than a majority of the votes cast on the referendum are for annexation, the
27 municipal governing body may not proceed with the adoption of the annexation ordinance or
28 begin a separate involuntary annexation process with respect to that proposed annexation area
29 for at least 36 months from the date of the referendum. If a majority of the votes cast on the
30 referendum are for annexation, the municipal governing body may proceed with the adoption of
31 the annexation ordinance under G.S. 160A-58.55."

32 SECTION 2. G.S. 160A-58.55 reads as rewritten:



* H 9 2 5 - P C S 1 1 3 0 0 - S T X - 9 2 *

1 **"§ 160A-58.55. Procedure for annexation.**

2 (a) Resolution of Consideration. – Any municipal governing board desiring to annex
3 territory under the provisions of this Part shall first pass a resolution of consideration
4 identifying the area under consideration for annexation by either a metes and bounds
5 description or a map. The resolution of consideration shall remain effective for two years after
6 adoption and be filed with the municipal clerk. A new resolution of consideration adopted
7 before expiration of the two-year period for a previously adopted resolution covering the same
8 area shall relate back to the date of the previous resolution. Adoption of a resolution of
9 consideration shall not confer prior jurisdiction over the area as to any other municipality.

10 (b) Notice of Resolution of Consideration. – A notice of the adoption of the resolution
11 of consideration shall be published once a week for two successive weeks, with each
12 publication being on the same day of the week, in a newspaper having general circulation in the
13 municipality. The second publication shall be no more than 30 days following adoption of the
14 resolution of consideration. The resolution of consideration shall contain a map or description
15 of the area under consideration and a summary of the annexation process and time lines. A
16 copy of the resolution of consideration shall be mailed within 30 days after the adoption of the
17 resolution of consideration by first class mail to the property owners of real property located
18 within the area under consideration for annexation as shown by the tax records of the county. If
19 a proposed annexation extends across a county border into a county other than the county where
20 the majority of the area of the existing municipality is located, a copy of the resolution of
21 consideration shall be mailed within 30 days after the adoption of the resolution of
22 consideration by first class mail to the clerk of the board of county commissioners of that
23 county.

24 (c) Resolution of Intent. – At least one year after adoption of the resolution of
25 consideration, the municipal governing body may adopt a resolution of intent of the
26 municipality to proceed with the annexation of some or all of the area described in the
27 resolution of consideration. The resolution of intent shall describe the boundaries of the area
28 proposed for annexation, fix a date for a public informational meeting, ~~and~~ fix a date for a
29 public hearing on the question of annexation, ~~and fix a date for the referendum on~~ annexation.
30 The date for the public informational meeting shall be not less than 45 days and not more than
31 55 days following passage of the resolution of intent. The date for the public hearing shall be
32 not less than 130 days and not more than 150 days following passage of the resolution of intent.
33 The date of the referendum on annexation shall be set for the next municipal general election
34 that is more than 45 days from the date of the resolution of intent.

35 (d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water
36 and Sewer. – A combined notice of public informational meeting and public hearing shall be
37 issued as provided for in this subsection as follows:

- 38 (1) The notice shall be a combined notice that includes at least all of the
39 following:
- 40 a. The date, hour, and place of the public informational meeting.
 - 41 b. The date, hour, and place of the public hearing.
 - 42 c. A clear description of the boundaries of the area under consideration,
43 including a legible map of the area.
 - 44 d. A statement that the report required by G.S. 160A-58.53 will be
45 available at the office of the municipal clerk.
 - 46 e. An explanation of a property owner's rights under this section.
 - 47 f. A summary of the annexation process with time lines.
 - 48 g. A summary of the opportunity to vote in the referendum and
49 available statutory remedies for denying and appealing the
50 annexation and the failure to provide services.

