

1997

**HOUSE
LOCAL & REGIONAL
GOVERNMENT I**

MINUTES



Rep. J. Sam Ellis
Chairman



R. Eugene Rogers, RMM



Cary D. Allred



Charles M. Buchanan



James C. Carpenter



W. Pete Cunningham



Andrew Dedmon



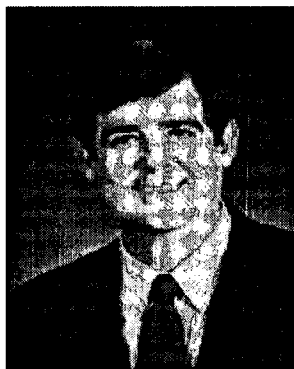
Edwin M. (Sandy) Hardy



John W. (Bill) Hurley



Joe L. Kiser



Dennis Reynolds



Drew Saunders



Timothy N. Tallent

HOUSE COMMITTEE ON LOCAL & REGIONAL GOVERNMENT I

1997/98 SESSION

MEMBER	CLERK	PHONE	OFFICE	SEAT
Rep. J. Sam Ellis, Chairman	Susan Everett Committee Clerk	733-5821	1303	78
Rep. Cary D. Allred	Jean Allred	733-5886	2223	11
Rep. Charles M. Buchanan	Shirley Phillips	733-5825	536	4
Rep. James C. Carpenter	Kara McCraw	733-5777	537	85
Rep. Edwin M. (Sandy) Hardy	Joel Raupe	715-3019	417A	100
Rep. Joe L. Kiser	Marilyn Holder	733-5803	1313	86
Rep. Dennis Reynolds	Tina Covington	733-5820	533	76
Rep. Timothy N. Tallent	Joyce Bulluck	733-5934	1104	73
Rep. R. Eugene Rogers, RMM	Judy Veorse	715-3023	416A	35
Rep. W. Pete Cunningham	Sylvia Green	733-5755	607	92
Rep. Andrew Dedmon	Donna Abu Harb	733-5654	1211	114
Rep. John W. (Bill) Hurley	Dot Anderson	733-5859	1004	71
Rep. Drew Saunders	Ruth Fish	733-5530	1017	110
Giles Perry, Committee Counsel		733-2578	545	

revised
2-21-97

ATTENDANCE

LOCAL AND REGIONAL GOVERNMENT I

(Name of Committee)

[illegible]

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

HOUSE: LOCAL & REGIONAL GOVERNMENT I

Valid Through 3-SEP-1997

1997-98 Regular Session

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 8	CARPENTER J	REPEAL MACON HUNTING RESTRICTIONS	R -CH. SL 97-0021	02-24-97	03-03-97
H 11	NICHOLS	SCHOOL SNOW-DAY FLEXIBILITY	*S -REF TO COM ON ED/HIED	02-03-97	02-18-97
H 42	DAVIS D	CAROLINA TRACE/LAKE ROYALE	*R -CH. SL 97-0294	02-05-97	02-25-97
H 63	NICHOLS	RIVER BEND ZONING/ANNEXATION	*R -CH. SL 97-0363	02-06-97	02-18-97
H 68	CRAWFORD	ROANOKE RAPIDS BICYCLE DISPOSITION	S -REF TO COM ON ST GVT	02-06-97	03-04-97
H 69	CRAWFORD	ROANOKE RAPIDS HOUSING CODE	S -REF TO COM ON ST GVT	02-06-97	03-04-97
H 70	CRAWFORD	ROANOKE RAPIDS STRUCTURES	*R -CH. SL 97-0101	02-06-97	03-04-97
H 71	CRAWFORD	HALIFAX-ROANOKE RAPIDS AIRPORT	R -CH. SL 97-0275	02-06-97	03-04-97
H 75	WILKINS	PERSON SCHOOL BOARD ELECTIONS	R -CH. SL 97-0087	02-10-97	04-08-97
H 84	MORGAN	PINEHURST COUNCIL TERMS	HF-POSTPONED INDEFINITELY	02-10-97	02-18-97
H 92=	ELLIS	ANNEXATION/MUNICIPAL SERVICES	H -CAL PURSUANT RULE 36 (A)	02-11-97	02-18-97
H 93=	ELLIS	ETJ CHANGES	H -CAL PURSUANT RULE 36 (A)	02-11-97	02-18-97
H 94=	ELLIS	ANNEXATION CHANGES	*H -RE-REF COM ON FINANCE	02-11-97	04-09-97
H 99=	HUNTER H	CAMDEN/BURKE SCHOOL AQUISITION	*R -CH. SL 97-0409	02-11-97	04-01-97
H 100	HUNTER H	HERTFORD SCHOOL ELECTION DATE	R -CH. SL 97-0043	02-11-97	04-08-97
H 112	OWENS	CAMDEN SAFETY ZONE	*R -CH. SL 97-0108	02-12-97	04-23-97
H 116=	ARNOLD	COLUMBUS & BRUNSWICK ALLIGATORS	*H -REF TO COM ON RULES	02-12-97	02-26-97
H 118=	SMITH	ATLANTIC BEACH NO-WAKE ZONE	H -REF TO COM ON LOC&RGI	02-12-97	
H 120	DAVIS D	CAROLINA TRACE INCORPORATED	H -REF TO COM ON LOC&RGI	02-12-97	
H 146	GRADY	JACKSONVILLE SITE PLAN REVIEW	R -CH. SL 97-0359	02-13-97	04-28-97
H 233	FOX	NO FIREARMS DISCHARGED NEAR SCHOOLS	*R -CH. SL 97-0128	02-17-97	04-23-97
H 269	ALLRED	BURLINGTON, WAYNE, PITT LOCAL ACT	*H -COM SUB RULED MATERIAL	02-18-97	02-25-97
H 281	STARNES	ALEXANDER CO. COMM. VACANCIES	R -CH. SL 97-0088	02-19-97	03-04-97
H 283	CULPEPPER	PERQUIMANS SCHOOL ACQUISITION	R -CH. SL 97-0162	02-20-97	04-01-97
H 286	ARNOLD	DORTCHES/ROCKY MOUNT BOUNDARIES	*S -REF TO COM ON RULES &	02-20-97	03-11-97
H 293	MOSLEY	PARKWOOD ANNEXATIONS	H -RE-REF COM ON FINANCE	02-24-97	04-15-97
H 294	MOSLEY	PARKWOOD ANNEXATION REFERENDA	H -RE-REF COM ON FINANCE	02-24-97	04-15-97
H 298	HILL	COLUMBUS AIRPORT AUTH. MEMBERSHIP	*R -CH. SL 97-0090	02-24-97	03-11-97
H 314	SUTTON	ABOLISH ROBESON CORONER	R -CH. SL 97-0051	02-25-97	04-15-97
H 335	NICHOLS	GRANTSBORO INCORPORATED	*H -CAL PURSUANT RULE 36 (A)	02-26-97	03-25-97

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.

* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session		HOUSE: LOCAL & REGIONAL GOVERNMENT I		Valid Through 3-SEP-1997	
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 346	CRAWFORD	ROANOKE RAPIDS OCCUPANCY TAX	H -REF TO COM ON LOC&RGI	02-27-97	
H 614	ELLIS	SWIFT CREEK INCORPORATED	*HF-FAILED 2ND READING	03-26-97	05-06-97
H 758=	INSKO	ORANGE ADMISSIONS TAX	*H -RE-REF COM ON FINANCE	04-02-97	06-04-97
H 759=	INSKO	CHATHAM CONVEYANCE ACT	HF-REPTD UNFAV	04-02-97	06-03-97
H 760=	INSKO	CARRBORO CHARTER AMENDMENTS	*H -RE-REF COM ON RULES	04-02-97	06-04-97
H 761=	INSKO	ORANGE LOCAL ACT-2	*R -CH. SL 97-0407	04-02-97	04-28-97
H 762=	INSKO	CHAPEL HILL OMNIBUS ACT	*H -RE-REF COM ON FINANCE	04-02-97	05-21-97
H 765=	BRASWELL	GOLDSBORO ROOM TAX USE	H -REF TO COM ON LOC&RGI	04-02-97	
H 807	GRADY	ON SLOW SCHOOL ACQUISITION	*H -RE-REF COM ON APP-CAP	04-03-97	05-20-97
H 808	MINER	CARY TREE ORDINANCES	*H -RE-REF COM ON RULES	04-03-97	04-28-97
H 812=	RUSSELL	WAYNE/NAHUNTA PROPERTY CONVEYANCE	S -REF TO COM ON ST GVT	04-07-97	04-29-97
H 836=	WRIGHT	NEW HANOVER AIRPORT DEVELOP ZONE	*R -CH. SL 97-0415	04-07-97	04-16-97
H 841=	HENSLEY	ESTABLISH SWIFT CREEK JOINT ZONING	H -REF TO COM ON LOC&RGI	04-07-97	
H 877	MCCOMAS	KURE BEACH EROSION CONTROL	R -CH. SL 97-0094	04-07-97	04-22-97
H 879	MILLER G	DURHAM BOARD OF ADJUSTMENT VOTES	R -CH. SL 97-0165	04-07-97	04-28-97
S 85=	MARTIN R	WILSON DEER HUNTING	*R -CH. SL 97-0004	02-25-97	03-11-97
S 363	PAGE	HARNETT COMM. COLL. ACQUISITION	R -CH. SL 97-0042	04-08-97	04-15-97
S 529	RAND	HOPE MILLS/WEAVERVILLE ANNEXATIONS	*R -CH. SL 97-0151	04-28-97	05-13-97
S 585	WEINSTEIN	LUMBERTON/SHELBY ROOM TAX CHANGES	*R -CH. SL 97-0361	04-30-97	06-25-97
S 648=	ALBERTSON	WALLACE MAYOR	R -CH. SL 97-0321	04-22-97	05-13-97
S 666	REEVES	WAKE STREET/ALLEY CLOSURE	H -RE-REF COM ON LOC&RGI	07-02-97	
S 677	CONDER	REPEAL ALBEMARLE FIREMEN'S PENSION	R -CH. SL 97-0052	04-24-97	05-13-97
S 698=	KERR	WAYNE/NAHUNTA PROPERTY CONVEYANCE	R -CH. SL 97-0170	04-15-97	05-13-97
S 713	REEVES	RALEIGH FIREMEN'S SUPP RETIREMENT	S -PRES. TO GOV. 08-19	04-24-97	06-25-97

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BOLD LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

February 18, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** held its first meeting of the 1997 Long Session on February 18, 1997, at 11:05 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Rep. Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages David Wood and Robert Branch. He then welcomed new members and invited each to introduce himself.

The following bills were discussed:

HB 84 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THREE OF THE MEMBERS ELECTED TO THE PINEHURST VILLAGE COUNCIL IN 1995 SHALL SERVE FOUR-YEAR TERMS. Rep. Richard Morgan was recognized to present his bill and explained that it provides that three of the members elected to the Village council in 1995 will serve four year terms. Rep. Carpenter moved for a favorable report; seconded and passed.

HB 11 A BILL TO BE ENTITLED AN ACT TO GIVE THE CRAVEN COUNTY BOARD OF EDUCATION ADDITIONAL FLEXIBILITY IN MAKING UP SCHOOL DAYS LOST DUE TO INCLEMENT WEATHER. Rep. John Nichols was recognized to present his bill and explained that it gives the Craven County School System the authority to extend the school day to make up school days lost to inclement weather. Rep. Carpenter moved for a favorable report; seconded and passed.

HB 93 A BILL TO BE ENTITLED AN ACT TO REQUIRE AT LEAST TWO REPRESENTATIVES FROM A MUNICIPALITY'S EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION ON THE PLANNING AGENCY. The Chairman requested that Committee Counsel Giles Perry explain the bill. Mr. Perry explained that the bill was the recommendation of the Property Issues Study Committee of the Legislative Research Commission and would make an adjustment to how persons are appointed to ETJ boards. After a brief discussion, Rep. Carpenter moved for a favorable report; seconded and passed.

HB 63 A BILL TO BE ENTITLED AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY

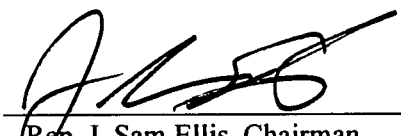
ANNEXATIONS. Rep. John Nichols was recognized to explain his bill and offered a Proposed Committee Substitute. Rep. Carpenter moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Nichols explained that the PCS will restore ETJ planning powers for the Town of River Bend. He further noted that the County Commissioners had no objections to the proposed changes. Rep. Kiser moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

HB 92 A BILL TO BE ENTITLED AN ACT TO REQUIRE ALL MUNICIPAL SERVICES TO BE PROVIDED TO A NEWLY ANNEXED AREA ON THE DATE OF ANNEXATION. Rep. Ellis invited Committee Counsel Giles Perry to explain the bill. Mr. Perry noted that the bill was recommended by the LRC Property Issues Committee and makes changes to the annexation service requirements for cities below and above 5000 in population. It would require provision of major municipal services to involuntarily annexed areas. After considerable discussion, Rep. Rogers moved to table the bill. Committee members debated the motion, and Rep. Ellis called for a vote. The motion failed. Division was called, and Chairman Ellis called for a show of hands. The motion failed. Rep. Allred moved for a favorable report. Rep. Hurley requested time for the North Carolina League of Municipalities to be heard. Rep. Ellis recognized Mr. Andy Romanet, the League's General Counsel, to speak. Mr. Romanet explained the League's opposition to the bill. Mr. Jim Blackburn, General Counsel to the County Commissioners' Association, was recognized to present the Association's position. Chairman Ellis restated the motion and called for a vote. The motion passed. Division was called, and a show of hands called. The motion passed.

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Mr. Ellis recognized Mr. Giles Perry, Committee Counsel, to explain the bill. Mr. Perry noted that the bill was recommended by the LRC Property Issues Committee. He described the bill as one that contained more extensive changes in annexation laws that affect cities both below and above 5000 population. Committee members' questions were answered by Giles Perry as discussion of the bill continued. No motions were made, and no vote was called so that members might continue their dialogue at the next meeting.

The meeting adjourned at 11:55 A.M.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

[illegible]

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 84 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THREE OF THE MEMBERS ELECTED TO THE PINEHURST VILLAGE COUNCIL IN 1995 SHALL SERVE FOUR-YEAR TERMS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill). (and recommendation that the committee substitute bill be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill , ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

#1. 2-18-97
Rep Morgan - Spencer

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

Jan. rat.

H

1

HOUSE BILL 84

Short Title: Pinehurst Council Terms.

(Local)

Sponsors: Representative Morgan.

Referred to: Local and Regional Government I.

February 10, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THREE OF THE MEMBERS ELECTED TO THE
3 PINEHURST VILLAGE COUNCIL IN 1995 SHALL SERVE FOUR-YEAR
4 TERMS.
5 The General Assembly of North Carolina enacts:
6 Section 1. The part of the Charter of the Village of Pinehurst added
7 under Part 4 of Article 5 of Chapter 160A of the General Statutes by Ordinance 95-
8 17 of the Village Council set out below reads as rewritten:
9 "At the regular municipal election to be held in 1995, the ~~three~~ four candidates
10 who receive the highest number of votes shall be elected for four-year terms, while
11 the ~~two candidates who receive~~ candidate who receives the next highest number of
12 votes shall be elected for ~~two-year terms~~ a two-year term. As provided by G.S. 160A-
13 63, the person appointed to fill a vacancy occurring in 1996 in a four-year term on
14 the Village Council serves only until a successor can be elected in 1997 to serve the
15 remainder of that term. At the regular municipal election to be held in 1997, and
16 every four years thereafter, two members of the Village Council shall be elected to
17 serve for four-year terms. At the regular municipal election to be held in 1999, and
18 every four years thereafter, three members of the Village Council shall be elected to
19 serve for four-year terms."
20 Section 2. This act is effective when it becomes law.



North Carolina General Assembly Legislative Services Agency

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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 84 Pinehurst Council Terms
Introduced by Representative Morgan

House Bill 84 amends the Charter of the Village of Pinehurst to provide that three of the members elected to the Village Council in 1995 shall serve four year terms.

House Bill 84 would become effective when it becomes law.



File

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL & REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 111 A BILL TO BE ENTITLED AN ACT TO GIVE THE CRAVEN COUNTY
BOARD OF EDUCATION ADDITIONAL FLEXIBILITY IN MAKING UP SCHOOL
DAYS LOST DUE TO INCLEMENT WEATHER.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill). (and recommendation that
the committee substitute bill be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill , ☐ which changes the
title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2-18-97

#2. Leo Nicholas - Sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 11

*Law not
concurrent*

1

Short Title: Craven Schools' Snow-Day Flexibility.

(Local)

Sponsors: Representative Nichols.

Referred to: Local and Regional Government I.

February 3, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO GIVE THE CRAVEN COUNTY BOARD OF EDUCATION
3 ADDITIONAL FLEXIBILITY IN MAKING UP SCHOOL DAYS LOST DUE
4 TO INCLEMENT WEATHER.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 115C-84.1(b) is repealed, as it applies to the Craven
7 County School Administrative Unit.
8 Section 2. This act is effective when it becomes law.



North Carolina General Assembly Legislative Services Agency

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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 11 Craven Schools' Snow-Day Flexibility
Introduced by Representative Nichols

Current law (G.S. 115C-84.1) requires some local boards of education to use all scheduled extra calendar days before using longer school days to make up for time lost to inclement weather.

House Bill 11 authorizes the Craven County Board of Education to use longer school days OR scheduled extra calendar days to make up school days lost to inclement weather.

House Bill 11 would become effective when it becomes law.



to suspend days as set forth in the preceding paragraph, the State Board of Education, at the request of the local board of education, may suspend school additional days in any local school administrative unit where it finds that conditions justify such suspension of school. The State Board of Education may also, at the request of the local board of education, suspend one or more days from the 180 day school term for an individual school, regardless of how many days have been made up within the school calendar for the school unit as a whole, if emergency conditions exist at that school that might be threatening to the health, safety, and welfare of students and staff. The days excused under this paragraph do not have to be made up by teachers or students and the first 15 such days do not affect teachers' pay.

During any period of emergency, in any section of the State where the said emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 9.

(e) Fixing Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed and determined by local boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time.

(f) Veterans Day. — Veterans Day shall be a holiday for all children enrolled in the public schools, but shall be a work day for all school employees, unless designated as a holiday by the local board of education. (1955, c. 1372, art. 5, ss. 18, 19; 1957, c. 262; 1963, c. 425; c. 1223, s. 2; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; c. 678; 1971, c. 85; c. 90, s. 1; 1973, c. 1137; 1977, c. 1128; 1979, c. 1069, s. 1.1; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 15.1; 1985, c. 791, ss. 7, 8; 1985 (Reg. Sess., 1986), c. 975, s. 14; 1987, c. 477, s. 1; 1991, c. 689, s. 197; 1995, c. 130, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 9.)

Effect of Amendments. — The 1995 amendment, effective May 31, 1995, added the second sentence in the second paragraph of subsection (c).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, repealed subsection (d), regarding standard class duration.

§ 115C-84.1. Longer school days as offset for lost days.

(a) A local board of education may schedule school days longer than the minimum required instructional hours so as to offset days lost due to inclement weather. For the purposes of computing the length of the school term and determining pay of school personnel, every additional hour scheduled may be used to offset one hour of a school day lost due to inclement weather.

(b) A local board of education may schedule longer school days under subsection (a) of this section only after all extra calendar days required under G.S. 115C-84(c) have been scheduled to be used as instructional days.

(c) This section applies only to the Alleghany, Avery, Buncombe, Cherokee, Clay, Craven, Duplin, Gaston, Graham, Haywood,

Henderson, Jackson, Jones, Lenoir, Macon, Madison, McDowell, Mitchell, Pamlico, Polk, Rockingham, Stokes, Swain, Transylvania, Wake, Watauga, and Yancey County School Administrative Units. The local board of education in each of these counties shall evaluate the educational effectiveness of this type of scheduling and shall report the results of this evaluation to the State Board of Education for the first two years following the ratification of this section. (1995 (Reg. Sess., 1996), c. 662, ss. 1, 2, 3; c. 723, s. 3; c. 724, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 662, ss. 1 through 3, have been codified as G.S. 115C-84.1, and additional counties have been included from Session Laws 1995 (Reg. Sess., 1996), c. 723, s. 3, and c. 724, s. 3, at the direction of the Revisor of Statutes.

Session Laws 1995 (Reg. Sess., 1996), c. 662, s. 4, made that Act effective upon ratification, and applicable to school years beginning with the 1996-97 school

year. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 723, s. 4, made that Act effective upon ratification and applicable to school years beginning with the 1996-97 school year. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 724, s. 5, made that Act effective upon ratification and applicable to school years beginning with the 1996-97 school year. The Act was ratified June 21, 1996.

Part 3. Textbooks.

§ 115C-85. Textbook needs are determined by course of study.

When the State Board of Education has adopted, upon the recommendation of the Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks.

As used in this part, "textbook" means systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process.

Textbooks adopted in accordance with the provisions of this Part shall be used by the public schools of the State except as provided in G.S. 115C-98(b1). (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 20; 1995 (Reg. Sess., 1996), c. 716, s. 18.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "except as provided

in G.S. 115C-98(b1)" to the end of the third paragraph.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 93 A BILL TO BE ENTITLED AN ACT TO REQUIRE AT LEAST TWO
REPRESENTATIVES FROM A MUNICIPALITY'S EXTRATERRITORIAL PLANNING
AND ZONING JURISDICTION ON THE PLANNING AGENCY.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill). (and recommendation that
the committee substitute bill be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill , ☐ which changes the
title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

#3. 2-18-97

Galen Perry - Staffer

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 93*

*you not
Carpenter*

1

Short Title: ETJ Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local and Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO REQUIRE AT LEAST TWO REPRESENTATIVES FROM A
3 MUNICIPALITY'S EXTRATERRITORIAL PLANNING AND ZONING
4 JURISDICTION ON THE PLANNING AGENCY.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 160A-362 reads as rewritten:

7 "§ 160A-362. Extraterritorial representation.

8 When a city elects to exercise extraterritorial zoning or subdivision-regulation
9 powers under G.S. 160A-360, it shall in the ordinance creating or designating its
10 planning agency or agencies provide a means of proportional representation based on
11 population for residents of the extraterritorial area to be regulated. Representation
12 shall be provided by appointing at least ~~one resident~~ two residents of the entire
13 extraterritorial zoning and subdivision regulation area to the planning agency and the
14 board of adjustment that makes recommendations or grants relief in these matters.
15 For purposes of this section, an additional member must be appointed to the planning
16 agency or board of adjustment to achieve proportional representation only when the
17 population of the entire extraterritorial zoning and subdivision area constitutes a full
18 fraction of the municipality's population divided by the total membership of the
19 planning agency or board of adjustment. Membership of joint municipal county
20 planning agencies or boards of adjustment may be appointed as agreed by counties
21 and municipalities. Any advisory board established prior to July 1, 1983, to provide
22 the required extraterritorial representation shall constitute compliance with this
23 section until the board is abolished by ordinance of the city. The representatives on

1 the planning agency and the board of adjustment shall be appointed by the board of
2 county commissioners with jurisdiction over the area. When selecting a new
3 representative to the planning agency or to the board of adjustment as a result of an
4 extension of the extraterritorial jurisdiction, the board of county commissioners shall
5 hold a public hearing on the selection. A notice of the hearing shall be given once a
6 week for two successive calendar weeks in a newspaper having general circulation in
7 the area. The board of county commissioners shall select appointees only from those
8 who apply at or before the public hearing. The county shall make the appointments
9 within 45 days following the public hearing. Once a city provides proportional
10 representation, no power available to a city under G.S. 160A-360 shall be ineffective
11 in its extraterritorial area solely because county appointments have not yet been
12 made. If there is an insufficient number of qualified residents of the area to meet
13 membership requirements, the board of county commissioners may appoint as many
14 other residents of the county as necessary to make up the requisite number. When the
15 extraterritorial area extends into two or more counties, each board of county
16 commissioners concerned shall appoint representatives from its portion of the area, as
17 specified in the ordinance. If a board of county commissioners fails to make these
18 appointments within 90 days after receiving a resolution from the city council
19 requesting that they be made, the city council may make them. If the ordinance so
20 provides, the outside representatives may have equal rights, privileges, and duties
21 with the other members of the agency to which they are appointed, regardless of
22 whether the matters at issue arise within the city or within the extraterritorial area;
23 otherwise they shall function only with respect to matters within the extraterritorial
24 area."

25 Section 2. This act is effective when it becomes law.



North Carolina General Assembly Legislative Services Agency

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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 93 ETJ Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis,
Hardy, Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 93 amends G.S. 160A-360 to require at least two (now-at least one) representatives from the extraterritorial planning and zoning jurisdiction of a municipality to be appointed to the planning agency of a municipality.

House Bill 93 would become effective when it becomes law.



**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 63 A BILL TO BE ENTITLED AN ACT TO RESTORE EXTRATERRITORIAL
PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM
MAKING INVOLUNTARY ANNEXATIONS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~Committee Substitute Bill~~), ☐ which changes the title,
unfavorable as to original bill (~~Committee Substitute Bill~~). (and recommendation that
the committee substitute bill be re-referred to the Committee on FINANCE.)

☐ With a favorable report as to House committee substitute bill , ☐ which changes the
title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4 2-18-97
Rep. Nichols

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 63

*unfavorable
but Com. Sub. de p...* 1

Short Title: River Bend Zoning/Annexation.

(Local)

Sponsors: Representatives Nichols; and Wainwright.

Referred to: Local and Regional Government I, if favorable, Finance.

February 6, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE
3 TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING
4 INVOLUNTARY ANNEXATIONS.
5 The General Assembly of North Carolina enacts:
6 Section 1. Section VI of the Charter of the Town of River Bend, being
7 that Charter approved by the Municipal Board of Control and filed with the
8 Secretary of State on January 14, 1981, as added by Chapter 26 of the Session Laws
9 of 1987, reads as rewritten:
10 "Section VI. The Town may not exercise in Craven County any ~~extraterritorial~~
11 ~~jurisdiction or extraterritorial~~ powers under Parts 2 and 3 of Article 49 4A of Chapter
12 160A of the General Statutes. Nothing in this section shall affect in any way the
13 authority of the Town to annex property in Craven County by petition under Parts 1
14 and 4 of Article 4A of Chapter 160A of the General Statutes, entitled, respectively,
15 'Extension by Petition' and 'Annexation of Noncontiguous Areas'."
16 Section 2. This act becomes effective 30 days after it becomes law.

Rep. Nicholas - Sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

*Law not
re-referred To Finance*

H

D

HOUSE BILL 63
Proposed Committee Substitute H63-PCS4039

Short Title: River Bend Zoning/Annexation.

(Local)

Sponsors:

Referred to:

February 6, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE
3 TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING
4 INVOLUNTARY ANNEXATIONS.
5 The General Assembly of North Carolina enacts:
6 Section 1. Section VI of the Charter of the Town of River Bend, being
7 that Charter approved by the Municipal Board of Control and filed with the
8 Secretary of State on January 14, 1981, as added by Chapter 26 of the Session Laws
9 of 1987, reads as rewritten:
10 "Section VI. ~~The Town may not exercise any extraterritorial jurisdiction or~~
11 ~~extraterritorial powers under Article 19 of Chapter 160A of the General Statutes. (a)~~
12 If no later than adjournment of the public hearing under G.S. 160A-37, a petition,
13 signed by the owners of twenty-five percent (25%) of the registered voters in the area
14 proposed to be annexed, is received by the city, opposing the annexation, then the
15 annexation ordinance shall become effective only if approved by the voters of the
16 area to be annexed in a referendum conducted under this section.
17 (b) If a referendum is required under subsection (a) of this section, the city
18 council shall order the board of elections which conducts elections for that city to call
19 an election to determine whether or not the proposed territory shall be annexed to
20 the city or town. Within 90 days after receiving such order from the governing body,
21 the county board of elections shall proceed to hold an election on the question.
22 Such election shall be called by a resolution or resolutions of said county board of
23 elections which shall:

(1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and

(3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the city or town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged.

At such election the question on the ballot shall be:

'[] FOR [] AGAINST
Annexation.'

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by this Part.

(c) The Town of River Bend has jurisdiction under Article 19 of Chapter 160A of the General Statutes over the following described territory:

TRACT ONE

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at a point on the southern right-of-way line of U.S. Highway 17, said point being the northwest corner of plan of Piner Estates recorded in Plat Cabinet D, Slide 666, Craven County Registry; thence from said point of beginning along and with westernmost line of said Piner Estates S27 degrees 29'38"W 528.53 feet to the northwesternmost corner of lot No. 1, Craven Woods Subdivision recorded in Plat Cabinet C, Slide 41, Craven County Registry; thence along and with line between aforesaid Piner Estates and Craven Woods Subdivisions N53 degrees 05'15"E 1186.76' to a point; thence continuing with said line N69 degrees 00' E 1106.85 feet to a point, the southeasternmost corner of Lot 1, Piner Estates; thence, S29 degrees 34'19"E to the centerline of secondary road No. 1307, (this point being designated by the letter "C" on that certain map or plat entitled Trent Estates recorded in Map Book 10, Page 72, Craven County Registry); thence continuing S29 degrees 34'19"E 30.0 feet to a point on the southern right-of-way line of secondary road No. 1307; thence with said southern right-of-way line of secondary road No. 1307 in a westwardly direction to a point on said southern right-of-way line where "Harris" easternmost line extended southwardly would intersect said right-of-way line; thence, N00 degrees 12'17"W 199.96 feet to a point; thence with said Harris easternmost line N84 degrees 45'48"W 95.12 feet to a point; thence N3 degrees 11'55"E 147.81' to a point on the southern right-of-way line of U.S. Highway No. 17; thence, with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 00'W 493 feet to a point at the intersection of said southern right-of-way line of U.S. Highway 17 and

1 Canoe Branch; thence in a northerly direction with said Canoe Branch to its
2 intersection with the centerline of Seaboard Coastline Railway, now abandoned;
3 thence with said centerline of Seaboard Coastline Railway in an easterly direction to
4 a point where the western line of Hidden Oaks Subdivision, recorded in Plat Cabinet
5 D, Slide 455, Craven County Registry, extended would intersect said centerline;
6 thence S25 degrees 51'58"E 62.5 feet to the northwestern corner of said Hidden Oaks
7 Subdivision; thence with said northernmost line of Hidden Oaks Subdivision N69
8 degrees 43'03"E 3, 111.74 feet to the northeast corner of said Hidden Oaks
9 Subdivision S22 degrees 23'E 731.08 feet to a point on the northern right-of-way line
10 of U.S. Highway No. 17; thence continuing S22 degrees 23'E 150.0 feet to a point on
11 the southern right-of-way line of U.S. Highway No. 17; thence with said southern
12 right-of-way line of U.S. Highway No. 17, S67 degrees 48'50"W 727.98 feet to the
13 northeastern corner of aforesaid Piner Estates; thence continuing with said southern
14 right-of-way line S67 degrees 48'50"W 2,271.20 feet to the Point of Beginning.

15 TRACT TWO

16 Lying and being situated in Number Eight Township, Craven County, North Carolina
17 and described as follows:

18 BEGINNING at the southeasternmost corner of Lot No. 18, Plan of Springdale
19 Subdivision recorded in Plat Cabinet D, Slide 623, Craven County Registry; said
20 corner being on the northern right-of-way line of U.S. Highway No. 17; thence along
21 and with the easternmost line of aforesaid Springdale Subdivision N22 degrees
22 22'03"W 277.0 feet to a point; thence S62 degrees 05'E to the northwestern corner of
23 Lot 79, Plan of Deerfield Subdivision, Phase 3, recorded in Plat Cabinet E, Slide 333,
24 Craven County Registry; thence with northernmost line of aforesaid Deerfield
25 Subdivision, Phase 3, N66 degrees 50'56"E 473.81 feet to a point; thence N50 degrees
26 07'40"E 281.86 feet to a point on the western right-of-way line of Forest Oaks Drive;
27 thence with western right-of-way line of Forest Oaks Drive S42 degrees 22'20"E
28 200.19 feet to the northern right-of-way line of Rocky Run Road; thence with said
29 right-of-way of Rocky Run Road S03 degrees 28'20"E 97.78 feet to a point on the
30 northern right-of-way line of U.S. Highway No. 17; thence S66 degrees 50'56"W
31 along and with said northern right-of-way line of U.S. Highway No. 17 to the Point of
32 Beginning.

33 Section 2. This act becomes effective 30 days after it becomes law.



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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 63 River Bend Zoning/Annexation
Introduced by Representatives Nichols; and Wainwright

Since 1981, the Town of River Bend in Craven County has been prohibited from exercising extraterritorial planning and zoning jurisdiction in the area surrounding the Town.

House Bill 63 would allow River Bend to exercise planning and zoning powers in the area around the Town, but would prohibit River Bend from making involuntary annexations.

House Bill 63 would become effective when it becomes law.



**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

- ☐ Committee Substitute for
H.B. 92 A BILL TO BE ENTITLED AN ACT TO REQUIRE ALL MUNICIPAL
SERVICES TO BE PROVIDED TO A NEWLY ANNEXED AREA ON THE DATE OF
ANNEXATION.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill). (and recommendation that
the committee substitute bill be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill , ☐ which changes the
title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

#5. 2-18-97
Helen Perry

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

HOUSE BILL 92*

*motion for you not - Rep. Allred
motion to table - Rep. Raper
2nd - Allred speaks to "not-table" the motion
motion for you not - Rep. Allred
favorable not*

Short Title: Annexation/Municipal Services.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Sexton, Sherrill, and Starnes.

Referred to: Local and Regional Government I, if favorable, Judiciary II. *no*

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ALL MUNICIPAL SERVICES TO BE PROVIDED TO A
NEWLY ANNEXED AREA ON THE DATE OF ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-35 reads as rewritten:

"§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- a. The present and proposed boundaries of the municipality.
- b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service

performed within the municipality at the time of annexation. Specifically, such plans shall:

a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of ~~annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation.~~ annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer ~~services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.~~ services. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.

c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights

1 under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good
2 faith response within 45 days following receipt of the written
3 request for information from the city, provided that the city's
4 written request so states by specific reference to this section."

5 Section 2. G.S. 160A-47 reads as rewritten:

6 **"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.**

7 A municipality exercising authority under this Part shall make plans for the
8 extension of services to the area proposed to be annexed and shall, prior to the public
9 hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to
10 provide services to such area. The report shall include:

11 (1) A map or maps of the municipality and adjacent territory to show
12 the following information:

- 13 a. The present and proposed boundaries of the municipality.
- 14 b. The present major trunk water mains and sewer interceptors
15 and outfalls, and the proposed extensions of such mains and
16 outfalls as required in subdivision (3) of this section. The
17 water and sewer map must bear the seal of a registered
18 professional engineer.
- 19 c. The general land use pattern in the area to be annexed.

20 (2) A statement showing that the area to be annexed meets the
21 requirements of G.S. 160A-48.

22 (3) A statement setting forth the plans of the municipality for
23 extending to the area to be annexed each major municipal service
24 performed within the municipality at the time of annexation.
25 Specifically, such plans shall:

- 26 a. Provide for extending police protection, fire protection, solid
27 waste collection and street maintenance services to the area
28 to be annexed on the date of ~~annexation on substantially the~~
29 ~~same basis and in the same manner as such services are~~
30 ~~provided within the rest of the municipality prior to~~
31 ~~annexation.~~ annexation. A contract with a rural fire
32 department to provide fire protection shall be an acceptable
33 method of providing fire protection. If a water distribution
34 system is not available in the area to be annexed, the plans
35 must call for reasonably effective fire protection services
36 until such time as waterlines are made available in such area
37 under existing municipal policies for the extension of
38 waterlines. A contract with a private firm to provide solid
39 waste collection services shall be an acceptable method of
40 providing solid waste collection services.
- 41 b. Provide for extension of major trunk water mains and sewer
42 outfall lines into the area to be annexed so that when such
43 lines are constructed, property owners in the area to be
44 annexed will be able to secure public water and sewer

- 1 ~~service, according to the policies in effect in such~~
2 ~~municipality for extending water and sewer lines to~~
3 ~~individual lots or subdivisions.~~ service. If requested by the
4 owner of an occupied dwelling unit or an operating
5 commercial or industrial property in writing on a form
6 provided by the municipality, which form acknowledges that
7 such extension or extensions will be made according to the
8 current financial policies of the municipality for making
9 such extensions, and if such form is received by the city
10 clerk not less than 30 days before adoption of the
11 annexation ordinance, provide for extension of water and
12 sewer lines to the property or to a point on a public street
13 or road right-of-way adjacent to the property according to
14 the financial policies in effect in such municipality for
15 extending water and sewer lines. If any such requests are
16 timely made, the municipality shall at the time of adoption
17 of the annexation ordinance amend its report and plan for
18 services to reflect and accommodate such requests.
- 19 c. If extension of major trunk water mains, sewer outfall lines,
20 sewer lines and water lines is necessary, set forth a proposed
21 timetable for construction of such mains, outfalls and lines
22 as soon as possible following the effective date of
23 annexation. In any event, the plans shall call for
24 construction to be completed within two years of the
25 effective date of annexation.
- 26 d. Set forth the method under which the municipality plans to
27 finance extension of services into the area to be annexed.
- 28 (4) A statement of the impact of the annexation on any rural fire
29 department providing service in the area to be annexed and a
30 statement of the impact of the annexation on fire protection and
31 fire insurance rates in the area to be annexed, if the area where
32 service is provided is in an insurance district designated under G.S.
33 153A-233, a rural fire protection district under Article 3A of
34 Chapter 69 of the General Statutes, or a fire service district under
35 Article 16 of Chapter 153A of the General Statutes. The rural fire
36 department shall make available to the city not later than 30 days
37 following a written request from the city all information in its
38 possession or control, including but not limited to operational,
39 financial and budgetary information, necessary for preparation of a
40 statement of impact. The rural fire department forfeits its rights
41 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
42 faith response within 45 days following receipt of the written
43 request for information from the city, provided that the city's
44 written request so states by specific reference to this section."

1

Section 3. This act is effective when it becomes law.



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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 92 Annexation/Municipal Services
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis,
Hardy, McComas, Sexton, Sherrill, and Starnes

House Bill 92 amends the State's annexation laws to require provision of major municipal services to areas annexed under what is commonly referred to as the "involuntary" or "standards and services" annexation provisions of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes.

House Bill 92 would become effective when it becomes law.



#6.

2-18-97

John Perry

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 94*

Short Title: Annexation Changes.

*No Vote Today
will continue discussion
@ next meeting*

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II. ?

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:

12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.

18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.

20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

- 1 calculate present level of service, including, if applicable,
2 personnel to population ratios and average response times.
- 3 (4) A statement of the impact of the annexation on any rural fire
4 department providing service in the area to be annexed and a
5 statement of the impact of the annexation on fire protection and
6 fire insurance rates in the area to be annexed, if the area where
7 service is provided is in an insurance district designated under G.S.
8 153A-233, a rural fire protection district under Article 3A of
9 Chapter 69 of the General Statutes, or a fire service district under
10 Article 16 of Chapter 153A of the General Statutes. The rural fire
11 department shall make available to the city not later than 30 days
12 following a written request from the city all information in its
13 possession or control, including but not limited to operational,
14 financial and budgetary information, necessary for preparation of a
15 statement of impact. The rural fire department forfeits its rights
16 under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good
17 faith response within 45 days following receipt of the written
18 request for information from the city, provided that the city's
19 written request so states by specific reference to this section.
- 20 (5) A statement containing the classification as to use and size of each
21 lot or tract in the area to be annexed.
- 22 (6) A clear and easily understandable statement notifying persons
23 affected by the annexation of their right to appeal under G.S.
24 160A-38 and the remedy under G.S. 160A-37(h) for failure of the
25 city to provide services.
- 26 (7) A statement showing how the proposed annexation will affect the
27 city's finances and services, including city revenue change
28 estimates. This statement shall be delivered to the clerk of the
29 board of county commissioners at least 30 days before the date of
30 any public hearing on any annexation under this Part."

31 Section 2. G.S. 160A-36 reads as rewritten:

32 **"§ 160A-36. Character of area to be annexed.**

33 (a) A municipal governing board may extend the municipal corporate limits to
34 include any area which meets the general standards of subsection (b), and which
35 meets the requirements of subsection (c).

36 (b) The total area to be annexed must meet the following standards:

- 37 (1) It must be adjacent or contiguous to the municipality's boundaries
38 at the time the annexation proceeding is begun, except if the entire
39 territory of a county water and sewer district created under G.S.
40 162A-86(b1) is being annexed, the annexation shall also include
41 any noncontiguous pieces of the district as long as the part of the
42 district with the greatest land area is adjacent or contiguous to the
43 municipality's boundaries at the time the annexation proceeding is
44 begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes~~; purposes at the time of the public hearing for the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined as any as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in ~~size~~; size; or

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes; or

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this ~~sentence~~ subsection only applies to annexation by a municipality if that:

(1) a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

- 6 (1) Fix the date, hour and place of the public hearing.
7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.
9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.
13 ~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35~~ G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~ municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

- 1 water and sewer map must bear the seal of a registered
2 professional engineer.
- 3 c. The general land use pattern in the area to be annexed.
- 4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.
- 6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.
- 26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 ~~service,~~ service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes~~
purposes at the time of the public hearing for the annexation ordinance. Area of
streets and rights-of-way shall be used only to determine total resident population per
acre of land in this section. An area developed for urban purposes is defined as any
area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality~~. municipality; or
- (5) Is so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or

- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area which does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 9. G.S. 160A-49(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.
- (4) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.



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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis,
Hardy, Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 94 makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights.

Section 4 of the bill amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000.



MEMORANDUM

Page 2

February 18, 1997

Section 5 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of appeal rights.

Section 10 of the bill amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill provides that it would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

February 25, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met February 25, 1997, at 11:05 A.M. in the Legislative Office Building, Room 415 with Rep. J. Sam Ellis presiding. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Matthew Donald Youngblood and Julie R. Allen.

The following bills were discussed:

HB 42 A BILL TO BE ENTITLED AN ACT TO EXTEND AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE COMMUNITY IN LEE COUNTY. Rep. Davis presented the bill and explained that it extends the motor vehicle laws of the state to the operation of vehicles on the private streets of Carolina Trace. Rep. Buchanan moved for a favorable report; seconded and passed.

HB 116 A BILL TO BE ENTITLED AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY. Rep. Arnold was recognized to explain his bill. He offered a Proposed Committee Substitute. Rep. Carpenter moved for adoption of the Committee Substitute; seconded and passed. Rep. Arnold then explained that the PCS eliminates spotlighting. Rep. Buchanan moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

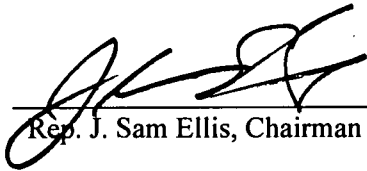
HB 269 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF BURLINGTON, NORTH CAROLINA, TO CONVEY CERTAIN SURPLUS PROPERTY BY PRIVATE SALE TO HABITAT FOR HUMANITY OF ALAMANCE COUNTY, N.C., INC. Rep. Allred was recognized to present his bill and explained that it allows the City of Burlington to make a private sale of property to Habitat for Humanity rather than going through the bidding process and putting the property up at public auction. Rep. Carpenter moved for a favorable report; seconded and passed.

Rep. Allred moved for suspension of the jacket rule. Without objection, the rule was suspended to allow members to remove their jackets.

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Chairman Ellis invited committee members familiar with local government to share their expertise as the committee continued its discussion of the bill. Mr. Giles Perry, Committee Counsel, was recognized to provide additional explanation of the bill. He explained that the three significant changes in the first section of the bill occur on pages 2 and 3. Changes include clarification of street maintenance services, including street lighting. Lines 20 through 22 provide clarification regarding smaller cities' sewer requirements. Lines 33 through 35 address street paving services. After considerable discussion, Chairman Ellis requested members to communicate with their respective municipalities and identify specific concerns and possible solutions.

The meeting adjourned at 11:55 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

2

February 25, 1997

Date _____

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **J. Sam Ellis** for the Committee on **LOCAL AND REGIONAL GOVERNMENT I.**

- ☐ Committee Substitute for
H.B. 42 A BILL TO BE ENTITLED AN ACT TO EXTEND AN ACT TO PROVIDE
THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE
CAROLINA TRACE COMMUNITY IN LEE COUNTY.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill). (and recommendation that
the committee substitute bill be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill , ☐ which changes the
title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

Feb. 25, 1997

Rep. Davis

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

J. Fausch

H

1

HOUSE BILL 42

Short Title: Extend Sunset for Carolina Trace.

(Local)

Sponsors: Representatives Davis, Hall; Hill, Mosley, and Moore.

Referred to: Local and Regional Government I.

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND AN ACT TO PROVIDE THAT THE LAWS RELATING
3 TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE
4 COMMUNITY IN LEE COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Section 5 of Chapter 96 of the 1995 Session Laws reads as
7 rewritten:

8 "Sec. 5. This act is effective upon ratification and shall expire ~~July 1, 1997.~~ July 1,
9 1999."

10 Section 2. This act is effective when it becomes law.



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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 42 Extend Sunset for Carolina Trace
Introduced by Representatives Davis, Hall; Hill, Mosley and Moore.

Chapter 96 of the 1995 Session Laws provided that the motor vehicle laws of the state were applicable to operation of vehicles on the private streets of Carolina Trace, a community in Lee County.

This bill extends the applicability of that Act from July 1, 1997 to July 1, 1999.

House Bill 42 would become effective when it becomes law.



file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

- ☐ Committee Substitute for
H.B. 116 A BILL TO BE ENTITLED AN ACT TO REGULATE DEER HUNTING IN
WILSON COUNTY.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ With a favorable report as to committee substitute bill (~~H.B. 116~~), ☐ which changes the title,
unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation
that the committee substitute bill # ~~_____~~) be re-referred to the Committee on ~~_____~~.)
- ☐ With a favorable report as to House committee substitute bill (# ~~_____~~), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 116*
Proposed Committee Substitute H116-PCS1100

Short Title: Wilson Deer Hunting.

(Local)

Sponsors:

Referred to:

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY.

3 The General Assembly of North Carolina enacts:

4 Section 1. It is unlawful to take or to hunt deer with rifles, except from a
5 stationary stand elevated at least eight feet above the ground. The height of the stand
6 described in this section shall be such that the bottoms of the hunter's feet when
7 standing are at least eight feet above the ground. As used in this section, the terms
8 "to hunt" and "to take" are used as those terms are defined in G.S. 113-130(5a) and
9 G.S. 113-130(7), respectively.

10 Section 2. Section 1 of Chapter 294 of the 1989 Session Laws reads as
11 rewritten:

12 "Section 1. It is unlawful to shine a light intentionally upon a deer or to sweep a
13 light in search of deer between the hours of ~~11:00 p.m.~~ one-half hour after sunset and
14 one-half hour before sunrise."

15 Section 3. Violation of this act is a Class 3 misdemeanor.

16 Section 4. This act is enforceable by law enforcement officers of the
17 Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the
18 State Highway Patrol, and by other peace officers with general subject matter
19 jurisdiction.

20 Section 5. This act applies only to Wilson County.

21 Section 6. This act is effective when it becomes law.

Feb 25, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*Yamashita rpt
of PCS HB 116*
D

H

HOUSE BILL 116*
Proposed Committee Substitute H116-PCS1091 #1

Short Title: Wilson Deer Hunting.

(Local)

Sponsors:

Referred to:

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY.
3 The General Assembly of North Carolina enacts:

4 Section 1. It is unlawful to take or to hunt deer with rifles, except from a
5 stationary stand elevated at least eight feet above the ground. The height of the stand
6 described in this section shall be such that the bottoms of the hunter's feet when
7 standing are at least eight feet above the ground. As used in this section, the terms
8 "to hunt" and "to take" are used as those terms are defined in G.S. 113-130(5a) and
9 G.S. 113-130(7), respectively.

10 Section 2. Section 1 of Chapter 294 of the 1989 Session Laws reads as
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14 one-half hour before sunrise."

15 Section 3. Violation of this act is a Class 3 misdemeanor.

16 Section 4. This act is enforceable by law enforcement officers of the
17 Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the
18 State Highway Patrol, and by other peace officers with general subject matter
19 jurisdiction.

20 Section 5. This act applies only to Wilson County.

21 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

HOUSE BILL 116*

Feb. 25, 1997
Rep. Arnold

offered PCB
Rep. Carpenter moved
for adoption.
Unfavorable 1
to amend

Short Title: Wilson Deer Hunting.

(Local)

Sponsors: Representatives Arnold; Fitch and Tolson.

Referred to: Local and Regional Government I, if favorable, Judiciary I

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY.

3 The General Assembly of North Carolina enacts:

4 Section 1. It is unlawful to take or to hunt deer with rifles, except from a
5 stationary stand elevated at least eight feet above the ground. The height of the stand
6 described in this section shall be such that the bottom of the hunter's feet when
7 standing are at least eight feet above the ground. As used in this section, the terms
8 "to hunt" and "to take" are used as those terms are defined in G.S. 113-130(5a) and
9 G.S. 113-130(7), respectively.

10 Section 2. Violation of Section 1 of this act is a Class 3 misdemeanor.

11 Section 3. This act is enforceable by law enforcement officers of the
12 Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the
13 State Highway Patrol, and by other peace officers with general subject matter
14 jurisdiction.

15 Section 4. This act applies only to Wilson County.

16 Section 5. This act is effective when it becomes law.



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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 116 Wilson Deer Hunting
Introduced by Representatives Arnold; Fitch and Tolson

House Bill 116 would require persons hunting deer with rifles in Wilson County to use a stand at least eight feet above the ground.

Violation of this act would constitute a Class 3 misdemeanor (up to \$200 fine and/or 1-10 day community penalty).

House Bill 116 would become effective upon ratification.



file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 269 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF
BURLINGTON, NORTH CAROLINA, TO CONVEY CERTAIN SURPLUS PROPERTY
BY PRIVATE SALE TO HABITAT FOR HUMANITY OF ALAMANCE COUNTY, N.C.,
INC.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

Feb. 25, 1997
Rep. Allred

SESSION 1997

H

HOUSE BILL 269

Amended 1

Short Title: Burlington Habitat Property.

(Local)

Sponsors: Representatives Allred, Reynolds; and Cole.

Referred to: Local and Regional Government I.

February 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF BURLINGTON, NORTH CAROLINA,
TO CONVEY CERTAIN SURPLUS PROPERTY BY PRIVATE SALE TO
HABITAT FOR HUMANITY OF ALAMANCE COUNTY, N.C., INC.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General
Statutes, the City of Burlington, North Carolina, may convey certain real property,
now declared surplus real property, at a negotiated private sale to HABITAT FOR
HUMANITY OF ALAMANCE COUNTY, N.C., INC., with monetary consideration,
any and all of its rights, title, and interest to the following described property:

A certain tract or parcel of land in Burlington Township, Alamance County,
adjoining Gunn Street, Richmond Avenue and the lands of Grace M. Jones, Mary
Belle Wilson and Lots 25 and 28 and being more particularly described as follows:

BEGINNING at a corner with Mary Belle Wilson and Lot No. 28 in the
line of Grace M. Jones and Lot No. 25 and running thence from said beginning point
with the line of Mary Belle Wilson and Lot No. 28 south 87 deg. 45' east 185' to a
point in the west right-of-way line of Richmond Avenue; thence with the west right-
of-way line of Richmond Avenue south 2 deg. 03' west 50.00' to the intersection of
the west right-of-way line of Richmond Avenue and the north right-of-way line of
Gunn Street; thence with the west right-of-way line of Gunn Street north 87 deg. 45'
west 185' to a corner with Grace M. Jones; thence with the line of Grace M. Jones
and Lot No. 25 north 2 deg. 03' east 50.00' to the BEGINNING and being part of Lot
No. 27, subdivision of the Manly Brooks Property on Richmond Hill recorded in Plat
Book 1, Page 53, in the office of the Alamance County Register of Deeds.

1 Section 2. This act is effective when it becomes law.



North Carolina General Assembly Legislative Services Agency

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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 269 Burlington Habitat Property
Introduced by Representative Allred, Reynolds; and Cole

House Bill 269 would authorize the City of Burlington to convey surplus real estate it owns to Habitat for Humanity of Alamance County by negotiated private sale.

House Bill 269 would become effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 94*

Feb. 25, 1997

Gilbert Perry
No ACTION Today
Discussion only.

1

Short Title: Annexation Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:

- 12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.

18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.

20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

1 calculate present level of service, including, if applicable,
2 personnel to population ratios and average response times.

3 (4) A statement of the impact of the annexation on any rural fire
4 department providing service in the area to be annexed and a
5 statement of the impact of the annexation on fire protection and
6 fire insurance rates in the area to be annexed, if the area where
7 service is provided is in an insurance district designated under G.S.
8 153A-233, a rural fire protection district under Article 3A of
9 Chapter 69 of the General Statutes, or a fire service district under
10 Article 16 of Chapter 153A of the General Statutes. The rural fire
11 department shall make available to the city not later than 30 days
12 following a written request from the city all information in its
13 possession or control, including but not limited to operational,
14 financial and budgetary information, necessary for preparation of a
15 statement of impact. The rural fire department forfeits its rights
16 under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good
17 faith response within 45 days following receipt of the written
18 request for information from the city, provided that the city's
19 written request so states by specific reference to this section.

20 (5) A statement containing the classification as to use and size of each
21 lot or tract in the area to be annexed.

22 (6) A clear and easily understandable statement notifying persons
23 affected by the annexation of their right to appeal under G.S.
24 160A-38 and the remedy under G.S. 160A-37(h) for failure of the
25 city to provide services.

26 (7) A statement showing how the proposed annexation will affect the
27 city's finances and services, including city revenue change
28 estimates. This statement shall be delivered to the clerk of the
29 board of county commissioners at least 30 days before the date of
30 any public hearing on any annexation under this Part."

31 Section 2. G.S. 160A-36 reads as rewritten:

32 "§ 160A-36. Character of area to be annexed.

33 (a) A municipal governing board may extend the municipal corporate limits to
34 include any area which meets the general standards of subsection (b), and which
35 meets the requirements of subsection (c).

36 (b) The total area to be annexed must meet the following standards:

37 (1) It must be adjacent or contiguous to the municipality's boundaries
38 at the time the annexation proceeding is begun, except if the entire
39 territory of a county water and sewer district created under G.S.
40 162A-86(b1) is being annexed, the annexation shall also include
41 any noncontiguous pieces of the district as long as the part of the
42 district with the greatest land area is adjacent or contiguous to the
43 municipality's boundaries at the time the annexation proceeding is
44 begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the time of the public hearing for the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined as ~~any~~ as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in ~~size~~ size; or

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes; or

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this ~~sentence~~ subsection only applies to annexation by a municipality if that:

(1) a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

6 (1) Fix the date, hour and place of the public hearing.

7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.

9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.

13 ~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

1 Section 4. G.S. 160A-37(d) reads as rewritten:

2 "(d) Public Hearing. -- At the public hearing a representative of the municipality
3 shall first make an explanation of the report required in ~~G.S. 160A-35~~. G.S. 160A-35,
4 including appeal rights as summarized in G.S. 160A-35(6). Following such
5 explanation, all persons resident or owning property in the territory described in the
6 notice of public hearing, and all residents of the municipality, shall be given an
7 opportunity to be heard."

8 Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

9 "(l) Any settlement reached by all parties in an appeal under this section may be
10 presented to the superior court in the county in which the municipality is located. If
11 the superior court, in its discretion, approves the settlement, it shall be binding on all
12 parties without the need for approval by the General Assembly."

13 Section 6. G.S. 160A-42 reads as rewritten:

14 "**§ 160A-42. Land estimates.**

15 In determining degree of land subdivision for purposes of meeting the
16 requirements of G.S. 160A-36, the municipality shall use methods calculated to
17 provide reasonably accurate results. In determining whether the standards set forth in
18 G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the
19 reviewing court shall accept the estimates of the ~~municipality~~. municipality as
20 provided in this section unless the actual total area or degree of subdivision falls
21 below the standards in G.S. 160A-36:

22 (1) As to total area if the estimate is based on an actual survey, or on
23 county tax maps or records, or on aerial photographs, or on some
24 other reasonably reliable map used for official purposes by a
25 governmental agency unless the petitioners on appeal demonstrate
26 that such estimates are in error in the amount of five percent (5%)
27 or more.

28 (2) As to degree of land subdivision, if the estimates are based on an
29 actual survey, or on county tax maps or records, or on aerial
30 photographs, or on some other reasonably reliable source, unless
31 the petitioners on appeal show that such estimates are in error in
32 the amount of five percent (5%) or more."

33 Section 7. G.S. 160A-47 reads as rewritten:

34 "**§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.**

35 A municipality exercising authority under this Part shall make plans for the
36 extension of services to the area proposed to be annexed and shall, prior to the public
37 hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to
38 provide services to such area. The report shall include:

39 (1) A map or maps of the municipality and adjacent territory to show
40 the following information:

- 41 a. The present and proposed boundaries of the municipality.
42 b. The present major trunk water mains and sewer interceptors
43 and outfalls, and the proposed extensions of such mains and
44 outfalls as required in subdivision (3) of this section. The

- 1 water and sewer map must bear the seal of a registered
2 professional engineer.
- 3 c. The general land use pattern in the area to be annexed.
- 4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.
- 6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.
- 26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 service, service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes~~. purposes at the time of the public hearing for the annexation ordinance. Area of streets and rights-of-way shall be used only to determine total resident population per acre of land in this section. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality~~. municipality; or
- (5) Is so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or

1 (2) Is adjacent, on at least sixty percent (60%) of its external
2 boundary, to any combination of the municipal boundary and the
3 boundary of an area or areas developed for urban purposes as
4 defined in subsection (c).

5 The purpose of this subsection is to permit municipal governing boards to extend
6 corporate limits to include all nearby areas developed for urban purposes and where
7 necessary to include areas which at the time of annexation are not yet developed for
8 urban purposes but which constitute necessary land connections between the
9 municipality and areas developed for urban purposes or between two or more areas
10 developed for urban purposes. For purposes of this subsection, 'necessary land
11 connection' means an area which does not exceed twenty-five percent (25%) of the
12 total area to be annexed.

13 (e) In fixing new municipal boundaries, a municipal governing board shall,
14 wherever practical, use natural topographic features such as ridge lines and streams
15 and creeks as boundaries, and may use streets as boundaries. Some or all of the
16 boundaries of a county water and sewer district may also be used when the entire
17 district not already within the corporate limits of a municipality is being annexed.

18 (f) The area of an abolished water and sewer district shall be considered to be a
19 water and sewer district for the purpose of this section even after its abolition under
20 G.S. 162A-87.2(b)."

21 Section 9. G.S. 160A-49(b) reads as rewritten:

22 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

- 23 (1) Fix the date, hour and place of the public hearing.
24 (2) Describe clearly the boundaries of the area under consideration,
25 and include a legible map of the area.
26 (3) State that the report required in G.S. 160A-47 will be available at
27 the office of the municipal clerk at least 30 days prior to the date
28 of the public hearing.
29 (4) Include a clear and easily understandable statement notifying
30 persons affected by the annexation of their right to appeal under
31 G.S. 160A-50, the right to request water and sewer services under
32 G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and
33 (k) for failure of the city to provide services.

34 Such notice shall be given by publication once a week for at least two successive
35 weeks prior to the date of the hearing in a newspaper having general circulation in
36 the municipality and, in addition thereto, if the area to be annexed lies in a county
37 containing less than fifty percent (50%) of the land area of the municipality, in a
38 newspaper having general circulation in the area of proposed annexation. The period
39 from the date of the first publication to the date of the last publication, both dates
40 inclusive, shall be not less than eight days including Sundays, and the date of the last
41 publication shall be not more than seven days preceding the date of public hearing. If
42 there be no such newspaper, the municipality shall post the notice in at least five
43 public places within the municipality and at least five public places in the area to be
44 annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.



**North Carolina General Assembly
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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy,
Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 94 makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights.

Section 4 of the bill amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000.



MEMORANDUM

Page 2

February 25, 1997

Section 5 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of appeal rights.

Section 10 of the bill amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill provides that it would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

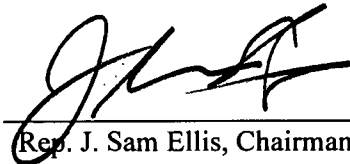
February 27, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met February 27, 1997, around the House Chamber desk of Rep. J. Sam Ellis. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Hurley, and Saunders. With Chairman Ellis presiding, members discussed the following bill:

HB 8 A BILL TO BE ENTITLED AN ACT TO REPEAL RESTRICTIONS ON HUNTING ON THE LAND OF ANOTHER IN MACON COUNTY. Rep. Carpenter was recognized to present the bill and explained that it would repeal certain restrictions on hunting in Macon County. Rep. Kiser moved for a favorable report; seconded and passed.

The meeting was adjourned.

Respectfully submitted,



Rep. J. Sam Ellis, Chairman



Susan S. Everett, Clerk

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for
H.B. 8 A BILL TO BE ENTITLED AN ACT TO REPEAL RESTRICTIONS ON HUNTING
ON THE LAND OF ANOTHER IN MACON COUNTY.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

*heard at Rep
Ellis' desk
favorable*

H

1

HOUSE BILL 8

Short Title: Repeal Hunting Restriction.

(Local)

Sponsors: Representatives Carpenter; and Rayfield.

Referred to: Local and Regional Government II.

January 30, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL RESTRICTIONS ON HUNTING ON THE LAND OF
3 ANOTHER IN MACON COUNTY.
4 The General Assembly of North Carolina enacts:
5 Section 1. Sections 2 and 3 of Chapter 754 of the 1995 Session Laws are
6 repealed.
7 Section 2. This act applies only to Macon County.
8 Section 3. This act is effective when it becomes law.



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February 27, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 8 Repeal Hunting Restriction
Introduced by Representatives Carpenter; and Rayfield

Section 2 of Chapter 754 of the 1995 Session Laws required written permission to hunt on the land of another in Macon County.

Section 3 of Chapter 754 of the 1995 Session Laws made it unlawful to discharge a weapon within 200 yards of a dwelling or outbuilding in Macon County without permission.

House Bill 8 would repeal these restrictions, effective upon ratification.



CHAPTER 754
SENATE BILL 1263

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF PUBLIC
ROADS IN NORTHAMPTON COUNTY AND TO RESTRICT HUNTING ON
THE LAND OF ANOTHER IN MACON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or wild bird with a firearm on, from, or across the right-of-way of any public road or highway in Northampton County.

Sec. 2. It is unlawful to hunt, take, or kill any wild animal or wild bird on the real property of another in Macon County without the written permission of the owner or lessee of the property, regardless of whether the property is posted. Written permission in satisfaction of this section shall be in the hunter's possession, may be valid for no more than one year, and may be revoked at any time at the discretion of the owner or lessee of the property.

Sec. 3. It is unlawful for a person other than the owner or lawful resident to discharge any weapon within 200 yards of a dwelling or outbuilding in Macon County without the express permission of the property owner or lessee.

Sec. 4. Violation of this act is a Class 3 misdemeanor.

Sec. 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 6. Section 1 of this act applies only to Northampton County. Sections 2 and 3 of this act apply only to Macon County.

Sec. 7. This act becomes effective December 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

DENNIS A. WICKER

Dennis A. Wicker
President of the Senate

HAROLD J. BRUBAKER

Harold J. Brubaker
Speaker of the House of Representatives

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

March 4, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met March 4, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415 with Rep. J. Sam Ellis presiding. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Tysa Banks and John William Daniels.

The following bills were discussed:

HB 68 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF ROANOKE RAPIDS TO DONATE UNCLAIMED BICYCLES TO CHARITY. Rep. Crawford was recognized to present the bill which allows the police department to donate unclaimed bicycles to charity. Rep. Carpenter moved for a favorable report; seconded and passed.

HB 69 A BILL TO BE ENTITLED AN ACT TO EXTEND TO THE CITY OF ROANOKE RAPIDS PROVISIONS OF A LOCAL ACT WHICH PROVIDES THAT SERVICE OF COMPLAINTS OR ORDERS ISSUED IN HOUSING CODE CASES IS SUFFICIENT WHERE THE COMPLAINTS OR ORDERS ARE SENT BY REGISTERED OR CERTIFIED MAIL IN CONJUNCTION WITH REGULAR MAIL AND THE REGISTERED OR CERTIFIED MAIL IS RETURNED, BUT THE REGULAR MAIL IS NOT RETURNED WITHIN TEN DAYS AFTER MAILING. Rep. Crawford presented the bill which authorizes notification of building inspection or minimum housing standard violation actions by registered or certified mail and regular mail. Rep. Tallent moved for a favorable report; seconded and passed.

HB 70 A BILL TO BE ENTITLED AN ACT TO GRANT AUTHORITY TO THE CITY OF ROANOKE RAPIDS TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND. Rep. Crawford presented the bill. Mr. Giles Perry, Committee Counsel, provided clarification of the population language. Rep. Buchanan moved for a favorable report; seconded and passed.

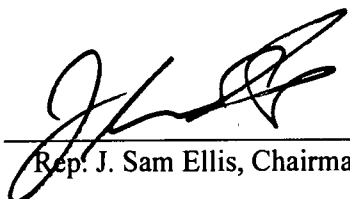
HB 71 A BILL TO BE ENTITLED AN ACT TO ENABLE THE COUNTY OF HALIFAX AND THE CITY OF ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY. Rep. Crawford was recognized to present the bill. He explained that the bill authorizes an airport authority with typical powers. Rep. Hurley moved for a favorable report and re-refer to House Finance Committee; seconded and passed.

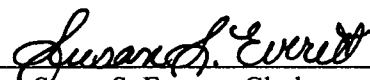
HB 281 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE ALEXANDER COUNTY BOARD OF COMMISSIONERS MUST FILL A VACANCY WITH THE PERSON NOMINATED BY THE APPROPRIATE POLITICAL PARTY IF THE NOMINATION IS MADE ON A TIMELY BASIS. Rep. Starnes was recognized to explain the bill. He noted that the bill simply adds Alexander County to the list of counties currently allowed to have the executive committees of the respective parties to fill a vacancy on the County Commission. He explained that the bill has the support of all five County Commissioners. Rep. Kiser moved for a favorable report; seconded and passed.

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Mr. Giles Perry, Committee Counsel, was recognized to recap Section 1 and begin explanation of Section 2. He explained that Section 2 affects cities with a population of 5,000 or less. The Committee continued its discussion of the bill with specific emphasis on the provisions of Sections 2 through 5. Section 3 requires that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights. Section 4 amends the bill to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000. Section 5 amends the bill to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000. Section 6 eliminates statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000, if the estimates fall below the statutory minimum standards. Chairman Ellis closed the meeting by instructing members to consider offering amendments that would address their concerns with specific sections of the bill. No action was taken on the bill.

The meeting adjourned at 11:50 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Tuesday, March 4, 1997
Date

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mable Haskins	Charlotte Chamber
Mie Parlane	Electricities
Edgar Stern	Member
ELLIS HANKINS	NCLM
David Anders	PFFAC
Frank Lloyd Wright	Roanoke Rapids
Andy Romanet	N.C. L. M.
Joe MECH	Good Neighbors
Kim Smith	NCLM
Tom McCune	Morris Van Allen
Chris Killian	" "
Don	DOC
Ron Abin	Good Neighbors Assoc
Ella Entwistle MD	Doctor of the Day

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 68 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF ROANOKE
RAPIDS TO DONATE UNCLAIMED BICYCLES TO CHARITY.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

favorable report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 68

Short Title: Roanoke Rapids Bicycle Disposition.

(Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I.

February 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE CITY OF ROANOKE RAPIDS TO DONATE
3 UNCLAIMED BICYCLES TO CHARITY.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 2 of Chapter 650 of the 1993 Session Laws, as
6 amended by Chapter 106 of the 1995 Session Laws, reads as rewritten:
7 "Sec. 2. This act applies to the Cities of ~~Asheville and Hendersonville~~ Asheville,
8 Hendersonville, and Roanoke Rapids only."
9 Section 2. This act is effective when it becomes law.



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March 4, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 68 Roanoke Rapids Bicycle Disposition
Introduced by Representatives Crawford; Wilkins and Hardaway

House Bill 68 authorizes the City of Roanoke Rapids to donate unclaimed bicycles in the possession of the police department to charity, instead of selling them by public auction.

House Bill 68 would become effective upon ratification.



**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 69 A BILL TO BE ENTITLED AN ACT TO EXTEND TO THE CITY OF ROANOKE RAPIDS PROVISIONS OF A LOCAL ACT WHICH PROVIDES THAT SERVICE OF COMPLAINTS OR ORDERS ISSUED IN HOUSING CODE CASES IS SUFFICIENT WHERE THE COMPLAINTS OR ORDERS ARE SENT BY REGISTERED OR CERTIFIED MAIL IN CONJUNCTION WITH REGULAR MAIL AND THE REGISTERED OR CERTIFIED MAIL IS RETURNED, BUT THE REGULAR MAIL IS NOT RETURNED WITHIN TEN DAYS AFTER MAILING.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

favorable report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 69

Short Title: Roanoke Rapids Housing Code.

(Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I.

February 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND TO THE CITY OF ROANOKE RAPIDS PROVISIONS OF
3 A LOCAL ACT WHICH PROVIDES THAT SERVICE OF COMPLAINTS OR
4 ORDERS ISSUED IN HOUSING CODE CASES IS SUFFICIENT WHERE THE
5 COMPLAINTS OR ORDERS ARE SENT BY REGISTERED OR CERTIFIED
6 MAIL IN CONJUNCTION WITH REGULAR MAIL AND THE REGISTERED
7 OR CERTIFIED MAIL IS RETURNED, BUT THE REGULAR MAIL IS NOT
8 RETURNED WITHIN TEN DAYS AFTER MAILING.

9 The General Assembly of North Carolina enacts:

10 Section 1. Section 2 of Chapter 578 of the 1993 Session Laws, as
11 amended by Chapter 29 of the 1995 Session Laws, reads as rewritten:

12 "Sec. 2. This act applies to the Cities of ~~Greensboro and Lumberton~~ Greensboro,
13 Lumberton, and Roanoke Rapids only."

14 Section 2. This act is effective when it becomes law.



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March 4, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 69 Roanoke Rapids Housing Code
Introduced by Representatives Crawford; Wilkins and Hardaway

House Bill 69 would authorize the City of Roanoke Rapids to notify persons of building inspection or minimum housing standard violation actions by registered or certified mail AND regular mail, and if the registered or certified mail is unclaimed or refused but the regular mail is not returned by the Post Office with 10 days, the regular mail notice would be considered sufficient.

House Bill 69 would become effective upon ratification.



determination to the Department of Revenue for the method of local sales tax distribution under G.S. 105-472.

Sec. 2. Chapter 901, Session Laws of 1989, is repealed.

Sec. 3. This act becomes effective on and after July 1, 1992.

In the General Assembly read three times and ratified this the 29th day of June, 1994.

H.B. 1727

CHAPTER 578

AN ACT RELATING TO SERVICE OF COMPLAINTS AND ORDERS IN HOUSING CODE CASES.

The General Assembly of North Carolina enacts:

Section 1. Complaints or orders issued by a public officer pursuant to Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes shall be served upon persons either personally or by registered or certified mail, and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing, service shall be deemed sufficient. The person mailing such complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be deemed conclusive in the absence of fraud.

Sec. 2. This act applies to the City of Greensboro only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1994.

S.B. 725

CHAPTER 579

AN ACT TO MODIFY THE PERCENTAGE OF SALES THAT MUST BE ATTRIBUTABLE TO FOOD AND NONALCOHOLIC BEVERAGES BY RESTAURANT PERMITTEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1000(6) reads as rewritten:

"(6) Restaurant -- An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages, not less than forty percent (40%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1994.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 70 A BILL TO BE ENTITLED AN ACT TO GRANT AUTHORITY TO THE CITY OF ROANOKE RAPIDS TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 70

favorable report
called question
motion Buchanan

1

Short Title: Roanoke Rapids Structures.

(Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I.

February 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO GRANT AUTHORITY TO THE CITY OF ROANOKE RAPIDS TO
3 ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS
4 MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE
5 HUNDRED SIXTY-THREE THOUSAND.
6 The General Assembly of North Carolina enacts:
7 Section 1. Section 2 of Chapter 733 of the 1995 Session Laws reads as
8 rewritten:
9 "Sec. 2. This act applies to the ~~City of Lumberton~~ Cities of Lumberton and
10 Roanoke Rapids only."
11 Section 2. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Agency**

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March 4, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 70 Roanoke Rapids Structures
Introduced by Representatives Crawford; Wilkins and Hardaway

House Bill 70 would authorize the City of Roanoke Rapids to order demolition or repair of dwellings vacated and closed for at least a year pursuant to a housing ordinance order, as is the law now in counties with a population in excess of 163,000.

House Bill 70 would become effective upon ratification.



CHAPTER 733
HOUSE BILL 1181

AN ACT TO GRANT AUTHORITY TO THE CITY OF LUMBERTON TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality ~~located in counties which have a population in excess of 163,000 by the last federal census,~~ other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period,

June, 19

enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census."

Sec. 2. This act applies to the City of Lumberton only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of

June, 1996.

DENNIS A. WICKER

Dennis A. Wicker
President of the Senate

HAROLD J. BRUBAKER

Harold J. Brubaker
Speaker of the House of Representatives

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**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 71 A BILL TO BE ENTITLED AN ACT TO ENABLE THE COUNTY OF HALIFAX
AND THE CITY OF ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY
FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
X Finance.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*favorable report
re-referred to Finance*

H

1

HOUSE BILL 71

Short Title: Halifax-Roanoke Rapids Airport.

(Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I, if favorable, Finance.

February 6, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO ENABLE THE COUNTY OF HALIFAX AND THE CITY OF
3 ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE
4 MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. There is hereby created the "Halifax-Roanoke Rapids Airport
7 Authority" (for brevity hereinafter referred to as the "Airport Authority"), which
8 shall be a body both corporate and politic, having the powers and jurisdiction
9 hereinafter enumerated and such other and additional powers as shall be conferred
10 upon it by general law and future acts of the General Assembly.

11 Section 2. The Airport Authority shall consist of seven members, three
12 of whom shall be appointed to staggered three-year terms by the Roanoke Rapids
13 City Council and three of whom shall be appointed to staggered three-year terms by
14 the Halifax County Board of Commissioners and one of whom shall be appointed by
15 the other six members of the Airport Authority. The members appointed by the
16 Roanoke Rapids City Council shall be qualified voters of the City of Roanoke
17 Rapids, and the members appointed by the Halifax County Board of Commissioners
18 and the Airport Authority shall be qualified voters of the County of Halifax. Each
19 member shall take and subscribe before the Clerk of Superior Court of Halifax
20 County an oath of office and file the same with the Halifax County Board of
21 Commissioners and the Roanoke Rapids City Council. Membership on the Halifax
22 County Board of Commissioners or the Roanoke Rapids City Council and the
23 Airport Authority shall not constitute double office holding within the meaning of
24 Article VI, Section 9 of the Constitution of North Carolina.

1 Section 3. The Airport Authority may adopt suitable bylaws for its
2 management. The members of the Airport Authority shall receive compensation, per
3 diem, or otherwise as the Roanoke Rapids City Council or the Halifax County Board
4 of Commissioners from time to time determines and be paid their actual traveling
5 expenses incurred in transacting the business and at the instance of the Airport
6 Authority. Members of the Airport Authority shall not be personally liable for their
7 acts as members of the Airport Authority, except for acts resulting from misfeasance
8 or malfeasance.

9 Section 4. (a) The Airport Authority shall constitute a body, both
10 corporate and politic, and shall have the following powers and authority:

11 (1) To purchase, acquire, establish, construct, own, control, lease,
12 equip, improve, maintain, operate, and regulate airports and
13 landing fields for the use of airplanes and other aircraft within the
14 limits of the County and for this purpose to purchase, improve,
15 own, hold, lease, or operate real or personal property. The
16 Airport Authority may exercise these powers alone or in
17 conjunction with the City of Roanoke Rapids or the County of
18 Halifax.

19 (2) To sue and be sued in the name of the Airport Authority, to make
20 contracts and hold any personal property necessary for the exercise
21 of the powers of the Airport Authority, and acquire by purchase,
22 lease, or otherwise any existing lease, leasehold right, or other
23 interest in any existing airport located in the County.

24 (3) To charge and collect reasonable and adequate fees and rents for
25 the use of airport property or for services rendered in the
26 operation of the airport.

27 (4) To make all reasonable rules and regulations it deems necessary
28 for the proper maintenance, use, operation, and control of the
29 airport and provide penalties for the violation of these rules and
30 regulations; provided, the rules and regulations and schedules of
31 fees not be in conflict with the laws of North Carolina, and the
32 regulations of the Federal Aviation Administration. The Airport
33 Authority may administer and enforce any airport zoning
34 regulations adopted by the City of Roanoke Rapids or the County
35 of Halifax.

36 (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General
37 Statutes.

38 (6) To sell, lease, or otherwise dispose of any property, real or
39 personal, belonging to the Airport Authority, according to the
40 procedures described in Article 12 of Chapter 160A of the General
41 Statutes, but no sale of real property shall be made without the
42 approval of the Halifax County Board of Commissioners and the
43 Roanoke Rapids City Council.

- 1 (7) To purchase any insurance that the Federal Aviation
2 Administration or the Airport Authority shall deem necessary.
3 The Airport Authority shall be responsible for any and all
4 insurance claims or liabilities.
- 5 (8) To deposit or invest and reinvest any of its funds as provided by
6 the Local Government Finance Act, as it may be amended from
7 time to time, for the deposit or investment of unit funds.
- 8 (9) To purchase any of its outstanding bonds or notes.
- 9 (10) To operate, own, lease, control, regulate, or grant to others, for a
10 period not to exceed 25 years, the right to operate on any airport
11 premises restaurants, snack bars, vending machines, food and
12 beverage dispensing outlets, rental car services, catering services,
13 novelty shops, insurance sales, advertising media, merchandising
14 outlets, motels, hotels, barber shops, automobile parking and
15 storage facilities, automobile service establishments, and all other
16 types of facilities as may be directly or indirectly related to the
17 maintenance and furnishing to the general public of a complete air
18 terminal installation.
- 19 (11) To contract with persons, firms, or corporations for terms not to
20 exceed 25 years, for the operation of airline-scheduled passenger
21 and freight flights, nonscheduled flights, and any other airplane
22 activities not inconsistent with the grant agreements under which
23 the airport property is held.
- 24 (12) To erect and construct buildings, hangars, shops, and other
25 improvements and facilities, not inconsistent with or in violation of
26 the agreements applicable to and the grants under which the real
27 property of the airport is held; to lease these improvements and
28 facilities for a term or terms not to exceed 25 years; to borrow
29 money for use in making and paying for these improvements and
30 facilities, secured by and on the credit only of the lease agreements
31 in respect to these improvements and facilities, and to pledge and
32 assign the leases and lease agreements as security for the
33 authorized loans.
- 34 (13) Subject to the limitations set out in this act, to have all the same
35 power and authority granted to cities and counties pursuant to
36 Chapter 63 of the General Statutes, Aeronautics.
- 37 (14) To have a corporate seal, which may be altered at will.
- 38 (b) The Airport Authority shall possess the same exemptions in respect
39 to payment of taxes and license fees and be eligible for sales and use tax refunds to
40 the same extent as provided for municipal corporations by the laws of the State of
41 North Carolina.

42 Section 5. The Airport Authority may acquire from the City and the
43 County, by agreement with the City and County, and the City and County may grant
44 and convey, either by gift or for such consideration as the City and County may deem

1 wise, any real or personal property which it now owns or may hereafter acquire,
2 including nontax monies, and which may be necessary for the construction, operation,
3 and maintenance of any airport located in the County.

4 Section 6. Any lands acquired, owned, controlled, or occupied by the
5 Airport Authority shall be, and are declared to be acquired, owned, controlled, and
6 occupied for a public purpose.

7 Section 7. Private property needed by the Airport Authority for any
8 airport, landing field, or as facilities of an airport or landing field may be acquired by
9 gift or devise, or may be acquired by private purchase or by the exercise of eminent
10 domain pursuant to Chapter 40A of the General Statutes.

11 Section 8. The Airport Authority shall make an annual report to the
12 Halifax County Board of Commissioners and the Roanoke Rapids City Council
13 setting forth in detail the operations and transactions conducted by it pursuant to this
14 act. The Airport Authority shall not have the power to pledge the credit of Halifax
15 County or the City of Roanoke Rapids, or any subdivision thereof, or to impose any
16 obligation on Halifax County or the City of Roanoke Rapids, or any of their
17 subdivisions, except when that power is expressly granted by statute.

18 Section 9. Subject to the limitations as set out in this act, all rights and
19 powers given and granted to counties or municipalities by general law, which may
20 now be in effect or enacted in the future relating to the development, regulation, and
21 control of municipal airports and the regulation of aircraft are vested in the Airport
22 Authority. The Halifax County Board of Commissioners or the Roanoke Rapids City
23 Council may delegate their powers under these acts to the Airport Authority, and the
24 Airport Authority shall have concurrent rights with Halifax County and the City of
25 Roanoke Rapids to control, regulate, and provide for the development of aviation in
26 Halifax County.

27 Section 10. The Airport Authority may contract with and accept grants
28 from the Federal Aviation Administration, the State of North Carolina, or any of the
29 agencies or representatives of either of said governmental bodies relating to the
30 purchase of land and air easements and to the grading, constructing, equipping,
31 improving, maintaining, or operating of an airport or its facilities or both.

32 Section 11. The Airport Authority may employ any agents, engineers,
33 attorneys, and other persons whose services may be deemed by the Airport Authority
34 to be necessary and useful in carrying out the provisions of Sections 1 through 10 of
35 this act.

36 Section 12. The Halifax County Board of Commissioners or the Roanoke
37 Rapids City Council may appropriate funds derived from any source including ad
38 valorem taxes to carry out the provisions of this act in any proportion or upon any
39 basis as may be determined by the Halifax County Board of Commissioners or the
40 Roanoke Rapids City Council.

41 Section 13. The Airport Authority may expend the funds that are
42 appropriated by the County and City for joint airport purposes and may pledge the
43 credit of the Airport Authority to the extent of the appropriated funds.

1 Section 14. The Airport Authority shall elect from among its members a
2 chair and other officers at its initial meeting and then annually thereafter. A majority
3 of the Airport Authority shall control its decisions. Each member of the Airport
4 Authority, including the chair, shall have one vote. The Airport Authority shall meet
5 at the places and times designated by the chair.

6 Section 15. The powers granted to the Airport Authority shall not be
7 effective until the members of the Airport Authority have been appointed by the
8 Halifax County Board of Commissioners and the Roanoke Rapids City Council, and
9 nothing in this act shall require the Board of Commissioners or City Council to make
10 the initial appointments. It is the intent of this act to enable but not to require the
11 formation of the Halifax-Roanoke Rapids Airport Authority.

12 Section 16. If any one or more sections, clauses, sentences, or parts of
13 this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate
14 the remaining provisions thereof, but shall be confined in its operation to the specific
15 provisions held invalid, and the inapplicability or invalidity of any section, clause,
16 sentence, or part of this act in one or more instances or circumstances shall not be
17 taken to affect or prejudice in any way its applicability or validity in any other
18 instance.

19 Section 17. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Agency**

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March 4, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 71 Halifax-Roanoke Rapids Airport
Introduced by Representatives Crawford; Wilkins and Hardaway

House Bill 71 would authorize the City of Roanoke Rapids and Halifax County to establish an airport authority with typical powers, including the authority to issue bonds and the power to condemn property for airport purposes.

House Bill 71 would become effective upon ratification.



1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL GOVERNMENT I.**

☐ Committee Substitute for

H.B. 281 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE ALEXANDER COUNTY BOARD OF COMMISSIONERS MUST FILL A VACANCY WITH THE PERSON NOMINATED BY THE APPROPRIATE POLITICAL PARTY IF THE NOMINATION IS MADE ON A TIMELY BASIS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

Favorable report

H

1

HOUSE BILL 281

Short Title: Alexander Co. Comm. Vacancies.

(Local)

Sponsors: Representatives Starnes; Holmes and Brown.

Referred to: Local and Regional Government I.

February 19, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE ALEXANDER COUNTY BOARD OF
3 COMMISSIONERS MUST FILL A VACANCY WITH THE PERSON
4 NOMINATED BY THE APPROPRIATE POLITICAL PARTY IF THE
5 NOMINATION IS MADE ON A TIMELY BASIS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 153A-27.1(h) reads as rewritten:
8 "(h) This section shall apply only in the following counties: Alamance, Alexander,
9 Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell,
10 Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth,
11 Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison,
12 McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford,
13 Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey."
14 Section 2. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Agency**

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March 4, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 281 Alexander County Commissioner Vacancies
Introduced by Representatives Starnes; Holmes and Brown

House Bill 281 would add Alexander County to G.S. 153A-27.1, which requires appointment of a replacement for a vacancy on the Board of County Commissioners to be the person recommended by the County Executive Committee of the appropriate political party, if the nomination is made within 30 days of the vacancy.

House Bill 281 would become effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

no action
filed explanation
sect. 2

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HOUSE BILL 94*

Suspension 12 H

Discussion/Questions

1 Jallent 6. Buchanan 12 Allred
2 Hurley 7 Kiser 13 Kiser
3 Allred 8 Hardy 14 Saunders
4 Kiser 9 Hurley 15 " (Public)"
5 Jallent 10 Cunningham

Short Title: Annexation Changes.

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

16. Allred
17. Hardy
18. Saunders
19.
20.

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

- 10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:
12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.
18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.
20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

- 1 calculate present level of service, including, if applicable,
2 personnel to population ratios and average response times.
- 3 (4) A statement of the impact of the annexation on any rural fire
4 department providing service in the area to be annexed and a
5 statement of the impact of the annexation on fire protection and
6 fire insurance rates in the area to be annexed, if the area where
7 service is provided is in an insurance district designated under G.S.
8 153A-233, a rural fire protection district under Article 3A of
9 Chapter 69 of the General Statutes, or a fire service district under
10 Article 16 of Chapter 153A of the General Statutes. The rural fire
11 department shall make available to the city not later than 30 days
12 following a written request from the city all information in its
13 possession or control, including but not limited to operational,
14 financial and budgetary information, necessary for preparation of a
15 statement of impact. The rural fire department forfeits its rights
16 under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good
17 faith response within 45 days following receipt of the written
18 request for information from the city, provided that the city's
19 written request so states by specific reference to this section.
- 20 (5) A statement containing the classification as to use and size of each
21 lot or tract in the area to be annexed.
- 22 (6) A clear and easily understandable statement notifying persons
23 affected by the annexation of their right to appeal under G.S.
24 160A-38 and the remedy under G.S. 160A-37(h) for failure of the
25 city to provide services.
- 26 (7) A statement showing how the proposed annexation will affect the
27 city's finances and services, including city revenue change
28 estimates. This statement shall be delivered to the clerk of the
29 board of county commissioners at least 30 days before the date of
30 any public hearing on any annexation under this Part."

