Coates' Canons Blog: Annexation Reform: Referendum Replaces Petition to Deny

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In 2011, the legislature substantially revised the annexation laws. Among other changes, the 2011 annexation reform law, summarized here, gave property owners in the annexed area the ability to petition to deny the annexation. These changes applied to annexations in process on or initiated after the effective date of the law. In addition, by separate local acts, the legislature applied the new petition-to- deny procedure to several specific annexations that had been completed. The petition process in these jurisdictions took place last summer, and several of the affected cities challenged the petition process on constitutional and other grounds. In March, a Wake County Superior Court judge ruled that the petition process in the local acts, as well as in the general law, was unconstitutional. The legislature responded by stripping out the petition provisions in the general law and replacing them with a requirement for a referendum. Under the new law a city may not undertake an involuntary annexation unless a majority of registered voters in the area to be annexed vote in favor of it. The bill became law on June 10, 2012 without the Governor's signature, and applies to involuntary annexation ordinances adopted on or after July 1, 2012. This post summarizes the new annexation requirements.

Overview

S.L. 2012-11 removes from the involuntary annexation statutes (now contained in G.S. 160A, Article 4A, Part 7) all of the provisions relating to the petition-to- deny process and replaces it with a referendum. Whereas the petition to deny came at the end of the process – after presentation of the plan for provision of services, and public information sessions and hearings – the referendum requirement kicks in immediately following the adoption of the resolution of intent. At that point, the city must notify the county and provide a clear description of the area to be annexed. The city may not proceed with the annexation process unless a majority of votes cast in the referendum are in favor of the annexation. If less than a majority vote in favor, the city must wait three years before proceeding with or initiating a new process for annexation of the area. The new law does not change any other aspects of the involuntary annexation process. The standards for qualifying areas for annexation, the requirements and notice provisions regarding the right to receive water and sewer service, and the other aspects of the process (as revised in 2011) remain the same.

Timing of the Referendum

The new law requires the referendum to be held at a regular municipal election that is more than 45 days after the resolution of intent is adopted. Since municipal elections in all but four cities are held only every other year in odd-numbered years, this will limit the opportunity for involuntary annexation to a once-every-two-years event. The law allows more than one area to be proposed and considered in the referendum, but it requires that each area must be presented as a separate question in the election.

Referendum and Petition Compared

The referendum process differs in many respects from the petition process in the 2011 Annexation Reform law. The 2011 law gave only to *property owners* the opportunity to sign petitions to deny the annexation. The process was complicated, with multiple notice requirements, identification of property owners, development of petition forms, mailing, collecting, and verifying petition forms – all at the expense of the city. A referendum, in contrast, is a process more easily conducted by the board elections using existing registered voter lists and processes already in place. The new law requires the city to reimburse the county for the costs of the referendum, but these will likely be less than the costs of the petition process. In addition, the law still requires the city to provide notice to property owners of their opportunity to vote in the referendum and request water and sewer service.

What If There Are No Voters?

Several astute city planners have contacted me about how the new referendum requirement will apply to a proposed annexation area in which there are no voters. This is not an uncommon scenario. The involuntary annexation law requires cities to demonstrate that areas to be annexed meet one or more of the statutory standards for use and development. Properties that are developed and used for commercial, industrial, governmental, or institutional purposes qualify under these standards. Of course these uses may be combined with residential uses, and some commercial or governmental uses might include apartments or other residential activities. It remains the case, however, that the law allows annexation of areas – most likely in industrial use, or perhaps in the case of a "donut hole" annexation – in which there are no voters. (Although the 2011 law exempted donut hole annexations from the petition requirement, there is no such exemption in the new law, so the referendum requirement applies to these types of annexations.) Indeed, G.S. 160A-58.54(a)(4)a.5 allows annexation of property that is "so developed that, at the time of the approval of the annexation report, *all tracts in the area to be annexed* are used for commercial, industrial governmental, or institutional purposes." (Emphasis added.)

