

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1198*

Short Title: Annex & Incorporation Revision.

(Public)

Sponsors: Senators Purcell; Ledbetter, Miller, and Odom.

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

May 21, 1998

A BILL TO BE ENTITLED

1 AN ACT TO REVISE THE MUNICIPAL ANNEXATION LAWS AND TO CHANGE
2 THE CRITERIA TO BE CONSIDERED BY THE JOINT LEGISLATIVE
3 COMMISSION ON MUNICIPAL INCORPORATIONS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-277.4(b) reads as rewritten:

7 "(b) Appraisal at Present-use Value. – Upon receipt of a properly executed
8 application, the assessor shall appraise the property at its present-use value as established
9 in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its
10 present-use value, the assessor shall appraise the improvements located on qualifying
11 land according to the schedules and standards used in appraising other similar
12 improvements in the county. If all or any part of a qualifying tract of land is located
13 within the limits of an incorporated city or town, or is property annexed subject to G.S.
14 160A-37(f1) or G.S. 160A-49(f1), the assessor shall furnish a copy of the property record
15 showing both the present-use appraisal and the valuation upon which the property would
16 have been taxed in the absence of this classification to the collector of the city or town.
17 He shall also notify the tax collector of any changes in the appraisals or in the eligibility
18 of the property for the benefit of this classification."
19

20 Section 2. G.S. 120-166 reads as rewritten:

"§ 120-166. Additional criteria; nearness to another municipality.

1 (a) The Commission may not make a positive recommendation if the proposed
2 municipality is located within one mile of a municipality of 5,000 to 9,999, within three
3 miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000
4 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most
5 recent decennial federal census, or according to the most recent annual estimate of the
6 Office of State Budget and Management if the municipality was incorporated since the
7 return of that census.

8 (b) Subsection (a) of this section does not apply in the case of proximity to a
9 specific municipality if:

- 10 (1) The proposed municipality is entirely on an island that the nearby city is
11 not on;
- 12 (2) The proposed municipality is separated by a major river or other natural
13 barrier from the nearby city, such that provision of municipal services
14 by the nearby city to the proposed municipality is infeasible or the cost
15 is prohibitive, and the Commission shall adopt policies to implement
16 this subdivision;
- 17 (3) The nearby municipality-municipalities within the distances described in
18 subsection (a) of this section by resolution expresses its-express their
19 approval of the incorporation; or
- 20 (4) An area of at least fifty percent (50%) of the proposed municipality has
21 petitioned for annexation to the nearby city under G.S. 160A-31 within
22 the previous 12 months before the incorporation petition is submitted to
23 the Commission but the annexation petition was not approved."

24 Section 3. Article 20 of Chapter 120 is amended by adding a new section to
25 read:

26 "**§ 120-169.1. Additional criteria; level of development, services.**

27 (a) Level of Development. – The Commission may not make a positive
28 recommendation unless the entire area proposed for incorporation meets the applicable
29 criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).

30 (b) Services. – The Commission may not make a positive recommendation unless
31 the area to be incorporated submits a plan for providing a reasonable level of municipal
32 services. To meet the requirements of this subsection, the persons submitting the plan for
33 incorporation must propose to provide at least two of the following services:

- 34 (1) Police protection.
- 35 (2) Fire protection.
- 36 (3) Garbage and refuse collection or disposal.
- 37 (4) Water distribution.
- 38 (5) Sewer collection or disposal.
- 39 (6) Street maintenance, construction, or right-of-way acquisition.
- 40 (7) Street lighting.
- 41 (8) Adoption of citywide planning and zoning."

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

43 "**§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.**

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

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

7 a. The present and proposed boundaries of the municipality.

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

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

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

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

32 b. Provide for extension of water mains and sewer lines into the
33 area to be annexed so that property owners in the area to be
34 annexed will be able to secure public water and sewer services
35 according to the policies in effect in such municipality for
36 extending water and sewer lines to individual lots or
37 subdivisions. If the municipality must, at its own expense,
38 extend water and/or sewer mains into the area to be annexed
39 before property owners in the area can, according to municipal
40 policies, make such connection to such lines, then the plans must
41 call for contracts to be let and construction to begin on such lines
42 within one year following the effective date of annexation. In
43 areas where the installation of sewer is not economically feasible

1 due to the unique topography of the area, the municipality may
2 agree to provide septic system maintenance and repair service
3 until such time as sewer service is provided to properties
4 similarly situated.