- 1 h. Information on how to request to become a customer of the water and
2 sewer service, all forms to request that service, and the consequences
3 of opting in or opting out, as provided in G.S. 160A-58.56.
- 4 i. A clear description of the distinction between the public
5 informational meeting and the public hearing.
- 6 (2) The combined notice shall be given by publication of the information
7 required by sub-subdivisions (1)a., b., and c. of this subsection and a
8 statement regarding the availability of the information required by the
9 remaining sub-subdivisions of subdivision (1) of this subsection in a
10 newspaper having general circulation in the municipality once a week for at
11 least two successive weeks prior to the date of the public informational
12 meeting, with each publication being on the same day of the week. The date
13 of the last publication shall be not more than 10 days preceding the date of
14 the public informational meeting. In addition thereto, if the area proposed to
15 be annexed lies in a county containing less than fifty percent (50%) of the
16 land area of the municipality, the same publication shall be given in a
17 newspaper having general circulation in the area of proposed annexation. If
18 there is no such newspaper, the municipality shall post the notice in at least
19 five public places within the municipality and at least five public places in
20 the area to be annexed for 30 days prior to the date of public informational
21 meeting.
- 22 (3) The combined notice, together with the information about requesting water
23 and sewer service, shall be mailed within five business days of the passage
24 of the resolution of intent by first class mail to the property owners of real
25 property located within the area to be annexed as shown by the tax records
26 of the county. The person or persons mailing such notices shall certify to the
27 governing board that fact, and such certificate shall become a part of the
28 public record of the annexation proceeding and shall be deemed conclusive
29 in the absence of fraud. If a notice is returned to the municipality by the
30 postal service by the tenth day before the informational meeting, a copy of
31 the notice shall be sent by certified mail, return receipt requested, at least
32 seven days before the informational meeting. Failure to comply with the
33 mailing requirement of this subsection shall not invalidate the annexation
34 unless it is shown that the requirements were not substantially complied
35 with.
- 36 (4) If the governing board by resolution finds that the tax records are not
37 adequate to identify the property owners within the area to be annexed after
38 exercising reasonable efforts to locate the property owners, it may, in lieu of
39 the mail procedure required by subdivision (3) of this subsection, post the
40 notice at least 30 days prior to the date of the public informational meeting
41 on all buildings, on such parcels, and in at least five other places within the
42 area to be annexed as to those parcels where the property owner could not be
43 so identified. In any case where notices are placed on property, the person
44 placing the notice shall certify that fact to the governing board.
- 45 (e) Action Prior to Informational Meeting. – At least 30 days before the date of the
46 public informational meeting, the municipal governing board shall do all of the following:
- 47 (1) Approve the report provided for in G.S. 160A-58.53.
- 48 (2) Prepare a summary of the approved report for public distribution.
- 49 (3) Post in the office of the clerk all of the following:
- 50 a. The approved report provided for in G.S. 160A-58.53.
- 51 b. The summary of the approved report.

- 1 c. A legible map of the area to be annexed.
2 d. The list of the property owners, and associated mailing addresses, in
3 the area to be annexed that the municipality has identified and mailed
4 notice.
5 e. Information for property owners on how to request to become a
6 customer of the water service or sewer service and all forms to
7 request that service.

8 (4) If the municipality has a Web site, post on that Web site all of the
9 information under this section together with any forms to apply for water
10 and sewer service.

11 (5) Prepare a summary of the opportunity to vote in the referendum and
12 available substantive statutory remedies for ~~denying and~~ appealing the
13 annexation for public distribution.

14 (f) Public Informational Meeting. – At the public informational meeting, a
15 representative of the municipality shall first make an explanation of the report required in
16 G.S. 160A-58.53 and an explanation of the provision of major municipal services. The
17 explanation of the provision of services shall include how to request water service or sewer
18 service to individual lots, the average cost of a residential connection to the water and sewer
19 system, and the opportunity for installation of a residential connection under G.S. 160A-58.56.
20 A summary of the annexation process with time lines, a summary of opportunity to vote in the
21 referendum and available statutory remedies for ~~denying and~~ appealing the annexation, an
22 explanation of the provision of services, and information for requesting water service or sewer
23 service to individual lots and any forms to so request shall also be distributed at the public
24 informational meeting. Following such explanation, all property owners and residents of the
25 area proposed to be annexed as described in the notice of public informational meeting and
26 hearing, and all residents of the municipality shall be given the opportunity to ask questions and
27 receive answers regarding the proposed annexation.