31 Section 2. G.S. 160A-36 reads as rewritten:

32 "**§ 160A-36. Character of area to be annexed.**

33 (a) A municipal governing board may extend the municipal corporate limits to
34 include any area which meets the general standards of subsection (b), and which
35 meets the requirements of subsection (c).

36 (b) The total area to be annexed must meet the following standards:

- 37 (1) It must be adjacent or contiguous to the municipality's boundaries
38 at the time the annexation proceeding is begun, except if the entire
39 territory of a county water and sewer district created under G.S.
40 162A-86(b1) is being annexed, the annexation shall also include
41 any noncontiguous pieces of the district as long as the part of the
42 district with the greatest land area is adjacent or contiguous to the
43 municipality's boundaries at the time the annexation proceeding is
44 begun.

- 1 (2) At least one eighth of the aggregate external boundaries of the area
2 must coincide with the municipal boundary.
- 3 (3) No part of the area shall be included within the boundary of
4 another incorporated municipality.
- 5 (4) No part of the area to be annexed shall be located in a county
6 other than the county with a majority of the municipality's
7 residents, unless areas previously added to the municipality in
8 another county include at least 1,000 persons.
- 9 (5) No lot or tract in the area to be annexed shall be in use for bona
10 fide farm purposes as defined in G.S. 153A-340.

11 (c) The area to be annexed must be developed for urban ~~purposes~~ purposes at
12 the time of the public hearing for the annexation ordinance. For purposes of this
13 section, area of streets and rights-of-way shall not be used to determine total acreage
14 or acreage of lots and tracts under this section. For purposes of this section, 'right-of-
15 way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot
16 right-of-way. An area developed for urban purposes is defined as any as:

- 17 (1) Any area which is so developed that at least sixty percent (60%) of
18 the total number of lots and tracts in the area at the time of
19 annexation are used for residential, commercial, industrial,
20 institutional or governmental purposes, and is subdivided into lots
21 and tracts such that at least sixty percent (60%) of the total
22 acreage, not counting the acreage used at the time of annexation
23 for commercial, industrial, governmental or institutional purposes,
24 consists of lots and tracts five acres or less in size; size; or
- 25 (2) An area so developed that at the time of annexation, all tracts in
26 the area to be annexed are used for commercial, industrial,
27 governmental or institutional purposes; or
- 28 (3) ~~An area developed for urban purposes is also the~~ The entire area
29 of any county water and sewer district created under G.S. 162A-
30 86(b1), but this sentence subsection only applies to annexation by a
31 municipality if that:
- 32 (1) a. Municipality has provided in a contract with that district
33 that the area is developed for urban purposes; and
- 34 (2) b. Contract provides for the municipality to operate the sewer
35 system of that county water and sewer district;

36 provided that the special categorization provided by this ~~sentence~~ subsection only
37 applies if the municipality is annexing in one proceeding the entire territory of the
38 district not already within the corporate limits of a municipality.

39 (d) In fixing new municipal boundaries, a municipal governing board shall,
40 wherever practical, use natural topographic features such as ridge lines and streams
41 and creeks as boundaries, and may use streets as boundaries. Some or all of the
42 boundaries of a county water and sewer district may also be used when the entire
43 district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

6 (1) Fix the date, hour and place of the public hearing.

7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.

9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.

13 ~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35~~. G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~. municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

- 1 water and sewer map must bear the seal of a registered
2 professional engineer.
- 3 c. The general land use pattern in the area to be annexed.
- 4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.
- 6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.
- 26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 ~~service,~~ service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

1 (c) Part or all of the area to be annexed must be developed for urban ~~purposes.~~
2 purposes at the time of the public hearing for the annexation ordinance. Area of
3 streets and rights-of-way shall be used only to determine total resident population per
4 acre of land in this section. An area developed for urban purposes is defined as any
5 area which meets any one of the following standards:

6 (1) Has a total resident population equal to at least two persons for
7 each acre of land included within its boundaries; or

8 (2) Has a total resident population equal to at least one person for
9 each acre of land included within its boundaries, and is subdivided
10 into lots and tracts such that at least sixty percent (60%) of the
11 total acreage consists of lots and tracts five acres or less in size and
12 such that at least sixty-five percent (65%) of the total number of
13 lots and tracts are one acre or less in size; or

14 (3) Is so developed that at least sixty percent (60%) of the total
15 number of lots and tracts in the area at the time of annexation are
16 used for residential, commercial, industrial, institutional or
17 governmental purposes, and is subdivided into lots and tracts such
18 that at least sixty percent (60%) of the total acreage, not counting
19 the acreage used at the time of annexation for commercial,
20 industrial, governmental or institutional purposes, consists of lots
21 and tracts five acres or less in size; or

22 (4) Is the entire area of any county water and sewer district created
23 under G.S. 162A-86(b1), but this subdivision only applies to
24 annexation by a municipality if that:

25 a. Municipality has provided in a contract with that district
26 that the area is developed for urban purposes; and

27 b. Contract provides for the municipality to operate the sewer
28 system of that county water and sewer district;

29 provided that the special categorization provided by this
30 subdivision only applies if the municipality is annexing in one
31 proceeding the entire territory of the district not already within the
32 corporate limits of a ~~municipality.~~ municipality; or

33 (5) Is so developed that at the time of annexation, all tracts in the area
34 to be annexed are used for commercial, industrial, governmental or
35 institutional purposes.

36 (d) In addition to areas developed for urban purposes, a governing board may
37 include in the area to be annexed any area which does not meet the requirements of
38 subsection (c) if such area either:

39 (1) Lies between the municipal boundary and an area developed for
40 urban purposes so that the area developed for urban purposes is
41 either not adjacent to the municipal boundary or cannot be served
42 by the municipality without extending services and/or water and/or
43 sewer lines through such sparsely developed area; or

- 1 (2) Is adjacent, on at least sixty percent (60%) of its external
2 boundary, to any combination of the municipal boundary and the
3 boundary of an area or areas developed for urban purposes as
4 defined in subsection (c).

5 The purpose of this subsection is to permit municipal governing boards to extend
6 corporate limits to include all nearby areas developed for urban purposes and where
7 necessary to include areas which at the time of annexation are not yet developed for
8 urban purposes but which constitute necessary land connections between the
9 municipality and areas developed for urban purposes or between two or more areas
10 developed for urban purposes. For purposes of this subsection, 'necessary land
11 connection' means an area which does not exceed twenty-five percent (25%) of the
12 total area to be annexed. *

13 (e) In fixing new municipal boundaries, a municipal governing board shall,
14 wherever practical, use natural topographic features such as ridge lines and streams
15 and creeks as boundaries, and may use streets as boundaries. Some or all of the
16 boundaries of a county water and sewer district may also be used when the entire
17 district not already within the corporate limits of a municipality is being annexed.

18 (f) The area of an abolished water and sewer district shall be considered to be a
19 water and sewer district for the purpose of this section even after its abolition under
20 G.S. 162A-87.2(b)."

21 Section 9. G.S. 160A-49(b) reads as rewritten:

22 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

- 23 (1) Fix the date, hour and place of the public hearing.
24 (2) Describe clearly the boundaries of the area under consideration,
25 and include a legible map of the area.
26 (3) State that the report required in G.S. 160A-47 will be available at
27 the office of the municipal clerk at least 30 days prior to the date
28 of the public hearing.
29 (4) Include a clear and easily understandable statement notifying
30 persons affected by the annexation of their right to appeal under
31 G.S. 160A-50, the right to request water and sewer services under
32 G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and
33 (k) for failure of the city to provide services.

34 Such notice shall be given by publication once a week for at least two successive
35 weeks prior to the date of the hearing in a newspaper having general circulation in
36 the municipality and, in addition thereto, if the area to be annexed lies in a county
37 containing less than fifty percent (50%) of the land area of the municipality, in a
38 newspaper having general circulation in the area of proposed annexation. The period
39 from the date of the first publication to the date of the last publication, both dates
40 inclusive, shall be not less than eight days including Sundays, and the date of the last
41 publication shall be not more than seven days preceding the date of public hearing. If
42 there be no such newspaper, the municipality shall post the notice in at least five
43 public places within the municipality and at least five public places in the area to be
44 annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.



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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy,
Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 94 makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights.

Section 4 of the bill amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000.



MEMORANDUM

Page 2

February 25, 1997

Section 5 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of appeal rights.

Section 10 of the bill amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill provides that it would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

March 11, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met March 11, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Amelia Talford and Janel Elizabeth Walls.

The following bills were discussed:

HB 286 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND TO ADD THE PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ROCKY MOUNT. Chairman Ellis declared the five minute rule in effect and recognized Rep. Arnold to explain the bill. Rep. Arnold presented a letter from the City of Rocky Mount endorsing the proposed annexation (Exhibit 1). He noted that Dortches property owners had requested the action. Rep. Buchanan moved for a favorable report and re-refer to House Finance Committee; seconded and passed.

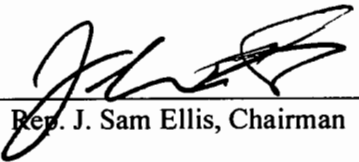
SB 85 A BILL TO BE ENTITLED AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY. Rep. Arnold was recognized to explain the bill and offered a Proposed Committee Substitute. Rep. Buchanan moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Arnold explained that the PCS makes this bill identical to HB 116. Rep. Carpenter moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

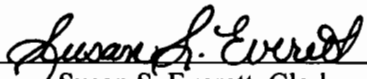
HB 298 A BILL TO BE ENTITLED AN ACT INCREASING FROM FIVE TO SEVEN THE MEMBERSHIP OF THE COLUMBUS COUNTY AIRPORT AUTHORITY. Rep. Hill was recognized to explain the bill and offered a Proposed Committee Substitute. Rep. Buchanan moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Hill explained that the Columbus County Airport Authority membership requested the addition of two members. Rep. Allred moved for a moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Chairman Ellis summarized new research materials that had been added to members' notebooks (Exhibits 2-5). Members reviewed the materials and discussed the practical matters associated with the annexation process. Chairman Ellis closed the meeting by asking members to prepare amendments for next week's meeting.

The meeting adjourned at 11:50 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

March 11, 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 286 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED
PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND
TO ADD THE PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ROCKY
MOUNT.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☒ Finance.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*favorable
re-referred
Finance*

H

1

HOUSE BILL 286

Short Title: Dortches/Rocky Mount Boundaries.

(Local)

Sponsors: Representative Arnold.

Referred to: Local and Regional Government I, if favorable, Finance.

February 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE
3 CORPORATE LIMITS OF THE TOWN OF DORTCHES AND TO ADD THE
4 PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ROCKY
5 MOUNT.

6 The General Assembly of North Carolina enacts:

7 Section 1. The following described property is removed from the
8 corporate limits of the Town of Dortches and is added to the corporate limits of the
9 City of Rocky Mount:

10
11 THARRINGTON TRACT

12 Beginning at a point in the center line of Halifax Road (N.C.S.R. 1527)
13 675 feet northerly from the intersection of the center line of Halifax Road with the
14 center line of Hunters Hill Road (N.C.S.R. 1604) corner of the property of W.M.
15 Daniels in Tract No. 7 of the John Eason Farm shown on map of survey hereinafter
16 referred to; thence N. 9° 59' E. along said center line 102.40 feet to a point, a corner
17 of said Tract 7; thence S. 80° 01' E. 339.40 feet to an iron, a corner between said
18 Tract 7 and the Property of Morris J. Hurt; thence N. 9° 59' E. 185.08 feet to an iron,
19 common corner between the Property of Morris J. Hurt, Guy Bunn and said Tract 7;
20 thence S. 77° 30' E. 69.57 feet to an iron, a corner; thence N. 52° 50' E. 75 feet to an
21 iron; thence N. 58° 30' E. 173 feet to an iron; thence N. 38° 30' E. 63 feet to an iron;
22 thence N. 16° 00' E. 407 feet to an iron, a corner between Tract 7 and the land of
23 Guy Bunn; thence S. 82° 16' E. 782 feet to an iron axle found in the line of Guy
24 Bunn, a corner; thence S. 7° 40' W. 1328.50 feet to an iron, a corner with Guy Bunn

1 property; thence N. 82° 20' W. 115.5 feet to a point, a corner with the Guy Bunn
2 property; thence S. 6° 34' W. 243.1 feet to a point in the center line of N.C.S.R.
3 1604, a corner; thence N. 75° 40' W. 133 feet to a point in said center line; thence N.
4 78° 41' W. 108.70 feet to a point in said center line, corner between the Eason
5 Property and said Tract 7; thence N. 10° 27' E. 428.60 feet to an iron, a corner;
6 thence N. 79° 30' W. 209.22 feet to an axle, a corner between the Eason Property
7 and said Tract 7; thence N. 10° 50' E. 122.60 feet to a red oak, a corner between the
8 Eason Property and said Tract 7; thence N. 75° 08' W. 637.22 feet to an iron; thence
9 N. 78° 36' W. 130 feet to an iron, corner of the W. M. Daniels Property; thence N.
10 78° 13' W. 185 feet to a point in the center line of N.C.S.R. 1527, the point of
11 beginning, containing 26.6 acres, more or less, and being all of Tract No. 7 as shown
12 on map of a survey of L. D. Harper entitled "Map of John Eason Farm, Nash County,
13 North Carolina," dated March 27, 1918, and recorded in Book 247, Page 143, Nash
14 County Registry, less and except from the aforesaid Tract 7 those lands described in
15 Deeds recorded in Book 871, Page 513, Book 886, Page 71, and Book 902, Page 276,
16 Nash County Registry; and being the property conveyed by Deed of February 24,
17 1981, from Minnie M. Tharrington, widow, by attorney-in-fact, et als, to Richard Y.
18 Tharrington, recorded in Book 1080, Page 120, Nash County Registry.

19 The aforesaid description was taken from map entitled "Property of
20 Richard Y. Tharrington," dated September 18, 1981, prepared by McIntyre Surveying,
21 Nashville, N.C.

BOSEMAN TRACT

24 Beginning at a point in the center of a culvert across Kirby Creek and in
25 the center of the County Road; thence with the center of said road N. 2° 30' W. 191
26 feet to a point in a slight bend in said road; thence, continuing with the center of said
27 road, N. 2° 15' E. 1900 feet to a point where the center of said road intersects with
28 the center of the old Hilliardston and Rocky Mount Road; thence, with the center of
29 said old Hilliardston and Rocky Mount, N. 67° W. 158 feet; thence, continuing with
30 the center of said road N. 58° W. 2388 feet to a point, iron axle on the side of said
31 road, Mrs. Brake's corner; thence S. 4° 10' W. 1390 feet to a gum on Kirby Creek;
32 thence, down Kirby Creek with its various courses and meanders to the beginning,
33 containing 85.8 acres, by survey made by W.F. Beal, C.E., in January, 1933, and being
34 all that part of the tract of land which was conveyed to J.J. Woodruff by Jacob Battle,
35 Commissioner, by deed recorded in Book 83, Page 345, Nash County Registry, which
36 lies west of the center line of the County Road running through said land. The
37 graveyard, with the right of way thereto is excepted from this deed. And, being the
38 same, identical property conveyed to E. L. Boseman by deed dated January 5, 1934
39 and recorded in Book 376 at Page 274 of the Nash County Public Registry, to which
40 deed reference is hereby made for a more full and perfect description of said
41 property.

42 The above described tract or parcel of land is the same identical property
43 shown on that certain forest type map entitled "BOSEMAN TRACT, STONEY
44 CREEK TWP., NASH COUNTY, N.C.," dated August 30, 1990 and prepared by

1 J.W. Baum, consulting forester of Nashville, North Carolina, a copy of which map is
2 attached hereto and incorporated herein and made a part hereof by this reference for
3 a more full and perfect description of said property.

4
5 COLEY TRACT

6 BEGINNING at an iron stake said iron stake being the Northeast corner
7 of Lot No. 13 Block C of Hunters Point as recorded in Plat Book 13 at Page 145 and
8 being the Southeast corner of the herein described tract; thence from said Beginning
9 point along the North line of Lot No. 13, Block C North 78 deg. 01' 42" W. 154.9 feet
10 to an iron stake in the East right of way line of Sportsman's Trail; thence S. 72 deg.
11 11' 54" W. 71.56 feet to an iron stake in the West right of way line of Sportsman's
12 Trail, the Northeast corner of Lot No. 3, Block D; thence with the North line of Lot
13 No. 3 N. 57 deg. 00' 00" W. 106.93 feet an iron stake; thence with the North line of
14 Lot No. 2, Block D, N. 70 deg. 00' 00" W. 100.0 feet to an iron stake; thence with the
15 North line of Lot 1, Block D, N. 78 deg. 00' 00" W. 110.0 feet to an iron stake in W.
16 D. Woodruff's East line; thence with Woodruff's East line N. 6 deg. 12' 00" East
17 2473.88 feet to an iron stake at Kirby Creek; thence along Kirby Creek the following
18 nine courses and distances: N. 57 deg. 24' E. 61.35 feet, N. 86 deg. 09' E. 56.0 feet,
19 N. 39 deg. 39' E. 54.0 feet, S. 39 deg. 51' E. 74.0 feet, S. 84 deg. 21' E. 95.0 feet, N.
20 33 deg. 09' E. 95.0 feet, S. 86 deg. 21' E. 55.0 feet, S. 51 deg. 21' E. 111.0 feet, N. 46
21 deg. 39' E. 58.0 feet to an axle; thence with the West line of the William W. Ricks
22 Estate South 5 deg. 58' W. 2628.08 feet to an iron stake the point of BEGINNING,
23 containing approximately 30.45 acres, more or less, and being contiguous with the
24 Hunter's Point Subdivision as recorded in Plat Book 13, at Page 145. This being a
25 part of the land described in Deed Book 1015, at Page 49.

26 Being the identical tract or parcel of land conveyed to Herman H. Fryar,
27 Jr. and John T. Coley, III, recorded in Book 1218, Page 613, Nash Registry.

28 Section 2. This act shall have no effect upon the validity of any liens of
29 the Town of Dortches for ad valorem taxes or special assessments outstanding before
30 the effective date of this act. Such liens may be collected or foreclosed upon after
31 the effective date of this act as though the property was still within the corporate
32 limits of the Town of Dortches.

33 Section 3. This act becomes effective June 30, 1997.

EXHIBIT 1



CITY OF ROCKY MOUNT

OFFICE OF
THE CITY MANAGER

March 6, 1997

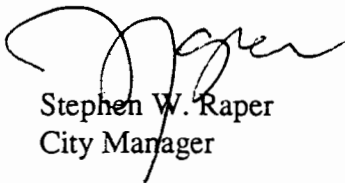
Honorable Gene Arnold
N. C. House of Representatives
535 State Legislative Building
Raleigh, NC 27601-2808

Dear Gene:

The Rocky Mount City Council discussed HB286 "Dortches/Rocky Mount Boundaries" at their Committee of the Whole meeting on March 5, 1997. The City Council noted that this action was initiated at the request of property owners and that the City's policy in the past has been to favorably consider voluntary annexation into the City of those whose property is contiguous to the City of Rocky Mount. Therefore, the City Council supports and approves the addition of the three (3) parcels now within the corporate limits of the Town of Dortches into the City of Rocky Mount by action of the North Carolina General Assembly as set forth in HB286.

If I can provide any additional information, please do not hesitate to let me know. Please keep us informed on the status of this legislation.

Sincerely,



Stephen W. Raper
City Manager

pwr

c Frederick E. Turnage, Mayor



North Carolina General Assembly Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

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Thomas L. Covington, Director
Fiscal Research Division
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Donald W. Fulford, Director
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(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 11, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 286 Dortches/Rocky Mount Boundaries
Introduced by Representative Arnold

House Bill 286 removes three described tracts from the Town of Dortches in Nash County, and adds them to the City of Rocky Mount.

House Bill 286 would become effective when it becomes law.



file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

S.B. 85 A BILL TO BE ENTITLED AN ACT TO REGULATE DEER HUNTING IN
WILSON COUNTY.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 85*

Proposed House Committee Substitute S85-PCS4528

Short Title: Wilson Deer Hunting.

(Local)

Sponsors:

Referred to:

February 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY.

3 The General Assembly of North Carolina enacts:

4 Section 1. It is unlawful to take or to hunt deer with rifles, except from a
5 stationary stand elevated at least eight feet above the ground. The height of the stand
6 described in this section shall be such that the bottom of the hunter's feet when
7 standing are at least eight feet above the ground. As used in this section, the terms
8 "to hunt" and "to take" are used as those terms are defined in G.S. 113-130(5a) and
9 G.S. 113-130(7), respectively.

10 Section 2. Section 1 of Chapter 294 of the 1989 Session Laws reads as
11 rewritten:

12 "Section 1. It is unlawful to shine a light intentionally upon a deer or to sweep a
13 light in search of deer between the hours of ~~11:00 p.m.~~ one-half hour after sunset and
14 one-half hour before sunrise."

15 Section 3. Violation of this act is a Class 3 misdemeanor.

16 Section 4. This act is enforceable by law enforcement officers of the
17 Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the
18 State Highway Patrol, and by other peace officers with general subject matter
19 jurisdiction.

20 Section 5. This act applies only to Wilson County.

21 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 85*

Short Title: Wilson Deer Hunting.

(Local)

Sponsors: Senators Martin of Pitt; Cooper and Wellons.

Referred to: State Government, Local Government, and Personnel.

February 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY.

3 The General Assembly of North Carolina enacts:

4 Section 1. It is unlawful to take or to hunt deer with rifles, except from a
5 stationary stand elevated at least eight feet above the ground. The height of the stand
6 described in this section shall be such that the bottom of the hunter's feet when
7 standing are at least eight feet above the ground. As used in this section, the terms
8 "to hunt" and "to take" are used as those terms are defined in G.S. 113-130(5a) and
9 G.S. 113-130(7), respectively.

10 Section 2. Violation of Section 1 of this act is a Class 3 misdemeanor.

11 Section 3. This act is enforceable by law enforcement officers of the
12 Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the
13 State Highway Patrol, and by other peace officers with general subject matter
14 jurisdiction.

15 Section 4. This act applies only to Wilson County.

16 Section 5. This act is effective when it becomes law.



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Raleigh, NC 27603-5925
(919) 733-2578

March 11, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: Senate Bill 85 Wilson Deer Hunting
Introduced by Senators Martin of Pitt; Cooper and Wellons

Senate Bill 85 would require persons hunting deer with rifles in Wilson County to use a stand at least eight feet above the ground.

Violation of this act would constitute a Class 3 misdemeanor (up to \$200 fine and/or 1-10 day community penalty).

Senate Bill 85 would become effective when it becomes law.



**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 298 A BILL TO BE ENTITLED AN ACT INCREASING FROM FIVE TO SEVEN
THE MEMBERSHIP OF THE COLUMBUS COUNTY AIRPORT AUTHORITY.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐.
- ☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 298
Proposed Committee Substitute H298-PCS6106

Short Title: Columbus Airport Auth. Membership.

(Local)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT INCREASING FROM FIVE TO SEVEN THE MEMBERSHIP OF THE
3 COLUMBUS COUNTY AIRPORT AUTHORITY.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 2 of Chapter 134 of the 1995 Session Laws reads as
6 rewritten:
7 "Sec. 2. The Airport Authority shall consist of ~~five~~ seven members who shall be
8 appointed to staggered terms of four years by the Columbus County Board of
9 Commissioners. All of the members shall be residents of Columbus County. Of the
10 initial ~~five~~ seven members, ~~two~~ three shall be appointed to a term of four years and
11 ~~three~~ four shall be appointed to a term of two years. Thereafter all terms shall be for
12 four years. Each member shall take and subscribe before the Clerk of the Superior
13 Court of Columbus County an oath of office and file the same with the Columbus
14 County Board of Commissioners. Upon the occurrence of any vacancy on the
15 Airport Authority, the vacancy shall be filled within 60 days after the vacancy occurs
16 at a regular meeting of the Board of County Commissioners. Membership on the
17 Columbus County Board of Commissioners and on the Airport Authority shall not
18 constitute double office holding within the meaning of Article VI, §9 of the
19 Constitution of North Carolina."
20 Section 2. This act is effective when it becomes law.



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March 11, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 298 Columbus County Airport Authority Membership
(PROPOSED COMMITTEE SUBSTITUTE)
Introduced by Representative Hill

House Bill 298 (PCS) would increase the membership of the Columbus County Airport Authority from five to seven members.

House Bill 298 would become effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 298

Short Title: Columbus Airport Auth. Membership.

(Local)

Sponsors: Representative Hill.

Referred to: Local and Regional Government I.

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT INCREASING FROM FIVE TO SEVEN THE MEMBERSHIP OF THE
3 COLUMBUS COUNTY AIRPORT AUTHORITY.

4 The General Assembly of North Carolina enacts:

5 Section 1. Section 2 of Chapter 134 of the 1995 Session Laws reads as
6 rewritten:

7 "Sec. 2. The Airport Authority shall consist of ~~five~~ seven members who shall be
8 appointed to staggered terms of four years by the Columbus County Board of
9 Commissioners. All of the members shall be residents of Columbus County. Of the
10 initial ~~five~~ seven members, two shall be appointed to a term of ~~four~~ five years and
11 ~~three~~ four shall be appointed to a term of two years. Thereafter all terms shall be for
12 four years. Each member shall take and subscribe before the Clerk of the Superior
13 Court of Columbus County an oath of office and file the same with the Columbus
14 County Board of Commissioners. Upon the occurrence of any vacancy on the
15 Airport Authority, the vacancy shall be filled within 60 days after the vacancy occurs
16 at a regular meeting of the Board of County Commissioners. Membership on the
17 Columbus County Board of Commissioners and on the Airport Authority shall not
18 constitute double office holding within the meaning of Article VI, §9 of the
19 Constitution of North Carolina."

20 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 94*

discussion

1

Short Title: Annexation Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "**§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.**

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:

12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.

18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.

20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

- 1 calculate present level of service, including, if applicable,
2 personnel to population ratios and average response times.
3 (4) A statement of the impact of the annexation on any rural fire
4 department providing service in the area to be annexed and a
5 statement of the impact of the annexation on fire protection and
6 fire insurance rates in the area to be annexed, if the area where
7 service is provided is in an insurance district designated under G.S.
8 153A-233, a rural fire protection district under Article 3A of
9 Chapter 69 of the General Statutes, or a fire service district under
10 Article 16 of Chapter 153A of the General Statutes. The rural fire
11 department shall make available to the city not later than 30 days
12 following a written request from the city all information in its
13 possession or control, including but not limited to operational,
14 financial and budgetary information, necessary for preparation of a
15 statement of impact. The rural fire department forfeits its rights
16 under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good
17 faith response within 45 days following receipt of the written
18 request for information from the city, provided that the city's
19 written request so states by specific reference to this section.
20 (5) A statement containing the classification as to use and size of each
21 lot or tract in the area to be annexed.
22 (6) A clear and easily understandable statement notifying persons
23 affected by the annexation of their right to appeal under G.S.
24 160A-38 and the remedy under G.S. 160A-37(h) for failure of the
25 city to provide services.
26 (7) A statement showing how the proposed annexation will affect the
27 city's finances and services, including city revenue change
28 estimates. This statement shall be delivered to the clerk of the
29 board of county commissioners at least 30 days before the date of
30 any public hearing on any annexation under this Part."

31 Section 2. G.S. 160A-36 reads as rewritten:

32 "**§ 160A-36. Character of area to be annexed.**

33 (a) A municipal governing board may extend the municipal corporate limits to
34 include any area which meets the general standards of subsection (b), and which
35 meets the requirements of subsection (c).

36 (b) The total area to be annexed must meet the following standards:

- 37 (1) It must be adjacent or contiguous to the municipality's boundaries
38 at the time the annexation proceeding is begun, except if the entire
39 territory of a county water and sewer district created under G.S.
40 162A-86(b1) is being annexed, the annexation shall also include
41 any noncontiguous pieces of the district as long as the part of the
42 district with the greatest land area is adjacent or contiguous to the
43 municipality's boundaries at the time the annexation proceeding is
44 begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the time of the public hearing for the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined ~~as any~~ as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in ~~size~~ size; or

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes; or

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this ~~sentence~~ subsection only applies to annexation by a municipality if that:

(1) ~~a.~~ a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) ~~b.~~ b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

6 (1) Fix the date, hour and place of the public hearing.
7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.

9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.

13 ~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35~~. G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~. municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

- 1 water and sewer map must bear the seal of a registered
2 professional engineer.
- 3 c. The general land use pattern in the area to be annexed.
- 4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.
- 6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.
- 26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 ~~service~~, service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes~~
purposes at the time of the public hearing for the annexation ordinance. Area of
streets and rights-of-way shall be used only to determine total resident population per
acre of land in this section. An area developed for urban purposes is defined as any
area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality~~. municipality; or
- (5) Is so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or

- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area which does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 9. G.S. 160A-49(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.
- (4) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.



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February 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis,
Hardy, Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 94 makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights.

Section 4 of the bill amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000.



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Section 5 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of appeal rights.

Section 10 of the bill amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill provides that it would become effective when it becomes law.

EXHIBIT 2

Involuntary Annexation by Cities of 5,000 or More

G.S. 160A-45 through 160A-54

160A-45	Declaration of policy
160A-46	Authority to annex
160A-47	Prerequisites to annexation; ability to serve; report and plans
160A-47.1	Limitation on change in financial participation prior to annexation
160A-48	Character of area to be annexed
160A-49	Procedure for annexation
160A-49.1	Contract with rural fire department
160A-49.2	Assumption of debt
160A-49.3	Contract with private solid waste collection firm(s)
160A-50	Appeal
160A-51	Annexation recorded
160A-52	Authorized expenditures
160A-53	Definitions
160A-54	Population and land estimates

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;
- (4) That new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-47(3). (1959, c. 1009, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 9.)

Local Modification. — (As to Part 3) Durham and Wake: 1985, c. 435, s. 2; (As to Parts 2 and 3) Rockingham: 1993, c. 418, s. 1; (As to Part 3) city of Brevard: 1987, c. 254, s. 2; 1991 (Reg. Sess., 1992), c. 964, s. 2; city of Durham: 1987, c. 606; 1989 (Reg. Sess., 1990), c. 841, s. 4; city of Eden: 1993, c. 418, s. 1; (As to Part 3) city of New Bern: 1993 (Reg. Sess., 1994), c. 605, s. 1; town of Dobbins Heights: 1983, c. 658; (As to Part 3) town of Stanley: 1993 (Reg. Sess., 1994), c. 713, s. 2; town of Wallace: 1989, c. 619, s. 2; (As to Part 3) community of Rock Barn: 1989, c. 27.

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Sections 160A-45 through 160A-56 were originally codified as §§ 160-453.13 through 160-453.24. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act,

except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1093 (1981).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For survey, "Municipal Annexation in North Carolina: A Look at the Past Decade," see 14 Campbell L. Rev. 135 (1992).

CASE NOTES

Annexation Procedure Constitutional. — The procedure for annexation by cities of 5,000 or more, § 160A-45 et seq., does not violate N.C. Const., Art. I, § 25, because it does not provide for trial by jury on issues of fact. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The procedure for annexation by cities of 5,000 or more does not authorize a taking of private property without just compensation in violation of the due process clause of U.S. Const., Amend. V or the law of the land provision of N.C. Const., Art. I, § 19, on the alleged ground that petitioner will pay a substantial sum in ad valorem taxes to the annexing town without receiving any substantial benefits or major services he does not already receive, since petitioner may petition for a writ of mandamus pursuant to § 160A-49(h) if he discovers he is not receiving services other residents are receiving, within 12 to 15 months from the effective date of the annexation, and the annexation procedure thus provides adequate due process safeguards to assure that citizens in the annexed area get municipal services on a nondiscriminatory basis. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Provisions Not Unconstitutional as Special or Local Legislation. — Sections 160A-45 through 160A-50 are not unconstitutional as special or local legislation even though as enacted the statutes exempted certain counties from their application, because municipal annexation is not one of the subject matter areas which the Constitution requires to be accomplished by general or uniformly applicable laws. *In re City of Durham*

Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649, appeal dismissed and cert. denied, 312 N.C. 493, 322 S.E.2d 553 (1984).

Sections 160A-45 et seq. do not violate N.C. Const., Art. II, § 24, which prohibits the General Assembly from enacting "any local, private, or special act or resolution" in regard to certain enumerated subjects. This constitutional provision does not apply to annexation proceedings by municipalities, since N.C. Const., Art. VII, § 1, authorizes the General Assembly "except as otherwise prohibited by this Constitution" to "give such powers and duties to counties, cities, and towns and other governmental subdivisions as it may deem advisable," and no other provision of the Constitution prohibits the General Assembly from enacting special legislation for the annexation of areas by municipalities. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Nor as Denial of Equal Protection. — Part 3 of Article 4A of Chapter 160A does not deny equal protection under either the state or federal Constitutions. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Rational Basis for Statutory Scheme. — Given the state policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. *Little Red School House, Ltd. v. City of Greens-*

boro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Legislative Intent. — To apply a strict interpretation to §§ 160A-45, et seq., would contravene the intent of the legislature, which is to obtain a meaningful review of annexation ordinances. *Southern Glove Mfg. Co. v. City of Newton*, 63 N.C. App. 754, 306 S.E.2d 466 (1983).

The legislative policy expressed in this section is that municipalities remain dynamic growing entities. *Quality Water Supply, Inc. v. City of Wilmington*, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 597, 393 S.E.2d 881 (1990).

Central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents receive the benefits of all the major services available to municipal residents. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982); *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The General Assembly has established detailed criteria and guidelines for annexation under Part 3 of this Article. *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Prima facie complete and substantial compliance with this Part is a condition precedent to annexation of territory by a municipality. *In re Ordinance of Annexation No. 1977-4*, 296 N.C. 1, 249 S.E.2d 698 (1978).

The provisions of this section are merely statements of policy. No procedural steps, substantive rights, or annexation requirements are contained in that statute. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); *In re Annexation Ordinance No. D-21927*, 303 N.C. 220, 278 S.E.2d 224 (1981).

And the policies enumerated under this section are aids for statutory interpretation when other sections of Part 3 of this Article are in need of clarification, definition, and interpretation. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); *In re Annexation Ordinance No. D-21927*, 303 N.C. 220, 278 S.E.2d 224 (1981).

Statement of Policy Not Part of § 160A-50 "Procedure". — The statement of state policy with regard to annexation set forth in this section is not part of the "procedure" of annexation under § 160A-50. *In re Annexation Ordinance No. D-21927*, 303 N.C. 220, 278 S.E.2d 224 (1981).

It is not required that proposed sewer interceptors be included on the maps that accompany annexation reports. *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

The legislature has recognized the importance of adequate water and sewer facilities to the end of quality urban development and specifically required that certain present and proposed water and sewer facilities be shown in the report. That the legislature did not include proposed sewer interceptors among those certain facilities is a matter of legislative concern. *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

Prior Jurisdiction Doctrine. — Adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of the annexation statutes. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

A county may not exercise jurisdiction over any part of a city located within its borders. *Davidson County v. City of High Point*, 321 N.C. 252, 362 S.E.2d 553 (1987).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. *Davidson County v. City of High Point*, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents,

the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. *Davidson County v. City of High Point*, 321 N.C. 252, 362 S.E.2d 553 (1987).

Where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

Preference of Landowners Is of No Consequence. — For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the involuntary annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

Discovery. — Though discovery in annexation proceedings is not altogether forbidden, its scope is necessarily limited by the nature of the proceeding. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Reports' Statement of Policy Objectives Held Sufficient. — A statement in an annexation plan report that the annexation was designed to promote sound urban development and assure

adequate provision of government services was a sufficient statement of the policy objectives to be met by the annexation to comply with this section. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Judicial Review. — The General Assembly has provided for limited judicial review of annexation ordinances. Section 160A-50 provides that a property owner in the annexed area may seek judicial review of the ordinance. Upon such review, the superior court may consider only whether (1) the statutory procedure was not followed, or (2) the provisions of § 160A-47 were not met, or (3) the provisions of § 160A-48 have not been met. Additionally, petitioner must carry the burden of showing both non-compliance with statutory requirements and procedure and material injury flowing from such noncompliance. *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Applied in *In re Annexation Ordinance*, 44 N.C. App. 274, 261 S.E.2d 39 (1979); *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980); *In re Annexation Ordinance No. 1219*, 62 N.C. App. 588, 303 S.E.2d 380 (1983); *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990).

Quoted in *In re Annexation Ordinances Nos. 866-870*, 253 N.C. 637, 117 S.E.2d 795 (1961).

Stated in *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980); *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 269 S.E.2d 142 (1980).

Cited in *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977); *In re Annexation Ordinance No. 300-X*, 304 N.C. 549, 284 S.E.2d 470 (1981); *In re Annexation Ordinance 301-X*, 304 N.C. 565, 284 S.E.2d 475 (1981); *Ricks v. Town of Selma*, 99 N.C. App. 82, 392 S.E.2d 437 (1990).

§ 160A-46. Authority to annex.

The governing board of any municipality having a population of 5,000 or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part. (1959, c. 1009, s. 2; 1973, c. 426, s. 74.)

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts

the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

This section is constitutional. In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

Right to Use New Annexation Method as Only Discretion Delegated to Municipalities. — By the enactment of Part 3 of this Article, the General Assembly did not delegate to the municipalities of the State having a population of 5,000 or more any discretion with respect to the provisions of the law. The guiding standards and requirements of the act are set out in great detail. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation, provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

A city has statutory authority to annex areas both contiguous and non-contiguous to its primary corporate limits. It must stand ready to provide sewer service (among other services) to newly annexed areas on substantially the same basis and in the

same manner in which these services are provided to the rest of the city. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Cited in McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
 - c. The general land use pattern in the area to be annexed.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal

service performed within the municipality at the time of annexation. Specifically, such plans shall:

- a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
 - b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk not less than 30 days before adoption of the annexation ordinance, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests.
 - c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.
 - d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an

insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 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. (1959, c. 1009, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7, 10, 11, 17, 19; 1985, c. 610, ss. 2, 6, 7; 1989, c. 598, s. 8; 1991, c. 25, s. 2; c. 761, s. 31.)

Local Modification. — Franklin: 1969, c. 1232.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1985, c. 610, s. 8, which amended this section, provided that the act applied to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, except that ss. 5 and 6 of the act were effective upon ratification (July 4, 1985).

Session Laws 1989, c. 598, s. 8, which added the last sentence in subsection (4), became effective with respect to annexations for which the resolution of intent is adopted on or after January 1, 1990.

Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

Session Laws 1991, c. 25, s. 2, effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992, designated the existing language as subsection (a), and added subsection (b). However, Session Laws 1991, c. 761, s. 31, effective July 16, 1991, provided: "G.S. 160A-47(b), as enacted by Section 1 of Chapter 25 of the 1991 Session Laws, is recodified as G.S. 160A-47.1, with a catch line to read: 'Limitation on change in financial participation prior to annexation.' G.S. 160A-47(a) is redesignated as G.S. 160A-47."

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

- I. In General.
- II. Maps.
- III. Plans for Extending Services.
 - A. In General.
 - B. Police and Fire Protection.
 - C. Street Maintenance.
 - D. Water and Sewer Service.
- IV. Method of Financing.

I. IN GENERAL.

Purpose. — The purpose of this section is to insure that major municipal services are provided to newly annexed areas on a nondiscriminatory basis. *Wallace v. Town of Chapel Hill*, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Section Required to Be Followed Only Where Annexation Achieved Under Chapter 160A, Art. 4A, Part 3. — This section, dealing with the submission of plans by the municipality for the extension of municipal services (including police and fire protection, solid waste collection, and street maintenance), and §§ 160A-49.1 and 160A-49.3, dealing with contracting for fire protection and sewage services, are required to be followed by a municipality only where the annexation is to be achieved under Chapter 160A, Art. 4A, Part 3. *Piedmont Ford Truck Sales, Inc. v. City of Greensboro*, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. *Little Red School House, Ltd. v. City of Greensboro*, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents receive the benefits of all the major services available to municipal residents. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982); *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984); *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Local act requiring city to extend municipal services, including services

under this section, to newly annexed areas did not violate N.C. Const., Art. II, § 24(1)(a). *Piedmont Ford Truck Sale v. Greensboro*, 324 N.C. 499, 380 S.E.2d 107 (1989).

A city has statutory authority to annex areas both contiguous and non-contiguous to its primary corporate limits. It must stand ready to provide sewer service (among other services) to newly annexed areas on substantially the same basis and in the same manner in which these services are provided to the rest of the city. *Davidson County v. City of High Point*, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. *Davidson County v. City of High Point*, 321 N.C. 252, 362 S.E.2d 553 (1987).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of this section, and as to the area involved being eligible for annexation under § 160A-48, in those

instances where discovery may illuminate these issues it is authorized under the Rules of Civil Procedure. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977); *In re Annexation Ordinance*, 44 N.C. App. 274, 261 S.E.2d 39 (1979); *Knight v. City of Wilmington*, 73 N.C. App. 254, 326 S.E.2d 376 (1985); *Chapel Hill Country Club, Inc. v. Town of Chapel Hill*, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

Quoted in *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980).

Stated in *Quality Water Supply, Inc. v. City of Wilmington*, 97 N.C. App. 400, 388 S.E.2d 608 (1990).

Cited in *Armento v. City of Fayetteville*, 32 N.C. App. 256, 231 S.E.2d 689 (1977); *In re Annexation Ordinance 301-X*, 304 N.C. 565, 284 S.E.2d 475 (1981); *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982); *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129 (1983); *Forsyth Citizens Opposing Annexation v. City of Winston-Salem*, 67 N.C. App. 164, 312 S.E.2d 517 (1984); *Livingston v. City of Charlotte*, 68 N.C. App. 265, 314 S.E.2d 303 (1984); *In re City of Durham Annexation Ordinance Numbered 5991 for Area A*, 69 N.C. App. 77, 316 S.E.2d 649 (1984); *Stillings v. City of Winston-Salem*, 311 N.C. 689, 319 S.E.2d 233 (1984); *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 380 S.E.2d 107 (1989); *Ricks v. Town of Selma*, 99 N.C. App. 82, 392 S.E.2d 437 (1990); *Biltmore Square Assocs. v. City of Asheville*, 113 N.C. App. 459, 439 S.E.2d 211 (1994).

II. MAPS.

It is not required that proposed sewer interceptors be included on the maps that accompany annexation reports. *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

Maps Held Sufficient. — Maps prepared by a town as part of its revised annexation plan report substantially complied with subdivision (1) of this section, although the eastern boundary and approximately one-fifth of the town area were omitted and the map showing the

general land use pattern contained several blank areas representing vacant lots which did not appear as a category on the legend of the maps, where both the entire area contiguous to the area to be annexed and that area itself were included on the map. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Plans for Extension of Services as Condition Precedent. — The requirement of plans for extension to the area to be annexed of all major municipal services performed within the municipality at the time of annexation is a condition precedent to annexation. *In re Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

The minimum requirements of subdivision (3) are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. *In re Annexation Ordinance No. 300-X*, 304 N.C. 549, 284 S.E.2d 470 (1981); *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a writ of mandamus requiring the municipality to live up to its commitments. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. *In re City of Dur-*

ham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Use of the word "substantially" in subdivision (3)a does not render the section vague and ambiguous. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

This Article requires that services be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service to consumers within its corporate limits, as a general rule. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

The city is required by law to provide waste disposal services on substantially the same basis and in the same manner as such services are provided within the municipality prior to annexation. *Stillings v. City of Winston-Salem*, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Subdivision (3)a of this section requires that the annexation report reflect the city's plans to provide certain enumerated services on substantially the same basis and in the same manner as in the rest of the city. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Nowhere in this section does the concept of equality with "average service" appear in reference to the municipal services to be supplied by the annexing municipality. No reasonable reading of the statutory language permits that inference. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

There is no requirement that a municipality duplicate services, in an area to be annexed, which are already available in the area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978); In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

City May Not Delegate Duty of Extending Services. — The city must furnish major municipal services to areas annexed as provided by Parts 2 and 3 of this Article. The performance of this duty may not be made to depend upon a doubtful contingency, and may not be delegated to others by the city so as to relieve the city of the duty. If other par-

ties are obligated to the city to perform such duty, the city must enforce the obligation directly against such parties and may not be otherwise relieved of its primary duty to the area which it seeks to make a part of the city for all other purposes. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

But Plans May Provide Only for Needed Services. — Plans for extension of services may, of course, take into consideration all circumstances and provide only for services if and when needed. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Statement of Plans for Extension of Services. — In its annexation report the city must include a statement setting forth the plans of the municipality for extending certain enumerated municipal services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Only Services Listed in Subdivision (3) Must Be Described in Plan.

— The annexation statute requires municipalities to include in their annexation reports plans to extend into the area proposed to be annexed only those municipal services specifically enumerated in subdivision (3) of this section: police protection, fire protection, garbage collection, street maintenance, major trunk water mains, and sewer outfall lines. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Other Anticipated Services Need Not Be Included. — In a municipal annexation proceeding the city is not required to include in its annexation report plans for extending into the proposed annexation area municipal services other than those enumerated in subdivision (3) of this section. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

The legislative intent expressed in subdivision (3) requires extension of a variety of municipal services, all of which are required for the public health and safety. Public transportation and parks and recreational facilities do not fall within this classification of service. In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

The required information is not that of plans for extending all municipal services, but only the "major" municipal services. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

City bus service and TV service are not "major" municipal services required to be addressed in the annexation report. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Contents of Report. — The report need contain only the following: (1) Information on the level of services then available in the city, (2) a commitment by the city to provide this same level of services in the annexed area within the statutory period, and (3) the method by which the city will finance the extension of these services. In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981).

The report need contain only the following: (1) information on the level of services then available in the city, (2) a commitment by the city to provide this same level of services in the annexed area within the statutory period, and (3) the method by which the city will finance the extension of these services. With this minimal information, both the city council and the public can make an informed decision of the costs and benefits of the proposed annexation, a reviewing court can determine whether the city has committed itself to a nondiscriminating level of services, and the residents and the courts have a benchmark against which to measure the level of services which the residents receive within the statutory period. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Service Is Municipal Even If Performed by Another. — A service, such as water or sewer service, is a "municipal service" even though it is performed or furnished by an independent authority or by franchise. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

And Must Still Be Included in Plan. — If the municipal service is one enumerated in subdivision (3) of this section, it must be included in the annexation report, even though it is provided by an independent authority or under a franchise agreement. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

The requirement that the annexation report contain a statement setting forth the plans for extending each major mu-

nicipal service extends to a major service "performed within the municipality," not performed by the municipality. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Plans Should Be Stated Fully and in Detail. — The report of plans for extension of services is the cornerstone of the annexation procedure under this Part, and to be of greatest possible benefit, the plans for services should be stated as fully and in as much detail as resources of the municipality reasonably permit. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Response time is only one of many factors that enters into the court's consideration of whether an annexation report reflects plans to provide certain required municipal services on substantially the same basis and in the same manner as in the pre-annexation city area. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Time for Implementing Extension of Services. — It would appear from a reading of § 160A-49(h) that a city annexing territory has one year, and possibly 15 months, to implement its plan for extending services to an annexed area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978); In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Burden of Showing Noncompliance with Subdivision (3). — The burden is on petitioner to establish, by competent and substantial evidence, the city's noncompliance with subdivision (3). In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981); *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Factors Affecting Whether a Plan Is Discriminatory. — A town's established policies for the provision of municipal services within pre-existing municipal limits should be taken into account when determining whether a proposed plan for extension of services to annexed territories is discriminatory. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Plan Held Sufficient. — Trial court did not err in finding that city's report of plans for the extension of police protection into annexed area met the requirements of this section; the city made a prima facie showing of substantial compliance where it promised to provide a full range of police protection on the

same basis and manner as in the present municipality and where the report then outlined the specific services it currently provided, to include a regular patrol division, criminal investigation, ordinance enforcement and traffic control. *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

B. Police and Fire Protection.

There are many variables that affect the level of fire protection afforded to different areas of a municipality: height and size of buildings, construction materials, proximity of buildings to one another and street pattern, among others. In re *City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Regardless of the level of services that county residents receive through a private contractor prior to annexation, the city is only required to provide annexed territories with substantially the same level of services as are enjoyed in other areas of the city. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

An increase in the police force proportional to the increase in the population attributable to annexation is a sufficiently sophisticated plan for the provision of services to meet the requirements of subdivision (3)a of this section. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Where city planned to hire three additional sworn officers to maintain its current ratio of one officer for every 486 citizens, the plan was sufficient to meet the requirements of subdivision (3)a of this section. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Full Compliance as to Police and Fire Protection Shown. — Record of annexation proceedings showed prima facie full compliance with this section in regard to extension of police and fire protection to the area to be annexed. In re *Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

City had shown prima facie compliance with the statute by proposing to provide fire protection services to the annexed area under the same plan as such services are provided to the pre-annexation portions of the city, and similar response times should be anticipated.

Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Response time for the fire services is only one of many factors that determines whether an annexation report complies with statutory requirements for the extension of fire protection services. That an annexation report did not include an average response time did not preclude a finding of compliance with the statute. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

C. Street Maintenance.

City Must Plan to Maintain Streets.

— So far as an annexation proceeding is concerned, the primary duty of street maintenance in an area after annexation is upon the city, and it must in good faith make plans to maintain the streets, whether paved or unpaved, on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. In re *Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

And May Not Limit Its Duty to Streets Meeting Certain Standards.

— A municipality may not limit its obligations to maintain streets in the area to be annexed by it to those streets which are improved to stipulated standards by the landowners and developers in the area. Any obligation of the landowners and developers to the city to improve the streets is a matter between them and the municipality and is irrelevant to the question of the sufficiency of the annexation ordinance to meet the requirements of the statute. In re *Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

Even if the property owners and developers in the area to be annexed are under a duty to the city to pave all streets and provide storm sewers and curbs and gutters, the city is in no position to rely on this obligation in an annexation proceeding and thereby shift to others the duty which this Article imposes on the city as a condition precedent to annexation. In re *Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

Specificity Concerning Street Maintenance. — A revised annexation plan report was sufficiently specific with respect to extension of street maintenance services where it detailed what services were provided in the annexing

town and stated that all such services would be provided in the annexed area, and was not deficient in failing to provide for the extension of water and sewer lines where this was not a service provided by the town to anyone but was a duty vested with an independent water authority. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

D. Water and Sewer Service.

City May Not Limit Water and Sewer Services to Existing Lines. — Where an annexation ordinance contains no plans for the municipality to extend water and sewer services in the area to be annexed beyond those services presently in existence in the area unless the water and sewer lines are extended by landowners and developers in the area, the ordinance fails to meet the requirements of subdivision (3)b of this section. In *re* Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

As to assessment of cost of water and sewer extensions upon lots or parcels of land abutting directly on lateral mains of water and sewer systems pursuant to former §§ 160-241 to 160-248 and § 160-255, see In *re* Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Remedy for Failure to Implement Plan. — After an area is annexed, if the residents find that the city is not providing them with water and sewer services, they may petition the court for a writ of mandamus requiring the city to provide such services. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Timetables for Extending Water Mains and Sewer Lines. — Since the city included in the annexation report its plans and timetables for extending the water mains and the sewer lines to the area proposed for annexation, it met the requirements of subdivisions (3)b and (3)c of this section even though no plan or associated timetables had been identified for the water supply. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Failure to Show Extension Was a

Major Water Main. — Where the plaintiffs offered no evidence from which the trial court or appellate court could ascertain in this instance that the twelve-inch water extension was a "major water main," and the policy requiring these petitioners to pay for the cost of water line extensions to their property was consistent with the policy of water line extensions within the pre-existing municipal limits, the trial court was not in error in concluding the town had substantially complied with all the relevant provisions of this section. *Wallace v. Town of Chapel Hill*, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

IV. METHOD OF FINANCING.

Subdivision (3)d requires only that the method of financing be disclosed, not that the precise source of each dollar be pinpointed. In *re* Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981).

Use of Federal Funds to Finance Extension of Services. — Although a city's proposals with reference to the financing of the extension of services into the area to be annexed contemplated the use of certain federal funds in connection with such financing, the method set forth in plans to finance extension of the services into the areas to be annexed constituted compliance with subdivision (3)d. *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

Budgeting of Funds at Time of Trial Held Unnecessary. — Since subdivision (3) of this section requires only that the annexing city file a statement showing how it will provide and finance municipal services to the annexed area, and since there is no requirement that available services be duplicated, the City of Goldsboro, in annexing a federal air force base, was not required to have funds budgeted at the time of trial to provide municipal services to the base in the event the federal government ceased providing those services, where the plan of annexation was based upon sound estimates of anticipated expenditures and revenues. In *re* Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

§ 160A-47.1. Limitation on change in financial participation prior to annexation.

No ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-49(a). (1991, c. 25, s. 2; c. 761, s. 31.)

Editor's Note. — Session Laws 1991, c. 25, s. 2, initially amended § 160A-47 by adding a subsection (b). This subsection was recodified as new § 160A-47.1 by Session Laws 1991, c. 761, s. 31, effective July 16, 1991, which provides: "G.S. 160A-47(b), as enacted by Section 1 of Chapter 25 of the 1991 Session Laws, is recodified as G.S. 160A-47.1, with a

catch line to read: 'Limitation on change in financial participation prior to annexation.' G.S. 160A-47(a) is redesignated as G.S. 160A-47."

Section 3 of Session Laws 1991, c. 25 makes this section effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992.

§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

- (1) Which meets the general standards of subsection (b), and
- (2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

- (3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district; provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.
- (d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:
 - (1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or
 - (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b). (1959, c. 1009, s. 4; 1973, c. 426, s. 74; 1983, c. 636, s. 15; 1985, c. 757, s. 205(d); 1993 (Reg. Sess., 1994), c. 696, s. 7; c. 714, s. 7.)

Local Modification. — City of Durham: 1987, c. 606; 1993, c. 342, s. 1. c. 636, which amended this section, in s. 37.1, amended by Session Laws 1983, c. 636, s. 25, provided: "The General As-

sembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted

prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994) c. 696, s. 7, effective July 6, 1994, and c. 714, s. 7, effective July 7, 1994, made identical changes by adding "except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun" in subdivision (b)(1); adding subdivision (c)(4) and making related changes; adding the last sentence of subsection (e); and adding subsection (f).

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Constitutionality. — See *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. *Little Red School House, Ltd. v. City of Greensboro*, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Question whether area is ripe for annexation should be addressed under statutory criteria set up in this section. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The entire area to be annexed must meet the requirements of subsection (b) of this section. *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980).

Cities with 5,000 or more people may annex an outlying urban area pursuant to subsection (c) of this section and the intervening undeveloped lands pursuant to subsection (d) so long as the entire

area meets the requirements of subsection (b). *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980).

This Section and § 160A-36 Compared. — The provisions of subsections (b), (c) and (e) of this section are virtually identical to their counterparts in subsections (b), (c) and (d) of § 160A-36. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

This section describes the character of areas which may properly be annexed. Generally, such an area (i) cannot be included within the boundary of another incorporated municipality, (ii) must be adjacent to the existing boundaries of the annexing municipality, (iii) must be developed for urban purposes or must connect an outlying area developed for urban purposes with the municipality and (iv) wherever practical should use topographic features as boundaries. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Each sub-area must be considered as a whole and must qualify under one of the urban purposes tests set forth in subsection (c). *Wallace v. Town of*

Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Tests as to Urban Development to Be Applied to Whole Annexation Area. — Not only must the entire annexation area meet the requirements of subsection (c)(1), but even more importantly, the tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Division into Sub-areas or Study Areas Improper. — The urban area that a city seeks to qualify for annexation under one of the urban purposes tests set forth in subdivisions (c)(1) through (c)(3) of this section must be considered as a whole, i.e., as one area, and may not be divided into sub-areas or study areas. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

City acted under a misapprehension of the law, and misapplied the statutory standard in subdivision (c)(1), in deciding that population credits should be applied only in the "study area" in which such credits were accumulated, rather than applied uniformly to the whole area to be annexed. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

Alternative Standards in Subdivisions (c)(1) and (c)(2). — This section's requirement that the area to be annexed must be developed for urban purposes is satisfied if either the standard of subdivision (c)(1) or the standard of subdivision (c)(2) is met. It is not required that both standards be satisfied. In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981).

To perform the computations required by the "subdivision test" under subdivision (c)(2) of this section, two figures are needed: the total acreage and the subdivided acreage. In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981).

Use of Different Standards Upheld. — The trial court did not err in concluding the town complied with sub-

section (c) of this section in annexing three noncontiguous sub-areas using different standards for qualifying each of the three sub-areas as urban property. Wallace v. Town of Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Applicability of Error Margins of § 160A-54 to Calculations Under Subsection (c). — The five percent error margins allowed in subdivisions (2) and (3) of § 160A-54 apply exclusively to calculations made by the municipality for purposes of establishing compliance with the population and subdivision tests contained within the alternative standards prescribed by subsection (c) of this section. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

The language of § 160A-54 is free from ambiguity and represents a legislative determination that margins of error should be allowed with respect to the calculations made by a municipality to establish compliance with the population and subdivision tests of subsection (c) of this section, but not with respect to the calculations made to establish compliance with the use test of subsection (c). Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Counting "Total Resident Population". — A person is properly counted as a member of the "total resident population" under this section if such person would have been counted as an inhabitant of the proposed area of annexation under rules governing the last preceding decennial census. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Finding of Domicile Not Required. — The annexing unit is not required to make a finding that a person is actually domiciled within the proposed area of annexation before counting that person for the purpose of making the population estimate required by this section. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Military Personnel Properly Counted in Estimating Annexed Population. — In an annexation proceeding the military personnel on an air force base in the area to be annexed were properly counted in determining the population estimate required by this section, since in accordance with census practice dating back to 1790, persons enumerated in the 1970 census who lived on military bases as members of

the armed forces were counted as residents of the states, counties, and minor civil divisions in which their installations were located. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The purpose of subsection (d) is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and, where necessary, to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. *Wallace v. Town of Chapel Hill*, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Annexation of Intervening Undeveloped Land under Subsection (d). — The requirement that the urban area that a city seeks to qualify for annexation be considered as a whole does not preclude annexation of intervening undeveloped land pursuant to subsection (d) of this section. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Where the area proposed to be annexed by a municipality, when considered as a whole, meets the requirements of subsections (b) and (c) of this section, the fact that a part of the area is an undeveloped tract which does not comply with the standards set out in the statute does not require that such part be excluded from annexation. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

The language of this section simply means that where a developed tract and an undeveloped tract are included in an area to be annexed, and the developed tract complies with subsection (c), but when the undeveloped tract is added, the area as a whole does not so comply, then the undeveloped tract must be excluded unless it complies with one of the requirements of subsection (d). In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Sub-area under subsection (d) may consist entirely of tracts of five acres or less. *Southern Glove Mfg. Co. v. City of Newton*, 75 N.C. App. 574, 331 S.E.2d 80, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

Two lots, 60 percent of external boundaries of which were contiguous to city limits or to a part of other

land which the city proposed to annex, qualified as sub-areas under subsection (d)(2), although they allegedly did not constitute "necessary land connections," as mentioned in the unnumbered paragraph at the end of subsection (d). The unnumbered paragraph had to be read as describing the sub-areas specifically allowed by subsection (d). *Southern Glove Mfg. Co. v. City of Newton*, 75 N.C. App. 574, 331 S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

In order to establish noncompliance with subsection (e) of this section, it must be shown: (1) that the boundary of the annexed area does not follow topographic features, and (2) that it would have been practical for the boundary to follow such features. In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649, appeal dismissed and cert. denied, 312 N.C. 493, 322 S.E.2d 553 (1984).

Annexation of Water and Sewer District. — Even though a water and sewer district under Chapter 162A is termed a municipal corporation, a water and sewer district is a municipal corporation organized for a special purpose, which does not qualify as a municipal corporation for purposes of this Chapter. *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Annexation of Air Force Base. — A federal air force base was subject to annexation by the City of Goldsboro where the annexation was not for the sole purpose of generating revenue, and it did not interfere with federal jurisdiction. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The annexation of a federal air force base by the City of Goldsboro did not create unconstitutional tax classes. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Tract Classified as Residential Despite Growing of Grass Thereon for Cattle Feed. — A city could classify a 1.83 acre tract with a rented house located on it as one lot used for residential purposes, despite the fact that on two separate parts of the lot fescue and sudex grass was grown and a person living in the neighborhood had been allowed to mow this grass, bale it and feed it to his cows. *Southern Glove Mfg. Co. v. City of Newton*, 75 N.C. App. 574, 331

S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

Record of annexation proceedings showed prima facie full compliance with requirements of this section as to the character of the area to be annexed. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of § 160A-47, and as to the area involved being eligible for annexation under this section, in those instances where discovery may illuminate these issues that it is authorized under the Rules of Civil Procedure. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Commercial Classification Upheld. — Two parcels of six and over 41 acres were properly classified as commercial where the tracts had been consolidated for development and tax purposes, all but 19.75 acres had recently been developed as a commercial shopping center, and the remaining 19.75 acres, contiguous to the shopping center, had been cleared and graded, and indirectly served the shopping center as a dumping ground. *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Institutional Classification Upheld. — Tract of 5.92 acres owned by local school board was properly classified as being in institutional use, where the evidence tended to show that only because of the unusual circumstance that high school was in the process of relocating was property not used for agriculture class as it has been for most summers since 1973; since the property was consistently used for institutional purposes for about 13 years prior to the trial, the property's disuse was merely a brief hiatus which did not disqualify the property from being in urban use. *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on

other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Trial court properly classified property as industrial in use rather than as vacant; where the record supported the trial court's finding that a large part of its 17.7 acres consisted of a creek and that property owner pumped water from the creek for industrial use and also discharged effluent into the creek. *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

It was error to include certain property among the acreage counted as subdivided and used for residential purposes under subdivision (c)(3) of this section where such classification did not reflect the factual characteristics of the property. Even though recorded plat indicated land was subdivided, the property had never been surveyed and divided on the ground, no lots had been sold, and no roads had been constructed and opened for traffic. Such land was not subdivided within the meaning of subdivision (c)(3) of this section. *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990).

Actual minimum urbanization is an essential requirement of the annexation act. — "Sound urban development" does not mean a territory may be annexed whenever some documentation of record supports its assessment as urban; it means a territory may be annexed when its character reflects some actual minimum urbanization. *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990).

Characterization of Property Held Proper. — Town could properly classify country club's property as being used for commercial or institutional purposes, even though much of the property was used as a golf course. *Chapel Hill Country Club, Inc. v. Town of Chapel Hill*, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

In addition to topographic features, the statute explicitly permits the use of streets as boundaries. In order to establish non-compliance with subdivision (e) of this section, petitioners must show two things: (1) that the boundary of the annexed area does not follow topographic features, and (2) that it would have been practical for the boundary to follow such features. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

City Not Required to Extend An-

nexation to Areas in Conflict with Mandatory Statute Provisions. — The city was not required to extend the boundaries of the proposed annexation area to include ridge lines where to do so would have defeated the city's compliance with the other mandatory portions of the annexation statute. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Applied in *Food Town Stores, Inc. v. City of Salisbury*, 303 N.C. 539, 279 S.E.2d 557 (1981); *Garland v. City of Asheville*, 63 N.C. App. 490, 305 S.E.2d 66 (1983); *Trask v. City of Wilmington*, 64 N.C. App. 17, 306 S.E.2d 832 (1983); *Baldwin v. City of Winston-Salem*, 710 F.2d 132 (4th Cir. 1983); *Knight v. City of Wilmington*, 73 N.C. App. 254, 326 S.E.2d 376 (1985); *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990); *Asheville Indus., Inc. v. City of Asheville*, 112 N.C. App. 713, 436 S.E.2d

873 (1993); *Biltmore Square Assocs. v. City of Asheville*, 113 N.C. App. 459, 439 S.E.2d 211 (1994).

Stated in *Livingston v. City of Charlotte*, 68 N.C. App. 265, 314 S.E.2d 303 (1984).

Cited in *Armento v. City of Fayetteville*, 32 N.C. App. 256, 231 S.E.2d 689 (1977); *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980); *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); *In re Annexation Ordinance No. 300-X*, 304 N.C. 549, 284 S.E.2d 470 (1981); *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982); *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982); *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129 (1983); *Forsyth Citizens Opposing Annexation v. City of Winston-Salem*, 67 N.C. App. 164, 312 S.E.2d 517 (1984).

§ 160A-49. Procedure for annexation.

(a) **Notice of Intent.** — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 45 days and not more than 90 days following passage of the resolution.

(b) **Notice of Public Hearing.** — The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the

county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to Hearing. — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public hearing, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described

by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)b found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the

municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of

the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00). (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6; 1983, c. 636, ss. 1, 3, 5, 6, 12-14, 37; c. 768, s. 25; 1985, c. 384, s. 1; 1987, c. 44, s. 2; 1989, c. 598, s. 12.)

Local Modification. — City of Durham: 1993, c. 342, s. 1; city of Raleigh: 1977, c. 351.

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see § 160A-58.9.

Editor's Note. — Session Laws 1977, c. 517, which amended this section, provided in s. 10: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24 [now repealed], G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those proce-

dures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Section 11 of Session Laws 1977, c. 517 provided: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provi-

sions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1985, c. 384, which amended this section, in s. 2 made the act effective with respect to annexations when resolutions of intent under § 160A-37(a) or § 160A-49(a) are

adopted after the date of ratification of the act (June 13, 1985).

Session Laws 1987, c. 44, s. 2, which added the proviso at the end of the first sentence of subsection (i), became effective from and after June 29, 1983, except that it does not affect litigation pending on the date of ratification.

Session Laws 1989, c. 598, s. 12, which added the last sentence of subsection (i), became effective with respect to annexations for which the resolution of consideration is adopted on or after January 1, 1990.

Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

Legal Periodicals. — For survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. *Little Red School House, Ltd. v. City of Greensboro*, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Challenges to annexations generally are not actionable under U.S. Const., Amend. XIV. *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. *Baldwin v. City of Winston-Salem*, 710 F.2d 132 (4th Cir.), cert. denied, 464 U.S. 1012, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Absolute and literal compliance with this section is unnecessary; only substantial compliance is required. *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has com-

mitted itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a writ of mandamus requiring the municipality to live up to its commitments. *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Purpose of subsection (a), requiring resolution stating intent to consider annexation, is to record the town board's decision and to mark the formal beginning of the municipality's actions. This resolution expresses the intent of the governing board and it has little significance to the public. *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Subsection (a) does not specifically require a written resolution, nor is such requirement implicit in the fact that the resolution must describe the land under consideration. *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Reading Report at Public Hearing in Compliance with Subsection (d).

— Reading report of proposed annexation in its entirety at a public hearing is a more detailed explanation of the report than a shorter summary explanation prepared by a representative of the municipality would have been. In this manner, those who attend the meeting are made aware of each and every provision and statement in the report and are then given an opportunity to be heard. This is sufficient compliance with the requirements of subsection (d) of this section. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Right of the general public to sufficient notice of proposed annexation is protected by subsections (b) and (e). *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

The notice of the public hearing must be published in a newspaper, or by other means, and must contain a clear description of the land under consideration. *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

By virtue of subsection (e), the governing board is prohibited from annexing any land except that described in the notice of the public hearing. *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Sections 160A-37(e), 160A-31(d) and subsection (e) of this section are in pari materia. *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

Extension of sewer lines and other services into the annexed area, pursuant to the plan of annexation, is not a condition precedent to annexation, the statutory remedy for failure to extend such services being an application, by a person owning property in the annexed territory, for a writ of mandamus to compel such performance of the plan. *Dale v. City of Morganton*, 270 N.C. 567, 155 S.E.2d 136 (1967).

In reviewing the procedure followed by a municipal governing board in an annexation proceeding, the question whether the municipality is then providing services pursuant to the plan of annexation is not before the court, and the extension of services into an annexed area in accordance with the promulgated plan is not a condition precedent to annexation. In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

Time for Implementing Extension of Services. — It would appear from a reading of subsection (h) of this section that a city annexing territory has one year, and possibly 15 months, to implement its plan for extending services to an annexed area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Increase in Voters Through Annexation Requires Preclearance under 42 U.S.C. § 1973c. — The increase in the number of voters in the municipality resulting from annexation is a charge of a voting qualification, prerequisite, standard, practice, or procedure requiring preclearance as contemplated by 42 U.S.C. § 1973c. *Moore v. Swinson*, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Elections Held Before Preclearance Under 42 U.S.C. § 1973c. — Until the city obtains clearance of its annexations in accordance with 42 U.S.C. § 1973c, all future elections must be conducted on the basis of the city boundaries as they existed before the unprecleared annexations were made, and citizens residing in such annexed areas may not participate in future municipal elections, either as electors or as candidates. This relief applies only to the right to vote and be a candidate. It does not, of course, constitute de-annexation, and it does not affect the rights of citizens residing in the annexed areas in any other way. *Moore v. Swinson*, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Persons in Annexed Areas May Be Denied Vote During 60-Day Approval Period. — Although those in annexed areas become citizens of the annexing jurisdiction upon annexation, under 42 U.S.C. § 1973c, it is proper to deny such persons the right to vote on a bond referendum held within 60 days of the annexation since that section gives the United States Attorney General 60 days within which to approve an annexation expanding the number of voters. 42 U.S.C. § 1973c was designed, in part, to enforce U.S. Const., Amend. XV, and it preempts all other provisions regarding the right to vote in such referenda. *Moore v. Swinson*, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Failure of Resolution of Intent to State Effective Date. — City's failure to state effective date of annexation in its resolution of intent was not an omission of an essential requirement of the statute but was only a "slight irregularity," which would not invalidate annexa-

tion proceedings if there has been substantial compliance with all essential elements of the law. *City of Kannapolis v. City of Concord*, 326 N.C. 512, 391 S.E.2d 493 (1990).

Subsection (g) — "Simultaneous Annexation Proceedings." — North Carolina annexation statutes do not permit municipality to annex by voluntary means tract of land that is contiguous with its municipal boundaries only by virtue of second tract of land being annexed simultaneously. *City of Kannapolis v. City of Concord*, 326 N.C. 512, 391 S.E.2d 493 (1990).

Applied in *In re Annexation Ordinance*, 44 N.C. App. 274, 261 S.E.2d 39 (1979); *In re Annexation Ordinance No. 1219*, 62 N.C. App. 588, 303 S.E.2d 380 (1983); *Garland v. City of Asheville*, 63 N.C. App. 490, 305 S.E.2d 66 (1983); *In re City of Durham Annexation Ordinance Numbered 5991 for Area A*, 69 N.C. App. 77, 316 S.E.2d 649 (1984); *Knight v. City of Wilmington*, 73 N.C. App. 254, 326 S.E.2d 376 (1985); *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989); *Chapel Hill*

Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

Quoted in *Upchurch v. City of Raleigh*, 252 N.C. 676, 114 S.E.2d 772 (1960); *Biltmore Square Assocs. v. City of Asheville*, 113 N.C. App. 459, 439 S.E.2d 211 (1994).

Stated in *Asheville Indus., Inc. v. City of Asheville*, 112 N.C. App. 713, 436 S.E.2d 873 (1993).

Cited in *Armento v. City of Fayetteville*, 32 N.C. App. 256, 231 S.E.2d 689 (1977); *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984); *Forsyth Citizens Opposing Annexation v. City of Winston-Salem*, 67 N.C. App. 164, 312 S.E.2d 517 (1984); *Town of Hazelwood v. Town of Waynesville*, 83 N.C. App. 670, 351 S.E.2d 558 (1987); *Town of Hazelwood v. Town of Waynesville*, 320 N.C. App. 89, 357 S.E.2d 686 (1987); *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

OPINIONS OF ATTORNEY GENERAL

As to the application of municipal privilege license taxes to newly annexed territory, see opinion of the At-

torney General to Mr. Edwin C. Ipock, Goldsboro City Attorney, 40 N.C.A.G. 863 (1970).

§ 160A-49.1. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually

over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars (\$100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-50 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes. (1983, c. 636, s. 21; 1987, c. 827, s. 1.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of

those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall be-

come effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as pro-

vided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

CASE NOTES

Section Required to Be Followed Only Where Annexation Achieved Under Chapter 160A, Art. 4A, Part 3.

— Section 160A-47, dealing with the submission of plans by the municipality for the extension of municipal services (including police and fire protection, solid waste collection, and street maintenance), this section and § 160A-49.3, dealing with contracting for fire protection and sewage services, are required to be followed by a municipality only where the annexation is to be achieved under Chapter 160A, Art. 4A, Part 3. *Piedmont Ford Truck Sales, Inc. v. City of Greensboro*, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Local act requiring city to extend municipal services, including services relating to health and sanitation, in a manner not authorized except when annexation is accomplished under general law was in contravention of N.C. Const., Art. II, § 24(a), and therefore void. *Piedmont Ford Truck Sales, Inc. v. City of Greensboro*, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Cited in *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 380 S.E.2d 107 (1989); *Chapel Hill Country Club, Inc. v. Town of Chapel Hill*, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

§ 160A-49.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 23.)

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and

towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26

through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall be-

come effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-49.3. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:

- (1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-49(j) or
- (2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-49(i)

was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:

- (3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and
- (4) During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and
- (5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing,

unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:

- (6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or
- (7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to

each private firm providing solid waste collection services in the area to be annexed.

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

- (1) A requirement that the private firm post a performance bond and maintain public liability insurance coverage;
- (2) A requirement that the private 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 private firms, or by the city as to customers not served by the private 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 for 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, 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 private firm under this subsection, such matters shall be determined by the Local Government Commission.

(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.

(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the private firm

for residential, commercial, and industrial collection service in the area annexed or to be annexed.

(g) The private firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private 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 five 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. (1985, c. 610, s. 4; 1987, c. 827, s. 1; 1989, c. 598, s. 9.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Session Laws 1985, c. 610, which amended this section, in s. 8 provided that this section applies to all annexations where a resolution of intent under Parts 2 or 3 under Article 4A of

Chapter 160A is adopted on or after September 1, 1985.

Session Laws 1989, c. 598, s. 9, which rewrote the first sentence, became effective with respect to all annexation ordinances adopted on or after January 1, 1990.

Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

CASE NOTES

Section Required to Be Followed Only Where Annexation Achieved Under Chapter 160A, Art. 4A, Part 3.

— Section 160A-47, dealing with the submission of plans by the municipality for the extension of municipal services (including police and fire protection, solid waste collection, and street maintenance), and § 160A-49.1 and this section, dealing with contracting for fire protection and sewage services, are required to be followed by a municipality only where the annexation is to be achieved under Chapter 160A, Art. 4A, Part 3. *Piedmont Ford Truck Sales, Inc. v. City of Greensboro*, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other

grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Local act requiring city to extend municipal services, including services relating to health and sanitation, in a manner not authorized except when annexation is accomplished under general law was in contravention of N.C. Const., Art. II, § 24(a), and therefore void. *Piedmont Ford Truck Sales, Inc. v. City of Greensboro*, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Cited in *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 380 S.E.2d 107 (1989).

§ 160A-50. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed, or

- (2) That the provisions of G.S. 160A-47 were not met, or

- (3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing

board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgement.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g). (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21; 1983, c. 636, s. 14.1; 1989, c. 598, s. 10.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifi-

cally listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1

are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1989, c. 598, s. 10, which rewrote the first sentence, became effective with respect to all annexation ordi-

nances adopted on or after January 1, 1990.

Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

- I. In General.
- II. Review by Superior Court.
- III. Review by Court of Appeals.
- IV. Effective Date.

I. IN GENERAL.

Limited Scope of Review. — Section 160A-38(f) and subsection (f) of this section limit the court's inquiry on review of an annexation ordinance to a determination of whether applicable annexation statutes have been substantially complied with. *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, *aff'd*, 321 N.C. 589, 364 S.E.2d 139 (1988).

In determining the validity of an annexation ordinance, the court's review is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioner suffer material injury thereby? (3) Does the area to be annexed meet the requirements of § 160A-36 or § 160A-48? *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, *aff'd*, 321 N.C. 589, 364 S.E.2d 139 (1988).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. *Little Red School House, Ltd. v. City of Greensboro*, 71 N.C. App. 332, 322 S.E.2d 195 (1984), *cert. denied* and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

The central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents of the annexed area receive the benefits of all the major services available to municipal residents. *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The minimum requirements of the annexation statute are that the city

provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

As to the different appellate forums formerly prescribed for appeals under this section and § 160A-38(h), see *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980), decided prior to the 1981 amendment to this section.

Who May Challenge Annexation Ordinance. — The only persons given the authority by this chapter to challenge an annexation ordinance are those who own property in the annexed area. *Davis v. City of Archdale*, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

Applied in *Taylor v. City of Raleigh*, 290 N.C. 608, 227 S.E.2d 576 (1976); *In re City of Durham Annexation Ordinance Numbered 5991 for Area A*, 69 N.C. App. 77, 316 S.E.2d 649 (1984); *In re Dunn*, 73 N.C. App. 243, 326 S.E.2d 309 (1985); *Chapel Hill Country Club, Inc. v. Town of Chapel Hill*, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

Cited in *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 234 S.E.2d 648 (1977); *Food Town Stores, Inc. v. City of Salisbury*, 303 N.C. 539, 279 S.E.2d 557 (1981); *Piedmont Ford Truck Sales, Inc. v. City of Greensboro*, 90 N.C. App. 692, 370 S.E.2d 262 (1988); *Joyner v. Town of Weaverville*, 94 N.C. App. 588, 380 S.E.2d 536 (1989); *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688 (1990); *Thrash v. City of*

Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990).

II. REVIEW BY SUPERIOR COURT.

Annexation statutes are not unconstitutional in providing that review by the superior court is without a jury. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

Provisions for Nonjury Trial in Subsection (f) Not Superseded by Rules of Civil Procedure. — The provisions of subsection (f) authorizing review of annexation proceedings by the court without a jury have not been superseded by the N.C. Rules of Civil Procedure. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

This section specifies the inquiries to which the courts are limited. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

Constitutional Challenges Restricted. — Attacks on state annexation procedures on either due process or equal protection grounds are specifically foreclosed. *Baldwin v. City of Winston-Salem*, 544 F. Supp. 123 (M.D.N.C. 1982), aff'd, 710 F.2d 132 (4th Cir.), cert. denied, 464 U.S. 1012, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Challenges to annexations generally are not actionable under U.S. Const., Amend. XIV. *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. *Baldwin v. City of Winston-Salem*, 710 F.2d 132 (4th Cir.), cert. denied, 464 U.S. 1012, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Limited Scope of Review. — The judicial review afforded in annexation proceedings is limited in scope and serves as a safeguard against unreasonable and arbitrary action by the annexing municipality. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Judicial review of an annexation ordinance is limited to determination of whether the annexation proceedings substantially comply with the requirements of the applicable annexation statute. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

The clear intent of the legislature under this section was to provide an expedited judicial review, limited in scope,

and avoiding unnecessary procedural delays. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Section 160A-38(f) and subsection (f) of this section limit the court's inquiry on review of an annexation ordinance to a determination of whether applicable annexation statutes have been substantially complied with. *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

In determining the validity of an annexation ordinance, the court's review is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioner suffer material injury thereby? (3) Does the area to be annexed meet the requirements of § 160A-36 or § 160A-48? *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

A court's review of an annexation ordinance is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioners "suffer material injury" by reason of the municipality's failure to comply? (3) Does the character of the area specified for annexation meet the requirement of § 160A-48 as applied to petitioners' property? In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

There is no test of "reasonableness" which must be considered upon judicial review of an annexation proceeding. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

On review of an annexation, a superior court may only hear claims based upon the grounds set out in subsection (f) of this section. There is no separate test of "reasonableness" within the limited scope of judicial review permitted in annexation cases. *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. *Baldwin v. City of Winston-Salem*, 710 F.2d 132 (4th Cir.), cert. denied, 464 U.S. 1012, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

But Reasonableness Is Considered under Subsection (f). — A separate test of the reasonableness of an annexation is not included within the limited

scope of judicial review; however, subsection (f) of this section and the provisions incorporated therein amount to a requirement that the courts determine whether an annexation is reasonable. *Forsyth Citizens Opposing Annexation v. City of Winston-Salem*, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d 701, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

Subsection (f) of this section and the provisions incorporated therein amount to a requirement that the superior court determine whether an annexation is reasonable. The language of the provisions does not speak in terms of arbitrariness, capriciousness or unreasonableness, but, the effect of the statute is to give substantial protection against arbitrary, capricious and unreasonable acts by the city. *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. *Baldwin v. City of Winston-Salem*, 710 F.2d 132 (4th Cir.), cert. denied, 464 U.S. 1012, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Statutory procedure referred to in subdivision (f)(1) is set out in § 160A-49. *Raintree Homeowners Ass'n v. City of Charlotte*, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. *Baldwin v. City of Winston-Salem*, 710 F.2d 132 (4th Cir.), cert. denied, 464 U.S. 1012, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Section 160A-45 Policy Not Part of "Procedure". — The statement of state policy with regard to annexation set forth in § 160A-45 is not part of the "procedure" of annexation under subsection (a) and subdivision (f)(1) of this section. *In re Annexation Ordinance No. D-21927*, 303 N.C. 220, 278 S.E.2d 224 (1981).

Issue on Review Is Substantial Compliance. — The basic question presented by a petition for review under this section is whether the procedure followed in adopting the ordinance was in substantial compliance with the applicable statutes. *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984); *Forsyth Citizens Opposing Annexation v. City of Winston-Salem*, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d 701, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

And Record Must Show Prima Facie Compliance. — Upon review in the superior court of a municipal annexation

ordinance enacted pursuant to this Article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this Article as a condition precedent to the right of the municipality to annex the territory. *In re Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

Burden on Petitioners to Prove Noncompliance or Irregularity. —

The burden is upon plaintiffs who appeal from annexation ordinance to show by competent evidence that city in fact failed to meet the statutory requirements or that there was irregularity in the proceedings which materially prejudiced their substantive rights. *In re Annexation Ordinance*, 278 N.C. 641, 180 S.E.2d 851 (1971).

The party challenging the annexation has the burden of showing error. *In re Ordinance of Annexation No. 1977-4*, 296 N.C. 1, 249 S.E.2d 698 (1978).

Where appeal is taken from an annexation ordinance and a petition has been filed requesting review of the annexation proceedings, and the proceedings show prima facie that there has been substantial compliance with the requirements and provisions of this Article, the burden is upon the petitioners to show, by competent evidence, failure on the part of the municipality to comply with the statutory requirements as a matter of fact or irregularity in the proceedings which materially prejudice their substantive rights. *In re Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961); *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Where the record of the annexation proceedings demonstrates prima facie substantial compliance with the applicable statutes, the burden is on the petitioner to show by competent evidence that the city has failed to meet the statutory requirements or that there was some irregularity in the proceedings that resulted in material prejudice to petitioners' rights. *In re City of Durham Annexation Ordinance No. 5791*, 66 N.C. App. 472, 311 S.E.2d 898 (1984); *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Under subsection (f) of this section, a party challenging an annexation action of a governing body must show (1) that the statutory procedure was not followed, or (2) that the provisions of

§ 160A-47 were not met, or (3) that the provisions of § 160A-48 were not met. The party challenging the ordinance has the burden of showing error. *Knight v. City of Wilmington*, 73 N.C. App. 254, 326 S.E.2d 376 (1985).

Slight irregularities will not invalidate annexation proceedings if there has been substantial compliance with all essential provisions of the law. In re *Annexation Ordinance*, 278 N.C. 641, 180 S.E.2d 851 (1971).

Absolute and literal compliance with a statute describing the conditions of annexation is unnecessary; substantial compliance only is required, because absolute and literal compliance with the statute would result in defeating the purpose of the statute in situations where no one has been or could be misled. In re *Annexation Ordinance*, 278 N.C. 641, 180 S.E.2d 851 (1971); *McKenzie v. City of High Point*, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Adverse Effect upon Financial Interests Not Grounds for Attacking Annexation Proceedings. — A property owner can attack annexation proceedings only upon the grounds specified in the statutes; he cannot successfully resist annexation because a city ordinance will adversely affect his financial interest. In re *Annexation Ordinance*, 278 N.C. 641, 180 S.E.2d 851 (1971); *Cockrell v. City of Raleigh*, 306 N.C. 479, 293 S.E.2d 770 (1982).

Remand for Amendment of Record. — If the record of annexation proceedings on its face fails to show substantial compliance with any essential provision of the statute, the superior court upon review must remand to the governing board for amendment with respect to such noncompliance. The court itself is without authority to amend the report, ordinance or other part of the record, even if evidence is presented which justifies amendment. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961); *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Remand on City's Motion. — While this section does not explicitly empower a superior court judge to remand an annexation ordinance upon a city's motion to exclude a landowner who originally was covered by it, such remand occasioned no material injury to the petitioners, where the end result was that petitioners were not made part of the

city by the ordinance at issue. *Southern Glove Mfg. Co. v. City of Newton*, 63 N.C. App. 754, 306 S.E.2d 466 (1983).

Applicability of Rules of Civil Procedure. — Since judicial review of an annexation ordinance is manifestly a "proceeding of a civil nature," the Rules of Civil Procedure clearly apply to it, unless a different procedure is provided by statute, but only to the extent necessary to process the proceeding according to its nature. A different procedure for this proceeding from that provided in the Rules of Civil Procedure is provided to some extent by this section. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of § 160A-47, and as to the area involved being eligible for annexation under § 160A-48, in those instances where discovery may illuminate these issues that it is authorized under the Rules of Civil Procedure. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Power to Require Production of Evidence. — Absent an explicit statutory restriction to the contrary, a judge having the duty to receive evidence on and decide certain issues has the power, within his discretion, to require that evidence on those issues be produced. In the exercise of that power other factors require consideration, however, including the information already available through the documents required by subsection (c) of this section and the mandate contained in this section that these reviews be accomplished expeditiously and without unnecessary delays. *Campbell v. City of Greensboro*, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

III. REVIEW BY COURT OF APPEALS.

On appeal, the findings of fact made below are binding on the Supreme Court (now the Court of Appeals) if supported by the evidence, even when there may be evidence to the contrary. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980).