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

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

23 Section 5. G.S. 160A-35.1 reads as rewritten:

24 "**§ 160A-35.1. Limitation on change in financial participation prior to annexation.**

25 ~~No~~ For purposes of the extension of water and sewer services required under G.S.
26 160A-35, no ordinance or policy substantially diminishing the financial participation of a
27 municipality in the construction of water or sewer facilities required under this Article
28 may apply to an area being annexed unless the ordinance or policy became effective at
29 least 180 days prior to the date of adoption by the municipality of the resolution giving
30 notice of intent to consider annexing the area under G.S. 160A-37(a)."

31 Section 6. 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 meets
35 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 at the
38 time the annexation proceeding is begun, except if the entire territory of
39 a county water and sewer district created under G.S. 162A-86(b1) is
40 being annexed, the annexation shall also include any noncontiguous
41 pieces of the district as long as the part of the district with the greatest
42 land area is adjacent or contiguous to the municipality's boundaries at
43 the time the annexation proceeding is begun.

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

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

5 (c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the
6 time of approval of the report provided for in G.S. 160A-35. For purposes of this section,
7 a lot or tract shall not be considered in use for a commercial, industrial, institutional, or
8 governmental, purpose if the lot or tract is used only temporarily, occasionally, or on an
9 incidental or insubstantial basis in relation to the size and character of the lot or tract. For
10 purposes of this section, acreage in use for commercial, industrial, institutional, or
11 governmental purposes shall include acreage actually occupied by buildings or other
12 man-made structures together with all areas that are reasonably necessary and
13 appurtenant to such facilities for purposes of parking, storage, ingress and egress,
14 utilities, buffering, and other ancillary services and facilities. Area of streets and rights-
15 of-way shall not be used to determine total acreage under this section. An area developed
16 for urban purposes is defined as any as:

17 (1) Any area which is so developed that at least sixty percent (60%) of the
18 total number of lots and tracts in the area at the time of annexation are
19 used for residential, commercial, industrial, institutional or
20 governmental purposes, and is subdivided into lots and tracts such that
21 at least sixty percent (60%) of the total acreage, not counting the
22 acreage used at the time of annexation for commercial, industrial,
23 governmental or institutional purposes, consists of lots and tracts five
24 acres or less in size.

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

28 (3) ~~An area developed for urban purposes is also the~~ The entire area of any
29 county water and sewer district created under G.S. 162A-86(b1), but
30 this ~~sentence~~ subsection only applies to annexation by a municipality if
31 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
35 sewer system of that county water and sewer district;

36 provided that the special categorization provided by this ~~sentence~~
37 subsection only applies if the municipality is annexing in one
38 proceeding the entire territory of the district not already within the
39 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 and~~
42 ~~creeks as boundaries, and may use streets as boundaries.~~ shall use recorded property lines
43 and streets as boundaries. Some or all of the boundaries of a county water and sewer

1 district may also be used when the entire district not already within the corporate limits of
2 a municipality is being annexed.

3 (e) The area of an abolished water and sewer district shall be considered to be a
4 water and sewer district for the purpose of this section even after its abolition under G.S.
5 162A-87.2(b).

6 Section 7. G.S. 160A-37 reads as rewritten:

7 "**§ 160A-37. Procedure for annexation.**

8 (a) Notice of Intent. – Any municipal governing board desiring to annex territory
9 under the provisions of this Part shall first pass a resolution stating the intent of the
10 municipality to consider annexation. Such resolution shall describe the boundaries of the
11 area under ~~consideration~~ consideration, fix a date for public informational meeting, and fix
12 a date for a public hearing on the question of ~~annexation, the annexation.~~ The date for the
13 public informational meeting shall be not less than 45 days and not more than 55 days
14 following passage of the resolution. The date for such the public hearing to be not less
15 than 45-60 days and not more than 90 days following passage of the resolution.

