

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 199

Short Title: Annexation Agreements.

(Public)

Sponsors: Senators Marvin; Ballance, Harris, Hunt of Moore, Johnson of Wake, Martin of Pitt, Martin of Guilford, Parnell, Rauch, Swain, Tally, Walker, Ward, and Winner.

Referred to: Local Government & Regional Affairs.

February 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CITIES TO ENTER INTO AGREEMENTS
3 CONCERNING ANNEXATIONS.

4 Whereas, the lack of authority to resolve disputes about future boundaries has
5 encouraged some cities to begin annexation proceedings in order to prevent annexation
6 of an area by some other city; and

7 Whereas, such lack of authority is disruptive of the orderly planning process;
8 and

9 Whereas, the General Assembly has authorized binding annexation
10 agreements by local acts applicable in Gaston, Guilford, Mecklenburg, and Orange
11 Counties; and

12 Whereas, such local acts have greatly reduced intergovernmental conflict, and
13 the General Assembly wishes to extend authority for annexation agreements to all the
14 cities of this State; Now, therefore,

15 The General Assembly of North Carolina enacts:

16 Section 1. Article 4A of Chapter 160A of the General Statutes is amended by
17 adding a new Part to read:

18 **“PART 6. ANNEXATION AGREEMENTS.**

19 **“§ 160A-58.21. Purpose.**

20 It is the purpose of this Part to authorize cities to enter into binding agreements
21 concerning future annexation in order to enhance orderly planning by such cities as well
22 as residents and property owners in areas adjacent to such cities.

23 **“§ 160A-58.22. Definitions.**

1 The words defined in this section shall have the meanings indicated when used in
2 this Part:

3 (1) 'Agreement' means any written agreement authorized by this Part.

4 (2) 'Annexation' means any extension of a city's corporate limits as
5 authorized by this Article, the charter of the city, or any local act
6 applicable to the city, as such statutory authority exists now or is
7 hereafter amended.

8 (3) 'Participating city' means any city which is a party to an agreement.

9 **"§ 160A-58.23. Annexation Agreements Authorized.**

10 Two or more cities may enter into agreements in order to designate one or more
11 areas which are not subject to annexation by one or more of the participating cities. The
12 agreements shall be of reasonable duration, not to exceed 30 years, and shall be
13 approved by ordinance of the governing board and executed by the mayor of each city
14 and spread upon its minutes.

15 **"§ 160A-58.24. Contents of Agreements.**

16 (a) The agreement shall:

17 (1) State the duration of the agreement.

18 (2) Describe clearly the area or areas subject to the agreement. The
19 boundaries of such area or areas may be established at such locations
20 as the participating cities shall agree. Thereafter, any participating city
21 may follow such boundaries in annexing any property, whether or not
22 such boundaries follow roads or natural topographical features.

23 (3) Specify one or more participating cities which may not annex the area
24 or areas described in the agreement.

25 (4) State the effective date of the agreement.

26 (5) Require each participating city which proposes any annexation to give
27 written notice to the other participating city or cities of the annexation
28 at least 60 days before the adoption of any annexation ordinance;
29 provided, however, that the agreement may provide for a waiver of this
30 time period by the notified city.

31 (6) Include any other necessary or proper matter.

32 (b) The written notice required by subdivision (a)(5) of this section shall describe
33 the area to be annexed by a legible map, clearly and accurately showing the boundaries
34 of the area to be annexed in relation to: the area or areas described pursuant to
35 subdivision (a)(2) of this section, roads, streams and any other prominent geographical
36 features. Such notice shall not be effective for more than 180 days.

37 (c) No agreement may be entered into under this Part unless each participating
38 city has held a public hearing on the agreement prior to adopting the ordinance
39 approving the agreement.

40 (d) Any agreement entered into under this Part may be modified or terminated:

41 (1) As provided by that agreement; or

42 (2) By a subsequent agreement entered into by all the participating cities
43 to that agreement, unless the agreement specifically prohibits such
44 amendment or termination.

1 **"§ 160A-58.25. Effect of Agreement.**

2 From and after the effective date of an agreement, no participating city may adopt an
3 annexation ordinance as to all or any portion of an area in violation of the agreement.