But Conclusions of Law Are Reviewable De Novo. — Conclusions of law drawn by the trial judge from the findings of fact are reviewable de novo on appeal. *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980).

IV. EFFECTIVE DATE.

Effect of Appeal. — Where petitioner appealed an annexation ordinance to the superior court within the time limits of subsection (a) of this section, but not before the ordinance's effective date of December 31, 1979, and the superior court on February 18, 1980, remanded the annexation plan report to the town board for a more specific statement of the services to be provided and the sources of revenues to finance such services, and where the infirmities in the report were cured by a revised plan adopted on February 26, 1980, this date became the effective date of the annexa-

tion ordinance, subject to further appeal to the superior court. Where such appeal was taken and the superior court entered an order on March 4, 1980, approving the revised annexation plan report and affirming the annexation, the effective date of the annexation became March 4, 1980, subject to further appeal to the North Carolina Supreme Court (now to the Court of Appeals). When petitioner appealed from that judgment to the Supreme Court, the effective date of the ordinance was again postponed by the language of subsection (i) of this section, until the date the final judgment of the Supreme Court was certified to the clerk of the superior court. *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The effective date of annexation ordinance was July 11, 1983, the date the judgment of the Court of Appeals holding the ordinance to be valid was certified, and not December 6, 1983, the date of the Supreme Court's order dismissing plaintiffs' appeal and denying discretionary review of the judgment of the Court of Appeals, as the final judgment in the annexation case was the judgment of the Court of Appeals. *Hunter v. City of Asheville*, 80 N.C. App. 325, 341 S.E.2d 743 (1986).

§ 160A-51. Annexation recorded.

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1959, c. 1009, s. 7; 1973, c. 426, s. 74; 1987, c. 715, s. 8; c. 879, s. 3; 1989, c. 440, s. 9; 1991, c. 586, s. 3.)

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see § 160A-58.9.

Editor's Note. — Session Laws 1991,

c. 586, s. 3, which amended this section, became effective October 1, 1991, and is applicable to annexation documents required to be filed with the Secretary of State after that date.

CASE NOTES

Recordation of Map and Ordinance Not Condition Precedent to Annexation. — The requirement in this section that a map of the annexed territory, together with a certified copy of the ordinance, be recorded in the office of the register of deeds and in the office of

the Secretary of State is not a condition precedent to the effective annexation of the territory, but is the imposition of a duty to be performed after the annexation is complete. *Dale v. City of Morganton*, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160A-52. Authorized expenditures.

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1009, s. 8; 1973, c. 426, s. 74.)

§ 160A-53. Definitions.

The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

- (1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.
- (2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1009, s. 9; 1973, c. 426, s. 74.)

CASE NOTES

Tract Classified as Residential Despite Growing of Grass Thereon for Cattle Feed. — A city could classify a 1.83 acre tract with a rented house located on it as one lot used for residential purposes, despite the fact that on two separate parts of the lot fescue and sudex grass was grown and a person living in the neighborhood had been allowed to mow this grass, bale it and feed

it to his cows. *Southern Glove Mfg. Co. v. City of Newton*, 75 N.C. App. 574, 331 S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

Quoted in *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980).

Stated in *Livingston v. City of Charlotte*, 68 N.C. App. 265, 314 S.E.2d 303 (1984).

§ 160A-54. Population and land estimates.

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-48, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the reviewing court shall accept the estimates of the municipality:

- (1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.
- (2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (1959, c. 1009, s. 10; 1973, c. 426, s. 74.)

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. *Little Red School House, Ltd. v. City of Greensboro*, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Tests as to Urban Development to Be Applied to Whole Annexation Area. — The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Census figures are more reliable than any formula that alters the figures by arbitrarily assuming vacancy rates and adjusting for dwelling unit size. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

This section contains no requirement regarding the use of final cen-

sus data and there is no judicially imposed requirement. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Although this statute specifies the use of federal census data, it does not require the use of final rather than preliminary census data. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Applicability of Error Margins to Calculations Under § 160A-48(c). — The five percent error margins allowed in subdivisions (2) and (3) of this section apply exclusively to calculations made by the municipality for purposes of establishing compliance with the population and subdivision tests contained within the alternative standards prescribed by § 160A-48(c). *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

The language of this section is free from ambiguity and represents a legislative determination that margins of error

should be allowed with respect to the calculations made by a municipality to establish compliance with the population and subdivision tests of § 160A-48(c), but not with respect to the calculations made to establish compliance with the use test of § 160A-48(c). *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Method of Calculating Number of Lots. — A municipality is not tied to any particular method of calculating the number of lots so long as the method utilized is calculated to provide reasonably accurate results. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

The fact that different methods of lot calculation have been used by the city in past annexations is of no import where the record establishes that the method

utilized in the annexation under scrutiny complies with the requirements of this section. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

It is eminently reasonable for the city to follow actual use and ownership patterns instead of artificial patterns of subdivision in determining the number of lots in the area to be annexed. Such method of lot counting was calculated to provide reasonably accurate results as required by this section. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Applied in *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990).

Quoted in *Asheville Indus., Inc. v. City of Asheville*, 112 N.C. App. 713, 436 S.E.2d 873 (1993).

§§ 160A-55, 160A-56: Repealed by Session Laws 1983, c. 636.

Editor's Note. — Session Laws 1983, c. 636, which repealed these sections, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-57: Reserved for future codification purposes.

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Part unless the context clearly requires another meaning:

- (1) "City" means any city, town, or village without regard to population, except cities not qualified to receive gasoline tax allocations under G.S. 136-41.2.

(k) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal. (1959, c. 1010, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7; 1989, c. 598, s. 7; 1995 (Reg. Sess., 1996), c. 746, s. 4.)

Editor's Note. —

The subsection designation (k) was assigned by the Revisor of Statutes, the subsection designation in Session Laws 1995 (Reg. Sess., 1996), c. 746, s. 4, having been (l).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective on and after January 1, 1996, added subsection (k).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

III. Plans for Extending Services. A. In General.

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Providing Forms to Property Owners. — Subdivision (3)(b) does not require the city to provide notice to the property owners that they may request a form providing for extension of lines to their property in accordance with the

financial policies of the city, and in the absence of a request, the city is not required to provide forms to property owners to be used to request extensions from their property to a major main in accordance with the city financial policies for such extensions. *Barnhardt v. City of Kannapolis*, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Applied in *Thrash v. City of Asheville*, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

§ 160A-49. Procedure for annexation.

CASE NOTES

Form for Extension. — This section, which specifically describes the procedure of annexation and the information that is required to be provided to residents of an area to be annexed, does not require that the city furnish the form described in § 160A-47 without a request. *Barnhardt v. City of Kannapolis*,

116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Where materials delivered to the court did not include a certificate that notice of the public hearing was mailed to all the property owners in the affected area as required by subsection

(b), but there was ample evidence that the notices were actually mailed and no contention that the property owners did not receive the mailed notices, this irregularity was so slight that it could not

have prejudiced petitioner, and it did not require remand of the ordinance. *Thrash v. City of Asheville*, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

§ 160A-50. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed, or

(2) That the provisions of G.S. 160A-47 were not met, or

(3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgement.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g).

(l) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal. (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21; 1983, c. 636, s. 14.1; 1989, c. 598, s. 10; 1995 (Reg. Sess., 1996), c. 746, s. 3.)

Editor's Note. —

The subsection designation (l) was assigned by the Revisor of Statutes, the subsection designation in Session Laws

1995 (Reg. Sess., 1996), c. 746, s. 3, having been (m).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective

on and after January 1, 1996, added subsection (l).

CASE NOTES

I. In General.

I. IN GENERAL.

Who May Challenge Annexation Ordinance. —

Where the record of the annexation proceedings showed substantial compliance with the requirements of Chapter 160A, the burden was on petitioners to prove failure to meet those requirements or an irregularity in the proceedings which materially prejudiced their sub-

stantive rights. *Thrash v. City of Asheville*, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Quoted in *Barnhardt v. City of Kannapolis*, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Cited in *Thrash v. City of Asheville*, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58.1. Petition for annexation; standards.

Local Modification. — City of Henderson: 1996, 2nd Ex. Sess., c. 3, s. 1; city of Mooresville, 1995, c. 82, s. 1; city of Rockingham: 1995 (Reg. Sess., 1996), c. 654, s. 1; town of Apex: 1995, c. 82, s. 1;

town of Edenton: 1995 (Reg. Sess., 1996), c. 707; town of Wallace: 1995 (Reg. Sess., 1996), c. 692, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-58.2. Public hearing.

Local Modification. — By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. Qualifications for elective office.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1; town of Tarboro: 1995, c. 73, s. 3.2.

§ 160A-63. Vacancies.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1; town of Tarboro: 1995, c. 73, s. 1.

For additional local modifications to this section, see the main pamphlet.

EXHIBIT 3

Involuntary Annexation by Cities of Less than 5,000

G.S. 160A-33 through 160A-42

160A-33	Declaration of policy
160A-34	Authority to annex
160A-35	Prerequisites to annexation; ability to serve; report and plans
160A-35.1	Limitation on change in financial participation prior to annexation
160A-36	Character of area to be annexed
160A-37	Procedure for annexation
160A-37.1	Contract with rural fire department
160A-37.2	Assumption of debt
160A-37.3	Contract with private solid waste collection firm(s)
160A-38	Appeal
160A-39	Annexation recorded
160A-40	Authorized expenditures
160A-41	Definitions
160A-42	Land estimates

annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars (\$100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement. (1989, c. 598, s. 2.)

Editor's Note. — Session Laws 1989, c. 598, s. 13 made this section effective with respect to all annexation ordi-

nances adopted on or after January 1, 1990. Section 13 further provided that the act did not affect pending litigation.

§ 160A-32: Repealed by Session Laws 1983, c. 636, s. 26.1.

Editor's Note. — Session Laws 1983, c. 636, which repealed this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-33. Declaration of policy.

It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended, in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare; and

- (4) That new urban development in and around municipalities having a population of less than 5,000 persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for larger municipalities and still attain the objectives set forth in this section;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-35(3). (1959, c. 1010, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 8.)

Local Modification. — (As to Part 2) Durham and Wake: 1985, c. 435, s. 2; Rockingham: 1993, c. 418, s. 1; city of Brevard: 1991 (Reg. Sess., 1992), c. 964, s. 2; (As to Part 2) city of Brevard: 1991 (Reg. Sess., 1992), c. 964, s. 2; city of Durham: 1987, c. 606; 1989 (Reg. Sess., 1990), c. 841, s. 4; City of Eden: 1993, c. 418, s. 1; town of Dobbins Heights: 1983, c. 658; town of Old Fort: 1993, c. 309, s. 1; (As to Part 2) town of Stanley: 1993 (Reg. Sess., 1994), c. 713, s. 2; town of Wallace: 1989, c. 619, s. 2; village of Sugar Mountain: 1985, c. 395; community of Rock Barn: 1989, c. 27.

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Sections 160A-33 through 160A-44 were originally codified as §§ 160-453.1 through 160-453.12. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26

through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Legal Periodicals. — For survey of 1980 administrative law, see 59 N.C.L. Rev. 1026 (1981).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1093 (1981).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For survey, "Municipal Annexation in North Carolina: A Look at the Past Decade," see 14 Campbell L. Rev. 135 (1992).

CASE NOTES

This Part does not constitute an unconstitutional delegation of legislative power in violation of N.C. Const., Art. VIII. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

The legislature may, without violating the state or federal Constitutions, delegate to a municipality the authority to implement a plan of annexation. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

The guidelines established by this Part are as stringent as those in § 160A-45 et seq., and the discretion conferred upon the municipalities of population less than 5,000 is no greater than that conferred upon municipalities of population of 5,000 or greater. Therefore, the contention that the annexation statute is unconstitutional is untenable. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Rational Basis for Statutory Scheme. — Given the State policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972).

Application to Property of Condominium Owners. — Condominium unit owners need municipal services like water, sewage disposal, and police and fire protection just as do homeowners in any new development. It would lead to anomalous results and violate legislative intent to construe the statute as applying to the property of homeowners but not to the property of condominium unit owners. *Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach*, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

Annexation of territory by a municipality is a legislative and not a judicial act; hence, in the absence of statutory directive, the court, on appeal from an annexation ordinance, cannot divide the territory, annex a part thereof and refuse to annex the remainder. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Proceeding Is Summary. — A proceeding by a municipality to annex territory pursuant to this Part is summary in nature. *Southern Ry. v. Hook*, 261 N.C. 517, 135 S.E.2d 562 (1964).

And the material statutory re-

quirements must be complied with. *Southern Ry. v. Hook*, 261 N.C. 517, 135 S.E.2d 562 (1964).

Burden of Showing Noncompliance. — In an annexation proceeding under this Part, the record of the proceedings must show prima facie complete and substantial compliance with the applicable provisions of the statutes; the burden is upon petitioners requesting review of annexation proceedings to show, by competent evidence, failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in the proceedings which materially prejudiced the substantive rights of petitioners. *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

Voluntary Procedure Is Simpler and Quicker than Involuntary Procedure. — The voluntary procedure initiated by landowners and future municipal taxpayers has understandably been made simpler and quicker than involuntary annexation procedures. *Town of Hudson v. City of Lenoir*, 279 N.C. 156, 181 S.E.2d 443 (1971).

And Injects Element of Choice. — The variations in procedural requirements with respect to voluntary and involuntary annexation make it possible for property owners in the affected area to inject an element of choice as to which municipality will govern them. *Town of Hudson v. City of Lenoir*, 279 N.C. 156, 181 S.E.2d 443 (1971).

Contiguity is an essential component of the traditional concept of a municipal corporation, which is envisioned as a governmental unit capable of providing essential governmental services to residents within compact borders on a scale adequate to insure "the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, and government purposes or in areas undergoing such development." Imposition of the contiguity requirement is one means of ensuring that the annexation process remains consistent with principles of sound urban development. *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980).

Section 160A-37 provides two different procedural methods for beginning the involuntary annexation process under §§ 160A-33 to 160A-42, and former §§ 160A-43 and 160A-44. A mu-

municipality may either pass a resolution of consideration one year prior to adopting its resolution of intent, or it may immediately adopt the resolution of intent and postpone the effective date of annexation for at least a year after the ordinance is passed. *Town of Hazelwood v. Town of Waynesville*, 83 N.C. App. 670, 351 S.E.2d 558, rev'd on other grounds, 320 N.C. 89, 357 S.E.2d 686 (1987).

Prior Jurisdiction Doctrine. — Adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of the annexation statutes. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

Where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

Preference of Landowners Is of No Consequence. — For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the involuntary annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

Objectives Held Sufficient to Justify Annexation. — Three avowed objectives stated by a town's governing board, namely, (1) essentially all of the town's desirable building sites were exhausted, (2) the tax base was unable to provide the kind of services people needed, and (3) many interested people were unable to participate in town government were sufficient to qualify annexation under this Part. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Municipality Need Not Acquire

Private Water and Sewer Systems. — An annexation ordinance may not be attacked on the ground that the municipality has no plans to purchase or finance the purchase of private water and sewer systems existing in the annexed territory, since the mere existence of such private systems within the territory to be annexed does not compel the city to purchase or acquire ownership of them. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Nor Does Mere Extension of Limits or Voluntary Maintenance Appropriate Such Systems. — Where a municipality annexes territory served by private water or sewer lines, the owners of such lines may not recover the value thereof from the municipality in the absence of provisions for payment by contract or ordinance, unless the municipality appropriates such private lines and controls them as proprietor; the mere extension of the city limits to include such lines or the voluntary maintenance of such lines by the city does not amount to an appropriation of such lines by the municipality. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Applied in *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964); *Safrit v. Costlow*, 270 N.C. 680, 155 S.E.2d 252 (1967); *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496 (1969); *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975); *In re Annexation Ordinance*, 44 N.C. App. 274, 261 S.E.2d 39 (1979).

Stated in *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 269 S.E.2d 142 (1980).

Cited in *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974); *Abbott v. Town of Highlands*, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981); *Town of Hazelwood v. Town of Waynesville*, 320 N.C. 89, 357 S.E.2d 686 (1987); *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688 (1990); *Ricks v. Town of Selma*, 99 N.C. App. 82, 392 S.E.2d 437 (1990).

§ 160A-34. Authority to annex.

The governing board of any municipality having a population of less than 5,000 persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part, except that this Part does not apply to any municipality in Craven County having a population of less than 500 persons according to the last federal decennial census unless that municipality provides at least six of the seven categories of municipal services listed in G.S. 136-41.2(c). (1959, c. 1010, s. 2; 1973, c. 426, s. 74; 1985, c. 92, s. 1.)

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts

the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Annexation of territory to a municipal corporation is a legislative function which may not be delegated to a court. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Municipality's Discretion Limited to Method of Annexation. — The only discretion given to the governing boards of municipalities is the permission and discretionary right to use the new method of annexation set out in this Article, provided such boards conform to the procedure and meet the requirements set out in this Part as a condition precedent to the right to annex. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Burden of Showing Failure to Meet Statutory Requirements. — Where the record of annexation proceedings under this section on its face showed substantial compliance with every essential element of the applicable statutes, the burden was upon petitioners, who appealed from the annexation ordinance, to show by competent evidence that the city in fact failed to meet the statutory requirements or that there was irregularity in the proceedings which materially prejudiced their substantive rights. *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

- a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
 - b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.
 - c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 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. (1959, c. 1010, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7.1, 16, 18; 1985, c. 610, ss. 1, 5, 7; 1989, c. 598, s. 5; 1991, c. 25, s. 1; c. 761, s. 30.)

Local Modification. — Town of Beaufort: 1963, c. 1189.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted

prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1985, c. 610, s. 8, which amended this section, provides that the act applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, except that ss. 5 and 6 of the act are effective upon ratification (July 4, 1985).

Session Laws 1989, c. 598, s. 5, which added the last sentence of subdivision (4), became effective with respect to annexations for which the resolution of intent is adopted on or after January 1, 1990. Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

Session Laws 1991, c. 25, s. 1, effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992, designated the existing language as subsection (a), and added a new subsection (b). However, Session Laws 1991, c. 761, s. 30, effective July 16, 1991, recodified subsection (b) as enacted by Session Laws 1991, c. 25, s. 1, as § 160A-35.1 and redesignated subsection (a) of § 160A-35 as § 160A-35.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Local Modification Held Unconstitutional. — Chapter 1189, Session Laws 1963, amending subdivision (3)b of this section solely as it applied to the Town of Beaufort and providing that a municipality shall not be required to extend sewage outfalls into an area annexed by it in the event that the municipal sewerage system shall have been declared a source of unlawful pollution, was a local act relating to health and sanitation within the meaning of N.C. Const., Art. II, § 24, and was unconstitutional and void. *Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967); *Safrit v. Costlow*, 270 N.C. 680, 155 S.E.2d 252 (1967).

Municipality, as a condition precedent to the right to annex, must file a report showing on its face strict compliance with statutory requirements, and upon review in superior court has the

burden of sustaining the regularity, adequacy, veracity and validity of the report and annexation ordinance by competent evidence. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

The legislature has empowered municipal governing boards to amend the report required by this section, in order to make changes in the plans for serving the area proposed to be annexed, so long as such changes meet the requirements of this section. *Gregory v. Town of Plymouth*, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Plans Held in Compliance with Subdivision (3)a. — Plans which contained (1) information with respect to the current level of services within town, (2) a commitment to provide substantially the same level of services in the annexation area, and (3) information

as to how the extension of services would be financed set forth sufficient information to allow the public and the courts to determine that the town had committed itself to provide a nondiscriminatory level of services to the annexed area and to establish compliance with subdivision (3)a. *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Failure to Call for Increase in Personnel in Plans. — Plans for services to the annexed area are not defective in failing to call for any significant increase in personnel where the record is devoid of evidence showing any need for increased personnel. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

The fact that the metes and bounds description in a resolution of intent to annex failed to close, because one small piece of property owned by a person who did not join the petition for review was not included within the resolution of intent, was not fatal to the validity of the annexation ordinance where the resolution of intent and the published notice of public hearing made full reference to a map filed in the office of the clerk of the city and available for public inspection of the area proposed to be annexed, and this map and a map published in the newspaper notice of the public hearing showed all the property proposed to be annexed. *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

This section does not make it incumbent upon the municipality to justify annexation other than to the extent of its ability to serve the areas to be annexed. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

While the extent to which an area needs municipal services is among the factors to be considered in a decision to annex, the statute requires only that a city demonstrate an ability to serve the area to be annexed. *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856, cert. denied, 287 N.C. 264, 214 S.E.2d 437 (1975).

Providing nondiscriminating level of services within statutory time is all that is required. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

Remedy Where Municipality Has

Not Carried Out Service Plans Adopted under Subdivision (3). —

The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of this section and § 160A-37 is by writ of mandamus. *Safrit v. Costlow*, 270 N.C. 680, 155 S.E.2d 252 (1967).

Record Held to Sustain Finding of Compliance. — Where the record disclosed the plans of the municipality for extending municipal services to the area annexed, itemizing the cost, and obtaining such cost from current taxes, the record supported a finding by the court of compliance with this section, and such finding would not be disturbed in the absence of evidence to the contrary of sufficient weight to overcome the prima facie presumption of regularity. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Evidence supporting the plans set out in the report, and no evidence that the service would not be adequate, was sufficient to support the conclusion that the police protection requirement of this section would be met. *Williams v. Town of Grifton*, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Annexation ordinance and report met the requirements of this section and § 160A-37. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

A second public hearing after amendment is not required by this section. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with this section, pursuant to the authority granted in § 160A-37(e). *Gregory v. Town of Plymouth*, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Applied in *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

Stated in *Abbott v. Town of Highlands*, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

Cited in *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980); *Town of Hazelwood v. Town of Waynesville*, 320 N.C. 89, 357 S.E.2d 686 (1987);

Ricks v. Town of Selma, 99 N.C. App. 82,
392 S.E.2d 437 (1990).

§ 160A-35.1. Limitation on change in financial participation prior to annexation.

No ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-37(a). (1991, c. 25, s. 1; c. 761, s. 30.)

Editor's Note. — Session Laws 1991, c. 25, s. 1, initially amended § 160A-35 by adding a subsection (b). This subsection was recodified as new § 160A-35.1 by Session Laws 1991, c. 761, s. 30, effective July 16, 1991, and given the catch-

line "Limitation on change in financial participation prior to annexation."

Section 3 of Session Laws 1991, c. 25 made this section effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992.

§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size. An area developed for urban purposes is also the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this sentence only applies to annexation by a municipality if that:

- (1) Municipality has provided in a contract with that district that the area is developed for urban purposes; and
- (2) Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this sentence only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b). (1959, c. 1010, s. 4; 1973, c. 426, s. 74; 1985, c. 757, s. 205(c); 1993 (Reg. Sess., 1994), c. 696, s. 6; c. 714, s. 6.)

Local Modification. — Town of Catawba: 1991 (Reg. Sess., 1992), c. 891.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994) c. 696, s. 6, effective July 6, 1994, and c. 714, s. 6, effective July 7, 1994, made identical changes by adding "except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the

district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun" in subdivision (b)(1); adding the last sentence of subsection (c); adding the last sentence of subsection (d); and adding subsection (e).

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

- I. In General.
- II. Standards Under Subsection (b).
- III. Tests Under Subsection (c).
- IV. Boundaries.

I. IN GENERAL.

This section was not copied from the laws of other states, but is a result of a study and recommendations made by the Municipal Government Study Commission, which was established in accordance with Joint Resolution 51 of the General Assembly of 1957. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

This Section and § 160A-48 Compared. — The provisions of subsections (b), (c) and (e) of § 106A-48 are virtually identical to their counterparts in subsections (b), (c) and (d) of this section. *Matheson v. City of Asheville*, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

When Annexation Proper Generally. — The language of subsection (a) of this section makes it clear that a municipality may annex any area which meets the general standards of subsection (b) and the requirements of subsection (c). *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

Particular Facts Control in Doubtful Cases. — When compliance with the statutory requirements is in doubt, the determination of whether an area is used for a purpose qualifying it for annexation will depend upon the particular facts of each case. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

This section does not specify any particular method of calculation for determination of compliance with statutorily mandated requirements and the reasonableness of the method chosen is to be determined in light of the particular circumstances of the questioned annexation proceedings. *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Contiguous Area and Coincidence of Boundary Requirements Held Met. — For case holding that where each of three portions included in proposed annexation area was contiguous to the existing town boundary, and, by using a railroad strip as a connector, were contiguous to each other, when viewed as an entire area, the area was contiguous to the boundaries of the town as they existed at the commencement of the annexation proceedings and that the required coincidence of boundaries existed, see *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Reason for Providing for Judicial Review. — The difficulties of applying the standards of this section in extreme cases were the reason the Municipal Government Study Commission recommended a provision for court review, set out in § 160A-38, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

Cited in *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980); *Thrash v. City of Asheville*, 95 N.C. App. 457, 383 S.E.2d 657 (1989).

II. STANDARDS UNDER SUBSECTION (b).

Annexation of Area in Another Municipality Prohibited. — Any new or amended proceeding by a town correcting procedural irregularities would be an exercise in futility after the disputed area became a part of another city, because after that date any attempt by the town to annex the disputed area would be in violation of this statute, which prohibits the annexation of an area already included within the boundary of another incorporated municipality. *Town of Hudson v. City of Lenoir*, 279 N.C. 156, 181 S.E.2d 443 (1971), overruled on other grounds, *City of Bur-*

lington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 538 (1984).

Territory which is contiguous solely to the "satellite corporate limits" fails to satisfy the requirement of subdivision (b)(1) of this section that the area to be annexed in an involuntary annexation proceeding be contiguous or adjacent to the municipal boundaries of the city which seeks annexation. Territory contiguous solely to "satellite corporate limits" is not eligible for annexation until such "satellite corporate limits" become "a part of the primary corporate limits." This occurs in accord with § 160A-58.6 when, through annexation of intervening territory, the boundaries of the satellite area and those of the primary town area touch. *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980).

If a town wishes to annex involuntarily two unannexed areas on either side of the satellite area, it must first annex the area which abuts directly on both the primary corporate limits and the satellite corporate limits. Only after this intervening territory has been successfully annexed is the area which presently abuts solely on satellite corporate limits eligible for annexation. *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980).

Coincidence of Boundary Requirement. — In considering the coincidence of boundary requirement, the entire area proposed for annexation must be viewed as a whole, rather than as various component portions. *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Purposes Underlying Subsection (b) Subverted. — Superior court properly remanded town's annexation ordinance for amendment of its proposed boundaries, where although the literal contiguity requirements of subsection (b) of this section and § 160A-41(1) were apparently satisfied by the town's ordinance, the town's compliance with the literal requirements of these statutes resulted in the subversion of the purposes underlying subsection (b), since the town's intentional gerrymandering of the annexation boundary created isolated islands connected to the town by a single narrow corridor of land. *Amick v. Town of Stallings*, 95 N.C. App. 64, 382 S.E.2d 221 (1989).

III. TESTS UNDER SUBSECTION (c).

For discussion as to history and scope of subsection (c), see *Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach*, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

"Use" Test and "Subdivision" Test for Determining Availability for Annexation. — The General Assembly adopted a standard containing two tests for determining availability for annexation: (1) The use test, i.e., that not less than 60% of the lots and tracts in the area must be in actual use, other than for agriculture, and (2) the subdivision test, i.e., that not less than 60% of the acreage which is in residential use, if any, and is vacant must consist of lots and tracts of five acres or less in size. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964); *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969); *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

The criteria in subsection (c) are known as the "use" test and the "subdivision" test. *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856, cert. denied, 287 N.C. 264, 214 S.E.2d 437 (1975).

Both Tests Must Be Complied With. — The fact that the General Assembly connected the two test clauses in subsection (c) of this section with the conjunctive "and," and the clear abuses and hardships which a literal application of the use test, if alone applied, would produce, leads to the conclusion that the legislative intent is that both tests be complied with. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

Both tests established by the General Assembly must be met in order for an area to meet the statutory standard. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969); *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Both the "use" test and the "subdivision" test must be met before an area can be classified as urban. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Application of Tests in Subsection (c). — The use and subdivision tests prescribed by subsection (c) of this section yield accurate results only if applied to a land area which encompasses only unannexed territory. This is so because these tests require a determination of the percentage of lots being used for "urban purposes" and the percentage of "total acreage" subdivided into lots of five acres or less. Such percentage figures will be skewed and inaccurate if not based on data from all the acreage and lots encompassed by the land area under consideration. *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980).

Application of Both Tests May Cause Absurd Results in Extreme Cases. — Literal insistence upon the application of both tests in subsection (c) might in some extreme and improbable circumstances bring about absurd results adverse to municipalities. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

Determining What Is a "Lot". — There are several methods which can be used in determining what is a lot in making an appraisal of an area to be annexed. One is to count each numbered lot separately. Another is to consider a landlocked lot as part of the lot in front of it and group the two lots, i.e., the landlocked lot and the one providing it with access to a street, as being a single lot. A third method would be to consider a group of lots in single ownership and used for a single purpose as being a tract within the meaning of the statute, and count tracts rather than lots. Any one of these methods would be "calculated to provide reasonably accurate results," as required by § 160A-42. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

The word "lot" in subsection (c) includes the concept of a condominium unit. *Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach*, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

Landlocked Lot and Fronting Lot as Single Lot. — It is not unreasonable and beyond the statutory definition to classify a landlocked lot and its fronting lot in single ownership as a single lot in residential use, where only the fronting lot contains "a habitable dwelling unit." *Adams-Millis Corp. v. Town of*

Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Lots in Single Ownership Used for Common Purpose May Be Considered Single Tract. — In appraising an area to be annexed, one of the methods which can be used to determine what is a tract is to consider several lots in single ownership used for a common purpose as being a single tract; these consolidated lots can then be used to determine the percentage of tracts used for urban purposes. *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

"Use" means "to put into service" under subsection (c). *Southern Ry. v. Hook*, 261 N.C. 517, 135 S.E.2d 562 (1964).

Tract Held for Future Development Not "Used". — Where about a tenth of a tract of land, marked off by a bumper strip or barrier, was used for parking, and the rest of the tract was graded and held by the owner for possible future industrial development, the vacant part of the tract was not "used" for industrial purposes within the purview of subsection (c). *Southern Ry. v. Hook*, 261 N.C. 517, 135 S.E.2d 562 (1964).

As to classification of tract as being in industrial use, see *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Industrial Classification Proper Where Area Is Actively So Used. — When an area is used for an active industrial purpose, the land is properly classified as in industrial use within the meaning of the annexation statute. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Industrial Classification Improper Absent Evidence of Such Use. — An area proposed for annexation is improperly classified as property in use for industrial purposes where there is no evidence that the land in question is being used either directly or indirectly for industrial purposes. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Transmission of electrical power over land by a power company is an industrial activity for an urban use. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert.

denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Golf Course as Commercial Purpose. — Golf course, open to the public and operated for profit, is used for a commercial purpose within the meaning of subsection (c). *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856, cert. denied, 287 N.C. 264, 214 S.E.2d 437 (1975).

Classification of apartment complex as commercial rather than residential property was a reasonable method of complying with statutorily mandated requirements for the character of an area to be annexed; the general statutory intent is not to exclude areas of urbanized land from annexation on a technicality, but to provide municipalities with a flexible planning tool. *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Annexation Ordinance Statement Held Insufficient for Lack of Specific Findings. — A statement in an annexation ordinance that the area to be annexed was in the process of being developed for urban purposes, that more than 60 percent of the area was in use for residential, commercial, industrial, governmental or institutional purposes, and that at least 60 percent of the total acreage, not counting the acreage so used, consisted of lots and tracts of five acres or less in size, did not meet the requirements of this section, as the statement was a mere conclusion and there were no specific findings nor any showing on the face of the record as to the method used by the municipality in making its calculations or as to the present use of any particular tract. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Review as to Availability of Area. — If a municipality clearly complies with the standards of subsection (c) of this section, there is nothing to review with respect to the availability of an area proposed for annexation. Where compliance is in doubt, the determination must be made upon the facts in the particular case. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

IV. BOUNDARIES.

Purpose of Subsection (d). — The legislative history of subsection (d) of this section suggests that the reason for its inclusion was the legislature's concern that the full range of municipal services be available to citizens in the an-

nexed area. Recognizing that water and, particularly, sewer services are necessarily limited by natural drainage boundaries, the Municipal Government Study Commission, whose recommendations were followed in establishing the present annexation procedures, included topography as an important consideration to be incorporated into the new statutory scheme of annexation. In order to ensure consideration of such topographic features, subsection (d) was enacted specifically enumerating certain features which create natural drainage boundaries. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

Subsection (d) contains no mandatory standards or requirements for annexation. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

Requirements of Subsection (d) Not Intended to Defeat Otherwise Proper Annexation. — It was not the intent of the legislature to defeat the annexation of an area which was otherwise ripe for annexation because of the directory language contained in subsection (d) of this section. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

"Practical" as used in subsection (d) is defined as "that which is possible of reasonable performance." *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

Tree lines do not constitute "natural topographic features" within the

meaning of the requirement of subsection (d) of this section. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982).

No provision in subsection (d) prevents a municipality from using a street as a reference in setting the boundary lines of an area to be annexed. *Rexham Corp. v. Town of Pineville*, 20 N.C. App. 349, 216 S.E.2d 445 (1975).

Drawing boundary exactly five feet from and parallel to a street for its entire length did not violate subsection (d). *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Splitting of Tracts Not Prohibited. — The statutory requirement contained in subsection (d) that a municipality use natural topographic features wherever practical in setting an annexation boundary does not demonstrate a legislative intent to prevent the splitting of tracts. *Rexham Corp. v. Town of Pineville*, 20 N.C. App. 349, 216 S.E.2d 445 (1975).

Proof of Noncompliance with Subsection (d). — In order to establish noncompliance with subsection (d) of this section, petitioners must show two things: (1) that the boundary of the annexed area does not follow natural topographic features, and (2) that it would have been practical for the boundary to follow such features. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982); *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

§ 160A-37. Procedure for annexation.

(a) **Notice of Intent.** — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 45 days and not more than 90 days following passage of the resolution.

(b) **Notice of Public Hearing.** — The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition

thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) Action Prior to Hearing. — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk at least 30 days before the public hearing a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing

board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) **Effect of Annexation Ordinance.** — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(g) **Simultaneous Annexation Proceedings.** — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) **Remedies for Failure to Provide Services.** — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted

under the provisions of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of G.S. 160A-35(3)c require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3; 1977, c. 517, s. 5; 1983, c. 636, ss. 2, 4, 6, 36; 1985, c. 384, s. 1; 1987, c. 44, s. 1; 1989, c. 598, s. 11.)

Local Modification. — Town of Grifton: 1975, c. 479.

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see § 160A-58.9.

Editor's Note. — Session Laws 1977, c. 517, which amended this section, provided in s. 10: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly

annexed property was or is taxed under the procedures of G.S. 160A-24 [now repealed], G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the pro-

ures established by Chapter 576 of 1975 Session Laws."

Session Laws 1977, c. 517, provided in s. 11: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of Acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Sec-

tion 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1985, c. 384, which amended this section, in s. 2 made the act effective with respect to annexations when resolutions of intent under § 160A-37(a) or § 160A-49(a) were adopted after the date of ratification of the act (June 13, 1985).

Session Laws 1987, c. 44, s. 1, which added the proviso at the end of the first sentence of subsection (i) became effective from and after June 29, 1983, except that it did not affect litigation pending on the date of ratification. The act was ratified April 2, 1987.

Session Laws 1989, c. 598, s. 11, which added the last sentence of subsection (i), became effective with respect to annexations for which the resolution of consideration is adopted on or after January 1, 1990.

Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

This section provides two different procedural methods for beginning the involuntary annexation process under §§ 160A-33 to 160A-42 and former §§ 160A-43 and 160A-44. A municipality may either pass a resolution of consideration one year prior to adopting its resolution of intent, or it may immediately adopt the resolution of intent and postpone the effective date of annexation for at least a year after the ordinance is passed. *Town of Hazelwood v. Town of Waynesville*, 83 N.C. App. 670, 351 E.2d 558, rev'd on other grounds, 320 N.C. 89, 357 S.E.2d 686 (1987).

Deliberate preference for voluntary annexation is incorporated into law. *Town of Hazelwood v. Town of Waynesville*, 320 N.C. 89, 357 S.E.2d

686, rehearing denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

Resolution of intent is "first mandatory public procedural step" for purposes of the prior jurisdiction rule. *Town of Hazelwood v. Town of Waynesville*, 320 N.C. 89, 357 S.E.2d 686, rehearing denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

The adoption of a resolution of intent is the critical date for determining whether a municipality utilizing involuntary annexation procedures has prior jurisdiction over the same territory being considered for voluntary annexation by a different municipality. *Town of Hazelwood v. Town of Waynesville*, 320 N.C. 89, 357 S.E.2d 686, rehearing denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

Sections 160A-31(d), 160A-49(e) and subsection (e) of this section are in *pari materia*. *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

The legislature has empowered municipal governing boards to amend the report required by § 160A-35, to accommodate changes in the plans for serving the area proposed to be annexed, so long as such changes meet the requirements of § 160A-35. *Gregory v. Town of Plymouth*, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Subsection (e) contains no provision requiring a second public hearing before the annexation report may be amended; to hold that a public hearing is always necessary when an annexation report is amended would result in a proliferation of unnecessary hearings. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

There is no requirement in subsection (e) that a second public hearing be held on the report as amended. *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with § 160A-35, pursuant to the authority granted in subsection (e) of this section. *Gregory v. Town of Plymouth*, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Nor any Provision as to Duration of Public Inspection of Amended Reports. — There is no requirement in subsection (e) that the amended report be available for public inspection for any particular amount of time before final action is taken on the annexation proposal. *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

Newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation under subsection (f) of this section. A taxpayer's right to recover taxes paid under protest for a fiscal year depends upon the date the annexation ordinance became effective under § 160A-38(i). *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972), decided under this section as it stood before the 1975 amendment.

Effect of Appeal on Effective Date of Annexation for Tax Purposes. — Where an appeal from an annexation or-

dinance was pending in the Court of Appeals on the effective date of annexation specified in the ordinance, May 15, 1969, and the decision of the Court of Appeals was filed and certified in September, 1969, property within the area being annexed was not subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1969, since (1) newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation, under subsection (f) of this section, and (2) under § 160A-38(i), the appeal postponed the effective date of the ordinance until the date of the final judgment of the appellate court. *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972), decided under this section as it stood before the 1975 amendment.

Annexed Areas Need Not Be Contiguous to Each Other. — If the areas to be annexed meet the standards prescribed, it does not matter whether they be contiguous. Subsection (g) of this section simply alleviates the necessity for separate annexation proceedings where areas to be annexed are adjacent to the municipality but not adjacent to each other, and specifically provides that annexation procedures may be simultaneously instituted and carried forward. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

But Contiguous Areas Are Not Excluded from Annexation. — Subsection (g) of this section is not interpreted to exclude annexation of areas contiguous to the municipality which are also contiguous to each other. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Fact that the metes and bounds description in a resolution of intent to annex failed to close because one small piece of property owned by a person who did not join the petition for review was not included within the resolution of intent was not fatal to the validity of the annexation ordinance, where the resolution of intent and the published notice of public hearing made full reference to a map, filed in the office of the clerk of the city, and available for public inspection of the area proposed to be annexed, and this map and a map published in the newspaper notice of the public hearing showed all the property proposed to be annexed. *Conover v.*

Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Where annexation is completed without being challenged in the manner prescribed by § 160A-38, it becomes an accomplished fact, and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of this section. *Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967).

Remedy Where Municipality Has Not Carried Out Service Plans. —

The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of § 160A-35 and subsection (e) of this section is by writ of mandamus. *Safrit v. Costlow*, 270 N.C. 680, 155 S.E.2d 252 (1967).

Time for Bringing Action for Mandamus. — The owner of property within territory annexed by a municipality may bring an action for mandamus after the expiration of one year from the effective date of annexation and prior to the expiration of 15 months from such date to compel the municipality to follow through on its plans for furnishing essential municipal services to the area

annexed in accordance with the plans filed in the proceedings. *Safrit v. Costlow*, 270 N.C. 680, 155 S.E.2d 252 (1967).

Annexation ordinance and annexation report met the requirements of § 160A-35 and this section. *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

Applied in *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961); *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974); *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975); *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980); *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240 (1982).

Quoted in *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599 (1987).

Cited in *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985); *Chapel Hill Country Club, Inc. v. Town of Chapel Hill*, 97 N.C. App. 171, 388 S.E.2d 168 (1990); *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688 (1990); *Asheville Indus., Inc. v. City of Asheville*, 112 N.C. App. 713, 436 S.E.2d 873 (1993).

§ 160A-37.1. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated

by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars (\$100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-38 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes. (1983, c. 636, s. 20; 1987, c. 827, s. 1.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Session Laws 1983, c. 636, which enacted this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of Acts, even if not specifically listed and repealed in Sections 26

through 35.4 of this act, are repealed. Neither this section nor sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as pro-

vided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act

shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-37.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 22.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-37.3. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a private solid waste collection firm or firms:

- (1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-37(j) or
- (2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-37(i) was providing solid waste collection services in

- the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:
- (3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and
 - (4) During the 90-day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and
 - (5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing, unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:
 - (6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or
 - (7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.
- (b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.
- (c) The city may require that the contract contain:
- (1) A requirement that the private firm post a performance bond and maintain public liability insurance coverage;
 - (2) A requirement that the private 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 private firms, or by the city as to customers not served by the private 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 for 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, 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 private firm under this subsection, such matters shall be determined by the Local Government Commission.

(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.

(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.

(g) The private firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private 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 five 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. (1985, c. 610, s. 3; 1987, c. 827, s. 1; 1989, c. 598, s. 6.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Session Laws 1985, c. 610, s. 8 provides that this section applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985.

Session Laws 1989, c. 598, s. 6, which rewrote the first sentence of subsection (g), became effective with respect to all annexation ordinances adopted on or after January 1, 1990.

Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

§ 160A-38. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or

- (2) That the provisions of G.S. 160A-35 were not met, or
- (3) That the provisions of G.S. 160A-36 have not been met.
- (g) The court may affirm the action of the governing board without change, or it may
 - (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
 - (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
 - (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for a rehearing or for discretionary review shall be treated as a final judgement.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g). (1959, c. 1010, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7; 1989, c. 598, s. 7.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A-58.9A.

Editor's Note. — Session Laws 1989, c. 598, s. 13 provided in part: "This act does not affect pending litigation."

Session Laws 1989, c. 598, s. 7, which amended this section, became effective

with respect to annexations for which the resolution of intent is adopted on or after January 1, 1990.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Reason for Judicial Review. — The difficulties of applying the standards of § 160A-36 in extreme cases are the reason the Municipal Government Study Commission recommended a provision for court review, set out in this section, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

Scope of Superior Court Review. — The superior court's review of an involuntary annexation proceeding, pursuant to this section, is limited in scope to the following: (1) Did the municipality comply with the statutory procedures? (2) If not, will petitioners "suffer material injury" by reason of the municipality's failure to comply? (3) Does the character of the area specified for annexation meet the requirements of § 160A-36 as applied to petitioners' property? *Conover v. Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979).

Subsection (f) of this section and § 160A-50(f) limit the court's inquiry on review of an annexation ordinance to a determination of whether applicable annexation statutes have been substantially complied with. *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

In determining the validity of an annexation ordinance, the court's review is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioner suffer material injury thereby? (3) Does the area to be annexed meet the requirements of § 160A-36 or § 160A-48? *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Section Provides Only Procedure Available to Property Owners to Prevent Annexation. — The statutory remedy provided by this section is the only procedure available to property owners to prevent the annexation provided by an annexation ordinance. *Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967).

Remedy Under § 160A-37 Exclusive Where Annexation Not Challenged Under this Section. — Where annexation is completed without being

challenged in the manner prescribed by this section, it becomes an accomplished fact, and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of § 160A-37. *Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967).

And Independent Action to Have Ordinance Declared Void Ab Initio May Not Be Maintained. — An owner of land in an area annexed by a municipality may attack the validity of the annexation ordinance only by filing a petition within 30 days following the passage of the ordinance seeking a review of the action of the municipal board of commissioners, in accordance with the procedure provided by this section, and an independent action instituted some 22 months after the adoption of the ordinance and seeking to have it declared void ab initio will be dismissed. *Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967).

Who May Appeal. — Subsection (a) allows persons owning property in the area to be annexed to appeal if such property owners believe that they will suffer material injury. *Taylor v. City of Raleigh*, 22 N.C. App. 259, 206 S.E.2d 401 (1974), aff'd, 290 N.C. 608, 227 S.E.2d 576 (1976).

Any person owning property in annexed territory has a right, within 30 days following the passage of the annexation ordinance, to challenge its validity by petition for review filed in the superior court. *Gaskill v. Costlow*, 270 N.C. 686, 155 S.E.2d 148 (1967).

Fact that city was proceeding under a local act which did not set forth the persons who could appeal, rather than under this Chapter, did not extend the right to challenge the annexation to persons outside the annexed area who did not own property within it. *Taylor v. City of Raleigh*, 22 N.C. App. 259, 206 S.E.2d 401 (1974), aff'd, 290 N.C. 608, 227 S.E.2d 576 (1976).

The only persons given authority by this Chapter to challenge an annexation ordinance are those who own property in the annexed area. *Davis v. City of Archdale*, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

The consolidation of two or more petitions for review in a single hearing referred to in subsection (d) refers to the consolidation of two or more petitions which involve a single annexation area

and ordinance. *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974).

Failure to Allege Material Injury Not Fatal. — While the better practice would be to allege specifically that the petitioner will suffer material injury by reason of the failure of respondent to comply with the statutory procedures regarding annexation, the failure to do so is not fatal, particularly if the petition contains allegations from which material injury can be implied. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Effect of Appeal on Effective Date of Annexation for Tax Purposes. — Where an appeal from an annexation ordinance was pending in the Court of Appeals on the effective date of annexation specified in the ordinance, May 15, 1969, and the decision of the Court of Appeals was filed and certified in September 1969, property within the area being annexed was not subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1969, since (1) newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation, § 160A-37(f), and (2) under subsection (i) of this section the appeal postponed the effective date of the ordinance until the date of the final judgment of the appellate court. *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972).

Findings of fact of the superior court are binding on appeal if supported by competent evidence, even though there is evidence to the contrary. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Record Must Show Prima Facie Compliance. — Upon review in the superior court of a municipal annexation ordinance enacted pursuant to this Article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this Article as a condition precedent to the right of the municipality to annex the territory. *Huntley v. Potter*, 255 N.C. 319, 122 S.E.2d 681 (1961); *In re Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961).

Burden on Petitioners to Prove Prejudicial Irregularity Where

Prima Facie Compliance Shown. — Where, upon review in the superior court of an annexation ordinance, the record of the proceeding shows prima facie that there has been substantial compliance with the requirements and provisions of the annexation statute, the burden is upon petitioners to show by competent evidence failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in the proceedings which materially prejudices the substantive rights of petitioners. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961); *In re Annexation Ordinance*, 255 N.C. 633, 122 S.E.2d 690 (1961); *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982); *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

The burden is upon petitioners in such case by reason of the presumption that public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Nothing to Review on Issue of Availability if Compliance Is Clear.

— If a municipality clearly complies with the standards of subsection (c) of § 160A-36, there is nothing to review with respect to the availability of an area proposed for annexation. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

Where compliance is in doubt, the determination must be made upon the facts in the particular case with respect to the availability of an area proposed for annexation under subsection (c) of § 160A-36. *Lithium Corp. of Am. v. Town of Bessemer City*, 261 N.C. 532, 135 S.E.2d 574 (1964).

Court May Not Amend Record. — The superior court itself is without authority to amend the report, ordinance or other part of the record. This is true even if evidence is presented which justifies amendment. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

But Must Remand Where Compliance Not Shown by Record. — Under this section, if the record of annexation proceedings on its face fails to show substantial compliance with any essential provision of this Article, the superior court upon review must remand to the

governing board for amendment with respect to such noncompliance. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Public Hearing on Remand. — Neither subdivision (g)(2) of this section nor any other provisions of the annexation statute requires the municipal governing board upon remand to hold a second public hearing unless it adds an area not included in the original notice of public hearing and not provided for in the plans for service. *Rexham Corp. v. Town of Pineville*, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

When Court May Permit Annexation of Part of Area. — The superior court may permit, under subsection (h) of this section, an annexation ordinance to be effective with respect to a part of the area proposed only when there is no appeal in regard to such part and the municipality agrees to the order for such partial annexation. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Where an order is issued restraining the operation of an annexation ordinance as to the entire area pending review, subsection (e) of this section has no application, since the statute permits the court to approve the annexation of a part of the proposed area only when no question for review has been raised as to such part. *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

Findings of fact of the superior court are binding on appeal if supported by competent evidence, even though there is evidence to the contrary. *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Jurisdiction of Court of Appeals. — An appeal from an order of the superior court affirming an annexation ordinance was properly taken to the Court of Appeals, notwithstanding that by clear legislative oversight subsections (h) and (i) of this section were not amended to include the Court of Appeals as one of the appellate courts, since § 7A-27 gives initial appellate jurisdiction of such cause to the Court of Appeals, and the Court of Appeals, therefore, is deemed to be included in subsections (h) and (i). *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972).

Filing of Petition Necessary to Perfect Appellate Jurisdiction in Superior Court. — An appeal from the pas-

sage of an annexation ordinance by a municipality having a population of less than 5,000 must be taken within 30 days following such passage by filing a petition in the superior court of the county in which the municipality is located. Compliance with this provision is a condition precedent to perfecting appellate jurisdiction in the superior court for the review of an annexation ordinance. *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Entry of remand order divested superior court of jurisdiction. — Superior court's entry of order of remand of appeal of adoption of 1988 ordinance for the limited purpose of including specific findings of fact that the area to be annexed was developed for urban purposes divested that court of appellate jurisdiction to conduct further review of those aspects of the petition brought forward, but not addressed by the order, such that petitioner was required to appeal anew from the action of the town taken pursuant to remand in adopting an amended 1989 ordinance in order to obtain the right to a review of the 1989 ordinance in the superior court. *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Further Appellate Review After Remand. — In order to obtain further review of an annexation ordinance after infirmities have been corrected by the municipality pursuant to an order of remand, whether such order of remand addresses all or merely some of the issues raised in the initial petition, appellate jurisdiction in the superior court must be perfected anew by filing a separate petition in accordance with the provisions of § 160A-38(a). *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Effective date of an ordinance adopted pursuant to superior court's order of remand is neither postponed nor amended absent further appeal, which must be taken within the required 30 days; i.e., the ordinance becomes an accomplished fact, subject only to further appeal. *Ingles Markets, Inc. v. Town of Black Mt.*, 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Applied in *Safrit v. Costlow*, 270 N.C. 680, 155 S.E.2d 252 (1967); *Town of*

Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971); *Taylor v. City of Raleigh*, 290 N.C. 608, 227 S.E.2d 576 (1976); *In re Dunn*, 73 N.C. App. 243, 326 S.E.2d 309 (1985).

Stated in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972); *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980); *In re Annexation Ordinance*, 300 N.C. 337, 266 S.E.2d 661 (1980).

Cited in *Williams v. Town of Grifton*, 22 N.C. App. 611, 207 S.E.2d 275 (1974); *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980); *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982); *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985); *Joyner v. Town of Weaverville*, 94 N.C. App. 588, 380 S.E.2d 536 (1989); *Amick v. Town of Stallings*, 95 N.C. App. 64, 382 S.E.2d 221 (1989).

§ 160A-39. Annexation recorded.

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1959, c. 1010, s. 7; 1973, c. 426, s. 74; 1987, c. 715, s. 7; c. 879, s. 3; 1989, c. 440, s. 8; 1991, c. 586, s. 2.)

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see § 160A-58.9.

Editor's Note. — Session Laws 1991,

c. 586, s. 2, which amended this section, became effective October 1, 1991, and is applicable to annexation documents required to be filed with the Secretary of Secretary of State after that date.

§ 160A-40. Authorized expenditures.

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1010, s. 8; 1973, c. 426, s. 74.)

§ 160A-41. Definitions.

The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

- (1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.
- (2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1010, s. 9; 1973, c. 426, s. 74.)

Local Modification. — Town of Atlantic Beach: 1983, c. 341.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among

Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Coincidence of Boundary Requirement. — In considering the coincidence of boundary requirement, the entire area proposed for annexation must be viewed as a whole, rather than as various component portions. *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Territory which is contiguous solely to "satellite corporate limits" is not a "contiguous area" as that term is defined in subdivision (1). *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980).

Classification of Landlocked and Fronting Lots in Single Ownership as Single Lot. — It is not unreasonable and beyond the statutory definition to classify a landlocked lot and its fronting lot in single ownership as a single lot in residential use where only the fronting lot contains "a habitable dwelling unit." *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Quoted in *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961); *Amick v. Town of Stallings*, 95 N.C. App. 64, 382 S.E.2d 221 (1989).

§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the municipality:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reli-

able source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (1959, c. 1010, s. 10; 1973, c. 426, s. 74.)

CASE NOTES

Determining What Is a "Lot". — In making an appraisal of an area to be annexed, there are several methods which can be used in determining what is a lot. One is to count each numbered lot separately. Another is to consider a landlocked lot as part of the lot in front of it and group the two lots, i.e., the landlocked lot and the one providing it with access to a street, as being a single lot. A third method would be to consider a group of lots in single ownership and used for a single purpose as being a tract within the meaning of the statute, and count tracts rather than lots. Any one of these methods would be "calculated to provide reasonably accurate results," as required by this section. *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Recorded plat. — Recorded plat was not a "reasonably reliable" source for purposes of showing subdivision where: (1) property shown on plat had never actually been developed; (2) county tax office had exceeded its statutory authority in classifying property as "subdivision," because it was not divided into lots and there were no streets (§ 105-287); (3) the

property had never been surveyed; and (4) no lots had ever been sold. Further, aerial photographs showed no road while recorded plat did. When accuracy of record evidence proffered by city to meet requisites for annexation is belied by evidence of actual condition of property, such records are not "reasonably reliable" for the purposes of this section. *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990).

Use of planimeter to calculate acreage. — See *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Applied in *Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961); *Thompson v. City of Salisbury*, 24 N.C. App. 616, 211 S.E.2d 856 (1975); *Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach*, 64 N.C. App. 239, 307 S.E.2d 181 (1983); *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Cited in *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.N.C. 1972); *Huyck Corp. v. Town of Wake Forest*, 86 N.C. App. 13, 356 S.E.2d 599 (1987); *Thrash v. City of Asheville*, 327 N.C. 251, 393 S.E.2d 842 (1990).

§§ 160A-43, 160A-44: Repealed by Session Laws 1983, c. 636, s. 27.

Editor's Note. — Session Laws 1983, c. 636, which repealed these sections, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

a board or commission with respect to water and wastewater systems or improvements only.

- (6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1). (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2.)

Editor's Note. —

Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 19, 1995,

added subdivision (h)(8).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subdivision (h)(5a).

ARTICLE 4A.

Extension of Corporate Limits.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

Town Not Required to Provide Service. — Language in annexation ordinances to the effect that since water service then provided to the annexed areas by plaintiff was comparable to that provided by the town, the town would not be required to appropriate funds to extend water and sewer lines to the annexed area was required by § 160A-37(e)(3) and subdivision (3)b to insure that residents of the area to be annexed

would have access to comparable water service; in no way did this serve as a promise to be rightfully relied upon that the town would not in the future construct its own water lines within the annexed area or that plaintiff had the exclusive right to furnish water service there. *Carolina Water Serv., Inc. v. Town of Atlantic Beach*, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-36. Character of area to be annexed.

Local Modification. — Town of Catawba: 1995, c. 230, s. 1.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

V. Boundaries.

IV. BOUNDARIES.

Proof of Noncompliance with Sub-

section (d). — In order to establish noncompliance with subsection (d) of this section, petitioners must show two

things: (1) that the boundary of the annexed area does not follow natural topographic features, and (2) that it would have been practical for the boundary to follow such features. *Greene v. Town of Valdese*, 306 N.C. 79, 291 S.E.2d 630 (1982); *Lowe v. Town of Mebane*, 76 N.C. App. 239, 332 S.E.2d 739 (1985); *Weeks v. Town of Coats*, 121 N.C. App. 471, 466 S.E.2d 83 (1996).

Topographic Features Not Followed. — There was sufficient evidence to support the court's conclusion that the town did not attempt to follow topographic features in violation of § 160A-36(d). *Weeks v. Town of Coats*, 121 N.C. App. 471, 466 S.E.2d 83 (1996).

§ 160A-37. Procedure for annexation.

CASE NOTES

Town Not Required to Provide Service. — Language in annexation ordinances to the effect that since water service then provided to the annexed areas by plaintiff was comparable to that provided by the town, the town would not be required to appropriate funds to extend water and sewer lines to the annexed area was required by subdivision (e)(3) and § 160A-35(3)b to insure that residents of the area to be annexed

would have access to comparable water service; in no way did this serve as a promise to be rightfully relied upon that the town would not in the future construct its own water lines within the annexed area or that plaintiff had the exclusive right to furnish water service there. *Carolina Water Serv., Inc. v. Town of Atlantic Beach*, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-38. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its

discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed or
- (2) That the provisions of G.S. 160A-35 were not met, or
- (3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of petition for a rehearing or for discretionary review shall be treated as a final judgement.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g).

(k) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal. (1959, c. 1010, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7; 1989, c. 598, s. 7; 1995 (Reg. Sess., 1996), c. 746, s. 4.)

Editor's Note. —

The subsection designation (k) was assigned by the Revisor of Statutes, the subsection designation in Session Laws 1995 (Reg. Sess., 1996), c. 746, s. 4, having been (l).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective on and after January 1, 1996, added subsection (k).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

III. Plans for Extending Services. A. In General.

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Providing Forms to Property Owners. — Subdivision (3)(b) does not require the city to provide notice to the property owners that they may request a form providing for extension of lines to their property in accordance with the

financial policies of the city, and in the absence of a request, the city is not required to provide forms to property owners to be used to request extensions from their property to a major main in accordance with the city financial policies for such extensions. *Barnhardt v. City of Kannapolis*, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Applied in *Thrash v. City of Asheville*, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

§ 160A-49. Procedure for annexation.

CASE NOTES

Form for Extension. — This section, which specifically describes the procedure of annexation and the information that is required to be provided to residents of an area to be annexed, does not require that the city furnish the form described in § 160A-47 without a request. *Barnhardt v. City of Kannapolis*,

116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Where materials delivered to the court did not include a certificate that notice of the public hearing was mailed to all the property owners in the affected area as required by subsection

EXHIBIT 4

INVOLUNTARY ANNEXATION TIME LINE

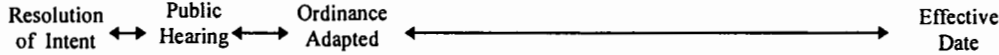
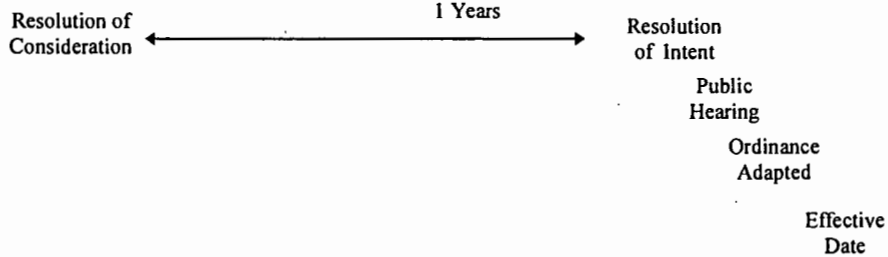
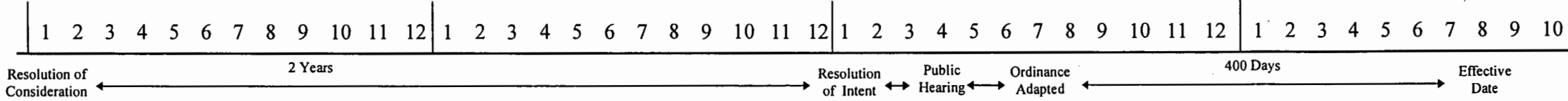
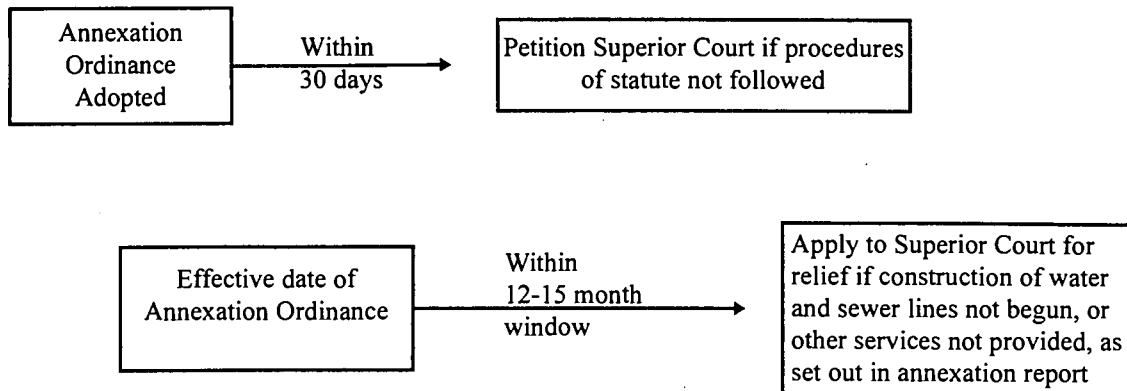


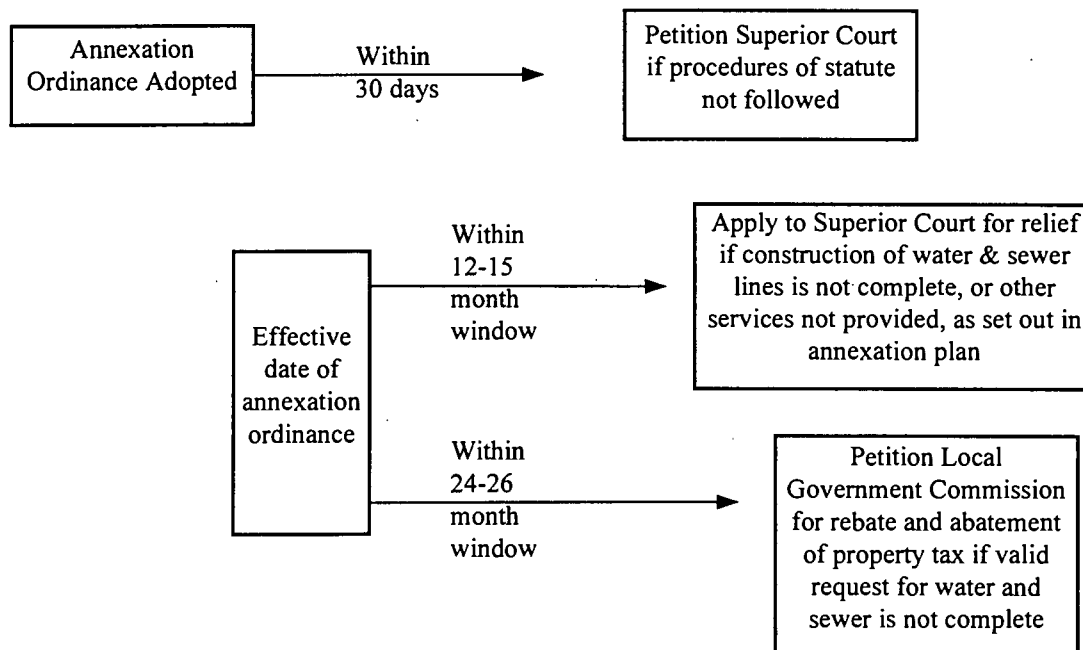
EXHIBIT 5

APPEALS OF INVOLUNTARY ANNEXATION

Under 5,000



5,000 or more



**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

March 18, 1997

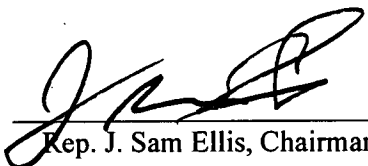
The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met March 18, 1997, at 11:05 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Page Christopher Simms.

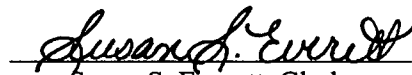
The following bill was discussed:

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Chairman Ellis began the discussion by offering eleven amendments for consideration. He presented Amendment #1, Bona Fide Farms, explaining that it establishes zoning regulation of property in use for bona fide farms purposes. After a lengthy discussion of the four-year provision, Rep. Carpenter moved for adoption of the amendment as amended to change from four to twenty-five the number of years that a city may not adopt or enforce any zoning regulation that affects property in use as for bona fide farm purposes; seconded and passed. Rep. Cunningham moved to reconsider the vote by which the zoning ordinance (Amendment #1) passed; seconded and passed. Rep. Ellis moved to withdraw Amendment #1; seconded and passed. Rep. Ellis explained that research was continuing on Amendment #2, Definitions of Water and Sewer Lines. It will be discussed at the next meeting. Amendment #3, Abatement of Water and Sewer Assessments, was presented. After considerable discussion, Rep. Allred moved for adoption of the amendment; seconded and passed. The remaining amendments will be discussed at the next meeting.

The meeting adjourned at 11:55 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

March 18, 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 94*

Short Title: Annexation Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "**§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.**

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:

12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.

18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.

20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

calculate present level of service, including, if applicable, personnel to population ratios and average response times.

- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 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.
- (5) A statement containing the classification as to use and size of each lot or tract in the area to be annexed. *winning*
- (6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of the city to provide services.
- (7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part."

Section 2. G.S. 160A-36 reads as rewritten:

"§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the time of the public hearing for the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined as any as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; size; or

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes; or

(3) An area developed for urban purposes is also the The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this ~~sentence~~ subsection only applies to annexation by a municipality if that:

(1) a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

6 (1) Fix the date, hour and place of the public hearing.
7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.

9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.

13 ~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35~~. G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~. municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- a. The present and proposed boundaries of the municipality.
- b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

1 water and sewer map must bear the seal of a registered
2 professional engineer.

3 c. The general land use pattern in the area to be annexed.

4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.

6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:

10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.

26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 ~~service,~~ service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

1 (c) Part or all of the area to be annexed must be developed for urban ~~purposes.~~
2 purposes at the time of the public hearing for the annexation ordinance. Area of
3 streets and rights-of-way shall be used only to determine total resident population per
4 acre of land in this section. An area developed for urban purposes is defined as any
5 area which meets any one of the following standards:

6 (1) Has a total resident population equal to at least two persons for
7 each acre of land included within its boundaries; or

8 (2) Has a total resident population equal to at least one person for
9 each acre of land included within its boundaries, and is subdivided
10 into lots and tracts such that at least sixty percent (60%) of the
11 total acreage consists of lots and tracts five acres or less in size and
12 such that at least sixty-five percent (65%) of the total number of
13 lots and tracts are one acre or less in size; or

14 (3) Is so developed that at least sixty percent (60%) of the total
15 number of lots and tracts in the area at the time of annexation are
16 used for residential, commercial, industrial, institutional or
17 governmental purposes, and is subdivided into lots and tracts such
18 that at least sixty percent (60%) of the total acreage, not counting
19 the acreage used at the time of annexation for commercial,
20 industrial, governmental or institutional purposes, consists of lots
21 and tracts five acres or less in size; or

22 (4) Is the entire area of any county water and sewer district created
23 under G.S. 162A-86(b1), but this subdivision only applies to
24 annexation by a municipality if that:

25 a. Municipality has provided in a contract with that district
26 that the area is developed for urban purposes; and

27 b. Contract provides for the municipality to operate the sewer
28 system of that county water and sewer district;

29 provided that the special categorization provided by this
30 subdivision only applies if the municipality is annexing in one
31 proceeding the entire territory of the district not already within the
32 corporate limits of a ~~municipality.~~ municipality; or

33 (5) Is so developed that at the time of annexation, all tracts in the area
34 to be annexed are used for commercial, industrial, governmental or
35 institutional purposes.

36 (d) In addition to areas developed for urban purposes, a governing board may
37 include in the area to be annexed any area which does not meet the requirements of
38 subsection (c) if such area either:

39 (1) Lies between the municipal boundary and an area developed for
40 urban purposes so that the area developed for urban purposes is
41 either not adjacent to the municipal boundary or cannot be served
42 by the municipality without extending services and/or water and/or
43 sewer lines through such sparsely developed area; or

- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area which does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 9. G.S. 160A-49(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.
- (4) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.



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March 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: Proposed amendments to House Bill 94

AMENDMENT #1 -- BONA FIDE FARMS

Page 4, lines 9-10 delete

Page 9, lines 43-44 delete

substitute new Section, as follow:

"160A-383.2 Zoning regulation of property in use for bona fide farms purposes.

Carpenter motion chg. to 25 yrs favorable to chg. to 25 yrs

A city may not adopt or enforce any zoning regulations for a period of ~~four years~~ that affects property in use as for bona fide farm purposes, if the property was annexed under Part 2 or Part 3 of Article 4A of this Chapter, the property was in use for bona fide farm purposes at the time of the effective date of the annexation, and the property continues in such use. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market."

AMENDMENT #2 -- DEFINITIONS OF WATER AND SEWER LINES

Sections 1, 3, 7, and 9

G.S. 160A-35

G.S. 160A-37(b),(e),(h)



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G.S. 160A-47

G.S. 160A-49(b),(e),(h)

Definition of:

Water mains (major trunk water lines)
secondary water lines
connector water lines

Sewer outfall lines (primary sewer lines)
secondary sewer lines
connector sewer lines

AMENDMENT #3 -- ABATEMENT OF W&S ASSESSMENTS

Add new section to bill:

"§160A-237. Authority to hold water and sewer assessments in abeyance.

(a) The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

(b) Owners of property subject to a water or sewer related assessment following annexation under Part 2 or Part 3 of this Chapter may request abatement of any water and sewer service assessments planned by the city until the property is transferred or the property owner connects to the water or sewer system. A request for abatement under this subsection must be received by the city at least 30 days prior to adoption of the annexation ordinance.

(c) All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest."

Allied moves to approve

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AMENDMENT #4 -- CHANGES TO NOTICE OF PUBLIC HEARING

Page 5, lines 12-13

Page 11, line 28-29

by adding between those lines:

" (4) State the right of a property owner to request abatement of water and sewer assessments under G.S. 160-A-237. A form for requesting an abatement, and an easily understandable explanation of the form, shall be mailed to all property owners entitled to a mailed notice of the proposed annexation."

Change (4) to (5) on Page 5, line 13, and on page 11, line 29.

Page 11, line 33, add the following:

"A form for requesting water and sewer services under G.S. 160-A-47(3)b., an easily understandable explanation of the form, and the city's water and sewer financial policies shall be mailed to all property owners entitled to a mailed notice of the proposed annexation."

AMENDMENT #5 -- PUBLIC HEARING PROCEDURE

Page 6, line 7 by rewriting that lined to read:

"opportunity to be ~~heard~~, heard, an opportunity to ask questions, and receive answers from the city's representative."

page 12, line 24 by rewriting that line to read:

"opportunity to be ~~heard~~, heard, an opportunity to ask questions, and receive answers from the city's representative."

AMENDMENT #6 -- AUTHORIZE APPLICATION TO LGC FOR REBATE AND ABATEMENT OF PROPERTY TAXES IF MAJOR MUNICIPAL SERVICES ARE NOT PROVIDED WITHIN ONE YEAR

Add new section to bill:

Section *:

G.S. 160A-49 is amended by adding a new subsection to read:

"(k1) If major municipal services (police protection, fire protection, solid waste collection, and street maintenance services) were to be provided to an annexed area according to the annexation services report, and if any of the services are not

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provided by the end of the one year after the effective date of the annexation ordinance, an owner of property in the area may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the one-year period, if such petition is filed not more than 90 days after the expiration of the one-year period. If the Local Government Commission finds that any major municipal service was not extended as provided in the annexation services report by the end of the one-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after provision of all major municipal services as provided in the annexation services report. In addition, if the Local Government Commission found that the provision of major municipal services was not completed by the end of the one-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the one-year period expired, the city made an appropriation for major municipal services from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for the major municipal service that was not provided."

AMENDMENT #7 -- EARLIEST DATE FOR ADOPTION OF ANNEXATION ORDINANCE AFTER PUBLIC HEARING

New section to bill:

Section * G.S. 160A-37(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. --The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance

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extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than ~~40~~ 70 days nor more than 400 days from the date of passage of the ordinance."

Add new Section

Section *. G.S. 160A-49(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at

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the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A- 48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A- 48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount

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sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than ~~40~~ 70 days nor more than 400 days from the date of passage of the ordinance."

AMENDMENT #8 -- INCREASE TIME PERIOD FOR OWNER OF OCCUPIED COMMERCIAL OR RESIDENTIAL PROPERTY IN CITY OF 5,000 OR MORE TO REQUEST WATER AND SEWER PRIOR TO ANNEXATION

Page 7, lines 40-41 by rewriting those lines to read:

"If such form is received by the city clerk not less than ~~30~~ 10 days before adoption of the annexation ordinance, provide"

Page 8, line 1 by adding after the period the following:

"The municipality must accept requests for water and sewer under this section for at least 30 days following the public hearing concerning the area proposed to be annexed."

AMENDMENT #9 -- NOTICE OF ANNEXATION, ADDITION TO ETJ TO THOSE IN ONE MILE AREA BEYOND ANNEXED TERRITORY.

Page 5, lines 29

Page 12 line 3

rewriting those lines to read:

"interests in real property located with in the area to be annexed, annexed, and one-mile beyond the area to be annexed. The notice sent to property owners in the area one-mile beyond the area to be annexed shall include an easily understandable explanation that the property owner may be subject to planning and zoning by the city as a result of being added to the city's extraterritorial planning and zoning jurisdiction."

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AMENDMENT #10 -- APPEAL TO LGC FOR ABATEMENT, REFUND OF PROPERTY TAXES FOR FAILURE TO PROVIDE WATER AND SEWER AFTER TWO YEARS (CITIES OF 5,000 OR MORE) -- 90 DAYS INSTEAD OF 60

New section to bill:

G.S. 160A-49(k) reads as rewritten:

"(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than ~~60~~ 90 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00)."

*add to
amendment memo*

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**AMENDMENT # 11 -- EXEMPTION FROM CITY PROPERTY TAX FOR LAND IN
FARM USE THAT IS ANNEXED**

add new section to bill:

*motion to
withdraw
favorable*

Sec. *

G.S. 160A-209 is amended by adding a new subsection to read:

"(i) Property classified for taxation by a county under G.S. 105-277.3 at the time of annexation shall not be subject to taxation under this section, as long as the property remains classified under G.S.105-277.3."

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

March 25, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met March 25, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Page Charles Hamilton Trivette.

The following bills were discussed:

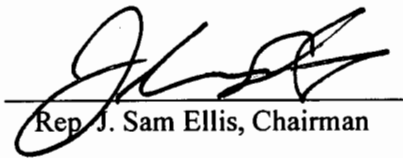
HB 335 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO. Rep. Nichols was recognized to present the bill and offered a Proposed Committee Substitute. Rep. Carpenter moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Nichols explained that the PCS redefines the town boundaries. The bill was requested by Pamlico County and has the support of the Pamlico Legislative Delegation and County Commissioners. Rep. Kiser moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Rep. Ellis opened the on-going discussion of the bill by introducing a document (Exhibit 1) designed to clarify the bill's definition section. He explained that this clarifying language would be entered into the statute under the definition section as outlined in Amendment #2, Definitions of Water and Sewer Lines. Rep. Carpenter moved for adoption of the amendment; seconded and passed. The discussion moved to Amendment #3, Abatement of Water and Sewer Assessments. This amendment addresses requests for abatement of any water and sewer service assessments planned by the city until the property is transferred or the property owner connects to the water or sewer system. After considerable discussion, Rep. Carpenter moved for adoption of the amendment; seconded and passed. Rep. Hurley called for division, and a show of hands indicated five yes and four no. The motion passed. Chairman Ellis invited committee members who oppose this amendment to present alternative amendments at the next meeting. Amendment #4, Changes to Notice of Public Hearing, was explained by Rep. Ellis. The amendment provides for certain written notifications and explanations to property owners. Rep. Allred moved for adoption of the amendment; seconded and passed. Rep. Ellis introduced Amendment #5, Public Hearing Procedure, and explained that it provides citizens with the opportunity to ask questions and receive answers from the city's

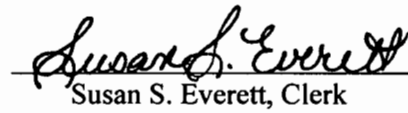
representatives. Following a short debate, Rep. Carpenter moved for adoption of the amendment; seconded and passed. Amendment #6, Authorize Application to LGC for Rebate and Abatement of Property Taxes if Major Municipal Services are not Provided Within One Year, was introduced. Rep. Ellis explained that it deals with the appeals process. Rep. Buchanan moved for adoption of the amendment; seconded and passed. The remaining amendments will be discussed at the next meeting.

The meeting adjourned at 11:50 AM.

Respectfully submitted,



Rep. J. Sam Ellis, Chairman



Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

March 25, 1997

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 335 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF
GRANTSBORO.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ With a favorable report as to committee substitute bill, unfavorable as to original bill, and
recommendation that the committee substitute bill be re-referred to the Committee on
Finance.
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 335
Proposed Committee Substitute H335-PCS8066

Short Title: Grantsboro Incorporated.

(Local)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO.

3 The General Assembly of North Carolina enacts:

4 Section 1. A Charter of the Town of Grantsboro is enacted as follows:

5 "THE CHARTER OF THE TOWN OF GRANTSBORO.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation.** The inhabitants of the Town of Grantsboro are a
9 body corporate and politic under the name 'Town of Grantsboro'. Under that name
10 they have all the powers, duties, rights, privileges, and immunities conferred and
11 imposed on cities by the general law of North Carolina.

12 "CHAPTER II.

13 "CORPORATE BOUNDARIES.

14 "Section 2-1. **Town Boundaries.** Until modified in accordance with the law, the
15 boundaries of the Town of Grantsboro are as follows:

16 Beginning at the intersection of the centerline of the right-of-way of NC 55 and the
17 western boundary of the corporate limits of the City of Alliance, and running thence
18 in a southerly direction, contiguous with the corporate limits of Alliance, to a point
19 on the South Prong of Bay River, south of Bay River Road (NCSR 1347);

20 Thence in a southwest direction along the South Prong of Bay River to the western
21 boundary of Tax Parcel 14, Property of Jeffrey and Billy H. Holton as recorded on
22 Tax Map F05 in DB 304, page 202;

1 Thence north along the western boundary of Tax Parcel 14 for 300 feet, more or less,
2 to the northeast corner of Tax Parcel 34, Property of Rhoda Scott Dixon on Tax Map
3 F051 in DB 170, page 181;
4 Thence westwardly along the northern boundary of Tax Parcel 34 to a point 1,000
5 feet east of the centerline of NC 306;
6 Thence in a southerly direction along a line parallel to and 1,000 feet east of the
7 centerline of NC 306 to the southern boundary of Tax Parcel 52, Property of Geneva
8 Parsons' Heirs on Tax Map F052, in DB 99, page 264;
9 Thence west along the southern boundary of Tax Parcel 52 to the centerline of NC
10 306;
11 Thence south 150 feet, more or less, along the centerline of NC 306 to the
12 intersection of the centerlines of NC 306 and Scott's Store Road (NCSR 1108);
13 Thence west along the centerline of Scott's Store Road to Deep Run Branch;
14 Thence along the center of Deep Run Branch 1,250 feet, more or less, in a
15 northwesterly direction to the northwest corner of Tax Parcel 19, Property of M.T.
16 Whitford on Tax Map E05 in DB 124, page 271;
17 Thence in an easterly direction along the northern boundary of Tax Parcels 19, 15,
18 14, all on Tax Map E05, and Tax Parcels 33 and 37, both on Tax Map F052, to a
19 point 1,000 feet west of NC 306;
20 Thence north along a line parallel to and 1,000 feet west of NC 306 to the southern
21 edge of the Tideland EMC right-of-way which follows the old Bay River Road
22 roadbed west of NC 306 to Keys Town Road (NCSR 1106);
23 Thence along the southern boundary of the Tideland EMC right-of-way to Keys
24 Town Road;
25 Thence, 1,200 feet south, more or less, to a forest access road and the northwest
26 corner of Tax Parcel 92, Property of Nora M. Lawson and Angelo B. Murrell on Tax
27 Map E05 in DB 215, page 149;
28 Thence eastwardly along the northern boundary of Tax Parcels 92 and 93, both on
29 Tax Map E05, to the northeast corner of 93;
30 Thence south along the eastern boundary of Tax Parcels 93, 89, 78, and 74, all on
31 Tax Map E05, to the southeast corner of 74;
32 Thence westwardly along the southern boundary of Tax Parcels 74, 72 and 102, all on
33 Tax Map E05, to Goose Creek;
34 Thence north along the center of Goose Creek to the centerline of NC 55;
35 Thence eastwardly 2,100 feet, more or less, along the centerline of NC 55 to the
36 intersection of Tax Parcel 12, Property of Booker T. and Loretta Jones on Tax Map
37 E05, DB 235, page 774 and the right-of-way of NC 55;
38 Thence in a northeast direction along the common boundary of Tax Parcels 12 and
39 14, both on Tax Map E04, and 65 on Tax Map E05 to Tax Parcel 13 on Tax Map
40 E04;
41 Thence in a northwesterly and northeasterly direction around the perimeter of Tax
42 Parcel 13 to a point on the southern boundary of Tax Parcel 31, Property of
43 Weyerhaeuser Co. on Tax Map E04, DB 110, page 550;

1 Thence around the perimeter of Tax Parcel 31 in an easterly and northerly direction
2 to Tax Parcel 3, Property of PCS Phosphate on Tax Map E03 in DB 305, page 831 at
3 a point 950 feet west, more or less, from NC 306;
4 Thence across Tax Parcel 3 in a northerly direction to the southeast corner of Tax
5 Parcel 33, Morris Logging Co. on Tax Map F041;
6 Thence along the common boundary of Tax Parcels 33 and 3 in a westwardly
7 direction to the southwest corner of 33;
8 Thence along the eastern boundary of Tax Parcel 3 in a northerly direction to the
9 northwest corner of Tax Parcel 42, Property of Bay Creek Trucking Inc. on Tax Map
10 E031 in DB 275, page 795;
11 Thence east, 1000 feet, more or less, along the northern boundary of Tax Parcel 42 to
12 the centerline of NC 306;
13 Thence southwardly 700 feet, more or less, along the centerline of NC 306 to a point
14 which is the northern boundary of Tax Parcel 43 on Tax Map E031 extending to said
15 road right-of-way;
16 Thence east along the northern boundary of Tax Parcels 43, 46, 47, 48, 48-1, all on
17 Tax Map E031, to the northeast corner of 48-1;
18 Thence south along the eastern boundary of Tax Parcels 48-1, 49, 54, 57, 58, 61 and
19 62, all on Tax Map E031, to the southeast corner of 62;
20 Thence westwardly along the southern boundary of Tax Parcel 62 to the northeastern
21 corner of Tax Parcel 68 on Tax Map E031;
22 Thence south along the eastern boundary of Tax Parcels 68, 77, 79, and 86, all on
23 Tax Map E031, to the centerline of Paul's Farm Road (NCSR 1243);
24 Thence east along the centerline of NCSR 1243 to the eastern boundary of CP&L
25 Transmission Lines right-of-way;
26 Thence south, southeast and east along the eastern and northern boundary of the
27 CP&L Transmission Lines right-of-way to the corporate limits of the City of Alliance;
28 Thence south along the western boundary of the corporate limits of the City of
29 Alliance to the centerline of NC 55 and the starting point.
30 All descriptions are based on maps in the Pamlico County Tax Office as of March 6,
31 1997.

32 In the event that any of the territory described above is, on the date this Charter
33 becomes effective, within the corporate limits of another town, or is subject to an
34 annexation ordinance of another town that has been adopted but is not yet effective,
35 this Charter removes that territory from the corporate limits of that other town.

36 "CHAPTER III.

37 "GOVERNING BODY.

38 "Section 3-1. **Structure of the Governing Body; Number of Member's.** The
39 governing body of the Town of Grantsboro is the Town Council which has five
40 members.

41 "Section 3-2. **Manner of Electing Council.** The qualified voters of the entire town
42 nominate and elect the Council.

43 "Section 3-3. **Term of Office of Council Members.** Members of the Council are
44 elected to two-year terms in 1997 and biennially thereafter.

1 "Section 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the qualified
2 voters of the Town in 1997 and biennially thereafter for a two-year term.

3 "CHAPTER IV.

4 "ELECTIONS.

5 "Section 4-1. **Elections.** Council members shall be elected on a plurality basis and
6 the results determined in accordance with G.S. 163-292.

7 "Section 4-2. **Results.** Election results shall be determined by the Pamlico County
8 Board of Elections according to Chapter 163 of the General Statutes.

9 "CHAPTER V.

10 "ADMINISTRATION.

11 "Section 5-1. **Mayor-Council Plan.** The Town of Grantsboro shall operate under
12 the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the
13 General Statutes.

14 "Section 5-2. **Taxation and Funds.** The Town of Grantsboro is eligible to receive
15 distributions of State funds during the fiscal year 1997-98."

16 Section 2. (a) From and after the effective date of this act, the citizens
17 and property in the Town of Grantsboro shall be subject to municipal taxes levied
18 for the year beginning July 1, 1997, and for that purpose the Town shall obtain from
19 Pamlico County a record of property in the area herein incorporated which was listed
20 for taxes as of January 1, 1997; and the businesses in the Town shall be liable for
21 privilege license tax from the effective date of the privilege license tax ordinance.

22 (b) If the effective date of this act is before July 1, 1997, the Town may
23 adopt a budget ordinance for fiscal year 1996-97 without following the timetable in
24 the Local Government Budget and Fiscal Control Act, but shall follow the sequence
25 of actions in the spirit of the act insofar as is practical. The Town may adopt a
26 budget ordinance for fiscal year 1997-98 without following the timetable in the Local
27 Government Budget and Fiscal Control Act, but shall follow the sequence of actions
28 in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem
29 taxes may be paid at par or face amount within 90 days of adoption of the budget
30 ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the
31 taxes had been due and payable on September 1, 1997.