16 (b) Notice of Public Hearing. – The notice of public hearing shall:

- 17 (1) Fix the date, hour and place of the public informational meeting and the
18 date, hour, and place of the public hearing.
19 (2) Describe clearly the boundaries of the area under consideration, and
20 include a legible map of the area.
21 (3) State that the report required in G.S. 160A-35 will be available at the
22 office of the municipal clerk at least 30 days prior to the date of the
23 public ~~hearing~~ informational meeting.

24 Such notice shall be given by publication once a week for at least two successive
25 weeks prior to the date of the ~~hearing~~ informational meeting in a newspaper having
26 general circulation in the municipality and, in addition thereto, if the area to be annexed
27 lies in a county containing less than fifty percent (50%) of the land area of the
28 municipality, in a newspaper having general circulation in the area of proposed
29 annexation. The period from the date of the first publication to the date of the last
30 publication, both dates inclusive, shall be not less than eight days including Sundays, and
31 the date of the last publication shall be not more than seven days preceding the date of
32 public ~~hearing~~ informational meeting. If there be no such newspaper, the municipality
33 shall post the notice in at least five public places within the municipality and at least five
34 public places in the area to be annexed for 30 days prior to the date of public ~~hearing~~ informational meeting. In addition, notice shall be mailed at least four weeks prior to
35 date of the ~~hearing~~ informational meeting, by first class mail, postage prepaid to the
36 owners as shown by the tax records of the county of all freehold interests in real property
37 located within the area to be annexed. The person or persons mailing such notices shall
38 certify to the governing board that fact, and such certificate shall become a part of the
39 record of the annexation proceeding and shall be deemed conclusive in the absence of
40 fraud. If the notice is returned to the city by the postal service by the tenth day before the
41 ~~hearing~~ informational meeting, a copy of the notice shall be sent by certified mail, return
42 receipt requested, at least seven days before the ~~hearing~~ informational meeting. Failure
43

1 to comply with the mailing requirement of this subsection shall not invalidate the
2 annexation unless it is shown that the requirements were not substantially complied with.

3 If the governing board by resolution finds that the tax records are not adequate to
4 identify the owners of some or all of the parcels of real property within the area it may in
5 lieu of the mail procedure as to those parcels where the owners could not be so identified,
6 post the notice at least 30 days prior to the date of public ~~hearing~~-informational meeting
7 on all buildings on such parcels, and in at least five other places within the area to be
8 annexed. In any case where notices are placed on property, the person placing the notice
9 shall certify that fact to the governing board.

10 (c) Action Prior to ~~Hearing~~-Informational Meeting. – At least 30 days before the
11 date of the public ~~hearing~~-informational meeting, the governing board shall approve the
12 report provided for in G.S. 160A-35, and shall make it available to the public at the office
13 of the municipal clerk. In addition, the municipality may prepare a summary of the full
14 report for public distribution. In addition, the city shall post in the office of the city clerk
15 at least 30 days before the public ~~hearing~~-informational meeting a legible map of the area
16 to be annexed and a list of the persons holding freehold interests in property in the area to
17 be annexed that it has identified.

18 (c1) Public Informational Meeting. – At the public informational meeting a
19 representative of the municipality shall first make an explanation of the report required in
20 G.S. 160A-35. Following such explanation, all persons resident or owning property in
21 the territory described in the notice of public hearing, and all residents of the
22 municipality, shall be given the opportunity to ask questions and receive answers
23 regarding the proposed annexation.

24 (d) Public Hearing. – At the public hearing a representative of the municipality
25 shall first make an explanation of the report required in G.S. 160A-35. Following such
26 explanation, all persons resident or owning property in the territory described in the
27 notice of public hearing, and all residents of the municipality, shall be given an
28 opportunity to be heard.

