HOUSE BILL 845:
Annexation Reform Act of 2011

2011-2012 General Assembly

Committee:	House Finance	**Date:**	May 10, 2011
Introduced by:	Reps. LaRoque, Dollar, Owens	**Prepared by:**	Kory Goldsmith and Giles Perry Staff Attorneys
Analysis of:	PCS to Second Edition H845-CSRCx-22		

SUMMARY: The proposed committee substitute for House Bill 845 makes substantive changes to the involuntary annexation process for all municipalities.

CURRENT LAW: North Carolina law sets forth four basic ways in which a town or city may annex an area into its corporate limits:

- **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city through local acts.
- **Voluntary Contiguous Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation.
- **Voluntary Satellite Annexation**. This method allows a town or city to annex a non-contiguous area into the town or city limits, with the agreement of the property owner.
- **Involuntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed through a statutorily prescribed process. The statutorily prescribed process is different for cities of less than 5,000 people than it is for larger cities.

BILL ANALYSIS:

Amends ***involuntary contiguous annexation*** in the following ways:

Section 1. Repeals the Part 2 of Article 4A of Chapter 160A of the General Statutes, Annexation of Cities of Less than 5,000.

Sections 2 – 6 recodify selected provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes (Annexation by Cities of 5,000 or more) and places those provisions in a new Part 7 created in Section 8 of the bill.

Section 7 repeals the remaining provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes , Annexation by Cities of 5,000 or more.

Section 8 creates a new Part 7 of Article 4A of Chapter 160A of the General Statutes to govern involuntary annexation by all municipalities in North Carolina, regardless of size.

Section 9 sets forth the procedures for annexation under the new Part 7 as follows:

- Prerequisites for Annexation
  - The area to be annexed must comply with the criteria set forth in the statute for urban density, etc.
  - A plan must be in place to provide the following services, within the time frames stated, on substantially the same basis and in the same manner as each service is provided within the rest of the municipal limits:
    - At the time of annexation: Police, Fire, Solid waste collection, Street maintenance
    - Within 3 ½ years of annexation: Water and Sewer
- Character of the Area to be Annexed – the property to be annexed must meet all of the following:

- Must be adjacent or contiguous to the municipal boundaries, with at least 1/8 of the aggregate external boundaries of the area to be annexed coinciding with the municipal boundary.
- Cannot be part of another municipality.
- Is one of the following:
  - Completely surrounded by the municipal limits.
  - Is either:
    - between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, OR
    - adjacent, on at least 60% of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes.
  - Developed for urban purposes. Developed for urban purposes is any one of the following criteria:
    - Has a total resident population equal to at least 2.3 persons for each acre.
    - Has a total resident population equal to at least 1 person per acre, and is subdivided into lots and tracts such that at least 60% of the total acreage consists of lots and tracts 3 acres or less in size and such that at least 65% of the total number of lots and tracts are 1 acre or less in size.
    - Is so developed that at least 60% of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least 60% of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.
    - Is the entire area of any county water and sewer district, only if the municipality operates the sewer system and the entire territory is annexed in one annexation proceeding
    - All the tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes

In fixing municipal boundaries and determining whether an area is developed for urban purposes, the municipality shall do all of the following:

- Use recorded property lines and streets as boundaries.
- Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.
- Not use a connecting corridor consisting solely of a street or street right-of-way to establish contiguity.
- Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.
- Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such

facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.

- Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).

- Procedure for Annexation
  - Resolution of Consideration. – Must be adopted at least one year, but not more than 2 years prior to the resolution of intent. Property owners must be mailed a copy of the resolution.
  - Resolution of Intent. – Adopted at least one year after the resolution of consideration, describing the area to be annexed, that complies with the criteria of area to be annexed.
  - Public Informational Meeting. – Held at least 45, but not more than 55, days after the adoption of the resolution of intent. An official from the municipality is to explain the annexation process and answer questions of property owners and residents of the area to be annexed and of the municipality.
  - Public Hearing. – To be held at least 130, but not more than 150, days after the public informational meeting, to accept comment from the property owners and residents of the area to be annexed and of the municipality. Prior to the public hearing, the property owners must be given an opportunity to opt into the water and sewer service at no cost.
  - Annexation Ordinance. – May be adopted at least 10, but not more than 90, days after the public hearing. Must set an effective date of June 30, either of that year or the following year.
  - Petition to Deny Annexation. – If the County Tax Assessor delivers to the municipal governing board petitions to deny annexation signed by eligible property owners of at least 60% of the parcels within the area to be annexed, then the annexation is terminated, and the municipality cannot begin the involuntary annexation process on that area again for 36 months.
  - Report to the Local Government Commission on provision of services to the area annexed. – 30 days after the effective date of the annexation, the municipality must report to the LGC as to whether the fire, police, solid waste collection, street maintenance and water/sewer services have been provided. If fire, police, solid waste collection and street maintenance services have not been provided within the 30 days, then the municipality may not include the population of the annexed area for purposes of monies distributed based on population by the State, federal or county government. If the water/sewer services have not been provided, then the municipality has to report again at the completion of the installation of the services or within 3 ½ years, whichever is earlier. If the municipality has not provided the water/sewer services within 3 ½ years, the municipality must stop, and may not begin, any other annexations until the installation is completed.
- Provision of Services – Generally, must be provided on substantially the same basis and in the same manner as within the corporate limits.
  - Fire, Police, Solid Waste Collection, Street Maintenance. – The municipality may provide the service directly, or contract for the provision of the services. Either way, each service must be in place on the date of annexation.
  - Water and Sewer –The water and sewer service to the annexed area shall be provided by the municipality within three and one half years of the effective date of the annexation ordinance. The municipality shall provide water and sewer lines and connections at no,