32 Section 3. Notwithstanding Sections 3-3 and 3-4 of the Charter of the
33 Town of Grantsboro as set out in Section 1 of this act, the Pamlico County Board of
34 Elections shall conduct the 1997 general election for Town Council and Mayor of
35 Grantsboro at the same time as the incorporation referendum provided for by Section
36 4 of this act. In the election, if a majority of the votes are cast "FOR incorporation of
37 the Town of Grantsboro", the persons elected shall serve terms ending at the
38 organizational meeting after the 1999 municipal election. The Pamlico County Board
39 of Elections shall adopt a special filing period for the election. As absentee balloting
40 is allowed by law for the incorporation referendum under G.S. 163-302, it shall also
41 be allowed for election of officers at that election. In the election, if a majority of the
42 votes are not cast "FOR incorporation of the Town of Grantsboro", then the election
43 of Town Council and Mayor is void.

1 Section 4. (a) The Pamlico County Board of Elections shall conduct an
2 election on a date set by the Pamlico County Board of Elections for the purpose of
3 submission to the qualified voters of the area described in Section 2-1 of the Charter
4 of the Town of Grantsboro the question of whether or not such area shall be
5 incorporated as the Town of Grantsboro. The date of the election shall be not less
6 than 60 days nor more than 90 days after the date of this act becomes law.
7 Registration for the election shall be conducted in accordance with G.S. 163-288.2.

8 (b) In the election, the question on the ballot shall be:

9 "☐ FOR ☐ AGAINST

10 Incorporation of the Town of Grantsboro".

11 Section 5. In the election, if a majority of the votes are cast "FOR
12 incorporation of the Town of Grantsboro", Sections 1 and 2 of this act become
13 effective on the date of the certification of the results of the election. Otherwise,
14 Sections 1 and 2 of this act have no force and effect.

15 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 335

Short Title: Grantsboro Incorporated.

(Local)

Sponsors: Representatives Nichols; and Wainwright.

Referred to: Local and Regional Government I, if favorable, Finance.

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO.

3 The General Assembly of North Carolina enacts:

4 Section 1. A Charter of the Town of Grantsboro is enacted as follows:

5 "THE CHARTER OF THE TOWN OF GRANTSBORO.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation.** The inhabitants of the Town of Grantsboro are a
9 body corporate and politic under the name 'Town of Grantsboro'. Under that name
10 they have all the powers, duties, rights, privileges, and immunities conferred and
11 imposed on cities by the general law of North Carolina.

12 "CHAPTER II.

13 "CORPORATE BOUNDARIES.

14 "Section 2-1. **Town Boundaries.** Until modified in accordance with the law, the
15 boundaries of the Town of Grantsboro are as follows:

- 16 1. In Pamlico County, beginning at the intersection of the centerline
17 of the right-of-way of NC 55 and the western border of the
18 corporate limits of the City of Alliance, and running thence in a
19 southerly direction, contiguous with the corporate limits of
20 Alliance, to a point 1,000 feet south of SR 1347 (Bay River Rd);
21 2. Thence west along a line parallel and 1,000 feet south of SR 1347
22 to a point 1,000 ft east of NC 306 and 1,000 ft southeast of Bay
23 River Rd (on or near, the southern border of Lot #34) (Tax Map
24 FO51);

3. Thence in a southerly direction along a line parallel and 1,000 feet east of NC 306 to the southeast corner of lot #52 (Tax Map FO52);
4. Thence west along the southern border of lot #52 (Tax Map FO52) to the centerline of NC 306;
5. Thence south along the centerline of NC 306 150 feet, more or less, to the intersection of the centerlines of NC 306 and SR 1108 (Scott's Store Rd);
6. Thence west along the centerline of SR 1108 (Scott's Store Rd) to Deep Run Branch;
7. Thence along the center of Deep Run Branch 1,250 feet, more or less, in a northwest direction to the intersection of lot #19 and Deep Run Branch (Tax Map E05);
8. Thence in a southeast direction along the northern borders of Lots #14, 15, 18, 19, 33, and 37 (Tax Map E052) to a point 700 feet north of Scott's Store Rd and 1,000 feet west of NC 306 near the southwest corner of lot #44 (Tax Map E052);
9. Thence north along a line parallel and 1,000 feet west of NC 306 to the southern edge of the Tideland EMC right-of-way;
10. Thence along the southern border of the Tideland EMC right-of-way to a point 1,000 feet east, more or less, of Keys Town Rd and 1,700 feet south, more or less, of NC 55 at the northwest corner of lot #27 (Tax Map E05);
11. Thence south along the eastern border of lots # 74, 78, 89, and 93 (Tax Map E05);
12. Thence west along the southern border of lot #74 to Goose Creek (Tax Map (E05);
13. Thence north along the center of Goose Creek to the intersection of the centerline of NC 55;
14. Thence north along the center line of NC 55 2,100 feet, more or less, to the intersection of lot #12 and the right-of-way of NC 55;
15. Thence in a northeast direction along the southern border of lots #12 and 14, the northern border of lots #13, and 17, across lot #18 and part of lot #19 to a point 1,000 feet west of NC 306 and 1,000 feet north of NC 55 (Tax Map E05);
16. Thence north along a line parallel and 1,000 feet west of NC 306 for 14,400 feet, more or less, to the northwest corner of lot #42 (Tax Map E081);
17. Thence east along the northern border of Lot # 42, 100 feet, more or less, to the centerline of NC 306;
18. Thence south 700 feet, more or less, along the centerline of NC 306;

- 1 19. Thence east along the northern border of lots # 43, 46, 47, 48, 48-
2 1; and then south along the eastern border of lots # 48.1, 49, 54,
3 57, 58, 61 and 62;
4 20. Thence west along the southern border of Lot # 62;
5 21. Thence south along the eastern border of Lots # 68, 77, across Lot
6 # 79, and the western border of Lot # 89 to the centerline of SR
7 1243 (Paul's Farm Road)(Tax Map E031);
8 22. Thence east along the centerline of SR 1243 to the eastern boarder
9 of CP&L right-of-way;
10 23. Thence south along the eastern border of the CP&L right-of-way;
11 24. Thence southeast and then east along the northern border of the
12 CP&L right-of-way to the corporate limits of the City of Alliance;
13 25. Thence south along the western border of the corporate limits of
14 the City of Alliance to the centerline of NC 55 and the starting
15 point.

16 In the event that any of the territory described above is, on the date this Charter
17 becomes effective, within the corporate limits of another town, or is subject to an
18 annexation ordinance of another town that has been adopted but is not yet effective,
19 this Charter removes that territory from the corporate limits of that other town.

20 "CHAPTER III.

21 "GOVERNING BODY.

22 "Section 3-1. **Structure of the Governing Body; Number of Member's.** The
23 governing body of the Town of Grantsboro is the Town Council which has five
24 members.

25 "Section 3-2. **Manner of Electing Council.** The qualified voters of the entire town
26 nominate and elect the Council.

27 "Section 3-3. **Term of Office of Council Members.** Members of the Council are
28 elected to two-year terms in 1997 and biennially thereafter.

29 "Section 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the qualified
30 voters of the Town in 1997 and biennially thereafter for a two-year term.

31 "CHAPTER IV.

32 "ELECTIONS.

33 "Section 4-1. **Elections.** Council members shall be elected on a plurality basis and
34 the results determined in accordance with G.S. 163-292.

35 "Section 4-2. **Results.** Election results shall be determined by the Pamlico County
36 Board of Elections according to Chapter 163 of the General Statutes.

37 "CHAPTER V.

38 "ADMINISTRATION.

39 "Section 5-1. **Mayor-Council Plan.** The Town of Grantsboro shall operate under
40 the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the
41 General Statutes.

42 "Section 5-2. **Taxation and Funds.** The Town of Grantsboro is eligible to receive
43 distributions of State funds during the fiscal year 1997-98."

1 Section 2. (a) From and after the effective date of this act, the citizens
2 and property in the Town of Grantsboro shall be subject to municipal taxes levied
3 for the year beginning July 1, 1997, and for that purpose the Town shall obtain from
4 Pamlico County a record of property in the area herein incorporated which was listed
5 for taxes as of January 1, 1997; and the businesses in the Town shall be liable for
6 privilege license tax from the effective date of the privilege license tax ordinance.

7 (b) If the effective date of this act is before July 1, 1997, the Town may
8 adopt a budget ordinance for fiscal year 1996-97 without following the timetable in
9 the Local Government Budget and Fiscal Control Act, but shall follow the sequence
10 of actions in the spirit of the act insofar as is practical. The Town may adopt a
11 budget ordinance for fiscal year 1997-98 without following the timetable in the Local
12 Government Budget and Fiscal Control Act, but shall follow the sequence of actions
13 in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem
14 taxes may be paid at par or face amount within 90 days of adoption of the budget
15 ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the
16 taxes had been due and payable on September 1, 1997.

17 Section 3. Notwithstanding Sections 3-3 and 3-4 of the Charter of the
18 Town of Grantsboro as set out in Section 1 of this act, the Pamlico County Board of
19 Elections shall conduct the 1997 general election for Town Council and Mayor of
20 Grantsboro at the same time as the incorporation referendum provided for by Section
21 4 of this act. In the election, if a majority of the votes are cast "FOR incorporation of
22 the Town of Grantsboro", the persons elected shall serve terms ending at the
23 organizational meeting after the 1999 municipal election. The Pamlico County Board
24 of Elections shall adopt a special filing period for the election. As absentee balloting
25 is allowed by law for the incorporation referendum under G.S. 163-302, it shall also
26 be allowed for election of officers at that election. In the election, if a majority of the
27 votes are not cast "FOR incorporation of the Town of Grantsboro", then the election
28 of Town Council and Mayor is void.

29 Section 4. (a) The Pamlico County Board of Elections shall conduct an
30 election on a date set by the Pamlico County Board of Elections for the purpose of
31 submission to the qualified voters of the area described in Section 2-1 of the Charter
32 of the Town of Grantsboro the question of whether or not such area shall be
33 incorporated as the Town of Grantsboro. The date of the election shall be not less
34 than 60 days nor more than 90 days after the date of this act becomes law.
35 Registration for the election shall be conducted in accordance with G.S. 163-288.2.

36 (b) In the election, the question on the ballot shall be:

37 "☐ FOR ☐ AGAINST

38 Incorporation of the Town of Grantsboro".

39 Section 5. In the election, if a majority of the votes are cast "FOR
40 incorporation of the Town of Grantsboro", Sections 1 and 2 of this act become
41 effective on the date of the certification of the results of the election. Otherwise,
42 Sections 1 and 2 of this act have no force and effect.

43 Section 6. This act is effective when it becomes law.



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March 24, 1997

To: Members of the House Local and Regional Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 335 Grantsboro Incorporation
Introduced by Representatives Nichols; and Wainwright

House Bill 335 provides for the incorporation for the Town of Grantsboro in Pamlico County, subject to referendum.

The bill provides for a five member town board, to be elected on a plurality basis, and a mayor-council form of governance.

House Bill 335 would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 94*

Short Title: Annexation Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:

12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.

18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.

20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the time of the public hearing for the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined ~~as any~~ as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in ~~size~~ size; or

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes; or

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this sentence subsection only applies to annexation by a municipality if that:

~~(1)~~ a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

~~(2)~~ b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 3. G.S. 160A-37(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of the city to provide services.

~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35~~. G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~. municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- a. The present and proposed boundaries of the municipality.
- b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

water and sewer map must bear the seal of a registered professional engineer.

c. The general land use pattern in the area to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

a. Provide for extending police protection, fire protection, solid waste collection and street maintenance ~~services~~ services, including street lighting, to the area to be annexed on the date of annexation on ~~substantially~~ the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer ~~service~~, service. The municipality shall extend secondary water and sewer lines and connector water and sewer lines according to the financial policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk not less than 30 days before adoption of the annexation ordinance, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes~~
purposes at the time of the public hearing for the annexation ordinance. Area of
streets and rights-of-way shall be used only to determine total resident population per
acre of land in this section. An area developed for urban purposes is defined as any
area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality~~. municipality; or
- (5) Is so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or

- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area which does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 9. G.S. 160A-49(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.
- (4) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.

EXHIBIT 1

Terminology Water and Sewer

Water

1. Transmission lines (also referred to as trunk lines or mains) -- Largest water lines that connect water treatment plant to distribution mains
2. Distribution mains -- Mid-size water lines that run from transmission lines down individual streets, or near individual properties to be served
3. Service lines -- Smallest water lines that run from distribution mains onto property to be served

Sewer

1. Interceptor sewers (also referred to as outfalls) -- Largest sewers, that connect to sewage treatment plant
2. Collector sewers -- Mid-size sewers that run down individual streets, or near individual properties to be served
3. Service laterals -- Smallest sewers that run from individual properties served to collector sewers



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March 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: Proposed amendments to House Bill 94

AMENDMENT #1 -- BONA FIDE FARMS

Page 4, lines 9-10 delete

Page 9, lines 43-44 delete

substitute new Section, as follow:

"160A-383.2 Zoning regulation of property in use for bona fide farms purposes.

A city may not adopt or enforce any zoning regulations for a period of four years that affects property in use as for bona fide farm purposes, if the property was annexed under Part 2 or Part 3 of Article 4A of this Chapter, the property was in use for bona fide farm purposes at the time of the effective date of the annexation, and the property continues in such use. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market."

AMENDMENT #2 -- DEFINITIONS OF WATER AND SEWER LINES

Sections 1, 3, 7, and 9

G.S. 160A-35

G.S. 160A-37(b),(e),(h)

passed



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Discussion

G.S. 160A-47

G.S. 160A-49(b),(e),(h)

Definition of:

Water mains (major trunk water lines)
secondary water lines
connector water lines

Sewer outfall lines (primary sewer lines)
secondary sewer lines
connector sewer lines

AMENDMENT #3 -- ABATEMENT OF W&S ASSESSMENTS

Add new section to bill:

"§160A-237. Authority to hold water and sewer assessments in abeyance.

(a) The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

(b) Owners of property subject to a water or sewer related assessment following annexation under Part 2 or Part 3 of this Chapter may request abatement of any water and sewer service assessments planned by the city until the property is transferred or the property owner connects to the water or sewer system. A request for abatement under this subsection must be received by the city at least 30 days prior to adoption of the annexation ordinance.

(c) All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest."

*Pop. Carpenter - moves
Add (accept) as
written
passed*

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passed
AMENDMENT #4 -- CHANGES TO NOTICE OF PUBLIC HEARING

Page 5, lines 12-13

Page 11, line 28-29

by adding between those lines:

" (4) State the right of a property owner to request abatement of water and sewer assessments under G.S. 160-A-237. A form for requesting an abatement, and an easily understandable explanation of the form, shall be mailed to all property owners entitled to a mailed notice of the proposed annexation."

Change (4) to (5) on Page 5, line 13, and on page 11, line 29.

Page 11, line 33, add the following:

"A form for requesting water and sewer services under G.S. 160-A-47(3)b., an easily understandable explanation of the form, and the city's water and sewer financial policies shall be mailed to all property owners entitled to a mailed notice of the proposed annexation."

AMENDMENT #5 -- PUBLIC HEARING PROCEDURE *passed*

Page 6, line 7 by rewriting that lined to read:

"opportunity to be ~~heard~~, heard, an opportunity to ask questions, and receive answers from the city's representative."

page 12, line 24 by rewriting that line to read:

"opportunity to be ~~heard~~, heard, an opportunity to ask questions, and receive answers from the city's representative."

AMENDMENT #6 -- AUTHORIZE APPLICATION TO ^(Local Gov't Commission) (LGC) FOR REBATE AND ABATEMENT OF PROPERTY TAXES IF MAJOR MUNICIPAL SERVICES ARE NOT PROVIDED WITHIN ONE YEAR

Add new section to bill:

Section *:

G.S. 160A-49 is amended by adding a new subsection to read:

passed
"(k1) If major municipal services (police protection, fire protection, solid waste collection, and street maintenance services) were to be provided to an annexed area according to the annexation services report, and if any of the services are not

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provided by the end of the one year after the effective date of the annexation ordinance, an owner of property in the area may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the one-year period, if such petition is filed not more than 90 days after the expiration of the one-year period. If the Local Government Commission finds that any major municipal service was not extended as provided in the annexation services report by the end of the one-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after provision of all major municipal services as provided in the annexation services report. In addition, if the Local Government Commission found that the provision of major municipal services was not completed by the end of the one-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the one-year period expired, the city made an appropriation for major municipal services from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for the major municipal service that was not provided."

AMENDMENT #7 -- EARLIEST DATE FOR ADOPTION OF ANNEXATION ORDINANCE AFTER PUBLIC HEARING

New section to bill:

Section * G.S. 160A-37(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. --The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance

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extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than ~~40~~ 70 days nor more than 400 days from the date of passage of the ordinance."

Add new Section

Section *. G.S. 160A-49(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at

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the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A- 48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A- 48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount

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sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 70 days nor more than 400 days from the date of passage of the ordinance."

AMENDMENT #8 -- INCREASE TIME PERIOD FOR OWNER OF OCCUPIED COMMERCIAL OR RESIDENTIAL PROPERTY IN CITY OF 5,000 OR MORE TO REQUEST WATER AND SEWER PRIOR TO ANNEXATION

Page 7, lines 40-41 by rewriting those lines to read:

"If such form is received by the city clerk not less than ~~30~~ 10 days before adoption of the annexation ordinance, provide"

Page 8, line 1 by adding after the period the following:

"The municipality must accept requests for water and sewer under this section for at least 30 days following the public hearing concerning the area proposed to be annexed."

AMENDMENT #9 -- NOTICE OF ANNEXATION, ADDITION TO ETJ TO THOSE IN ONE MILE AREA BEYOND ANNEXED TERRITORY.

Page 5, lines 29

Page 12 line 3

rewriting those lines to read:

"interests in real property located with in the area to be annexed, annexed, and one-mile beyond the area to be annexed. The notice sent to property owners in the area one-mile beyond the area to be annexed shall include an easily understandable explanation that the property owner may be subject to planning and zoning by the city as a result of being added to the city's extraterritorial planning and zoning jurisdiction."

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AMENDMENT #10 -- APPEAL TO LGC FOR ABATEMENT, REFUND OF PROPERTY TAXES FOR FAILURE TO PROVIDE WATER AND SEWER AFTER TWO YEARS (CITIES OF 5,000 OR MORE) -- 90 DAYS INSTEAD OF 60

New section to bill:

G.S. 160A-49(k) reads as rewritten:

"(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than ~~60~~ 90 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00)."

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**AMENDMENT # 11 -- EXEMPTION FROM CITY PROPERTY TAX FOR LAND IN
FARM USE THAT IS ANNEXED**

add new section to bill:

Sec. *

G.S. 160A-209 is amended by adding a new subsection to read:

"(i) Property classified for taxation by a county under G.S. 105-277.3 at the time of annexation shall not be subject to taxation under this section, as long as the property remains classified under G.S.105-277.3."



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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy,
Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 94 makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights.

Section 4 of the bill amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000.



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Section 5 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of appeal rights.

Section 10 of the bill amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill provides that it would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

April 1, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met April 1, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Buchanan, Carpenter, Reynolds, Tallent, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Matthew Dale Thompson and Patrick L. Williams.

The following bills were discussed:

HB 99 A BILL TO BE ENTITLED AN ACT TO ALLOW GATES COUNTY TO ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION. Rep. Howard Hunter was recognized to present the bill. He explained that the bill would allow Gates County to acquire property for use by a local school system. Additionally, the bill would allow a school system to enter into certain leases or sales of property in connection with school improvement. Rep. Carpenter moved for a favorable report and re-refer to House Finance Committee; seconded and passed.

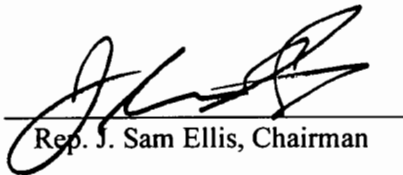
HB 283 A BILL TO BE ENTITLED AN ACT TO ALLOW PERQUIMANS COUNTY TO ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION. Rep. Culpepper was recognized to explain the bill that authorizes Perquimans County to acquire and improve property on behalf of its local public school board. Rep. Rogers moved for a favorable report and re-refer to House Finance Committee; seconded and passed.

HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Rep. Ellis invited members to continue their discussion of the proposed amendments to the bill. Amendment #7, Earliest Date for Adoption of Annexation Ordinance After Public Hearing, involves the time period between the public hearing and the passage of the annexation ordinance. Additionally, it changes the ten-day period to a thirty-day period. Rep. Carpenter moved for adoption of the amendment; seconded and passed. Rep. Ellis explained Amendment #8, Increase Time Period for Owner of Occupied Commercial or Residential Property in City of 5,000 or more to Request Water and Sewer Prior to Annexation. The amendment states that the municipality must accept requests for water and sewer for at least 30 days following the public hearing concerning the area proposed to be annexed. Rep. Carpenter moved for adoption of the amendment; seconded and passed. Amendment #9, Notice of Annexation, Addition to ETJ to Those in One Mile Area Beyond Annexed

Territory, was presented. Rep. Ellis explained that any time the boundaries of the cities grow, the boundaries of the ETJ grow. Rep. Carpenter moved for adoption of the amendment; seconded and passed. Amendment #10, Appeal to LGC for Abatement, Refund of Property Taxes for Failure to Provide Water and Sewer After Two Years (Cities of 5,000 or More) – 90 Days Instead of 60, was presented. Rep. Ellis explained that this amendment serves as a time extension for the appeal process. Rep. Carpenter moved for adoption of the amendment; seconded and passed. A Proposed Committee Substitute will be prepared and distributed to the membership for review prior to next week's meeting.

The meeting adjourned at 11:40 AM.

Respectfully submitted,



Rep. J. Sam Ellis, Chairman



Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

April 1, 1997
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 99 A BILL TO BE ENTITLED AN ACT TO ALLOW GATES COUNTY TO
ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION.

- ☐ With a favorable report.
- ☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☒ Finance.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)



**North Carolina General Assembly
Legislative Services Agency**

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April 1, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 99 Gates School Acquisition
Introduced by Representatives H. Hunter; and Rogers

Frequently over the last several years there have been local bills similar to this one adding counties to the law that authorizes counties to acquire and improve property on behalf of their local public school boards.

House Bill 99 would allow Gates County to:

- acquire property for use by a local school system, if requested by the school board and after a public hearing; and
- construct, equip, expand, improve, renovate, or make available property for a local school system.

House Bill 99 would allow a school system in Gates County to:

- lease or sell the property to the county in connection with a school improvement; and
- contract for construction of a school on a site owned by the county.

The purpose of these bills is to allow counties (in this case, Gates) to finance school construction by using installment purchase contracts.

This method has several advantages in the opinion of some counties and local school boards:

- it allows the county and the school board to avoid using school bonds, which require voter approval, to finance the school construction;
- local acts to allow school systems to use the installment purchase method are prohibited under Article V, §4(1) of the N.C. Constitution; and
- counties can get sales tax refunds on their purchases under G.S. 105-164.14, but school boards can't.

House Bill 99 would become effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*favorable
he-referred Finance
motion-Carpenter*

H

1

HOUSE BILL 99*

Short Title: Gates School Acquisition.

(Local)

Sponsors: Representatives H. Hunter; and Rogers.

Referred to: Local & Regional Government I, if favorable, Finance.

February 11, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW GATES COUNTY TO ACQUIRE PROPERTY FOR USE
3 BY ITS COUNTY BOARD OF EDUCATION.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 153A-158.1 reads as rewritten:
6 "§ 153A-158.1. Acquisition and improvement of school property in certain counties.
7 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
8 interest in real or personal property for use by a school administrative unit within the
9 county. In exercising the power of eminent domain a county shall use the procedures
10 of Chapter 40A. The county shall use its authority under this subsection to acquire
11 property for use by a school administrative unit within the county only upon the
12 request of the board of education of that school administrative unit and after a public
13 hearing.
14 (b) Construction or Improvement by County. -- A county may construct, equip,
15 expand, improve, renovate, or otherwise make available property for use by a school
16 administrative unit within the county. The local board of education shall be involved
17 in the design, construction, equipping, expansion, improvement, or renovation of the
18 property to the same extent as if the local board owned the property.
19 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
20 115C-518 and G.S. 160A-274, a local board of education may, in connection with
21 additions, improvements, renovations, or repairs to all or part of any of its property,
22 lease or sell the property to the board of commissioners of the county in which the
23 property is located for any price negotiated between the two boards.

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,
11 Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,
12 Wake, Wilson, and Watauga Counties."

13 Section 2. This act is effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 283 A BILL TO BE ENTITLED AN ACT TO ALLOW PERQUIMANS COUNTY TO
ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION.

- ☐ With a favorable report.
- ☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☒ Finance.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)



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April 1, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: House Bill 283 Perquimans School Acquisition
Introduced by Representative Culpepper

Frequently over the last several years there have been local bills similar to this one adding counties to the law that authorizes counties to acquire and improve property on behalf of their local public school boards.

House Bill 283 would allow Perquimans County to:

- acquire property for use by a local school system, if requested by the school board and after a public hearing; and
- construct, equip, expand, improve, renovate, or make available property for a local school system.

House Bill 283 would allow a school system in Perquimans County to:

- lease or sell the property to the county in connection with a school improvement; and
- contract for construction of a school on a site owned by the county.

The purpose of these bills is to allow counties (in this case, Perquimans) to finance school construction by using installment purchase contracts.

This method has several advantages in the opinion of some counties and local school boards:

- it allows the county and the school board to avoid using school bonds, which require voter approval, to finance the school construction;
- local acts to allow school systems to use the installment purchase method are prohibited under Article V, §4(1) of the N.C. Constitution; and
- counties can get sales tax refunds on their purchases under G.S. 105-164.14, but school boards can't.

House Bill 283 would become effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*Favorable
re-referred
motion - Rogers*

H

1

HOUSE BILL 283

Short Title: Perquimans School Acquisition.

(Local)

Sponsors: Representative Culpepper.

Referred to: Local and Regional Government I, if favorable, Finance.

February 20, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW PERQUIMANS COUNTY TO ACQUIRE PROPERTY FOR
3 USE BY ITS COUNTY BOARD OF EDUCATION.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 153A-158.1 reads as rewritten:
6 **"§ 153A-158.1. Acquisition and improvement of school property in certain counties.**
7 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
8 interest in real or personal property for use by a school administrative unit within the
9 county. In exercising the power of eminent domain a county shall use the procedures
10 of Chapter 40A. The county shall use its authority under this subsection to acquire
11 property for use by a school administrative unit within the county only upon the
12 request of the board of education of that school administrative unit and after a public
13 hearing.
14 (b) Construction or Improvement by County. -- A county may construct, equip,
15 expand, improve, renovate, or otherwise make available property for use by a school
16 administrative unit within the county. The local board of education shall be involved
17 in the design, construction, equipping, expansion, improvement, or renovation of the
18 property to the same extent as if the local board owned the property.
19 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
20 115C-518 and G.S. 160A-274, a local board of education may, in connection with
21 additions, improvements, renovations, or repairs to all or part of any of its property,
22 lease or sell the property to the board of commissioners of the county in which the
23 property is located for any price negotiated between the two boards.

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Perquimans, Person, Pitt,
11 Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry,
12 Union, Vance, Wake, Wilson, and Watauga Counties."

13 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 94*

Short Title: Annexation Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "**§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.**

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:

12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.

18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.

20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

calculate present level of service, including, if applicable,
personnel to population ratios and average response times.

- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 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.
- (5) A statement containing the classification as to use and size of each lot or tract in the area to be annexed.
- (6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of the city to provide services.
- (7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part."

Section 2. G.S. 160A-36 reads as rewritten:

"§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

- 1 (2) At least one eighth of the aggregate external boundaries of the area
2 must coincide with the municipal boundary.
- 3 (3) No part of the area shall be included within the boundary of
4 another incorporated municipality.
- 5 (4) No part of the area to be annexed shall be located in a county
6 other than the county with a majority of the municipality's
7 residents, unless areas previously added to the municipality in
8 another county include at least 1,000 persons.
- 9 *Non Conforming uses*
10 *for* (5) No lot or tract in the area to be annexed shall be in use for bona
11 fide farm purposes as defined in G.S. 153A-340.
- 12 (c) The area to be annexed must be developed for urban ~~purposes~~ purposes at
13 the time of the public hearing for the annexation ordinance. For purposes of this
14 section, area of streets and rights-of-way shall not be used to determine total acreage
15 or acreage of lots and tracts under this section. For purposes of this section, 'right-of-
16 way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot
17 right-of-way. An area developed for urban purposes is defined as any as:
- 18 (1) Any area which is so developed that at least sixty percent (60%) of
19 the total number of lots and tracts in the area at the time of
20 annexation are used for residential, commercial, industrial,
21 institutional or governmental purposes, and is subdivided into lots
22 and tracts such that at least sixty percent (60%) of the total
23 acreage, not counting the acreage used at the time of annexation
24 for commercial, industrial, governmental or institutional purposes,
25 consists of lots and tracts five acres or less in ~~size~~ size; or
- 26 (2) An area so developed that at the time of annexation, all tracts in
27 the area to be annexed are used for commercial, industrial,
28 governmental or institutional purposes; or
- 29 (3) ~~An area developed for urban purposes is also the~~ The entire area
30 of any county water and sewer district created under G.S. 162A-
31 86(b1), but this ~~sentence~~ subsection only applies to annexation by a
32 municipality if that:
- 33 (1) a. Municipality has provided in a contract with that district
34 that the area is developed for urban purposes; and
- 35 (2) b. Contract provides for the municipality to operate the sewer
36 system of that county water and sewer district;
- 37 provided that the special categorization provided by this ~~sentence~~ subsection only
38 applies if the municipality is annexing in one proceeding the entire territory of the
39 district not already within the corporate limits of a municipality.
- 40 (d) In fixing new municipal boundaries, a municipal governing board shall,
41 wherever practical, use natural topographic features such as ridge lines and streams
42 and creeks as boundaries, and may use streets as boundaries. Some or all of the
43 boundaries of a county water and sewer district may also be used when the entire
district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

6 (1) Fix the date, hour and place of the public hearing.
7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.

9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.

13 ~~(3)~~ (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35.~~ G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality;~~ municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

- 1 water and sewer map must bear the seal of a registered
2 professional engineer.
- 3 c. The general land use pattern in the area to be annexed.
- 4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.
- 6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.
- 26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 ~~service,~~ service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- 1 such municipality for extending water and sewer lines. If
2 any such requests are timely made, the municipality shall at
3 the time of adoption of the annexation ordinance amend its
4 report and plan for services to reflect and accommodate
5 such requests.
- 6 c. If extension of major trunk water mains, sewer outfall lines,
7 sewer lines and water lines is necessary, set forth a proposed
8 timetable for construction of such mains, outfalls and lines
9 as soon as possible following the effective date of
10 annexation. In any event, the plans shall call for
11 construction to be completed within two years of the
12 effective date of annexation.
- 13 d. Set forth the method under which the municipality plans to
14 finance extension of services into the area to be annexed.
- 15 e. Provide for street paving service on substantially the same
16 basis and in the same manner as that service is provided
17 within the rest of the municipality prior to the annexation.
- 18 f. Include a summary of city police, fire, solid waste, street
19 maintenance and paving, water and sewer services provided
20 to current city residents as of 90 days prior to the date set
21 for the public hearing. The summary shall specify, at a
22 minimum, the number of personnel employed by the
23 municipality for police and fire protection, the services
24 provided as part of police and fire protection, the increase
25 in personnel or equipment, if any, planned as a result of the
26 annexation and the method the municipality used to
27 calculate present level of service, including, if applicable,
28 personnel to population ratios and average response times.
- 29 (4) A statement of the impact of the annexation on any rural fire
30 department providing service in the area to be annexed and a
31 statement of the impact of the annexation on fire protection and
32 fire insurance rates in the area to be annexed, if the area where
33 service is provided is in an insurance district designated under G.S.
34 153A-233, a rural fire protection district under Article 3A of
35 Chapter 69 of the General Statutes, or a fire service district under
36 Article 16 of Chapter 153A of the General Statutes. The rural fire
37 department shall make available to the city not later than 30 days
38 following a written request from the city all information in its
39 possession or control, including but not limited to operational,
40 financial and budgetary information, necessary for preparation of a
41 statement of impact. The rural fire department forfeits its rights
42 under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good
43 faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

- (1) Which meets the general standards of subsection (b), and
- (2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.
- (4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.
- (5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes~~
purposes at the time of the public hearing for the annexation ordinance. Area of
streets and rights-of-way shall be used only to determine total resident population per
acre of land in this section. An area developed for urban purposes is defined as any
area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or
- (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality~~ municipality; or
- (5) Is so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or

- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area which does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 9. G.S. 160A-49(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.
- (4) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

- 40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.



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March 18, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee
FROM: Giles S. Perry, Committee Counsel
RE: Proposed amendments to House Bill 94

AMENDMENT #1 -- BONA FIDE FARMS

Page 4, lines 9-10 delete

Page 9, lines 43-44 delete

substitute new Section, as follow:

"160A-383.2 Zoning regulation of property in use for bona fide farms purposes.

A city may not adopt or enforce any zoning regulations for a period of four years that affects property in use as for bona fide farm purposes, if the property was annexed under Part 2 or Part 3 of Article 4A of this Chapter, the property was in use for bona fide farm purposes at the time of the effective date of the annexation, and the property continues in such use. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market."

AMENDMENT #2 -- DEFINITIONS OF WATER AND SEWER LINES

Sections 1, 3, 7, and 9

G.S. 160A-35

G.S. 160A-37(b),(e),(h)



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G.S. 160A-47

G.S. 160A-49(b),(e),(h)

Definition of:

Water mains (major trunk water lines)
secondary water lines
connector water lines

Sewer outfall lines (primary sewer lines)
secondary sewer lines
connector sewer lines

AMENDMENT #3 -- ABATEMENT OF W&S ASSESSMENTS

Add new section to bill:

"§160A-237. Authority to hold water and sewer assessments in abeyance.

(a) The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

(b) Owners of property subject to a water or sewer related assessment following annexation under Part 2 or Part 3 of this Chapter may request abatement of any water and sewer service assessments planned by the city until the property is transferred or the property owner connects to the water or sewer system. A request for abatement under this subsection must be received by the city at least 30 days prior to adoption of the annexation ordinance.

(c) All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest."

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AMENDMENT #4 -- CHANGES TO NOTICE OF PUBLIC HEARING

Page 5, lines 12-13

Page 11, line 28-29

by adding between those lines:

" (4) State the right of a property owner to request abatement of water and sewer assessments under G.S. 160-A-237. A form for requesting an abatement, and an easily understandable explanation of the form, shall be mailed to all property owners entitled to a mailed notice of the proposed annexation."

Change (4) to (5) on Page 5, line 13, and on page 11, line 29.

Page 11, line 33, add the following:

"A form for requesting water and sewer services under G.S. 160-A-47(3)b., an easily understandable explanation of the form, and the city's water and sewer financial policies shall be mailed to all property owners entitled to a mailed notice of the proposed annexation."

AMENDMENT #5 -- PUBLIC HEARING PROCEDURE

Page 6, line 7 by rewriting that lined to read:

"opportunity to be ~~heard~~, heard, an opportunity to ask questions, and receive answers from the city's representative."

page 12, line 24 by rewriting that line to read:

"opportunity to be ~~heard~~, heard, an opportunity to ask questions, and receive answers from the city's representative."

AMENDMENT #6 -- AUTHORIZE APPLICATION TO LGC FOR REBATE AND ABATEMENT OF PROPERTY TAXES IF MAJOR MUNICIPAL SERVICES ARE NOT PROVIDED WITHIN ONE YEAR

Add new section to bill:

Section *:

G.S. 160A-49 is amended by adding a new subsection to read:

"(k1) If major municipal services (police protection, fire protection, solid waste collection, and street maintenance services) were to be provided to an annexed area according to the annexation services report, and if any of the services are not

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provided by the end of the one year after the effective date of the annexation ordinance, an owner of property in the area may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the one-year period, if such petition is filed not more than 90 days after the expiration of the one-year period. If the Local Government Commission finds that any major municipal service was not extended as provided in the annexation services report by the end of the one-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after provision of all major municipal services as provided in the annexation services report. In addition, if the Local Government Commission found that the provision of major municipal services was not completed by the end of the one-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the one-year period expired, the city made an appropriation for major municipal services from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for the major municipal service that was not provided."

yes AMENDMENT #7 -- EARLIEST DATE FOR ADOPTION OF ANNEXATION ORDINANCE AFTER PUBLIC HEARING

New section to bill:

Section * G.S. 160A-37(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. --The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance

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extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than ~~40~~ 70 days nor more than 400 days from the date of passage of the ordinance."

Add new Section

Section *. G.S. 160A-49(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at

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the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A- 48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A- 48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount

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sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 70 days nor more than 400 days from the date of passage of the ordinance."

yes AMENDMENT #8 -- INCREASE TIME PERIOD FOR OWNER OF OCCUPIED COMMERCIAL OR RESIDENTIAL PROPERTY IN CITY OF 5,000 OR MORE TO REQUEST WATER AND SEWER PRIOR TO ANNEXATION

Page 7, lines 40-41 by rewriting those lines to read:

"If such form is received by the city clerk not less than 30 10 days before adoption of the annexation ordinance, provide"

Page 8, line 1 by adding after the period the following:

"The municipality must accept requests for water and sewer under this section for at least 30 days following the public hearing concerning the area proposed to be annexed."

yes AMENDMENT #9 -- NOTICE OF ANNEXATION, ADDITION TO ETJ TO THOSE IN ONE MILE AREA BEYOND ANNEXED TERRITORY.

Page 5, lines 29

Page 12 line 3

rewriting those lines to read:

"interests in real property located with in the area to be annexed- annexed, and one-mile beyond the area to be annexed. The notice sent to property owners in the area one-mile beyond the area to be annexed shall include an easily understandable explanation that the property owner may be subject to planning and zoning by the city as a result of being added to the city's extraterritorial planning and zoning jurisdiction."

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yes AMENDMENT #10 -- APPEAL TO LGC FOR ABATEMENT, REFUND OF PROPERTY TAXES FOR FAILURE TO PROVIDE WATER AND SEWER AFTER TWO YEARS (CITIES OF 5,000 OR MORE) -- 90 DAYS INSTEAD OF 60

New section to bill:

G.S. 160A-49(k) reads as rewritten:

"(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than ~~60~~ 90 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00)."

MEMORANDUM

Page 9

March 18, 1997

**AMENDMENT # 11 -- EXEMPTION FROM CITY PROPERTY TAX FOR LAND IN
FARM USE THAT IS ANNEXED**

add new section to bill:

Sec. *

G.S. 160A-209 is amended by adding a new subsection to read:

"(i) Property classified for taxation by a county under G.S. 105-277.3 at the time of annexation shall not be subject to taxation under this section, as long as the property remains classified under G.S.105-277.3."



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February 25, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
Introduced by Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy,
Rayfield, Sexton, Sherrill, Shubert, and Starnes

House Bill 94 makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of appeal rights.

Section 4 of the bill amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000.



MEMORANDUM

Page 2

February 25, 1997

Section 5 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for trunk water mains and sewer outfall lines in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of appeal rights.

Section 10 of the bill amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill provides that it would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

April 8, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met April 8, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Reynolds, Tallent, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Page Seth Raymond Sutton.

The following bills were discussed:

HB 75 A BILL TO BE ENTITLED AN ACT CODIFYING THE METHOD OF ELECTING THE PERSON COUNTY BOARD OF EDUCATION AS ORDERED BY THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA. Rep. Wilkins was recognized to present the bill. He explained that it was a local bill requested by the Person County Board of Education and would codify election methods that had already been used in Person County's last Board of Education election. The bill would enhance the opportunity for minority representation on the board. Rep. Buchanan moved for a favorable report; seconded and passed.

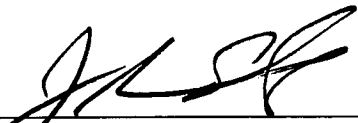
HB 100 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ELECTION OF MEMBERS OF THE HERTFORD COUNTY BOARD OF EDUCATION IN NOVEMBER OF EVEN-NUMBERED YEARS. Rep. Howard Hunter was recognized to explain the bill. He noted that the bill allows for a change in election day from May to November beginning in 1998. Rep. Rogers moved for a favorable report; seconded and passed.

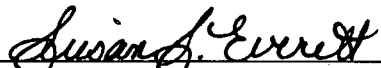
HB 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS. Chairman Ellis opened the discussion by noting that there were three additional proposed amendments to the bill (Exhibit 1). Page 6, line 28, by rewriting that line to read "board shall use natural topographic features." Rep. Buchanan moved for approval of the amendment; seconded and passed. Page 19, line 5, by deleting the phrase "at the time of the" and substituting the phrase "30 days prior to the first." Rep. Allred moved for approval of the amendment; seconded and passed. Page 20, line 38, by deleting the word "which" and substituting the phrase "that does not exceed 100 acres and that." Rep. Allred moved for approval of the amendment; seconded and passed. Chairman Ellis explained that the additional amendments would be included in the Proposed Committee Substitute. Rep. Allred moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Allred moved for a favorable

report to Committee Substitute for HB 94 rolled into a Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and voice vote called. Division was called, and a show of hands indicated six no and seven yes. The motion passed.

The meeting adjourned at 11:55 AM.

Respectfully submitted,



Rep. J. Sam Ellis, Chairman

Susan S. Everett, Clerk

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 75 A BILL TO BE ENTITLED AN ACT CODIFYING THE METHOD OF
ELECTING THE PERSON COUNTY BOARD OF EDUCATION AS ORDERED BY THE
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH
CAROLINA.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 75

Short Title: Person School Board Elections.

(Local)

Sponsors: Representatives Wilkins; and Crawford.

Referred to: Local and Regional Government I.

February 10, 1997

1

A BILL TO BE ENTITLED

2 AN ACT CODIFYING THE METHOD OF ELECTING THE PERSON COUNTY

3 BOARD OF EDUCATION AS ORDERED BY THE UNITED STATES

4 DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 Section 1. The Person County Board of Education shall consist of five
7 members elected in nonpartisan plurality elections for concurrent four-year terms.

8 Section 2. Elections for the Board of Education shall be held at the same
9 time as the general election for State and county offices in the year 2000 and every
10 four years thereafter. Board members shall take office at the time specified by
11 general State law for county officers.

12 Section 3. The period for filing notices of candidacy for the Board of
13 Education shall commence at noon on the first Monday in August preceding the
14 election, and shall close at noon on the last Friday of August. If, however, general
15 State law provides a different filing period for nonpartisan plurality elections held in
16 November of even-numbered years, the filing shall be conducted according to that
17 general State law.

18 Section 4. This act is intended to codify the method of election ordered
19 by the United States District Court for the Middle District of North Carolina in the
20 Consent Decree entered on 30 November 1995 in Webster, et al., v. Board of
21 Education of Person County, et. al., No. 1:91CV554. Pursuant to the Consent Decree,
22 the method of election may be evaluated following the 2000 election, if the plaintiffs
23 make such request within the time specified in the decree.

24 Section 5. This act is effective when it becomes law.



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April 8, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 75 Person School Board Elections

House Bill 75 codifies the method of election for the Person County Board of Education agreed to on November 30, 1995 to settle litigation challenging the prior method.

The bill specifies that the Person County School Board will consist of 5 members elected in non-partisan plurality elections in the year 2000 and every four years thereafter.

House Bill 75 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 100 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ELECTION OF
MEMBERS OF THE HERTFORD COUNTY BOARD OF EDUCATION IN NOVEMBER
OF EVEN-NUMBERED YEARS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 100

Short Title: Hertford School Election Date.

(Local)

Sponsors: Representative H. Hunter.

Referred to: Local and Regional Government I.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO PROVIDE FOR ELECTION OF MEMBERS OF THE HERTFORD
3 COUNTY BOARD OF EDUCATION IN NOVEMBER OF EVEN-NUMBERED
4 YEARS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Beginning with the 1998 election, members of the Hertford
7 County Board of Education shall be elected in November of even-numbered years at
8 the same time as the general election for State and county officers. Elections shall
9 continue to be conducted by the nonpartisan plurality method.

10 Section 2. Unless the General Assembly by general State law provides a
11 different period for the filing of notices of candidacy for nonpartisan plurality
12 elections held in November of even-numbered years, the filing period for the
13 Hertford County Board of Education shall commence at noon on the first Friday in
14 July and close at noon on the first Friday in August preceding the election.

15 Section 3. Except as otherwise provided in this act, elections for the
16 Hertford County Board of Education shall be conducted according to general State
17 law for county school boards.

18 Section 4. This act shall not be implemented until it has been precleared
19 pursuant to section 5 of the Voting Rights Act of 1965.

20 Section 5. This act is effective when it becomes law.



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April 8 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 100 Hertford School Election Date

House Bill 100 provides that beginning in 1998, members of the Hertford County School Board would be elected in November of even numbered years. Elections would continue to be held under the nonpartisan plurality method.

House Bill 100 would become effective when it becomes law, subject to preclearance under section 5 of the Voting Rights Act of 1965.

out 4-8-97
file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 94 A BILL TO BE ENTITLED AN ACT TO CHANGE THE ANNEXATION LAWS.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill,
and recommendation that the committee substitute bill be re-referred to the Committee
on Finance.**
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

EXHIBIT 1

Additional Proposed Amendments

Page 6, line 28

by rewriting that line to read "board ~~shall, wherever practical,~~ shall use natural topographic features"

Page 19, line 5

by deleting the phrase "at the time of the" and substituting the phrase "30 days prior to the first"

Page 20, line 38

by deleting the word "which" and substituting the phrase "that does not exceed 100 acres and that"

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 94*

Short Title: Annexation Changes.

(Public)

Sponsors: Representatives Ellis; Allred, Cansler, Capps, Davis, Hardy, McComas, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

Referred to: Local & Regional Government I, if favorable, Judiciary II.

February 11, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CHANGE THE ANNEXATION LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 160A-35 reads as rewritten:

5 "**§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.**

6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:

- 10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:
12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water mains and sewer outfalls
14 to serve the annexed area, if such utilities are operated by
15 the municipality. The water and sewer map must bear the
16 seal of a registered professional engineer or a licensed
17 surveyor.
- 18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.
- 20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of major water mains and sewer
18 outfall lines into the area to be annexed so that property
19 owners in the area to be annexed will be able to secure
20 public water and sewer ~~services~~ services. The municipality
21 shall extend secondary water and sewer lines and connector
22 water and sewer lines, according to the financial policies in
23 effect in such municipality for extending water and sewer
24 lines to individual lots or subdivisions. If the municipality
25 must, at its own expense, extend water and/or sewer mains
26 into the area to be annexed before property owners in the
27 area can, according to municipal policies, make such
28 connection to such lines, then the plans must call for
29 contracts to be let and construction to begin on such lines
30 within one year following the effective date of annexation.
- 31 c. Set forth the method under which the municipality plans to
32 finance extension of services into the area to be annexed.
- 33 d. Provide for street paving service on substantially the same
34 basis and in the same manner as that service is provided
35 within the rest of the municipality prior to the annexation.
- 36 e. Include a summary of city police, fire, solid waste, street
37 maintenance and paving, water and sewer services provided
38 to current city residents as of 90 days prior to the date set
39 for the public hearing. The summary shall specify, at a
40 minimum, the number of personnel employed by the
41 municipality for police and fire protection, the services
42 provided as part of police and fire protection, the increase
43 in personnel or equipment, if any, planned as a result of the
44 annexation and the method the municipality used to

1 calculate present level of service, including, if applicable,
2 personnel to population ratios and average response times.

- 3 (4) A statement of the impact of the annexation on any rural fire
4 department providing service in the area to be annexed and a
5 statement of the impact of the annexation on fire protection and
6 fire insurance rates in the area to be annexed, if the area where
7 service is provided is in an insurance district designated under G.S.
8 153A-233, a rural fire protection district under Article 3A of
9 Chapter 69 of the General Statutes, or a fire service district under
10 Article 16 of Chapter 153A of the General Statutes. The rural fire
11 department shall make available to the city not later than 30 days
12 following a written request from the city all information in its
13 possession or control, including but not limited to operational,
14 financial and budgetary information, necessary for preparation of a
15 statement of impact. The rural fire department forfeits its rights
16 under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good
17 faith response within 45 days following receipt of the written
18 request for information from the city, provided that the city's
19 written request so states by specific reference to this section.

- 20 (5) A statement containing the classification as to use and size of each
21 lot or tract in the area to be annexed.

- 22 (6) A clear and easily understandable statement notifying persons
23 affected by the annexation of their right to appeal under G.S.
24 160A-38 and the remedy under G.S. 160A-37(h) for failure of the
25 city to provide services.

- 26 (7) A statement showing how the proposed annexation will affect the
27 city's finances and services, including city revenue change
28 estimates. This statement shall be delivered to the clerk of the
29 board of county commissioners at least 30 days before the date of
30 any public hearing on any annexation under this Part."

31 Section 2. G.S. 160A-36 reads as rewritten:

32 "**§ 160A-36. Character of area to be annexed.**

33 (a) A municipal governing board may extend the municipal corporate limits to
34 include any area which meets the general standards of subsection (b), and which
35 meets the requirements of subsection (c).

36 (b) The total area to be annexed must meet the following standards:

- 37 (1) It must be adjacent or contiguous to the municipality's boundaries
38 at the time the annexation proceeding is begun, except if the entire
39 territory of a county water and sewer district created under G.S.
40 162A-86(b1) is being annexed, the annexation shall also include
41 any noncontiguous pieces of the district as long as the part of the
42 district with the greatest land area is adjacent or contiguous to the
43 municipality's boundaries at the time the annexation proceeding is
44 begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the time of the public hearing for the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined as any as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in ~~size~~ size; or

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental or institutional purposes; or

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this sentence subsection only applies to annexation by a municipality if that:

(1) a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this sentence subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

1 (e) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 3. G.S. 160A-37(b) reads as rewritten:

5 "(b) Notice of Public Hearing. -- The notice of public hearing shall:

6 (1) Fix the date, hour and place of the public hearing.

7 (2) Describe clearly the boundaries of the area under consideration,
8 and include a legible map of the area.

9 (3) Include a clear and easily understandable statement notifying
10 persons affected by the annexation of their right to appeal under
11 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
12 the city to provide services.

13 (3) (4) State that the report required in G.S. 160A-35 will be available at
14 the office of the municipal clerk at least 30 days prior to the date
15 of the public hearing.

16 Such notice shall be given by publication once a week for at least two successive
17 weeks prior to the date of the hearing in a newspaper having general circulation in
18 the municipality and, in addition thereto, if the area to be annexed lies in a county
19 containing less than fifty percent (50%) of the land area of the municipality, in a
20 newspaper having general circulation in the area of proposed annexation. The period
21 from the date of the first publication to the date of the last publication, both dates
22 inclusive, shall be not less than eight days including Sundays, and the date of the last
23 publication shall be not more than seven days preceding the date of public hearing. If
24 there be no such newspaper, the municipality shall post the notice in at least five
25 public places within the municipality and at least five public places in the area to be
26 annexed for 30 days prior to the date of public hearing. In addition, notice shall be
27 mailed at least four weeks prior to date of the hearing by first class mail, postage
28 prepaid to the owners as shown by the tax records of the county of all freehold
29 interests in real property located within the area to be annexed. The person or
30 persons mailing such notices shall certify to the governing board that fact, and such
31 certificate shall become a part of the record of the annexation proceeding and shall
32 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
33 the postal service by the tenth day before the hearing, a copy of the notice shall be
34 sent by certified mail, return receipt requested, at least seven days before the hearing.
35 Failure to comply with the mailing requirement of this subsection shall not invalidate
36 the annexation unless it is shown that the requirements were not substantially
37 complied with.

38 If the governing board by resolution finds that the tax records are not adequate to
39 identify the owners of some or all of the parcels of real property within the area it
40 may in lieu of the mail procedure as to those parcels where the owners could not be
41 so identified, post the notice at least 30 days prior to the date of public hearing on all
42 buildings on such parcels, and in at least five other places within the area to be
43 annexed. In any case where notices are placed on property, the person placing the
44 notice shall certify that fact to the governing board."

Section 4. G.S. 160A-37(d) reads as rewritten:

"(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in ~~G.S. 160A-35~~. G.S. 160A-35, including appeal rights as summarized in G.S. 160A-35(6). Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard."

Section 5. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~. municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The

- 1 water and sewer map must bear the seal of a registered
2 professional engineer.
- 3 c. The general land use pattern in the area to be annexed.
- 4 (2) A statement showing that the area to be annexed meets the
5 requirements of G.S. 160A-48.
- 6 (3) A statement setting forth the plans of the municipality for
7 extending to the area to be annexed each major municipal service
8 performed within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire protection, solid
11 waste collection and street maintenance ~~services~~ services,
12 including street lighting, to the area to be annexed on the
13 date of annexation on ~~substantially~~ the same basis and in the
14 same manner as such services are provided within the rest of
15 the municipality prior to annexation. A contract with a
16 rural fire department to provide fire protection shall be an
17 acceptable method of providing fire protection. If a water
18 distribution system is not available in the area to be
19 annexed, the plans must call for reasonably effective fire
20 protection services until such time as waterlines are made
21 available in such area under existing municipal policies for
22 the extension of waterlines. A contract with a private firm
23 to provide solid waste collection services shall be an
24 acceptable method of providing solid waste collection
25 services.
- 26 b. Provide for extension of major trunk water mains and sewer
27 outfall lines into the area to be annexed so that when such
28 lines are constructed, property owners in the area to be
29 annexed will be able to secure public water and sewer
30 ~~service~~; service. The municipality shall extend secondary
31 water and sewer lines and connector water and sewer lines
32 according to the financial policies in effect in such
33 municipality for extending water and sewer lines to
34 individual lots or subdivisions. If requested by the owner of
35 an occupied dwelling unit or an operating commercial or
36 industrial property in writing on a form provided by the
37 municipality, which form acknowledges that such extension
38 or extensions will be made according to the current financial
39 policies of the municipality for making such extensions, and
40 if such form is received by the city clerk not less than 30
41 days before adoption of the annexation ordinance, provide
42 for extension of water and sewer lines to the property or to
43 a point on a public street or road right-of-way adjacent to
44 the property according to the financial policies in effect in

- such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests.
- c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.
- d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- e. Provide for street paving service on substantially the same basis and in the same manner as that service is provided within the rest of the municipality prior to the annexation.
- f. Include a summary of city police, fire, solid waste, street maintenance and paving, water and sewer services provided to current city residents as of 90 days prior to the date set for the public hearing. The summary shall specify, at a minimum, the number of personnel employed by the municipality for police and fire protection, the services provided as part of police and fire protection, the increase in personnel or equipment, if any, planned as a result of the annexation and the method the municipality used to calculate present level of service, including, if applicable, personnel to population ratios and average response times.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 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.

(5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.

(6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

(7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

Section 8. G.S. 160A-48 reads as rewritten:

"§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes.~~
purposes at the time of the public hearing for the annexation ordinance. Area of
streets and rights-of-way shall be used only to determine total resident population per
acre of land in this section. An area developed for urban purposes is defined as any
area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for
each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for
each acre of land included within its boundaries, and is subdivided
into lots and tracts such that at least sixty percent (60%) of the
total acreage consists of lots and tracts five acres or less in size and
such that at least sixty-five percent (65%) of the total number of
lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size; or

(4) Is the entire area of any county water and sewer district created
under G.S. 162A-86(b1), but this subdivision only applies to
annexation by a municipality if that:

a. Municipality has provided in a contract with that district
that the area is developed for urban purposes; and

b. Contract provides for the municipality to operate the sewer
system of that county water and sewer district;

provided that the special categorization provided by this
subdivision only applies if the municipality is annexing in one
proceeding the entire territory of the district not already within the
corporate limits of a ~~municipality.~~ municipality; or

(5) Is so developed that at the time of annexation, all tracts in the area
to be annexed are used for commercial, industrial, governmental or
institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may
include in the area to be annexed any area which does not meet the requirements of
subsection (c) if such area either:

(1) Lies 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 services and/or water and/or
sewer lines through such sparsely developed area; or

- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area which does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

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

Section 9. G.S. 160A-49(b) reads as rewritten:

"(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.
- (4) Include a clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be

1 mailed at least four weeks prior to date of the hearing by first class mail, postage
2 prepaid to the owners as shown by the tax records of the county of all freehold
3 interests in real property located within the area to be annexed. The person or
4 persons mailing such notices shall certify to the governing board that fact, and such
5 certificate shall become a part of the record of the annexation proceeding and shall
6 be deemed conclusive in the absence of fraud. If the notice is returned to the city by
7 the postal service by the tenth day before the hearing, a copy of the notice shall be
8 sent by certified mail, return receipt requested, at least seven days before the hearing.
9 Failure to comply with the mailing requirements of this subsection shall not
10 invalidate the annexation unless it is shown that the requirements were not
11 substantially complied with. If the governing board by resolution finds that the tax
12 records are not adequate to identify the owners of some or all of the parcels of real
13 property within the area it may in lieu of the mail procedure as to those parcels
14 where the owners could not be so identified, post the notice at least 30 days prior to
15 the date of public hearing on all buildings on such parcels, and in at least five other
16 places within the area to be annexed. In any case where notices are placed on
17 property, the person placing the notices shall certify that fact to the governing board."

18 Section 10. G.S. 160A-49(d) reads as rewritten:

19 "(d) Public Hearing. -- At the public hearing a representative of the municipality
20 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
21 including appeal rights as summarized in G.S. 160A-47(6). Following such
22 explanation, all persons resident or owning property in the territory described in the
23 notice of public hearing, and all residents of the municipality, shall be given an
24 opportunity to be heard."

25 Section 11. G.S. 160A-50 is amended by adding a new subsection to
26 read:

27 "(m) Any settlement reached by all parties in an appeal under this section may be
28 presented to the superior court in the county in which the municipality is located. If
29 the superior court, in its discretion, approves the settlement, it shall be binding on all
30 parties without the need for approval by the General Assembly."

31 Section 12. G.S. 160A-54 reads as rewritten:

32 "**§ 160A-54. Population and land estimates.**

33 In determining population and degree of land subdivision for purposes of meeting
34 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
35 provide reasonably accurate results. In determining whether the standards set forth in
36 G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the
37 reviewing court shall accept the estimates of the ~~municipality~~. municipality unless the
38 actual population, total area, or degree of land subdivision falls below the standards
39 in G.S. 160A-48:

40 (1) As to population, if the estimate is based on the number of
41 dwelling units in the area multiplied by the average family size in
42 such area, or in the township or townships of which such area is a
43 part, as determined by the last preceding federal decennial census;
44 or if it is based on a new enumeration carried out under

1 reasonable rules and regulations by the annexing municipality;
2 provided, that the court shall not accept such estimates if the
3 petitioners demonstrate that such estimates are in error in the
4 amount of ten percent (10%) or more.

5 (2) As to total area if the estimate is based on an actual survey, or on
6 county tax maps or records, or on aerial photographs, or on some
7 other reasonably reliable map used for official purposes by a
8 governmental agency, unless the petitioners on appeal demonstrate
9 that such estimates are in error in the amount of five percent (5%)
10 or more.

11 (3) As to degree of land subdivision, if the estimates are based on an
12 actual survey, or on county tax maps or records, or on aerial
13 photographs, or on some other reasonably reliable source, unless
14 the petitioners on appeal show that such estimates are in error in
15 the amount of five percent (5%) or more."

16 Section 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 94*

Proposed Committee Substitute H94-PCS2238

Short Title: Annexation Changes.

(Public)

Sponsors:

Referred to:

February 11, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE ANNEXATION LAWS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 160A-35 reads as rewritten:
5 "§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.
6 A municipality exercising authority under this Part shall make plans for the
7 extension of services to the area proposed to be annexed and shall, prior to the public
8 hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to
9 provide services to such area. The report shall include:
10 (1) A map or maps of the municipality and adjacent territory to show
11 the following information:
12 a. The present and proposed boundaries of the municipality.
13 b. The proposed extensions of water ~~mains~~ transmission lines
14 and ~~sewer outfalls~~ interceptor sewers to serve the annexed
15 area, if such utilities are operated by the municipality. The
16 water and sewer map must bear the seal of a registered
17 professional engineer or a licensed surveyor.
18 (2) A statement showing that the area to be annexed meets the
19 requirements of G.S. 160A-36.
20 (3) A statement setting forth the plans of the municipality for
21 extending to the area to be annexed each major municipal service
22 performed within the municipality at the time of annexation.
23 Specifically, such plans shall:

- 1 a. Provide for extending police protection, fire protection, solid
2 waste collection and street maintenance ~~services~~ services,
3 including street lighting, to the area to be annexed on the
4 date of annexation on ~~substantially~~ the same basis and in the
5 same manner as such services are provided within the rest of
6 the municipality prior to annexation. A contract with a
7 rural fire department to provide fire protection shall be an
8 acceptable method of providing fire protection. If a water
9 distribution system is not available in the area to be
10 annexed, the plans must call for reasonably effective fire
11 protection services until such time as waterlines are made
12 available in such area under existing municipal policies for
13 the extension of waterlines. A contract with a private firm
14 to provide solid waste collection services shall be an
15 acceptable method of providing solid waste collection
16 services.
- 17 b. Provide for extension of water ~~mains~~ transmission lines and
18 ~~sewer interceptor sewers~~ lines into the area to be annexed so
19 that property owners in the area to be annexed will be able
20 to secure public water and sewer ~~services~~ services. The
21 municipality shall extend water distribution mains, water
22 service lines, collector sewers, and sewer service laterals
23 according to the financial policies in effect in such
24 municipality for extending water and sewer lines water
25 service lines or sewer service laterals to individual lots or
26 subdivisions. If the municipality must, at its own expense,
27 extend ~~water and/or sewer mains~~ water transmission lines,
28 interceptor sewers, or both into the area to be annexed
29 before property owners in the area can, according to
30 municipal policies, make such connection to such ~~lines,~~ lines
31 or sewers, then the plans must call for contracts to be let
32 and construction to begin on such ~~lines~~ lines or sewers,
33 within one year following the effective date of annexation.
- 34 c. Set forth the method under which the municipality plans to
35 finance extension of services into the area to be annexed.
- 36 d. Provide for street paving service on substantially the same
37 basis and in the same manner as that service is provided
38 within the rest of the municipality prior to the annexation.
- 39 e. Include a summary of city police, fire, solid waste, street
40 maintenance and paving, and water and sewer services
41 provided to current city residents as of 90 days prior to the
42 date set for the public hearing. The summary shall specify,
43 at a minimum, the number of personnel employed by the
44 municipality for police and fire protection, the services

provided as part of police and fire protection, the increase in personnel or equipment, if any, planned as a result of the annexation and the method the municipality used to calculate present level of service, including, if applicable, personnel to population ratios and average response times.

- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 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.

- (5) A statement containing the classification as to use and size of each lot or tract in the area to be annexed.

- (6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of the city to provide services.

- (7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part."

Section 2. G.S. 160A-36 reads as rewritten:

"§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the

district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) No part of the area to be annexed shall be located in a county other than the county with a majority of the municipality's residents, unless areas previously added to the municipality in another county include at least 1,000 persons.

(5) No lot or tract in the area to be annexed shall be in use for bona fide farm purposes as defined in G.S. 153A-340.

(c) The area to be annexed must be developed for urban ~~purposes.~~ purposes 30 days prior to the first public hearing on the annexation ordinance. For purposes of this section, area of streets and rights-of-way shall not be used to determine total acreage or acreage of lots and tracts under this section. For purposes of this section, 'right-of-way' means a recorded right-of-way, or if none is recorded, a presumptive 60-foot right-of-way. An area developed for urban purposes is defined ~~as any~~ as:

(1) Any area which is so developed that at least sixty percent (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 sixty percent (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 five acres or less in size. ~~size; or~~

(2) An area so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes; or

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this ~~sentence~~ subdivision only applies to annexation by a municipality if that:

(1) ~~a.~~ a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) ~~b.~~ b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board ~~shall;~~ shall ~~wherever practical,~~ shall use recorded property boundaries and natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets

1 as boundaries. Some or all of the boundaries of a county water and sewer district
2 may also be used when the entire district not already within the corporate limits of a
3 municipality is being annexed.

4 (e) The area of an abolished water and sewer district shall be considered to be a
5 water and sewer district for the purpose of this section even after its abolition under
6 G.S. 162A-87.2(b)."

7 Section 3. G.S. 160A-37 reads as rewritten:

8 "§ 160A-37. Procedure for annexation.

9 (a) Notice of Intent. -- Any municipal governing board desiring to annex territory
10 under the provisions of this Part shall first pass a resolution stating the intent of the
11 municipality to consider annexation. Such resolution shall describe the boundaries of
12 the area under consideration and fix a date for a public hearing on the question of
13 annexation, the date for such public hearing to be not less than 45 days and not more
14 than 90 days following passage of the resolution.

15 (b) Notice of Public Hearing. -- The notice of public hearing shall:

- 16 (1) Fix the date, hour and place of the public hearing.
- 17 (2) Describe clearly the boundaries of the area under consideration,
18 and include a legible map of the area.
- 19 (3) Include a clear and easily understandable statement notifying
20 persons affected by the annexation of their right to appeal under
21 G.S. 160A-38 and the remedy under G.S. 160A-37(h) for failure of
22 the city to provide services.
- 23 (4) State the right of a property owner to request abatement of water
24 and sewer assessments under G.S. 160A-237. A form for
25 requesting an abatement, and an easily understandable explanation
26 of the form, shall be mailed to all property owners entitled to a
27 mailed notice of the proposed annexation.
- 28 (3) (5) State that the report required in G.S. 160A-35 will be available at
29 the office of the municipal clerk at least 30 days prior to the date
30 of the public hearing.

31 Such notice shall be given by publication once a week for at least two successive
32 weeks prior to the date of the hearing in a newspaper having general circulation in
33 the municipality and, in addition thereto, if the area to be annexed lies in a county
34 containing less than fifty percent (50%) of the land area of the municipality, in a
35 newspaper having general circulation in the area of proposed annexation. The
36 period from the date of the first publication to the date of the last publication, both
37 dates inclusive, shall be not less than eight days including Sundays, and the date of
38 the last publication shall be not more than seven days preceding the date of public
39 hearing. If there be no such newspaper, the municipality shall post the notice in at
40 least five public places within the municipality and at least five public places in the
41 area to be annexed for 30 days prior to the date of public hearing. In addition,
42 notice shall be mailed at least four weeks prior to date of the hearing by first class
43 mail, postage prepaid to the owners as shown by the tax records of the county of all
44 freehold interests in real property located within the area to be ~~annexed~~: annexed.

1 and one mile beyond the area to be annexed. The notice sent to property owners in
2 the area one mile beyond the area to be annexed shall include an easily
3 understandable explanation that the property owner may be subject to planning and
4 zoning by the city as a result of being added to the city's extraterritorial planning and
5 zoning jurisdiction. The person or persons mailing such notices shall certify to the
6 governing board that fact, and such certificate shall become a part of the record of
7 the annexation proceeding and shall be deemed conclusive in the absence of fraud.
8 If the notice is returned to the city by the postal service by the tenth day before the
9 hearing, a copy of the notice shall be sent by certified mail, return receipt requested,
10 at least seven days before the hearing. Failure to comply with the mailing
11 requirement of this subsection shall not invalidate the annexation unless it is shown
12 that the requirements were not substantially complied with.

13 If the governing board by resolution finds that the tax records are not adequate to
14 identify the owners of some or all of the parcels of real property within the area it
15 may in lieu of the mail procedure as to those parcels where the owners could not be
16 so identified, post the notice at least 30 days prior to the date of public hearing on all
17 buildings on such parcels, and in at least five other places within the area to be
18 annexed. In any case where notices are placed on property, the person placing the
19 notice shall certify that fact to the governing board.

20 (c) Action Prior to Hearing. -- At least 30 days before the date of the public
21 hearing, the governing board shall approve the report provided for in G.S. 160A-35,
22 and shall make it available to the public at the office of the municipal clerk. In
23 addition, the municipality may prepare a summary of the full report for public
24 distribution. In addition, the city shall post in the office of the city clerk at least 30
25 days before the public hearing a legible map of the area to be annexed and a list of
26 the persons holding freehold interests in property in the area to be annexed that it
27 has identified.

28 (d) Public Hearing. -- At the public hearing a representative of the municipality
29 shall first make an explanation of the report required in ~~G.S. 160A-35~~ G.S. 160A-35,
30 including appeal rights as summarized in G.S. 160A-35(6). Following such
31 explanation, all persons resident or owning property in the territory described in the
32 notice of public hearing, and all residents of the municipality, shall be given an
33 opportunity to be ~~heard.~~ heard, an opportunity to ask questions, and receive answers
34 from the city's representative.

35 (e) Passage of the Annexation Ordinance. -- The municipal governing board shall
36 take into consideration facts presented at the public hearing and shall have authority
37 to amend the report required by G.S. 160A-35 to make changes in the plans for
38 serving the area proposed to be annexed so long as such changes meet the
39 requirements of G.S. 160A-35. At any regular or special meeting held no sooner
40 than the ~~tenth~~ thirtieth day following the public hearing and not later than 90 days
41 following such public hearing, the governing board shall have authority to adopt an
42 ordinance extending the corporate limits of the municipality to include all, or such
43 part, of the area described in the notice of public hearing which meets the

1 requirements of G.S. 160A-36 and which the governing board has concluded should
2 be annexed. The ordinance shall:

- 3 (1) Contain specific findings showing that the area to be annexed
4 meets the requirements of G.S. 160A-36. The external boundaries
5 of the area to be annexed shall be described by metes and bounds.
6 In showing the application of G.S. 160A-36(c) and (d) to the area,
7 the governing board may refer to boundaries set forth on a map of
8 the area and incorporate same by reference as a part of the
9 ordinance.
- 10 (2) A statement of the intent of the municipality to provide services to
11 the area being annexed as set forth in the report required by G.S.
12 160A-35.
- 13 (3) A specific finding that on the effective date of annexation the
14 municipality will have funds appropriated in sufficient amount to
15 finance construction of any water and sewer lines found necessary
16 in the report required by G.S. 160A-35 to extend the basic water
17 and/or sewer system of the municipality into the area to be
18 annexed, or that on the effective date of annexation the
19 municipality will have authority to issue bonds in an amount
20 sufficient to finance such construction. If authority to issue such
21 bonds must be secured from the electorate of the municipality
22 prior to the effective date of annexation, then the effective date of
23 annexation shall be no earlier than the day following the statement
24 of the successful result of the bond election.
- 25 (4) Fix the effective date for annexation. The effective date of
26 annexation may be fixed for any date not less than ~~40~~ 70 days nor
27 more than 400 days from the date of passage of the ordinance.

28 (f) Effect of Annexation Ordinance. -- From and after the effective date of the
29 annexation ordinance, the territory and its citizens and property shall be subject to all
30 debts, laws, ordinances and regulations in force in such municipality and shall be
31 entitled to the same privileges and benefits as other parts of such municipality. Real
32 and personal property in the newly annexed territory on the January 1 immediately
33 preceding the beginning of the fiscal year in which the annexation becomes effective
34 is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of
35 annexation falls between June 1 and June 30, and the effective date of the privilege
36 license tax ordinance of the annexing municipality is June 1, then businesses in the
37 area to be annexed shall be liable for taxes imposed in such ordinance from and after
38 the effective date of annexation.

39 (g) Simultaneous Annexation Proceedings. -- If a municipality is considering the
40 annexation of two or more areas which are all adjacent to the municipal boundary
41 but are not adjacent to one another, it may undertake simultaneous proceedings
42 under authority of this Part for the annexation of such areas.

43 (h) Remedies for Failure to Provide Services. -- If, not earlier than one year from
44 the effective date of annexation, and not later than 15 months from the effective date

1 of annexation, any person owning property in the annexed territory shall believe that
2 the municipality has not followed through on its service plans adopted under the
3 provisions of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of
4 mandamus under the provisions of Article 40, Chapter 1 of the General Statutes.
5 Relief may be granted by the judge of superior court

6 (1) If the municipality has not provided the services set forth in its
7 plan submitted under the provisions of G.S. 160A-35(3)a on
8 substantially the same basis and in the same manner as such
9 services were provided within the rest of the municipality prior to
10 the effective date of annexation, and

11 (2) If at the time the writ is sought such services set forth in the plan
12 submitted under the provisions of G.S. 160A-35(3)a are still being
13 provided on substantially the same basis and in the same manner
14 as on the date of annexation of the municipality.

15 Relief may also be granted by the judge of superior court

16 (1) If the plans submitted under the provisions of G.S. 160A-35(3)c
17 require the construction of major trunk water mains and sewer
18 outfall lines and

19 (2) If contracts for such construction have not yet been let.

20 If a writ is issued, costs in the action, including a reasonable attorney's fee for such
21 aggrieved person, shall be charged to the municipality.

22 (i) No resolution of intent may be adopted under subsection (a) of this section
23 unless the city council (or a planning agency created or designated under either G.S.
24 160A-361 or the charter) has, by resolution adopted at least one year prior to
25 adoption of the resolution of intent, identified the area as being under consideration
26 for annexation; provided, adoption of such resolution of consideration shall not
27 confer prior jurisdiction over the area as to any other city. The area described under
28 the resolution of intent may comprise a smaller area than that identified by the
29 resolution of consideration. The resolution of consideration may have a metes and
30 bounds description or a map, shall remain effective for two years after adoption, and
31 shall be filed with the city clerk. A new resolution of consideration adopted before
32 expiration of the two-year period for a previously adopted resolution covering the
33 same area shall relate back to the date of the previous resolution.

34 (j) Subsection (i) of this section shall not apply to the annexation of any area if
35 the resolution of intent describing the area and the ordinance annexing the area both
36 provide that the effective date of the annexation shall be at least one year from the
37 date of passage of the annexation ordinance."

38 Section 4. G.S. 160A-38 is rewritten by adding a new subsection to read:

39 "(l) Any settlement reached by all parties in an appeal under this section may be
40 presented to the superior court in the county in which the municipality is located. If
41 the superior court, in its discretion, approves the settlement, it shall be binding on all
42 parties without the need for approval by the General Assembly."

43 Section 5. G.S. 160A-41 reads as rewritten:

44 **"§ 160A-41. Definitions.**

The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) 'Contiguous area' shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.

(2) 'Used for residential purposes' shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit.

(3) Water definitions:

a. 'Water distribution mains'. -- Midsize water lines that run from transmission lines down individual streets or near individual properties to be served.

b. 'Water service lines'. -- Smallest water lines that run from distribution mains onto property to be served.

c. 'Water transmission lines' (also referred to as trunk lines or mains). -- Largest water lines that connect water treatment plant to distribution lines.

(4) Sewer definitions:

a. 'Interceptor sewers' (also referred to as outfalls). -- Largest sewers that connect to sewage treatment plant.

b. 'Collector sewers'. -- Midsize sewers that run down individual streets or near individual properties to be served.

c. 'Service laterals'. -- Smallest sewers that run from individual properties served to collector sewers."

Section 6. G.S. 160A-42 reads as rewritten:

"§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality~~ municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 7. G.S. 160A-47 reads as rewritten:

"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:

- a. The present and proposed boundaries of the municipality.
- b. The present ~~major-trunk~~ water ~~mains~~ transmission lines and ~~sewer~~ interceptors and outfalls, and the proposed extensions of such ~~mains and outfalls~~ interceptor sewers as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
- c. The general land use pattern in the area to be annexed.

- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.

- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

- a. Provide for extending police protection, fire protection, solid waste collection and street maintenance ~~services~~ services, including street lighting, to the area to be annexed on the date of annexation on ~~substantially~~ the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
- b. Provide for extension of ~~major-trunk~~ water ~~mains~~ transmission lines and ~~sewer-outfall lines~~ interceptor sewers

1 into the area to be annexed so that when such lines are
2 constructed, property owners in the area to be annexed will
3 be able to secure public water and sewer ~~service~~, service.
4 The municipality shall extend water distribution mains,
5 water service lines, collector sewers, and sewer service
6 laterals according to the financial policies in effect in such
7 municipality for extending ~~water and sewer lines~~ water
8 service lines or sewer service laterals to individual lots or
9 subdivisions. If requested by the owner of an occupied
10 dwelling unit or an operating commercial or industrial
11 property in writing on a form provided by the municipality,
12 which form acknowledges that such extension or extensions
13 will be made according to the current financial policies of
14 the municipality for making such extensions, and if such
15 form is received by the city clerk not less than ~~30~~ 10 days
16 before adoption of the annexation ordinance, provide for
17 extension of ~~water and sewer lines~~ water service lines or
18 sewer service laterals to the property or to a point on a
19 public street or road right-of-way adjacent to the property
20 according to the financial policies in effect in such
21 municipality for extending water and sewer lines. The
22 municipality must accept requests for water and sewer
23 service under this section for at least 30 days following the
24 public hearing concerning the area proposed to be annexed.
25 If any such requests are timely made, the municipality shall
26 at the time of adoption of the annexation ordinance amend
27 its report and plan for services to reflect and accommodate
28 such requests.

- 29 c. If extension of ~~major trunk water mains, sewer outfall lines,~~
30 ~~sewer lines and water lines~~ water transmission lines, water
31 distribution mains, interceptor sewers, or collector sewers is
32 necessary, set forth a proposed timetable for construction of
33 such ~~mains, outfalls and lines~~ water transmission lines, water
34 distribution mains, interceptor sewers, or collector sewers as
35 soon as possible following the effective date of annexation.
36 In any event, the plans shall call for construction to be
37 completed within two years of the effective date of
38 annexation.
- 39 d. Set forth the method under which the municipality plans to
40 finance extension of services into the area to be annexed.
- 41 e. Provide for street paving service on substantially the same
42 basis and in the same manner as that service is provided
43 within the rest of the municipality prior to the annexation.

- f. Include a summary of city police, fire, solid waste, street maintenance and paving, and water and sewer services provided to current city residents as of 90 days prior to the date set for the public hearing. The summary shall specify, at a minimum, the number of personnel employed by the municipality for police and fire protection, the services provided as part of police and fire protection, the increase in personnel or equipment, if any, planned as a result of the annexation and the method the municipality used to calculate present level of service, including, if applicable, personnel to population ratios and average response times.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 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.
- (5) If the lot or tract standard was used to qualify the area, the report shall state the classification of each lot or tract in the area to be annexed as to use and size. If a population standard was used to qualify the area, the report shall state how the population estimate of the area was determined.
- (6) A clear and easily understandable statement notifying persons affected by the annexation of their right to appeal under G.S. 160A-50, the right to request water and sewer services under subdivision (3)b. of this section, and the remedies under G.S. 160A-49(h) and (k) for failure of the city to provide services.
- (7) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of any public hearing on any annexation under this Part at the time of the public hearing for the annexation ordinance."

1 Section 8. G.S. 160A-48 reads as rewritten:

2 "§ 160A-48. Character of area to be annexed.

3 (a) A municipal governing board may extend the municipal corporate limits to
4 include any area

5 (1) Which meets the general standards of subsection (b), and

6 (2) Every part of which meets the requirements of either subsection (c)
7 or subsection (d).

8 (b) The total area to be annexed must meet the following standards:

9 (1) It must be adjacent or contiguous to the municipality's boundaries
10 at the time the annexation proceeding is begun, except if the entire
11 territory of a county water and sewer district created under G.S.
12 162A-86(b1) is being annexed, the annexation shall also include
13 any noncontiguous pieces of the district as long as the part of the
14 district with the greatest land area is adjacent or contiguous to the
15 municipality's boundaries at the time the annexation proceeding is
16 begun.

17 (2) At least one eighth of the aggregate external boundaries of the area
18 must coincide with the municipal boundary.

19 (3) No part of the area shall be included within the boundary of
20 another incorporated municipality.

21 (4) No part of the area to be annexed shall be located in a county
22 other than the county with a majority of the municipality's
23 residents, unless areas previously added to the municipality in
24 another county include at least 1,000 persons.

25 (5) No lot or tract in the area to be annexed shall be in use for bona
26 fide farm purposes as defined in G.S. 153A-340.

27 (c) Part or all of the area to be annexed must be developed for urban ~~purposes~~.
28 purposes 30 days prior to the public hearing for the annexation ordinance. Area of
29 streets and rights-of-way shall be used only to determine total resident population per
30 acre of land in this section. An area developed for urban purposes is defined as any
31 area which meets any one of the following standards:

32 (1) Has a total resident population equal to at least two persons for
33 each acre of land included within its boundaries; or

34 (2) Has a total resident population equal to at least one person for
35 each acre of land included within its boundaries, and is subdivided
36 into lots and tracts such that at least sixty percent (60%) of the
37 total acreage consists of lots and tracts five acres or less in size and
38 such that at least sixty-five percent (65%) of the total number of
39 lots and tracts are one acre or less in size; or

40 (3) Is so developed that at least sixty percent (60%) of the total
41 number of lots and tracts in the area at the time of annexation are
42 used for residential, commercial, industrial, institutional or
43 governmental purposes, and is subdivided into lots and tracts such
44 that at least sixty percent (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 five acres or less in size; or

(4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:

a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality~~. municipality; or

(5) Is so developed that at the time of annexation, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

(1) Lies 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 services and/or water and/or sewer lines through such sparsely developed area; or

(2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area that does not exceed 100 acres and does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board ~~shall, wherever practical,~~ shall use recorded property boundaries and natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

1 (f) The area of an abolished water and sewer district shall be considered to be a
2 water and sewer district for the purpose of this section even after its abolition under
3 G.S. 162A-87.2(b)."

4 Section 9. G.S. 160A-49 reads as rewritten:

5 "**§ 160A-49. Procedure for annexation.**

6 (a) Notice of Intent. -- Any municipal governing board desiring to annex territory
7 under the provisions of this Part shall first pass a resolution stating the intent of the
8 municipality to consider annexation. Such resolution shall describe the boundaries of
9 the area under consideration and fix a date for a public hearing on the question of
10 annexation, the date for such public hearing to be not less than 45 days and not more
11 than 90 days following passage of the resolution.

12 (b) Notice of Public Hearing. -- The notice of public hearing shall:

- 13 (1) Fix the date, hour and place of the public hearing.
- 14 (2) Describe clearly the boundaries of the area under consideration,
15 and include a legible map of the area.
- 16 (3) State that the report required in G.S. 160A-47 will be available at
17 the office of the municipal clerk at least 30 days prior to the date
18 of the public hearing.
- 19 (4) State the right of a property owner to request abatement of water
20 and sewer assessments under G.S. 160A-237. A form for
21 requesting an abatement, and an easily understandable explanation
22 of the form, shall be mailed to all property owners entitled to a
23 mailed notice of the proposed annexation.
- 24 (5) Include a clear and easily understandable statement notifying
25 persons affected by the annexation of their right to appeal under
26 G.S. 160A-50, the right to request water and sewer services under
27 G.S. 160A-47(3)b., and the remedies under G.S. 160A-49(h) and
28 (k) for failure of the city to provide services. A form for
29 requesting water and sewer services under G.S. 160A-47(3)b., an
30 easily understandable explanation of the form, and the city's water
31 and sewer financial policies shall be mailed to all property owners
32 entitled to a mailed notice of the proposed annexation.

33 Such notice shall be given by publication once a week for at least two successive
34 weeks prior to the date of the hearing in a newspaper having general circulation in
35 the municipality and, in addition thereto, if the area to be annexed lies in a county
36 containing less than fifty percent (50%) of the land area of the municipality, in a
37 newspaper having general circulation in the area of proposed annexation. The
38 period from the date of the first publication to the date of the last publication, both
39 dates inclusive, shall be not less than eight days including Sundays, and the date of
40 the last publication shall be not more than seven days preceding the date of public
41 hearing. If there be no such newspaper, the municipality shall post the notice in at
42 least five public places within the municipality and at least five public places in the
43 area to be annexed for 30 days prior to the date of public hearing. In addition,
44 notice shall be mailed at least four weeks prior to date of the hearing by first class

1 mail, postage prepaid to the owners as shown by the tax records of the county of all
2 freehold interests in real property located within the area to be ~~annexed~~. annexed,
3 and one mile beyond the area to be annexed. The notice sent to property owners in
4 the area one mile beyond the area to be annexed shall include an easily
5 understandable explanation that the property owner may be subject to planning and
6 zoning by the city as a result of being added to the city's extraterritorial planning and
7 zoning jurisdiction. The person or persons mailing such notices shall certify to the
8 governing board that fact, and such certificate shall become a part of the record of
9 the annexation proceeding and shall be deemed conclusive in the absence of fraud.
10 If the notice is returned to the city by the postal service by the tenth day before the
11 hearing, a copy of the notice shall be sent by certified mail, return receipt requested,
12 at least seven days before the hearing. Failure to comply with the mailing
13 requirements of this subsection shall not invalidate the annexation unless it is shown
14 that the requirements were not substantially complied with. If the governing board
15 by resolution finds that the tax records are not adequate to identify the owners of
16 some or all of the parcels of real property within the area it may in lieu of the mail
17 procedure as to those parcels where the owners could not be so identified, post the
18 notice at least 30 days prior to the date of public hearing on all buildings on such
19 parcels, and in at least five other places within the area to be annexed. In any case
20 where notices are placed on property, the person placing the notices shall certify that
21 fact to the governing board.

22 (c) Action Prior to Hearing. -- At least 30 days before the date of the public
23 hearing, the governing board shall approve the report provided for in G.S. 160A-47,
24 and shall make it available to the public at the office of the municipal clerk. In
25 addition, the municipality may prepare a summary of the full report for public
26 distribution. In addition, the city shall post in the office of the city clerk, at least 30
27 days before the public hearing, a legible map of the area to be annexed and a list of
28 persons holding freehold interests in property in the area to be annexed that it has
29 identified.

30 (d) Public Hearing. -- At the public hearing a representative of the municipality
31 shall first make an explanation of the report required in ~~G.S. 160A-47~~. G.S. 160A-47,
32 including appeal rights as summarized in G.S. 160A-47(6). Following such
33 explanation, all persons resident or owning property in the territory described in the
34 notice of public hearing, and all residents of the municipality, shall be given an
35 opportunity to be ~~heard~~. heard, an opportunity to ask questions, and receive answers
36 from the city's representative.

