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SENATE BILL DRS35241-BDx-8 (03/22)

Short Title: Annexation of Enclaves. (Public)

Sponsors: Senators Wells and Tucker (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PROCESS FOR THE ANNEXATION OF ENCLAVES THAT
3 ARE ENTIRELY CONTAINED WITHIN THE PRIMARY CORPORATE LIMITS OF A
4 MUNICIPALITY.

5 The General Assembly of North Carolina enacts:

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

8 "Part 7A. Annexation of Enclaves.

9 **"§ 160A-58.65. Authority to annex enclaves.**

10 In addition to annexation authority otherwise granted in this Article, a municipal governing
11 board may extend the municipal corporate limits to include any qualifying enclave as provided
12 in this Part.

13 **"§ 160A-58.66. Qualification of enclave; limitations.**

14 (a) As used in this Part, "enclave" means an unincorporated area of real property
15 enclosed completely within and contiguously bounded on all sides by any of the following:

16 (1) The primary corporate boundaries of one or more incorporated
17 municipalities.

18 (2) The primary corporate boundaries of one or more incorporated
19 municipalities and any of the following:

20 a. The boundary line of a State, county, or other unit of local
21 government.

22 b. A military installation.

23 c. A State or national park or forest.

24 d. A river, lake, pond, or other body of water.

25 e. A railroad or a public or private street, road, highway, or alley.

26 f. A bona fide farm as defined under G.S. 153A-340.

27 (b) To qualify for annexation under this Part, an enclave:

28 (1) Shall not be a bona fide farm.

29 (2) Must be less than 60 acres in total land area. The acreage of any bona fide
30 farm shall not be included in calculating the acreage limitation under this
31 subsection.

32 (3) Shall have met the qualifications of this section for a period of no less than
33 three years from the effective date of annexation under this Part.

34 (c) Nothing in this section shall prevent the owner or owners of a bona fide farm from
35 consenting to voluntary annexation under this Article.



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1 "§ 160A-58.67. Prerequisites for annexation; availability of water and sewer services;
2 report required.

3 (a) A municipality exercising authority under this Part shall, on the effective date of
4 annexation, provide all municipal services, including water and sewer, on substantially the
5 same basis and in the same manner as are otherwise provided within the municipality to the
6 annexed enclave.

7 (b) Prior to the public hearing required by G.S. 160A-58.68, the municipality shall
8 prepare a report in the nature of that required by G.S. 160A-58.53. Such report shall set forth
9 how the municipality intends to make all its services available on the effective date of
10 annexation.

11 "§ 160A-58.68. Procedure to annex an enclave.

12 (a) Interlocal Annexation Agreement. – Annexation under this Part shall be by
13 execution of an interlocal agreement as provided in Part 1 of Article 20 of this Chapter between
14 the governing boards of the annexing municipality and of the county or counties where the
15 enclave lies.

16 (b) Declaration of Agreement. – Prior to entering into an interlocal agreement under
17 this section, the municipality seeking to annex shall adopt a declaration stating its intent to
18 enter into an interlocal agreement to annex the enclave. The declaration shall describe the
19 boundaries of the enclave proposed for annexation, identify the county or counties with whom
20 the municipality intends to execute the agreement, and fix a date for a public hearing on the
21 declaration. The date for the public hearing shall be not less than 60 days and not more than 90
22 days following passage of the declaration.

23 (c) Notice of Public Hearing. –

24 (1) The notice of public hearing shall include at least all of the following:

25 a. The date, hour, and place of the public hearing.

26 b. A clear description of the boundaries of the enclave under
27 consideration, including a legible map.

28 c. A statement that the report required by G.S. 160A-58.67 will be
29 available at the office of the municipal clerk.

30 d. An explanation of a property owner's rights under this section.

31 e. A summary of the annexation process with time lines.

32 f. Information on being a customer of the water and sewer service,
33 including the rate and fee schedule.

34 (2) The notice required under this subsection shall be mailed within five
35 business days of the passage of the declaration of agreement in accordance
36 with G.S. 160A-58.55(d)(3) and (4).