4 **"§ 160A-58.26. Part Grants no Annexation Authority.**

5 Nothing in this Part shall be construed to authorize the annexation of any area which
6 is not otherwise subject to annexation under applicable law.

7 **"§ 160A-58.27. Relief.**

8 (a) Each provision of an agreement shall be binding upon the respective parties.
9 Within 30 days following the passage of an annexation ordinance concerning territory
10 subject to an agreement, a participating city which believes that another participating
11 city has violated this Part or the agreement may file a petition in the superior court of
12 the county where any of the territory proposed to be annexed is located, seeking review
13 of the action of the city alleged to have violated this Part or the agreement.

14 (b) Within five days after the petition is filed with the court, the petitioning city
15 shall serve copies of the petition by certified mail, return receipt requested, upon the
16 respondent city.

17 (c) Within 15 days after receipt of the copy of the petition for review, or within
18 such additional time as the court may allow, the respondent city shall transmit to the
19 reviewing court:

20 (1) A transcript of the portions of the ordinance or minute book in which
21 the procedure for annexation has been set forth;

22 (2) A copy of resolutions, ordinances, and any other document received or
23 approved by the respondent city's governing board as part of the
24 annexation proceeding.

25 (d) The court shall fix the date for review of the petition so that review shall be
26 expeditious and without unnecessary delays. The review shall be conducted by the
27 court without a jury. The court may hear oral arguments and receive written briefs, and
28 may take evidence intended to show either:

29 (1) That the provisions of this Part were not met; or

30 (2) That the provisions of the agreement were not met.

31 (d1) At any time before or during the review proceeding, any petitioner may apply
32 to the reviewing court for an order staying the operation of the annexation ordinance
33 pending the outcome of the review. The court may grant or deny the stay in its
34 discretion upon such terms as it deems proper, and it may permit annexation of any part
35 of the area described in the ordinance concerning which no question for review has been
36 raised.

37 (e) Upon a finding that the respondent city has not violated this Part or the
38 agreement, the court may affirm the action of the respondent city without change. Upon
39 a finding that the respondent city has violated this Part or the agreement, the court may:

40 (1) Remand to the respondent city's governing board any ordinance
41 adopted pursuant to Parts 2 or 3 of this Article, as the same exists now
42 or is hereafter amended, for amendment of the boundaries, or for such
43 other action as is necessary, to conform to the provisions of this Part
44 and the agreement.

1 (2) Declare any annexation begun pursuant to any other applicable law to
2 be void. If the respondent city shall fail to take action in accordance
3 with the court's instructions upon remand under subdivision (e)(1) of
4 this section within three months from receipt of such instructions, the
5 annexation proceeding shall be void.

6 (f) Any participating city which is a party to the review proceedings may appeal
7 from the final judgment of the superior court under rules of procedure applicable in
8 other civil cases. The appealing party may apply to superior court for a stay in its final
9 determination, or a stay of the annexation ordinance, whichever shall be appropriate,
10 pending the outcome of the appeal to the appellate division; provided, that the superior
11 court may, with the agreement of the parties, permit annexation to be effective with
12 respect to any part of the area concerning which no appeal is being made and which can
13 be incorporated into the respondent city without regard to any part of the area
14 concerning which an appeal is being made.

15 (g) If part or all of the area annexed under the terms of a challenged annexation
16 ordinance is the subject of an appeal to the superior court or appellate division on the
17 effective date of the ordinance, then the ordinance shall be deemed amended to make
18 the effective date with respect to such area the date of the final judgment of the superior
19 court or appellate division, whichever is appropriate, or the date the respondent city's
20 governing board completes action to make the ordinance conform to the court's
21 instructions in the event of remand.

22 **"§ 160A-58.28. Affect on Prior Local Acts.**

23 This Part does not affect Chapter 953, Session Laws of 1983, or Chapters 204, 233,
24 or 1009, Session Laws of 1987, authorizing municipalities (or in the case of Chapter
25 1009, Session Laws of 1987 authorizing municipalities and counties) to enter into
26 agreements, but any city which is authorized to enter into agreements by one of those
27 acts may enter into future such agreements either under such act or this Part."

28 Sec. 2. This act is effective upon ratification.