37 (e) Passage of the Annexation Ordinance. -- The municipal governing board shall
38 take into consideration facts presented at the public hearing and shall have authority
39 to amend the report required by G.S. 160A-47 to make changes in the plans for
40 serving the area proposed to be annexed so long as such changes meet the
41 requirements of G.S. 160A-47, provided that if the annexation report is amended to
42 show additional subsections of G.S. 160A-48(c) or (d) under which the annexation
43 qualifies that were not listed in the original report, the city must hold an additional
44 public hearing on the annexation not less than 30 nor more than 90 days after the

1 date the report is amended, and notice of such new hearing shall be given at the first
2 public hearing. At any regular or special meeting held no sooner than the ~~tenth~~
3 thirtieth day following the public hearing and not later than 90 days following such
4 public hearing, the governing board shall have authority to adopt an ordinance
5 extending the corporate limits of the municipality to include all, or such part, of the
6 area described in the notice of public hearing which meets the requirements of G.S.
7 160A- 48 and which the governing board has concluded should be annexed. The
8 ordinance shall:

- 9 (1) Contain specific findings showing that the area to be annexed
10 meets the requirements of G.S. 160A-48. The external boundaries
11 of the area to be annexed shall be described by metes and bounds.
12 In showing the application of G.S. 160A- 48(c) and (d) to the area,
13 the governing board may refer to boundaries set forth on a map of
14 the area and incorporate same by reference as a part of the
15 ordinance.
- 16 (2) A statement of the intent of the municipality to provide services to
17 the area being annexed as set forth in the report required by G.S.
18 160A-47.
- 19 (3) A specific finding that on the effective date of annexation the
20 municipality will have funds appropriated in sufficient amount to
21 finance construction of any major trunk water mains and sewer
22 outfalls and such water and sewer lines as required in G.S.
23 160A-47(3)(b) found necessary in the report required by G.S.
24 160A-47 to extend the basic water and/or sewer system of the
25 municipality into the area to be annexed, or that on the effective
26 date of annexation the municipality will have authority to issue
27 bonds in an amount sufficient to finance such construction. If
28 authority to issue such bonds must be secured from the electorate
29 of the municipality prior to the effective date of annexation, then
30 the effective date of annexation shall be no earlier than the day
31 following the statement of the successful result of the bond
32 election.
- 33 (4) Fix the effective date for annexation. The effective date of
34 annexation may be fixed for any date not less than ~~40~~ 70 days nor
35 more than 400 days from the date of passage of the ordinance.

36 (f) Effect of Annexation Ordinance. -- From and after the effective date of the
37 annexation ordinance, the territory and its citizens and property shall be subject to all
38 debts, laws, ordinances and regulations in force in such municipality and shall be
39 entitled to the same privileges and benefits as other parts of such municipality. Real
40 and personal property in the newly annexed territory on the January 1 immediately
41 preceding the beginning of the fiscal year in which the annexation becomes effective
42 is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed
43 property which is a part of a sanitary district, which has installed water and sewer
44 lines, paid for by the residents of said district, shall not be subject to that part of the

1 municipal taxes levied for debt service for the first five years after the effective date
2 of annexation. If this proviso should be declared by a court of competent jurisdiction
3 to be in violation of any provision of the federal or State Constitution, the same shall
4 not affect the remaining provisions of this Part. If the effective date of annexation
5 falls between June 1 and June 30, and the effective date of the privilege license tax
6 ordinance of the annexing municipality is June 1, then businesses in the area to be
7 annexed shall be liable for taxes imposed in such ordinances from and after the
8 effective date of annexation.

9 (g) Simultaneous Annexation Proceedings. -- If a municipality is considering the
10 annexation of two or more areas which are all adjacent to the municipal boundary
11 but are not adjacent to one another, it may undertake simultaneous proceedings
12 under authority of this Part for the annexation of such areas.

13 (h) Remedies for Failure to Provide Services. -- If, not earlier than one year from
14 the effective date of annexation, and not later than 15 months from the effective date
15 of annexation, any person owning property in the annexed territory shall believe that
16 the municipality has not followed through on its service plans adopted under the
17 provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than
18 water and sewer services such person may apply for a writ of mandamus under the
19 provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by
20 the judge of superior court

21 (1) If the municipality has not provided the services set forth in its
22 plan submitted under the provisions of G.S. 160A-47(3)a on
23 substantially the same basis and in the same manner as such
24 services were provided within the rest of the municipality prior to
25 the effective date of annexation, and

26 (2) If at the time the writ is sought such services set forth in the plan
27 submitted under the provisions of G.S. 160A-47(3)a are still being
28 provided on substantially the same basis and in the same manner
29 as on the date of annexation of the municipality.

30 If, not earlier than 24 months from the effective date of the annexation, and not
31 later than 27 months from the effective date of the annexation, any person owning
32 property in the annexed area can show that the plans submitted under the provisions
33 of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer
34 outfall lines and if construction has not been completed within two years of the
35 effective date of the annexation, relief may also be granted by the superior court by
36 an order to the municipality to complete such lines and outfalls within a certain time.
37 Similar relief may be granted by the superior court to any owner of property who
38 made a timely request for a water or sewer line, or both, pursuant to G.S.
39 160A-47(3)b and such lines have not been completed within two years from the
40 effective date of annexation in accordance with applicable city policies and through
41 no fault of the owner, if such owner petitions for such relief not earlier than 24
42 months following the effective date of annexation and not later than 27 months
43 following the effective date of annexation.

1 If a writ is issued, costs in the action, including a reasonable attorney's fee for such
2 aggrieved person, shall be charged to the municipality.

3 (i) No resolution of intent may be adopted under subsection (a) of this section
4 unless the city council (or planning agency created or designated under either G.S.
5 160A-361 or the charter) has, by resolution adopted at least one year prior to
6 adoption of the resolution of intent, identified the area as being under consideration
7 for annexation; provided, adoption of such resolution of consideration shall not
8 confer prior jurisdiction over the area as to any other city. The area described under
9 the resolution of intent may comprise a smaller area than that identified by the
10 resolution of consideration. The resolution of consideration may have a metes and
11 bounds description or a map and shall remain effective for two years after adoption,
12 and shall be filed with the city clerk. A new resolution of consideration adopted
13 before expiration of the two-year period for a previously adopted resolution covering
14 the same area shall relate back to the date of the previous resolution.

15 (j) Subsection (i) of this section shall not apply to the annexation of any area if the
16 resolution of intent describing the area and the ordinance annexing the area both
17 provide that the effective date of the annexation shall be at least one year from the
18 date of passage of the annexation ordinance.

19 (k) If a valid request for extension of a water or sewer line has been made under
20 G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the
21 effective date of the annexation ordinance, the owner of the property may petition
22 the Local Government Commission for abatement of taxes to be paid to the city
23 which have not been levied as of the expiration date of the two-year period, if such
24 petition is filed not more than ~~60~~ 90 days after the expiration of the two-year period.
25 If the Local Government Commission finds that the extension to the property was not
26 complete by the end of the two-year period, it shall enter an order directing the city
27 not to levy any further ad valorem taxes on the property until the fiscal year
28 commencing after completion of the extension. In addition, if the Local Government
29 Commission found that the extension to the property was not completed by the end
30 of the two-year period, and if it finds that for any fiscal year during the period
31 beginning with the first day of the fiscal year in which the annexation ordinance
32 became effective and ending the last day of the fiscal year in which the two-year
33 period expired, the city made an appropriation for construction, operation or
34 maintenance of a water or sewer system (other than payments the city made as a
35 customer of the system) from the fund or funds for which ad valorem taxes are
36 levied, then the Local Government Commission shall order the city to release or
37 refund an amount of the petitioner's property taxes for that year in question in
38 proportion to the percentage of appropriations in the fund made for water and sewer
39 services. By way of illustration, if a net amount of one hundred thousand dollars
40 (\$100,000) was appropriated for water or sewer construction, operation or
41 maintenance from a fund which had total expenditures of ten million dollars
42 (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the
43 amount of release or refund shall be ten dollars (\$10.00).

(k1) If major municipal services (police protection, fire protection, solid waste collection, and street maintenance services) were to be provided to an annexed area according to the annexation services report, and if any of the services are not provided by the end of the one year after the effective date of the annexation ordinance, an owner of the property in the area may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the one-year period, if such petition is filed not more than 90 days after the expiration of the one-year period. If the Local Government Commission finds that any major municipal service was not extended as provided in the annexation services report by the end of the one-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after provision of all major municipal services as provided in the annexation services report. In addition, if the Local Government Commission found that the provision of major municipal services was not completed by the end of the one-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the one-year period expired, the city made an appropriation for major municipal services from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for the major municipal service that was not provided."

Section 10. G.S. 160A-50 is amended by adding a new subsection to read:

"(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 11. G.S. 160A-53 reads as rewritten:

"§ 160A-53. Definitions.

The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) 'Contiguous area' shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.

(2) 'Used for residential purposes' shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit.

(3) Water definitions:

- 1 a. 'Water distribution mains'. -- Midsize water lines that run
2 from transmission lines down individual streets or near
3 individual properties to be served.
4 b. 'Water service lines'. -- Smallest water lines that run from
5 distribution mains onto property to be served.
6 c. 'Water transmission lines (also referred to as trunk lines or
7 mains). -- Largest water lines that connect water treatment
8 plant to distribution lines.
9 (4) Sewer definitions:
10 a. 'Interceptor sewers' (also referred to as outfalls). -- Largest
11 sewers that connect to sewage treatment plant.
12 b. 'Collector sewers'. -- Midsize sewers that run down
13 individual streets or near individual properties to be served.
14 c. 'Service laterals'. -- Smallest sewers that run from individual
15 properties served to collector sewers."

16 Section 12. G.S. 160A-54 reads as rewritten:

17 **"§ 160A-54. Population and land estimates.**

18 In determining population and degree of land subdivision for purposes of meeting
19 the requirements of G.S. 160A-48, the municipality shall use methods calculated to
20 provide reasonably accurate results. In determining whether the standards set forth
21 in G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50,
22 the reviewing court shall accept the estimates of the ~~municipality~~ municipality unless
23 the actual population, total area, or degree of land subdivision falls below the
24 standards in G.S. 160A-48:

- 25 (1) As to population, if the estimate is based on the number of
26 dwelling units in the area multiplied by the average family size in
27 such area, or in the township or townships of which such area is a
28 part, as determined by the last preceding federal decennial census;
29 or if it is based on a new enumeration carried out under
30 reasonable rules and regulations by the annexing municipality;
31 provided, that the court shall not accept such estimates if the
32 petitioners demonstrate that such estimates are in error in the
33 amount of ten percent (10%) or more.
34 (2) As to total area if the estimate is based on an actual survey, or on
35 county tax maps or records, or on aerial photographs, or on some
36 other reasonably reliable map used for official purposes by a
37 governmental agency, unless the petitioners on appeal demonstrate
38 that such estimates are in error in the amount of five percent (5%)
39 or more.
40 (3) As to degree of land subdivision, if the estimates are based on an
41 actual survey, or on county tax maps or records, or on aerial
42 photographs, or on some other reasonably reliable source, unless
43 the petitioners on appeal show that such estimates are in error in
44 the amount of five percent (5%) or more."

Section 13. G.S. 160A-237 reads as rewritten:

"§ 160A-237. Authority to hold water and sewer assessments in abeyance.

(a) The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

(b) Owners of property subject to a water or sewer related assessment following annexation under Part 2 or Part 3 of this Chapter may request abatement of any water and sewer service assessments planned by the city until the property is transferred or the property owner connects to the water or sewer system. A request for abatement under this subsection must be received by the city at least 30 days prior to adoption of the annexation ordinance.

(c) All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest."

Section 14. This act is effective when it becomes law.



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April 8, 1997

MEMORANDUM

TO: Members of the House Local Government I Committee

FROM: Giles S. Perry, Committee Counsel

RE: House Bill 94 Annexation Changes
PROPOSED COMMITTEE SUBSTITUTE H94-CSRW-002

House Bill 94 (PCS) makes numerous changes to the State's annexation laws, as summarized below:

Section 1 of the bill amends G.S. 160A-35 to clarify that municipalities or less than 5,000 preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for water transmission lines and interceptor sewers in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal, and a statement showing how the proposed annexation will affect the municipality's finances and services.

Section 2 of the bill amends G.S. 160A-36 to provide that any area annexed by a municipality of less than 5,000 shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 2 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes;" and authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-36.

Section 3 of the bill amends G.S. 160A-37(b) to require that notice of a public hearing for an annexation by a municipality of less than 5,000 include a notice of right to appeal if city fails to follow statutory procedures, the remedy for the city's failure to provide services, and the right of a property owner to request abatement of water and sewer assessments. Section 3 also amends G.S. 160-37(b) to require notice of the proposed annexation to be sent to property owners in the area one-mile beyond the proposed annexation, notifying them that they may be subject to extraterritorial planning and zoning jurisdiction by the annexing municipality.



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Section 3 of the bill also amends G.S. 160A-37(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of less than 5,000, and to require an opportunity for questions to be asked and answered at the public hearing.

Section 3 of the bill also amends G.S. 160A-37(e) to require at least thirty days after the public hearing before an annexation ordinance may be adopted, and at least 70 following adoption before the ordinance may become effective (if there was a resolution of consideration).

Section 4 of the bill amends G.S. 160A-38 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of less than 5,000.

Section 5 of the bill amends G.S. 160A-41 to add new technical definitions for water and sewer lines in municipalities of less than 5,000

Section 6 of the bill amends G.S. 160A-42 to eliminate statutory allowances for area and land subdivision estimates used by municipalities of less than 5,000 cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 7 of the bill amends G.S. 160A-47 to clarify that municipalities of 5,000 or more preparing to annex must include in their annexation plan: provision for street lighting services as a part of any street maintenance services offered; provision for water transmission lines and interceptor sewers in the area to be annexed; provision for street paving services in the area to be annexed; a detailed service statement; classification as to use and size of each lot or tract to be annexed, a notice of the right to appeal for failure of the city to follow statutory procedures, a notice of the right to request water and sewer services, a notice of the remedies for failure of the city to provide services, and a statement showing how the proposed annexation will affect the municipality's finances and services. In addition, Section 7 requires the municipality to accept requests for water and sewer services for at least 30 days following the public hearing concerning the proposed annexation.

Section 8 of the bill amends G.S. 160A-48 to provide that any area annexed by a municipality of 5,000 or more shall not be located in another county, unless at least 1,000 residents of the annexing municipality already reside in another county; and no lot or tract in use for bona fide farm purposes may be annexed. In addition, Section 8 forbids use of the area of streets and rights-of-way (defined) to be used to determine the "area developed for urban purposes, but requires use of the area of streets and rights-of-way to determine total resident population per acre of land. Section 8 also authorizes annexation of tracts exclusively in use for commercial, industrial, governmental, or institutional use that meet the other requirements of G.S. 160A-48. Section 8 also provides that areas included in an annexation by a municipality of 5,000 or more as as "necessary land connections" may not exceed 25% of the total area to be annexed.

Section 9 of the bill amends G.S. 160A-49(b) to require that notice of a public hearing for an annexation by a municipality of 5,000 or more include a notice of the property owner's right to request abatement of water and sewer assessments, and a

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form to do so; notice of the right to appeal if a city fails to follow statutory procedures; the right to request water and sewer services and a form to do so; and the remedies for the city's failure to provide services. Section 9 also amends G.S. 160-49(b) to require notice of the proposed annexation to be sent to property owners in the area one-mile beyond the proposed annexation, notifying them that they may be subject to extraterritorial planning and zoning jurisdiction by the annexing municipality.

Section 9 of the bill also amends G.S. 160A-49(d) to require an oral explanation of appeal rights at the public hearing for an annexation by a municipality of 5,000 or more, and to require an opportunity for questions to be asked and answered at the public hearing.

Section 9 of the bill also amends G.S. 160A-49(e) to require at least thirty days after the public hearing before an annexation ordinance may be adopted, and at least 70 following adoption before the ordinance may become effective (if there was a resolution of consideration).

Section 9 of the bill also amends G.S. 160A-49(k) to extend the time for application to the Local Government Commission for refund and abatement of taxes for failure of a municipality of 5,000 or more to provide water and sewer services within two years, and adds new subsection (k1) to authorize the same procedure if a municipality of 5,000 or more fails to provide other major municipal services within one year.

Section 10 of the bill amends G.S. 160A-50 to authorize the superior court to approve a binding negotiated settlement of an annexation dispute involving a municipality of 5,000 or more.

Section 11 of the bill amends G.S. 160A-53 to add new technical definitions for water and sewer lines in municipalities of 5,000 or more.

Section 12 of the bill amends G.S. 160A-54 to eliminate statutory allowances for population, area and land subdivision estimates used by larger cities in annexation proceedings, if the estimates fall below the statutory minimum standards.

Section 13 of the bill authorizes property owners to request water and sewer assessment abatements until their property is transferred or until they connect to the system.

Section 14 of the bill provides that it would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

April 15, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met April 15, 1997, at 11:10 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Rebecca Crumpler and Christina Hewett.

The following bills were discussed:

HB 314 A BILL TO BE ENTITLED AN ACT ABOLISHING THE VACANT OFFICE OF CORONER IN ROBESON COUNTY. Chairman Ellis explained that the bill's sponsor, Rep. Sutton, was ill and had communicated permission, under Rule 29, for the Chair to represent the bill. Rep. Buchanan moved for a favorable report; seconded and passed.

HB 293 A BILL TO BE ENTITLED AN ACT TO REQUIRE A SUPERMAJORITY OF THE DURHAM CITY COUNCIL TO APPROVE A SPECIFIC ANNEXATION IF A SUFFICIENT PROTEST PETITION IS SUBMITTED. Rep. Mosley was recognized to present the bill. She explained that the Parkwood community in Durham County consisted of about one thousand homeowners who did not wish to be annexed by the City of Durham. The bill would require the Durham City Council to approve the annexation by a $\frac{3}{4}$ vote if a protest petition signed by at least 20% of the landowners in the area was submitted to the City Council as specified in the bill. Rep. Mosley also explained that HB 294 was part of this two-bill package and that it provided for a referendum. The Chair recognized Mr. O. Powell, former Durham City Manager, to represent the views of the current Durham City Council. He explained that the Council opposed the bill. Mr. S. Ellis Hankins, Executive Director of the NC League of Municipalities, was recognized to present the League's position. He explained that the League believed that current annexation statutes have served the state well and should not be changed. Mr. Powell described the services currently available to Parkwood and explained that the issue had been argued in the court system. After considerable discussion, Rep. Carpenter moved for a favorable report; seconded and passed.

HB 294 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR REFERENDA ON ANNEXATION IN PARKWOOD IN DURHAM COUNTY IF REQUESTED BY RESIDENTS OF THE AREA TO BE ANNEXED. Since Rep. Mosley had explained the bill during the earlier discussion of HB 293, Rep.

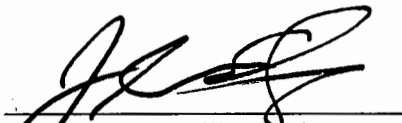
Ellis recognized Mr. Ellis Hankins of the NC League of Municipalities to speak to the Parkwood annexation issue. Mr. Hankins asserted that although House Bills 293 and 294 were local bills, the impact of their enactment would be the same as enacting state-wide provisions. He restated the League's position that current annexation statutes had served North Carolina well. Further, he noted, a number of Chambers of Commerce around the state had gone on record as supporting current annexation laws. Mr. Ron Akins of the Good Neighbors Association of NC was recognized to state the Association's support for the bill. Rep. Carpenter moved for a favorable report and re-refer to House Finance Committee; seconded and passed.

HB 836 A BILL TO BE ENTITLED AN ACT TO CREATE THE NEW HANOVER INTERNATIONAL AIRPORT ECONOMIC DEVELOPMENT ZONE. Rep. Wright was recognized to present the bill. He explained that the Airport Authority requested this bill that would allow the solicitation of economic development near the airport. The ensuing discussion raised the issue of annexation concerns, and Rep. Wright explained a resolution passed by the Wilmington City Council. The resolution requested language that would provide for ownership of the property by a governmental entity in order for the Wilmington City Council to support the concept outlined in the bill. Mr. Parks Griffin, a member of the New Hanover Airport Authority, was recognized to answer questions about the Authority's intentions with respect to possible future privatization of the Authority. He explained that there were no plans to that end. Mr. Hankins of the League of Municipalities was recognized to explain their opposition. Giles Perry, Committee Counsel, suggested that the requested language change would be on Page 1, Line 7. This would establish the economic development zone and prevent the annexation as long as the land is used within the definition of the zone. Rep. Carpenter moved for adoption of the Proposed Committee Substitute as amended. Rep. Allred presented a substitute motion for an unfavorable report to the original bill. Rep. Allred's motion failed. Rep. Carpenter's motion passed. Rep. Carpenter moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

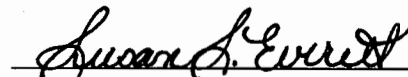
HB 808 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF CARY TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN THE CITY'S EXTRATERRITORIAL PLANNING JURISDICTION. Rep. Miner was recognized to present the bill. He explained that it was drafted to regulate the clear-cutting of trees. Rep. Carpenter asked Rep. Miner if he would mind continuing the debate when there would be more time for discussion. Rep. Miner agreed, and Rep. Carpenter moved for adjournment; passed on the one hour meeting limit. This bill will be calendared for the next meeting.

The meeting adjourned at 12:00 PM.

Respectfully submitted,



Rep. J. Sam Ellis, Chairman



Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

4-15-97, 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

- ☐ Committee Substitute for
H.B. 314 A BILL TO BE ENTITLED AN ACT ABOLISHING THE VACANT OFFICE OF
CORONER IN ROBESON COUNTY.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐.
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 314

Short Title: Abolish Robeson Coroner.

(Local)

Sponsors: Representatives Sutton, Yongue, Bonner; Blue, Boyd-McIntyre, Hightower, Hill, Hurley, Redwine, and Warner.

Referred to: Local and Regional Government I.

February 25, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT ABOLISHING THE VACANT OFFICE OF CORONER IN ROBESON
3 COUNTY.
4 The General Assembly of North Carolina enacts:
5 Section 1. The office of coroner in Robeson County is abolished.
6 Section 2. Chapter 152 of the General Statutes is not applicable to
7 Robeson County.
8 Section 3. This act is effective when it becomes law.



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Legislative Services Office**

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April 15, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 314 Abolish Robeson Coroner
Introduced by Representatives Sutton, Yongue, Bonner; and others

House Bill 314 abolishes the vacant Office of Coroner in Robeson County. The duties of the coroner are now carried out by the county medical examiner, appointed by the Chief Medical Examiner, as provided in Article 16 of Chapter 130A of the General Statutes.

House Bill 314 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 293 A BILL TO BE ENTITLED AN ACT TO REQUIRE A SUPERMAJORITY OF
THE DURHAM CITY COUNCIL TO APPROVE A SPECIFIC ANNEXATION IF A
SUFFICIENT PROTEST PETITION IS SUBMITTED.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☒ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 293

Short Title: Parkwood Annexations.

(Local)

Sponsors: Representatives Mosley; Rayfield and Capps.

Referred to: Local and Regional Government I, if favorable, Finance.

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A SUPERMAJORITY OF THE DURHAM CITY
3 COUNCIL TO APPROVE A SPECIFIC ANNEXATION IF A SUFFICIENT
4 PROTEST PETITION IS SUBMITTED.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 160A-49 is amended by adding a new subsection to read:
7 "(1) Protest Petition. --
8 (1) Protest authorized. -- Upon submission of a protest petition signed
9 by twenty percent (20%) or more of the landowners affected by a
10 proposed annexation, the annexation ordinance shall not become
11 effective except by favorable vote of three-fourths vote of the city
12 council.
13 (2) Procedure. -- No protest against any proposed annexation
14 ordinance shall be valid unless it be in the form of a written
15 petition actually bearing the signatures of the requisite number of
16 property owners and stating that the signers do protest the
17 proposed annexation and unless it shall have been received by the
18 city clerk in sufficient time to allow the city at least two normal
19 workdays, excluding Saturdays, Sundays, and legal holidays, before
20 the date established for a public hearing on the annexation
21 ordinance to determine the sufficiency and accuracy of the
22 petition. The city council may by ordinance require that all
23 protest petitions be on a form prescribed and furnished by the city,
24 and such form may prescribe any reasonable information deemed

1 necessary to permit the city to determine the sufficiency and
2 accuracy of the petition.

3 (3) Effect of failure of three-fourths vote after protest petition. -- If the
4 city council fails to adopt the annexation ordinance by the required
5 three-fourths vote following submission of the protest petition, the
6 city council may not consider an annexation ordinance under this
7 Part affecting the same parcels of land for a period of one year
8 from the date of the submission of the protest petition."

9 Section 2. This act applies only as to the following described territory in
10 Durham County:

11 BEGINNING at a point located at the southeast corner of tract 6 of the
12 Research Square Associates Property as shown in Plat Book 100, page 65 of the
13 Durham County Registry and also being located on the existing City limits line also
14 being on the West right-of-way line of the Durham and Southern Railroad; thence in
15 a southerly direction along said City limits line an approximate distance of 3225 feet
16 to a point, said point being the northeast corner of Tax Map 541A-1-5 and shown in
17 Plat Book 29, page 84; thence along the existing City limits line in the following
18 courses and distances: N84-45-00W a distance of 277.00 feet to point located on the
19 East right-of-way line of N.C. Highway 55; thence in a westerly direction across said
20 N.C. Highway 55 an approximate distance of 150 feet to a point located on the West
21 right-of-way line of said N.C. Highway 55; thence N86-23-16W a distance of 780.62
22 feet to a point; thence S28-08-06E a distance of 957.42 feet to a point, said point
23 located on the new North right-of-way line of Sedwick Road; thence in a
24 southeasterly direction across said Sedwick Road an approximate distance of 63 feet
25 to a point located on the South right-of-way line of Sedwick Road; thence along said
26 Sedwick Road and the existing City limits line the following courses and distances:
27 S56-46-05W a distance of 40 feet to a point; thence S55-20-41W a distance of 79.03
28 feet to a point; thence S54-06-06W a distance of 88.14 feet to a point; thence S53-13-
29 18W a distance of 82.93 feet to a point; thence S51-33-04W a distance of 107.95 feet
30 to a point; thence S49-21-17W a distance of 119.00 feet to a point, said point being
31 the southwest corner of tract 2 as shown in Plat Book 99, page 85; thence leaving the
32 existing City limits line and continuing along said South right-of-way line of Sedwick
33 Road in a southwesterly direction an approximate distance of 720 feet to a point, said
34 point being the northeast corner of lot 13 as shown in Plat Book 111, page 115,
35 Frenchmans Creek Subdivision, and recorded in the Durham County Registry; thence
36 S84-11-37E along the east property line of lots 13 thru 18 of the aforementioned map
37 of Frenchmans Creek Subdivision a distance of 673.20 feet to a point, said point
38 being the southeastern most corner of lot 18; thence N84-08-52W a distance of 918.80
39 feet to a point, said point being the southwest corner of a 2.11 acre tract as shown in
40 Plat Book 86, page 12 said point also located in the east property line of Buttonwood
41 Acres, Section 2B, Map 1, in Plat Book 72, page 20; thence S00-18-00E along the East
42 property line of lots "Park Area" and 731, 730, 729 and 728 of the aforementioned
43 Plat Book 72, page 20 a distance of 409.71 feet to a point, said point being the
44 southeast corner of lot 728; thence N89-12-30W a distance of 178.54 feet to a point

1 located in the center line of Revere Road; thence N89-21-00W a distance of 111.27
2 feet to a point; thence N88-56-00W a distance of 620.41 feet to a point, said point
3 being the northeast corner of lot 706 of Buttonwood Acres, Section 2B, Map 2 as
4 shown in Plat book 74, page 44; thence S02-34-00W a distance of 138.19 feet to a
5 point, said point being the southeast corner of lot 706; thence S01-10-00E a distance
6 of 427.22 feet to a point, said point being located on the east property line of lot 701;
7 thence S01-38-00E a distance of 418.20 feet to a point, said point being located on the
8 east property line of lot 696; thence S02-28-00E a distance of 92.14 feet to a point,
9 said point being the southeast corner of lot 695 as shown in the aforementioned Plat
10 book 74, page 44; thence N89-30-00W a distance of 1283.09 feet to a point, said point
11 being the southwest corner of lot 665 of Plat Book 74, page 44; thence N89-30-00W
12 an approximate distance of 1180 feet to a point, said point being located on the West
13 right-of-way line of Grandale Drive; thence in a northerly direction along the West
14 right-of-way line of Grandale Drive an approximate distance of 4070 feet to a point,
15 said point being the northeast corner of the B.G. Mars property as shown in Deed
16 Book 331, page 257; thence S89-33-31W a distance of 1389.57 feet to a point, said
17 point being the southwest corner of lot 15 of Settlers Mill Subdivision as shown in
18 Plat Book 126, page 111; thence N05-21-50E a distance of 489.02 feet to a point;
19 thence S85-44-59E a distance of 700.93 feet to a point said point being located on the
20 west right-of-way line of Grandale Drive; thence along said west right-of-way line of
21 Grandale Drive the following course and distance: N38 43-25W a distance of 34.17
22 feet to a point; thence along a curve to the right said curve having a radius of 1667.08
23 feet an arc distance of 283.53 feet to a point; thence N 28-23-30W a distance of 582.66
24 feet to a point said point also being the southeast corner of lot 1 as shown in Plat
25 book 125, page 108; thence S46-40-19W a distance of 210.23 feet to a point; thence
26 S28-24-42W a distance of 434.31 feet to a point; thence S36-17-05W a distance of
27 204.65 feet to a point; thence S07-10-04W a distance of 262.15 feet to a point; thence
28 S30-15-40W a distance of 273.15 feet to a point; thence N86-10-26W a distance of
29 261.48 feet to a point, said point being the southwest corner of tract 1 (one) as shown
30 in Plat Book 122, page 15; thence N03-20-00E a distance of 1337.42 feet to a point;
31 thence N05-41-41E a distance of 705.42 feet to a point said point being located on the
32 new right-of-way line of Grandale Road and also being the northwest corner of
33 Grandale Forest Subdivision, Phase 1A, as shown in Plat Book 125, page 108; thence
34 continuing in a northerly direction along the West right-of-way line of Grandale Road
35 an approximate distance of 840 feet to a point, said point being the southeast corner
36 of tract 3; thence N83-57-26W across said Herndon Road a distance of 60 feet to a
37 point located at the southeast corner of tract 3, Block B, as shown in Plat Book 71,
38 page 24 In the Durham County Registry; thence N83-57-26W along the south
39 property line of said tract 3 a distance of 929.37 feet to a point located on the East
40 right-of-way line of Herndon Road and also being the southwest corner of tract 3;
41 thence N83-57-26W across said Herndon Road a distance of 60 feet to a point located
42 at the southeast corner of tract 3, Block A as shown in Plat Book 71, page 24; thence
43 N16-35-24E along the West right-of-way of said Herndon Road a distance of 360.68
44 feet to a point; thence along a curve to the left said curve having a radius of 692.77

1 feet an arc distance of 79.95 feet to a point; thence S83-57-26E a distance of 60 feet to
2 a point said point being located on the east right-of-way line of Herndon Road and
3 also being the northwest corner of tract 2 as shown in Plat book 71, page 24; thence
4 S83-57-26E along said north property line of tract 2 a distance of 273.26 feet to a
5 point; thence N10-59-57E a distance of 198.04 feet to a point; thence N89-36-44W a
6 distance of 299.98 feet to a point said point being located on the east right-of-way line
7 of Herndon Road; thence in a westerly direction across said Herndon Road an
8 approximate distance of 60 feet to a point located on the western right-of-way line of
9 Herndon Road; thence along said west right-of-way line along a curve to the left said
10 curve having a radius of 692.77 feet an approximate distance of 35 feet to a point;
11 thence N06-51-32W a distance of 1033.77 feet to a point said point being located at
12 the point of intersection of the West right-of-way line of Herndon Road and the
13 South right-of-way line of Massey Chapel Road; thence in a northeasterly direction
14 across Barbee Road an approximate distance of 80 feet to a point, said point being
15 located on the North right-of-way line of Barbee Road and also being located on the
16 existing City limits line; thence along said right-of-way line and existing City limits
17 line the following courses and distances: S89-05-28E a distance of 93.60 feet to a
18 point; thence S88-06-56E a distance of 85.30 feet to a point; thence S89-03-11E a
19 distance of 130.90 feet to a point; thence S88-45-12E a distance of 96.62 feet to a
20 point; thence N86-22-54E a distance of 96.52 feet to a point; thence N83-15-43E a
21 distance of 96.50 feet to a point; thence N79-19-20E a distance of 96.82 feet to a
22 point; thence N77-29-46E a distance of 96.54 feet to a point; thence N76-25-55E a
23 distance of 361.96 feet to a point; thence N77-51-31E a distance of 45.16 feet to a
24 point said point being the southeast corner of tract I of the Raleigh Properties
25 Annexation Map; thence N81-05E a distance of 205.62 feet to a point said point being
26 the southeast corner of lot 21 as being shown in Plat book 49 page 42 of the Durham
27 County Registry and also being the point of intersection of the north right-of-way of
28 Barbee Road and the west right-of-way line of Amherst Street; thence in a
29 northeasterly direction across said Amherst Street an approximate distance of 60 feet
30 to a point said point being the southwest corner of lot 21 of the aforementioned Plat
31 book 49 page 42; thence N82-23-00E along the north right-of-way line of Barbee
32 Road a distance of 299.52 feet to a point; thence along a curve to the left said curve
33 having a radius of 884.86 feet an arc distance of an approximate distance of 384.45
34 feet to a point of reverse curve to the right said curve having a radius of 873.98 feet
35 an arc distance of an approximate distance of 202.36 feet to a point located at the
36 southeast corner of lot 15 as shown in Plat book 49 page 60 and also being the point
37 of intersection of the north right-of-way line of Barbee Road and the west right-of-
38 way line of Grenfell Drive; thence across said Grenfell Drive and approximate
39 distance of 60 feet to a point being the southwest corner of lot 16 of the
40 aforementioned Plat book; thence along a curve to the right said curve having a
41 radius of 873.98 feet an arc distance of 177.00 feet to a point; thence N76-40-00E a
42 distance of 266.2 feet to a point said point being the southeast corner of lot 19 as
43 shown in Plat book 49 page 60; thence N04-11-00E an approximate distance of 135
44 feet to a point said point being located in the existing City limits line; thence along

1 the existing City limits line the following courses and distances: southeasterly an
2 approximate distance of 1920 feet to a point; thence in a northerly direction a
3 distance of 216 feet to a point said point being located on the South right-of-way line
4 of N. C. Highway 54; thence in a southeasterly direction an approximate distance of
5 2060 feet to a point, said point being the northeast corner of tract 3, section 1,
6 Parkwood Subdivision as shown in Plat Book 36, page 18; thence continuing along
7 said existing City limits line in a southerly direction 200 feet to a point, said point
8 being located 200 feet from the South right-of-way line of N.C. Highway 54; thence in
9 an easterly direction along said parallel line a distance of 1370 feet to a point located
10 in the center line of Northeast Creek; thence in a southwesterly direction along said
11 center line of Northeast Creek an approximate distance of 1300 feet to a point
12 located on the north property line of tract 1 as shown in Plat Book 91, page 154;
13 thence leaving the existing City limits line N83-37-08W an approximate distance of
14 355 feet to a point, said point being the northwest corner of tract 1 as shown in Plat
15 Book 122, page 41; thence S03-47-18W a distance of 604.81 feet to a point, said point
16 being the southwest corner of tract II as shown in Plat Book 122, page 141; thence
17 S83-42-31E a distance of 2072.45 feet to a point, said point being located on the West
18 right-of-way line of N.C. Highway 55; thence in a northeasterly direction along said
19 West right-of-way line an approximate distance of 630 feet to a point, said point being
20 located on the existing City limits line and also being the northeast corner of tract I
21 as shown Plat Book 91, page 154; thence continuing along said City limits line in a
22 easterly direction a distance of 805.72 feet to a point, said point being the point and
23 place of beginning.

24 The above description contains _____ acres. For further
25 reference see Map of "Parkwood Annexation," prepared by Robert W. Young, L. No.
26 1755 dated February 1994 and recorded in the office of the Register of Deeds of
27 Durham County in Plat book _____, page _____.

28 Section 3. This act is effective when it becomes law. This act also applies
29 to annexation ordinances adopted prior to the date this act becomes law where:

- 30 (1) The ordinance did not receive a three-fourths vote of the city
31 council upon its adoption;
- 32 (2) The effective date of the ordinance has not passed when this act
33 becomes law; and
- 34 (3) The petition required by G.S. 160A-49(l), as enacted by Section 1
35 of this act, is received by the city clerk no later than 60 days after
36 the date this act becomes law. If the city council requires under
37 G.S. 160A-49(l), as enacted by Section 1 of this act, that the
38 petitions be on a form required by ordinance, that ordinance must
39 be adopted within 14 days of ratification of this act, and in such
40 case the deadline for submitting the petition shall be 60 days after
41 adoption of the ordinance specifying the form.

42 When the city has determined the petition to be sufficient, the ordinance is repealed,
43 and it may not be adopted again except in accordance with G.S. 160A-49(l), as

1 enacted by Section 1 of this act. The city council may then proceed to a vote on the
2 adoption of the ordinance.



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Legislative Services Office**

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April 15, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 293 Parkwood Annexations
Introduced by Representatives Mosley; Rayfield and Capps

House Bill 293 is a local bill that would require the Durham City Council to approve the annexation of the Parkwood community in Durham County by a $\frac{3}{4}$ vote, if a protest petition signed by at least 20% of the landowners in the area is submitted to the City Council as specified in the bill.

House Bill 293 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 294 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR REFERENDA ON
ANNEXATION IN PARKWOOD IN DURHAM COUNTY IF REQUESTED BY
RESIDENTS OF THE AREA TO BE ANNEXED.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☒ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 294

Short Title: Parkwood Annexation Referenda.

(Local)

Sponsors: Representatives Mosley; Rayfield and Capps.

Referred to: Local & Regional Government I, if favorable, Finance.

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR REFERENDA ON ANNEXATION IN PARKWOOD
3 IN DURHAM COUNTY IF REQUESTED BY RESIDENTS OF THE AREA TO
4 BE ANNEXED.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 160A-49(e) reads as rewritten:
7 "(e) Passage of the Annexation Ordinance. -- The municipal governing board
8 shall take into consideration facts presented at the public hearing and shall have
9 authority to amend the report required by G.S. 160A-47 to make changes in the plans
10 for serving the area proposed to be annexed so long as such changes meet the
11 requirements of G.S. 160A-47, provided that if the annexation report is amended to
12 show additional subsections of G.S. 160A-48(c) or (d) under which the annexation
13 qualifies that were not listed in the original report, the city must hold an additional
14 public hearing on the annexation not less than 30 nor more than 90 days after the
15 date the report is amended, and notice of such new hearing shall be given at the first
16 public hearing. At any regular or special meeting held no sooner than the tenth day
17 following the public hearing and not later than 90 days following such public hearing,
18 the governing board shall have authority to adopt an ordinance extending the
19 corporate limits of the municipality to include all, or such part, of the area described
20 in the notice of public hearing which meets the requirements of G.S. 160A-48 and
21 which the governing board has concluded should be ~~annexed~~ annexed, provided if
22 no later than adjournment of the public hearing, a petition, signed by twenty-five
23 percent (25%) of the registered voters who are freeholders in the area proposed to be
24 annexed, is received by the city, opposing the annexation, then the annexation

ordinance shall become effective only if approved by the voters of the area to be annexed in a referendum conducted under subsection (e1) of this section, except that this proviso has no effect if the annexation ordinance is adopted by a favorable vote of three-fourths of all the members of the city council.

The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance."

Section 2. G.S. 160A-49 is amended by adding a new subsection to read:

"(e1) If a referendum is required under subsection (e) of this section, the city council shall order the board of elections which conducts elections for that city to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within 90 days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

- (1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and

(3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the city or town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged.

At such election the question on the ballot shall be:

'[] FOR [] AGAINST
Annexation.'

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by this Part."

Section 3. G.S. 160A-37(e) reads as rewritten:

"(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be ~~annexed~~. annexed, provided if no later than adjournment of the public hearing, a petition, signed by twenty-five percent (25%) of the registered voters who are freeholders in the area proposed to be annexed, is received by the city, opposing the annexation, then the annexation ordinance shall become effective only if approved by the voters of the area to be annexed in a referendum conducted under subsection (e1) of this section, except that this proviso has no effect if the annexation ordinance is adopted by a favorable vote of three-fourths of all members of the city council. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance."

Section 4. G.S. 160A-37 is amended by adding a new subsection to read:

"(e1) If a referendum is required under subsection (e) of this section, the city council shall order the board of elections which conducts elections for that city to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within 90 days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and

(3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the city or town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged.

At such election the question on the ballot shall be:

'[] FOR [] AGAINST
Annexation.'

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by this Part."

1 Section 5. This act applies only as to the following described territory in
2 Durham County:

3 BEGINNING at a point located at the southeast corner of tract 6 of the
4 Research Square Associates Property as shown in Plat Book 100, page 65 of the
5 Durham County Registry and also being located on the existing City limits line also
6 being on the West right-of-way line of the Durham and Southern Railroad; thence in
7 a southerly direction along said City limits line an approximate distance of 3225 feet
8 to a point, said point being the northeast corner of Tax Map 541A-1-5 and shown in
9 Plat Book 29, page 84; thence along the existing City limits line in the following
10 courses and distances: N84-45-00W a distance of 277.00 feet to point located on the
11 East right-of-way line of N.C. Highway 55; thence in a westerly direction across said
12 N.C. Highway 55 an approximate distance of 150 feet to a point located on the West
13 right-of-way line of said N.C. Highway 55; thence N86-23-16W a distance of 780.62
14 feet to a point; thence S28-08-06E a distance of 957.42 feet to a point, said point
15 located on the new North right-of-way line of Sedwick Road; thence in a
16 southeasterly direction across said Sedwick Road an approximate distance of 63 feet
17 to a point located on the South right-of-way line of Sedwick Road; thence along said
18 Sedwick Road and the existing City limits line the following courses and distances:
19 S56-46-05W a distance of 40 feet to a point; thence S55-20-41W a distance of 79.03
20 feet to a point; thence S54-06-06W a distance of 88.14 feet to a point; thence S53-13-
21 18W a distance of 82.93 feet to a point; thence S51-33-04W a distance of 107.95 feet
22 to a point; thence S49-21-17W a distance of 119.00 feet to a point, said point being
23 the southwest corner of tract 2 as shown in Plat Book 99, page 85; thence leaving the
24 existing City limits line and continuing along said South right-of-way line of Sedwick
25 Road in a southwesterly direction an approximate distance of 720 feet to a point, said
26 point being the northeast corner of lot 13 as shown in Plat Book 111, page 115,
27 Frenchmans Creek Subdivision, and recorded in the Durham County Registry; thence
28 S84-11-37E along the east property line of lots 13 thru 18 of the aforementioned map
29 of Frenchmans Creek Subdivision a distance of 673.20 feet to a point, said point
30 being the southeastern most corner of lot 18; thence N84-08-52W a distance of 918.80
31 feet to a point, said point being the southwest corner of a 2.11 acre tract as shown in
32 Plat Book 86, page 12 said point also located in the east property line of Buttonwood
33 Acres, Section 2B, Map 1, in Plat Book 72, page 20; thence S00-18-00E along the East
34 property line of lots "Park Area" and 731, 730, 729 and 728 of the aforementioned
35 Plat Book 72, page 20 a distance of 409.71 feet to a point, said point being the
36 southeast corner of lot 728; thence N89-12-30W a distance of 178.54 feet to a point
37 located in the center line of Revere Road; thence N89-21-00W a distance of 111.27
38 feet to a point; thence N88-56-00W a distance of 620.41 feet to a point, said point
39 being the northeast corner of lot 706 of Buttonwood Acres, Section 2B, Map 2 as
40 shown in Plat book 74, page 44; thence S02-34-00W a distance of 138.19 feet to a
41 point, said point being the southeast corner of lot 706; thence S01-10-00E a distance
42 of 427.22 feet to a point, said point being located on the east property line of lot 701;
43 thence S01-38-00E a distance of 418.20 feet to a point, said point being located on the
44 east property line of lot 696; thence S02-28-00E a distance of 92.14 feet to a point,

1 said point being the southeast corner of lot 695 as shown in the aforementioned Plat
2 book 74, page 44; thence N89-30-00W a distance of 1283.09 feet to a point, said point
3 being the southwest corner of lot 665 of Plat Book 74, page 44; thence N89-30-00W
4 an approximate distance of 1180 feet to a point, said point being located on the West
5 right-of-way line of Grandale Drive; thence in a northerly direction along the West
6 right-of-way line of Grandale Drive an approximate distance of 4070 feet to a point,
7 said point being the northeast corner of the B.G. Mars property as shown in Deed
8 Book 331, page 257; thence S89-33-31W a distance of 1389.57 feet to a point, said
9 point being the southwest corner of lot 15 of Settlers Mill Subdivision as shown in
10 Plat Book 126, page 111; thence N05-21-50E a distance of 489.02 feet to a point;
11 thence S85-44-59E a distance of 700.93 feet to a point said point being located on the
12 west right-of-way line of Grandale Drive; thence along said west right-of-way line of
13 Grandale Drive the following course and distance: N38 43-25W a distance of 34.17
14 feet to a point; thence along a curve to the right said curve having a radius of 1667.08
15 feet an arc distance of 283.53 feet to a point; thence N 28-23-30W a distance of 582.66
16 feet to a point said point also being the southeast corner of lot 1 as shown in Plat
17 book 125, page 108; thence S46-40-19W a distance of 210.23 feet to a point; thence
18 S28-24-42W a distance of 434.31 feet to a point; thence S36-17-05W a distance of
19 204.65 feet to a point; thence S07-10-04W a distance of 262.15 feet to a point; thence
20 S30-15-40W a distance of 273.15 feet to a point; thence N86-10-26W a distance of
21 261.48 feet to a point, said point being the southwest corner of tract 1 (one) as shown
22 in Plat Book 122, page 15; thence N03-20-00E a distance of 1337.42 feet to a point;
23 thence N05-41-41E a distance of 705.42 feet to a point said point being located on the
24 new right-of-way line of Grandale Road and also being the northwest corner of
25 Grandale Forest Subdivision, Phase 1A, as shown in Plat Book 125, page 108; thence
26 continuing in a northerly direction along the West right-of-way line of Grandale Road
27 an approximate distance of 840 feet to a point, said point being the southeast corner
28 of tract 3; thence N83-57-26W across said Herndon Road a distance of 60 feet to a
29 point located at the southeast corner of tract 3, Block B, as shown in Plat Book 71,
30 page 24 In the Durham County Registry; thence N83-57-26W along the south
31 property line of said tract 3 a distance of 929.37 feet to a point located on the East
32 right-of-way line of Herndon Road and also being the southwest corner of tract 3;
33 thence N83-57-26W across said Herndon Road a distance of 60 feet to a point located
34 at the southeast corner of tract 3, Block A as shown in Plat Book 71, page 24; thence
35 N16-35-24E along the West right-of-way of said Herndon Road a distance of 360.68
36 feet to a point; thence along a curve to the left said curve having a radius of 692.77
37 feet an arc distance of 79.95 feet to a point; thence S83-57-26E a distance of 60 feet to
38 a point said point being located on the east right-of-way line of Herndon Road and
39 also being the northwest corner of tract 2 as shown in Plat book 71, page 24; thence
40 S83-57-26E along said north property line of tract 2 a distance of 273.26 feet to a
41 point; thence N10-59-57E a distance of 198.04 feet to a point; thence N89-36-44W a
42 distance of 299.98 feet to a point said point being located on the east right-of-way line
43 of Herndon Road; thence in a westerly direction across said Herndon Road an
44 approximate distance of 60 feet to a point located on the western right-of-way line of

1 Herndon Road; thence along said west right-of-way line along a curve to the left said
2 curve having a radius of 692.77 feet an approximate distance of 35 feet to a point;
3 thence N06-51-32W a distance of 1033.77 feet to a point said point being located at
4 the point of intersection of the West right-of-way line of Herndon Road and the
5 South right-of-way line of Massey Chapel Road; thence in a northeasterly direction
6 across Barbee Road an approximate distance of 80 feet to a point, said point being
7 located on the North right-of-way line of Barbee Road and also being located on the
8 existing City limits line; thence along said right-of-way line and existing City limits
9 line the following courses and distances: S89-05-28E a distance of 93.60 feet to a
10 point; thence S88-06-56E a distance of 85.30 feet to a point; thence S89-03-11E a
11 distance of 130.90 feet to a point; thence S88-45-12E a distance of 96.62 feet to a
12 point; thence N86-22-54E a distance of 96.52 feet to a point; thence N83-15-43E a
13 distance of 96.50 feet to a point; thence N79-19-20E a distance of 96.82 feet to a
14 point; thence N77-29-46E a distance of 96.54 feet to a point; thence N76-25-55E a
15 distance of 361.96 feet to a point; thence N77-51-31E a distance of 45.16 feet to a
16 point said point being the southeast corner of tract I of the Raleigh Properties
17 Annexation Map; thence N81-05E a distance of 205.62 feet to a point said point being
18 the southeast corner of lot 21 as being shown in Plat book 49 page 42 of the Durham
19 County Registry and also being the point of intersection of the north right-of-way of
20 Barbee Road and the west right-of-way line of Amherst Street; thence in a
21 northeasterly direction across said Amherst Street an approximate distance of 60 feet
22 to a point said point being the southwest corner of lot 21 of the aforementioned Plat
23 book 49 page 42; thence N82-23-00E along the north right-of-way line of Barbee
24 Road a distance of 299.52 feet to a point; thence along a curve to the left said curve
25 having a radius of 884.86 feet an arc distance of an approximate distance of 384.45
26 feet to a point of reverse curve to the right said curve having a radius of 873.98 feet
27 an arc distance of an approximate distance of 202.36 feet to a point located at the
28 southeast corner of lot 15 as shown in Plat book 49 page 60 and also being the point
29 of intersection of the north right-of-way line of Barbee Road and the west right-of-
30 way line of Grenfell Drive; thence across said Grenfell Drive and approximate
31 distance of 60 feet to a point being the southwest corner of lot 16 of the
32 aforementioned Plat book; thence along a curve to the right said curve having a
33 radius of 873.98 feet an arc distance of 177.00 feet to a point; thence N76-40-00E a
34 distance of 266.2 feet to a point said point being the southeast corner of lot 19 as
35 shown in Plat book 49 page 60; thence N04-11-00E an approximate distance of 135
36 feet to a point said point being located in the existing City limits line; thence along
37 the existing City limits line the following courses and distances: southeasterly an
38 approximate distance of 1920 feet to a point; thence in a northerly direction a
39 distance of 216 feet to a point said point being located on the South right-of-way line
40 of N. C. Highway 54; thence in a southeasterly direction an approximate distance of
41 2060 feet to a point, said point being the northeast corner of tract 3, section 1,
42 Parkwood Subdivision as shown in Plat Book 36, page 18; thence continuing along
43 said existing City limits line in a southerly direction 200 feet to a point, said point
44 being located 200 feet from the South right-of-way line of N.C. Highway 54; thence in

1 an easterly direction along said parallel line a distance of 1370 feet to a point located
2 in the center line of Northeast Creek; thence in a southwesterly direction along said
3 center line of Northeast Creek an approximate distance of 1300 feet to a point
4 located on the north property line of tract 1 as shown in Plat Book 91, page 154;
5 thence leaving the existing City limits line N83-37-08W an approximate distance of
6 355 feet to a point, said point being the northwest corner of tract 1 as shown in Plat
7 Book 122, page 41; thence S03-47-18W a distance of 604.81 feet to a point, said point
8 being the southwest corner of tract II as shown in Plat Book 122, page 141; thence
9 S83-42-31E a distance of 2072.45 feet to a point, said point being located on the West
10 right-of-way line of N.C. Highway 55; thence in a northeasterly direction along said
11 West right-of-way line an approximate distance of 630 feet to a point, said point being
12 located on the existing City limits line and also being the northeast corner of tract I
13 as shown Plat Book 91, page 154; thence continuing along said City limits line in a
14 easterly direction a distance of 805.72 feet to a point, said point being the point and
15 place of beginning.

16 The above description contains _____ acres. For further
17 reference see Map of "Parkwood Annexation," prepared by Robert W. Young, L. No.
18 1755 dated February 1994 and recorded in the office of the Register of Deeds of
19 Durham County in Plat book _____, page _____.

20 Section 6. This act becomes effective October 20, 1994. Any annexation
21 ordinance adopted on or after that date as to any of the territory described in Section
22 5 of this act is void, but the city may adopt a resolution of intent to annex some or all
23 of that territory at any time after ratification of this act without adopting a resolution
24 of consideration.



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April 15, 1997

To: Members of the House Local Government Committee I

From: Giles S. Perry, Committee Counsel

Re: House Bill 294 Parkwood Annexation Referenda
Introduced by Representatives Mosley; Rayfield and Capps

House Bill 294 is a local bill that would require a referendum in the Parkwood community of Durham County, if requested by 25% of the resident property owners in that area, before the area could be annexed by the City of Durham. No referendum would be required if the annexation of Parkwood was approved by $\frac{3}{4}$ vote of the Durham City Council.

House Bill 294 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 836 A BILL TO BE ENTITLED AN ACT TO CREATE THE NEW HANOVER
INTERNATIONAL AIRPORT ECONOMIC DEVELOPMENT ZONE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill,
and recommendation that the committee substitute bill be re-referred to the Committee
on Finance.**

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 836*

Short Title: Airport Econ. Develop. Zone Act.

(Local)

Sponsors: Representatives Wright; and Goodwin.

Referred to: Local and Regional Government I.

April 7, 1997

1

A BILL TO BE ENTITLED

2 AN ACT TO CREATE THE NEW HANOVER INTERNATIONAL AIRPORT
3 ECONOMIC DEVELOPMENT ZONE.

4 The General Assembly of North Carolina enacts:

5 Section 1. No municipality may annex any of the following described
6 property in New Hanover County, North Carolina, pursuant to Article 4A of Chapter
7 160A of the General Statutes, or pursuant to any other provision of law:

8 Legal Description Fee Property - New Hanover International Airport. Cape Fear
9 Township, New Hanover County, North Carolina.

10

11 Tract 1

12

13 Beginning at an existing concrete monument at the point of intersection of a segment
14 of the New Hanover International Airport property line with the eastern right-of-way
15 line of the CSX Transportation, Inc. Railroad right-of-way (130.0' right-of-way). Said
16 existing concrete monument being located North 79 degrees 06 minutes 51 seconds
17 East - 82.23' from an existing nail at the point of intersection of the centerline of
18 Secondary Road #1385. Hall Drive (60.0' right-of-way) with the centerline of the
19 CSX Transportation, Inc. Railroad right-of-way and having North Carolina grid
20 coordinates: North = 192.858.98. East = 2.326.559.18. Running thence from said
21 point of beginning 20.0' north east of and parallel with the northern right-of-way line
22 of Secondary Road #1385. South 63 degrees 19 minutes 30 seconds East - 592.10' to
23 a point; thence North 29 degrees 27 minutes 00 seconds East - 687.57' to a point;
24 thence North 75 degrees 48 minutes 15 seconds East - 999.87' to a point; thence north

1 77 degrees 03 minutes 15 seconds East - 101.03' to a point; thence North 01 degrees
2 38 minutes 45 seconds West - 210.20' to a point; thence South 75 degrees 48 minutes
3 15 seconds West - 97.16' to a point; thence North 01 degrees 04 minutes 30 seconds
4 West - 558.28' to a point; thence South 84 degrees 27 minutes 15 seconds West -
5 198.68' to a point; thence North 05 degrees 52 minutes 45 seconds East - 247.96' to a
6 point; thence North 19 degrees 12 minutes 45 seconds East - 256.94' to a point;
7 thence South 64 degrees 17 minutes 15 seconds East - 107.04' to a point; thence
8 North 01 degrees 05 minutes 30 seconds West - 508.71' to a point; thence North 68
9 degrees 32 minutes 45 seconds East - 423.97' to a point; thence North 21 degrees 23
10 minutes 45 seconds West - 1199.66' to a point in the eastern right-of-way line of the
11 CSX Transportation, Inc. Railroad right-of-way; thence with said right-of-way line
12 North 26 degrees 35 minutes 15 seconds East - 407.42' to a point; thence leaving said
13 right-of-way line and running South 55 degrees 20 minutes 45 seconds East - 98.99' to
14 a point; thence North 58 degrees 58 minutes 15 seconds East - 204.35' to a point;
15 thence North 26 degrees 49 minutes 15 seconds East - 79.26' to a point; thence South
16 56 degrees 23 minutes 45 seconds East - 82.69' to a point; thence North 68 degrees 37
17 minutes 15 seconds East - 282.77' to a point; thence South 57 degrees 45 minutes 45
18 seconds East - 278.20' to a point; thence South 21 degrees 22 minutes 45 seconds East
19 - 424.81' to a point; thence South 58 degrees 14 minutes 45 seconds East - 288.14' to
20 a point; thence South 58 degrees 52 minutes 20 seconds East - 193.79' to a point;
21 thence North 66 degrees 40 minutes 36 seconds East - 109.09' to a point; thence
22 North 68 degrees 35 minutes 30 seconds East - 279.59' to a point; thence South 19
23 degrees 49 minutes 45 seconds East - 79.70' to a point; thence South 68 degrees 31
24 minutes 45 seconds West - 277.32' to a point; thence south 64 degrees 31 minutes 45
25 seconds West - 106.12' Chord Distance to a point; thence South 14 degrees 47
26 minutes 30 seconds East - 886.49' to a point; thence South 21 degrees 23 minutes 00
27 seconds East - 628.90' to a point; thence South 87 degrees 50 minutes 53 seconds East
28 - 123.13' to a point; thence South 61 degrees 11 minutes 16 seconds East - 65.18' to a
29 point; thence South 45 degrees 08 minutes 30 seconds East - 58.02' to a point; thence
30 south 50 degrees 14 minutes 29 seconds East - 130.84' to a point; thence South 56
31 degrees 05 minutes 02 seconds East - 82.04' to a point; thence South 52 degrees 57
32 minutes 42 seconds East 86.04' to a point; thence South 45 degrees 15 minutes 36
33 seconds East 181.86' to a point; thence South 52 degrees 22 minutes 37 seconds East -
34 146.74' to a point; thence South 56 degrees 31 minutes 30 seconds East - 96.66' to a
35 point; thence South 57 degrees 14 minutes 05 seconds East - 218.04' to a point;
36 thence South 17 degrees 11 minutes 54 seconds East - 512.64' to a point; thence
37 North 72 degrees 60 minutes 36 seconds West - 800.85' to a point; thence South 21
38 degrees 23 minutes 00 seconds East - 211.13' to a point; thence South degrees 52
39 minutes 00 seconds East - 136.98' to a point; thence South 18 degrees 20 minutes 45
40 seconds East - 1532.59' to a point; thence South 73 degrees 10 minutes 45 seconds
41 East - 606.40' to a point; thence South 17 degrees 11 minutes 54 seconds East -
42 151.27' to a point; thence North 47 degrees 41 minutes 30 seconds East - 1361.25 to a
43 point; thence North 14 degrees 53 minutes 00 seconds East - 273.44' to a point;
44 thence North 14 degrees 55 minutes 15 seconds East - 238.61' to a point; thence

1 North 79 degrees 36 minutes 30 seconds East - 34.60' to a point; thence North 48
2 degrees 09 minutes 00 seconds East - 1420.38' to a point; thence North 17 degrees 27
3 minutes 00 seconds East - 203.95' to a point; thence North 16 degrees 23 minutes 58
4 seconds East - 640.89' to a point; thence South 73 degrees 14 minutes 30 seconds East
5 - 139.90' to a point; thence North 17 degrees 00 minutes 30 seconds East - 292.65' to
6 a point; thence South 52 degrees 19 minutes 07 seconds East - 325.43' to a point;
7 thence South 17 degrees 40 minutes 45 seconds East - 118.43' Chord Distance to
8 point; thence South 16 degrees 57 minutes 36 seconds West - 79.76' to a point; thence
9 South 73 degrees 08 minutes 15 seconds East - 42.36' to a point; thence North 17
10 degrees 38 minutes 45 seconds East - 72.43' to a point; thence North 47 degrees 44
11 minutes 00 seconds East - 1053.66 to a point; thence South 42 degrees 14 minutes 45
12 seconds East - 673.92' to a point; thence South 42 degrees 14 minutes 45 seconds East
13 - 228.33' to a point; thence North 72 degrees 59 minutes 15 seconds East - 232.96' to
14 a point; thence North 72 degrees 59 minutes 15 seconds East - 227.01' to a point;
15 thence South 66 degrees 59 minutes 45 seconds East - 508.72' to a point in the
16 western line of Futch Avenue; thence with western line of Futch Avenue South 08
17 degrees 49 minutes 15 seconds West - 801.08' to a point; thence South 88 degrees 03
18 minutes 00 seconds West - 77.89' to a point; thence South 10 degrees 00 minutes 30
19 seconds West - 141.01' to a point in the northern right-of-way line of Kerr Avenue;
20 thence with the northern right-of-way line of Kerr Avenue South 47 degrees 45
21 minutes 15 seconds West - 2091.59' to a point; thence South 47 degrees 45 minutes 15
22 seconds West - 170.76' to a point; thence South 25 degrees 16 minutes 21 seconds
23 West - 381.93' to a point; thence leaving the northern right-of-way line of Kerr
24 Avenue and running North 43 degrees 58 minutes 00 seconds West - 261.44' to a
25 point; thence South 54 degrees 35 minutes 00 seconds West - 251.37' to a point;
26 thence North 72 degrees 38 minutes 00 seconds West - 398.34' to a point; thence
27 South 24 degrees 56 minutes 15 seconds West - 357.52' to a point of the western
28 right-of-way line of the old Winter Park - Wrightsboro Road (00.0' right-of-way);
29 thence with said right-of-way line South 07 degrees 05 minutes 15 seconds East -
30 721.22' to a point; thence leaving the right-of-way line of the old Winter Park
31 -Wrightsboro Road and running North 82 degrees 23 minutes 15 seconds East -
32 622.58', along the northern line of Morris Road, to a point in the western right-of-
33 way line of North Kerr Avenue; thence with the western right-of-way line of North
34 Kerr Avenue South 14 degrees 47 minutes 30 seconds West - 986.16' to a point;
35 thence South 03 degrees 31 minutes 15 seconds West - 395.69' Chord Distance to a
36 point; thence leaving the right-of-way line of North Kerr Avenue and running South
37 14 degrees 41 minutes 45 seconds West - 409.16' to a point; thence South 43 degrees
38 03 minutes 30 seconds East - 1012.80' to a point; thence South 51 degrees 15 minutes
39 00 seconds East - 529.58' to a point; thence continuing the same course
40 approximately 100' to the center of the run of Smith Creek; thence in a south
41 westerly direction with the meanders of the centerline of the run of Smith Creek,
42 approximately 3750' to a point that bears North 21 degrees 23 minutes 45 seconds
43 West from a point on the bank of Smith Creek; thence South 21 degrees 23 minutes
44 45 seconds East - approximately 200.0' to a point of the bank of Smith Creek; thence

1 South 21 degrees 23 minutes 45 seconds East - 951.54' to a point; thence South 68
2 degrees 35 minutes 45 seconds West - 400.00' to a point; thence North 21 degrees 23
3 minutes 45 seconds West - 1434.65' to a point on the bank of Smith Creek; thence
4 continuing the same course approximately 150' to the centerline of the run of Smith
5 Creek; thence with the centerline of the run of Smith Creek as it meanders in a more
6 or less southwesterly direction approximately 9750' to the point of intersection of the
7 centerline of said run with the eastern right-of-way line of North 23rd Street; thence
8 leaving the run of Smith Creek and running North 02 degrees 38 minutes 35 seconds
9 East - approximately 60' to a point on the bank of Smith Creek; thence continuing
10 with the right-of-way line of North 23 Street, North 02 degrees 38 minutes 35 seconds
11 East - 753.21' to a point; thence South 89 degrees 24 minutes 45 seconds East - 162.28'
12 to a point; thence North 14 degrees 57 minutes 30 seconds East - 2124.43' to a point;
13 thence South 87 degrees 38 minutes 00 seconds West - 42.01' to a point; thence South
14 81 degrees 53 minutes 00 seconds west - 1035.91' to a point in the eastern right-of-
15 way line of North 23rd Street; thence with the said right-of-way line North 28 degrees
16 21 minutes 30 seconds West - 423.67' Chord Distance to a point; thence North 31
17 degrees 29 minutes 45 seconds West - 593.46' to a point; thence leaving the right-of-
18 way line of North 23rd Street and running North 58 degrees 31 minutes 00 seconds
19 East - 599.87' to a point; thence South 02 degrees 07 minutes 15 seconds East - 21.10'
20 to a point; thence North 87 degrees 37 minutes 00 seconds East - 180.51' to a point;
21 thence North 00 degrees 36 minutes 00 seconds West - 979.17' to a point; thence
22 North 63 degrees 19 minutes 45 seconds West - 320.87' to a point in the eastern right-
23 of-way line of the CSX Railroad right-of-way; thence with said Railroad right-of-way
24 North 26 degrees 38 minutes 00 seconds East - 1372.47' to the point of beginning and
25 containing 1498.13 acres more or less. The basic Airport Tract being subject to the
26 North Carolina National Guard Lease Tract (41.27 acres). Tracts 2, 3, and 4 as
27 shown on the Airport Exhibit A are included in acreage total. However, tracts are
28 not included in meets and bounds description of basic tract because tracts were
29 plotted from deed references and are not shown as a result of an actual field survey.

30

31 Tract 2

32

33 Beginning at an existing iron pipe in the eastern right-of-way line of the old Winter
34 Park - Wrightsboro Road (60.0' right-of-way). Said point of beginning being located
35 North 35 degrees 21 minutes 40 seconds East - 88.83' from an existing concrete
36 monument at the point of intersection of the western right-of-way line of the old
37 Winter Park - Wrightsboro Road with the northern line extended of Morris Road
38 (50.0' right-of-way). Running thence from said point of beginning with the eastern
39 right-of-way line of the old Winter Park - Wrightsboro Road North 07 degrees 04
40 minutes 30 seconds West - 80.0' to a point; thence leaving said right-of-way line and
41 running South 82 degrees 39 minutes 37 seconds West - 384.25' to a point; thence
42 South 01 degrees 30 minutes 45 seconds West - 80.00' to a point; thence South 82
43 degrees 30 minutes 47 seconds West - 372.31' to the point of beginning and
44 containing 691 acres more or less and representing all of Lot 3, of the John R. Morris

- 1 Division as shown on a map of said division Recorded in Deed Book 671 at Page 296
2 1/2 of the New Hanover Registry.
3
4 Tract 3
5
6 Beginning at an existing iron pipe in the eastern right-of-way line of the old Winter
7 Park - Wrightsboro Road (60.0' right-of-way). Said point of beginning being located
8 North 05 degrees 51 minutes 58 seconds East - 267.60' from an existing concrete
9 monument at the point of intersection of the western right-of-way line of the old
10 Winter Park - Wrightsboro Road with the northern right-of-way line extended of
11 Morris Road (50.0' right-of-way). Running thence from said point of beginning with
12 the eastern right-of-way line of the old Winter Park - Wrightsboro Road, North 07
13 degrees 04 minutes 45 seconds West - 252.96' to a point; thence leaving said right-of-
14 way line and running along an old ditch North 61 degrees 56 minutes 39 seconds East
15 - 138.50 feet to a point; thence North 48 degrees 03 minutes 30 seconds East - 279.00'
16 to a point; thence North 63 degrees 30 minutes 37 seconds East - 195.76' to a point;
17 thence leaving said ditch and running South 05 degrees 35 minutes 40 seconds South
18 05 degrees 35 minutes West - 243.15' to a point; thence North 84 degrees 25 minutes
19 15 seconds West - 16.0' to a point in the western line of a 15.0' wide alley; thence
20 with the western line of said alley South 05 degrees 36 minutes 15 seconds West -
21 360.33' to a point, said point being at the PC of a radius in said alley right-of-way
22 line; thence continuing with said right-of-way line as it curves to the west to a point
23 that bears South 49 degrees 18 minutes 45 seconds West - 20.74' Chord Distance
24 from the preceding point; thence with the northern line of another 15.0' wide alley
25 North 86 degrees 57 minutes 45 seconds West - 161.81' to a point, said point being at
26 the PC of a curve to the North; thence continuing with the line of said alley as it
27 curves to the north to a point that bears North 45 degrees 25 minutes 15 seconds
28 West - 19.90' Chord Distance from the preceding point; thence continuing with the
29 eastern line of said alley North 03 degrees 52 minutes 45 seconds West - 121.73' to a
30 point; thence crossing said alley South 82 degrees 57 minutes 47 seconds West -
31 15.02' to a point; thence with the western line of said alley South 03 degrees 52
32 minutes 44 seconds East - 121.73' to a point, the PC of a curve in said right-of-way
33 line; thence continuing with said right-of-way line as it curves to the west to a point
34 that bears South 46 degrees 08 minutes 17 seconds West - 21.88' Chord Distance
35 from the preceding point; thence continuing with the northern line of said alley
36 North 86 degrees 57 minutes 45 seconds West - 175.55' to the point of beginning and
37 containing 5.0781 acres more or less and being all of tract 1 and the Home Place
38 Tract of the John R. Morris Division as said division is shown on a map Recorded in
39 Deed Book 671 at Page 296 1/2 of the New Hanover County Registry.
40
41 Tract 4
42
43 Beginning at a point in the western right-of-way line of Farley Drive (60.0' right-of-
44 way). Said point or beginning being located North 76 degrees 42 minutes 45 seconds

1 West - 31.10' from a point on the centerline of Farley Drive which is located North
2 28 degrees 34 minutes 19 seconds East - 846.71', as measured along said centerline,
3 from the point of intersection of said centerline, with the centerline of Gordon Road
4 extended. Running thence from said point beginning with the western right-of-way
5 line of Farley Drive South 28 degrees 34 minutes 19 seconds West - 302.40' to a
6 point, thence leaving said right-of-way line and running North 80 degrees 07 minutes
7 09 seconds West - 1711.40' to a point in the eastern line of Futch Avenue; thence
8 with the eastern line of Futch Avenue North 08 degrees 49 minutes 15 seconds east -
9 302.74' to a point; thence leaving the eastern line of Futch Avenue and running
10 South 76 degrees 42 minutes 45 seconds East - 274.10' to the point of beginning and
11 containing 1.51 acres more or less.

12

13 Tract 5

14

15 Beginning at a point in the western right-of-way line of North 23rd Street, said point
16 being located South 81 degrees 53 minutes 00 seconds West - 104.69' from an existing
17 concrete monument at the point of intersection of a segment of the New Hanover
18 International Airport property line with the eastern right-of-way line on North 23rd
19 Street. Said concrete monument in the eastern right-of-way line of North 23rd Street
20 being located approximately 2750' as measured along said right-of-way line from the
21 point of intersection of said right-of-way line with the centerline of Smith Creek.
22 Running thence from said point of beginning South 81 degrees 53 minutes 00 seconds
23 West - 178.66' to a point; thence North 39 degrees 19 minutes 15 seconds East -
24 158.11' to a point; thence North 18 degrees 08 minutes 15 seconds East - 34.98' to a
25 point in the western right-of-way line of North 23rd Street; thence with the western
26 right-of-way line of North 23rd Street as it curves to the south to a point that bears
27 South 26 degrees 48 minutes 00 seconds East - 146.01' Chord Distance from the
28 preceding point.

29

30 Tract 6

31

32 Area to be acquired in accordance with the Airport Development Plan (1995-2015)
33 on file with the Federal Aviation Administration further described as:

34

35 Airport Development Plan (1995-2015), New Hanover
36 International Airport, Wilmington, North Carolina.

37

38 Phase 1 (1995-2000)

39

40 Tract 1

41

42 Beginning at the point of intersection of the northern right-of-way line of Morris
43 Road with the western right-of-way line of North Kerr Avenue. Running thence from
44 said point of beginning with the existing property line of the New Hanover

1 International Airport, South 82 degrees 23 minutes 15 seconds East - 622.58' to a
2 point; thence North 07 degrees 05 minutes 15 seconds West - 721.22' to a point;
3 thence North 24 degrees 56 minutes 15 seconds East - 357.52' to a point; thence
4 South 72 degrees 38 minutes 00 seconds East - 398.34' to a point; thence North 54
5 degrees 35 minutes 00 seconds East - 251.27' to a point; thence South 43 degrees 58
6 minutes 00 seconds East - 261.44' to a point in the western right-of-way line of North
7 Kerr Avenue; thence in a southwesterly direction with the western right-of-way line
8 of North Kerr Avenue 875' more or less to the point of beginning and containing 13.6
9 acres more or less.

10

11 Tract 2

12

13 Beginning at an existing concrete monument at the point of intersection of the
14 western line of Futch Avenue with the northern line of Old Gordon Road. Running
15 thence from said point of beginning with the western right-of-way line of Futch
16 Avenue North 08 degrees 49 minutes 15 seconds East - 500' more or less to a point;
17 thence South 80 degrees 07 minutes 09 seconds East - 191.40' more or less to the
18 western right-of-way line of Farley Drive; thence North 28 degrees 34 minutes 19
19 seconds East - 302.40' to a point; thence leaving said right-of-way line and running
20 North 76 degrees 42 minutes 45 seconds West - 294.10' to a point in the northeastern
21 line of the New Hanover International Airport; thence with said Airport property
22 line, North 66 degrees 59 minutes 45 seconds West - 508.72' to a point; thence South
23 72 degrees 59 minutes 15 seconds West - 459.97' to a point; thence North 42 degrees
24 14 minutes 45 seconds West - 802.25' to a point; thence in a northeasterly direction
25 and parallel with the centerline of the existing northeast - southwest runway 3400'
26 more or less to the point of intersection of said line with the southern right-of-way
27 line of North Kerr Avenue; thence with the southern right-of-way line of North Kerr
28 Avenue as it curves to the south and to the west 5625' to the point of intersection of
29 said right-of-way line with the northeastern property line of the New Hanover
30 International Airport; thence North 10 degrees 00 minutes 30 seconds West - 141.01'
31 to a point; thence North 88 degrees 03 minutes 00 seconds East - 77.89' to the point
32 of beginning and containing 157 acres more or less.

33

34 Tract 3

35

36 Beginning at the point of intersection of the southern right-of-way line of secondary
37 road #1370 with the western right-of-way line of secondary road #1319. Running
38 thence from said point of beginning with the western right-of-way line of secondary
39 road #1319 in a southeasterly direction, approximately 2000' to the point of
40 intersection of said right-of-way line with the southern right-of-way line of secondary
41 road #1320 if said right-of-way line were extended in a northwesterly direction;
42 thence with the western right-of-way line of secondary road #1320 as it curves to the
43 south and to the east approximately 2375' to the point of intersection of said right-of-
44 way line with the property line of the New Hanover International Airport; thence

1 with the property line of the New Hanover International Airport South 14 degrees 53
2 minutes 00 seconds West - 300' more or less to a point; thence South 47 degrees 41
3 minutes 30 seconds West - 1361.25' to a point; thence South 47 degrees 41 minutes 32
4 seconds West - 143.48' to a point; thence North 73 degrees 10 minutes 12 seconds
5 West - 442.36' to a point; thence North 18 degrees 20 minutes 45 seconds West -
6 303.93' to a point; thence North 18 degrees 20 minutes 45 second West - 1532.59' to a
7 point; thence North 72 degrees 52 minutes 00 seconds West - 136.98' to a point;
8 thence North 21 degrees 23 minutes 00 seconds West - 1806.80' to a point; thence
9 North 14 degrees 47 minutes 30 seconds West - 886.49' to a point in the southern
10 right-of-way line of secondary road #1370; thence North 64 degrees 31 minutes 45
11 seconds East - 106.12' Chord Distance to a point; thence North 68 degrees 31 minutes
12 45 seconds East - 277.32' to the point of beginning and containing 100 acres more or
13 less.

14

15 Tract 4

16

17 Beginning at the point of intersection of the northern right-of-way line of secondary
18 road #1370 with the western right-of-way line of secondary road #1319. Running
19 thence from said point of beginning with the property line of the New Hanover
20 International Airport South 68 degrees 35 minutes 30 seconds West - 279.59' to a
21 point; thence South 66 degrees 40 minutes 36 seconds West - 109.09' to a point;
22 thence South 58 degrees 11 minutes 36 seconds West - 88.42' Chord Distance to a
23 point; thence South 54 degrees 07 minutes 05 seconds West - 31.10' Chord Distance
24 to a point; thence South 53 degrees 03 minutes 30 seconds West - 148.73' to a point;
25 thence North 21 degrees 24 minutes 45 seconds West - 182.97' to a point; thence
26 North 53 degrees 34 minutes 15 seconds East - 145.53' to a point; thence North 58
27 degrees 14 minutes 45 seconds West - 288.14' to a point; thence north 21 degrees 22
28 minutes 45 seconds West - 424.81' to a point; thence North 57 degrees 45 minutes 45
29 seconds West - 278.20' to a point; thence South 68 degrees 37 minutes 15 seconds
30 West - 282.77' to a point; thence North 56 degrees 23 minutes 45 seconds West -
31 92.69' to a point; thence South 26 degrees 49 minutes 15 seconds West - 79.26' to a
32 point; thence South 58 degrees 58 minutes 15 seconds West - 204.35' to a point;
33 thence North 55 degrees 20 minutes 45 seconds West - 98.99' to a point in the
34 southeastern right-of-way line of the now or formerly CSX Railroad; thence with the
35 southeastern right-of-way line of the now or formerly CSX Railroad in a northeasterly
36 direction 1300' more or less to the point of intersection of said right-of-way line with
37 the southern right-of-way line of secondary road #1322 (North Kerr Avenue); thence
38 with the southern right-of-way line of North Kerr Avenue 50' more or less to the
39 point of intersection of said right-of-way line with the western right-of-way of
40 secondary road #1319; thence with the western right-of-way line of secondary road
41 #1319, 2125' more or less to the point of beginning.

42

43 Tract 4 A

44

1 Beginning at the point of intersection of the northern right-of-way line of Blue Clay
2 Road with the southern right-of-way line of North Kerr Avenue. Running thence
3 from said point of beginning with the northern right-of-way line of Blue Clay Road
4 1600' more or less to the point of intersection of said right-of-way line with the
5 western flare line of the proposed clear zone for the northwest - southeast runway of
6 the New Hanover International Airport; thence with said flare line in a northwesterly
7 direction 1450' more or less to the point of intersection with said flare line with the
8 southern right-of-way line of North Kerr Avenue; thence with the southern right-of-
9 way line of North Kerr Avenue in a southeasterly direction 1425' more or less to the
10 point of beginning. Tract 4 and Tract 4A contain 47 acres more or less.

11

12 Tract 5

13

14 Beginning at a point in the southern right-of-way line of the now or formerly CSX
15 Railroad that is located 4000' more or less, as measured along said right-of-way line,
16 from the point of intersection of said right-of-way line with the centerline of
17 secondary road #1386. Said point of beginning also being the point of intersection
18 of said Railroad right-of-way line with the property line of the New Hanover
19 International Airport. Running thence from said point of beginning with the
20 property line of the New Hanover International Airport South 21 degrees 23 minutes
21 45 seconds East - 1199.66' to a point; thence South 68 degrees 32 minutes 45 seconds
22 West - 423.97' to a point; thence South 01 degrees 05 minutes 30 seconds East - 300'
23 more or less to a point; thence leaving said property line and running in a
24 southwesterly direction, and perpendicular to the centerline of the southeast-
25 northwest runway of the New Hanover International Airport 250' more or less to a
26 point; thence in a northwesterly direction and parallel with the centerline of the
27 southeast-northwest runway 250' more or less to a point; thence in a southwesterly
28 direction and perpendicular to the runway centerline 650' more or less to a point;
29 thence in a southeasterly direction and parallel with said runway centerline 1300'
30 more or less to a point; thence in a northeasterly direction and perpendicular to the
31 centerline of said runway 450' more or less to a point in the western property line of
32 the New Hanover International Airport; thence South 01 degrees 04 minutes 30
33 seconds East - 75' more or less to a point; thence North 75 degrees 48 minutes 15
34 seconds East - 97.16' to a point; thence South 01 degrees 38 minutes 45 seconds East
35 - 210.20' to a point; thence South 77 degrees 03 minutes 15 seconds West - 101.03' to
36 a point; thence South 75 degrees 48 minutes 15 seconds West - 999.87' to a point;
37 thence South 29 degrees 27 minutes 00 seconds West - 687.57' to a point in the
38 northern right-of-way line of secondary road #1386; thence with the northern right-
39 of-way line of secondary road #1386 North 63 degrees 19 minutes 30 seconds West -
40 592.10' to the point of intersection of said right-of-way line with the southern right-of-
41 way line of the now or formerly CSX Railroad; thence with the southern right-of-way
42 line of the CSX Railroad in a northeasterly direction 3970' more or less to the point
43 of beginning and containing 71 acres more or less.

44

1 Phase 2 (2001-2005)

2

3 Tract 1

4

5 Beginning at a point in the northwestern property line of the New Hanover
6 International Airport, said point of beginning being located South 01 degree 05
7 minutes 30 seconds East - 300.0' more or less as measured along said property line,
8 from property corner #1025. Said property corner being shown on an exhibit A
9 property map of the New Hanover International Airport. Running thence from said
10 point of beginning in a southwesterly direction and perpendicular to the northwest-
11 southeast runway of said airport 250' more or less to a point; thence in a
12 northwesterly direction and parallel with the northwest-southeast runway centerline
13 250.0' more or less to a point; thence in a southwesterly direction and perpendicular
14 to the centerline of said northwest-southeast runway 650.0' to a point; thence in a
15 southeasterly direction and parallel with the centerline of said runway 650.0' to a
16 point; thence in a northeasterly direction and perpendicular to the centerline of said
17 runway 550' more or less to a point in the northwestern property line of the New
18 Hanover International Airport; thence with said property line North 05 degrees 52
19 minutes 45 seconds East - 125' more or less to a point; thence North 19 degrees 12
20 minutes 45 seconds East - 256.94' to a point; thence South 64 degrees 17 minutes 15
21 seconds East - 107.04' to a point; thence North 01 degrees 05 minutes 30 seconds
22 West - 208.71' to the point of beginning.

23

24 Phase 3 (2006-2015)

25

26 Tract 1

27

28 Beginning at a point in the northwestern property line of the New Hanover
29 International Airport. Said point of beginning being located North 01 degree 04
30 minutes 30 seconds West - 75' more or less from a concrete monument at property
31 corner 1019 of the New Hanover International Airport. Said property corner being
32 shown on an exhibit A property map of the New Hanover International Airport.
33 Running thence from said point of beginning in a southwesterly direction and
34 perpendicular to the centerline of the northwest-southeast runway 450' more or less
35 to a point; thence in a northwesterly direction and parallel with the centerline of the
36 northwest-southeast runway 650' more or less to a point; thence in a northeasterly
37 direction and perpendicular to the northwest-southeast runway 550' to a point in the
38 northwestern property line of the New Hanover International Airport; thence with
39 said property line South 05 degrees 52 minutes 45 seconds West - 122.96' more or
40 less to a point; thence North 84 degrees 27 minutes 15 seconds East - 198.68' to a
41 point; thence South 01 degrees 04 minutes 30 seconds East - 483.28' to the point of
42 beginning.

43

44 Tract 2

1
2 Beginning at the point or intersection of the northern right-of-way line of North Kerr
3 Avenue with the western right-of-way line of Blue Clay Road. Running thence with
4 the northern right-of-way line of North Kerr Avenue in a northwesterly direction
5 1450' more or less to a point in the flare line of the clear zone for the northwest-
6 southeast runway of the New Hanover International Airport; thence with said flare
7 line in a northwesterly direction 300' to a point; thence in a northeasterly direction
8 with the end line of said clear zone 1750' to a corner of said clear zone; thence in a
9 southwesterly direction with the flare line of said clear zone 500' more or less to a
10 point in the northern right-of-way line of Blue Clay Road; thence with the northern
11 right-of-way line of Blue Clay Road 300' more or less to the point of beginning.

12
13 Ultimate

14
15 Tract 1

16
17 Beginning at the point of intersection of the western right-of-way line of secondary
18 road #1319 with the southern right-of-way line of North Kerr Avenue (secondary
19 road #1322). Running thence from said point of beginning with the southern right-
20 of-way line of North Kerr Avenue as it curves to the south 600' more or less to a
21 point; thence leaving said right-of-way line and running with the southern right-of-
22 way line of the proposed relocated North Kerr Avenue in a northeasterly direction
23 1400' more or less to the point of intersection of said right-of-way line with the
24 western flare line of a proposed clear zone for a proposed northwest-southeast
25 parallel runway; thence with the flare line of said clear zone in a northwesterly
26 direction 1200' more or less to a point; thence in a northeasterly direction in the end
27 line of said clear zone 1750' to a point in the eastern flare line of said clear zone;
28 thence with said flare line in a southwesterly direction 1450' more or less to the point
29 of intersection of said flare line with the southern right-of-way line of the proposed
30 relocated North Kerr Avenue; thence in a southeasterly direction 2375' more or less
31 to the point of intersection of said relocated North Kerr Avenue with the existing
32 right-of-way line of North Kerr Avenue; thence continuing with the southern right-of-
33 way line of North Kerr Avenue as it now exists 4500' more or less to the point of
34 intersection of said right-of-way line with the proposed extension of the northeast
35 property line of the New Hanover International Airport; thence in a southwesterly
36 direction and parallel with the centerline of the northeast-southwest runway 3400'
37 more or less to a point, a property corner of the New Hanover International Airport;
38 thence with the property line of the New Hanover International Airport South 47
39 degrees 44 minutes 00 seconds West - 1053.66' to a point; thence South 17 degrees 38
40 minutes 45 seconds West - 72.43' to a point; thence North 73 degrees 08 minutes 15
41 seconds West - 42.36' to a point; thence North 16 degrees 57 minutes 36 seconds East
42 - 79.76' to a point; thence North 17 degrees 40 minutes 45 seconds West - 118.43'
43 Chord Distance to a point; thence North 52 degrees 19 minutes 07 seconds West -
44 325.43' to a point; thence South 17 degrees 00 minutes 30 seconds West - 292.65' to a

1 point; thence North 73 degrees 14 minutes 30 seconds West - 139.90' to a point;
2 thence South 16 degrees 23 minutes 58 seconds West - 640.89' to a point; thence
3 South 17 degrees 27 minutes 00 seconds West - 203.95' to a point; thence South 48
4 degrees 09 minutes 00 seconds West - 1420.38' to a point; thence South 79 degrees 36
5 minutes 30 seconds West - 34.60' to a point; thence South 14 degrees 55 minutes 15
6 seconds West - 200' more or less to the point of intersection of said line with the
7 western right-of-way line of secondary road #1320; thence with the western right-of-
8 way line of secondary road #1320 in a northwesterly direction as it curves to the
9 north 2375' more or less to the point of intersection of said right-of-way line with the
10 western right-of-way line of secondary road #1319; thence with the western right-of-
11 way line of secondary road #1319 in a northwesterly direction 4125' more or less to
12 the point of beginning and containing 530 acres more or less.