37 (3) The notice required under this subsection shall also be given by publication
38 of the information required by subdivision (1) of this subsection in
39 accordance with G.S. 160A-58.55(d)(2).

40 (d) Public Hearing. – At the public hearing, a representative of the municipality shall
41 first make an explanation of the report required by G.S. 160A-58.67(b). Following such
42 explanation, all property owners and residents of the enclave proposed to be annexed and all
43 residents of the municipality shall be given an opportunity to be heard.

44 (e) Action of the Governing Boards. –

45 (1) At any regular or special meeting held no sooner than the tenth day
46 following the public hearing, the governing board of the annexing
47 municipality shall have authority to:

48 a. Approve, or to amend and approve, the report required by
49 G.S. 160A-58.67(b).

50 b. Enter into the interlocal agreement with the county or counties
51 annexing the enclave described in the notice of public hearing.

1 (2) At any regular or special meeting held no sooner than the tenth day
2 following the public hearing, the board of county commissioners of the
3 county or counties where the enclave lies may approve, with or without an
4 additional public hearing, the interlocal agreement annexing the enclave
5 described in the notice of public hearing.

6 (3) Upon approval by all affected governing boards, the interlocal agreement
7 annexing the enclave described in the notice of public hearing shall be duly
8 executed by the officials designated to do so.

9 **"§ 160A-58.69. Interlocal annexation agreement recorded; effective date of annexation.**

10 Interlocal agreements annexing an enclave under this Part shall be recorded as provided by
11 G.S. 160A-58.61 and shall fix the effective date for annexation as June 30 next following the
12 recording of the interlocal agreement. From and after the effective date of the annexation, the
13 territory and its citizens and property shall be subject to all debts and all laws, ordinances, and
14 regulations in force in such municipality and shall be entitled to the same privileges and
15 benefits as other parts of the municipality.

16 **"§ 160A-58.70. Simultaneous annexation in one proceeding; limitation.**

17 If a municipality is considering the annexation of two or more enclaves that are not adjacent
18 to one another, the municipality may undertake simultaneous proceedings under authority of
19 this Part for the annexation of such areas.

20 **"§ 160A-58.71. Appeal and remedies; report to Local Government Commission.**

21 (a) The appeal procedure in G.S. 160A-58.60 shall apply to annexation under this Part,
22 and the entering into the interlocal agreement shall be treated as adoption of the annexation
23 ordinance.

24 (b) Within 30 days after the effective date of annexation under this Part, the
25 municipality shall report to the Local Government Commission whether all of the services
26 required by G.S. 160A-57 to be available on the effective date of the annexation were available
27 by that date.

28 (1) If the Local Government Commission determines that the municipality
29 failed to deliver the required services in a timely manner, the Commission
30 shall notify the municipality that the municipality may not count any of the
31 residents as part of the population of the municipality for the purpose of
32 receiving any State, federal, or county dollars distributed based on
33 population until all of the services are provided.

34 (2) If the municipality failed to timely deliver either water or sewer services, or
35 both, as provided for in G.S. 160A-58.57, the municipality shall stop any
36 other annexations in progress and may not begin any other annexation until
37 the water and sewer services are provided."

38 **SECTION 2.** G.S. 160A-58.60 reads as rewritten:

39 **"§ 160A-58.60. Appeal.**

40 (a) Within 60 days following the adoption of the annexation ordinance, any property
41 owner of real property located within the area described in the annexation ordinance who
42 believes that property owner will suffer material injury by reason of the failure of the municipal
43 governing board to comply with the procedure or to meet the requirements set forth in this Part
44 or Part 7A of this Article as they apply to the annexation may file a petition in the superior
45 court of the county in which the municipality is located seeking review of the action of the
46 governing board.

47 ...