28 (g) Public Hearing. – At the public hearing, a representative of the municipality shall
29 first make an explanation of the report required in G.S. 160A-58.53. Following such
30 explanation, all property owners and residents of the area proposed to be annexed as described
31 in the notice of public informational meeting and hearing, and all residents of the municipality,
32 shall be given an opportunity to be heard.

33 (h) The municipal governing board shall take into consideration facts presented at the
34 public hearing and shall have authority to amend the report required by G.S. 160A-58.53 to
35 make changes in the plans for serving the area proposed to be annexed so long as such changes
36 meet the requirements of G.S. 160A-58.53. At any regular or special meeting held no sooner
37 than the tenth day following the ~~public hearing and not later than 90 days following the public~~
38 ~~hearing,~~ certification of the election held under G.S. 160A-58.64, the governing board shall
39 have authority to adopt an ordinance, subject to subsection (i) of this section, extending the
40 corporate limits of the municipality to include all, or part, of the area described in the notice of
41 public hearing which the governing board has concluded should be annexed. The annexation
42 ordinance shall:

- 43 (1) Contain specific findings showing that the area to be annexed meets the
44 requirements of G.S. 160A-58.54.
45 (2) Describe the external boundaries of the area to be annexed by metes and
46 bounds.
47 (3) Include a statement of the intent of the municipality to provide services to
48 the area being annexed as set forth in the report required by G.S. 160A-58.53
49 and a time line for the provision of those services.
50 (4) Contain a specific finding that on the effective date of annexation, the
51 municipality will have funds appropriated in sufficient amount to finance

- 1 construction of any water and sewer lines stated in the report required by
2 G.S. 160A-58.53 to extend the water and sewer services into the area to be
3 annexed, or that on the effective date of annexation the municipality will
4 have authority to issue bonds in an amount sufficient to finance such
5 construction. If authority to issue such bonds shall be secured from the
6 electorate of the municipality prior to the effective date of annexation, then
7 the effective date of annexation shall be no earlier than the day following the
8 statement of the successful result of the bond election.
- 9 (5) Fix the effective date for annexation as June 30 next following the adoption
10 of the ordinance or the second June 30 following adoption of the ordinance,
11 but not before the completion of the water and sewer request ~~and petition to~~
12 ~~deny and~~ appeal periods are complete.
- 13 (6) Together, with the list of the property owners of parcels within the area
14 described in the annexation ordinance to which a notice was mailed under
15 subsection (d) of this section, be delivered within five business days to the
16 tax assessor and the board of elections of the county in which a majority of
17 the municipality lies.
- 18 ~~(7) Be summarized, and sent in accordance with subsection (i) of this section, to~~
19 ~~the list of the property owners within the area described in the annexation~~
20 ~~ordinance to which a notice was mailed under subsection (d) of this section~~
21 ~~together with a blank petition form, preprinted with name and address of the~~
22 ~~property owner.~~
- 23 (8) If a public body has a Web site, conspicuously post ~~a copy of the petition to~~
24 ~~deny annexation ordinance that a property owner in the real property located~~
25 ~~within the area described in the annexation ordinance may download,~~
26 ~~complete, and return to the county board of elections in accordance with~~
27 ~~subsection (i) of this section.~~ notice of the referendum until after the
28 certification of the election.
- 29 (i) Petition-Referendum Vote to Deny on Annexation Ordinance. – The following
30 procedures in G.S. 160A-58.64 shall apply to ~~this subsection:~~
- 31 (1) ~~Upon receipt of the resolution of intent and a list of property owners of the~~
32 ~~real property located within the area, the county tax assessor shall prepare a~~
33 ~~list of the real property parcels within the area, and forward it to the board of~~
34 ~~elections in the county where a majority of the parcels proposed for~~
35 ~~annexation are located. The board of elections shall prepare petitions for~~
36 ~~property owners of the real property located within the area described in the~~
37 ~~resolution of intent to sign opposing the annexation ordinance.~~
- 38 (2) ~~A petition shall include the names of the property owners of the parcel of~~
39 ~~real property listed individually, a signature line for each owner, and a~~
40 ~~statement that the person signing is petitioning to deny the annexation.~~
- 41 (3) ~~The board of elections shall mail a petition to the address of record for those~~
42 ~~real property owners within five business days of receipt from the county tax~~
43 ~~assessor of the list.~~
- 44 (4) ~~The board of elections shall provide two methods by which property owners~~
45 ~~of the real property located within the area described in the annexation~~
46 ~~ordinance may sign a petition form prepared by the board of elections: (i) in~~
47 ~~person or (ii) by submitting the signed petition form by mail. The board of~~
48 ~~elections shall also accept signatures signed on a petition form prepared by~~
49 ~~the board of elections, but collected by another, if that petition form is~~
50 ~~returned to the board of elections in a sealed container.~~