29 (e) Passage of the Annexation Ordinance. – The municipal governing board shall
30 take into consideration facts presented at the public hearing and shall have authority to
31 amend the report required by G.S. 160A-35 to make changes in the plans for serving the
32 area proposed to be annexed so long as such changes meet the requirements of G.S.
33 160A-35. At any regular or special meeting held no sooner than the tenth day following
34 the public hearing and not later than 90 days following such public hearing, the
35 governing board shall have authority to adopt an ordinance extending the corporate limits
36 of the municipality to include all, or such part, of the area described in the notice of
37 public hearing which meets the requirements of G.S. 160A-36 and which the governing
38 board has concluded should be annexed. The ordinance shall:

- 39 (1) Contain specific findings showing that the area to be annexed meets the
40 requirements of G.S. 160A-36. The external boundaries of the area to be
41 annexed shall be described by metes and bounds. In showing the
42 application of G.S. 160A-36(c) and (d) to the area, the governing board

1 may refer to boundaries set forth on a map of the area and incorporate
2 same by reference as a part of the ordinance.

3 (2) A statement of the intent of the municipality to provide services to the
4 area being annexed as set forth in the report required by G.S. 160A-35.

5 (3) A specific finding that on the effective date of annexation the
6 municipality will have funds appropriated in sufficient amount to
7 finance construction of any water and sewer lines found necessary in the
8 report required by G.S. 160A-35 to extend the basic water and/or sewer
9 system of the municipality into the area to be annexed, or that on the
10 effective date of annexation the municipality will have authority to issue
11 bonds in an amount sufficient to finance such construction. If authority
12 to issue such bonds must be secured from the electorate of the
13 municipality prior to the effective date of annexation, then the effective
14 date of annexation shall be no earlier than the day following the
15 statement of the successful result of the bond election.

16 (4) Fix the effective date for annexation. The effective date of annexation
17 may be fixed for any date not less than 40 days nor more than 400 days
18 from the date of passage of the ordinance.

19 (f) Effect of Annexation Ordinance. – Except as provided in subsection (f1) of this
20 section, from ~~From~~ and after the effective date of the annexation ordinance, the territory
21 and its citizens and property shall be subject to all debts, laws, ordinances and regulations
22 in force in such municipality and shall be entitled to the same privileges and benefits as
23 other parts of such municipality. Real and personal property in the newly annexed
24 territory on the January 1 immediately preceding the beginning of the fiscal year in which
25 the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-
26 58.10. If the effective date of annexation falls between June 1 and June 30, and the
27 effective date of the privilege license tax ordinance of the annexing municipality is June
28 1, then businesses in the area to be annexed shall be liable for taxes imposed in such
29 ordinance from and after the effective date of annexation.

30 (f1) Property Subject to Present-Use Value Appraisal. – If an area described in an
31 annexation ordinance includes: agricultural land, horticultural land, or forestland that is,
32 on the effective date of annexation, being taxed at present-use value pursuant to G.S.
33 105-277.4; land that is eligible for present-use value taxation under G.S. 105-277.4, but
34 the owner has not elected to place it under present-use value taxation; or land that is
35 being used for actual production on the effective date of the annexation ordinance and is
36 eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in
37 use for actual production for the required time under G.S. 105-277.3, the annexation
38 becomes effective as to that property pursuant to this subsection.

39 (1) Upon the effective date of the annexation ordinance, the property is
40 considered part of the city only (i) for the purpose of establishing city
41 boundaries for additional annexations pursuant to this Article and (ii)
42 for the exercise of city authority pursuant to Article 19 of this Chapter.

1 (2) For all other purposes, the annexation becomes effective as to each tract
2 of such property or part thereof on the last day of the month in which
3 that tract or part thereof becomes ineligible for classification pursuant to
4 G.S. 105-227.4. Until annexation of a tract or a part of a tract becomes
5 effective pursuant to this subdivision, the tract or part of a tract is not
6 subject to taxation by the city under Article 12 of Chapter 105 nor is the
7 tract or part of a tract entitled to services provided by the city.

8 (g) Simultaneous Annexation Proceedings. – If a municipality is considering the
9 annexation of two or more areas which are all adjacent to the municipal boundary but are
10 not adjacent to one another, it may undertake simultaneous proceedings under authority
11 of this Part for the annexation of such areas.

