
Coates' Canons Blog: Annexation Reform: A Summary of the New Law

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UPDATE August 2013: In 2012, the legislature replaced the petition process described below with a referendum requirement. The current law is summarized [here](#).

Nearly 40 annexation-related bills were introduced during this legislative session. Included in this number were identical **House** and **Senate** bills that would have imposed a one-year moratorium on involuntary annexation, as well as several local bills undoing specific annexations that had been adopted but had not yet become effective. The legislature opted for reform instead of a moratorium and enacted **S.L. 2011-396 (HB 845)**. In addition, the legislature has created an exclusion from annexation for land used for farm purposes, as set forth in a separate act, **S.L. 2011-363**, which also affects authority over farm property in the ETJ. Local bills to repeal certain completed annexations were revised and combined in two separate acts, **S.L. 2011-173 (SB 27)** and **2011-177 (HB 56)**. These acts allow completed annexations in nine cities to be terminated by petition of the owners of 60% of the annexed parcels. This post updates and replaces my earlier post about the statewide bill, and provides a summary of the new annexation law (which became effective without the Governor's signature on July 1, 2011), and of the other related legislation.

Overview of Key Provisions

There are several significant changes in the new statewide law. First, an annexation can now be terminated if the owners of 60% of the parcels in the area to be annexed sign petitions to deny the annexation. Second, cities that provide water and sewer services are required to extend water and sewer services to properties in the annexed areas within 3 and 1/2 years of the annexation at no cost to the property owners, if the owners of a majority of the parcels request services within the timeframe set out in the law. Third, the new law amends the voluntary annexation law to allow petitions for voluntary annexation of contiguous property in high poverty areas, modifying the 100% petition requirement, and allowing petitions by residents in addition to property owners. The section pertaining petitions by property owners in high poverty areas *requires* the city to annex the property and to provide water and sewer services to the area.

Decoding the Session Law

The new law reorganizes the annexation provisions in the statutes, which are codified in Article 4A of Chapter 160A. The voluntary annexation provisions are in Part 1 (contiguous) and Part 4 (satellite). Part 2 contained the involuntary annexation provisions for cities of less than 5,000, and Part 3 contained the involuntary provisions for cities of 5,000 or more. The new law repeals Parts 2 and 3 and enacts a new Part 7 containing the requirements for involuntary annexation by all cities. The new part incorporates the same urbanization standards (the requirements for qualifying areas that may be annexed) that applied to cities of 5,000 or more, which now apply to all cities. The new part also includes changes in various sections that reflect interpretations in court cases and clarification of existing law. The basic structure of the process remains the same, beginning with a resolution of consideration, then the resolution of intent, preparation of an annexation report, public informational meeting, public hearing, and adoption of the ordinance. New components are added to provide the opportunity for property owners to request water and sewer service, and to deny the annexation by petition, so the process also includes procedures and time frames for providing notice and receiving responses as to each of these new options.

Water and Sewer Services

The city's obligation to provide water and sewer service is set out in new G.S. 160A-58.56. Under this provision, at an early stage of the annexation procedure – just after the adoption of the resolution of intent to annex – the city must provide notice to the property owners in the annexed area describing their right to have water and sewer lines and connections

installed and extended to their property at no cost to them (other than user fees). Property owners have 65 days to request service. The city's obligation to extend lines to these properties at no cost kicks in only if a the owners of a majority of parcels in the area to be annexed request service. (If a majority opt in, the law requires a second notice to those who didn't, in case they want to change their minds.) If the obligation to extend service is triggered, the city is required to complete all of the improvements necessary to provide water and sewer service to each property within 3 1/2 years of the effective date of the ordinance. The language of the new law indicates that the required improvements include service to and within the property, including the part of the extension that becomes the private property of the owner.

If a the owners of a majority of parcels do not request service within the initial time frame, the city is not required to extend service. If the city does extend the lines, and property owners request service, the law sets a sliding scale (based on how much later the requests come in), which limits how much the city may charge these customers, expressed as a percentage of the total cost of connecting under the policies then in effect. This limitation on the amounts that may be charged applies to requests received within the first five years following annexation, after which property owners requesting service may be charged according the policies in effect at the time of the request.

The obligation to provide water and sewer services relates back the provision that requires provision of services "on substantially the same basis and in the same manner as such services are provided in the rest of the municipality." So if a city doesn't provide or contract for the provision of water and sewer services, it would not apply. G.S. 160A-58.56(a) also provides that the city has no financial responsibility for the extension of lines if water and sewer services are provided under contract with another water or sewer system, and the contract does not require the city to pay for extensions to annexed areas.