- 1 (5) ~~If the signed petition is one that was mailed under subdivision (h)(7) of this~~
2 ~~section and the signer is not the same as the preprinted name on the form, the~~
3 ~~signed petition shall be notarized and accompanied by a copy of the legal~~
4 ~~authority for the signature of the person signing a petition.~~
- 5 (6) ~~If a petition is returned as undeliverable to the board of elections, the board~~
6 ~~of elections shall send the petition return receipt requested. If the petition is~~
7 ~~returned again, the board of elections shall not include that property owner~~
8 ~~in the total number of eligible property owners.~~
- 9 (7) ~~If there is a change in ownership of real property after the date of the~~
10 ~~resolution of consideration until 30 days after the date of the adoption of the~~
11 ~~annexation ordinance, the new owner of the real property shall be considered~~
12 ~~the eligible owner of real property.~~
- 13 (8) ~~The board of elections shall accept signatures on the petition until 130 days~~
14 ~~after the adoption of the annexation ordinance.~~
- 15 (9) ~~The determination of the results by the board of elections of the petition~~
16 ~~period shall be observed by three property owners from the area proposed~~
17 ~~for annexation, chosen by lot by the board of elections from among those~~
18 ~~who request to serve in this role, and three persons designated by the~~
19 ~~municipality. A majority of the property owners of a single parcel of real~~
20 ~~property must sign the petition before the board of elections may count that~~
21 ~~parcel as having submitted a petition to deny annexation.~~
- 22 (10) ~~Within 10 business days after the close of the signature period, the board of~~
23 ~~elections shall certify to the municipal governing body the number of~~
24 ~~petitions signed by eligible property owners of the real property located~~
25 ~~within the area described in the annexation ordinance.~~
- 26 (11) ~~If the board of elections delivers to the municipal governing board petitions~~
27 ~~signed by eligible property owners of at least sixty percent (60%) of the~~
28 ~~parcels located within the area described in the annexation ordinance as~~
29 ~~provided in this subsection, the annexation shall be terminated and the~~
30 ~~municipality may not adopt a resolution of consideration for the area~~
31 ~~described in the annexation ordinance for at least 36 months.~~
- 32 (12) ~~This subsection shall not apply to any property owner of real property~~
33 ~~located within the area described in the annexation ordinance that is~~
34 ~~completely surrounded by the municipality's primary corporate limits.~~
- 35 (13) ~~any annexation under this Part. The municipality shall reimburse the board~~
36 ~~or boards of elections the costs of the petition process referendum required~~
37 ~~under this subsection. G.S. 160A-58.64.~~
- 38 (j) Effect of Annexation Ordinance. – From and after the effective date of the
39 annexation ordinance, the territory and its citizens and property shall be subject to all debts,
40 laws, ordinances, and regulations in force in such municipality and shall be entitled to the same
41 privileges and benefits as other parts of such municipality.
- 42 (k) Reserved.
- 43 (l) Reserved.
- 44 (m) Simultaneous Annexation Proceedings. – If a municipality is considering the
45 annexation of two or more areas which are all adjacent to the municipal boundary but are not
46 adjacent to one another, it may undertake simultaneous proceedings under authority of this Part
47 for the annexation of such areas.
- 48 (n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the
49 effective date of annexation and not later than 15 months from the effective date of annexation,
50 any property owner in the annexed territory shall believe that the municipality has not followed
51 through providing services as set forth in the report adopted under G.S. 160A-58.53 and