12 (h) Remedies for Failure to Provide Services. – If, not earlier than one year from
13 the effective date of annexation, and not later than 15 months from the effective date of
14 annexation, any person owning property in the annexed territory shall believe that the
15 municipality has not followed through on its service plans adopted under the provisions
16 of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of mandamus
17 under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be
18 granted by the judge of superior court

19 (1) If the municipality has not provided the services set forth in its plan
20 submitted under the provisions of G.S. 160A-35(3)a on substantially the
21 same basis and in the same manner as such services were provided
22 within the rest of the municipality prior to the effective date of
23 annexation, and

24 (2) If at the time the writ is sought such services set forth in the plan
25 submitted under the provisions of G.S. 160A-35(3)a are still being
26 provided on substantially the same basis and in the same manner as on
27 the date of annexation of the municipality.

28 Relief may also be granted by the judge of superior court

29 (1) If the plans submitted under the provisions of G.S. 160A-35(3)c require
30 the construction of major trunk water mains and sewer outfall lines and

31 (2) If contracts for such construction have not yet been let.

32 If a writ is issued, costs in the action, including a reasonable attorney's fee for such
33 aggrieved person, shall be charged to the municipality.

34 (i) No resolution of intent may be adopted under subsection (a) of this section
35 unless the city council (or a planning agency created or designated under either G.S.
36 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of
37 the resolution of intent, identified the area as being under consideration for annexation;
38 provided, adoption of such resolution of consideration shall not confer prior jurisdiction
39 over the area as to any other city. The area described under the resolution of intent may
40 comprise a smaller area than that identified by the resolution of consideration. The
41 resolution of consideration may have a metes and bounds description or a map, shall
42 remain effective for two years after adoption, and shall be filed with the city clerk. A
43 new resolution of consideration adopted before expiration of the two-year period for a

1 previously adopted resolution covering the same area shall relate back to the date of the
2 previous resolution.

3 (j) Subsection (i) of this section shall not apply to the annexation of any area if the
4 resolution of intent describing the area and the ordinance annexing the area both provide
5 that the effective date of the annexation shall be at least one year from the date of passage
6 of the annexation ordinance.

7 (k) If a city fails to deliver police, fire protection, solid waste or street maintenance
8 services to property in a newly annexed area within 60 days after the effective date of the
9 annexation on substantially the same basis and in the same manner as they were provided
10 to the rest of the city prior to the annexation, the owner of the property may petition the
11 Local Government Commission for abatement of taxes to be paid to the city for taxes that
12 have been levied as of the end of the 60-day period, if the petition is filed not more than
13 90 days after the expiration of the 60-day period. If the Local Government Commission
14 finds that services were not extended by the end of the 60-day period, it shall enter an
15 order directing the city not to levy any further ad valorem taxes on the property until the
16 fiscal year commencing after extension of the municipal services."

17 Section 8. G.S. 160A-37.2 reads as rewritten:

18 "**§ 160A-37.2. Assumption of debt.**

19 (a) If the city has annexed any area which is served by a rural fire department and
20 which is in an insurance district defined under G.S. 153A-233, a rural fire protection
21 district under Article 3A of Chapter 69 of the General Statutes or a fire service district
22 under Article 17 of Chapter 153A of the General Statutes, then upon the effective date of
23 annexation if the city has not contracted with the rural fire department for fire protection,
24 or when the rural fire department ceases to provide fire protection under contract, then
25 the city shall pay annually a proportionate share of any payments due on any debt
26 (including principal and interest) relating to facilities or equipment of the rural fire
27 department, if the debt was existing at the time of adoption of the resolution of intent,
28 with the payments in the same proportion that the assessed valuation of the area of the
29 district annexed bears to the assessed valuation of the entire district on the date the
30 annexation ordinance becomes ~~effective~~ effective or another date for valuation mutually
31 agreed upon by the city and the fire department.

32 (b) The city and rural fire department shall jointly present a payment schedule to
33 the Local Government Commission for approval and no payment may be made until such
34 schedule is approved."