Petitions to Deny Annexation [**Repealed and Replaced With a Referendum**]

Under new G.S. 160A-58.55(i), after the city completes the entire process and adopts an ordinance annexing property, owners of property in the area to be annexed have the opportunity to sign a petition to terminate the annexation. If the owners of at least 60% of the parcels in the annexation area sign petitions to deny the annexation, it is terminated, and the city is prohibited from considering annexation of the property for at least 36 months. For a property with multiple owners to count toward the 60%, a majority of the owners must sign a petition.

The statute gives the county board of elections the responsibility for distributing and collecting the pre-printed petitions for denial. The process begins with the county tax assessor providing to the board of elections a list of property owners in the area proposed for annexation. The board of elections prepares and mails pre-printed petitions. Detailed procedures and time frames are specified for the contents, mailing, receipt, and review of petitions. Results are determined and certified by the board of elections. The statute calls for observation of this determination by three property owners, chosen by the board of elections from among those who volunteer, and three people designated by the city. If the 60% requirement is met, the annexation is terminated by operation of law, without any action by the city.

Exception for Land Used for Farm Purposes

The annexation laws previously provided for special treatment of land subject to present use value taxation under **G.S. 105-277.3**, allowing annexation but limiting the extent of regulation and taxation of this type of property. These provisions are not included in the new involuntary annexation provisions. Instead, the legislature has created an exception to the city's annexation authority for land used for bona fide farm purposes. In **S.L. 2011-363** the legislature adopted G.S. 160A-58.54 (in the new Part 7 of the annexation laws), which provides that, "Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property." Although the language is a bit confusing, the pertinent date is probably the date of the resolution of consideration. Under a separate section of this session law the legislature lists evidence that may be provided to demonstrate that property is being used for bona fide farm purposes. I refer readers to the **session law** for the list, which effectively exempts from annexation a significantly larger category of property than was covered by the prior "present use value" provisions.

Amendments to Voluntary Annexation Laws

Under existing law, petitions for voluntary annexation (whether contiguous or satellite) must be signed by 100% of the property owners in the area to be annexed, and the city has no legal obligation to annex the property upon receipt of a

valid petition. The new law creates two exceptions to the 100% petition requirement and creates a new requirement to annex upon receipt of a petition. These new provisions apply only to contiguous – not to satellite – annexations.

The new law adds a new subsection (b1) to **G.S. 160A-31**, to allow *property owners* in high poverty areas to petition for voluntary annexation. High poverty is defined as an area in which 51% of the households have incomes that are 200% or less than the most recent US Census Bureau poverty thresholds. If the owners of 75% of the parcels in such areas petition for annexation, the city *must* annex the property. The population in the area to be annexed must not exceed 10% of the existing city population, and the area must have a minimum 1/8 contiguity with the existing city limits. A city is not required to annex more than one of these areas within a 36-month period.

A second provision (new subsection (j) of **G.S. 160A-31**), allows *residents* in “distressed areas” – defined the same way as in (b1) described above – to petition for voluntary annexation. Under this provision, the city may consider annexation if it receives petitions signed by at least one adult resident of at least two-thirds of the resident households in the area to be annexed. The statute allows the city to require reasonable proof that the petitioner actually resides at the address indicated. The area must be contiguous, but no minimum amount of contiguity is specified. This provision *does not require* the city to annex upon receipt of a valid petition.

Cities annexing under either of these provisions must provide services to the annexed areas in accordance with the provisions in Part 7 (the new involuntary annexation provisions). This means that if the annexing city provides water and sewer services, lines must be extended at no cost to the annexed areas. The voluntary annexation statute does allow a city to deny a petition under subsection (b1) if the cost of extending lines is too high, as determined by a formula set out in the statute (new G.S. 160A-31(d2)), and subject to review by the Local Government Commission. If a petition is denied, another request may not be filed within the next 36 months, but during that time, the law requires the city to make ongoing efforts to secure funding sufficient to make the extension feasible. The law also requires the relevant state agencies to give priority consideration to grant requests for water and sewer projects in these areas.

Annexing State Rights of Way

Another change to the voluntary annexation laws appears to address a narrow circumstance involving annexation of state maintained streets. **S.L. 2011-57 (HB 171)** prohibits a city from petitioning itself for annexation of property it doesn't own (including a state-maintained right of way in which the city does not own a fee simple interest). Ownership of an easement in a state-owned right of way is not sufficient to support a self-annexation petition. It also prohibits the acceptance of a petition that is not signed, or that does not require a signature (which is the case for tax exempt or utility property) and the property owner objects to the annexation.

For some insights into the tax effects of these changes, check out Chris McLaughlin's **blog post**.

Links

- canons.sog.unc.edu/?p=6731
- www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=H9
- www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=S27
- www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H845v7.pdf
- www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H168v6.pdf
- www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S27v6.pdf
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- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-31
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