1 subsection (e) of this section, the property owner may apply for a writ of mandamus. Relief
2 may be granted by the judge of superior court if the municipality has not provided the services
3 set forth in its plan submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the
4 same basis and in the same manner as such services were provided within the rest of the
5 municipality prior to the effective date of annexation and those services are still being provided
6 on substantially the same basis and in the same manner within the original corporate limits of
7 the municipality. If a writ is issued, costs in the action, including reasonable attorneys' fees for
8 such aggrieved property owner, shall be charged to the municipality.

9 (o) Reports to the Local Government Commission. – The municipality shall report to
10 the Local Government Commission as follows:

11 (1) As to whether police protection, fire protection, solid waste services, and
12 street maintenance services were provided in accordance with
13 G.S. 160A-58.53(3)a., within 30 days after the effective date of the
14 annexation. Such report shall be filed no more than 30 days following the
15 expiration of the 30-day period. If the Local Government Commission
16 determines that the municipality failed to deliver police protection, fire
17 protection, solid waste services, or street maintenance services as provided
18 for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the
19 annexation, the Local Government Commission shall notify the municipality
20 that the municipality may not count any of the residents as part of the
21 population of the municipality for the purpose of receiving any State,
22 federal, or county dollars distributed based on population until all of the
23 services are provided.

24 (2) As to whether the extension of water and sewer lines was completed within
25 the time period specified in G.S. 160A-58.53(3), within six months after the
26 effective date of the annexation ordinance, and again within three and
27 one-half years of the effective date of the annexation ordinance or upon the
28 completion of the installation, whichever occurs first. If the municipality
29 failed to deliver either water or sewer services, or both, as provided for in
30 G.S. 160A-58.53(3)b. within three and one-half years after the effective date
31 of the annexation, the municipality shall stop any other annexations in
32 progress and may not begin any other annexation until the water and sewer
33 services are provided. The municipality shall adopt a resolution of
34 consideration to begin again any annexation that is stopped due to this
35 subdivision."

36 **SECTION 4.** G.S. 160A-58.51(2) reads as rewritten:

37 "(2) Eligible property owner. – A property owner who is eligible to sign a
38 ~~petition to deny an annexation ordinance or a property owner who is eligible~~
39 to be notified of the opportunity to have water lines and sewer lines and
40 connections installed at no cost to the property owner. ~~A property owner is~~
41 ~~eligible to sign a petition to deny an annexation ordinance if the property~~
42 ~~owner held a freehold interest in the property, determined as of the date of~~
43 ~~the resolution of consideration.~~ A property owner is eligible to be notified of
44 the opportunity to have water lines and sewer lines and connections installed
45 at no cost to the property owner if that property owner held a freehold
46 interest in the real property to be annexed as of the date of the combined
47 notice of public informational meeting and public hearing."

48 **SECTION 5.** G.S. 160A-60(a) reads as rewritten:

49 "(a) Within 60 days following the ~~close of the signature period under~~
50 ~~G.S. 160A-58.55(i),~~ adoption of the annexation ordinance, any property owner of real property
51 located within the area described in the annexation ordinance who believes that property owner

1 will suffer material injury by reason of the failure of the municipal governing board to comply
2 with the procedure or to meet the requirements set forth in this Part as they apply to the
3 annexation may file a petition in the superior court of the county in which the municipality is
4 located seeking review of the action of the governing board."

5 **SECTION 6.** This act becomes effective July 1, 2012, and applies to any
6 annexation ordinance adopted under Part 7 of Article 4A of Chapter 160A of the General
7 Statutes on or after that date.