35 Section 9. G.S.160A-37.3 is amended by adding a new subsection to read:

36 "(h) A firm which has given notice under subsection (a) of this section that it
37 desires to contract, and any firm that the city believes is eligible to give such notice, shall
38 make available to the city not later than ~~five~~ 10 business days following a written request
39 of the city all information in its possession or control, including but not limited to
40 operational, financial and budgetary information, necessary for the city to determine if
41 the firm qualifies for the benefits of this section and to determine the nature and scope of
42 the potential contract and/or economic loss. The firm forfeits its rights under this section
43 if it fails to make a good faith response within 10 business days following receipt of the

1 written request for information from the the city, provided that the city's written request
2 states that statutory rights will be forfeited in the absence of a timely response and
3 includes a specific reference to this section."

4 Section 10. G.S. 160A-38 reads as rewritten:

5 "**§ 160A-38. Appeal.**

6 (a) Within ~~30 days~~ 60 days following the passage of an annexation ordinance under
7 authority of this Part, any person owning property in the annexed territory who shall
8 believe that he will suffer material injury by reason of the failure of the municipal
9 governing board to comply with the procedure set forth in this Part or to meet the
10 requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in
11 the superior court of the county in which the municipality is located seeking review of the
12 action of the governing board.

13 (b) Such petition shall explicitly state what exceptions are taken to the action of
14 the governing board and what relief the petitioner seeks. Within ~~five days~~ 10 days after
15 the petition is filed with the court, the person seeking review shall serve copies of the
16 petition by registered mail, return receipt requested, upon the municipality.

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 municipality shall transmit to the
19 reviewing court

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

22 (2) A copy of the report setting forth the plans for extending services to the
23 annexed area as required in G.S. 160A-35.

24 (d) If two or more petitions for review are submitted to the court, the court may
25 consolidate all such petitions for review at a single hearing, and the municipality shall be
26 required to submit only one set of minutes and one report as required in subsection (c).

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

33 (f) The court shall fix the date for review of annexation proceedings under this
34 Chapter, which review date shall preferably be within 30 days following the last day for
35 receiving petitions to the end that review shall be expeditious and without unnecessary
36 delays. The review shall be conducted by the court without a jury. The court may hear
37 oral arguments and receive written briefs, and may take evidence intended to show either

38 (1) That the statutory procedure was not followed or

39 (2) That the provisions of G.S. 160A-35 were not met, or

40 (3) That the provisions of G.S. 160A-36 have not been met.

41 (g) The court may affirm the action of the governing board without change, or it
42 may

- 1 (1) Remand the ordinance to the municipal governing board for further
2 proceedings if procedural irregularities are found to have materially
3 prejudiced the substantive rights of any of the petitioners.
- 4 (2) Remand the ordinance to the municipal governing board for amendment
5 of the boundaries to conform to the provisions of G.S. 160A-36 if it
6 finds that the provisions of G.S. 160A-36 have not been met; provided,
7 that the court cannot remand the ordinance to the municipal governing
8 board with directions to add area to the municipality which was not
9 included in the notice of public hearing and not provided for in plans for
10 service.
- 11 (3) Remand the report to the municipal governing board for amendment of
12 the plans for providing services to the end that the provisions of G.S.
13 160A-35 are satisfied.
- 14 (4) Declare the ordinance null and void, if the court finds that the ordinance
15 cannot be corrected by remand as provided in subdivisions (1), (2), or
16 (3) of this subsection.

17 If any municipality shall fail to take action in accordance with the court's instructions
18 upon remand within three months from receipt of such instructions, the annexation
19 proceeding shall be deemed null and void.

20 (h) Any party to the review proceedings, including the municipality, may appeal to
21 the Court of Appeals from the final judgment of the superior court under rules of
22 procedure applicable in other civil cases. The superior court may, with the agreement of
23 the municipality, permit annexation to be effective with respect to any part of the area
24 concerning which no appeal is being made and which can be incorporated into the city
25 without regard to any part of the area concerning which an appeal is being made.