or reduced, costs other than periodic fees to all property owners requesting the service within the process set out below:

- After passage of the resolution of intent, the property owners of real property located within the area proposed to be annexed shall be notified in writing, within five business days of the passage of the resolution of intent, of the opportunity to have water and sewer or both installed at no cost to the property owner, if the property owners a majority of the parcels respond positively to the opportunity. If a property owner fails to respond or responds negatively within 65 days, the property owner will be sent a reminder notice and will have 30 additional days to request water and sewer or both at no charge,. If the property is other than residential, that property will be given a credit in the amount of the average residential installation costs.
- If the property owners a majority of parcels do not respond positively to the opportunity the municipality may still go forward with the annexation. If it does, the municipality is not required to provide water or sewer to the annexed area, but if it does and if a property owner requests to be provided service, the municipality may be charged as described below.
- Any residential property owner who does not initially request water and sewer may do so later, but may be charged the following percentage of the average residential installation cost:
    - In the 1st year of the annexation – up to 50%.
    - In the 2nd year of the annexation – up to 60%
    - In the 3rd year of the annexation - up to 70%
    - In the 4th year of the annexation - up to 80%
    - In the 5th year of the annexation - up to 90%

The municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become, a customer of the water and sewer system.

- Appeal
    - Transfers the current process for appeal from G.S. 160A-50, and makes conforming changes:
        - Within 60 days of the close of the time to sign a petition to deny, a property owner who believes they will suffer material injury by reason of the failure of the municipality to comply with the annexation procedure may file petition seeking review.
        - The court is to review and take evidence intended to show:
            - That the statutory procedure was not followed
            - That the prerequisites for annexation were not met
            - That the area annexed did not comply with the statutory requirements
            - That the provisions of the Declaration of Policy in G.S. 160A-58.50 have not been met
        - Remedies for the court:
            - Affirm the annexation without change.
            - Remand to the municipality for further proceedings.
            - Remand to the municipality for amendment to the boundaries.
            - Remand the report to the municipality for amendment on the plan for providing services or to correct errors in the city's estimates.
            - Declare the ordinance null and void.

Section 10 amends ***voluntary contiguous annexation*** in the following ways:

1. Requires the annexation of contiguous "distressed areas" if the following requirements are met:
    a. 51% of the households have incomes that are 200% or less than the US Census poverty thresholds
    b. The population of the area seeking to be petitioned is no more than 10% of the municipality and 1/8th of the aggregate external boundaries are contiguous to the municipality
    c. The owners of at least 75% of the parcels submit a signed petition to the governing board.
    d. If the capital costs to the municipality of extending water and sewer to all parcels does not exceed certain thresholds, as certified by the Local Government Commission.
2. Allows the annexation of contiguous "distressed areas" upon petition of two-thirds of the resident households located in the area.
3. Prohibits the use of a street as a connecting corridor to establish contiguity.

Section 11 adds a new Part 8 to Article 4A of Chapter 160A that requires all annexations to be recorded and reported in the same manner as under G.S. 160A-29. It also requires that in order for an agreement regarding annexation must be recorded in order to be enforceable.

Sections 11.1 requires the Department of Commerce and **Section 11.2** requires the Division of Water Quality to adopt guidelines for the awarding of Community Development Block Grants and other grants to cities that annex areas under Article 4A of Chapter 160A.

Section 12 provides that the act (except Sections 10, 11.1 and 11.2) does not apply to any municipality that in its charter requires that an annexation must be approved by (i) either the voters in a referendum or the request of a majority of the property owners; (ii) the voters in a referendum; or (iii) the request of a majority of the property owners.

EFFECTIVE DATE: When the act becomes law, and applies to annexations initiated by municipalities on or after that date and to voluntary petitions for annexation presented on or after that date. Involuntary Annexations initiated prior to the effective date of this act by any action but for which an annexation ordinance has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of Article 4A of Chapter 160A of the General Statutes as enacted by this act

Erika Churchill,staff attorney, substantially contributed to this summary.

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