The referendum requirement kicks in whenever a resolution of intent to annex is adopted. There is no exception for annexations in which there are no voters. In addition, the authority to annex is now dependent upon the results of the referendum. Specifically, under new G.S. 160A-58.64, there must be a majority vote in favor of the annexation in order for the municipality to proceed with the annexation. The result appears to be that if a referendum cannot take place due to the lack of voters in the proposed annexation area, the area simply cannot be annexed. A municipality has a few choices: 1) consider adding to the proposed annexation area some qualifying property that does have voters; 2) encourage the property owner to petition for voluntary annexation; or 3) annex the area and, if challenged, ask a court to resolve the apparent conflict under the statute. Obviously, the third option involves a risk of invalidation, but the conflict in the statute does raise a question of legislative intent which must be resolved either by legislative amendment or judicial interpretation.

Limitations on Expenditures to Influence the Referendum

It's generally considered a good practice for an annexing city to educate residents in proposed annexation areas about the services they will receive. Indeed, the annexation process emphasizes the need to provide this information by requiring informational sessions and hearings as required in the statutes. On the other hand, court cases, and now a specific statute, limit the city's authority to spend tax dollars in order to influence an election. G.S. 160A-499.3 prohibits a municipality from using public funds to "endorse or oppose a referendum, election or a particular candidate for elective office." In this blog post I described the North Carolina case law on this issue. It seems reasonable to assume that the statute mirrors the case law, although it has not been interpreted by our courts. Certainly, the city endorses the annexation or it would not have adopted the resolution of intent. If the intent of the statute is consistent with the case law, funds may be spent on materials that provide information, but not on promotional materials intended to sway voters. Based on the case law, acceptable information would include the reasons the unit is pursuing annexation, the services residents and property owners will receive, and anticipated costs and other effects of the proposed annexation. All messages paid for using public funds should be carefully reviewed to make sure they do not violate the statute.

Individual Deannexations

As I've noted, the legislature enacted two local acts last year applying the petition-to-deny option to completed annexations in several cities. After those petition efforts were challenged and invalidated, the legislature exercised its authority to simply deannex those properties. Under S.L. 2012-3, specific property annexed by the cities of Kinston, Lexington, Rocky Mount, Wilmington, Asheville, Marvin, Southport, Goldsboro, and Fayetteville will be removed from their corporate limits effective July 1, 2012, and enforcement of any ordinances pending on that date is suspended. In addition, these jurisdictions are prohibited from involuntarily annexing the affected properties for a period of twelve years from the effective date. This restriction does not limit voluntary annexation of these properties.

The legislature has also approved or is considering numerous individual local bills involving annexations and deannexations. A list of those bills/session laws to date follows:

S.L. 2012-61 (Morganton Deannexation)

House Bill 180 (Wilmington Voluntary Annexation)

House Bill 945 (Marion Legislative Annexation)[right-of-way annexation]

House Bill 1106 (Apex Annexation)

House Bill 1050 (Elizabethtown Industrial Park Deannexation)

House Bill 1051 (Elizabethtown Hayfield Deannexation)

House Bill 1202 (Roanoke Rapids Deannex)

Senate 796 (Davidson County Annexations)[requiring county and voter approval of annexations]

House Bill 1169/Senate Bill 946 (Burgaw Deannexation)

House Bill 1216/Senate Bill 944 (Wallace Satellite Annexation)[modifying satellite annexation standard]

House Bill 1217 (Asheville/Woodfin Boundary Adjustments)

Senate Bill 876 (Mooresville Deannexation)[by request]

Senate Bill 900 (Surf City Deannexation)

Senate Bill 901 (Ocean Isle Beach Satellite Annexation)[modifying satellite annexation standard]

Links

- www.ncleg.net/enactedlegislation/sessionlaws/html/2011-2012/sl2011-396.html
- canons.sog.unc.edu/?p=4494
- www.ncleg.net/enactedlegislation/sessionlaws/html/2011-2012/sl2012-11.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-58.54
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-499.3.html
- canons.sog.unc.edu/?p=2403
- www.ncleg.net/enactedlegislation/sessionlaws/html/2011-2012/sl2012-3.html
- www.ncleg.net/Sessions/2011/Bills/House/PDF/H1032v3.pdf
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