13

14 Tract 2

15

16 Beginning at the point of intersection of the northern right-of-way line of Morris
17 Road with the northwestern right-of-way line of North Kerr Avenue. Running thence
18 from said point of beginning with the northwestern right-of-way line of North Kerr
19 Avenue South 14 degrees 47 minutes 30 seconds West - 986.16' to a point; thence
20 South 03 degrees 31 minutes 15 seconds West - 395.69' Chord Distance to a point;
21 thence South 14 degrees 41 minutes 45 seconds West - 409.16' to a point; thence
22 South 43 degrees 03 minutes 30 seconds East - 1100' more or less to a point; thence
23 leaving said airport line and running in a north northeasterly direction 350.0' to a
24 point in the end line of a proposed clear zone for the proposed northwest-southeast
25 parallel runway; thence with the end line of said clear zone in a northeasterly
26 direction 1100' more or less to a point; thence with the eastern flare line of said clear
27 zone in a northwesterly direction 1750' more or less to a point in the proposed
28 eastern right-of-way line of the proposed relocated North Kerr Avenue; thence with
29 the proposed right-of-way line of the relocated North Kerr Avenue and crossing the
30 existing North Kerr Avenue 2125' more or less to a point in the existing airport
31 property line; thence with said property line South 47 degrees 45 minutes 15 seconds
32 West - 850' more or less to a point; thence South 47 degrees 45 minutes 15 seconds
33 West - 170.76' to a point; thence South 25 degrees 16 minutes 21 seconds West -
34 381.93' to a point; thence continuing with the existing western right-of-way line of
35 North Kerr Avenue in a southwesterly direction 875' more or less to the point of
36 beginning and containing 70 acres more or less.

37

38 Section 2. The boundary of the area described in Section 1 of this act
39 shall be considered "municipal boundary" of the City of Wilmington for the purposes
40 of Part 3 of Article 4A of Chapter 160A of the General Statutes with respect to
41 future annexations by the City of Wilmington.

41

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 836*
Proposed Committee Substitute H836-PCS4090

Short Title: Airport Econ. Develop. Zone Act.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CREATE THE NEW HANOVER INTERNATIONAL AIRPORT
3 ECONOMIC DEVELOPMENT ZONE.

4 The General Assembly of North Carolina enacts:

5 Section 1. No municipality may annex any of the following described
6 property in New Hanover County, North Carolina, pursuant to Article 4A of Chapter
7 160A of the General Statutes, or pursuant to any other provision of law, as long as
8 the described property is used as part of an airport economic development zone:

9 Legal Description Fee Property - New Hanover International Airport. Cape Fear
10 Township, New Hanover County, North Carolina.

11

12 Tract 1

13

14 Beginning at an existing concrete monument at the point of intersection of a segment
15 of the New Hanover International Airport property line with the eastern right-of-way
16 line of the CSX Transportation, Inc. Railroad right-of-way (130.0' right-of-way). Said
17 existing concrete monument being located North 79 degrees 06 minutes 51 seconds
18 East - 82.23' from an existing nail at the point of intersection of the centerline of
19 Secondary Road #1385. Hall Drive (60.0' right-of-way) with the centerline of the
20 CSX Transportation, Inc. Railroad right-of-way and having North Carolina grid
21 coordinates: North = 192.858.98. East = 2.326.559.18. Running thence from said
22 point of beginning 20.0' north east of and parallel with the northern right-of-way line
23 of Secondary Road #1385. South 63 degrees 19 minutes 30 seconds East - 592.10' to

1 a point; thence North 29 degrees 27 minutes 00 seconds East - 687.57' to a point;
2 thence North 75 degrees 48 minutes 15 seconds East - 999.87' to a point; thence north
3 77 degrees 03 minutes 15 seconds East - 101.03' to a point; thence North 01 degrees
4 38 minutes 45 seconds West - 210.20' to a point; thence South 75 degrees 48 minutes
5 15 seconds West - 97.16' to a point; thence North 01 degrees 04 minutes 30 seconds
6 West - 558.28' to a point; thence South 84 degrees 27 minutes 15 seconds West -
7 198.68' to a point; thence North 05 degrees 52 minutes 45 seconds East - 247.96' to a
8 point; thence North 19 degrees 12 minutes 45 seconds East - 256.94' to a point;
9 thence South 64 degrees 17 minutes 15 seconds East - 107.04' to a point; thence
10 North 01 degrees 05 minutes 30 seconds West - 508.71' to a point; thence North 68
11 degrees 32 minutes 45 seconds East - 423.97' to a point; thence North 21 degrees 23
12 minutes 45 seconds West - 1199.66' to a point in the eastern right-of-way line of the
13 CSX Transportation, Inc. Railroad right-of-way; thence with said right-of-way line
14 North 26 degrees 35 minutes 15 seconds East - 407.42' to a point; thence leaving said
15 right-of-way line and running South 55 degrees 20 minutes 45 seconds East - 98.99' to
16 a point; thence North 58 degrees 58 minutes 15 seconds East - 204.35' to a point;
17 thence North 26 degrees 49 minutes 15 seconds East - 79.26' to a point; thence South
18 56 degrees 23 minutes 45 seconds East - 82.69' to a point; thence North 68 degrees 37
19 minutes 15 seconds East - 282.77' to a point; thence South 57 degrees 45 minutes 45
20 seconds East - 278.20' to a point; thence South 21 degrees 22 minutes 45 seconds East
21 - 424.81' to a point; thence South 58 degrees 14 minutes 45 seconds East - 288.14' to
22 a point; thence South 58 degrees 52 minutes 20 seconds East - 193.79' to a point;
23 thence North 66 degrees 40 minutes 36 seconds East - 109.09' to a point; thence
24 North 68 degrees 35 minutes 30 seconds East - 279.59' to a point; thence South 19
25 degrees 49 minutes 45 seconds East - 79.70' to a point; thence South 68 degrees 31
26 minutes 45 seconds West - 277.32' to a point; thence south 64 degrees 31 minutes 45
27 seconds West - 106.12' Chord Distance to a point; thence South 14 degrees 47
28 minutes 30 seconds East - 886.49' to a point; thence South 21 degrees 23 minutes 00
29 seconds East - 628.90' to a point; thence South 87 degrees 50 minutes 53 seconds East
30 - 123.13' to a point; thence South 61 degrees 11 minutes 16 seconds East - 65.18' to a
31 point; thence South 45 degrees 08 minutes 30 seconds East - 58.02' to a point; thence
32 south 50 degrees 14 minutes 29 seconds East - 130.84' to a point; thence South 56
33 degrees 05 minutes 02 seconds East - 82.04' to a point; thence South 52 degrees 57
34 minutes 42 seconds East 86.04' to a point; thence South 45 degrees 15 minutes 36
35 seconds East 181.86' to a point; thence South 52 degrees 22 minutes 37 seconds East -
36 146.74' to a point; thence South 56 degrees 31 minutes 30 seconds East - 96.66' to a
37 point; thence South 57 degrees 14 minutes 05 seconds East - 218.04' to a point;
38 thence South 17 degrees 11 minutes 54 seconds East - 512.64' to a point; thence
39 North 72 degrees 60 minutes 36 seconds West - 800.85' to a point; thence South 21
40 degrees 23 minutes 00 seconds East - 211.13' to a point; thence South degrees 52
41 minutes 00 seconds East - 136.98' to a point; thence South 18 degrees 20 minutes 45
42 seconds East - 1532.59' to a point; thence South 73 degrees 10 minutes 45 seconds
43 East - 606.40' to a point; thence South 17 degrees 11 minutes 54 seconds East -
44 151.27' to a point; thence North 47 degrees 41 minutes 30 seconds East - 1361.25 to a

1 point; thence North 14 degrees 53 minutes 00 seconds East - 273.44' to a point;
2 thence North 14 degrees 55 minutes 15 seconds East - 238.61' to a point; thence
3 North 79 degrees 36 minutes 30 seconds East - 34.60' to a point; thence North 48
4 degrees 09 minutes 00 seconds East - 1420.38' to a point; thence North 17 degrees 27
5 minutes 00 seconds East - 203.95' to a point; thence North 16 degrees 23 minutes 58
6 seconds East - 640.89' to a point; thence South 73 degrees 14 minutes 30 seconds East
7 - 139.90' to a point; thence North 17 degrees 00 minutes 30 seconds East - 292.65' to
8 a point; thence South 52 degrees 19 minutes 07 seconds East - 325.43' to a point;
9 thence South 17 degrees 40 minutes 45 seconds East - 118.43' Chord Distance to
10 point; thence South 16 degrees 57 minutes 36 seconds West - 79.76' to a point; thence
11 South 73 degrees 08 minutes 15 seconds East - 42.36' to a point; thence North 17
12 degrees 38 minutes 45 seconds East - 72.43' to a point; thence North 47 degrees 44
13 minutes 00 seconds East - 1053.66 to a point; thence South 42 degrees 14 minutes 45
14 seconds East - 673.92' to a point; thence South 42 degrees 14 minutes 45 seconds East
15 - 228.33' to a point; thence North 72 degrees 59 minutes 15 seconds East - 232.96' to
16 a point; thence North 72 degrees 59 minutes 15 seconds East - 227.01' to a point;
17 thence South 66 degrees 59 minutes 45 seconds East - 508.72' to a point in the
18 western line of Futch Avenue; thence with western line of Futch Avenue South 08
19 degrees 49 minutes 15 seconds West - 801.08' to a point; thence South 88 degrees 03
20 minutes 00 seconds West - 77.89' to a point; thence South 10 degrees 00 minutes 30
21 seconds West - 141.01' to a point in the northern right-of-way line of Kerr Avenue;
22 thence with the northern right-of-way line of Kerr Avenue South 47 degrees 45
23 minutes 15 seconds West - 2091.59' to a point; thence South 47 degrees 45 minutes 15
24 seconds West -- 170.76' to a point; thence South 25 degrees 16 minutes 21 seconds
25 West - 381.93' to a point; thence leaving the northern right-of-way line of Kerr
26 Avenue and running North 43 degrees 58 minutes 00 seconds West - 261.44' to a
27 point; thence South 54 degrees 35 minutes 00 seconds West - 251.37' to a point;
28 thence North 72 degrees 38 minutes 00 seconds West - 398.34' to a point; thence
29 South 24 degrees 56 minutes 15 seconds West - 357.52' to a point of the western
30 right-of-way line of the old Winter Park - Wrightsboro Road (00.0' right-of-way);
31 thence with said right-of-way line South 07 degrees 05 minutes 15 seconds East -
32 721.22' to a point; thence leaving the right-of-way line of the old Winter Park
33 -Wrightsboro Road and running North 82 degrees 23 minutes 15 seconds East -
34 622.58', along the northern line of Morris Road, to a point in the western right-of-
35 way line of North Kerr Avenue; thence with the western right-of-way line of North
36 Kerr Avenue South 14 degrees 47 minutes 30 seconds West - 986.16' to a point;
37 thence South 03 degrees 31 minutes 15 seconds West - 395.69' Chord Distance to a
38 point; thence leaving the right-of-way line of North Kerr Avenue and running South
39 14 degrees 41 minutes 45 seconds West - 409.16' to a point; thence South 43 degrees
40 03 minutes 30 seconds East - 1012.80' to a point; thence South 51 degrees 15 minutes
41 00 seconds East - 529.58' to a point; thence continuing the same course
42 approximately 100' to the center of the run of Smith Creek; thence in a south
43 westerly direction with the meanders of the centerline of the run of Smith Creek,
44 approximately 3750' to a point that bears North 21 degrees 23 minutes 45 seconds

1 West from a point on the bank of Smith Creek; thence South 21 degrees 23 minutes
2 45 seconds East - approximately 200.0' to a point of the bank of Smith Creek; thence
3 South 21 degrees 23 minutes 45 seconds East - 951.54' to a point; thence South 68
4 degrees 35 minutes 45 seconds West - 400.00' to a point; thence North 21 degrees 23
5 minutes 45 seconds West - 1434.65' to a point on the bank of Smith Creek; thence
6 continuing the same course approximately 150' to the centerline of the run of Smith
7 Creek; thence with the centerline of the run of Smith Creek as it meanders in a more
8 or less southwesterly direction approximately 9750' to the point of intersection of the
9 centerline of said run with the eastern right-of-way line of North 23rd Street; thence
10 leaving the run of Smith Creek and running North 02 degrees 38 minutes 35 seconds
11 East - approximately 60' to a point on the bank of Smith Creek; thence continuing
12 with the right-of-way line of North 23 Street, North 02 degrees 38 minutes 35 seconds
13 East - 753.21' to a point; thence South 89 degrees 24 minutes 45 seconds East - 162.28'
14 to a point; thence North 14 degrees 57 minutes 30 seconds East - 2124.43' to a point;
15 thence South 87 degrees 38 minutes 00 seconds West - 42.01' to a point; thence South
16 81 degrees 53 minutes 00 seconds west - 1035.91' to a point in the eastern right-of-
17 way line of North 23rd Street; thence with the said right-of-way line North 28 degrees
18 21 minutes 30 seconds West - 423.67' Chord Distance to a point; thence North 31
19 degrees 29 minutes 45 seconds West - 593.46' to a point; thence leaving the right-of-
20 way line of North 23rd Street and running North 58 degrees 31 minutes 00 seconds
21 East - 599.87' to a point; thence South 02 degrees 07 minutes 15 seconds East - 21.10'
22 to a point; thence North 87 degrees 37 minutes 00 seconds East - 180.51' to a point;
23 thence North 00 degrees 36 minutes 00 seconds West - 979.17' to a point; thence
24 North 63 degrees 19 minutes 45 seconds West - 320.87' to a point in the eastern right-
25 of-way line of the CSX Railroad right-of-way; thence with said Railroad right-of-way
26 North 26 degrees 38 minutes 00 seconds East - 1372.47' to the point of beginning and
27 containing 1498.13 acres more or less. The basic Airport Tract being subject to the
28 North Carolina National Guard Lease Tract (41.27 acres). Tracts 2, 3, and 4 as
29 shown on the Airport Exhibit A are included in acreage total. However, tracts are
30 not included in meets and bounds description of basic tract because tracts were
31 plotted from deed references and are not shown as a result of an actual field survey.

32
33 Tract 2

34
35 Beginning at an existing iron pipe in the eastern right-of-way line of the old Winter
36 Park - Wrightsboro Road (60.0' right-of-way). Said point of beginning being located
37 North 35 degrees 21 minutes 40 seconds East - 88.83' from an existing concrete
38 monument at the point of intersection of the western right-of-way line of the old
39 Winter Park - Wrightsboro Road with the northern line extended of Morris Road
40 (50.0' right-of-way). Running thence from said point of beginning with the eastern
41 right-of-way line of the old Winter Park - Wrightsboro Road North 07 degrees 04
42 minutes 30 seconds West - 80.0' to a point; thence leaving said right-of-way line and
43 running South 82 degrees 39 minutes 37 seconds West - 384.25' to a point; thence
44 South 01 degrees 30 minutes 45 seconds West - 80.00' to a point; thence South 82

1 degrees 30 minutes 47 seconds West - 372.31' to the point of beginning and
2 containing 691 acres more or less and representing all of Lot 3, of the John R. Morris
3 Division as shown on a map of said division Recorded in Deed Book 671 at Page 296
4 1/2 of the New Hanover Registry.

5

6 Tract 3

7

8 Beginning at an existing iron pipe in the eastern right-of-way line of the old Winter
9 Park - Wrightsboro Road (60.0' right-of-way). Said point of beginning being located
10 North 05 degrees 51 minutes 58 seconds East - 267.60' from an existing concrete
11 monument at the point of intersection of the western right-of-way line of the old
12 Winter Park - Wrightsboro Road with the northern right-of-way line extended of
13 Morris Road (50.0' right-of-way). Running thence from said point of beginning with
14 the eastern right-of-way line of the old Winter Park - Wrightsboro Road, North 07
15 degrees 04 minutes 45 seconds West - 252.96' to a point; thence leaving said right-of-
16 way line and running along an old ditch North 61 degrees 56 minutes 39 seconds East
17 - 138.50 feet to a point; thence North 48 degrees 03 minutes 30 seconds East - 279.00'
18 to a point; thence North 63 degrees 30 minutes 37 seconds East - 195.76' to a point;
19 thence leaving said ditch and running South 05 degrees 35 minutes 40 seconds South
20 05 degrees 35 minutes West - 243.15' to a point; thence North 84 degrees 25 minutes
21 15 seconds West - 16.0' to a point in the western line of a 15.0' wide alley; thence
22 with the western line of said alley South 05 degrees 36 minutes 15 seconds West -
23 360.33' to a point, said point being at the PC of a radius in said alley right-of-way
24 line; thence continuing with said right-of-way line as it curves to the west to a point
25 that bears South 49 degrees 18 minutes 45 seconds West - 20.74' Chord Distance
26 from the preceding point; thence with the northern line of another 15.0' wide alley
27 North 86 degrees 57 minutes 45 seconds West - 161.81' to a point, said point being at
28 the PC of a curve to the North; thence continuing with the line of said alley as it
29 curves to the north to a point that bears North 45 degrees 25 minutes 15 seconds
30 West - 19.90' Chord Distance from the preceding point; thence continuing with the
31 eastern line of said alley North 03 degrees 52 minutes 45 seconds West - 121.73' to a
32 point; thence crossing said alley South 82 degrees 57 minutes 47 seconds West -
33 15.02' to a point; thence with the western line of said alley South 03 degrees 52
34 minutes 44 seconds East - 121.73' to a point, the PC of a curve in said right-of-way
35 line; thence continuing with said right-of-way line as it curves to the west to a point
36 that bears South 46 degrees 08 minutes 17 seconds West - 21.88' Chord Distance
37 from the preceding point; thence continuing with the northern line of said alley
38 North 86 degrees 57 minutes 45 seconds West - 175.55' to the point of beginning and
39 containing 5.0781 acres more or less and being all of tract 1 and the Home Place
40 Tract of the John R. Morris Division as said division is shown on a map Recorded in
41 Deed Book 671 at Page 296 1/2 of the New Hanover County Registry.

42

43 Tract 4

44

1 Beginning at a point in the western right-of-way line of Farley Drive (60.0' right-of-
2 way). Said point or beginning being located North 76 degrees 42 minutes 45 seconds
3 West - 31.10' from a point on the centerline of Farley Drive which is located North
4 28 degrees 34 minutes 19 seconds East - 846.71', as measured along said centerline,
5 from the point of intersection of said centerline, with the centerline of Gordon Road
6 extended. Running thence from said point beginning with the western right-of-way
7 line of Farley Drive South 28 degrees 34 minutes 19 seconds West - 302.40' to a
8 point, thence leaving said right-of-way line and running North 80 degrees 07 minutes
9 09 seconds West - 1711.40' to a point in the eastern line of Futch Avenue; thence
10 with the eastern line of Futch Avenue North 08 degrees 49 minutes 15 seconds east -
11 302.74' to a point; thence leaving the eastern line of Futch Avenue and running
12 South 76 degrees 42 minutes 45 seconds East - 274.10' to the point of beginning and
13 containing 1.51 acres more or less.

14
15 Tract 5

16
17 Beginning at a point in the western right-of-way line of North 23rd Street, said point
18 being located South 81 degrees 53 minutes 00 seconds West - 104.69' from an existing
19 concrete monument at the point of intersection of a segment of the New Hanover
20 International Airport property line with the eastern right-of-way line on North 23rd
21 Street. Said concrete monument in the eastern right-of-way line of North 23rd Street
22 being located approximately 2750' as measured along said right-of-way line from the
23 point of intersection of said right-of-way line with the centerline of Smith Creek.
24 Running thence from said point of beginning South 81 degrees 53 minutes 00 seconds
25 West - 178.66' to a point; thence North 39 degrees 19 minutes 15 seconds East -
26 158.11' to a point; thence North 18 degrees 08 minutes 15 seconds East - 34.98' to a
27 point in the western right-of-way line of North 23rd Street; thence with the western
28 right-of-way line of North 23rd Street as it curves to the south to a point that bears
29 South 26 degrees 48 minutes 00 seconds East - 146.01' Chord Distance from the
30 preceding point.

31
32 Tract 6

33
34 Area to be acquired in accordance with the Airport Development Plan (1995-2015)
35 on file with the Federal Aviation Administration further described as:

36
37 Airport Development Plan (1995-2015), New Hanover
38 International Airport, Wilmington, North Carolina.

39
40 Phase 1 (1995-2000)

41
42 Tract 1

43

1 Beginning at the point of intersection of the northern right-of-way line of Morris
2 Road with the western right-of-way line of North Kerr Avenue. Running thence from
3 said point of beginning with the existing property line of the New Hanover
4 International Airport, South 82 degrees 23 minutes 15 seconds East - 622.58' to a
5 point; thence North 07 degrees 05 minutes 15 seconds West - 721.22' to a point;
6 thence North 24 degrees 56 minutes 15 seconds East - 357.52' to a point; thence
7 South 72 degrees 38 minutes 00 seconds East - 398.34' to a point; thence North 54
8 degrees 35 minutes 00 seconds East - 251.27' to a point; thence South 43 degrees 58
9 minutes 00 seconds East - 261.44' to a point in the western right-of-way line of North
10 Kerr Avenue; thence in a southwesterly direction with the western right-of-way line
11 of North Kerr Avenue 875' more or less to the point of beginning and containing 13.6
12 acres more or less.

13

14 Tract 2

15

16 Beginning at an existing concrete monument at the point of intersection of the
17 western line of Futch Avenue with the northern line of Old Gordon Road. Running
18 thence from said point of beginning with the western right-of-way line of Futch
19 Avenue North 08 degrees 49 minutes 15 seconds East - 500' more or less to a point;
20 thence South 80 degrees 07 minutes 09 seconds East - 191.40' more or less to the
21 western right-of-way line of Farley Drive; thence North 28 degrees 34 minutes 19
22 seconds East - 302.40' to a point; thence leaving said right-of-way line and running
23 North 76 degrees 42 minutes 45 seconds West - 294.10' to a point in the northeastern
24 line of the New Hanover International Airport; thence with said Airport property
25 line, North 66 degrees 59 minutes 45 seconds West - 508.72' to a point; thence South
26 72 degrees 59 minutes 15 seconds West - 459.97' to a point; thence North 42 degrees
27 14 minutes 45 seconds West - 802.25' to a point; thence in a northeasterly direction
28 and parallel with the centerline of the existing northeast - southwest runway 3400'
29 more or less to the point of intersection of said line with the southern right-of-way
30 line of North Kerr Avenue; thence with the southern right-of-way line of North Kerr
31 Avenue as it curves to the south and to the west 5625' to the point of intersection of
32 said right-of-way line with the northeastern property line of the New Hanover
33 International Airport; thence North 10 degrees 00 minutes 30 seconds West - 141.01'
34 to a point; thence North 88 degrees 03 minutes 00 seconds East - 77.89' to the point
35 of beginning and containing 157 acres more or less.

36

37 Tract 3

38

39 Beginning at the point of intersection of the southern right-of-way line of secondary
40 road #1370 with the western right-of-way line of secondary road #1319. Running
41 thence from said point of beginning with the western right-of-way line of secondary
42 road #1319 in a southeasterly direction, approximately 2000' to the point of
43 intersection of said right-of-way line with the southern right-of-way line of secondary
44 road #1320 if said right-of-way line were extended in a northwesterly direction;

1 thence with the western right-of-way line of secondary road #1320 as it curves to the
2 south and to the east approximately 2375' to the point of intersection of said right-of-
3 way line with the property line of the New Hanover International Airport; thence
4 with the property line of the New Hanover International Airport South 14 degrees 53
5 minutes 00 seconds West - 300' more or less to a point; thence South 47 degrees 41
6 minutes 30 seconds West - 1361.25' to a point; thence South 47 degrees 41 minutes 32
7 seconds West - 143.48' to a point; thence North 73 degrees 10 minutes 12 seconds
8 West - 442.36' to a point; thence North 18 degrees 20 minutes 45 seconds West -
9 303.93' to a point; thence North 18 degrees 20 minutes 45 second West - 1532.59' to a
10 point; thence North 72 degrees 52 minutes 00 seconds West - 136.98' to a point;
11 thence North 21 degrees 23 minutes 00 seconds West - 1806.80' to a point; thence
12 North 14 degrees 47 minutes 30 seconds West - 886.49' to a point in the southern
13 right-of-way line of secondary road #1370; thence North 64 degrees 31 minutes 45
14 seconds East - 106.12' Chord Distance to a point; thence North 68 degrees 31 minutes
15 45 seconds East - 277.32' to the point of beginning and containing 100 acres more or
16 less.

17

18 Tract 4

19

20 Beginning at the point of intersection of the northern right-of-way line of secondary
21 road #1370 with the western right-of-way line of secondary road #1319. Running
22 thence from said point of beginning with the property line of the New Hanover
23 International Airport South 68 degrees 35 minutes 30 seconds West - 279.59' to a
24 point; thence South 66 degrees 40 minutes 36 seconds West - 109.09' to a point;
25 thence South 58 degrees 11 minutes 36 seconds West - 88.42' Chord Distance to a
26 point; thence South 54 degrees 07 minutes 05 seconds West - 31.10' Chord Distance
27 to a point; thence South 53 degrees 03 minutes 30 seconds West - 148.73' to a point;
28 thence North 21 degrees 24 minutes 45 seconds West - 182.97' to a point; thence
29 North 53 degrees 34 minutes 15 seconds East - 145.53' to a point; thence North 58
30 degrees 14 minutes 45 seconds West - 288.14' to a point; thence north 21 degrees 22
31 minutes 45 seconds West - 424.81' to a point; thence North 57 degrees 45 minutes 45
32 seconds West - 278.20' to a point; thence South 68 degrees 37 minutes 15 seconds
33 West - 282.77' to a point; thence North 56 degrees 23 minutes 45 seconds West -
34 92.69' to a point; thence South 26 degrees 49 minutes 15 seconds West - 79.26' to a
35 point; thence South 58 degrees 58 minutes 15 seconds West - 204.35' to a point;
36 thence North 55 degrees 20 minutes 45 seconds West - 98.99' to a point in the
37 southeastern right-of-way line of the now or formerly CSX Railroad; thence with the
38 southeastern right-of-way line of the now or formerly CSX Railroad in a northeasterly
39 direction 1300' more or less to the point of intersection of said right-of-way line with
40 the southern right-of-way line of secondary road #1322 (North Kerr Avenue); thence
41 with the southern right-of-way line of North Kerr Avenue 50' more or less to the
42 point of intersection of said right-of-way line with the western right-of-way of
43 secondary road #1319; thence with the western right-of-way line of secondary road
44 #1319, 2125' more or less to the point of beginning.

1

2 Tract 4 A

3

4 Beginning at the point of intersection of the northern right-of-way line of Blue Clay
5 Road with the southern right-of-way line of North Kerr Avenue. Running thence
6 from said point of beginning with the northern right-of-way line of Blue Clay Road
7 1600' more or less to the point of intersection of said right-of-way line with the
8 western flare line of the proposed clear zone for the northwest - southeast runway of
9 the New Hanover International Airport; thence with said flare line in a northwesterly
10 direction 1450' more or less to the point of intersection with said flare line with the
11 southern right-of-way line of North Kerr Avenue; thence with the southern right-of-
12 way line of North Kerr Avenue in a southeasterly direction 1425' more or less to the
13 point of beginning. Tract 4 and Tract 4A contain 47 acres more or less.

14

15 Tract 5

16

17 Beginning at a point in the southern right-of-way line of the now or formerly CSX
18 Railroad that is located 4000' more or less, as measured along said right-of-way line,
19 from the point of intersection of said right-of-way line with the centerline of
20 secondary road #1386. Said point of beginning also being the point of intersection
21 of said Railroad right-of-way line with the property line of the New Hanover
22 International Airport. Running thence from said point of beginning with the
23 property line of the New Hanover International Airport South 21 degrees 23 minutes
24 45 seconds East - 1199.66' to a point; thence South 68 degrees 32 minutes 45 seconds
25 West - 423.97' to a point; thence South 01 degrees 05 minutes 30 seconds East - 300'
26 more or less to a point; thence leaving said property line and running in a
27 southwesterly direction, and perpendicular to the centerline of the southeast-
28 northwest runway of the New Hanover International Airport 250' more or less to a
29 point; thence in a northwesterly direction and parallel with the centerline of the
30 southeast-northwest runway 250' more or less to a point; thence in a southwesterly
31 direction and perpendicular to the runway centerline 650' more or less to a point;
32 thence in a southeasterly direction and parallel with said runway centerline 1300'
33 more or less to a point; thence in a northeasterly direction and perpendicular to the
34 centerline of said runway 450' more or less to a point in the western property line of
35 the New Hanover International Airport; thence South 01 degrees 04 minutes 30
36 seconds East - 75' more or less to a point; thence North 75 degrees 48 minutes 15
37 seconds East - 97.16' to a point; thence South 01 degrees 38 minutes 45 seconds East
38 - 210.20' to a point; thence South 77 degrees 03 minutes 15 seconds West - 101.03' to
39 a point; thence South 75 degrees 48 minutes 15 seconds West - 999.87' to a point;
40 thence South 29 degrees 27 minutes 00 seconds West - 687.57' to a point in the
41 northern right-of-way line of secondary road #1386; thence with the northern right-
42 of-way line of secondary road #1386 North 63 degrees 19 minutes 30 seconds West -
43 592.10' to the point of intersection of said right-of-way line with the southern right-of-
44 way line of the now or formerly CSX Railroad; thence with the southern right-of-way

1 line of the CSX Railroad in a northeasterly direction 3970' more or less to the point
2 of beginning and containing 71 acres more or less.

3

4 Phase 2 (2001-2005)

5

6 Tract 1

7

8 Beginning at a point in the northwestern property line of the New Hanover
9 International Airport, said point of beginning being located South 01 degree 05
10 minutes 30 seconds East - 300.0' more or less as measured along said property line,
11 from property corner #1025. Said property corner being shown on an exhibit A
12 property map of the New Hanover International Airport. Running thence from said
13 point of beginning in a southwesterly direction and perpendicular to the northwest-
14 southeast runway of said airport 250' more or less to a point; thence in a
15 northwesterly direction and parallel with the northwest-southeast runway centerline
16 250.0' more or less to a point; thence in a southwesterly direction and perpendicular
17 to the centerline of said northwest-southeast runway 650.0' to a point; thence in a
18 southeasterly direction and parallel with the centerline of said runway 650.0' to a
19 point; thence in a northeasterly direction and perpendicular to the centerline of said
20 runway 550' more or less to a point in the northwestern property line of the New
21 Hanover International Airport; thence with said property line North 05 degrees 52
22 minutes 45 seconds East - 125' more or less to a point; thence North 19 degrees 12
23 minutes 45 seconds East - 256.94' to a point; thence South 64 degrees 17 minutes 15
24 seconds East - 107.04' to a point; thence North 01 degrees 05 minutes 30 seconds
25 West - 208.71' to the point of beginning.

26

27 Phase 3 (2006-2015)

28

29 Tract 1

30

31 Beginning at a point in the northwestern property line of the New Hanover
32 International Airport. Said point of beginning being located North 01 degree 04
33 minutes 30 seconds West -75' more or less from a concrete monument at property
34 corner 1019 of the New Hanover International Airport. Said property corner being
35 shown on an exhibit A property map of the New Hanover International Airport.
36 Running thence from said point of beginning in a southwesterly direction and
37 perpendicular to the centerline of the northwest-southeast runway 450' more or less
38 to a point; thence in a northwesterly direction and parallel with the centerline of the
39 northwest-southeast runway 650' more or less to a point; thence in a northeasterly
40 direction and perpendicular to the northwest-southeast runway 550' to a point in the
41 northwestern property line of the New Hanover International Airport; thence with
42 said property line South 05 degrees 52 minutes 45 seconds West - 122.96' more or
43 less to a point; thence North 84 degrees 27 minutes 15 seconds East - 198.68' to a

1 point; thence South 01 degrees 04 minutes 30 seconds East - 483.28' to the point of
2 beginning.

3

4 Tract 2

5

6 Beginning at the point or intersection of the northern right-of-way line of North Kerr
7 Avenue with the western right-of-way line of Blue Clay Road. Running thence with
8 the northern right-of-way line of North Kerr Avenue in a northwesterly direction
9 1450' more or less to a point in the flare line of the clear zone for the northwest-
10 southeast runway of the New Hanover International Airport; thence with said flare
11 line in a northwesterly direction 300' to a point; thence in a northeasterly direction
12 with the end line of said clear zone 1750' to a corner of said clear zone; thence in a
13 southwesterly direction with the flare line of said clear zone 500' more or less to a
14 point in the northern right-of-way line of Blue Clay Road; thence with the northern
15 right-of-way line of Blue Clay Road 300' more or less to the point of beginning.

16

17 Ultimate

18

19 Tract 1

20

21 Beginning at the point of intersection of the western right-of-way line of secondary
22 road #1319 with the southern right-of-way line of North Kerr Avenue (secondary
23 road #1322). Running thence from said point of beginning with the southern right-
24 of-way line of North Kerr Avenue as it curves to the south 600' more or less to a
25 point; thence leaving said right-of-way line and running with the southern right-of-
26 way line of the proposed relocated North Kerr Avenue in a northeasterly direction
27 1400' more or less to the point of intersection of said right-of-way line with the
28 western flare line of a proposed clear zone for a proposed northwest-southeast
29 parallel runway; thence with the flare line of said clear zone in a northwesterly
30 direction 1200' more or less to a point; thence in a northeasterly direction in the end
31 line of said clear zone 1750' to a point in the eastern flare line of said clear zone;
32 thence with said flare line in a southwesterly direction 1450' more or less to the point
33 of intersection of said flare line with the southern right-of-way line of the proposed
34 relocated North Kerr Avenue; thence in a southeasterly direction 2375' more or less
35 to the point of intersection of said relocated North Kerr Avenue with the existing
36 right-of-way line of North Kerr Avenue; thence continuing with the southern right-of-
37 way line of North Kerr Avenue as it now exists 4500' more or less to the point of
38 intersection of said right-of-way line with the proposed extension of the northeast
39 property line of the New Hanover International Airport; thence in a southwesterly
40 direction and parallel with the centerline of the northeast-southwest runway 3400'
41 more or less to a point, a property corner of the New Hanover International Airport;
42 thence with the property line of the New Hanover International Airport South 47
43 degrees 44 minutes 00 seconds West - 1053.66' to a point; thence South 17 degrees 38
44 minutes 45 seconds West - 72.43' to a point; thence North 73 degrees 08 minutes 15

1 seconds West - 42.36' to a point; thence North 16 degrees 57 minutes 36 seconds East
2 - 79.76' to a point; thence North 17 degrees 40 minutes 45 seconds West - 118.43'
3 Chord Distance to a point; thence North 52 degrees 19 minutes 07 seconds West -
4 325.43' to a point; thence South 17 degrees 00 minutes 30 seconds West - 292.65' to a
5 point; thence North 73 degrees 14 minutes 30 seconds West - 139.90' to a point;
6 thence South 16 degrees 23 minutes 58 seconds West - 640.89' to a point; thence
7 South 17 degrees 27 minutes 00 seconds West - 203.95' to a point; thence South 48
8 degrees 09 minutes 00 seconds West - 1420.38' to a point; thence South 79 degrees 36
9 minutes 30 seconds West - 34.60' to a point; thence South 14 degrees 55 minutes 15
10 seconds West - 200' more or less to the point of intersection of said line with the
11 western right-of-way line of secondary road #1320; thence with the western right-of-
12 way line of secondary road #1320 in a northwesterly direction as it curves to the
13 north 2375' more or less to the point of intersection of said right-of-way line with the
14 western right-of-way line of secondary road #1319; thence with the western right-of-
15 way line of secondary road #1319 in a northwesterly direction 4125' more or less to
16 the point of beginning and containing 530 acres more or less.

17
18 Tract 2

19
20 Beginning at the point of intersection of the northern right-of-way line of Morris
21 Road with the northwestern right-of-way line of North Kerr Avenue. Running thence
22 from said point of beginning with the northwestern right-of-way line of North Kerr
23 Avenue South 14 degrees 47 minutes 30 seconds West - 986.16' to a point; thence
24 South 03 degrees 31 minutes 15 seconds West - 395.69' Chord Distance to a point;
25 thence South 14 degrees 41 minutes 45 seconds West - 409.16' to a point; thence
26 South 43 degrees 03 minutes 30 seconds East - 1100' more or less to a point; thence
27 leaving said airport line and running in a north northeasterly direction 350.0' to a
28 point in the end line of a proposed clear zone for the proposed northwest-southeast
29 parallel runway; thence with the end line of said clear zone in a northeasterly
30 direction 1100' more or less to a point; thence with the eastern flare line of said clear
31 zone in a northwesterly direction 1750' more or less to a point in the proposed
32 eastern right-of-way line of the proposed relocated North Kerr Avenue; thence with
33 the proposed right-of-way line of the relocated North Kerr Avenue and crossing the
34 existing North Kerr Avenue 2125' more or less to a point in the existing airport
35 property line; thence with said property line South 47 degrees 45 minutes 15 seconds
36 West - 850' more or less to a point; thence South 47 degrees 45 minutes 15 seconds
37 West - 170.76' to a point; thence South 25 degrees 16 minutes 21 seconds West -
38 381.93' to a point; thence continuing with the existing western right-of-way line of
39 North Kerr Avenue in a southwesterly direction 875' more or less to the point of
40 beginning and containing 70 acres more or less.

41 Section 2. The boundary of the area described in Section 1 of this act
42 shall be considered "municipal boundary" of the City of Wilmington for the purposes
43 of Part 3 of Article 4A of Chapter 160A of the General Statutes with respect to
44 future annexations by the City of Wilmington.

1

Section 3. This act is effective when it becomes law.



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April 15, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 836 Airport Econ. Develop. Zone Act

House Bill 836 forbids any municipality from annexing the property that is described in the bill, the New Hanover International Airport.

Section 2 of the bill authorizes Wilmington to use the airport boundary as the municipal boundary for future annexations.

House Bill 836 would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 808

Short Title: Cary Tree Ordinances.

(Local)

Sponsors: Representatives Miner; and Mosley.

Referred to: Local and Regional Government I.

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF CARY TO ADOPT ORDINANCES
3 REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF
4 TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN THE
5 CITY'S EXTRATERRITORIAL PLANNING JURISDICTION.

6 The General Assembly of North Carolina enacts:

7 Section 1. In order to preserve and enhance one of the most valuable
8 natural resources of the community and to protect the health, safety, and welfare of
9 its citizens, a municipality may adopt ordinances to regulate the planting, removal,
10 and preservation of trees and shrubs on public and private property within the
11 municipality.

12 Section 2. Prior to adopting an ordinance authorized by Section 1 of this
13 act, a public hearing shall be held before the municipality's governing board. Notice
14 of the hearing shall be given in accordance with G.S. 160A-364.

15 Section 3. This act shall apply only to the City of Cary and to areas
16 within the City's extraterritorial planning jurisdiction under Article 19 of Chapter
17 160A of the General Statutes.

18 Section 4. This act is effective when it becomes law.



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April 15, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 808 Cary Tree Ordinances
Introduced by Representatives Miner; and Mosley

House Bill 808 authorizes the City of Cary to adopt ordinances, following notice and a hearing, regulating the planting, removal and preservation of trees. An ordinance adopted under the authority of this bill could apply to the area in the city limits of Cary, and to its extraterritorial planning jurisdiction.

House Bill 808 would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

April 22, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met April 22, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Rogers, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Page Jennifer Ann Sult.

The following bills were discussed:

HB 877 A BILL TO BE ENTITLED AN ACT TO ADD, FOR THE TOWN OF KURE BEACH ONLY, EROSION CONTROL MEASURES TO THE LIST OF PUBLIC ENTERPRISES THAT CITIES HAVE FULL AUTHORITY TO PROTECT AND REGULATE. Rep. McComas was recognized to present the bill. He explained that last year's hurricane season caused beach erosion that prompted this measure. Rep. Buchanan moved for a favorable report; seconded and passed.

HB 112 A BILL TO BE ENTITLED AN ACT TO CREATE A SAFETY ZONE AROUND PUBLIC AND PRIVATE SCHOOLS IN CAMDEN COUNTY BY PROHIBITING HUNTING OR THE DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY OF PUBLIC ROADS WITHIN ONE-HALF MILE OF A SCHOOL. Rep. Owens was recognized to present the bill. He explained that the bill was requested by Camden County Commissioners, without opposition from local hunters. Rep. Carpenter sent forth an amendment to change Line 11 to provide clarification of the firearm discharge distance and direction and moved for adoption of the amendment into a Committee Substitute; seconded and passed. Rep. Rogers moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Rogers moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

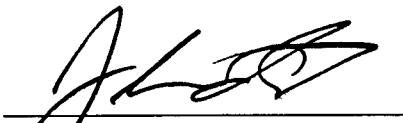
HB 233 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM NEAR AN ELEMENTARY OR SECONDARY SCHOOL IN VANCE COUNTY. Rep. Fox was recognized to present the bill and explained that it prohibits the discharge of a firearm within one thousand feet of an elementary or secondary school. The bill was requested by the Vance County Board of Commissioners and has the support of the Vance County School Board. Rep. Carpenter sent forth an amendment to change Line 5 to provide clarification of the firearm discharge direction and moved for adoption

of the amendment into a Committee Substitute; seconded and passed. Rep. Buchanan moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Hurley moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

HB 614 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE VILLAGE OF SWIFT CREEK. Rep. Ellis, the bill's principal sponsor, explained that the area of Swift Creek has watershed protection under agreement with three municipalities in Wake County. The agreements regulate the population density in the Swift Creek area for purposes of protecting the watershed. Swift Creek residents wish to continue development in this low-density manner to protect their property values and the watershed. The purpose of this bill is to provide for the incorporation of the Village of Swift Creek, subject to approval in a referendum by a majority of the residents of the area. Rep. Hardy sent forth an amendment to change Page 3, Line 28 to extend voter eligibility to residents of an area one mile beyond the described boundaries if they are not already residents of another municipality. Chairman Ellis recognized Cheri Poucher of the Wake County Board of Elections who explained the difficulty of establishing such an extended boundary. Rep. Ellis restated Rep. Hardy's motion to amend the bill and called for a vote. The motion failed. Tom Vass, representing incorporation proponents, was recognized to answer questions. After considerable discussion, Rep. Ellis announced that the bill would be calendared for the April 29, 1997 meeting.

The meeting adjourned at 11:50 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

April 22, 1997

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 877 A BILL TO BE ENTITLED AN ACT TO ADD, FOR THE TOWN OF KURE BEACH ONLY, EROSION CONTROL MEASURES TO THE LIST OF PUBLIC ENTERPRISES THAT CITIES HAVE FULL AUTHORITY TO PROTECT AND REGULATE.

☒ **With a favorable report.**

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 877

Short Title: Kure Beach Erosion Control.

(Local)

Sponsors: Representative McComas.

Referred to: Local and Regional Government I.

April 7, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO ADD, FOR THE TOWN OF KURE BEACH ONLY, EROSION
3 CONTROL MEASURES TO THE LIST OF PUBLIC ENTERPRISES THAT
4 CITIES HAVE FULL AUTHORITY TO PROTECT AND REGULATE.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 160A-311 reads as rewritten:

7 "**§ 160A-311. Public enterprise defined.**

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

- 9 (1) Electric power generation, transmission, and distribution systems;
- 10 (2) Water supply and distribution systems;
- 11 (3) Wastewater collection, treatment, and disposal systems of all types,
12 including septic tank systems or other on-site collection or disposal
13 facilities or systems;
- 14 (4) Gas production, storage, transmission, and distribution systems,
15 where systems shall also include the purchase and/or lease of
16 natural gas fields and natural gas reserves, the purchase of natural
17 gas supplies, and the surveying, drilling and any other activities
18 related to the exploration for natural gas, whether within the State
19 or without;
- 20 (5) Public transportation systems;
- 21 (6) Solid waste collection and disposal systems and facilities;
- 22 (7) Cable television systems;
- 23 (8) Off-street parking facilities and systems;
- 24 (9) Airports;

- 1 (10) Structural and natural stormwater and drainage systems of all
2 ~~types:~~ types:
3 (11) Erosion control works."
4 Section 2. This act shall not be construed to modify G.S. 113A-56.
5 Section 3. This act is effective when it becomes law and applies only to
6 the Town of Kure Beach.



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April 22, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 877 Kure Beach Erosion Control
Introduced by Representative McComas

Article 16 of Chapter 160A authorizes cities to operate 10 types of "public enterprises." House Bill 877 would add "erosion control works" to the list of public enterprises that could be operated by the Town of Kure Beach.

Section 2 of the bill provides that it is *not* to be construed to modify the jurisdiction of the North Carolina Sedimentation Control Commission of the North Carolina Department of Environment, Health, and Natural Resources.

House Bill 877 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 112 A BILL TO BE ENTITLED AN ACT TO CREATE A SAFETY ZONE AROUND
PUBLIC AND PRIVATE SCHOOLS IN CAMDEN COUNTY BY PROHIBITING
HUNTING OR THE DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY OF
PUBLIC ROADS WITHIN ONE-HALF MILE OF A SCHOOL.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill.**

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 112

Short Title: Camden Safety Zone.

(Local)

Sponsors: Representative Owens.

Referred to: Local and Regional Government I, if favorable, Judiciary I.

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A SAFETY ZONE AROUND PUBLIC AND PRIVATE
3 SCHOOLS IN CAMDEN COUNTY BY PROHIBITING HUNTING OR THE
4 DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY OF PUBLIC
5 ROADS WITHIN ONE-HALF MILE OF A SCHOOL.

6 The General Assembly of North Carolina enacts:

7 Section 1. It is unlawful to hunt or otherwise discharge a firearm from
8 the right-of-way of public roads within one-half mile of any public or private school
9 located in Camden County.

10 Section 2. It is unlawful for any person to discharge or cause to be
11 discharged any firearm toward any public or private school, or to cause any projectile
12 to enter any public or private school grounds for any reason.

13 Section 3. This act does not apply to a person transporting a firearm on
14 a State-maintained road or highway within or on any motor vehicle or to any person
15 who is actively engaged in retrieving dogs on a State-maintained road or highway.

16 Section 4. Violation of this act is a Class 3 misdemeanor.

17 Section 5. This act is enforceable by law enforcement officers of the
18 Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace
19 officers with general subject matter jurisdiction.

20 Section 6. This act becomes effective October 1, 1997.

2 amendments

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 112
Proposed Committee Substitute H112-PCS7272

Short Title: Camden Safety Zone.

(Local)

Sponsors:

Referred to:

February 12, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A SAFETY ZONE AROUND PUBLIC AND PRIVATE
3 SCHOOLS IN CAMDEN COUNTY BY PROHIBITING HUNTING OR THE
4 DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY OF PUBLIC
5 ROADS WITHIN ONE-HALF MILE OF A SCHOOL.
6 The General Assembly of North Carolina enacts:
7 Section 1. It is unlawful to hunt or otherwise discharge a firearm from
8 the right-of-way of public roads within one-half mile of any public or private school
9 located in Camden County.
10 Section 2. It is unlawful for any person to discharge or cause to be
11 discharged any firearm within one-half mile of any public or private school, toward
12 any public or private school, or to cause any projectile discharged from a firearm to
13 enter any public or private school grounds for any reason.
14 Section 3. This act does not apply to a person transporting a firearm on
15 a State-maintained road or highway within or on any motor vehicle or to any person
16 who is actively engaged in retrieving dogs on a State-maintained road or highway.
17 Section 4. Violation of this act is a Class 3 misdemeanor.
18 Section 5. This act is enforceable by law enforcement officers of the
19 Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace
20 officers with general subject matter jurisdiction.
21 Section 6. This act becomes effective October 1, 1997.



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April 22, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 112 Camden Safety Zone
Introduced by Representative Ownes

House Bill 112 would make it unlawful, in Camden County, to:

- Hunt or otherwise discharge a firearm from the right-of-way of a public road within one-half mile of a public or private school; or
- Discharge a firearm toward a public or private school, or cause a projectile to enter the grounds of a public or private school.

Violation of House Bill 112 would constitute a Class 3 misdemeanor (1-10 days community penalty and/or a fine of up to \$200, if no prior convictions).

House Bill 112 would not apply to a person transporting a firearm in or on a vehicle on a State road, or a person actively retrieving dogs on a State road.

House Bill 112 would be enforceable by officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by any other officers with general subject matter jurisdiction.

House Bill 112 would become effective October 1, 1997.

NOTE: Under current general law (G.S. 153A-129), counties may regulate the discharge of firearms by ordinance, but may not regulate hunting by ordinance.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 233 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DISCHARGE OF A
FIREARM NEAR AN ELEMENTARY OR SECONDARY SCHOOL IN VANCE
COUNTY.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill.**

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees. .

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 233
Proposed Committee Substitute H233-PCS1315

Short Title: No Firearms Discharged Near Schools.

(Local)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM NEAR AN
3 ELEMENTARY OR SECONDARY SCHOOL IN VANCE COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. It is a Class 1 misdemeanor to discharge a firearm in the
6 direction of a school within 1,000 feet of an elementary or secondary school except
7 when used in the defense of person or property or when used pursuant to the lawful
8 direction of law enforcement officers.

9 Section 2. This act applies only to Vance County.

10 Section 3. This act becomes effective December 1, 1997, and applies to
11 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 233

Short Title: No Firearms Discharged Near Schools.

(Local)

Sponsors: Representatives Fox; Crawford, Wilkins, Thompson, Goodwin, Mosley,
and Moore.

Referred to: Local & Regional Government I, if favorable, Judiciary I.

February 17, 1997

1

A BILL TO BE ENTITLED

2

AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM NEAR AN
ELEMENTARY OR SECONDARY SCHOOL IN VANCE COUNTY.

3

4 The General Assembly of North Carolina enacts:

5

Section 1. It is a Class 1 misdemeanor to discharge a firearm within
1,000 feet of an elementary or secondary school except when used in the defense of
person or property or when used pursuant to the lawful direction of law enforcement
officers.

6

7

8

9

10

11

Section 2. This act applies only to Vance County.

Section 3. This act becomes effective December 1, 1997, and applies to
offenses committed on or after that date.



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April 22, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 233 No Firearms Discharged Near Schools
Introduced by Representatives Fox; and others

House Bill 233 would make it unlawful to discharge a firearm within 1,000 ft. of an elementary or secondary school in Vance County, unless the firearm is used in the defense of person or property, or when used under the lawful direction of law enforcement officers.

Violation of House Bill 233 would constitute an Class 1 misdemeanor (1-45 days community penalty and/or fine in discretion of the court if no prior convictions).

House Bill 233 would become effective December 1, 1997, and apply to offenses committed on or after that date.

NOTE: Under current general law (G.S. 153A-129), counties may regulate the discharge of firearms by ordinance, but may not regulate hunting by ordinance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 614

Short Title: Swift Creek Incorporated.

(Local)

Sponsors: Representative Ellis.

Referred to: Local and Regional Government I, if favorable, Finance.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE VILLAGE OF SWIFT CREEK.

3 The General Assembly of North Carolina enacts:

4 Section 1. A charter of the Village of Swift Creek is enacted as follows:

5 "THE CHARTER OF THE VILLAGE OF SWIFT CREEK.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation and Corporate Powers.** The inhabitants of the Village
9 of Swift Creek are a body corporate and politic under the name 'Village of Swift
10 Creek'. Under that name they have all the powers, duties, rights, privileges, and
11 immunities conferred and imposed on cities by the general law of North Carolina.
12 The General Assembly intends by this act to assist in fulfilling the broad public
13 purpose of environmental preservation, protection of watersheds, and enhancement of
14 natural resources.

15 "CHAPTER II.

16 "CORPORATE BOUNDARIES.

17 "Sec. 2-1. **Village Boundaries.** Until modified in accordance with the law, the
18 boundaries of the Village of Swift Creek are as follows:

19 In Wake County, beginning at the intersection of Tryon Road and Lake Wheeler
20 Road, thence following Lake Wheeler Road in a direction generally south to its
21 intersection with Hilltop Needmore Road, thence following Hilltop Needmore Road
22 in a direction generally west to its intersection with Sunset Lake Road, thence
23 following Sunset Lake Road in a direction generally northwest to its intersection with
24 Holly Springs Road, thence following Holly Springs Road generally northeast to its

1 intersection with Kildaire Farm Road, thence following Kildaire Farm Road in a
2 direction generally north to its intersection with Penny Road, thence following Penny
3 Road in a direction generally east to its intersection with Holly Springs Road, thence
4 following Holly Springs Road in a direction generally northeast to its intersection
5 with Tryon Road, thence following Tryon Road in a direction generally east to the
6 point and place of BEGINNING. This description includes all named roads to their
7 outer right-of-way, but excludes any area which on January 1, 1997, was within the
8 corporate limits of the Town of Cary, the Town of Holly Springs, or the City of
9 Raleigh.

10 "CHAPTER III.

11 "GOVERNING BODY.

12 "Sec. 3-1. **Structure of the Governing Body; Number of Members.** The governing
13 body of the Village of Swift Creek is the Board of Aldermen which has five
14 members.

15 "Sec. 3-2. **Manner of Electing Board.** The qualified voters of the entire Village
16 nominate and elect the Board.

17 "Sec. 3-3. **Term of Office of Board Members.** Except for the initial Board,
18 members of the Board are elected to four-year terms. In 1997, all members of the
19 Board are elected to one-year terms. In 1998, five members shall be elected to the
20 Board. The three members receiving the highest number of votes shall serve four-
21 year terms. The two receiving the next highest number of votes shall serve two-year
22 terms. In 2000, and quadrennially thereafter, two members shall be elected to the
23 Board. In 2002, and quadrennially thereafter, three members shall be elected to the
24 Board.

25 "Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the qualified
26 voters of the Village. The Mayor shall be elected in 1997 for a one-year term, and in
27 1998 and quadrennially thereafter for a four-year term. The Mayor shall vote on all
28 issues before the council unless excused under G.S. 160A-75.

29 "CHAPTER IV.

30 "ELECTIONS.

31 "Sec. 4-1. **Method.** Board members shall be elected on a nonpartisan plurality
32 basis and the results determined in accordance with G.S. 163-292.

33 "Sec. 4-2. **Results.** Election results shall be determined by the Wake County
34 Board of Elections according to Chapter 163 of the General Statutes.

35 "Sec. 4-3. **Filing Period.** The filing period for municipal office shall open at 12:00
36 noon on the second Monday in August and end at 12:00 noon on the second Monday
37 thereafter.

38 "Sec. 4-4. **General Law.** Except as provided by this Charter, town election shall
39 be conducted in accordance with Chapter 163 of the General Statutes. Elections in
40 even-numbered years shall be conducted by the same method as in odd-numbered
41 years.

42 "CHAPTER V.

43 "ADMINISTRATION.

1 "Sec. 5-1. **Mayor-Board Plan.** The Village of Swift Creek shall operate under the
2 Council-Manager Plan as provided in Part 2 of Article 7 of Chapter 160A of the
3 General Statutes.

4 "Sec. 5-2. **Interim Board.** From the effective date of this Charter until the
5 organizational meeting of the Board of Aldermen after the 1998 municipal election,
6 the members of the Board shall be:

7 "Sec. 5-3. **Taxation and Funds.** The Village of Swift Creek is eligible to receive
8 distributions of State funds during the fiscal year 1997-98."

9 Section 2. (a) From and after the effective date of this act, the citizens
10 and property in the Village of Swift Creek shall be subject to municipal taxes levied
11 for the year beginning July 1, 1997, and for that purpose the Village shall obtain from
12 Wake County a record of property in the area herein incorporated which was listed
13 for taxes as of January 1, 1997; and the businesses in the Village shall be liable for
14 privilege license tax from the effective date of the privilege license tax ordinance.

15 (b) If the effective date of this act is before July 1, 1997, the Village may
16 adopt a budget ordinance for fiscal year 1996-97 without following the timetable in
17 the Local Government Budget and Fiscal Control Act, but shall follow the sequence
18 of actions in the spirit of the act insofar as is practical. The Village may adopt a
19 budget ordinance for fiscal year 1997-98 without following the timetable in the Local
20 Government Budget and Fiscal Control Act, but shall follow the sequence of actions
21 in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem
22 taxes may be paid at par or face amount within 90 days of adoption of the budget
23 ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the
24 taxes had been due and payable on September 1, 1997.

25 Section 3. The Wake County Board of Elections shall conduct on a date
26 no later than August 1, 1997, a special election for the purpose of submission to the
27 qualified voters of the area described in Section 2.1 of the Charter of the Village of
28 Swift Creek the question of whether or not such area shall be incorporated as the
29 Village of Swift Creek. The date shall be set by the Wake County Board of
30 Elections. Registration for the election shall be conducted in accordance with G.S.
31 163-288.2.

32 Section 4. In the election, the question on the ballot shall be:

33 "[] FOR [] AGAINST

34 Incorporation of the Village of Swift Creek".

35 Section 5. In the election, if a majority of the votes are cast "For
36 incorporation of the Village of Swift Creek", Sections 1 and 2 of this act shall
37 become effective on the date that the Wake County Board of Elections certifies the
38 results of the election. If necessary, the Wake County Board of Elections shall
39 establish a special candidate filing period for the 1997 municipal election. Otherwise,
40 those sections shall have no force and effect.

41 Section 6. This act is effective when it becomes law.

Amendment



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April 22, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 614 Swift Creek Incorporated
Introduced by Representative Ellis

House Bill 614 provides for the incorporation of the Village of Swift Creek in Wake County, subject to a approval in a referendum by a majority of the residents of the area.

The bill provides standard Charter provisions for an incorporation, with all powers authorized by law available to the Village upon incorporation.

House Bill 614 would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

April 24, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met April 24, 1997, at 5:25 P.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Carpenter, Hardy, Kiser, Cunningham, Dedmon, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker.

The following bills were discussed:

HB 761 A BILL TO BE ENTITLED AN ACT TO ALLOW HILLSBOROUGH TO CONTRACT FOR INSPECTION SERVICES. Rep. Insko was recognized to present the bill and explained that it would authorize the Town of Hillsborough to hire contract inspectors to carry out building inspections. Rep. Kiser moved for a favorable report; seconded and passed.

HB 146 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF JACKSONVILLE TO REQUIRE SIDEWALK IMPROVEMENTS THROUGH THE SITE PLAN REVIEW PROCESS UNDER THE AUTHORITY OF THE CITY ZONING ORDINANCE. Rep. Grady, the bill's principal sponsor, requested the bill be voted on in his absence. Rep. Dedmon moved for a favorable report; seconded and passed.

HB 841 A BILL TO BE ENTITLED AN ACT ESTABLISHING BINDING JOINT ZONING JURISDICTION FOR THE SWIFT CREEK AREA IN WAKE COUNTY SUBJECT TO MODIFICATION ONLY BY INTERLOCAL AGREEMENT BY AND BETWEEN ALL JURISDICTIONS INVOLVED OR BY ACTION OF THE GENERAL ASSEMBLY. A Proposed Committee Substitute was presented for consideration. Rep. Kiser moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Hensley was recognized to present the PCS. He explained that it would require the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner to share binding joint zoning jurisdiction over the area known as Swift Creek. Rep. Cunningham moved for a favorable report to Committee Substitute; unfavorable to original bill. Rep. Ellis appointed Rep. Reynolds to preside over the meeting for the remainder of the Swift Creek discussion. After a lengthy discussion, Rep. Ellis moved to temporarily displace the motion until the next regularly scheduled meeting; seconded and passed.

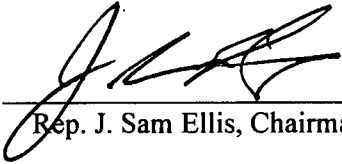
HB 879 A BILL TO BE ENTITLED AN ACT TO ALLOW CERTAIN DECISIONS OF THE DURHAM COUNTY BOARD OF ADJUSTMENT

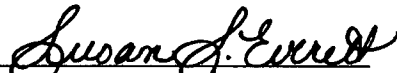
TO BE MADE BY THREE-FIFTHS VOTE RATHER THAT FOUR-FIFTHS. Rep. Miller was not present to explain the bill. In his absence, Rep. Dedmon moved for a favorable report; seconded and passed.

HB 808 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF CARY TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN THE CITY'S EXTRATERRITORIAL PLANNING JURISDICTION. Rep. Carpenter sent forth an amendment to add language on Page 1, Line 11, that addresses the harvesting of timber on privately owned property and site plan approval for development of the property and moved for adoption of the amendment into a Committee Substitute; seconded and passes. Rep. Kiser moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Kiser moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

The meeting adjourned at 5:50 P.M.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

April 24, 1997

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 761 A BILL TO BE ENTITLED AN ACT TO ALLOW HILLSBOROUGH TO
CONTRACT FOR INSPECTION SERVICES.

☒ **With a favorable report.**

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 761

Short Title: Hillsborough Inspection Contracts.

(Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Local and Regional Government I.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW HILLSBOROUGH TO CONTRACT FOR INSPECTION
3 SERVICES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 160A-413 reads as rewritten:

6 "**§ 160A-413. Joint inspection department; other arrangements.**

7 A city council may enter into and carry out contracts with another city, county, or
8 combination thereof under which the parties agree to create and support a joint
9 inspection department for the enforcement of State and local laws specified in the
10 agreement. The governing boards of the contracting parties are authorized to make
11 any necessary appropriations for this purpose.

12 In lieu of a joint inspection department, a city council may designate an inspector
13 from any other city or county to serve as a member of its inspection department with
14 the approval of the governing body of the other city or county, or may contract with
15 an individual who is not a city or county employee but who holds one of the
16 applicable certificates as provided in G.S. 160A-411.1 or ~~G.S. 153A-351.1~~ G.S. 153A-
17 351.1, or may contract with the employer of an individual who holds one of the
18 applicable certificates for the services of that individual. The inspector, if designated
19 from another city or county under this section, shall, while exercising the duties of
20 the position, be considered a municipal employee. The city shall have the same
21 potential liability, if any, for inspections conducted by an individual who is not an
22 employee of the city as it does for an individual who is an employee of the city. The
23 individual with whom the city contracts shall have errors and omissions and other
24 insurance coverage acceptable to the city.

1 The city council of any city may request the board of county commissioners of the
2 county in which the city is located to direct one or more county building inspectors
3 to exercise their powers within part or all of the city's jurisdiction, and they shall
4 thereupon be empowered to do so until the city council officially withdraws its
5 request in the manner provided in G.S. 160A-360(g)."

6 Section 2. This act applies to the Town of Hillsborough only.

7 Section 3. This act is effective when it becomes law.



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April 24, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 761 Hillsborough Inspection Contracts
Introduced by Representatives Insko and Hackney

House Bill 761 would authorize the Town of Hillsborough to hire contract inspectors to carry out building inspections required under Part 5 of Article 19 of Chapter 160A.

House Bill 761 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 146 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF
JACKSONVILLE TO REQUIRE SIDEWALK IMPROVEMENTS THROUGH THE SITE
PLAN REVIEW PROCESS UNDER THE AUTHORITY OF THE CITY ZONING
ORDINANCE.

☒ **With a favorable report.**

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

HOUSE BILL 146

yes

*all on for
Thurs 24th
subject to crossover*

*1
5-3024*

Short Title: Jacksonville Site Plan Review.

(Local)

Sponsors: Representatives Grady, Preston, Smith; and Watson.

Referred to: Local & Regional Government I.

February 13, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE CITY OF JACKSONVILLE TO REQUIRE
3 SIDEWALK IMPROVEMENTS THROUGH THE SITE PLAN REVIEW
4 PROCESS UNDER THE AUTHORITY OF THE CITY ZONING ORDINANCE.
5 The General Assembly of North Carolina enacts:
6 Section 1. The city council may require sidewalk improvements for all
7 development that is subject to be reviewed under the site plan review provisions of
8 the city zoning ordinance.
9 Section 2. This act applies to the City of Jacksonville only.
10 Section 3. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Office**

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April 24, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 146 Jacksonville Site Plan Review
Introduced by Representatives Grady, Preston, Smith; and Watson

House Bill 146 would authorize the City of Jacksonville to require sidewalk improvements for all development that is subject to site plan review under the city zoning ordinance.

House Bill 146 would become effective when it becomes law.

H146-SMRW-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 841

Short Title: Establish Swift Creek Joint Zoning.

(Local)

Sponsors: Representatives Hensley, Blue (Cosponsors); and Mosley.

Referred to: Local and Regional Government I.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING BINDING JOINT ZONING JURISDICTION FOR THE
3 SWIFT CREEK AREA IN WAKE COUNTY SUBJECT TO MODIFICATION
4 ONLY BY INTERLOCAL AGREEMENT BY AND BETWEEN ALL
5 JURISDICTIONS INVOLVED OR BY ACTION OF THE GENERAL
6 ASSEMBLY.

7 Whereas, in January 1988, the late Mayor Avery Upchurch of Raleigh
8 invited chief elected officials of the Swift Creek area to meet to discuss the
9 development of a coordinated land-use plan for the area; and

10 Whereas, the able efforts of elected officials and technical staffs of the
11 County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner
12 resulted in the development of the Swift Creek Management Plan in September 1988;
13 and

14 Whereas, the various local governments having jurisdiction over the area
15 have approved the Swift Creek Management Plan through appropriate action of their
16 respective governing bodies; and

17 Whereas, the General Assembly finds that it is in the best interest of the
18 citizens of the Swift Creek area and the various local governments to maintain the
19 Swift Creek Management Plan as agreed to by those jurisdictions; and

20 Whereas, conferring binding joint zoning jurisdiction over the Swift
21 Creek area in accordance with the requirements of the Swift Creek Management Plan
22 is an equitable manner in which to provide for the continuation of the Swift Creek
23 Management Plan to the benefit of the area and the local governments involved;
24 Now, therefore,

1 The General Assembly of North Carolina enacts:

2 Section 1. Notwithstanding any other provision of law, the County of
3 Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner shall share
4 binding joint zoning jurisdiction, as provided by this act, over the area in Wake
5 County known as Swift Creek and described more particularly in the Swift Creek
6 Management Plan developed in 1988 and subsequently submitted by the Swift Creek
7 Planning Committee to the State as the official water supply watershed protection
8 plan for the Swift Creek area.

9 Section 2. The joint zoning jurisdiction shared by the County of Wake,
10 the City of Raleigh, and the Towns of Apex, Cary, and Garner shall be binding upon
11 those jurisdictions in accordance with the requirements of the Swift Creek
12 Management Plan, as approved by the County of Wake on April 2, 1990; the City of
13 Raleigh on May 2, 1988; the Town of Apex on January 3, 1989; the Town of Cary on
14 February 4, 1990; and the Town of Garner in 1989.

15 Section 3. The Swift Creek Management Plan is established as a binding
16 joint zoning plan that may be modified only by interlocal agreement entered into by
17 all of the respective jurisdictions or by action of the General Assembly.

18 Section 4. This act is effective when it becomes law.

Clerk Copy

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 841

Proposed Committee Substitute H841-CSLR-040

WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Establish Swift Creek Joint Zoning.

(Local)

Sponsors:

Referred to: Local and Regional Government I.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING BINDING JOINT PLANNING AND ZONING
3 JURISDICTION FOR THE SWIFT CREEK AREA IN WAKE COUNTY SUBJECT TO
4 MODIFICATION ONLY BY INTERLOCAL AGREEMENT BY AND BETWEEN ALL
5 JURISDICTIONS INVOLVED OR BY ACTION OF THE GENERAL ASSEMBLY.
6 Whereas, in January 1988, the late Mayor Avery Upchurch
7 of Raleigh invited chief elected officials of the Swift Creek
8 area to meet to discuss the development of a coordinated land-use
9 plan for the area; and
10 Whereas, the able efforts of elected officials and
11 technical staffs of the County of Wake, the City of Raleigh, and
12 the Towns of Apex, Cary, and Garner resulted in the development
13 of the Swift Creek Management Plan in September 1988; and
14 Whereas, the various local governments having
15 jurisdiction over the area have approved the Swift Creek
16 Management Plan through appropriate action of their respective
17 governing bodies; and
18 Whereas, the General Assembly finds that it is in the
19 best interest of the citizens of the Swift Creek area and the
20 various local governments to maintain the Swift Creek Management
21 Plan as agreed to by those jurisdictions; and

1 Whereas, conferring binding joint planning and zoning
2 jurisdiction over the Swift Creek area in accordance with the
3 requirements of the Swift Creek Management Plan is an equitable
4 manner in which to provide for the continuation of the Swift
5 Creek Management Plan to the benefit of the area and the local
6 governments involved; Now, therefore,
7 The General Assembly of North Carolina enacts:

8 Section 1. Notwithstanding any other provision of law,
9 and subject to the provisions of Section 4 of this act, the
10 County of Wake, the City of Raleigh, and the Towns of Apex, Cary,
11 and Garner shall share binding joint planning and zoning
12 jurisdiction, as provided by this act, over the area in Wake
13 County known as Swift Creek and described more particularly in
14 the Swift Creek Management Plan developed in 1988 and
15 subsequently submitted by the Swift Creek Planning Committee to
16 the State as the official water supply watershed protection plan
17 for the Swift Creek area.

18 Section 2. The joint planning and zoning jurisdiction
19 shared by the County of Wake, the City of Raleigh, and the Towns
20 of Apex, Cary, and Garner shall be binding upon those
21 jurisdictions in accordance with the requirements of the Swift
22 Creek Management Plan, as approved by the County of Wake on April
23 2, 1990; the City of Raleigh on May 2, 1988; the Town of Apex on
24 January 3, 1989; the Town of Cary on February 4, 1990; and the
25 Town of Garner in 1989.

26 Section 3. (a) Except as otherwise provided by Section
27 4 of this act, the Swift Creek Management Plan is established as
28 a binding joint planning and zoning plan that may be modified
29 only by:

30 (1) Interlocal agreement pursuant to Article 20 of
31 Chapter 160A of the General Statutes entered into
32 by all of the affected jurisdictions; or

33 (2) Action of the General Assembly.

34 (b) An interlocal agreement entered into pursuant to
35 this act may include mutual agreement regarding the exercise of
36 all powers granted by Article 18 of Chapter 153A of the General
37 Statutes and Article 19 of Chapter 160A of the General Statutes,
38 including powers involving the exercise of legislative
39 discretion.

40 Section 4. If a jurisdiction affected by this act has
41 an ordinance to effectuate the recommended minimum performance
42 standards for the Swift Creek watershed and the other specific
43 features set forth in the Swift Creek Management Plan, then the
44 jurisdiction may modify its zoning ordinance to further meet or

1 exceed the requirements of the Swift Creek Management Plan
2 without having to:

- 3 (1) Obtain authorization from the General Assembly; or
4 (2) Enter into an interlocal agreement required by
5 Section 3 of this act.

6 Section 5. The City of Raleigh, and the Towns of Apex,
7 Cary, and Garner may extend utilities unilaterally to any portion
8 of their respective jurisdictions subject to the Swift Creek
9 Management Plan provided that, prior to the effective date of
10 this act, the municipalities zoned or rezoned the subject area in
11 anticipation of providing utilities to the area.

12 Section 6. (a) A jurisdiction affected by this act
13 shall not adopt any ordinance authorized by Article 18 of Chapter
14 153A of the General Statutes, Article 19 of Chapter 160A of the
15 General Statutes, or under any local act or charter provision
16 relating to the subject of those Articles, nor grant any permit
17 or approval pursuant to those ordinances, that would be
18 inconsistent with the standards and provisions of the Swift Creek
19 Management Plan.

20 (b) This act applies to any zoning map amendment and to
21 any other zoning amendment, modification, repeal, or change in
22 zoning regulations and restrictions or zone boundaries relating
23 to the area set forth in the Swift Creek Management Plan, but
24 shall not be construed to prevent any jurisdiction subject to its
25 provisions from adopting zoning ordinance text changes.

26 (c) This act shall not affect any valid and unexpired
27 vested right of any landowner arising by law pursuant to G.S.
28 153A-344.1 or G.S. 160A-385.1, nor shall this act affect the
29 right of any person to protest zoning changes or otherwise appeal
30 planning, subdivision, or zoning actions as provided by Article
31 18 of Chapter 153A of the General Statutes or Article 19 of
32 Chapter 160A of the General Statutes or by local ordinance.

33 Section 7. This act is effective when it becomes law,
34 except that Section 4 of this act becomes effective October 1,
35 1997.



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April 24, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 841 Establish Swift Creek Joint Zoning
Introduced by Representatives Hensley, Blue (Cosponsors); and Mosley

House Bill 841 would require the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner to share binding joint zoning jurisdiction over the area known as Swift Creek., in accordance with the Swift Creek Management Plan approved by each unit of government. The bill would provide that the Management Plan could only be modified by interlocal agreement of all jurisdictions, or by the General Assembly.

House Bill 841 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 879 A BILL TO BE ENTITLED AN ACT TO ALLOW CERTAIN DECISIONS OF
THE DURHAM COUNTY BOARD OF ADJUSTMENT TO BE MADE BY THREE-
FIFTHS VOTE RATHER THAN FOUR-FIFTHS.

☒ **With a favorable report.**

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 879

Short Title: Durham Board of Adjustment Votes.

(Local)

Sponsors: Representatives Miller; Capps and Mosley.

Referred to: Local and Regional Government I.

April 7, 1997

1

A BILL TO BE ENTITLED

2

AN ACT TO ALLOW CERTAIN DECISIONS OF THE DURHAM COUNTY

3

BOARD OF ADJUSTMENT TO BE MADE BY THREE-FIFTHS VOTE

4

RATHER THAN FOUR-FIFTHS.

5

The General Assembly of North Carolina enacts:

6

Section 1. G.S. 153A-345(e) reads as rewritten:

7

"(e) The board of adjustment, by a vote of ~~four-fifths~~ three-fifths of its members,

8

may reverse any order, requirement, decision, or determination of an administrative

9

officer charged with enforcing an ordinance adopted pursuant to this Part, or may

10

decide in favor of the applicant a matter upon which the board is required to pass

11

under the ordinance, or may grant a variance from the provisions of the ordinance.

12

Each decision of the board is subject to review by the superior court by proceedings

13

in the nature of certiorari. Any petition for review by the superior court shall be

14

filed with the clerk of superior court within 30 days after the decision of the board is

15

filed in such office as the ordinance specifies, or after a written copy thereof is

16

delivered to every aggrieved party who has filed a written request for such copy with

17

the secretary or chairman of the board at the time of its hearing of the case,

18

whichever is later. The decision of the board may be delivered to the aggrieved party

19

either by personal service or by registered mail or certified mail return receipt

20

requested."

21

Section 2. This act applies to Durham County only.

22

Section 3. This act is effective when it becomes law.



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April 24, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 879 Durham Board of Adjustment Votes
Introduced by Representatives Miller; Capps and Mosley

House Bill 879 would authorize Board of Adjustment decisions specified in G.S. 153-345(e) to be made by a 3/5 vote (4/5 under general law), if made by the Durham County Board of Adjustment.

House Bill 879 would become effective when it becomes law.

H879-SMRW-001

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 808 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF CARY
TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND
PRESERVATION OF TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN
THE CITY'S EXTRATERRITORIAL PLANNING JURISDICTION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill, ☒ which changes the title,
unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 808

Short Title: Cary Tree Ordinances.

(Local)

Sponsors: Representatives Miner; and Mosley.

Referred to: Local and Regional Government I.

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF CARY TO ADOPT ORDINANCES
3 REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF
4 TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN THE
5 CITY'S EXTRATERRITORIAL PLANNING JURISDICTION.

6 The General Assembly of North Carolina enacts:

7 Section 1. In order to preserve and enhance one of the most valuable
8 natural resources of the community and to protect the health, safety, and welfare of
9 its citizens, a municipality may adopt ordinances to regulate the planting, removal,
10 and preservation of trees and shrubs on public and private property within the
11 municipality.

12 Section 2. Prior to adopting an ordinance authorized by Section 1 of this
13 act, a public hearing shall be held before the municipality's governing board. Notice
14 of the hearing shall be given in accordance with G.S. 160A-364.

15 Section 3. This act shall apply only to the City of Cary and to areas
16 within the City's extraterritorial planning jurisdiction under Article 19 of Chapter
17 160A of the General Statutes.

18 Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 808
Proposed Committee Substitute H808-PCS6244

Short Title: Cary Tree Ordinances.

(Local)

Sponsors:

Referred to:

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TOWN OF CARY TO ADOPT ORDINANCES
3 REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF
4 TREES AND SHRUBS WITHIN THE TOWN AND AREAS WITHIN THE
5 TOWN'S EXTRATERRITORIAL PLANNING JURISDICTION.

6 The General Assembly of North Carolina enacts:

7 Section 1. In order to preserve and enhance one of the most valuable
8 natural resources of the community and to protect the health, safety, and welfare of
9 its citizens, a municipality may adopt ordinances to regulate the planting, removal,
10 and preservation of trees and shrubs on public and private property within the
11 municipality. Any ordinance adopted pursuant to this act may not regulate the
12 harvest of timber on privately owned property. If a clear cutting occurs on property
13 subject to an ordinance adopted pursuant to this act, the city may provide by
14 ordinance that no plan approval for development of the property will be granted by
15 the town for a period of up to 12 months following the clear cutting.

16 Section 2. Prior to adopting an ordinance authorized by Section 1 of this
17 act, a public hearing shall be held before the municipality's governing board. Notice
18 of the hearing shall be given in accordance with G.S. 160A-364.

19 Section 3. This act shall apply only to the Town of Cary and to areas
20 within the Town's extraterritorial planning jurisdiction under Article 19 of Chapter
21 160A of the General Statutes.

22 Section 4. This act is effective when it becomes law.



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April 24, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 808 Cary Tree Ordinances
Introduced by Representatives Miner; and Mosley

House Bill 808 authorizes the City of Cary to adopt ordinances, following notice and a hearing, regulating the planting, removal and preservation of trees. An ordinance adopted under the authority of this bill could apply to the area in the city limits of Cary, and to its extraterritorial planning jurisdiction.

House Bill 808 would become effective when it becomes law.

Proposed Amendment to House Bill 808:

add on page 1, line 11, following the period:

"Any ordinance adopted pursuant to this act may not regulate the harvest of timber on privately owned property. If a clear-cutting occurs on property subject to an ordinance adopted pursuant to this act, the city may provide by ordinance that no site plan approval for development of the property will be granted by the City for a period of up to 24 months following the clear-cutting."

H808-SMRW-001

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

April 29, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met April 29, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Buchanan, Carpenter, Kiser, Reynolds, Tallent, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Terra Abrams and David Bilich.

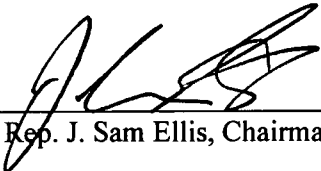
The following bills were discussed:

HB 841 A BILL TO BE ENTITLED AN ACT ESTABLISHING BINDING JOINT ZONING JURISDICTION FOR THE SWIFT CREEK AREA IN WAKE COUNTY SUBJECT TO MODIFICATION ONLY BY INTERLOCAL AGREEMENT BY AND BETWEEN ALL JURISDICTIONS INVOLVED OR BY ACTION OF THE GENERAL ASSEMBLY. Rep. Hensley was recognized to present the Proposed Committee Substitute adopted for consideration at the April 24, 1997 meeting. He explained that the bill would formalize the Swift Creek Management Plan into state law. Rep. Carpenter moved the bill be displaced from the calendar; seconded and passed.

HB 812 A BILL TO BE ENTITLED AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY PRIVATE SALE. Rep. Russell was recognized to present the bill. She explained that the bill was drafted at the request of the Wayne County Commissioners and would authorize Wayne County to convey a tract of land to the Nahunta Volunteer Fire Department. Rep. Hurley moved for a favorable report; seconded and passed.

The meeting adjourned at 11:20 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

April 29, 1997
Date

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 841

Short Title: Establish Swift Creek Joint Zoning.

(Local)

Sponsors: Representatives Hensley, Blue (Cosponsors); and Mosley.

Referred to: Local and Regional Government I.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING BINDING JOINT ZONING JURISDICTION FOR THE
3 SWIFT CREEK AREA IN WAKE COUNTY SUBJECT TO MODIFICATION
4 ONLY BY INTERLOCAL AGREEMENT BY AND BETWEEN ALL
5 JURISDICTIONS INVOLVED OR BY ACTION OF THE GENERAL
6 ASSEMBLY.

7 Whereas, in January 1988, the late Mayor Avery Upchurch of Raleigh
8 invited chief elected officials of the Swift Creek area to meet to discuss the
9 development of a coordinated land-use plan for the area; and

10 Whereas, the able efforts of elected officials and technical staffs of the
11 County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner
12 resulted in the development of the Swift Creek Management Plan in September 1988;
13 and

14 Whereas, the various local governments having jurisdiction over the area
15 have approved the Swift Creek Management Plan through appropriate action of their
16 respective governing bodies; and

17 Whereas, the General Assembly finds that it is in the best interest of the
18 citizens of the Swift Creek area and the various local governments to maintain the
19 Swift Creek Management Plan as agreed to by those jurisdictions; and

20 Whereas, conferring binding joint zoning jurisdiction over the Swift
21 Creek area in accordance with the requirements of the Swift Creek Management Plan
22 is an equitable manner in which to provide for the continuation of the Swift Creek
23 Management Plan to the benefit of the area and the local governments involved;

24 Now, therefore,

1 The General Assembly of North Carolina enacts:

2 Section 1. Notwithstanding any other provision of law, the County of
3 Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner shall share
4 binding joint zoning jurisdiction, as provided by this act, over the area in Wake
5 County known as Swift Creek and described more particularly in the Swift Creek
6 Management Plan developed in 1988 and subsequently submitted by the Swift Creek
7 Planning Committee to the State as the official water supply watershed protection
8 plan for the Swift Creek area.

9 Section 2. The joint zoning jurisdiction shared by the County of Wake,
10 the City of Raleigh, and the Towns of Apex, Cary, and Garner shall be binding upon
11 those jurisdictions in accordance with the requirements of the Swift Creek
12 Management Plan, as approved by the County of Wake on April 2, 1990; the City of
13 Raleigh on May 2, 1988; the Town of Apex on January 3, 1989; the Town of Cary on
14 February 4, 1990; and the Town of Garner in 1989.

15 Section 3. The Swift Creek Management Plan is established as a binding
16 joint zoning plan that may be modified only by interlocal agreement entered into by
17 all of the respective jurisdictions or by action of the General Assembly.

18 Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 841

Proposed Committee Substitute H841-CSLR-040

WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Establish Swift Creek Joint Zoning.

(Local)

Sponsors:

Referred to: Local and Regional Government I.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING BINDING JOINT PLANNING AND ZONING
3 JURISDICTION FOR THE SWIFT CREEK AREA IN WAKE COUNTY SUBJECT TO
4 MODIFICATION ONLY BY INTERLOCAL AGREEMENT BY AND BETWEEN ALL
5 JURISDICTIONS INVOLVED OR BY ACTION OF THE GENERAL ASSEMBLY.
6 Whereas, in January 1988, the late Mayor Avery Upchurch
7 of Raleigh invited chief elected officials of the Swift Creek
8 area to meet to discuss the development of a coordinated land-use
9 plan for the area; and
10 Whereas, the able efforts of elected officials and
11 technical staffs of the County of Wake, the City of Raleigh, and
12 the Towns of Apex, Cary, and Garner resulted in the development
13 of the Swift Creek Management Plan in September 1988; and
14 Whereas, the various local governments having
15 jurisdiction over the area have approved the Swift Creek
16 Management Plan through appropriate action of their respective
17 governing bodies; and
18 Whereas, the General Assembly finds that it is in the
19 best interest of the citizens of the Swift Creek area and the
20 various local governments to maintain the Swift Creek Management
21 Plan as agreed to by those jurisdictions; and

1 Whereas, conferring binding joint planning and zoning
2 jurisdiction over the Swift Creek area in accordance with the
3 requirements of the Swift Creek Management Plan is an equitable
4 manner in which to provide for the continuation of the Swift
5 Creek Management Plan to the benefit of the area and the local
6 governments involved; Now, therefore,

7 The General Assembly of North Carolina enacts:

8 Section 1. Notwithstanding any other provision of law,
9 and subject to the provisions of Section 4 of this act, the
10 County of Wake, the City of Raleigh, and the Towns of Apex, Cary,
11 and Garner shall share binding joint planning and zoning
12 jurisdiction, as provided by this act, over the area in Wake
13 County known as Swift Creek and described more particularly in
14 the Swift Creek Management Plan developed in 1988 and
15 subsequently submitted by the Swift Creek Planning Committee to
16 the State as the official water supply watershed protection plan
17 for the Swift Creek area.

18 Section 2. The joint planning and zoning jurisdiction
19 shared by the County of Wake, the City of Raleigh, and the Towns
20 of Apex, Cary, and Garner shall be binding upon those
21 jurisdictions in accordance with the requirements of the Swift
22 Creek Management Plan, as approved by the County of Wake on April
23 2, 1990; the City of Raleigh on May 2, 1988; the Town of Apex on
24 January 3, 1989; the Town of Cary on February 4, 1990; and the
25 Town of Garner in 1989.

26 Section 3. (a) Except as otherwise provided by Section
27 4 of this act, the Swift Creek Management Plan is established as
28 a binding joint planning and zoning plan that may be modified
29 only by:

30 (1) Interlocal agreement pursuant to Article 20 of
31 Chapter 160A of the General Statutes entered into
32 by all of the affected jurisdictions; or

33 (2) Action of the General Assembly.

34 (b) An interlocal agreement entered into pursuant to
35 this act may include mutual agreement regarding the exercise of
36 all powers granted by Article 18 of Chapter 153A of the General
37 Statutes and Article 19 of Chapter 160A of the General Statutes,
38 including powers involving the exercise of legislative
39 discretion.