48 (f) The court shall fix the date for review of annexation proceedings under this Part,
49 Part or Part 7A of this Article, which review date shall be expeditious and without unnecessary
50 delays. The review shall be conducted by the court without a jury. The court may hear oral

1 arguments and receive written briefs and may take evidence intended to show one or more of
2 the following:

- 3 (1) That the statutory procedure under this Part or Part 7A of this Article was
4 not followed.
- 5 (2) That the provisions of G.S. 160A-58.53 were not met.
- 6 (3) That the provisions of G.S. 160A-58.54 have not been met.
- 7 (4) That the provisions of G.S. 160A-58.50 have not been met.
- 8 (5) That the property does not qualify as an "enclave" under G.S. 160A-58.66.

9"

10 **SECTION 3.** G.S. 160A-58.61 reads as rewritten:

11 **"§ 160A-58.61. Annexation recorded.**

12 Whenever the limits of a municipality are enlarged in accordance with the provisions of this
13 ~~Part, Part or Part 7A of this Article~~, it shall be the duty of the mayor of the municipality to
14 cause an accurate map of such annexed territory, together with a copy of the ordinance or
15 interlocal agreement duly certified, to be recorded in the office of the register of deeds of the
16 county or counties in which such territory is situated and in the office of the Secretary of State.
17 The documents required to be filed with the Secretary of State under this section shall be filed
18 not later than 30 days following the effective date of the annexation ordinance. All documents
19 shall have an identifying number affixed thereto and shall conform in size in accordance with
20 rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of
21 the annexation. Any annexation shall be reported as part of the Boundary and Annexation
22 Survey of the United States Bureau of the Census."

23 **SECTION 4.** G.S. 160A-461 reads as rewritten:

24 **"§ 160A-461. Interlocal cooperation authorized.**

25 (a) Any unit of local government in this State and any one or more other units of local
26 government in this State or any other state (to the extent permitted by the laws of the other
27 state) may enter into contracts or agreements with each other in order to execute any
28 undertaking. The contracts and agreements shall be of reasonable duration, as determined by
29 the participating units, and shall be ratified by resolution of the governing board of each unit
30 spread upon its minutes.

31 (b) An incorporated municipality in this State and any county are authorized to enter
32 into an interlocal agreement extending the corporate limits of the municipality to include an
33 enclave as provided by Part 7A of Article 4A of this Chapter."

34 **SECTION 5.** G.S. 160A-464 reads as rewritten:

35 **"§ 160A-464. Provisions of the agreement.**

36 (a) Any contract or agreement establishing an undertaking shall specify:

- 37 (1) The purpose or purposes of the contract or agreement;
- 38 (2) The duration of the agreement;
- 39 (3) If a joint agency is established, its composition, organization, and nature,
40 together with the powers conferred on it;
- 41 (4) The manner of appointing the personnel necessary to the execution of the
42 undertaking;
- 43 (5) The method of financing the undertaking, including the apportionment of
44 costs and revenues;
- 45 (6) The formula for ownership of real property involved in the undertaking, and
46 procedures for the disposition of such property when the contract or
47 agreement expires or is terminated;
- 48 (7) Methods for amending the contract or agreement;
- 49 (8) Methods for terminating the contract or agreement;
- 50 (9) Any other necessary or proper matter.

1 (b) Any interlocal agreement extending the corporate limits of a municipality to include
2 an enclave under Part 7A of Article 4A of this Chapter shall:

3 (1) Be executed by those officials authorized by the governing boards to do so.

4 (2) Contain at least all of the following:

5 a. Specific findings showing that the annexed enclave meets the
6 requirements of G.S. 160A-58.66.

7 b. A list of the property owners identified with the respective parcel
8 identification numbers of the parcels affected by the annexation of
9 the enclave.

10 c. A metes and bounds description of the annexed enclave or a map
11 sufficient to identify the area with particularity.

12 d. A statement that the municipality shall provide services to the area
13 being annexed by the effective date of the annexation as required by
14 G.S. 160A-58.67.

15 e. A statement of the effective date of annexation.

16 f. Any other necessary or proper matter.

17 (3) Be recorded as provided by G.S. 160-58.69."

18 **SECTION 6.** This act is effective when it becomes law.