26 (i) If part or all of the area annexed under the terms of an annexation ordinance is
27 the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the
28 effective date of the ordinance, then the ordinance shall be deemed amended to make the
29 effective date with respect to such area the last day of the next full calendar month
30 following the date of the final judgment of the superior court, Court of Appeals or
31 Supreme Court, whichever is appropriate, or the date the municipal governing board
32 completes action to make the ordinance conform to the court's instructions in the event of
33 remand. For the purposes of this subsection, a denial of a petition for a rehearing or for
34 discretionary review shall be treated as a final judgement.

35 (j) The provisions of subsection (i) of this section shall apply to any judicial
36 review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g).

37 (k) In any proceeding related to an annexation ordinance appeal under this section,
38 a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing
39 in this Article shall be construed to mean that as a result of an appeal a municipality may
40 assert a claim for property tax revenue lost during the pendency of the appeal.

41 (l) Any settlement agreed to by all parties in an appeal under this section may be
42 presented to the superior court in the county in which the municipality is located. If the

1 superior court, in its discretion, approves the settlement, it shall be binding on all parties
2 without the need for approval by the General Assembly."

3 Section 11. G.S. 160A-42 reads as rewritten:

4 **"§ 160A-42. Land estimates.**

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

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

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

21 Section 12. G.S. 160A-47 reads as rewritten:

22 **"§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.**

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

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

- 29 a. The present and proposed boundaries of the municipality.
30 b. The present major trunk water mains and sewer interceptors and
31 outfalls, and the proposed extensions of such mains and outfalls
32 as required in subdivision (3) of this section. The water and
33 sewer map must bear the seal of a registered professional
34 engineer.
35 c. The general land use pattern in the area to be annexed.

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

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

- 42 a. Provide for extending police protection, fire protection, solid
43 waste collection and street maintenance services to the area to be

1 annexed on the date of annexation on substantially the same basis
2 and in the same manner as such services are provided within the
3 rest of the municipality prior to annexation. A contract with a
4 rural fire department to provide fire protection shall be an
5 acceptable method of providing fire protection. If a water
6 distribution system is not available in the area to be annexed, the
7 plans must call for reasonably effective fire protection services
8 until such time as waterlines are made available in such area
9 under existing municipal policies for the extension of waterlines.
10 A contract with a private firm to provide solid waste collection
11 services shall be an acceptable method of providing solid waste
12 collection services.

- 13 b. Provide for extension of major trunk water mains and sewer
14 outfall lines into the area to be annexed so that when such lines
15 are constructed, property owners in the area to be annexed will
16 be able to secure public water and sewer service, according to the
17 policies in effect in such municipality for extending water and
18 sewer lines to individual lots or subdivisions. If requested by the
19 owner of an occupied dwelling unit or an operating commercial
20 or industrial property in writing on a form provided by the
21 municipality, which form acknowledges that such extension or
22 extensions will be made according to the current financial
23 policies of the municipality for making such extensions, and if
24 such form is received by the city clerk ~~not less than 30 days before~~
25 ~~adoption of the annexation ordinance, no less than five days after~~
26 the public hearing, provide for extension of water and sewer lines
27 to the property or to a point on a public street or road right-of-
28 way adjacent to the property according to the financial policies in
29 effect in such municipality for extending water and sewer lines.
30 If any such requests are timely made, the municipality shall at the
31 time of adoption of the annexation ordinance amend its report
32 and plan for services to reflect and accommodate such ~~requests.~~
33 requests, if an amendment is necessary. In areas where the
34 installation of sewer is not economically feasible due to the
35 unique topography of the area, the municipality may agree to
36 provide septic system maintenance and repair service until such
37 time as sewer service is provided to properties similarly situated.
- 38 c. If extension of major trunk water mains, sewer outfall lines,
39 sewer lines and water lines is necessary, set forth a proposed
40 timetable for construction of such mains, outfalls and lines as
41 soon as possible following the effective date of annexation. In
42 any event, the plans shall call for construction to be completed
43 within two years of the effective date of annexation.