40 Section 4. If a jurisdiction affected by this act has
41 an ordinance to effectuate the recommended minimum performance
42 standards for the Swift Creek watershed and the other specific
43 features set forth in the Swift Creek Management Plan, then the
44 jurisdiction may modify its zoning ordinance to further meet or

1 exceed the requirements of the Swift Creek Management Plan
2 without having to:

- 3 (1) Obtain authorization from the General Assembly; or
4 (2) Enter into an interlocal agreement required by
5 Section 3 of this act.

6 Section 5. The City of Raleigh, and the Towns of Apex,
7 Cary, and Garner may extend utilities unilaterally to any portion
8 of their respective jurisdictions subject to the Swift Creek
9 Management Plan provided that, prior to the effective date of
10 this act, the municipalities zoned or rezoned the subject area in
11 anticipation of providing utilities to the area.

12 Section 6. (a) A jurisdiction affected by this act
13 shall not adopt any ordinance authorized by Article 18 of Chapter
14 153A of the General Statutes, Article 19 of Chapter 160A of the
15 General Statutes, or under any local act or charter provision
16 relating to the subject of those Articles, nor grant any permit
17 or approval pursuant to those ordinances, that would be
18 inconsistent with the standards and provisions of the Swift Creek
19 Management Plan.

20 (b) This act applies to any zoning map amendment and to
21 any other zoning amendment, modification, repeal, or change in
22 zoning regulations and restrictions or zone boundaries relating
23 to the area set forth in the Swift Creek Management Plan, but
24 shall not be construed to prevent any jurisdiction subject to its
25 provisions from adopting zoning ordinance text changes.

26 (c) This act shall not affect any valid and unexpired
27 vested right of any landowner arising by law pursuant to G.S.
28 153A-344.1 or G.S. 160A-385.1, nor shall this act affect the
29 right of any person to protest zoning changes or otherwise appeal
30 planning, subdivision, or zoning actions as provided by Article
31 18 of Chapter 153A of the General Statutes or Article 19 of
32 Chapter 160A of the General Statutes or by local ordinance.

33 Section 7. This act is effective when it becomes law,
34 except that Section 4 of this act becomes effective October 1,
35 1997.



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April 29, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 841 Establish Swift Creek Joint Zoning
Introduced by Representatives Hensley, Blue (Cosponsors); and Mosley

House Bill 841 would require the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner to share binding joint zoning jurisdiction over the area known as Swift Creek., in accordance with the Swift Creek Management Plan approved by each unit of government. The bill would provide that the Management Plan could only be modified by interlocal agreement of all jurisdictions, or by the General Assembly.

House Bill 841 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 812 A BILL TO BE ENTITLED AN ACT ALLOWING WAYNE COUNTY TO
CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE
DEPARTMENT BY PRIVATE SALE.

☒ **With a favorable report.**

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 812

Short Title: Wayne/Nahunta Real Property Conveyance.

(Local)

Sponsors: Representatives Russell, Baddour, and Braswell (Cosponsors).

Referred to: Local and Regional Government I.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL
3 PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY
4 PRIVATE SALE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Notwithstanding the provisions of Article 12 of Chapter 160A
7 of the General Statutes, the County of Wayne may convey to the Nahunta Volunteer
8 Fire Department, Inc., a nonprofit corporation, by private sale with or without
9 consideration, a tract consisting of 2.88 acres and a right-of-way located in Buck
10 Swamp Township, Wayne County, and described in the deed recorded in Book 1555,
11 Page 1 of the Wayne County Registry, for use as a parking area and for use by the
12 Nahunta Extension Homemakers Club, said property being more particularly
13 described as follows:

14 "All that tract of land containing 2.88 acres more or less, being part of the
15 property recorded in Deed Book 274, page 158 and Deed Book 410, page 407, being
16 located in Buck Swamp Township, Wayne County, NC and described by metes and
17 bounds as follows:

18 Commencing at an iron stake found on the eastern right-of-way of NC Highway
19 No. 581, the southwestern corner of Ed Radford Auto Auction, Inc., Deed Book
20 1348, page 470, said stake being point 'A', having NC Grid Coordinates
21 Y=640,662.6989 and X=2,278,646.8410 and being located from NC Geodetic station
22 Monument entitled 'Nahunta', having grid coordinates Y=640,993.6524 and X=
23 2,278,588.5365, a magnetic bearing S. 04-54-21 E. and a horizontal distance 336.09
24 feet; and runs thence, leaving said road right-of-way, and with the line of Ed Radford

1 Auto Auction, Inc., Deed Book 1348, Page 470, N. 80-30-00 E. 195.36 feet to an iron
2 stake found; thence continued with said Radford line N. 08-38-23 W. 92.33 feet to a
3 p.k. nail found; thence continued with said Radford line, N. 08-38-23 W. 85.86 feet to
4 an iron stake found; thence continued with said Radford line N. 08-38.23 W 33.11
5 feet to an iron stake found; thence continued with said Radford line N. 80-36-52 E.
6 181.51 feet to an iron stake found; thence continued with said Radford line N. 80-36-
7 52 E. 22.66 feet to an iron stake found on the western edge of a 30 foot right-of-way,
8 Deed Book 1354, Page 186, said stake being located S. 09-30-02 E. 139.60 feet from a
9 point on the southern right-of-way of NCSR No. 1336; thence with the western edge
10 of said 30 foot right-of-way, S. 09-30-02 E. 33.66 feet to an iron stake found at the
11 end of said 30 foot right-of-way, the point of beginning; thence from said beginning
12 and along the southern end of said 30 foot right-of-way, Deed Book 1354, Page 186,
13 N. 80-45-48 E. 30.00 feet to an iron stake found on the eastern edge of said 30 foot
14 right-of-way; thence leaving said 30 foot right-of-way and with the line of the Trustees
15 of the Nahunta Home Extension Club, Deed Book 1354, Page 186, N. 80-45-48 E.
16 24.01 feet to a point in said line; thence continued with said line and with an existing
17 ditch, N. 80-45-48 E. 64.18 feet to a point in said line and in said ditch; thence
18 continued with said line and said ditch, N. 81-03-19 E. 76.97 feet to an iron stake;
19 thence continued with said Nahunta Home Extension Club Line, N. 71-56-52E.
20 109.32 feet to an iron stake; thence continued N. 71-56-52 E. 30.00 feet to a point in
21 Brooks Branch; thence with said branch as it meanders S. 29-23-12E. 433.29 feet to
22 an iron stake found (axle) in said branch; thence leaving said branch and with the
23 line of Zeb Whaley Heirs, S. 83-13-43 W. 191.51 feet to an iron stake set; thence
24 continued with said Whaley Line, S. 83-13-43 W. 200.00 feet to an iron stake set;
25 thence leaving said Whaley Line, N. 07-27-40 W. 278.24 feet to an iron stake set;
26 thence N. 65-18-27 W. 119.87 feet to an iron stake set; thence N. 09-30-02 W. 23.96
27 feet to the point of beginning.

28 THERE IS ALSO CONVEYED all of the Grantor's right title and interest in and
29 to the perpetual easement for ingress, egress and regress described in Deed Book
30 1354, Page 186 of the Wayne County Registry."

31 Section 2. This act is effective when it becomes law.



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April 29, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 812 Wayne/Nahunta Real Property Conveyance
Introduced by Representatives Russell, Baddour, and Braswell

House Bill 812 would authorize Wayne County to convey a 2.88 acre tract of land, described in the bill, to the Nahunta Volunteer Fire Department, Inc. by private sale with or without consideration.

House Bill 812 would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

May 6, 1997

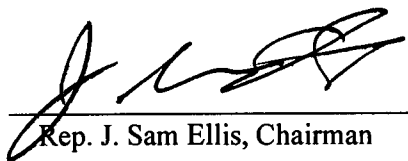
The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met May 6, 1997, at 11:05 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. LOCAL AND REGIONAL GOVERNMENT I members present were: Representatives Allred, Buchanan, Carpenter, Kiser, Reynolds, Tallent, Rogers, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Hunter LeVan and Christopher D. Whitaker.

The following bill was discussed:

HB 614 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE VILLAGE OF SWIFT CREEK. Rep. Ellis offered a Proposed Committee Substitute. Rep. Carpenter moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Ellis explained that the changes occurred on Pages 1, 3, and 4. The changes on Page 1, Lines 12-14 were requested by North Carolina State University for the purpose of continuing its existing operations at the Lake Wheeler Road Research Field Laboratory. Page 3, Line 39 establishes the date for the referendum. If the incorporation vote is successful, the Page 4 change establishes a date of February or March of 1999, as the first election for the permanent board. Rep. Ellis explained that a perfecting amendment was needed to delete certain language on Page 3, Line 42. Rep. Carpenter moved for a perfecting amendment as described and for adoption of the Amended Committee Substitute; seconded and passed. Following a brief discussion of the proposed village's boundaries and current industrial development, Rep. Buchanan moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

The meeting adjourned at 11:20 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

May 6, 1997
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 614 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE VILLAGE OF
SWIFT CREEK.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐.

☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill,
and recommendation that the committee substitute bill be re-referred to the Committee
on Finance.**

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

1

HOUSE BILL 614

Short Title: Swift Creek Incorporated.

(Local)

Sponsors: Representative Ellis.

Referred to: Local and Regional Government I, if favorable, Finance.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE VILLAGE OF SWIFT CREEK.

3 The General Assembly of North Carolina enacts:

4 Section 1. A charter of the Village of Swift Creek is enacted as follows:
5 "THE CHARTER OF THE VILLAGE OF SWIFT CREEK.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation and Corporate Powers.** The inhabitants of the Village
9 of Swift Creek are a body corporate and politic under the name 'Village of Swift
10 Creek'. Under that name they have all the powers, duties, rights, privileges, and
11 immunities conferred and imposed on cities by the general law of North Carolina.
12 The General Assembly intends by this act to assist in fulfilling the broad public
13 purpose of environmental preservation, protection of watersheds, and enhancement of
14 natural resources.

15 "CHAPTER II.

16 "CORPORATE BOUNDARIES.

17 "Sec. 2-1. **Village Boundaries.** Until modified in accordance with the law, the
18 boundaries of the Village of Swift Creek are as follows:

19 In Wake County, beginning at the intersection of Tryon Road and Lake Wheeler
20 Road, thence following Lake Wheeler Road in a direction generally south to its
21 intersection with Hilltop Needmore Road, thence following Hilltop Needmore Road
22 in a direction generally west to its intersection with Sunset Lake Road, thence
23 following Sunset Lake Road in a direction generally northwest to its intersection with
24 Holly Springs Road, thence following Holly Springs Road generally northeast to its

1 intersection with Kildaire Farm Road, thence following Kildaire Farm Road in a
2 direction generally north to its intersection with Penny Road, thence following Penny
3 Road in a direction generally east to its intersection with Holly Springs Road, thence
4 following Holly Springs Road in a direction generally northeast to its intersection
5 with Tryon Road, thence following Tryon Road in a direction generally east to the
6 point and place of BEGINNING. This description includes all named roads to their
7 outer right-of-way, but excludes any area which on January 1, 1997, was within the
8 corporate limits of the Town of Cary, the Town of Holly Springs, or the City of
9 Raleigh.

10 "CHAPTER III.

11 "GOVERNING BODY.

12 "Sec. 3-1. **Structure of the Governing Body; Number of Members.** The governing
13 body of the Village of Swift Creek is the Board of Aldermen which has five
14 members.

15 "Sec. 3-2. **Manner of Electing Board.** The qualified voters of the entire Village
16 nominate and elect the Board.

17 "Sec. 3-3. **Term of Office of Board Members.** Except for the initial Board,
18 members of the Board are elected to four-year terms. In 1997, all members of the
19 Board are elected to one-year terms. In 1998, five members shall be elected to the
20 Board. The three members receiving the highest number of votes shall serve four-
21 year terms. The two receiving the next highest number of votes shall serve two-year
22 terms. In 2000, and quadrennially thereafter, two members shall be elected to the
23 Board. In 2002, and quadrennially thereafter, three members shall be elected to the
24 Board.

25 "Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the qualified
26 voters of the Village. The Mayor shall be elected in 1997 for a one-year term, and in
27 1998 and quadrennially thereafter for a four-year term. The Mayor shall vote on all
28 issues before the council unless excused under G.S. 160A-75.

29 "CHAPTER IV.

30 "ELECTIONS.

31 "Sec. 4-1. **Method.** Board members shall be elected on a nonpartisan plurality
32 basis and the results determined in accordance with G.S. 163-292.

33 "Sec. 4-2. **Results.** Election results shall be determined by the Wake County
34 Board of Elections according to Chapter 163 of the General Statutes.

35 "Sec. 4-3. **Filing Period.** The filing period for municipal office shall open at 12:00
36 noon on the second Monday in August and end at 12:00 noon on the second Monday
37 thereafter.

38 "Sec. 4-4. **General Law.** Except as provided by this Charter, town election shall
39 be conducted in accordance with Chapter 163 of the General Statutes. Elections in
40 even-numbered years shall be conducted by the same method as in odd-numbered
41 years.

42 "CHAPTER V.

43 "ADMINISTRATION.

1 "Sec. 5-1. **Mayor-Board Plan.** The Village of Swift Creek shall operate under the
2 Council-Manager Plan as provided in Part 2 of Article 7 of Chapter 160A of the
3 General Statutes.

4 "Sec. 5-2. **Interim Board.** From the effective date of this Charter until the
5 organizational meeting of the Board of Aldermen after the 1998 municipal election,
6 the members of the Board shall be:

7 "Sec. 5-3. **Taxation and Funds.** The Village of Swift Creek is eligible to receive
8 distributions of State funds during the fiscal year 1997-98."

9 Section 2. (a) From and after the effective date of this act, the citizens
10 and property in the Village of Swift Creek shall be subject to municipal taxes levied
11 for the year beginning July 1, 1997, and for that purpose the Village shall obtain from
12 Wake County a record of property in the area herein incorporated which was listed
13 for taxes as of January 1, 1997; and the businesses in the Village shall be liable for
14 privilege license tax from the effective date of the privilege license tax ordinance.

15 (b) If the effective date of this act is before July 1, 1997, the Village may
16 adopt a budget ordinance for fiscal year 1996-97 without following the timetable in
17 the Local Government Budget and Fiscal Control Act, but shall follow the sequence
18 of actions in the spirit of the act insofar as is practical. The Village may adopt a
19 budget ordinance for fiscal year 1997-98 without following the timetable in the Local
20 Government Budget and Fiscal Control Act, but shall follow the sequence of actions
21 in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem
22 taxes may be paid at par or face amount within 90 days of adoption of the budget
23 ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the
24 taxes had been due and payable on September 1, 1997.

25 Section 3. The Wake County Board of Elections shall conduct on a date
26 no later than August 1, 1997, a special election for the purpose of submission to the
27 qualified voters of the area described in Section 2.1 of the Charter of the Village of
28 Swift Creek the question of whether or not such area shall be incorporated as the
29 Village of Swift Creek. The date shall be set by the Wake County Board of
30 Elections. Registration for the election shall be conducted in accordance with G.S.
31 163-288.2.

32 Section 4. In the election, the question on the ballot shall be:

33 "[] FOR [] AGAINST

34 Incorporation of the Village of Swift Creek".

35 Section 5. In the election, if a majority of the votes are cast "For
36 incorporation of the Village of Swift Creek", Sections 1 and 2 of this act shall
37 become effective on the date that the Wake County Board of Elections certifies the
38 results of the election. If necessary, the Wake County Board of Elections shall
39 establish a special candidate filing period for the 1997 municipal election. Otherwise,
40 those sections shall have no force and effect.

41 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 614
Proposed Committee Substitute H614-PCS1366

Short Title: Swift Creek Incorporated.

(Local)

Sponsors:

Referred to:

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE VILLAGE OF SWIFT CREEK.
3 The General Assembly of North Carolina enacts:

4 Section 1. A charter of the Village of Swift Creek is enacted as follows:
5 "THE CHARTER OF THE VILLAGE OF SWIFT CREEK.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation and Corporate Powers.** The inhabitants of the Village
9 of Swift Creek are a body corporate and politic under the name 'Village of Swift
10 Creek'. Under that name they have all the powers, duties, rights, privileges, and
11 immunities conferred and imposed on cities by the general law of North Carolina,
12 except that the Village of Swift Creek shall permit North Carolina State University to
13 continue to operate and to expand existing research farm operations, known as the
14 Lake Wheeler Road Field Laboratories, on those lands owned by the State of North
15 Carolina, or leased or otherwise provided to the university for its use. The General
16 Assembly intends by this act to assist in fulfilling the broad public purpose of
17 environmental preservation, protection of watersheds, and enhancement of natural
18 resources.

19 "CHAPTER II.

20 "CORPORATE BOUNDARIES.

21 "Sec. 2-1. **Village Boundaries.** Until modified in accordance with the law, the
22 boundaries of the Village of Swift Creek are as follows:

1 In Wake County, beginning at the intersection of Tryon Road and Lake Wheeler
2 Road, thence following Lake Wheeler Road in a direction generally south to where it
3 crosses Middle Creek, thence following Middle Creek in a direction generally west to
4 its intersection with Rocky Branch, thence following Rocky Branch in a direction
5 generally north to where it crosses Holly Springs Road, thence following Holly
6 Springs Road generally southwest to its intersection with Kildaire Farm Road, thence
7 following Kildaire Farm Road in a direction generally north to the northwest corner
8 of Wake County parcel 0760064109, thence following the northern boundaries of
9 Wake County parcels 0760064109, 0760065159, 0760161037, 0760164130, and
10 0760166148, easterly to the northeast corner of Wake County Parcel 0760166148
11 thence following the eastern boundaries of Wake County Parcels 0760166148,
12 0760167046, 0760157945, 0760157854, 0760156790, 0760157662, and 0760158428
13 southerly to Wake County Parcel 0760159388, thence following the northern
14 boundaries of Wake County Tax Parcels 0760159388, 0760251434, and 0760253495 to
15 Surry Ridge Circle, thence following that same line across Surry Ridge Circle to the
16 northwest corner of Wake County Parcel 0760257443, thence following the northern
17 boundary of Wake County Parcels 0760257443, 0760350476, and 0760354421 east to
18 the northeast corner of Wake County Parcel 0760354421, thence following the eastern
19 boundary of Wake County Parcel 0760354421 south to the northern boundary of
20 Wake County Parcel 0760355221, thence along the northern boundaries of Wake
21 County Parcels 0760355221, and 0760356240 east to where that line intersects Wake
22 County Parcel 0760450236, thence following the northern boundary of Wake County
23 Parcel 0760450236 east, north, and east to the intersection with Wake County Parcel
24 0760452485, thence following the western boundary of Wake County Parcel
25 0760452485 in a generally northeast direction to its intersection with Arthur Pierce
26 Road, thence following Arthur Pierce Road in a direction generally southeast to its
27 intersection with Holly Springs Road, thence following Holly Springs Road in a
28 direction generally northeast to its intersection with the extraterritorial zoning
29 jurisdiction of the Town of Cary as it existed on March 26, 1997, thence following the
30 extraterritorial zoning jurisdiction of the Town of Cary as it existed on March 26,
31 1997, generally east to its intersection with Campbell Road, thence following
32 Campbell Road north to Tryon Road, thence following Tryon Road in a direction
33 generally east to the point and place of BEGINNING. This description includes all
34 named roads to their outer right-of-way, but excludes any area which on January 1,
35 1997, was within the corporate limits of the Town of Cary, the Town of Holly
36 Springs, or the City of Raleigh.

37 "CHAPTER III.

38 "GOVERNING BODY.

39 "Sec. 3-1. **Structure of the Governing Body; Number of Members.** The governing
40 body of the Village of Swift Creek is the Board of Aldermen which has five
41 members.

42 "Sec. 3-2. **Manner of Electing Board.** The qualified voters of the entire Village
43 nominate and elect the Board.

1 "Sec. 3-3. **Term of Office of Board Members.** Except for the initial Board,
2 members of the Board are elected to four-year terms. In 1999, five members shall be
3 elected to the Board. The three members receiving the highest number of votes shall
4 serve four-year terms. The two receiving the next highest number of votes shall serve
5 two-year terms. In 2001, and quadrennially thereafter, two members shall be elected
6 to the Board. In 2003, and quadrennially thereafter, three members shall be elected
7 to the Board.

8 "Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the qualified
9 voters of the Village. The Mayor shall be elected in 1999 and quadrennially
10 thereafter for a four-year term. The Mayor shall vote on all issues before the council
11 unless excused under G.S. 160A-75.

12 "CHAPTER IV.

13 "ELECTIONS.

14 "Sec. 4-1. **Method.** Board members shall be elected on a nonpartisan plurality
15 basis and the results determined in accordance with G.S. 163-292.

16 "Sec. 4-2. **Results.** Election results shall be determined by the Wake County
17 Board of Elections according to Chapter 163 of the General Statutes.

18 "Sec. 4-3. **General Law.** Except as provided by this Charter, town election shall
19 be conducted in accordance with Chapter 163 of the General Statutes.

20 "CHAPTER V.

21 "ADMINISTRATION.

22 "Sec. 5-1. **Mayor-Board Plan.** The Village of Swift Creek shall operate under the
23 Council-Manager Plan as provided in Part 2 of Article 7 of Chapter 160A of the
24 General Statutes."

25 Section 2. (a) From and after the effective date of this act, the citizens
26 and property in the Village of Swift Creek shall be subject to municipal taxes levied
27 for the year beginning July 1, 1998, and for that purpose the Village shall obtain from
28 Wake County a record of property in the area herein incorporated which was listed
29 for taxes as of January 1, 1998, and the businesses in the Village shall be liable for
30 privilege license tax from the effective date of the privilege license tax ordinance.

31 (b) The Village may adopt a budget ordinance for fiscal years 1998-99
32 and 1999-2000 without following the timetable in the Local Government Budget and
33 Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act
34 insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par
35 or face amount within 90 days of adoption of the budget ordinance, and thereafter in
36 accordance with the schedule in G.S. 105-360 as if the taxes had been due and
37 payable on September 1, 1998.

38 Section 3. The Wake County Board of Elections shall conduct a special
39 election on November 3, 1998, for the purpose of submission to the qualified voters
40 of the area described in Section 2-1 of the Charter of the Village of Swift Creek the
41 question of whether or not such area shall be incorporated as the Village of Swift
42 Creek. Registration for the election shall be conducted in accordance with G.S. 163-
43 288.2.

44 Section 4. In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the Village of Swift Creek".

Section 5. (a) In the election, if a majority of the votes are cast "For incorporation of the Village of Swift Creek", Sections 1 and 2 of this act shall become effective on the date of the organizational meeting of the Board of Aldermen in 1999 as established under subsection (b) of this section. Otherwise, those sections shall have no force and effect.

(b) If Sections 1 and 2 of this act become effective, rather than being on the Tuesday after the first Monday in November of 1999, the initial election for the Mayor and Board of Aldermen shall be a date in February or March of 1999 established by the Wake County Board of Elections which shall establish a special candidate filing period. The organizational meeting of the Board of Aldermen shall be on Tuesday following the initial election at a time and place established by the Wake County Board of Elections. As provided in Sections 3-3 and 3-4 of the Charter, initial terms shall expire at the organizational meetings in 2001 and 2003.

Section 6. This act is effective when it becomes law.



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April 29, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 614 Swift Creek Incorporated
Introduced by Representative Ellis

House Bill 614 provides for the incorporation of the Village of Swift Creek in Wake County, subject to a approval in a referendum by a majority of the residents of the area.

The bill provides standard Charter provisions for an incorporation, with all powers authorized by law available to the Village upon incorporation.

House Bill 614 would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

May 13, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met May 13, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Buchanan, Hardy, Reynolds, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Laura Elizabeth Oliver and Jeremy Paul Newman.

The following bills were discussed:

SB 677 A BILL TO BE ENTITLED AN ACT TO REPEAL THE ACT ESTABLISHING A SUPPLEMENTARY PENSION FUND FOR FIREMEN IN THE CITY OF ALBEMARLE. Rep. Goodwin was recognized to present the bill on behalf of the sponsor, Sen. Conder. The bill will phase out one pension plan and incorporate it into a new plan. The measure was endorsed by the firemen of the area, the Mayor of Albemarle, and city leaders. Rep. Buchanan moved for a favorable report; seconded and passed.

SB 529 A BILL TO BE ENTITLED AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWN OF HOPE MILLS. Rep. Hurley moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Cansler was recognized to present the bill on behalf of the sponsor, Sen. Rand. The proposed change adds the Town of Weaverville to the bill and is endorsed by all parties. Rep. Buchanan moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

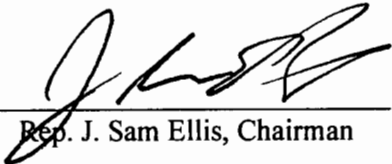
SB 648 A BILL TO BE ENTITLED AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF WALLACE. Committee Counsel Giles Perry was recognized to explain the bill that would amend the Charter of the Town of Wallace to extend the term of mayor from two to four years. Rep. Buchanan moved for a favorable report and re-refer to Committee on Rules, Calendar, and Operations of the House; seconded and passed.

SB 698 A BILL TO BE ENTITLED AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY PRIVATE SALE. Committee Counsel Giles Perry was recognized to present the bill and explained that it would allow Wayne County to convey a 2.88 acre tract of land to the Nahunta Volunteer Fire Department for use as a parking area and for use by the Nahunta

Extension Homemakers Club. Rep. Dedmon moved for a favorable report and re-refer to Committee on Rules, Calendar, and Operations of the House; seconded and passed.

The meeting adjourned at 11:30 AM.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for
S.B. 677 A BILL TO BE ENTITLED AN ACT TO REPEAL THE ACT ESTABLISHING A
SUPPLEMENTARY PENSION FUND FOR FIREMEN IN THE CITY OF ALBEMARLE.

☒ **With a favorable report.**

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 677

Short Title: Repeal Albemarle Firemen's Pension.

(Local)

Sponsors: Senators Conder and Plyler.

Referred to: Pensions & Retirement and Insurance.

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE ACT ESTABLISHING A SUPPLEMENTARY
3 PENSION FUND FOR FIREMEN IN THE CITY OF ALBEMARLE.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 102 of the 1957 Session Laws, as amended by
6 Chapter 589 of the 1963 Session Laws and Chapter 606 of the 1967 Session Laws, is
7 repealed.
8 Section 2. All funds held by the Trustees of the Albemarle
9 Supplementary Pension Fund are transferred to the Board of Trustees of the
10 Albemarle Firemen's Relief Fund to be held and administered as provided in Article
11 84 of Chapter 58 of the General Statutes.
12 Section 3. This act becomes effective July 1, 1997.



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May 13, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: Senate Bill 677 Repeal Albemarle Fireman's Supplementary Pension Fund
Introduced by Senators Condor and Plyler

Senate Bill 677 would repeal the Albemarle Fireman's Supplementary Pension Fund, and transfer the balance of the Fund to the Albemarle Fireman's Relief Fund.

Senate Bill 677 would become effective July 1, 1997.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

S.B. 529 A BILL TO BE ENTITLED AN ACT CONCERNING THE ANNEXATION OF
NONCONTIGUOUS AREAS BY THE TOWN OF HOPE MILLS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ **With a favorable report as to House committee substitute bill, ☒ which changes the
title, unfavorable as to original bill and recommendation that the committee substitute
bill be re-referred to the Committee on Finance.**

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 529

Short Title: Hope Mills Annexations.

(Local)

Sponsors: Senators Rand; and Weinstein.

Referred to: State Government, Local Government, and Personnel.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS
3 BY THE TOWN OF HOPE MILLS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:

6 "(5) The area within the proposed satellite corporate limits, when
7 added to the area within all other satellite corporate limits, may
8 not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area
9 within the primary corporate limits of the annexing city."

10 Section 2. This act applies only to the Town of Hope Mills.

11 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 529

Proposed House Committee Substitute S529-PCS7797

Short Title: Hope Mills Annexations.

(Local)

Sponsors:

Referred to:

March 26, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS
3 BY THE TOWNS OF HOPE MILLS AND WEAVERVILLE.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:
6 "(5) The area within the proposed satellite corporate limits, when
7 added to the area within all other satellite corporate limits, may
8 not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area
9 within the primary corporate limits of the annexing city."
10 Section 2. G.S. 160A-58.1(b)(5) reads as rewritten:
11 "(5) The area within the proposed satellite corporate limits, when
12 added to the area within all other satellite corporate limits, may
13 not exceed ~~ten percent (10%)~~ twenty-three percent (23%) of the
14 area within the primary corporate limits of the annexing city."
15 Section 3. Section 1 of this act applies only to the Town of Hope Mills.
16 Section 4. Section 2 of this act applies only to the Town of Weaverville.
17 Section 5. This act is effective when it becomes law.



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May 13, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: Senate Bill 529 Hope Mills Annexations
Introduced by Senators Rand; and Weinstein

Current law authorizes municipalities to voluntarily annex non contiguous "satellite" areas, if they do not exceed 10% of the area within the primary corporate limits of the municipality.

Senate Bill 529 would authorize the Town of Hope Mills to annex satellite areas with an area of up to 20% of the area of the primary corporate limits of the Town.

Senate Bill 529 would become effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for
S.B. 648 A BILL TO BE ENTITLED AN ACT TO PROVIDE A FOUR-YEAR TERM FOR
THE MAYOR OF THE TOWN OF WALLACE.

☐ With a favorable report.

☒ **With a favorable report and recommendation that the bill be re-referred to the
Committee on Rules, Calendar, and Operations of the House.**

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 648*

Short Title: Wallace Mayor.

(Local)

Sponsors: Senator Albertson.

Referred to: State Government, Local Government, and Personnel.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE
3 TOWN OF WALLACE.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 2.3 of the Charter of the Town of Wallace, being
6 Chapter 94 of the 1987 Session Laws, reads as rewritten:
7 "Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all
8 the qualified voters of the Town for a term of ~~two~~ four years; shall be the official
9 head of the Town government and preside at meetings of the Council; shall have the
10 right to vote only when there is an equal division on any question or matter before
11 the Council; and shall exercise the powers and duties conferred by law or as directed
12 by the Council."
13 Section 2. This act applies beginning with the Mayor elected in 1997.
14 Section 3. This act is effective when it becomes law.



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May 13, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: Senate Bill 648 Wallace Mayor
Introduced by Senator Albertson

Senate Bill 648 would amend the Charter of the Town of Wallace to extend the term of mayor from *two* to *four* years.

Senate Bill 648 would become effective when it becomes law, and apply beginning with the mayor elected in 1997.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

S.B. 698 A BILL TO BE ENTITLED AN ACT ALLOWING WAYNE COUNTY TO
CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE
DEPARTMENT BY PRIVATE SALE.

☐ With a favorable report.

☒ **With a favorable report and recommendation that the bill be re-referred to the
Committee on Rules, Calendar, and Operations of the House.**

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 698

Short Title: Wayne/Nahunta Real Property Conveyance.

(Local)

Sponsors: Senator Kerr.

Referred to: State Government, Local Government, and Personnel.

April 7, 1997

1 A BILL TO BE ENTITLED

2 AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL
3 PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY
4 PRIVATE SALE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Notwithstanding the provisions of Article 12 of Chapter 160A
7 of the General Statutes, the County of Wayne may convey to the Nahunta Volunteer
8 Fire Department, Inc., a nonprofit corporation, by private sale with or without
9 consideration, a tract consisting of 2.88 acres and a right-of-way located in Buck
10 Swamp Township, Wayne County, and described in the deed recorded in Book 1555,
11 Page 1 of the Wayne County Registry, for use as a parking area and for use by the
12 Nahunta Extension Homemakers Club, said property being more particularly
13 described as follows:

14 "All that tract of land containing 2.88 acres more or less, being part of the
15 property recorded in Deed Book 274, page 158 and Deed Book 410, page 407, being
16 located in Buck Swamp Township, Wayne County, NC and described by metes and
17 bounds as follows:

18 Commencing at an iron stake found on the eastern right-of-way of NC Highway
19 No. 581, the southwestern corner of Ed Radford Auto Auction, Inc., Deed Book
20 1348, page 470, said stake being point 'A', having NC Grid Coordinates
21 Y=640,662.6989 and X=2,278,646.8410 and being located from NC Geodetic station
22 Monument entitled 'Nahunta', having grid coordinates Y=640,993.6524 and X-
23 2,278,588.5365, a magnetic bearing S. 04-54-21 E. and a horizontal distance 336.09
24 feet; and runs thence, leaving said road right-of-way, and with the line of Ed Radford

1 Auto Auction, Inc., Deed Book 1348, Page 470, N. 80-30-00 E. 195.36 feet to an iron
2 stake found; thence continued with said Radford line N. 08-38-23 W. 92.33 feet to a
3 p.k. nail found; thence continued with said Radford line, N. 08-38-23 W. 85.86 feet to
4 an iron stake found; thence continued with said Radford line N. 08-38.23 W 33.11
5 feet to an iron stake found; thence continued with said Radford line N. 80-36-52 E.
6 181.51 feet to an iron stake found; thence continued with said Radford line N. 80-36-
7 52 E. 22.66 feet to an iron stake found on the western edge of a 30 foot right-of-way,
8 Deed Book 1354, Page 186, said stake being located S. 09-30-02 E. 139.60 feet from a
9 point on the southern right-of-way of NCSR No. 1336; thence with the western edge
10 of said 30 foot right-of-way, S. 09-30-02 E. 33.66 feet to an iron stake found at the
11 end of said 30 foot right-of-way, the point of beginning; thence from said beginning
12 and along the southern end of said 30 foot right-of-way, Deed Book 1354, Page 186,
13 N. 80-45-48 E. 30.00 feet to an iron stake found on the eastern edge of said 30 foot
14 right-of-way; thence leaving said 30 foot right-of-way and with the line of the Trustees
15 of the Nahunta Home Extension Club, Deed Book 1354, Page 186, N. 80-45-48 E.
16 24.01 feet to a point in said line; thence continued with said line and with an existing
17 ditch, N. 80-45-48 E. 64.18 feet to a point in said line and in said ditch; thence
18 continued with said line and said ditch, N. 81-03-19 E. 76.97 feet to an iron stake;
19 thence continued with said Nahunta Home Extension Club Line, N. 71-56-52E.
20 109.32 feet to an iron stake; thence continued N. 71-56-52 E. 30.00 feet to a point in
21 Brooks Branch; thence with said branch as it meanders S. 29-23-12E. 433.29 feet to
22 an iron stake found (axle) in said branch; thence leaving said branch and with the
23 line of Zeb Whaley Heirs, S. 83-13-43 W. 191.51 feet to an iron stake set; thence
24 continued with said Whaley Line, S. 83-13-43 W. 200.00 feet to an iron stake set;
25 thence leaving said Whaley Line, N. 07-27-40 W. 278.24 feet to an iron stake set;
26 thence N. 65-18-27 W. 119.87 feet to an iron stake set; thence N. 09-30-02 W. 23.96
27 feet to the point of beginning.

28 THERE IS ALSO CONVEYED all of the Grantor's right title and interest in and
29 to the perpetual easement for ingress, egress and regress described in Deed Book
30 1354, Page 186 of the Wayne County Registry."

31 Section 2. This act is effective when it becomes law.



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May 13, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: Senate Bill 698 Wayne/Nahunta Real Property Conveyance
Introduced by Senator Kerr

Current law allows cities and counties to convey real property to a volunteer fire department by private sale for the purpose of "constructing or expanding fire department or rescue squad facilities" (G.S. 153A-177, 160A-277).

Senate Bill 698 would authorize Wayne County to convey a 2.88 acre tract of land, described in the bill, to the Nahunta Volunteer Fire Department, Inc. by private sale, with or without consideration, for use as a parking area, and for use by the Nahunta Extension Homemakers Club.

Senate Bill 698 would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

May 20, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met May 20, 1997, at 11:00 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. LOCAL AND REGIONAL GOVERNMENT I members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages William Carmichael and Jami Caviness.

The following bills were discussed:

HB 758 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY AND AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN ORANGE COUNTY, RELATING TO CLASSIFICATIONS UNDER THE ORANGE COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE, DISPOSAL, LABELING, OR APPLICATION OF PESTICIDES, AND TO MAKE TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX. Rep. Insko was recognized to present the bill and offered a Proposed Committee Substitute. Rep. Carpenter moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Insko explained that the PCS makes two changes: Section 1 authorizes an entertainment tax on events in large facilities in Orange County and Section 2 authorizes more restrictive pesticide regulation. Geof Gledhill, Orange County Attorney, was recognized to address the pesticide issue. He explained that there is no intent to regulate agricultural pesticide use; rather, this section would authorize the County to adopt pesticide use and handling rules more restrictive than those of the N.C. Pesticide Board. Glenn Jernigan, representing the Agriculture Alliance of N.C., was recognized to speak on the pesticide regulation. He encouraged members to reject this portion of the bill. Rep. Carpenter moved for an unfavorable report. No action was taken. Amendments to the PCS will be prepared and presented at the next meeting.

HB 762 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF CHAPEL HILL TO LEVY AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN THE TOWN OF CHAPEL HILL, TO AUTHORIZE THE TOWN TO REQUIRE THAT NEW DEVELOPMENT INCLUDE HOUSING FOR A PERCENTAGE OF LOW- AND MODERATE-INCOME FAMILIES OR PROVIDE LAND OR PAYMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 760*

Short Title: Carrboro Charter Amendments.

(Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Local and Regional Government I, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO.

3 The General Assembly of North Carolina enacts:

4 Section 1. Section 9-3 of the Charter of the Town of Carrboro, being
5 Chapter 476 of the 1987 Session Laws, reads as rewritten:

6 "Section 9-3. Zoning Board of Adjustment. The board of aldermen may create a
7 board of adjustment in accordance with the provisions of Article 19 of Chapter 160A
8 of the General Statutes. Such board shall be subject to all the provisions of general
9 law except that the board of aldermen may authorize the board of adjustment to
10 decide any matter before it either (i) upon a vote of a majority of the members
11 present at a meeting and not excused from voting, so long as a quorum ~~consisting of~~
12 ~~at least six members~~ is present, or (ii) upon a vote of a four-fifths majority of the
13 members present at a meeting and not excused from voting, so long as a quorum
14 ~~consisting of at least six members~~ is present."

15 Section 2. Section 9-5 of the Charter of the Town of Carrboro, being
16 Chapter 476 of the 1987 Session Laws, reads as rewritten:

17 "Section 9-5. Sprinkler Systems. Notwithstanding any provision of the North
18 Carolina State Building Code or any general or local law to the contrary, the board
19 of aldermen may adopt an ordinance requiring that sprinkler systems be installed in
20 all of the following types of buildings constructed within the town or its
21 extraterritorial planning ~~jurisdiction~~: jurisdiction, including the portion of the joint
22 planning area authorized under Chapter 233 of the 1987 Session Laws wherein the
23 Town of Carrboro administers the State Building Code; (i) buildings in excess of 50
24 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of

1 floor surface area; ~~or~~ (iii) buildings designed for assembly occupancy (as defined in
2 the North Carolina State Building Code) that accommodate more than 25 ~~people~~.
3 ~~people; or (iv) residential buildings having three or more dwelling units. This~~
4 ~~ordinance applies~~ An ordinance adopted pursuant to this section may apply to
5 existing buildings only to the extent and under the circumstances that the provisions
6 of the North Carolina State Building Code apply to preexisting buildings."

7 Section 3. Section 3-1 of the Charter of the Town of Carrboro, being
8 Chapter 476 of the 1987 Session Laws, reads as rewritten:

9 **"Section 3-1. Privilege License Tax.** The town may levy privilege license taxes on
10 all trades, occupations, professions, businesses, and franchises carried on within the
11 town unless such trade, occupation, profession, business, or franchise has been
12 completely exempted from municipal privilege license taxes under State law. The
13 town may, but is not required to, establish a schedule of privilege license taxes based
14 in whole or in part on the annual gross receipts of the businesses taxed. The
15 schedule is not subject to the limitations referenced in G.S. 160A-211 on the
16 maximum amount of privilege license taxes that may be levied on specific types of
17 businesses."

18 Section 4. This act is effective when it becomes law.



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May 20, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 760 Carrboro Charter Amendments
Introduced by Representatives Insko and Hackney

House Bill 760 would amend the Chapter of the Town of Carrboro to:

- delete the requirement for six members to be present to constitute a quorum of the Zoning Board of Adjustment;
- authorize a requirement for sprinklers in the joint planning area of the Town where the Building Code is administered by Carrboro; and
- authorize the Town to base privilege license taxes in whole or in part on gross receipts of the businesses taxed.

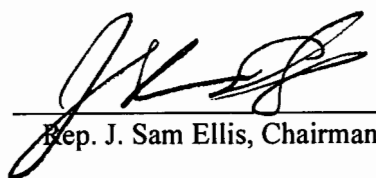
House Bill 760 would become effective when it becomes law.

IN LIEU OF PROVIDING SUCH HOUSING, TO PROVIDE AUTHORIZATION FOR LOCAL REVENUE OPTIONS FOR TRANSIT FUNDING, AND TO PROVIDE THAT THE TOWN'S OCCUPANCY TAX APPLY TO UNIVERSITY FACILITIES ON THE SAME BASIS AS IT APPLIES TO PRIVATE ACCOMMODATIONS FOR TRANSIENT OCCUPANCY. Proposed Committee Substitute H762-PCS1352 was offered, and Rep. Carpenter moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Insko was recognized to present the bill and noted that an amendment was needed. Rep. Carpenter sent forth an amendment to Page 3, Section 3, deleting the entire section; seconded and passed. Rep. Insko explained that the bill would authorize the Town of Chapel Hill to levy an entertainment tax not to exceed \$1 per ticket on events in facilities with a capacity greater than 15,000 persons. It would authorize Orange County and the Town of Chapel Hill to levy a ½% sales and use tax, a 5%(maximum) vehicle rental tax, and a \$5 (maximum) vehicle registration tax. Additionally, the bill would authorize the Town of Chapel Hill to levy a parking tax of up to \$5 per year/per space to fund public transportation. Rep. Carpenter sent forth an amendment to delete the language on Page 4, beginning with Line 1 and ending at Line 32; seconded and passed. Rep. Hackney requested the Chair allow interested parties to speak on the bill. Mayor Rosemary Waldorf of Chapel Hill was recognized to explain the public transportation tax portion of the bill. Roland Giduz, a former member of the Chapel Hill Town Council, was recognized to explain the Council's support for the entertainment tax portion of the bill. Rep. Carpenter sent forth an amendment to delete Section 5; seconded and passed. Rep. Carpenter moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

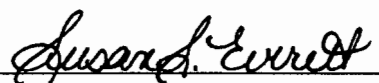
HB 760 A BILL TO BE ENTITLED AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO. Rep. Insko was recognized to present the bill. She explained that besides the change in quorum requirements for the Zoning Board of Adjustment, the bill covered two other important issues: sprinkler systems and privilege license taxes. First, the bill authorizes a requirement for sprinklers in the joint planning area of the Town where the Building Code is administered by Carrboro. Second, it authorizes the Town to base privilege license taxes in whole or in part on gross receipts of the businesses taxed. Rep. Carpenter sent forth an amendment to Page 2, Line 3, inserting after the parenthesis (iv), the word multifamily instead of residential. No action was taken on the motion as the prescribed meeting limit had been exceeded. This bill will be heard at the next meeting.

The meeting adjourned at 12:05 P.M.

Respectfully submitted,



Rep. J. Sam Ellis, Chairman



Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

May 20, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>P. Cant Williams</i>	<i>NCMBA</i>
<i>NK Cullen</i>	<i>NCPP</i>
<i>Lorelei Costa</i>	<i>NCPP</i>
<i>Debrah Ross</i>	<i>ACLU</i>
<i>Clarence E. Whitefield</i>	<i>Chapel Hill</i>
<i>Rosemary I. Waldorf</i>	<i>Mayor of Chapel Hill</i>
<i>Poland Gidney</i>	<i>Chapel Hill</i>
<i>Sally Bell</i>	<i>Orange County Shores</i>
<i>Mark Lang</i>	<i>TCNC Southern Pines</i>
<i>Rena Jernigan</i>	<i>Agribusiness & the own business of NC</i>
<i>Paul E. Reed</i>	<i>N.C. Agribusiness</i>
<i>Biel Duffalo</i>	<i>Garner NC</i>
<i>Jim Lyon</i>	<i>NC Pest Control Assoc.</i>
<i>J. Caryl Teague</i>	<i>Cooperative Council of NC</i>
<i>John McAlister</i>	<i>Duke Power Company</i>
<i>Jim Whitehurst</i>	<i>Crop Protection Assoc. of NC</i>
<i>Deroy Jackson</i>	<i>Plant Food Assn of NC</i>
<i>Earl Ogle</i>	<i>Crop Protection Assn of NC</i>
<i>Yvonne Jones</i>	<i>Broughton Wilkins Webb & Sugg</i>
<i>Ann Case</i>	<i>DEHNR</i>
<i>Laura Hartwell</i>	<i>MCIC</i>
<i>Maurice Weaver</i>	<i>NCDA</i>
<i>Jim Bunnelle</i>	<i>NCDA</i>
<i>Don Lee</i>	<i>NCDOT</i>
<i>David M. Lord</i>	<i>NCDA</i>
<i>Ann Graves Webster</i>	<i>NAR</i>
<i>Peter Daniel</i>	<i>NCDA</i>
<i>Pat Baker</i>	<i>NCga</i>
<i>Charles Horn</i>	<i>Chatham County</i>

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

May 20, 1997
Date

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 758*

Short Title: Orange Omnibus Act.

(Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Local and Regional Government, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON
3 INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY
4 AND AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN
5 ORANGE COUNTY, RELATING TO CLASSIFICATIONS UNDER THE
6 ORANGE COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE
7 AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE,
8 DISPOSAL, LABELING, OR APPLICATION OF PESTICIDES, AND TO
9 MAKE TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM
10 OCCUPANCY TAX.

11 The General Assembly of North Carolina enacts:

12 Section 1. Excise Tax.

13 (a) Authorization. The Orange County Board of Commissioners may, by
14 resolution, levy an excise tax on instruments conveying certain interests in real
15 property in Orange County. The tax imposed may not exceed one dollar (\$1.00) on
16 each one hundred dollars (\$100.00) or fraction thereof of the total consideration or
17 value, whichever is greater, of the interest conveyed, including, in the case of a sale,
18 the value of any lien or encumbrance remaining on the property at the time of sale.
19 This tax is in addition to the tax levied by Article 8E of Chapter 105 of the General
20 Statutes.

21 The value of a lease subject to this tax shall be computed on the basis of
22 the present value of the fixed lease payments and, if the lease payments are based in
23 whole or in part on the lessee's receipts, the estimated amount of the lessee's receipts.
24 Based upon the recommendation of the Orange County Finance Director, the Board

1 of Commissioners shall, at least annually, set the discount rate to be used to
2 determine the present value of lease payments. Such determination shall be
3 conclusive.

4 (b) Scope. A tax levied under this section applies to all instruments
5 conveying an interest in real property in Orange County except an instrument:

6 (1) Conveying an interest in real property from the United States, the
7 State, or a political subdivision of the State.

8 (2) Recording a lease for a term of 10 years or less, unless:

9 a. The lease gives the lessee an option to renew the lease for a
10 period that, when added to the term of the lease, exceeds 10
11 years;

12 b. The lease is for substantially the same property and is
13 between the same parties as a lease previously recorded, and
14 the term of the new lease, when added to that of the
15 previous lease, exceed 10 years; or

16 c. The lease requires or permits the property to be transferred
17 to the lessee for less than the fair market value of the
18 property.

19 (3) Securing indebtedness.

20 (4) Recording a transfer in which no consideration is due the
21 transferor by the transferee.

22 (5) Conveying an interest in real property located in more than one
23 county if the greater part of the property, with respect to value, lies
24 in a county other than Orange County.

25 In addition, this tax does not apply to conveyances of an interest in real property by
26 operation of law, by will, by intestacy, by gift, by merger or consideration.

27 (c) Collection. A tax levied under this section is payable by the
28 transferor of the interest to the Orange County Director of Revenue. The transferor
29 in the case of a sheriff's deed is herein defined to be the debtor whose property is
30 sold pursuant to judicial process. The sheriff is authorized to pay the tax on behalf of
31 the debtor and to charge the tax levied under this section to the account of the
32 debtor as a cost of sale.

33 This tax shall be paid at the office of the Director of Revenue before the
34 instrument conveying the interest is recorded. The Director of Revenue may require
35 any documentation, including an affidavit of value, the Director of Revenue considers
36 necessary to establish the accuracy of the tax to be paid. The Director of Revenue
37 shall stamp or otherwise mark each instrument subject to the tax to indicate that the
38 tax has been paid. The Orange County Register of Deeds may not accept for
39 recordation an instrument subject to a tax levied under this section unless the
40 instrument bears the mark of the Director of Revenue indicating that the tax has been
41 paid.

42 (d) Use and Distribution of Tax Revenue. Orange County may retain in
43 its general fund three percent (3%) of the gross proceeds of the tax as costs of
44 collection. The remaining proceeds of the tax shall be retained by the county and

1 placed in a Capital Reserve Fund to be expended only for capital projects, including
2 debt service for capital projects. All interest earned from investment of the funds in
3 the Capital Reserve Fund shall be held and expended only in accordance with the
4 provisions of this subsection.

5 (e) Penalties. A person who knowingly fails or refuses to pay a tax
6 levied under this section, who knowingly aids another to fail to pay a tax levied
7 under this section, or who, to avoid paying part or all of the tax due under this
8 section, knowingly misstates the total consideration for an interest conveyed is guilty
9 of a Class 3 misdemeanor and is punishable by imprisonment as provided by law and
10 a fine of not less than one hundred dollars (\$100.00) nor more than the amount of
11 tax that is due and payable.

12 (f) Taxes Recoverable by Action. If a transferor fails to pay a tax
13 imposed by this section within 30 days after the Revenue Director's demand that the
14 transferor pay the tax, the tax may be recovered by Orange County in an action
15 brought in the General Court of Justice, Superior or District Court, of the county. In
16 an action to recover a tax imposed under this section, costs of court shall include a
17 fee to the county of twenty-five dollars (\$25.00) for the expense of collection.

18 (h) Effective Date and Application. A tax levied under this section shall
19 become effective on the first day of a month, as designated in the resolution levying
20 the tax, and may not become effective for at least 30 days after the adoption of the
21 resolution. A tax levied under this section applies to instruments that are recorded
22 on or after the effective date of the levy, except instruments executed on or after that
23 date that convey an interest in real property pursuant to a written contract recorded
24 before the effective date.

25 (i) Repeal. A tax levied by this section may be repealed by a resolution
26 adopted by the Orange County Board of Commissioners. Repeal of a tax levied
27 under this section shall become effective on the first day of a month and shall apply
28 to instruments recorded on or after the effective date of the repeal. Repeal of a tax
29 levied under this section does not affect a liability for the tax that attached before the
30 effective date of the repeal.

31 Section 2. Admissions Tax.

32 (a) Authorization and Scope. Notwithstanding the provisions of G.S.
33 105-37.1(b), the Orange County Board of Commissioners may, by resolution, levy an
34 entertainment tax on every admission ticket purchased for admission to an
35 entertainment, an amusement, or an athletic or commercial event for which an
36 admission is charged and which is presented in Orange County in a facility having a
37 seating capacity greater than 15,000. This tax does not apply, however, to athletic
38 events sponsored by the North Carolina High School Athletic Association that
39 involve participants at or below high school level. The tax shall be at a rate of not
40 more than one dollar (\$1.00) per admission ticket purchased. This tax is in addition
41 to any other State or local tax.

42 (b) Collection. Every person, firm, corporation, or organization selling
43 admission tickets taxable under this section shall collect the tax. This tax shall be
44 collected at the same time as the charge for furnishing a taxable admission ticket and

1 shall be paid by the purchaser to the seller of the admission ticket as trustee for and
2 on account of Orange County. The tax shall be stated and charged separately from
3 the sales price. The tax shall be added to the admission price and shall be passed on
4 to the purchaser instead of being borne by the seller.

5 (c) Administration. Orange County shall administer a tax levied under
6 this section. A tax levied and collected under this section is due and payable to the
7 Orange County Director of Revenue on or before the 15th day of the month
8 following the month in which the tax accrues. Every person, firm, or corporation
9 liable for the tax shall, on or before the 15th day of each month, prepare and render
10 a return on a form prescribed by Orange County. The return shall state the total
11 number of admissions subject to the tax that were sold in the preceding month. A
12 return filed with the Director of Revenue under this section is not a public record
13 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
14 208.1. Orange County may, by resolution, establish additional procedures for
15 collection, reporting, remittance, and use of a tax levied under this section.

16 (d) Penalties. A person, firm, or corporation who fails or refuses to file
17 the return required by this section shall pay a tax penalty of ten dollars (\$10.00) for
18 each day's omission. In case of failure or refusal to file the return or pay the tax for
19 a period of 30 days after the time required for filing the return or for paying the tax,
20 there shall be an additional tax penalty of five percent (5%) of the tax due, with an
21 additional tax penalty of five percent (5%) for each additional month or fraction
22 thereof until the tax is paid. The board of county commissioners may, for good cause
23 shown, compromise or forgive the tax penalties imposed by this section.

24 Any person who willfully attempts in any manner to evade a tax imposed
25 under this section or who willfully fails to pay the tax or make and file a return shall,
26 in addition to all other penalties provided by law, be guilty of a misdemeanor.

27 (e) Use and Distribution of Tax Revenue. The Board of Commissioners
28 of Orange County shall use the proceeds collected from this tax solely for capital
29 projects. The proceeds shall be placed in a Capital Reserve Fund to be expended
30 only for capital projects, including debt service for capital projects. All interest
31 earned from investment of the funds in the Capital Reserve Fund shall be held and
32 expended only in accordance with the provisions of this subsection.

33 (f) Effective Date of the Levy. A tax levied under this section shall
34 become effective on the date specified in the resolution levying the tax. That date
35 must be the first day of a calendar month, however, and may not be earlier than the
36 first day of the second month after the date the resolution is adopted.

37 (g) Repeal. A tax levied under this section may be repealed by a
38 resolution adopted by the Orange County Board of Commissioners. Repeal of a tax
39 levied under this section shall become effective on the first day of a month and may
40 not become effective until the end of the fiscal year in which the repeal resolution
41 was adopted. Repeal of a tax levied under this section does not affect liability for a
42 tax, its collection, or its payment to Orange County that was attached before the
43 effective date of the repeal, nor does it affect a right to a refund of a tax that accrued
44 before the effective date of the repeal.

1 Section 3. Section 6(a) of Chapter 246, Session Laws of 1991, as rewritten
2 by Section 14 of Chapter 358 of the 1993 Session Laws reads as rewritten:

3 "(a) The Board of Commissioners of Orange County (hereafter 'Board of
4 Commissioners') may adopt an ordinance (hereafter 'the Ordinance') to prohibit
5 discrimination in employment, housing, and public accommodations on the basis of
6 race, color, religion, gender, national origin, age, disability, marital status, familial
7 status, ~~and veteran status.~~ status, heterosexuality, and homosexuality.

8 The Board of Commissioners may include in the Ordinance a prohibition of
9 language or conduct or both directed at an individual or at a group of individuals
10 because of that individual's or group of individuals' actual or perceived race, color,
11 religion, gender, national origin, age, disability, marital status, familial status, ~~or~~
12 ~~veteran status~~ status, heterosexuality, or homosexuality which communicates in a
13 threatening manner words that incite imminent lawless action or which tend to incite
14 an immediate breach of the peace."

15 Section 4. G.S. 153A-465(d) reads as rewritten:

16 "(d) No county, city, or other political subdivision of the State shall adopt or
17 continue in effect any ordinance, rule, regulation, or resolution regulating the use,
18 sale, distribution, storage, transportation, disposal, formulation, labeling, registration,
19 manufacture, or application of pesticides in any area subject to regulation by the
20 Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or
21 other political subdivision of the State from exercising its planning and zoning
22 authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of
23 Chapter 153A of the General Statutes, or from exercising its fire prevention or
24 inspection authority. Notwithstanding the first sentence of this subsection, a county
25 may, in the exercise of its planning and zoning authority under Article 18 of Chapter
26 153A of the General Statutes, in a manner more stringent than any rule, regulation,
27 or resolution adopted by the North Carolina Pesticide Board, regulate the use,
28 storage, disposal, labeling, or application of pesticides."

29 Section 5. This section makes technical changes in the Orange County
30 Room Occupancy Tax.

31 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 758

H758-CSRW-001

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

16-MAY-97 13:32:37

Short Title: Orange Omnibus Act.

(Local)

Sponsors:

Referred to: Local and Regional Government

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN ENTERTAINMENT TAX ON
3 EVENTS IN LARGE FACILITIES IN ORANGE COUNTY, TO CLARIFY THE
4 AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE,
5 DISPOSAL, LABELING, OR APPLICATIONS OF PESTICIDES, AND TO MAKE
6 TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX.

7 The General Assembly of North Carolina enacts:

8 Section 1. Admissions Tax.

9 (a) Authorization and Scope. Notwithstanding the
10 provisions of G.S. 105-37.1(b), the Orange County Board of
11 Commissioners may, by resolution, levy an entertainment tax on
12 every admission ticket purchased for admission to an
13 entertainment, an amusement, or an athletic or commercial event
14 for which an admission is charged and which is presented in
15 Orange County in a facility having a seating capacity greater
16 than 15,000. This tax does not apply, however, to athletic
17 events sponsored by the North Carolina High School Athletic
18 Association that involve participants at or below high school
19 level. The tax shall be at a rate of not more than one dollar

1 (\$1.00) per admission ticket purchased. This tax is in addition
2 to any other State or local tax.

3 (b) Collection. Every person, firm, corporation, or
4 organization selling admission tickets taxable under this section
5 shall collect the tax. This tax shall be collected at the same
6 time as the charge for furnishing a taxable admission ticket and
7 shall be paid by the purchaser to the seller of the admission
8 ticket as trustee for and on account of Orange County. The tax
9 shall be stated and charged separately from the sales price. The
10 tax shall be added to the admission price and shall be passed on
11 to the purchaser instead of being borne by the seller.

12 (c) Administration. Orange County shall administer a
13 tax levied under this section. A tax levied and collected under
14 this section is due and payable to the Orange County Director of
15 Revenue on or before the 15th day of the month following the
16 month in which the tax accrues. Every person, firm, or
17 corporation liable for the tax shall, on or before the 15th day
18 of each month, prepare and render a return on a form prescribed
19 by Orange County. The return shall state the total number of
20 admissions subject to the tax that were sold in the preceding
21 month. A return filed with the Director of Revenue under this
22 section is not a public record and may not be disclosed except in
23 accordance with G.S. 153A-148.1 or G.S. 160A-208.1. Orange
24 County may, by resolution, establish additional procedures for
25 collection, reporting, remittance, and use of a tax levied under
26 this section.

27 (d) Penalties. A person, firm, or corporation who
28 fails or refuses to file the return required by this section
29 shall pay a tax penalty of ten dollars (\$10.00) for each day's
30 omission. In case of failure or refusal to file the return or
31 pay the tax for a period of 30 days after the time required for
32 filing the return or for paying the tax, there shall be an
33 additional tax penalty of five percent (5%) of the tax due, with
34 an additional tax penalty of five percent (5%) for each
35 additional month or fraction thereof until the tax is paid. The
36 board of county commissioners may, for good cause shown,
37 compromise or forgive the tax penalties imposed by this section.

38 Any person who willfully attempts in any manner to evade
39 a tax imposed under this section or who willfully fails to pay

1 the tax or make and file a return shall, in addition to all other
2 penalties provided by law, be guilty of a misdemeanor.

3 (e) Use and Distribution of Tax Revenue. The Board of
4 Commissioners of Orange County shall use the proceeds collected
5 from this tax solely for capital projects. The proceeds shall be
6 placed in a Capital Reserve Fund to be expended only for capital
7 projects, including debt service for capital projects. All
8 interest earned from investment of the funds in the Capital
9 Reserve Fund shall be held and expended only in accordance with
10 the provisions of this subsection.

11 (f) Effective Date of the Levy. A tax levied under
12 this section shall become effective on the date specified in the
13 resolution levying the tax. That date must be the first day of a
14 calendar month, however, and may not be earlier than the first
15 day of the second month after the date the resolution is adopted.

16 (g) Repeal. A tax levied under this section may be
17 repealed by a resolution adopted by the Orange County Board of
18 Commissioners. Repeal of a tax levied under this section shall
19 become effective on the first day of a month and may not become
20 effective until the end of the fiscal year in which the repeal
21 resolution was adopted. Repeal of a tax levied under this
22 section does not affect liability for a tax, its collection, or
23 its payment to Orange County that was attached before the
24 effective date of the repeal, nor does it affect a right to a
25 refund of a tax that accrued before the effective date of the
26 repeal.

27 Section 2. G.S. 153A-465(d) reads as rewritten:

28 "(d) No county, city, or other political subdivision of the
29 State shall adopt or continue in effect any ordinance, rule,
30 regulation, or resolution regulating the use, sale, distribution,
31 storage, transportation, disposal, formulation, labeling,
32 registration, manufacture, or application of pesticides in any
33 area subject to regulation by the Board pursuant to this Article.
34 Nothing in this section shall prohibit a county, city, or other
35 political subdivision of the State from exercising its planning
36 and zoning authority under Article 19 of Chapter 160A of the
37 General Statutes or Article 18 of Chapter 153A of the General
38 Statutes, or from exercising its fire prevention or inspection
39 authority. Notwithstanding the first sentence of this
40 subsection, a county may, in the exercise of its planning and

1 zoning authority under Article 18 of Chapter 153A of the General
2 Statutes, in a manner more stringent than any rule, regulation,
3 or resolution adopted by the North Carolina Pesticide Board,
4 regulate the use, storage, disposal, labeling, or application of
5 pesticides."

6 Section 3. This section makes technical changes in the
7 Orange County Room Occupancy Tax.

8 Section 4. This act is effective when it becomes law.



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May 20, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 758 Orange Omnibus Act
Proposed Committee Substitute H758-CSRW-001

House Bill 758 would make five changes affecting Orange County.

Section 1 of the bill would authorize Orange County to levy an admissions tax of up to \$1 per ticket for events in facilities with a capacity greater than 15,000 persons.

Section 2 of the bill would authorize Orange County to adopt pesticide use and handling rules more restrictive than those of the N. C. Pesticide Board.

Section 3 of the bill would make technical corrections to the Orange County Room Occupancy Tax, but it contains no provisions to do so.

Section 4 of the bill provides that it would become effective when it becomes law.

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**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL GOVERNMENT I.**

☐ Committee Substitute for

H.B. 762 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF CHAPEL HILL TO LEVY AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN THE TOWN OF CHAPEL HILL, TO AUTHORIZE THE TOWN TO REQUIRE THAT NEW DEVELOPMENT INCLUDE HOUSING FOR A PERCENTAGE OF LOW- AND MODERATE-INCOME FAMILIES OR PROVIDE LAND OR PAYMENT IN LIEU OF PROVIDING SUCH HOUSING, TO PROVIDE AUTHORIZATION FOR LOCAL REVENUE OPTIONS FOR TRANSIT FUNDING, AND TO PROVIDE THAT THE TOWN'S OCCUPANCY TAX APPLY TO UNIVERSITY FACILITIES ON THE SAME BASIS AS IT APPLIES TO PRIVATE ACCOMMODATIONS FOR TRANSIENT OCCUPANCY.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, which changes the title, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 762*

Short Title: Chapel Hill Omnibus Act.

(Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Local and Regional Government I, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TOWN OF CHAPEL HILL TO LEVY AN
3 ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN THE
4 TOWN OF CHAPEL HILL, TO AUTHORIZE THE TOWN TO REQUIRE
5 THAT NEW DEVELOPMENT INCLUDE HOUSING FOR A PERCENTAGE
6 OF LOW- AND MODERATE-INCOME FAMILIES OR PROVIDE LAND OR
7 PAYMENT IN LIEU OF PROVIDING SUCH HOUSING, TO PROVIDE
8 AUTHORIZATION FOR LOCAL REVENUE OPTIONS FOR TRANSIT
9 FUNDING, AND TO PROVIDE THAT THE TOWN'S OCCUPANCY TAX
10 APPLY TO UNIVERSITY FACILITIES ON THE SAME BASIS AS IT APPLIES
11 TO PRIVATE ACCOMMODATIONS FOR TRANSIENT OCCUPANCY.
12 The General Assembly of North Carolina enacts:
13 Section 1. (a) This section applies to the Town of Chapel Hill only.
14 (b) Authorization and scope. Notwithstanding the provisions of G.S.
15 105-37.1(b), a town by resolution of its governing board may levy an entertainment
16 tax on every admission ticket purchased for admission to an entertainment, an
17 amusement, or an athletic or commercial event for which an admission is charged
18 and which is presented in that town in a facility having a seating capacity greater
19 than 15,000. This tax does not apply, however, to athletic events sponsored by the
20 North Carolina High School Athletic Association that involve participants at or
21 below high school level. The tax shall be at a rate of not more than one dollar
22 (\$1.00) per admission ticket purchased. This tax is in addition to any other State or
23 local tax.

1 (c) Collection. Every person, firm, corporation, or organization selling
2 admission tickets taxable under this section shall collect the tax. This tax shall be
3 collected at the same time as the charge for furnishing a taxable admission ticket and
4 shall be paid by the purchaser to the seller of the admission ticket as trustee for and
5 on account of the town. The tax shall be stated and charged separately from the sales
6 price. The tax shall be added to the admission price and shall be passed on to the
7 purchaser instead of being borne by the seller.

8 (d) Administration. The town shall administer a tax levied under this
9 section. A tax levied and collected under this section is due and payable to the town
10 tax collector on or before the 15th day of the month following the month in which
11 the tax accrues. Every person, firm, or corporation liable for the tax shall, on or
12 before the 15th day of each month, prepare and render a return on a form prescribed
13 by the town. The return shall state the total number of admissions subject to the tax
14 that were sold in the preceding month. A return filed with the tax collector under
15 this section is not a public record as defined in G.S. 132-1 and may not be disclosed
16 except as required by law. The town may, by ordinance establish additional
17 procedures for collection, reporting, remittance, and use of a tax levied under this
18 section.

19 (e) Penalties. A person, firm, or corporation who fails or refuses to file
20 the return required by this section shall pay a tax penalty of ten dollars (\$10.00) for
21 each day's omission. In case of failure or refusal to file the return or pay the tax for
22 a period of 30 days after the time required for filing the return or for paying the tax,
23 there shall be an additional tax penalty of five percent (5%) of the tax due, with an
24 additional tax penalty of five percent (5%) for each additional month or fraction
25 thereof until the tax is paid. The town council may, for good cause shown,
26 compromise or forgive the tax penalties imposed by this section.

27 Any person who willfully attempts in any manner to evade a tax imposed
28 under this section or who willfully fails to pay the tax or make and file a return shall,
29 in addition to all other penalties provided by law, be guilty of a Class 3 misdemeanor.

30 (f) Use and distribution of tax revenue. The town shall use the proceeds
31 collected from this tax solely for the purpose of supporting the public transportation
32 system operated by the town, including services provided under agreement with the
33 University of North Carolina at Chapel Hill and with the Town of Carrboro.

34 (g) Effective date of the levy. A tax levied under this section shall
35 become effective on the date specified in the ordinance levying the tax. That date
36 must be the first day of a calendar month, however, and may not be earlier than the
37 first day of the second month after the date the ordinance is adopted.

38 (h) Repeal. A tax levied under this section may be repealed by an
39 ordinance adopted by the town council. Repeal of a tax levied under this section
40 shall become effective on the first day of a month and may not become effective until
41 the end of the fiscal year in which the repeal ordinance was adopted. Repeal of a tax
42 levied under this section does not affect liability for a tax, its collection, or its
43 payment to the town that was attached before the effective date of the repeal, nor

1 does it affect a right to a refund of a tax that accrued before the effective date of the
2 repeal.

3 Section 2. The Charter of the Town of Chapel Hill, being Chapter 473,
4 Session Laws of 1975, is amended by adding the following section:

5 "Section 5.19. Ordinances requiring provision of housing for persons of
6 low- and moderate-income.

7 (a) Subject to the provisions of subsection (b) of this section, for the purpose of
8 increasing the availability of housing for persons of low- and moderate-income and
9 thereby promoting the public health, safety, and welfare, the Town of Chapel Hill
10 may enact ordinances which may require that subdividers of residentially zoned land
11 and developers of housing within the town and its extraterritorial planning
12 jurisdiction and including the planning jurisdiction established through a joint
13 planning agreement with Orange County jurisdiction(s):

14 (1) Construct up to but no more than twenty-five percent (25%) of the
15 total dwelling units of a housing development for persons of low-
16 or moderate-income; or

17 (2) Construct up to but no more than ten percent (10%) of the total
18 units of a housing development for lower-income persons; or

19 (3) Dedicate land in the immediate area of the subdivision or
20 development for use by the Town for housing for persons of low-
21 and moderate-income, or provide funds to the Town whereby the
22 Town may acquire other lands or areas for the purpose of
23 providing additional housing opportunities for persons of low- and
24 moderate-income. Any formula enacted to determine the amount
25 of funds that are to be provided under this subsection shall be
26 based on the value of the development or subdivision for property
27 tax purposes.

28 (b) The authority of subsection (a) of this section may only be exercised when a
29 proposed development or subdivision contains at least 10 dwelling units or is at least
30 10 acres in size, or both.

31 (c) The Town may exercise the authority granted in subsection (a) of this section
32 only if the Town either grants an equivalent density bonus or provides other
33 incentives of equivalent financial value to a developer required to provide low- or
34 moderate-income housing."

35 Section 3. This section provides local option transit revenue sources.

36 Section 4. This section modifies the Chapel Hill room occupancy tax.

37 Section 5. This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 762*
Proposed Committee Substitute H762-PCS1352

Short Title: Chapel Hill Omnibus Act.

(Local)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TOWN OF CHAPEL HILL TO LEVY AN
3 ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN THE
4 TOWN OF CHAPEL HILL, TO AUTHORIZE THE TOWN TO REQUIRE
5 THAT NEW DEVELOPMENT INCLUDE HOUSING FOR A PERCENTAGE
6 OF LOW- AND MODERATE-INCOME FAMILIES OR PROVIDE LAND OR
7 PAYMENT IN LIEU OF PROVIDING SUCH HOUSING, TO AUTHORIZE
8 THE TOWN OF CHAPEL HILL TO LEVY A VEHICLE RENTAL TAX AND
9 A PARKING SPACE TAX FOR PUBLIC TRANSPORTATION, AND TO
10 AUTHORIZE ORANGE COUNTY TO LEVY A SALES TAX AND A
11 VEHICLE REGISTRATION TAX FOR PUBLIC TRANSPORTATION.
12 The General Assembly of North Carolina enacts:
13 Section 1. Sections 4, 5, and 7 of this act apply to Orange County and to
14 the Town of Chapel Hill. The remainder of this act applies to the Town of Chapel
15 Hill only.
16 Section 2. (a) Authorization and scope. Notwithstanding the provisions
17 of G.S. 105-37.1(b), a town by resolution of its governing board may levy an
18 entertainment tax on every admission ticket purchased for admission to an
19 entertainment, an amusement, or an athletic or commercial event for which an
20 admission is charged and which is presented in that town in a facility having a seating
21 capacity greater than 15,000. This tax does not apply, however, to athletic events
22 sponsored by the North Carolina High School Athletic Association that involve
23 participants at or below high school level. The tax shall be at a rate of not more than

1 one dollar (\$1.00) per admission ticket purchased. This tax is in addition to any
2 other State or local tax.

3 (b) Collection. Every person, firm, corporation, or organization selling
4 admission tickets taxable under this section shall collect the tax. This tax shall be
5 collected at the same time as the charge for furnishing a taxable admission ticket and
6 shall be paid by the purchaser to the seller of the admission ticket as trustee for and
7 on account of the town. The tax shall be stated and charged separately from the sales
8 price. The tax shall be added to the admission price and shall be passed on to the
9 purchaser instead of being borne by the seller.

10 (c) Administration. The town shall administer a tax levied under this
11 section. A tax levied and collected under this section is due and payable to the town
12 tax collector on or before the 15th day of the month following the month in which
13 the tax accrues. Every person, firm, or corporation liable for the tax shall, on or
14 before the 15th day of each month, prepare and render a return on a form prescribed
15 by the town. The return shall state the total number of admissions subject to the tax
16 that were sold in the preceding month. A return filed with the tax collector under
17 this section is not a public record as defined in G.S. 132-1 and may not be disclosed
18 except as required by law. The town may, by ordinance establish additional
19 procedures for collection, reporting, remittance, and use of a tax levied under this
20 section.

21 (d) Penalties. A person, firm, or corporation who fails or refuses to file
22 the return required by this section shall pay a tax penalty of ten dollars (\$10.00) for
23 each day's omission. In case of failure or refusal to file the return or pay the tax for
24 a period of 30 days after the time required for filing the return or for paying the tax,
25 there shall be an additional tax penalty of five percent (5%) of the tax due, with an
26 additional tax penalty of five percent (5%) for each additional month or fraction
27 thereof until the tax is paid. The town council may, for good cause shown,
28 compromise or forgive the tax penalties imposed by this section.

29 Any person who willfully attempts in any manner to evade a tax imposed
30 under this section or who willfully fails to pay the tax or make and file a return shall,
31 in addition to all other penalties provided by law, be guilty of a Class 3 misdemeanor.

32 (e) Use and distribution of tax revenue. The town shall use the proceeds
33 collected from this tax solely for the purpose of supporting the public transportation
34 system operated by the town, including services provided under agreement with the
35 University of North Carolina at Chapel Hill and with the Town of Carrboro.

36 (f) Effective date of the levy. A tax levied under this section shall
37 become effective on the date specified in the ordinance levying the tax. That date
38 must be the first day of a calendar month, however, and may not be earlier than the
39 first day of the second month after the date the ordinance is adopted.

40 (g) Repeal. A tax levied under this section may be repealed by an
41 ordinance adopted by the town council. Repeal of a tax levied under this section
42 shall become effective on the first day of a month and may not become effective until
43 the end of the fiscal year in which the repeal ordinance was adopted. Repeal of a tax
44 levied under this section does not affect liability for a tax, its collection, or its

1 payment to the town that was attached before the effective date of the repeal, nor
2 does it affect a right to a refund of a tax that accrued before the effective date of the
3 repeal.

4 Section 3. The Charter of the Town of Chapel Hill, being Chapter 473,
5 Session Laws of 1975, is amended by adding the following section:

6 "Section 5.19. Ordinances requiring provision of housing for persons of low- and
7 moderate-income.

8 (a) Subject to the provisions of subsection (b) of this section, for the purpose of
9 increasing the availability of housing for persons of low- and moderate-income and
10 thereby promoting the public health, safety, and welfare, the Town of Chapel Hill
11 may enact ordinances which may require that subdividers of residentially zoned land
12 and developers of housing within the town and its extraterritorial planning
13 jurisdiction and including the planning jurisdiction established through a joint
14 planning agreement with Orange County jurisdiction(s):

15 (1) Construct up to but no more than twenty-five percent (25%) of the
16 total dwelling units of a housing development for persons of low-
17 or moderate-income; or

18 (2) Construct up to but no more than ten percent (10%) of the total
19 units of a housing development for lower-income persons; or

20 (3) Dedicate land in the immediate area of the subdivision or
21 development for use by the Town for housing for persons of low-
22 and moderate-income, or provide funds to the Town whereby the
23 Town may acquire other lands or areas for the purpose of
24 providing additional housing opportunities for persons of low- and
25 moderate-income. Any formula enacted to determine the amount
26 of funds that are to be provided under this subsection shall be
27 based on the value of the development or subdivision for property
28 tax purposes.

29 (b) The authority of subsection (a) of this section may only be exercised when a
30 proposed development or subdivision contains at least 10 dwelling units or is at least
31 10 acres in size, or both.

32 (c) The Town may exercise the authority granted in subsection (a) of this section
33 only if the Town either grants an equivalent density bonus or provides other
34 incentives of equivalent financial value to a developer required to provide low- or
35 moderate-income housing."

36 Section 4. The title of Subchapter VIII of Chapter 105 of the General
37 Statutes reads as rewritten:

38 "~~SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX. TAXES.~~"

39 Section 5. Subchapter VIII of Chapter 105 of the General Statutes is
40 amended by adding two new Articles to read:

41 "ARTICLE 43.

42 "Local Government Sales and

43 "Vehicle Rental Taxes for Public Transit.

44 "§ 105-505. Short title; purpose.

This Article shall be known as the Local Government Public Transit Tax Act.
This Article gives the counties and municipalities of this State an opportunity to
obtain additional sources of revenue with which to meet their needs for financing
local public transportation systems. It provides counties with authority to levy
one-half percent (1/2%) sales and use taxes and provides municipalities with
authority to levy five percent (5%) gross receipts taxes on short-term vehicle rentals.

"§ 105-506. Definitions.

The definitions in G.S. 160A-601 and G.S. 105-164.3 and the following definitions
apply to this Article:

- (1) Long-term lease or rental. -- Defined in G.S. 105-187.1.
- (2) Motorcycle. -- Defined in G.S. 20-4.01.
- (3) Net proceeds. -- Gross proceeds less the cost of administering and
collecting the tax. In the case of a tax collected by a municipality,
the cost of administering and collecting the tax shall be determined
by the finance officer, but may not exceed seven percent (7%) of
the gross proceeds.
- (4) Private passenger vehicle. -- Defined in G.S. 20-4.01.
- (5) Public transportation system. -- Any combination of real and
personal property established for purposes of public transportation.
The systems may include one or more of the following: structures,
improvements, buildings, equipment, vehicle parking or passenger
transfer facilities, railroads and railroad rights-of-way,
rights-of-way, bus services, shared-ride services, high-occupancy
vehicle facilities, car-pool and vanpool programs, voucher
programs, telecommunications and information systems, integrated
fare systems, bus lanes, and busways. The term does not include,
however, streets, roads, or highways except to the extent they are
dedicated to public transportation vehicles or to the extent they are
necessary for access to vehicle parking or passenger transfer
facilities.
- (6) Short-term lease or rental. -- A lease or rental that is not a long-
term lease or rental.

"§ 105-507. Limitations.

A county may not levy a tax under this Article unless the county or at least one
unit of local government in the county operates a public transportation system. A
municipality may not levy a tax under this Article unless the municipality operates a
public transportation system.

"§ 105-508. Reserved.

"§ 105-509. Levy and collection of sales and use tax.

(a) Levy. -- The board of commissioners of a county may, by resolution, after not
less than 10 days' public notice and after a public hearing, levy one-half percent
(1/2%) local sales and use taxes in addition to any other State and local sales and use
taxes levied pursuant to law.

1 (b) Administration. -- Except as provided in this Article, the adoption, levy,
2 collection, administration, and repeal of these additional taxes shall be in accordance
3 with Article 39 of this Chapter. In applying the provisions of Article 39 of this
4 Chapter to this Article, references to 'this Article' mean Article 43 of Chapter 105 of
5 the General Statutes.

6 (c) Food Exempt. -- A tax levied under this Article does not apply to the sales
7 price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but
8 would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it
9 were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

10 **"§ 105-510. Levy and collection of vehicle rental tax.**

11 (a) Levy. -- The governing body of a municipality may, by resolution, after not
12 less than 10 days' public notice and after a public hearing, levy on a retailer who is
13 engaged in the business of leasing or renting private passenger vehicles or
14 motorcycles a tax at a rate of up to five percent (5%) of the gross receipts derived by
15 the retailer from the short-term lease or rental of these vehicles. A tax imposed
16 under this section applies to short-term leases or rentals made by a retailer whose
17 place of business or inventory is located within the jurisdiction of the taxing
18 municipality. This tax is in addition to all other taxes.

19 (b) Effective Date. -- A tax imposed under this section becomes effective on the
20 date set by the governing body of the municipality in the resolution imposing the tax.
21 The effective date must be the first day of a month and may not be earlier than the
22 first day of the second month after the governing body adopts the resolution.

23 (c) Collection. -- A tax imposed under this section shall be collected by the
24 taxing municipality but shall otherwise be administered in the same manner as the
25 optional gross receipts tax imposed by G.S. 105-187.5. Like the optional gross
26 receipts tax, a tax imposed under this section is to be added to the lease or rental
27 price of a private passenger vehicle or motorcycle and thereby be paid by the person
28 to whom it is leased or rented.

29 A tax imposed under this section applies regardless of whether the retailer who
30 leases or rents the private passenger vehicle or motorcycle has elected to pay the
31 optional gross receipts tax on the lease or rental receipts from the vehicle. A tax
32 imposed under this section must be paid to the taxing municipality by the date an
33 optional gross receipts tax would be payable to the Secretary of Revenue under G.S.
34 105-187.5 if the retailer who leases or rents the private passenger vehicle or
35 motorcycle had elected to pay the optional gross receipts tax.

36 (d) Penalties and Remedies. -- The penalties and remedies that apply to local
37 sales and use taxes imposed under this Subchapter apply to a tax imposed under this
38 section. A taxing municipality may exercise the same powers in collecting the tax
39 imposed under this section that a county may exercise in collecting local sales and
40 use taxes under this Subchapter.

41 (e) Exemptions and Refunds. -- No exemptions are allowed from a tax imposed
42 under this section. No refunds are allowed for a tax lawfully imposed under this
43 section.

44 **"§ 105-511. Distribution and use of taxes.**

1 (a) Distribution of Sales and Use Taxes. -- The Secretary shall, on a quarterly
2 basis, allocate to each taxing county the net proceeds of the tax levied under G.S.
3 105-509 by that county. If the Secretary collects taxes under this Article in a month
4 and the taxes cannot be identified as being attributable to a particular taxing county,
5 the Secretary shall allocate these taxes among the taxing counties in proportion to the
6 amount of taxes collected in each county under this Article in that month and shall
7 include them in the quarterly distribution.

8 The Secretary shall distribute the net proceeds of the tax levied by a county on a
9 per capita basis among the county and the units of local government in the county
10 that operate public transportation systems. No proceeds shall be distributed to a
11 county that does not operate a public transportation system or to a unit of local
12 government that does not operate a public transportation system.

13 (b) Distribution of Vehicle Rental Taxes. -- A municipality that levies a tax under
14 G.S. 105-510 shall retain the net proceeds of the tax.

15 (c) Use. -- A county or another unit of local government may use the net proceeds
16 distributed to it under this Article only for financing, constructing, operating, and
17 maintaining local public transportation systems.

18 "ARTICLE 44.

19 "Local Government Vehicle

20 Registration Tax for Public Transit.

21 "§ 105-514. Limitations.

22 A county may not levy a tax under this Article unless the county or at least one
23 unit of local government in the county operates a public transportation system.

24 "§ 105-515. Levy of vehicle registration tax.

25 The board of commissioners of a county may, by resolution, after not less than 10
26 days' public notice and a public hearing, levy an annual registration tax on motor
27 vehicles with a tax situs within the county. The tax must be a full dollar amount and
28 may not exceed five dollars (\$5.00). A tax levied under this section is in addition to
29 any other motor vehicle license or registration tax.

30 The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers,
31 or pay a tax under G.S. 20-87(1), (2), (4), (5), (6), or (7). The tax situs of a motor
32 vehicle for the purpose of this Article is its ad valorem tax situs. If the vehicle is not
33 subject to ad valorem tax, its tax situs for the purpose of this Article is the ad
34 valorem tax situs it would have if it were subject to ad valorem tax.

35 The effective date of a tax levied under this section must be the first day of a
36 calendar month set by the board of commissioners in the resolution levying the tax
37 and shall be no earlier than the first day of the third calendar month after the
38 adoption of the resolution.

39 "§ 105-516. Administration.

40 The Division of Motor Vehicles of the Department of Transportation shall collect
41 and administer a tax levied under this section. Immediately after adopting a
42 resolution levying, modifying, or repealing a tax under this section, the Commission
43 shall deliver a certified copy of the resolution to the Division of Motor Vehicles. A
44 tax levied under this section is due at the same time and subject to the same

1 restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated
2 in accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules
3 necessary to administer the tax.

4 **"§ 105-517. Modification or repeal of tax.**

5 The board of commissioners of a county may, by resolution, repeal the levy of the
6 tax under this section, or increase or decrease the rate of tax, under the same
7 procedures as provided in G.S. 105-515. The repeal, increase, or decrease of the tax
8 shall become effective on the first day of a month and may not become effective
9 before the first day of the third calendar month after the adoption of the resolution.
10 The repeal or reduction of a tax under this Article does not affect a liability for a tax
11 that attached before the effective date of the repeal or reduction, nor does it affect a
12 right to a refund of a tax that accrued before the effective date of the repeal or
13 reduction.

14 **"§ 105-518. Distribution and use of tax proceeds.**

15 The Commissioner of Motor Vehicles shall credit the proceeds of each tax levied
16 under this Article to a special account and distribute the net proceeds on a quarterly
17 basis. Interest on the special account shall be credited quarterly to the Highway
18 Fund to reimburse the Division of Motor Vehicles for the cost of collecting and
19 administering the tax.

20 The Commissioner of Motor Vehicles shall allocate to each taxing county the net
21 proceeds of the tax levied by that county. The Commissioner shall distribute the tax
22 proceeds on a per capita basis among the taxing county and the units of local
23 government in the county that operate public transportation systems. No proceeds
24 shall be distributed to a county that does not operate a public transportation system
25 or to a unit of local government that does not operate a public transportation system.

26 A unit of local government may use the proceeds distributed to it under this
27 Article only for financing, constructing, operating, and maintaining local public
28 transportation systems. As used in this section, the term 'public transportation
29 system' has the meaning provided in G.S. 105-506."

30 Section 6. Article 9 of Chapter 160A of the General Statutes is amended
31 by adding a new section to read:

32 **"§ 160A-211.2. Privilege license tax on nonresidential parking spaces.**

33 (a) Authorization. -- A city may levy an annual privilege license tax on every
34 person who owns parking spaces and provides them to others, at the rate of up to five
35 dollars (\$5.00) per parking space. The tax applies whether the spaces are provided to
36 others free of charge, pursuant to a lease, or for a fee. The tax applies to parking
37 spaces owned as of January 1. If the owner disposes of a parking space during the
38 year, the tax on that space for the year shall be reduced in proportion to the number
39 of months during the year it was not owned by the taxpayer.

40 (b) Exemptions. -- A tax levied under this section does not apply to:

- 41 (1) A person who owns 10 or fewer parking spaces.
42 (2) A federal, State, or local government agency.
43 (3) Parking spaces provided exclusively for residential parking.

1 (4) Parking spaces owned by a nonprofit religious organization and
2 provided to others free of charge.

3 (c) Collection. -- A tax levied under this section shall be billed with the taxpayer's
4 property taxes, is payable in the same manner as property taxes, and, in the case of
5 nonpayment, may be collected in any manner by which delinquent personal or real
6 property taxes can be collected. Delinquent taxes are a lien on the real property that
7 includes the parking spaces on which the taxes are levied."

8 Section 7. A tax levied under Article 43 of Chapter 105 of the General
9 Statutes, as enacted by this act, does not apply to construction materials purchased to
10 fulfill a lump sum or unit price contract entered into or awarded before the effective
11 date of the levy or entered into or awarded pursuant to a bid made before the
12 effective date of the levy when the construction materials would otherwise be subject
13 to the tax levied under Article 43 of Chapter 105 of the General Statutes.

14 Section 8. This act is effective when it becomes law.



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Legislative Services Office**

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May 20, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 762 Chapel Hill Omnibus Act
Introduced by Representatives Insko and Hackney
Proposed Committee Substitute H762-PCS1352

House Bill 762 (H762-PCS1352) would make several changes affecting both the Town of Chapel Hill and Orange County.

Section 1 sets out the applicability of each section of the bill (explained below).

Section 2 of the bill would authorize the Town of Chapel Hill to levy an entertainment tax not to exceed \$1 per ticket on events in facilities with a capacity greater than 15,000 persons.

Section 3 of the bill would amend the Charter of the Town of Chapel Hill to authorize the Town to enact an ordinance requiring housing developers to include low and moderate income housing in new developments within the Town.

Section 4 is a technical change.

Section 5 of the bill would authorize Orange County and the Town of Chapel Hill to levy a 1/2% sales and use tax, a 5% (maximum) vehicle rental tax, and a \$5 (maximum) vehicle registration tax. All three of these taxes could only be used to fund public transit.

Section 6 of the bill would authorize the Town of Chapel Hill to levy a parking tax of up to \$5 per year/per space, for use to fund public transportation.

Section 7 of the bill would exempt certain construction materials purchased prior to the effective date of this bill from the sales and use tax created in Section 5.

House Bill 762 would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

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D

HOUSE BILL 762*
Proposed Committee Substitute H762-PCS1377

Short Title: Chapel Hill Large Event Ticket Tax.

(Local)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TOWN OF CHAPEL HILL TO LEVY AN
3 ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN THE
4 TOWN OF CHAPEL HILL.
5 The General Assembly of North Carolina enacts:
6 Section 1. (a) Authorization and scope. Notwithstanding the provisions
7 of G.S. 105-37.1(b), a town by resolution of its governing board may levy an
8 entertainment tax on every admission ticket purchased for admission to an
9 entertainment, an amusement, or an athletic or commercial event for which an
10 admission is charged and which is presented in that town in a facility having a seating
11 capacity greater than 15,000. This tax does not apply, however, to athletic events
12 sponsored by the North Carolina High School Athletic Association that involve
13 participants at or below high school level. The tax shall be at a rate of not more than
14 one dollar (\$1.00) per admission ticket purchased. This tax is in addition to any
15 other State or local tax.
16 (b) Collection. Every person, firm, corporation, or organization selling
17 admission tickets taxable under this section shall collect the tax. This tax shall be
18 collected at the same time as the charge for furnishing a taxable admission ticket and
19 shall be paid by the purchaser to the seller of the admission ticket as trustee for and
20 on account of the town. The tax shall be stated and charged separately from the sales
21 price. The tax shall be added to the admission price and shall be passed on to the
22 purchaser instead of being borne by the seller.

(c) Administration. The town shall administer a tax levied under this section. A tax levied and collected under this section is due and payable to the town tax collector on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total number of admissions subject to the tax that were sold in the preceding month. A return filed with the tax collector under this section is not a public record as defined in G.S. 132-1 and may not be disclosed except as required by law. The town may, by ordinance establish additional procedures for collection, reporting, remittance, and use of a tax levied under this section.

(d) Penalties. A person, firm, or corporation who fails or refuses to file the return required by this section shall pay a tax penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax penalty of five percent (5%) of the tax due, with an additional tax penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The town council may, for good cause shown, compromise or forgive the tax penalties imposed by this section.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a Class 3 misdemeanor.

(e) Use and distribution of tax revenue. The town shall use the proceeds collected from this tax solely for the purpose of supporting the public transportation system operated by the town, including services provided under agreement with the University of North Carolina at Chapel Hill and with the Town of Carrboro.

(f) Effective date of the levy. A tax levied under this section shall become effective on the date specified in the ordinance levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the ordinance is adopted.

(g) Repeal. A tax levied under this section may be repealed by an ordinance adopted by the town council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal ordinance was adopted. Repeal of a tax levied under this section does not affect liability for a tax, its collection, or its payment to the town that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Section 2. This act is effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

June 3, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met June 3, 1997, at 11:05 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Allred, Buchanan, Carpenter, Hardy, Kiser, Reynolds, Tallent, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Catherine Huisman and Jessica Kolseth.

The following bills were discussed:

HB 758 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY AND AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN ORANGE COUNTY, RELATING TO CLASSIFICATIONS UNDER THE ORANGE COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE, DISPOSAL, LABELING, OR APPLICATION OF PESTICIDES, AND TO MAKE TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX. Rep. Insko was recognized to present the bill. Rep. Kiser sent forth an amendment to Page 1, Line 3, deleting the phrase, "TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE, DISPOSAL, LABELING, OR APPLICATIONS OF PESTICIDES,"; and to further amend on Page 3, Line 27, through Page 4, Line 5, by deleting those lines. Geof Gledhill, Orange County Attorney, was recognized to explain a proposed amendment to Page 3, Line 39 through Page 4, Line 5, that would authorize notice of a pesticide application to be conspicuously posted at the time and place of its application. Pesticide Administrator John Smith was recognized to clarify pesticide terminology and explain pesticide licensing practices. Glenn Jernigan, representing the Agriculture Alliance of N.C., was recognized to speak on the pesticide regulation. No action was taken on the proposed amendment. After a brief discussion, Rep. Kiser moved for adoption of his amendment; seconded and passed. Rep. Ellis sent forth an amendment to Sections 1, 2, and 3 of the bill. Section 1 would authorize Orange County to levy an admissions tax of up to \$1 per ticket for events in facilities with a capacity greater than 15,000 persons. Section 2 would authorize Orange County to adopt pesticide use and handling rules more restrictive than those of the N.C. Pesticide Board. Section 3 would make technical corrections to the Orange County Room Occupancy Tax,

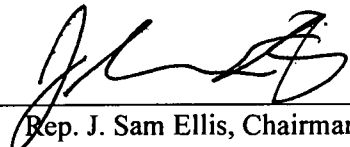
but it contains no provisions to do so. Following a brief discussion of the amendment, a vote on the motion to amend was called. The motion failed. Rep. Carpenter sent forth an amendment to remove Lines 6 and 7 of Section 3, Page 4; seconded and passed. Rep. Buchanan moved for adoption of the Proposed Committee Substitute; seconded and passed. Rep. Buchanan moved for a favorable report to Committee Substitute as amended; unfavorable to original bill and re-refer to House Finance Committee; seconded and voice vote called. Division was called, and a show of hands indicated six no and seven yes. The motion passed.

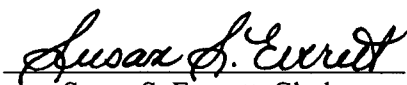
HB 760 A BILL TO BE ENTITLED AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO. Rep. Insko was recognized to present the bill and continue discussion from the May 20th meeting. Rep. Carpenter sent forth an amendment to delete Section 3-1, Privilege License Tax. Paul Wilms of the N.C. Home Builders Association was recognized to speak to the sprinkler issue. He explained the Association's support for the sprinkler system section of the bill, as set forth in the May 20th proposed amendment offered by Rep. Carpenter and included in a Proposed Committee Substitute. Rep. Carpenter moved for adoption of the Proposed Committee Substitute, as amended to include the deletion of Section 3-1, Privilege License Tax; seconded and passed. Rep. Carpenter moved for a favorable report to Committee Substitute; unfavorable to original bill; seconded and passed.

HB 759 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CHATHAM COUNTY TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY IN CHATHAM COUNTY. Rep. Insko was recognized to present the bill. She explained that it is a real estate transfer tax to be used for capital expenses for courts, jails, emergency medical services, libraries, recreation, education, administration, water, sewage, health, and social services. County Manager Charles Horn was recognized to offer Chatham County's support for the bill. Rep. Insko restated her support for the bill, explaining that it is more equitable to tax home buyers relocating to North Carolina than to raise taxes for existing home owners. Rep. Dedmon moved for an unfavorable report; seconded and passed.

The meeting adjourned at 12:00 P.M.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman


Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

June 3, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Don Lee	NC DOT
Charles Tomlinson	NC DOT
Sam Lee	TCX
Bill Johnson	NCVMA & NC DOT
Tom Wharton	NCVMA & Dow Elanco
Maurice Weaver	NCDA
Earl Cole	Crop Protection Assn of NC
John Smith	NC Dept of Ag
Robert Gleason	NCADA
Al Howard	NCSSA
David Feneel	Hofe, McNamee, Caldwell, McElroy, Hutz
Velberta Popper	ZDA, PA
Leroy Jackson	Plant Food Assn of NC
John Curran	N.C. State Grange
Charles Horn	Chatham County
Eddie Caldwell	H McC McC IPA
D. M. Ford	NCDA
Donna Z. Womack	EBHLS
Anna Hartsell	MCC
Alvin R. R. R.	ASCFB
Clifton R. R. R.	LENC
Jim Hobbs	NCHMA
ELVIS HANKINS	NCLM
Ron Atkins	ENANC
Rep Aldridge	
Kathy Collier	Davey Tree
IL R. R. R.	KANK
MIKE LAMAR	SWIFT CREEK

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

June 3, 1997

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

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**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 758 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY AND AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN ORANGE COUNTY, RELATING TO CLASSIFICATIONS UNDER THE ORANGE COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE, DISPOSAL, LABELING, OR APPLICATION OF PESTICIDES, AND TO MAKE TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 758*

Short Title: Orange Omnibus Act.

(Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Local and Regional Government, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON
3 INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY
4 AND AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN
5 ORANGE COUNTY, RELATING TO CLASSIFICATIONS UNDER THE
6 ORANGE COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE
7 AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE,
8 DISPOSAL, LABELING, OR APPLICATION OF PESTICIDES, AND TO
9 MAKE TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM
10 OCCUPANCY TAX.
11 The General Assembly of North Carolina enacts:
12 Section 1. Excise Tax.
13 (a) Authorization. The Orange County Board of Commissioners may, by
14 resolution, levy an excise tax on instruments conveying certain interests in real
15 property in Orange County. The tax imposed may not exceed one dollar (\$1.00) on
16 each one hundred dollars (\$100.00) or fraction thereof of the total consideration or
17 value, whichever is greater, of the interest conveyed, including, in the case of a sale,
18 the value of any lien or encumbrance remaining on the property at the time of sale.
19 This tax is in addition to the tax levied by Article 8E of Chapter 105 of the General
20 Statutes.
21 The value of a lease subject to this tax shall be computed on the basis of
22 the present value of the fixed lease payments and, if the lease payments are based in
23 whole or in part on the lessee's receipts, the estimated amount of the lessee's receipts.
24 Based upon the recommendation of the Orange County Finance Director, the Board

1 of Commissioners shall, at least annually, set the discount rate to be used to
2 determine the present value of lease payments. Such determination shall be
3 conclusive.

4 (b) Scope. A tax levied under this section applies to all instruments
5 conveying an interest in real property in Orange County except an instrument:

6 (1) Conveying an interest in real property from the United States, the
7 State, or a political subdivision of the State.

8 (2) Recording a lease for a term of 10 years or less, unless:

9 a. The lease gives the lessee an option to renew the lease for a
10 period that, when added to the term of the lease, exceeds 10
11 years;

12 b. The lease is for substantially the same property and is
13 between the same parties as a lease previously recorded, and
14 the term of the new lease, when added to that of the
15 previous lease, exceed 10 years; or

16 c. The lease requires or permits the property to be transferred
17 to the lessee for less than the fair market value of the
18 property.

19 (3) Securing indebtedness.

20 (4) Recording a transfer in which no consideration is due the
21 transferor by the transferee.

22 (5) Conveying an interest in real property located in more than one
23 county if the greater part of the property, with respect to value, lies
24 in a county other than Orange County.

25 In addition, this tax does not apply to conveyances of an interest in real property by
26 operation of law, by will, by intestacy, by gift, by merger or consideration.

27 (c) Collection. A tax levied under this section is payable by the
28 transferor of the interest to the Orange County Director of Revenue. The transferor
29 in the case of a sheriff's deed is herein defined to be the debtor whose property is
30 sold pursuant to judicial process. The sheriff is authorized to pay the tax on behalf of
31 the debtor and to charge the tax levied under this section to the account of the
32 debtor as a cost of sale.

33 This tax shall be paid at the office of the Director of Revenue before the
34 instrument conveying the interest is recorded. The Director of Revenue may require
35 any documentation, including an affidavit of value, the Director of Revenue considers
36 necessary to establish the accuracy of the tax to be paid. The Director of Revenue
37 shall stamp or otherwise mark each instrument subject to the tax to indicate that the
38 tax has been paid. The Orange County Register of Deeds may not accept for
39 recordation an instrument subject to a tax levied under this section unless the
40 instrument bears the mark of the Director of Revenue indicating that the tax has been
41 paid.

42 (d) Use and Distribution of Tax Revenue. Orange County may retain in
43 its general fund three percent (3%) of the gross proceeds of the tax as costs of
44 collection. The remaining proceeds of the tax shall be retained by the county and

1 placed in a Capital Reserve Fund to be expended only for capital projects, including
2 debt service for capital projects. All interest earned from investment of the funds in
3 the Capital Reserve Fund shall be held and expended only in accordance with the
4 provisions of this subsection.

5 (e) Penalties. A person who knowingly fails or refuses to pay a tax
6 levied under this section, who knowingly aids another to fail to pay a tax levied
7 under this section, or who, to avoid paying part or all of the tax due under this
8 section, knowingly misstates the total consideration for an interest conveyed is guilty
9 of a Class 3 misdemeanor and is punishable by imprisonment as provided by law and
10 a fine of not less than one hundred dollars (\$100.00) nor more than the amount of
11 tax that is due and payable.

12 (f) Taxes Recoverable by Action. If a transferor fails to pay a tax
13 imposed by this section within 30 days after the Revenue Director's demand that the
14 transferor pay the tax, the tax may be recovered by Orange County in an action
15 brought in the General Court of Justice, Superior or District Court, of the county. In
16 an action to recover a tax imposed under this section, costs of court shall include a
17 fee to the county of twenty-five dollars (\$25.00) for the expense of collection.

18 (h) Effective Date and Application. A tax levied under this section shall
19 become effective on the first day of a month, as designated in the resolution levying
20 the tax, and may not become effective for at least 30 days after the adoption of the
21 resolution. A tax levied under this section applies to instruments that are recorded
22 on or after the effective date of the levy, except instruments executed on or after that
23 date that convey an interest in real property pursuant to a written contract recorded
24 before the effective date.

25 (i) Repeal. A tax levied by this section may be repealed by a resolution
26 adopted by the Orange County Board of Commissioners. Repeal of a tax levied
27 under this section shall become effective on the first day of a month and shall apply
28 to instruments recorded on or after the effective date of the repeal. Repeal of a tax
29 levied under this section does not affect a liability for the tax that attached before the
30 effective date of the repeal.

31 Section 2. Admissions Tax.

32 (a) Authorization and Scope. Notwithstanding the provisions of G.S.
33 105-37.1(b), the Orange County Board of Commissioners may, by resolution, levy an
34 entertainment tax on every admission ticket purchased for admission to an
35 entertainment, an amusement, or an athletic or commercial event for which an
36 admission is charged and which is presented in Orange County in a facility having a
37 seating capacity greater than 15,000. This tax does not apply, however, to athletic
38 events sponsored by the North Carolina High School Athletic Association that
39 involve participants at or below high school level. The tax shall be at a rate of not
40 more than one dollar (\$1.00) per admission ticket purchased. This tax is in addition
41 to any other State or local tax.

42 (b) Collection. Every person, firm, corporation, or organization selling
43 admission tickets taxable under this section shall collect the tax. This tax shall be
44 collected at the same time as the charge for furnishing a taxable admission ticket and

1 shall be paid by the purchaser to the seller of the admission ticket as trustee for and
2 on account of Orange County. The tax shall be stated and charged separately from
3 the sales price. The tax shall be added to the admission price and shall be passed on
4 to the purchaser instead of being borne by the seller.

5 (c) Administration. Orange County shall administer a tax levied under
6 this section. A tax levied and collected under this section is due and payable to the
7 Orange County Director of Revenue on or before the 15th day of the month
8 following the month in which the tax accrues. Every person, firm, or corporation
9 liable for the tax shall, on or before the 15th day of each month, prepare and render
10 a return on a form prescribed by Orange County. The return shall state the total
11 number of admissions subject to the tax that were sold in the preceding month. A
12 return filed with the Director of Revenue under this section is not a public record
13 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
14 208.1. Orange County may, by resolution, establish additional procedures for
15 collection, reporting, remittance, and use of a tax levied under this section.

16 (d) Penalties. A person, firm, or corporation who fails or refuses to file
17 the return required by this section shall pay a tax penalty of ten dollars (\$10.00) for
18 each day's omission. In case of failure or refusal to file the return or pay the tax for
19 a period of 30 days after the time required for filing the return or for paying the tax,
20 there shall be an additional tax penalty of five percent (5%) of the tax due, with an
21 additional tax penalty of five percent (5%) for each additional month or fraction
22 thereof until the tax is paid. The board of county commissioners may, for good cause
23 shown, compromise or forgive the tax penalties imposed by this section.

24 Any person who willfully attempts in any manner to evade a tax imposed
25 under this section or who willfully fails to pay the tax or make and file a return shall,
26 in addition to all other penalties provided by law, be guilty of a misdemeanor.

27 (e) Use and Distribution of Tax Revenue. The Board of Commissioners
28 of Orange County shall use the proceeds collected from this tax solely for capital
29 projects. The proceeds shall be placed in a Capital Reserve Fund to be expended
30 only for capital projects, including debt service for capital projects. All interest
31 earned from investment of the funds in the Capital Reserve Fund shall be held and
32 expended only in accordance with the provisions of this subsection.

33 (f) Effective Date of the Levy. A tax levied under this section shall
34 become effective on the date specified in the resolution levying the tax. That date
35 must be the first day of a calendar month, however, and may not be earlier than the
36 first day of the second month after the date the resolution is adopted.

37 (g) Repeal. A tax levied under this section may be repealed by a
38 resolution adopted by the Orange County Board of Commissioners. Repeal of a tax
39 levied under this section shall become effective on the first day of a month and may
40 not become effective until the end of the fiscal year in which the repeal resolution
41 was adopted. Repeal of a tax levied under this section does not affect liability for a
42 tax, its collection, or its payment to Orange County that was attached before the
43 effective date of the repeal, nor does it affect a right to a refund of a tax that accrued
44 before the effective date of the repeal.

1 Section 3. Section 6(a) of Chapter 246, Session Laws of 1991, as rewritten
2 by Section 14 of Chapter 358 of the 1993 Session Laws reads as rewritten:

3 "(a) The Board of Commissioners of Orange County (hereafter 'Board of
4 Commissioners') may adopt an ordinance (hereafter 'the Ordinance') to prohibit
5 discrimination in employment, housing, and public accommodations on the basis of
6 race, color, religion, gender, national origin, age, disability, marital status, familial
7 status, ~~and veteran status~~, status, heterosexuality, and homosexuality.

8 The Board of Commissioners may include in the Ordinance a prohibition of
9 language or conduct or both directed at an individual or at a group of individuals
10 because of that individual's or group of individuals' actual or perceived race, color,
11 religion, gender, national origin, age, disability, marital status, familial status, ~~or~~
12 veteran ~~status~~ status, heterosexuality, or homosexuality which communicates in a
13 threatening manner words that incite imminent lawless action or which tend to incite
14 an immediate breach of the peace."

15 Section 4. G.S. 153A-465(d) reads as rewritten:

16 "(d) No county, city, or other political subdivision of the State shall adopt or
17 continue in effect any ordinance, rule, regulation, or resolution regulating the use,
18 sale, distribution, storage, transportation, disposal, formulation, labeling, registration,
19 manufacture, or application of pesticides in any area subject to regulation by the
20 Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or
21 other political subdivision of the State from exercising its planning and zoning
22 authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of
23 Chapter 153A of the General Statutes, or from exercising its fire prevention or
24 inspection authority. Notwithstanding the first sentence of this subsection, a county
25 may, in the exercise of its planning and zoning authority under Article 18 of Chapter
26 153A of the General Statutes, in a manner more stringent than any rule, regulation,
27 or resolution adopted by the North Carolina Pesticide Board, regulate the use,
28 storage, disposal, labeling, or application of pesticides."

29 Section 5. This section makes technical changes in the Orange County
30 Room Occupancy Tax.

31 Section 6. This act is effective when it becomes law.



Kiser
6-3
rolled into PCS

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 758

H758-ARW-002

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

Date _____, 1997

Comm. Sub. [YES]
Amends Title [YES]

Rep. Kiser

- 1 moves to amend the bill on page 1, line 3,
2 by deleting the phrase, "TO CLARIFY THE AUTHORITY OF ORANGE COUNTY
3 TO REGULATE THE USE, STORAGE, DISPOSAL, LABELING, OR APPLICATIONS OF
4 PESTICIDES,";
5
6 and to further amend on page 3, line 27, through page 4, line 5,
7 by deleting those lines and by renumbering the remaining sections
8 accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Rep. _____

Amendment to H758 (version H758-CSRW-001)

Page 1, lines 4-5 by rewriting those lines to read:

"AUTHORITY OF ORANGE COUNTY TO REQUIRE NOTICE OF APPLICATION OF PESTICIDES, AND TO MAKE"

Page 3, line 39 through page 4, line 5 by rewriting those lines to read:

"authority. Notwithstanding the first sentence of this subsection, a county may, in the exercise of its planning and zoning authority under Article 18 of Chapter 153A of the General Statutes, require that (1) notice of a proposed application of a pesticide be given to landowners adjoining or in the immediate vicinity of the property to be treated, and (2) notice of an application of a pesticide be conspicuously posted at the time and place of its application."



6-397
Ellis
Jules

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 758

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H758-ARW-001

Date _____, 1997

Comm. Sub. [YES]
Amends Title [YES]

1 moves to amend the bill on page 1, line 3,
2 by deleting the words "ORANGE COUNTY" and replacing them with the
3 words "ORANGE AND WAKE COUNTIES";
4
5 and on page 4, lines 7 and 8,
6 by adding between those lines a new section to read:
7
8 "Section 4. Admissions Tax.
9 (a) Authorization and Scope. Notwithstanding the
10 provisions of G.S. 105-37.1(b), the Wake County Board of
11 Commissioners may, by resolution, levy an entertainment tax on every
12 admission ticket purchased for admission to an entertainment, an
13 amusement, or an athletic or commercial event for which an admission
14 is charged and which is presented in Wake County in an enclosed
15 facility having a seating capacity greater than 20,000. This tax
16 does not apply, however, to athletic events sponsored by the North
17 Carolina High School Athletic Association that involve participants
18 at or below high school level. The tax shall be at a rate of not
19 more than one dollar (\$1.00) per admission ticket purchased. This
20 tax is in addition to any other State or local tax.
21 (b) Collection. Every person, firm, corporation, or
22 organization selling admission tickets taxable under this section
23 shall collect the tax. This tax shall be collected at the same time
24 as the charge for furnishing a taxable admission ticket and shall be
25 paid by the purchaser to the seller of the admission ticket as
26 trustee for and on account of Wake County. The tax shall be stated
27 and charged separately from the sales price. The tax shall be added



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 758

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of ____

H758-ARW-001

1 to the admission price and shall be passed on to the purchaser
2 instead of being borne by the seller.

3 (c) Administration. Wake County shall administer a tax
4 levied under this section. A tax levied and collected under this
5 section is due and payable to the Wake County Director of Revenue on
6 or before the 15th day of the month following the month in which the
7 tax accrues. Every person, firm, or corporation liable for the tax
8 shall, on or before the 15th day of each month, prepare and render a
9 return on a form prescribed by Wake County. The return shall state
10 the total number of admissions subject to the tax that were sold in
11 the preceding month. A return filed with the Director of Revenue
12 under this section is not a public record and may not be disclosed
13 except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1. Wake
14 County may, by resolution, establish additional procedures for
15 collection, reporting, remittance, and use of a tax levied under
16 this section.

17 (d) Penalties. A person, firm, or corporation who fails
18 or refuses to file the return required by this section shall pay a
19 tax penalty of ten dollars (\$10.00) for each day's omission. In
20 case of failure or refusal to file the return or pay the tax for a
21 period of 30 days after the time required for filing the return or
22 for paying the tax, there shall be an additional tax penalty of five
23 percent (5%) of the tax due, with an additional tax penalty of five
24 percent (5%) for each additional month or fraction thereof until the
25 tax is paid. The board of county commissioners may, for good cause
26 shown, compromise or forgive the tax penalties imposed by this
27 section.

28 Any person who willfully attempts in any manner to evade a
29 tax imposed under this section or who willfully fails to pay the tax
30 or make and file a return shall, in addition to all other penalties
31 provided by law, be guilty of a misdemeanor.

32 (e) Use and Distribution of Tax Revenue. The Board of
33 Commissioners of Wake County shall use the proceeds collected from
34 this tax solely for municipal street projects that are eligible for
35 funds under G.S. 136-41.1. The proceeds shall be placed in a
36 Municipal Street Reserve Fund, and distributed yearly to each
37 municipality of the County, based on the procedure and formula in
38 G.S. 136-41.1, for use by each municipality for projects that are
39 also eligible for funds distributed under that section. All
40 interest earned from investment of the funds in the Municipal Street



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 758

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 3 of ____

H758-ARW-001

1 Reserve Fund shall be held and expended only in accordance with the
2 provisions of this subsection.

3 (f) Effective Date of the Levy. A tax levied under this
4 section shall become effective on the date specified in the
5 resolution levying the tax. That date must be the first day of a
6 calendar month, however, and may not be earlier than the first day
7 of the second month after the date the resolution is adopted.

8 (g) Repeal. A tax levied under this section may be
9 repealed by a resolution adopted by the Wake County Board of
10 Commissioners. Repeal of a tax levied under this section shall
11 become effective on the first day of a month and may not become
12 effective until the end of the fiscal year in which the repeal
13 resolution was adopted. Repeal of a tax levied under this section
14 does not affect liability for a tax, its collection, or its payment
15 to Wake County that was attached before the effective date of the
16 repeal, nor does it affect a right to a refund of a tax that accrued
17 before the effective date of the repeal."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



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May 20, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 758 Orange Omnibus Act
Proposed Committee Substitute H758-CSRW-001

House Bill 758 would make five changes affecting Orange County.

Section 1 of the bill would authorize Orange County to levy an admissions tax of up to \$1 per ticket for events in facilities with a capacity greater than 15,000 persons.

Section 2 of the bill would authorize Orange County to adopt pesticide use and handling rules more restrictive than those of the N. C. Pesticide Board.

Section 3 of the bill would make technical corrections to the Orange County Room Occupancy Tax, but it contains no provisions to do so.

Section 4 of the bill provides that it would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 758

H758-CSRW-002

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

2-JUN-97 15:08:34

Short Title: Orange Omnibus Act.

(Local)

Sponsors:

Referred to: Local and Regional Government

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN ENTERTAINMENT TAX ON
3 EVENTS IN LARGE FACILITIES IN ORANGE COUNTY, TO CLARIFY THE
4 AUTHORITY OF ORANGE COUNTY TO REGULATE THE USE, STORAGE,
5 DISPOSAL, LABELING, OR APPLICATIONS OF PESTICIDES, AND TO MAKE
6 TECHNICAL CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX.
7 The General Assembly of North Carolina enacts:
8 Section 1. Admissions Tax.
9 (a) Authorization and Scope. Notwithstanding the
10 provisions of G.S. 105-37.1(b), the Orange County Board of
11 Commissioners may, by resolution, levy an entertainment tax on
12 every admission ticket purchased for admission to an
13 entertainment, an amusement, or an athletic or commercial event
14 for which an admission is charged and which is presented in
15 Orange County in a facility having a seating capacity greater
16 than 15,000. This tax does not apply, however, to athletic
17 events sponsored by the North Carolina High School Athletic
18 Association that involve participants at or below high school
19 level. The tax shall be at a rate of not more than one dollar

1 (\$1.00) per admission ticket purchased. This tax is in addition
2 to any other State or local tax.

3 (b) Collection. Every person, firm, corporation, or
4 organization selling admission tickets taxable under this section
5 shall collect the tax. This tax shall be collected at the same
6 time as the charge for furnishing a taxable admission ticket and
7 shall be paid by the purchaser to the seller of the admission
8 ticket as trustee for and on account of Orange County. The tax
9 shall be stated and charged separately from the sales price. The
10 tax shall be added to the admission price and shall be passed on
11 to the purchaser instead of being borne by the seller.

12 (c) Administration. Orange County shall administer a
13 tax levied under this section. A tax levied and collected under
14 this section is due and payable to the Orange County Director of
15 Revenue on or before the 15th day of the month following the
16 month in which the tax accrues. Every person, firm, or
17 corporation liable for the tax shall, on or before the 15th day
18 of each month, prepare and render a return on a form prescribed
19 by Orange County. The return shall state the total number of
20 admissions subject to the tax that were sold in the preceding
21 month. A return filed with the Director of Revenue under this
22 section is not a public record and may not be disclosed except in
23 accordance with G.S. 153A-148.1 or G.S. 160A-208.1. Orange
24 County may, by resolution, establish additional procedures for
25 collection, reporting, remittance, and use of a tax levied under
26 this section.

27 (d) Penalties. A person, firm, or corporation who
28 fails or refuses to file the return required by this section
29 shall pay a tax penalty of ten dollars (\$10.00) for each day's
30 omission. In case of failure or refusal to file the return or
31 pay the tax for a period of 30 days after the time required for
32 filing the return or for paying the tax, there shall be an
33 additional tax penalty of five percent (5%) of the tax due, with
34 an additional tax penalty of five percent (5%) for each
35 additional month or fraction thereof until the tax is paid. The
36 board of county commissioners may, for good cause shown,
37 compromise or forgive the tax penalties imposed by this section.

38 Any person who willfully attempts in any manner to evade
39 a tax imposed under this section or who willfully fails to pay

1 the tax or make and file a return shall, in addition to all other
2 penalties provided by law, be guilty of a misdemeanor.

3 (e) Use and Distribution of Tax Revenue. The Board of
4 Commissioners of Orange County shall use the proceeds collected
5 from this tax solely for capital projects. The proceeds shall be
6 placed in a Capital Reserve Fund to be expended only for capital
7 projects, including debt service for capital projects. All
8 interest earned from investment of the funds in the Capital
9 Reserve Fund shall be held and expended only in accordance with
10 the provisions of this subsection.

11 (f) Effective Date of the Levy. A tax levied under
12 this section shall become effective on the date specified in the
13 resolution levying the tax. That date must be the first day of a
14 calendar month, however, and may not be earlier than the first
15 day of the second month after the date the resolution is adopted.

16 (g) Repeal. A tax levied under this section may be
17 repealed by a resolution adopted by the Orange County Board of
18 Commissioners. Repeal of a tax levied under this section shall
19 become effective on the first day of a month and may not become
20 effective until the end of the fiscal year in which the repeal
21 resolution was adopted. Repeal of a tax levied under this
22 section does not affect liability for a tax, its collection, or
23 its payment to Orange County that was attached before the
24 effective date of the repeal, nor does it affect a right to a
25 refund of a tax that accrued before the effective date of the
26 repeal.

27 Section 2. G.S. 143-465(d) reads as rewritten:

28 "(d) No county, city, or other political subdivision of the
29 State shall adopt or continue in effect any ordinance, rule,
30 regulation, or resolution regulating the use, sale, distribution,
31 storage, transportation, disposal, formulation, labeling,
32 registration, manufacture, or application of pesticides in any
33 area subject to regulation by the Board pursuant to this Article.
34 Nothing in this section shall prohibit a county, city, or other
35 political subdivision of the State from exercising its planning
36 and zoning authority under Article 19 of Chapter 160A of the
37 General Statutes or Article 18 of Chapter 153A of the General
38 Statutes, or from exercising its fire prevention or inspection
39 authority. Notwithstanding the first sentence of this
40 subsection, a county may, in the exercise of its planning and

1 zoning authority under Article 18 of Chapter 153A of the General
2 Statutes, in a manner more stringent than any rule, regulation,
3 or resolution adopted by the North Carolina Pesticide Board,
4 regulate the use, storage, disposal, labeling, or application of
5 pesticides."

6 Section 3. This section makes technical changes in the
7 Orange County Room Occupancy Tax.

8 Section 4. This act is effective when it becomes law.



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June 3, 1997

To: Members of the House Local and Regional Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 758 Orange Omnibus Act
Proposed Committee Substitute H758-CSRW-002

House Bill 758 would make five changes affecting Orange County.

Section 1 of the bill would authorize Orange County to levy an admissions tax of up to \$1 per ticket for events in facilities with a capacity greater than 15,000 persons.

Section 2 of the bill would authorize Orange County to adopt pesticide use and handling rules more restrictive than those of the N. C. Pesticide Board "in the exercise of its planning and zoning authority".

Section 3 of the bill would make technical corrections to the Orange County Room Occupancy Tax, but it contains no provisions to do so.

Section 4 of the bill provides that it would become effective when it becomes law.

passed

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 758*
Proposed Committee Substitute H758-PCS1392

Short Title: Orange Admissions Tax.

(Local)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN
3 ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN ORANGE
4 COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Admissions Tax.

7 (a) Authorization and Scope. Notwithstanding the provisions of G.S.
8 105-37.1(b), the Orange County Board of Commissioners may, by resolution, levy an
9 entertainment tax on every admission ticket purchased for admission to an
10 entertainment, an amusement, or an athletic or commercial event for which an
11 admission is charged and which is presented in Orange County in a facility having a
12 seating capacity greater than 15,000. This tax does not apply, however, to athletic
13 events sponsored by the North Carolina High School Athletic Association that
14 involve participants at or below high school level. The tax shall be at a rate of not
15 more than one dollar (\$1.00) per admission ticket purchased. This tax is in addition
16 to any other State or local tax.

17 (b) Collection. Every person, firm, corporation, or organization selling
18 admission tickets taxable under this section shall collect the tax. This tax shall be
19 collected at the same time as the charge for furnishing a taxable admission ticket and
20 shall be paid by the purchaser to the seller of the admission ticket as trustee for and
21 on account of Orange County. The tax shall be stated and charged separately from
22 the sales price. The tax shall be added to the admission price and shall be passed on
23 to the purchaser instead of being borne by the seller.

1 (c) Administration. Orange County shall administer a tax levied under
2 this section. A tax levied and collected under this section is due and payable to the
3 Orange County Director of Revenue on or before the 15th day of the month
4 following the month in which the tax accrues. Every person, firm, or corporation
5 liable for the tax shall, on or before the 15th day of each month, prepare and render
6 a return on a form prescribed by Orange County. The return shall state the total
7 number of admissions subject to the tax that were sold in the preceding month. A
8 return filed with the Director of Revenue under this section is not a public record
9 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
10 208.1. Orange County may, by resolution, establish additional procedures for
11 collection, reporting, remittance, and use of a tax levied under this section.

12 (d) Penalties. A person, firm, or corporation who fails or refuses to file
13 the return required by this section shall pay a tax penalty of ten dollars (\$10.00) for
14 each day's omission. In case of failure or refusal to file the return or pay the tax for
15 a period of 30 days after the time required for filing the return or for paying the tax,
16 there shall be an additional tax penalty of five percent (5%) of the tax due, with an
17 additional tax penalty of five percent (5%) for each additional month or fraction
18 thereof until the tax is paid. The board of county commissioners may, for good cause
19 shown, compromise or forgive the tax penalties imposed by this section.

20 Any person who willfully attempts in any manner to evade a tax imposed
21 under this section or who willfully fails to pay the tax or make and file a return shall,
22 in addition to all other penalties provided by law, be guilty of a misdemeanor.

23 (e) Use and Distribution of Tax Revenue. The Board of Commissioners
24 of Orange County shall use the proceeds collected from this tax solely for capital
25 projects. The proceeds shall be placed in a Capital Reserve Fund to be expended
26 only for capital projects, including debt service for capital projects. All interest
27 earned from investment of the funds in the Capital Reserve Fund shall be held and
28 expended only in accordance with the provisions of this subsection.

29 (f) Effective Date of the Levy. A tax levied under this section shall
30 become effective on the date specified in the resolution levying the tax. That date
31 must be the first day of a calendar month, however, and may not be earlier than the
32 first day of the second month after the date the resolution is adopted.

33 (g) Repeal. A tax levied under this section may be repealed by a
34 resolution adopted by the Orange County Board of Commissioners. Repeal of a tax
35 levied under this section shall become effective on the first day of a month and may
36 not become effective until the end of the fiscal year in which the repeal resolution
37 was adopted. Repeal of a tax levied under this section does not affect liability for a
38 tax, its collection, or its payment to Orange County that was attached before the
39 effective date of the repeal, nor does it affect a right to a refund of a tax that accrued
40 before the effective date of the repeal.

41 Section 2. This act is effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 760 A BILL TO BE ENTITLED AN ACT TO AMEND THE CHARTER OF THE
TOWN OF CARRBORO

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill.**
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 760*

Short Title: Carrboro Charter Amendments.

(Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Local and Regional Government I, if favorable, Finance.

April 2, 1997

1

A BILL TO BE ENTITLED

2

AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO.

3

The General Assembly of North Carolina enacts:

4

Section 1. Section 9-3 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

6

"Section 9-3. Zoning Board of Adjustment. The board of aldermen may create a board of adjustment in accordance with the provisions of Article 19 of Chapter 160A of the General Statutes. Such board shall be subject to all the provisions of general law except that the board of aldermen may authorize the board of adjustment to decide any matter before it either (i) upon a vote of a majority of the members present at a meeting and not excused from voting, so long as a quorum ~~consisting of at least six members~~ is present, or (ii) upon a vote of a four-fifths majority of the members present at a meeting and not excused from voting, so long as a quorum ~~consisting of at least six members~~ is present."

15

Section 2. Section 9-5 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

17

"Section 9-5. Sprinkler Systems. Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, the board of aldermen may adopt an ordinance requiring that sprinkler systems be installed in all of the following types of buildings constructed within the town or its extraterritorial planning ~~jurisdiction~~: jurisdiction, including the portion of the joint planning area authorized under Chapter 233 of the 1987 Session Laws wherein the Town of Carrboro administers the State Building Code: (i) buildings in excess of 50 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of

24

1 floor surface area; ~~or~~ (iii) buildings designed for assembly occupancy (as defined in
2 the North Carolina State Building Code) that accommodate more than 25 ~~people~~.
3 ~~people; or (iv) residential buildings having three or more dwelling units. This~~
4 ~~ordinance applies~~ An ordinance adopted pursuant to this section may apply to
5 existing buildings only to the extent and under the circumstances that the provisions
6 of the North Carolina State Building Code apply to preexisting buildings."

7 Section 3. Section 3-1 of the Charter of the Town of Carrboro, being
8 Chapter 476 of the 1987 Session Laws, reads as rewritten:

9 "Section 3-1. Privilege License Tax. The town may levy privilege license taxes on
10 all trades, occupations, professions, businesses, and franchises carried on within the
11 town unless such trade, occupation, profession, business, or franchise has been
12 completely exempted from municipal privilege license taxes under State law. The
13 town may, but is not required to, establish a schedule of privilege license taxes based
14 in whole or in part on the annual gross receipts of the businesses taxed. The
15 schedule is not subject to the limitations referenced in G.S. 160A-211 on the
16 maximum amount of privilege license taxes that may be levied on specific types of
17 businesses."

18 Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 760*
Proposed Committee Substitute H760-PCS2341

Short Title: Carrboro Charter Amendments.

(Local)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO.
3 The General Assembly of North Carolina enacts:
4 Section 1. Section 9-3 of the Charter of the Town of Carrboro, being
5 Chapter 476 of the 1987 Session Laws, reads as rewritten:
6 "Section 9-3. Zoning Board of Adjustment. The board of aldermen may create a
7 board of adjustment in accordance with the provisions of Article 19 of Chapter 160A
8 of the General Statutes. Such board shall be subject to all the provisions of general
9 law except that the board of aldermen may authorize the board of adjustment to
10 decide any matter before it either (i) upon a vote of a majority of the members
11 present at a meeting and not excused from voting, so long as a quorum ~~consisting of~~
12 ~~at least six members~~ is present, or (ii) upon a vote of a four-fifths majority of the
13 members present at a meeting and not excused from voting, so long as a quorum
14 ~~consisting of at least six members~~ is present."
15 Section 2. Section 9-5 of the Charter of the Town of Carrboro, being
16 Chapter 476 of the 1987 Session Laws, reads as rewritten:
17 "Section 9-5. Sprinkler Systems. Notwithstanding any provision of the North
18 Carolina State Building Code or any general or local law to the contrary, the board
19 of aldermen may adopt an ordinance requiring that sprinkler systems be installed in
20 all of the following types of buildings constructed within the town or its
21 extraterritorial planning ~~jurisdiction~~ jurisdiction, including the portion of the joint
22 planning area authorized under Chapter 233 of the 1987 Session Laws wherein the
23 Town of Carrboro administers the State Building Code: (i) buildings in excess of 50

1 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of
2 floor surface area; ~~or~~ (iii) buildings designed for assembly occupancy (as defined in
3 the North Carolina State Building Code) that accommodate more than 25 people.
4 people; or (iv) multifamily buildings having three or more dwelling units. This
5 ordinance applies An ordinance adopted pursuant to this section may apply to
6 existing buildings only to the extent and under the circumstances that the provisions
7 of the North Carolina State Building Code apply to preexisting buildings."

8 Section 3. This act is effective when it becomes law.



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June 3, 1997

To: Members of the House Local and Regional Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 760 Carrboro Charter Amendments
Introduced by Representatives Insko and Hackney

House Bill 760 would amend the Chapter of the Town of Carrboro to:

- delete the requirement for six members to be present to constitute a quorum of the Zoning Board of Adjustment;
- authorize a requirement for sprinklers in the joint planning area of the Town where the Building Code is administered by Carrboro; and
- authorize the Town to base privilege license taxes in whole or in part on gross receipts of the businesses taxed.

House Bill 760 would become effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☐ Committee Substitute for

H.B. 759 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CHATHAM COUNTY
TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY IN
CHATHAM COUNTY.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☒ **With an unfavorable report.**

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 759*

Short Title: Chatham Conveyance Tax.

(Local)

Sponsors: Representatives Insko, Hackney, and Culp.

Referred to: Local and Regional Government I, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CHATHAM COUNTY TO LEVY AN EXCISE TAX
3 ON INSTRUMENTS CONVEYING REAL PROPERTY IN CHATHAM
4 COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. (a) Authorization. The Chatham County Board of
7 Commissioners may, by resolution, levy an excise tax on instruments conveying
8 certain interests in real property in Chatham County. The tax imposed may not
9 exceed one dollar (\$1.00) on each one thousand dollars (\$1,000) or fraction thereof
10 of the total consideration or value, whichever is greater, of the interest conveyed,
11 including, in the case of a sale, the value of any lien or encumbrance remaining on
12 the property at the time of the sale. This tax is in addition to the tax levied by
13 Article 8E of Chapter 105 of the General Statutes.

14 The value of a lease subject to this tax shall be computed on the basis of
15 the present value of the fixed lease payments and, if the lease payments are based in
16 whole or in part on the lessee's receipts, the estimated amount of the lessee's receipts.
17 Based upon the recommendation of the Chatham County Tax Collector, the board of
18 commissioners shall, at least annually, set the discount rate to be used to determine
19 the present value of lease payments. This determination shall be conclusive.

20 (b) Scope. A tax levied under this section applies to all instruments
21 conveying an interest in real property in Chatham County except an instrument:

- 22 (1) Conveying an interest in real property from the United States, the
23 State of North Carolina, or a political subdivision of the State.
24 (2) Recording a lease for a term of 10 years or less, unless:

- a. The lease gives the lessee an option to renew the lease for a period that, when added to the term of the lease, exceeds 10 years;
 - b. The lease is for substantially the same parties as a lease previously recorded, and the term of the new lease, when added to that of the previous lease, exceeds 10 years; or
 - c. The lease requires or permits the property to be transferred to the lessee for less than the fair market value of the property.
- (3) Securing indebtedness.
 - (4) Recording a transfer in which no consideration was paid or is due the transferor by the transferee.
 - (5) Conveying an interest in real property located in more than one county if the greater part of the property, with respect to value, lies in a county other than Chatham County.

In addition, this tax does not apply to conveyances of an interest in real property by operation of law, by will, or by intestacy.

(c) Collection. A tax levied under this section is payable by the transferor of the interest to the Chatham County Tax Collector. This tax must be paid at the tax collector's office before the instrument conveying the interest is recorded. The tax collector may require any documentation, including an affidavit of value, the tax collector considers necessary to establish the accuracy of the tax to be paid. The tax collector shall stamp or otherwise mark each instrument subject to the tax to indicate that the tax has been paid. The Chatham County Register of Deeds may not accept for recordation an instrument subject to a tax levied under this section unless the instrument bears the tax collector's mark indicating that the tax has been paid.

(d) Appeal. A person who is liable for the tax levied under this section who disputes the amount of tax due shall pay the tax stated by the tax collector to be due, but may appeal the payment of the tax by filing a written notice of appeal with the tax collector within 30 days after paying the tax. A notice of appeal shall state the reason for the appeal and the amount of tax the appellant contends is due. Upon receipt of a notice of appeal, the tax collector shall forward a copy of the notice of appeal to the clerk of the board of commissioners, and to the chair of the Land Transfer Tax Appeals Board if the board has been established.

(e) Tax Appeals Board. Appeals may be heard by the board of commissioners, or the board of commissioners may by resolution provide for appeals to be heard by a Land Transfer Tax Appeals Board. Should the board of commissioners elect to hear appeals, the same time limitations set forth for the Tax Appeals Board shall apply.

(f) Membership and Procedure. If the board of commissioners elects to provide for hearing of appeals by a Land Transfer Tax Appeals Board, the establishment and proceedings of the Board shall be governed by the following:

- 1 (1) The Land Transfer Tax Appeals Board shall determine appeals of
2 taxes imposed under this section. The Board shall consist of five
3 members appointed by the Chatham County Board of
4 Commissioners. The county commissioners shall designate a chair
5 of the Board from the membership of the Board. The expenses of
6 the Board are an administrative expense and shall be paid from the
7 proceeds of the tax.
- 8 (2) Members of the Board shall serve staggered four-year terms ending
9 on June 30. Two members of the initial Board shall be appointed
10 for a term ending June 30 in the year following the year of their
11 appointment, and three members of the initial Board shall be
12 appointed for a term ending June 30 in the third year following the
13 year of their appointment. Thereafter all appointments, except
14 appointments to fill an unexpired term, shall be for four years.
15 Members shall serve until their successors are appointed. Any
16 vacancy shall be filled by the board of commissioners for the
17 unexpired term.
- 18 (3) The Land Transfer Tax Appeals Board shall meet at the call of the
19 chair and shall meet as often as needed to hear appeals. All
20 appeals to the Board shall be heard by the Board within 45 days
21 after the date the tax collector receives a notice of appeal. The
22 Board shall issue a written decision within 20 days after hearing an
23 appeal and shall send a copy of the decision to the appellant and
24 to the tax collector. If the decision states that an appellant paid
25 more tax than was due, the tax collector shall, unless the decision
26 is appealed within 30 days after receipt of notice of the decision,
27 immediately upon expiration of the 30-day period, refund to the
28 appellant the amount of the overpayment. The appellant and the
29 tax collector may appeal the decision of the Board in an action
30 brought in the district court of the county. An appeal to the
31 district court shall be heard de novo.
- 32 (g) Use of Tax Revenue. All proceeds of the tax shall be placed in a
33 special Capital Reserve Fund in the general fund of the county. Revenue in this fund
34 may be used by the county only for capital expenditures for the following: courts,
35 jails and detention facilities, emergency medical services, libraries, recreation,
36 education, administration, water, sewage, health, and social services.
- 37 (h) Penalties. Any person who knowingly fails to pay a tax levied under
38 this section, or who knowingly aids another to fail to pay a tax levied under this
39 section, or who, to avoid paying part or all of the tax due under this section,
40 knowingly misstates the total consideration for an interest conveyed shall be guilty of
41 a Class 2 misdemeanor.
- 42 (i) Taxes Recoverable by Action. If a transferor fails to pay a tax
43 imposed by this section within 30 days after the tax collector's demand for the tax,
44 the tax may be recovered by Chatham County in an action brought in the district

1 court of Chatham County. In an action to recover a tax imposed under this section,
2 costs of court shall include a fee to the county of one hundred dollars (\$100.00) to
3 help defray the expense of collection.

4 (j) Effective Date and Application. A tax levied under this section shall
5 become effective on the first day of a month, as designated in the resolution levying
6 the tax, and may not become effective for at least 30 days after the adoption of the
7 resolution. A tax levied under this section applies to instruments that are executed
8 on or after the effective date of the levy, except instruments executed on or after that
9 date that convey an interest in real property pursuant to a recorded written contract
10 made before the effective date.

11 (k) Repeal. A tax levied by this section may be repealed by a resolution
12 adopted by the Chatham County Board of Commissioners. Repeal of a tax levied
13 under this section shall become effective on the first day of July following adoption of
14 the resolution and shall apply to instruments recorded on or after the effective date of
15 the repeal. Repeal of a tax levied under this section does not affect a liability for this
16 tax that accrued before the effective date of the repeal.

17 Section 2. This act is effective when it becomes law.



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June 3, 1997

To: Members of the House Local Government I Committee

From: Giles S. Perry, Committee Counsel

Re: House Bill 759 Chatham Conveyance Tax
Introduced by Representatives Insko, Hackney, and Culp

House Bill 759 would authorize Chatham County to levy an excise tax on instruments conveying real property. The tax could not exceed \$1 per \$1000 of value or consideration.

The tax could only be used for capital expenses for courts, jails, emergency medical services, libraries, recreation, education, administration, water, sewage, health, and social services.

House Bill 759 would become effective when it becomes law.

**MINUTES
HOUSE COMMITTEE ON
LOCAL AND REGIONAL GOVERNMENT I**

June 24, 1997

The **HOUSE COMMITTEE ON LOCAL AND REGIONAL GOVERNMENT I** met June 24, 1997, at 9:05 A.M. in the Legislative Office Building, Room 415. Rep. J. Sam Ellis presided. **LOCAL AND REGIONAL GOVERNMENT I** members present were: Representatives Buchanan, Kiser, Tallent, Rogers, Cunningham, Dedmon, Hurley, and Saunders. Chairman Ellis opened the meeting by recognizing Sergeant-at-Arms Billy Crocker and House Pages Kathryn Cutler Midyette and Elizabeth A. Milligan.

The following bills were discussed:

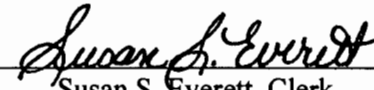
SB 585 A BILL TO BE ENTITLED AN ACT TO INCREASE THE MAXIMUM RATE OF THE LUMBERTON ROOM OCCUPANCY TAX FROM THREE PERCENT TO SIX PERCENT, AND TO AUTHORIZE THE CITY OF SHELBY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX IF APPROVED BY THE VOTERS OF THE CITY. Rep. Tallent moved for adoption of the Proposed Committee Substitute; seconded and passed. Leanne Winner of the Travel and Tourism Coalition was recognized to speak to the Coalition's concerns with the bill. She explained that Coalition members had established state-wide standards for the allocation of room occupancy taxes and that both the Shelby and Lumberton portions of the bill conform to those standards. Rep. Dedmon, speaking for his legislative delegation, confirmed their support for the bill. The Chair recognized Mr. Dee Freeman, Shelby City Manager, and Mr. Robert Hites, Lumberton City Manager, to answer questions about the bill. After questions by the Committee and comments by the audience, Rep. Tallent moved for a favorable report. Rep. Ellis added that he wished to offer information about Section 6, Line 37 and 38. With no opposition, Rep. Hurley moved to delete Section 6, Line 37 and 38, and to amend the title on Page 1, Line 6, deleting the phrase, "AND TO REPEAL CHAPTER 182 OF THE 1997 SESSION LAWS," and renumber the bill; seconded and passed. Rep. Tallent moved for a favorable report to Committee Substitute; unfavorable to original bill and re-refer to House Finance Committee; seconded and passed.

SB 713 A BILL TO BE ENTITLED AN ACT TO REPEAL THE AUTHORIZATION OF SUPPLEMENTAL RETIREMENT BENEFITS FOR FIREMEN IN THE CITY OF RALEIGH. Sen. Reeves was recognized to present the bill. He explained that it would allow Raleigh Firefighters to manage their retirement benefits in a more beneficial way. Paul Smith and Stanley Moore of the Firefighters Association were recognized to answer questions about the immediate and long-term implications of the bill. Following

a brief discussion, Rep. Buchanan moved for a favorable report and re-refer to House Pensions and Retirement Committee; seconded and passed.

The meeting adjourned at 9:40 A.M.

Respectfully submitted,


Rep. J. Sam Ellis, Chairman
Susan S. Everett, Clerk

VISITOR REGISTRATION SHEET

LOCAL AND REGIONAL GOVERNMENT I

Name of Committee

June 24, 1997

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

☒ Committee Substitute for

S.B. 585 A BILL TO BE ENTITLED AN ACT TO INCREASE THE MAXIMUM RATE OF THE LUMBERTON ROOM OCCUPANCY TAX FROM THREE PERCENT TO SIX PERCENT, AND TO AUTHORIZE THE CITY OF SHELBY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX IF APPROVED BY THE VOTERS OF THE CITY.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)
- ☒ **With a favorable report as to House committee substitute bill, ☒ which changes the title, unfavorable as to Senate committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Finance.**
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

unlaw.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 585

Finance Committee Substitute Adopted 4/23/97

Short Title: Lumberton, Shelby Room Tax Changes.

(Local)

Sponsors:

Referred to:

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE MAXIMUM RATE OF THE LUMBERTON ROOM
3 OCCUPANCY TAX FROM THREE PERCENT TO SIX PERCENT, AND TO
4 AUTHORIZE THE CITY OF SHELBY TO LEVY A ROOM OCCUPANCY
5 AND TOURISM DEVELOPMENT TAX IF APPROVED BY THE VOTERS OF
6 THE CITY.

7 The General Assembly of North Carolina enacts:

8 Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended
9 by Chapter 1028 of the 1983 Session Laws and Chapter 935 of the 1987 Session Laws,
10 as it relates to the City of Lumberton only, is recodified and rewritten as Section 2 of
11 this act.

12 Section 2. Lumberton Occupancy Tax. (a) Authorization and scope.
13 The Lumberton City Council may levy a room occupancy tax of up to three percent
14 (3%) of the gross receipts derived from the rental of any room, lodging, or
15 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within
16 the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).
17 This tax is in addition to any State or local sales tax.

18 (b) Authorization of additional tax. In addition to the tax authorized by
19 subsection (a) of this section, the Lumberton City Council may levy an additional
20 room occupancy tax of up to three percent (3%) of the gross receipts derived from
21 the rental of accommodations taxable under subsection (a). The levy, collection,
22 administration, and repeal of the tax authorized by this subsection shall be in
23 accordance with the provisions of this section. The Lumberton City Council may not

1 levy a tax under this subsection unless it also levies the tax authorized under
2 subsection (a) of this section.

3 (c) Administration. A tax levied under this section shall be levied,
4 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
5 provided in G.S. 160A-215 apply to a tax levied under this section.

6 The tax collector may collect any unpaid taxes levied under this section
7 through the use of attachment and garnishment proceedings as provided in G.S.
8 105-368 for collection of property taxes. The tax collector has the same enforcement
9 powers concerning the tax imposed by this section as does the Secretary of Revenue
10 in enforcing the State sales tax under G.S. 105-164.30.

11 (d) Distribution and use of tax revenue. The City of Lumberton shall
12 use the net proceeds of the tax only for tourism-related expenditures.

13 The following definitions apply in this subsection:

14 (1) Net proceeds. -- Gross proceeds less the cost to the city of
15 administering and collecting the tax, as determined by the finance
16 officer, not to exceed seven percent (7%) of the gross proceeds.

17 (2) Tourism-related expenditures. -- Any of the following
18 expenditures: sponsoring tourist-oriented events, encouraging
19 tourism through advertising and promotion, establishing a visitors'
20 center, and other expenditures that directly enhance tourism. The
21 term also includes any of the following expenditures: criminal
22 justice system, fire protection, public facilities and utilities, health
23 facilities, and solid waste and sewage treatment. The term does
24 not include, however, expenditures for services normally provided
25 by the city on behalf of its citizens unless these services promote
26 tourism and enlarge its economic benefits by enhancing the ability
27 of the city to attract and provide for tourists.

28 Section 3. (a) Article 9 of Chapter 160A of the General Statutes is
29 amended by adding a new section to read:

30 "**§ 160A-215. Uniform provisions for room occupancy taxes.**

31 (a) Scope. -- This section applies only to municipalities the General Assembly has
32 authorized to levy room occupancy taxes. For the purpose of this section, the term
33 'city' means a municipality.

34 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
35 than 10 days' public notice and after a public hearing held pursuant thereto. A room
36 occupancy tax shall become effective on the date specified in the resolution levying
37 the tax. That date must be the first day of a calendar month, however, and may not
38 be earlier than the first day of the second month after the date the resolution is
39 adopted.

40 (c) Collection. -- Every operator of a business subject to a room occupancy tax
41 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
42 shall be collected as part of the charge for furnishing a taxable accommodation. The
43 tax shall be stated and charged separately from the sales records and shall be paid by
44 the purchaser to the operator of the business as trustee for and on account of the

1 taxing city. The tax shall be added to the sales price and shall be passed on to the
2 purchaser instead of being borne by the operator of the business. The taxing city
3 shall design, print, and furnish to all appropriate businesses and persons in the city
4 the necessary forms for filing returns and instructions to ensure the full collection of
5 the tax. An operator of a business who collects a room occupancy tax may deduct
6 from the amount remitted to the taxing city a discount equal to the discount the State
7 allows the operator for State sales and use tax.

8 (d) Administration. -- The taxing city shall administer a room occupancy tax it
9 levies. A room occupancy tax is due and payable to the city finance officer in
10 monthly installments on or before the fifteenth day of the month following the month
11 in which the tax accrues. Every person, firm, corporation, or association liable for
12 the tax shall, on or before the fifteenth day of each month, prepare and render a
13 return on a form prescribed by the taxing city. The return shall state the total gross
14 receipts derived in the preceding month from rentals upon which the tax is levied. A
15 room occupancy tax return filed with the city finance officer is not a public record
16 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
17 208.1.

18 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
19 file a room occupancy tax return or pay a room occupancy tax as required by law is
20 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
21 a return for State sales and use taxes. The governing board of the taxing city has the
22 same authority to waive the penalties for a room occupancy tax that the Secretary of
23 Revenue has to waive the penalties for State sales and use taxes.

24 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
25 repealed or reduced by a resolution adopted by the governing body of the city.
26 Repeal or reduction of a room occupancy tax shall become effective on the first day
27 of a month and may not become effective until the end of the fiscal year in which the
28 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
29 a liability for a tax that was attached before the effective date of the repeal or
30 reduction, nor does it affect a right to a refund of a tax that accrued before the
31 effective date of the repeal or reduction."

32 (b) This section applies only to the Cities of Lumberton and Shelby.

33 Section 4. Shelby Occupancy Tax. (a) Referendum. The City Council
34 of the City of Shelby may direct the county board of elections to conduct an advisory
35 referendum on the question of whether a room occupancy tax of up to three percent
36 (3%) shall be levied in accordance with this section. The election shall be held on a
37 date jointly agreed upon by the city council and the board of elections, which must
38 be the date of a regular municipal election under Subchapter IX of Chapter 163 of
39 the General Statutes. The election shall be held in accordance with the procedures
40 of G.S. 163-287.

41 The form of the question to be presented on a ballot for the referendum
42 concerning the levy of the tax authorized by this section shall be:

43 [] FOR [] AGAINST

1 Room occupancy tax of up to three percent (3%) on the rental of accommodations
2 by hotels, motels, camps, and similar businesses within the city.

3 (b) Authorization and scope. If the majority of those voting in a
4 referendum held pursuant to this section vote for the levy of the tax, the City Council
5 of the City of Shelby may levy a room occupancy tax of up to three percent (3%) of
6 the gross receipts derived from the rental of any room, lodging, or accommodation
7 furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is
8 subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in
9 addition to any State or local sales tax. This tax does not apply to accommodations
10 furnished by nonprofit charitable, educational, or religious organizations when
11 furnished in furtherance of their nonprofit purpose.

12 (c) Administration. The city may contract with Cleveland County for
13 tax collection services relating to the occupancy tax levied under this section. Such a
14 contract shall be under terms and conditions agreed to by the city and the county and
15 may be modified from time to time. Except as provided in this section, a tax levied
16 under this section shall be levied, administered, collected, and repealed as provided
17 in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied
18 under this section.

19 (d) Use of tax revenue. The City of Shelby may use the net proceeds of
20 the occupancy tax only for tourism and economic development for the city. The
21 following definitions apply in this subsection:

22 (1) Net proceeds. -- Gross proceeds less the cost to the city of
23 administering and collecting the tax, as determined by the city, not
24 to exceed seven percent (7%) of the gross proceeds.

25 (2) Tourism and economic development. -- Services and other
26 expenditures that will enhance travel, tourism, or economic
27 development in the city.

28 Section 5. This act is effective when it becomes law.

No action on this version

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 585

Finance Committee Substitute Adopted 4/23/97

Proposed House Committee Substitute S585-CSLCX-6/19C

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Lumberton/Shelby Room Tax Changes.

(Local)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE CITY OF LUMBERTON TO LEVY AN ADDITIONAL,
3 TEMPORARY ROOM OCCUPANCY TAX, TO MODIFY THE PURPOSES FOR WHICH
4 THE LUMBERTON ROOM OCCUPANCY TAX CAN BE USED, TO AUTHORIZE THE
5 CITY OF SHELBY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT
* 6 TAX, AND TO REPEAL CHAPTER 182 OF THE 1997 SESSION LAWS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Part IX of Chapter 908 of the 1983 Session
9 Laws, as amended by Chapter 1028 of the 1983 Session Laws and
10 Chapter 935 of the 1987 Session Laws, as it relates to the City
11 of Lumberton only, is recodified and rewritten as Section 2 of
12 this act.

13 Section 2. Lumberton Occupancy Tax. (a) Authorization
14 and scope. The Lumberton City Council may levy a room occupancy
15 tax of up to three percent (3%) of the gross receipts derived
16 from the rental of any room, lodging, or accommodation furnished
17 by a hotel, motel, inn, tourist camp, or similar place within the
18 city that is subject to sales tax imposed by the State under G.S.
19 105-164.4(a)(3). This tax is in addition to any State or local
20 sales tax.

1 (b) Authorization of additional tax. In addition to
2 the tax authorized by subsection (a) of this section, the
3 Lumberton City Council may levy an additional room occupancy tax
4 of up to three percent (3%) of the gross receipts derived from
5 the rental of accommodations taxable under subsection (a). The
6 levy, collection, administration, and repeal of the tax
7 authorized by this subsection shall be in accordance with the
8 provisions of this section. The Lumberton City Council may not
9 levy a tax under this subsection unless it also levies the tax
10 authorized under subsection (a) of this section. The
11 authorization to levy this tax expires August 1, 2000.

12 (c) Administration. A tax levied under this section
13 shall be levied, administered, collected, and repealed as
14 provided in G.S. 160A-215. The penalties provided in G.S.
15 160A-215 apply to a tax levied under this section.

16 The tax collector may collect any unpaid taxes levied
17 under this section through the use of attachment and garnishment
18 proceedings as provided in G.S. 105-368 for collection of
19 property taxes. The tax collector has the same enforcement
20 powers concerning the tax imposed by this section as does the
21 Secretary of Revenue in enforcing the State sales tax under G.S.
22 105-164.30.

23 (d) Distribution and use of first three percent (3%)
24 tax revenue. The City of Lumberton shall, on a quarterly basis,
25 remit the net proceeds of the first three percent (3%) occupancy
26 tax authorized in subsection (a) of this section to the Lumberton
27 Tourism Development Authority. The Authority shall use at least
28 two-thirds of the funds remitted to it under this subsection to
29 promote travel and tourism in Lumberton and shall use the
30 remainder for tourism-related expenditures. Of the funds
31 designated for tourism-related expenditures, the Authority shall
32 remit the first one hundred fifteen thousand dollars (\$115,000)
33 to the Carolina Civic Center Foundation, Inc. for tourism-related
34 expenditures. The Authority may use no more than twenty-three
35 percent (23%) of the funds remitted to it under this subsection
36 for salaries in carrying out these purposes and may use no more
37 than ten percent (10%) of the funds remitted to it under this
38 subsection for other administrative costs in carrying out these
39 purposes.

40 (e) Distribution and use of additional three percent
41 (3%) tax revenue. The City of Lumberton shall use the net
42 proceeds of the additional tax authorized in subsection (b) of
43 this section for tourism-related expenditures and other public
44 purposes.

- 1 (f) The following definitions apply in this section:
- 2 (1) Net proceeds. -- Gross proceeds less the cost to
- 3 the city of administering and collecting the tax,
- 4 as determined by the finance officer, not to exceed
- 5 four percent (4%) of the gross proceeds.
- 6 (2) Promote travel and tourism. -- To advertise or
- 7 market an area or activity, publish and distribute
- 8 pamphlets and other materials, conduct market
- 9 research, or engage in similar promotional
- 10 activities that attract tourists or business
- 11 travelers to the area; the term includes
- 12 administrative expenses incurred in engaging in the
- 13 listed activities.
- 14 (3) Tourism-related expenditures. -- Expenditures that,
- 15 in the judgment of the Authority, are designed to
- 16 increase the use of lodging facilities, meeting
- 17 facilities, and convention facilities in a city by
- 18 attracting tourists or business travelers to the
- 19 city. The term includes tourism-related capital
- 20 expenditures.

21 Section 3. Lumberton Tourism Development Authority.

22 (a) Appointment and membership. When the Lumberton City Council

23 adopts a resolution levying a room occupancy tax under this act,

24 it shall also adopt a resolution creating a city Tourism

25 Development Authority, which shall be a public authority under

26 the Local Government Budget and Fiscal Control Act. The

27 resolution shall provide for the the members' terms of office and

28 for the filling of vacancies on the Authority.

29 The Authority shall have eight members appointed by the city

30 council and two ex officio, non-voting members, as follows:

- 31 (1) Four individuals who own or operate a hotel or
- 32 motel in the city.
- 33 (2) Four individuals who are currently active in the
- 34 promotion of travel and tourism in the city.
- 35 (3) The Finance Officer for Lumberton, to serve ex
- 36 officio.
- 37 (4) A member of the Lumberton City Council, designated
- 38 by the city council, to serve ex officio.

39 The Lumberton City Council shall designate one member of the

40 Authority as chair and shall determine the compensation, if any,

41 to be paid to members of the Authority.

42 The Authority shall meet at the call of the chair and

43 shall adopt rules of procedure to govern its meetings.

1 (b) Duties. The Authority shall expend the net
2 proceeds of the tax levied under Section 2 of this act for the
3 purposes provided in Section 2 of this act. The Authority shall
4 promote travel, tourism, and conventions in the city, sponsor
5 tourist-related events and activities in the city, and finance
6 tourist-related capital projects in the city.

7 (c) Reports. The Authority shall report quarterly and
8 at the close of the fiscal year to the Lumberton City Council on
9 its receipts and expenditures for the preceding quarter and for
10 the year in such detail as the Lumberton City Council may
11 require.

12 Section 4. Uniform City Occupancy Tax Provisions. (a)
13 Article 9 of Chapter 160A of the General Statutes is amended by
14 adding a new section to read:

15 "§ 160A-215. Uniform provisions for room occupancy taxes.

16 (a) Scope. -- This section applies only to municipalities the
17 General Assembly has authorized to levy room occupancy taxes.
18 For the purpose of this section, the term 'city' means a
19 municipality.

20 (b) Levy. -- A room occupancy tax may be levied only by
21 resolution, after not less than 10 days' public notice and after
22 a public hearing held pursuant thereto. A room occupancy tax
23 shall become effective on the date specified in the resolution
24 levying the tax. That date must be the first day of a calendar
25 month, however, and may not be earlier than the first day of the
26 second month after the date the resolution is adopted.

27 (c) Collection. -- Every operator of a business subject to a
28 room occupancy tax shall, on and after the effective date of the
29 levy of the tax, collect the tax. The tax shall be collected as
30 part of the charge for furnishing a taxable accommodation. The
31 tax shall be stated and charged separately from the sales records
32 and shall be paid by the purchaser to the operator of the
33 business as trustee for and on account of the taxing city. The
34 tax shall be added to the sales price and shall be passed on to
35 the purchaser instead of being borne by the operator of the
36 business. The taxing city shall design, print, and furnish to
37 all appropriate businesses and persons in the city the necessary
38 forms for filing returns and instructions to ensure the full
39 collection of the tax. An operator of a business who collects a
40 room occupancy tax may deduct from the amount remitted to the
41 taxing city a discount equal to the discount the State allows the
42 operator for State sales and use tax.

43 (d) Administration. -- The taxing city shall administer a room
44 occupancy tax it levies. A room occupancy tax is due and payable

1 to the city finance officer in monthly installments on or before
2 the fifteenth day of the month following the month in which the
3 tax accrues. Every person, firm, corporation, or association
4 liable for the tax shall, on or before the fifteenth day of each
5 month, prepare and render a return on a form prescribed by the
6 taxing city. The return shall state the total gross receipts
7 derived in the preceding month from rentals upon which the tax is
8 levied. A room occupancy tax return filed with the city finance
9 officer is not a public record and may not be disclosed except in
10 accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

11 (e) Penalties. -- A person, firm, corporation, or association
12 who fails or refuses to file a room occupancy tax return or pay a
13 room occupancy tax as required by law is subject to the civil and
14 criminal penalties set by G.S. 105-236 for failure to pay or file
15 a return for State sales and use taxes. The governing board of
16 the taxing city has the same authority to waive the penalties for
17 a room occupancy tax that the Secretary of Revenue has to waive
18 the penalties for State sales and use taxes.

19 (f) Repeal or Reduction. -- A room occupancy tax levied by a
20 city may be repealed or reduced by a resolution adopted by the
21 governing body of the city. Repeal or reduction of a room
22 occupancy tax shall become effective on the first day of a month
23 and may not become effective until the end of the fiscal year in
24 which the resolution was adopted. Repeal or reduction of a room
25 occupancy tax does not affect a liability for a tax that was
26 attached before the effective date of the repeal or reduction,
27 nor does it affect a right to a refund of a tax that accrued
28 before the effective date of the repeal or reduction."

29 (b) This section applies only to the Cities of Lumberton
30 and Shelby.

31 Section 5. Shelby Occupancy Tax. (a) Authorization
32 and scope. The City Council of the City of Shelby may levy a
33 room occupancy tax of up to three percent (3%) of the gross
34 receipts derived from the rental of any room, lodging, or
35 accommodation furnished by a hotel, motel, inn, tourist camp, or
36 similar place within the city that is subject to sales tax
37 imposed by the State under G.S. 105-164.4(a)(3). This tax is in
38 addition to any State or local sales tax. This tax does not
39 apply to accommodations furnished by nonprofit charitable,
40 educational, or religious organizations when furnished in
41 furtherance of their nonprofit purpose.

42 (b) Administration. The city may contract with
43 Cleveland County for tax collection services relating to the
44 occupancy tax levied under this section. Such a contract shall

1 be under terms and conditions agreed to by the city and the
2 county and may be modified from time to time. Except as
3 otherwise provided in this section, a tax levied under this
4 section shall be levied, administered, collected, and repealed as
5 provided in G.S. 160A-215. The penalties provided in G.S.
6 160A-215 apply to a tax levied under this section.

7 (c) Use of tax revenue. The City of Shelby shall use
8 at least two-thirds of the net proceeds of the occupancy tax to
9 promote travel and tourism in the city and shall use the
10 remainder for tourism-related expenditures. The City shall use
11 at least two-thirds of the funds remitted to it under this
12 subsection to promote travel and tourism in Shelby and shall use
13 the remainder for tourism-related expenditures. The following
14 definitions apply in this subsection:

15 (1) Net proceeds. -- Gross proceeds less the cost to
16 the city of administering and collecting the tax,
17 as determined by the city, not to exceed three
18 percent (3%) of the first five hundred thousand
19 dollars (\$500,000) of gross proceeds collected each
20 year and one percent (1%) of the remaining gross
21 receipts collected each year.

22 (2) Promote travel and tourism. -- To advertise or
23 market an area or activity, publish and distribute
24 pamphlets and other materials, conduct market
25 research, or engage in similar promotional
26 activities that attract tourists or business
27 travelers to the area; the term includes
28 administrative expenses incurred in engaging in
29 these activities.

30 (3) Tourism-related expenditures. -- Expenditures that,
31 in the judgment of the city, are designed to
32 increase the use of lodging facilities, meeting
33 facilities, and convention facilities in a city by
34 attracting tourists or business travelers to the
35 city. The term includes tourism-related capital
36 expenditures.

* 37 Section 6. Chapter 182 of the 1997 Session Laws is
* 38 repealed.

39 Section 7. Section 2(d) of this act becomes effective
40 August 1, 1997, and applies to taxes that accrue on or after that
41 date. The remainder of this act is effective when this act
42 becomes law. Sections 2(b) and 2(e) of this act are repealed
43 effective August 1, 2000.

far

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 585

Finance Committee Substitute Adopted 4/23/97
Proposed House Committee Substitute S585-PCS1838

Short Title: Lumberton/Shelby Room Tax Changes.

(Local)

Sponsors:

Referred to:

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF LUMBERTON TO LEVY AN
3 ADDITIONAL, TEMPORARY ROOM OCCUPANCY TAX, TO MODIFY THE
4 PURPOSES FOR WHICH THE LUMBERTON ROOM OCCUPANCY TAX
5 CAN BE USED, AND TO AUTHORIZE THE CITY OF SHELBY TO LEVY A
6 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

7 The General Assembly of North Carolina enacts:

8 Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended
9 by Chapter 1028 of the 1983 Session Laws and Chapter 935 of the 1987 Session Laws,
10 as it relates to the City of Lumberton only, is recodified and rewritten as Section 2 of
11 this act.

12 Section 2. Lumberton Occupancy Tax. (a) Authorization and scope.
13 The Lumberton City Council may levy a room occupancy tax of up to three percent
14 (3%) of the gross receipts derived from the rental of any room, lodging, or
15 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within
16 the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).
17 This tax is in addition to any State or local sales tax.

18 (b) Authorization of additional tax. In addition to the tax authorized by
19 subsection (a) of this section, the Lumberton City Council may levy an additional
20 room occupancy tax of up to three percent (3%) of the gross receipts derived from
21 the rental of accommodations taxable under subsection (a). The levy, collection,
22 administration, and repeal of the tax authorized by this subsection shall be in

1 accordance with the provisions of this section. The Lumberton City Council may not
2 levy a tax under this subsection unless it also levies the tax authorized under
3 subsection (a) of this section. The authorization to levy this tax expires August 1,
4 2000.

5 (c) Administration. A tax levied under this section shall be levied,
6 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
7 provided in G.S. 160A-215 apply to a tax levied under this section.

8 The tax collector may collect any unpaid taxes levied under this section
9 through the use of attachment and garnishment proceedings as provided in G.S.
10 105-368 for collection of property taxes. The tax collector has the same enforcement
11 powers concerning the tax imposed by this section as does the Secretary of Revenue
12 in enforcing the State sales tax under G.S. 105-164.30.

13 (d) Distribution and use of first three percent (3%) tax revenue. The
14 City of Lumberton shall, on a quarterly basis, remit the net proceeds of the first three
15 percent (3%) occupancy tax authorized in subsection (a) of this section to the
16 Lumberton Tourism Development Authority. The Authority shall use at least two-
17 thirds of the funds remitted to it under this subsection to promote travel and tourism
18 in Lumberton and shall use the remainder for tourism-related expenditures. Of the
19 funds designated for tourism-related expenditures, the Authority shall remit the first
20 one hundred fifteen thousand dollars (\$115,000) to the Carolina Civic Center
21 Foundation, Inc., for tourism-related expenditures. The Authority may use no more
22 than twenty-three percent (23%) of the funds remitted to it under this subsection for
23 salaries in carrying out these purposes and may use no more than ten percent (10%)
24 of the funds remitted to it under this subsection for other administrative costs in
25 carrying out these purposes.

26 (e) Distribution and use of additional three percent (3%) tax revenue.
27 The City of Lumberton shall use the net proceeds of the additional tax authorized in
28 subsection (b) of this section for tourism-related expenditures and other public
29 purposes.

30 (f) The following definitions apply in this section:

31 (1) Net proceeds. -- Gross proceeds less the cost to the city of
32 administering and collecting the tax, as determined by the finance
33 officer, not to exceed four percent (4%) of the gross proceeds.

34 (2) Promote travel and tourism. -- To advertise or market an area or
35 activity, publish and distribute pamphlets and other materials,
36 conduct market research, or engage in similar promotional
37 activities that attract tourists or business travelers to the area; the
38 term includes administrative expenses incurred in engaging in the
39 listed activities.

40 (3) Tourism-related expenditures. -- Expenditures that, in the
41 judgment of the Authority, are designed to increase the use of
42 lodging facilities, meeting facilities, and convention facilities in a
43 city by attracting tourists or business travelers to the city. The
44 term includes tourism-related capital expenditures.

1 Section 3. Lumberton Tourism Development Authority. (a)
2 Appointment and membership. When the Lumberton City Council adopts a
3 resolution levying a room occupancy tax under this act, it shall also adopt a
4 resolution creating a city Tourism Development Authority, which shall be a public
5 authority under the Local Government Budget and Fiscal Control Act. The
6 resolution shall provide for the members' terms of office and for the filling of
7 vacancies on the Authority.

8 The Authority shall have eight members appointed by the city council
9 and two ex officio, nonvoting members, as follows:

- 10 (1) Four individuals who own or operate a hotel or motel in the city.
- 11 (2) Four individuals who are currently active in the promotion of
12 travel and tourism in the city.
- 13 (3) The Finance Officer for Lumberton, to serve ex officio.
- 14 (4) A member of the Lumberton City Council, designated by the city
15 council, to serve ex officio.

16 The Lumberton City Council shall designate one member of the Authority as chair
17 and shall determine the compensation, if any, to be paid to members of the
18 Authority.

19 The Authority shall meet at the call of the chair and shall adopt rules of
20 procedure to govern its meetings.

21 (b) Duties. The Authority shall expend the net proceeds of the tax
22 levied under Section 2 of this act for the purposes provided in Section 2 of this act.
23 The Authority shall promote travel, tourism, and conventions in the city, sponsor
24 tourist-related events and activities in the city, and finance tourist-related capital
25 projects in the city.

26 (c) Reports. The Authority shall report quarterly and at the close of the
27 fiscal year to the Lumberton City Council on its receipts and expenditures for the
28 preceding quarter and for the year in such detail as the Lumberton City Council may
29 require.

30 Section 4. Uniform City Occupancy Tax Provisions. (a) Article 9 of
31 Chapter 160A of the General Statutes is amended by adding a new section to read:

32 "§ 160A-215. Uniform provisions for room occupancy taxes.

33 (a) Scope. -- This section applies only to municipalities the General Assembly has
34 authorized to levy room occupancy taxes. For the purpose of this section, the term
35 'city' means a municipality.

36 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
37 than 10 days' public notice and after a public hearing held pursuant thereto. A room
38 occupancy tax shall become effective on the date specified in the resolution levying
39 the tax. That date must be the first day of a calendar month, however, and may not
40 be earlier than the first day of the second month after the date the resolution is
41 adopted.

42 (c) Collection. -- Every operator of a business subject to a room occupancy tax
43 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
44 shall be collected as part of the charge for furnishing a taxable accommodation. The

1 tax shall be stated and charged separately from the sales records and shall be paid by
2 the purchaser to the operator of the business as trustee for and on account of the
3 taxing city. The tax shall be added to the sales price and shall be passed on to the
4 purchaser instead of being borne by the operator of the business. The taxing city
5 shall design, print, and furnish to all appropriate businesses and persons in the city
6 the necessary forms for filing returns and instructions to ensure the full collection of
7 the tax. An operator of a business who collects a room occupancy tax may deduct
8 from the amount remitted to the taxing city a discount equal to the discount the State
9 allows the operator for State sales and use tax.

10 (d) Administration. -- The taxing city shall administer a room occupancy tax it
11 levies. A room occupancy tax is due and payable to the city finance officer in
12 monthly installments on or before the fifteenth day of the month following the month
13 in which the tax accrues. Every person, firm, corporation, or association liable for
14 the tax shall, on or before the fifteenth day of each month, prepare and render a
15 return on a form prescribed by the taxing city. The return shall state the total gross
16 receipts derived in the preceding month from rentals upon which the tax is levied. A
17 room occupancy tax return filed with the city finance officer is not a public record
18 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
19 208.1.

20 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
21 file a room occupancy tax return or pay a room occupancy tax as required by law is
22 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
23 a return for State sales and use taxes. The governing board of the taxing city has the
24 same authority to waive the penalties for a room occupancy tax that the Secretary of
25 Revenue has to waive the penalties for State sales and use taxes.

26 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
27 repealed or reduced by a resolution adopted by the governing body of the city.
28 Repeal or reduction of a room occupancy tax shall become effective on the first day
29 of a month and may not become effective until the end of the fiscal year in which the
30 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
31 a liability for a tax that was attached before the effective date of the repeal or
32 reduction, nor does it affect a right to a refund of a tax that accrued before the
33 effective date of the repeal or reduction."

34 (b) This section applies only to the Cities of Lumberton and Shelby.

35 Section 5. Shelby Occupancy Tax. (a) Authorization and scope. The
36 City Council of the City of Shelby may levy a room occupancy tax of up to three
37 percent (3%) of the gross receipts derived from the rental of any room, lodging, or
38 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within
39 the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).
40 This tax is in addition to any State or local sales tax. This tax does not apply to
41 accommodations furnished by nonprofit charitable, educational, or religious
42 organizations when furnished in furtherance of their nonprofit purpose.

43 (b) Administration. The city may contract with Cleveland County for
44 tax collection services relating to the occupancy tax levied under this section. Such a

1 contract shall be under terms and conditions agreed to by the city and the county and
2 may be modified from time to time. Except as otherwise provided in this section, a
3 tax levied under this section shall be levied, administered, collected, and repealed as
4 provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax
5 levied under this section.

6 (c) Use of tax revenue. The City of Shelby shall use at least two-thirds
7 of the net proceeds of the occupancy tax to promote travel and tourism in the city
8 and shall use the remainder for tourism-related expenditures. The City shall use at
9 least two-thirds of the funds remitted to it under this subsection to promote travel
10 and tourism in Shelby and shall use the remainder for tourism-related expenditures.
11 The following definitions apply in this subsection:

12 (1) Net proceeds. -- Gross proceeds less the cost to the city of
13 administering and collecting the tax, as determined by the city, not
14 to exceed three percent (3%) of the first five hundred thousand
15 dollars (\$500,000) of gross proceeds collected each year and one
16 percent (1%) of the remaining gross receipts collected each year.

17 (2) Promote travel and tourism. -- To advertise or market an area or
18 activity, publish and distribute pamphlets and other materials,
19 conduct market research, or engage in similar promotional
20 activities that attract tourists or business travelers to the area; the
21 term includes administrative expenses incurred in engaging in
22 these activities.

23 (3) Tourism-related expenditures. -- Expenditures that, in the
24 judgment of the city, are designed to increase the use of lodging
25 facilities, meeting facilities, and convention facilities in a city by
26 attracting tourists or business travelers to the city. The term
27 includes tourism-related capital expenditures.

28 Section 6. Section 2(d) of this act becomes effective August 1, 1997, and
29 applies to taxes that accrue on or after that date. The remainder of this act is
30 effective when this act becomes law. Sections 2(b) and 2(e) of this act are repealed
31 effective August 1, 2000.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Ellis** for the Committee on **LOCAL AND REGIONAL
GOVERNMENT I.**

- ☐ Committee Substitute for
S.B. 713 A BILL TO BE ENTITLED AN ACT TO REPEAL THE AUTHORIZATION OF
SUPPLEMENTAL RETIREMENT BENEFITS FOR FIREMEN IN THE CITY OF
RALEIGH.
- ☐ With a favorable report.
- ☒ **With a favorable report and recommendation that the bill be re-referred to the
Committee on ☒ Pensions and Retirement.**
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 713

Short Title: City of Raleigh Firemen's Supplemental Retirement Fund. (Public)

Sponsors: Senator Reeves.

Referred to: Pensions & Retirement and Insurance.

April 7, 1997

1

A BILL TO BE ENTITLED

2 AN ACT TO REPEAL THE AUTHORIZATION OF SUPPLEMENTAL
3 RETIREMENT BENEFITS FOR FIREMEN IN THE CITY OF RALEIGH.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 421 of the 1969 Session Laws, as amended by
6 Chapter 504 of the 1975 Session Laws, Chapter 328 of the 1979 Session Laws, and
7 Chapter 917 of the 1989 Session Laws, is repealed.

8 Section 2. All funds held by the Trustees of the City of Raleigh
9 Firemen's Supplemental Retirement Fund are transferred to the City of Raleigh
10 Firemen's Relief Fund to be held and administered as provided in Article 84 of
11 Chapter 58 of the General Statutes of North Carolina.

12 Section 3. This act becomes effective July 1, 1997.



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June 24, 1997

To: Members of the House Local and Regional Government I Committee

From: Giles S. Perry, Committee Counsel

Re: Senate Bill 713 City of Raleigh Fireman's Supplemental Retirement Fund
Introduced by Senator Reeves

Senate Bill 713 would repeal the authorization for the Raleigh Firemen's Supplemental Retirement Fund, and direct the transfer of any remaining assets in that fund to the City of Raleigh's Fireman's Relief Fund.

Senate Bill 713 would become effective July 1, 1997.