- 1 d. Set forth the method under which the municipality plans to
2 finance extension of services into the area to be annexed.
- 3 (4) A statement of the impact of the annexation on any rural fire department
4 providing service in the area to be annexed and a statement of the
5 impact of the annexation on fire protection and fire insurance rates in
6 the area to be annexed, if the area where service is provided is in an
7 insurance district designated under G.S. 153A-233, a rural fire
8 protection district under Article 3A of Chapter 69 of the General
9 Statutes, or a fire service district under Article 16 of Chapter 153A of
10 the General Statutes. The rural fire department shall make available to
11 the city not later than 30 days following a written request from the city
12 all information in its possession or control, including but not limited to
13 operational, financial and budgetary information, necessary for
14 preparation of a statement of impact. The rural fire department forfeits
15 its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a
16 good faith response within 45 days following receipt of the written
17 request for information from the city, provided that the city's written
18 request so states by specific reference to this section."

19 Section 13. G.S. 160A-47.1 reads as rewritten:

20 **"§ 160A-47.1. Limitation on change in financial participation prior to annexation.**

21 ~~No~~ For purposes of the extension of water and sewer services required under G.S.
22 160A-47, no ordinance or policy substantially diminishing the financial participation of a
23 municipality in the construction of water or sewer facilities required under this Article
24 may apply to an area being annexed unless the ordinance or policy became effective at
25 least 180 days prior to the date of adoption by the municipality of the resolution giving
26 notice of intent to consider annexing the area under G.S. 160A-49(a)."

27 Section 14. 160A-48 reads as rewritten:

28 **"§ 160A-48. Character of area to be annexed.**

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

- 31 (1) Which meets the general standards of subsection (b), and
32 (2) Every part of which meets the requirements of either subsection (c) or
33 subsection (d).

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

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

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

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

3 (c) Part or all of the area to be annexed must be developed for urban ~~purposes.~~
4 purposes at the time of approval of the report provided for in G.S. 160A-47. Area of
5 streets and rights-of-way shall not be used to determine total acreage under this section.

6 An area developed for urban purposes is defined as any area which meets any one of the
7 following standards:

8 (1) Has a total resident population equal to at least ~~two-two~~ and three-tenths
9 persons for each acre of land included within its boundaries; or

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

16 (3) Is so developed that at least sixty percent (60%) of the total number of
17 lots and tracts in the area at the time of annexation are used for
18 residential, commercial, industrial, institutional or governmental
19 purposes, and is subdivided into lots and tracts such that at least sixty
20 percent (60%) of the total acreage, not counting the acreage used at the
21 time of annexation for commercial, industrial, governmental or
22 institutional purposes, consists of lots and tracts ~~five-three~~ acres or less
23 in size; or size. For purposes of this section, a lot or tract shall not be
24 considered in use for a commercial, industrial, institutional, or
25 governmental purpose if the lot or tract is used only temporarily,
26 occasionally, or on an incidental, or insubstantial basis in relation to the
27 size and character of the lot or tract. For purposes of this section,
28 acreage in use for commercial, industrial, institutional or governmental
29 purposes shall include acreage actually occupied by buildings or other
30 man-made structures together with all areas that are reasonably
31 necessary and appurtenant to such facilities for purposes of parking,
32 storage, ingress and egress, utilities, buffering, and other ancillary
33 services and facilities; or

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

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

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

41 provided that the special categorization provided by this subdivision
42 only applies if the municipality is annexing in one proceeding the entire

1 territory of the district not already within the corporate limits of a
2 municipality; or

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

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

9 (1) Lies between the municipal boundary and an area developed for urban
10 purposes so that the area developed for urban purposes is either not
11 adjacent to the municipal boundary or cannot be served by the
12 municipality without extending services and/or water and/or sewer lines
13 through such sparsely developed area; or

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

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

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

30 (f) The area of an abolished water and sewer district shall be considered to be a
31 water and sewer district for the purpose of this section even after its abolition under G.S.
32 162A-87.2(b)."

33 Section 15. G.S. 160A-49 reads as rewritten:

34 "**§ 160A-49. Procedure for annexation.**

35 (a) Notice of Intent. – Any municipal governing board desiring to annex territory
36 under the provisions of this Part shall first pass a resolution stating the intent of the
37 municipality to consider annexation. Such resolution shall describe the boundaries of the
38 area under ~~consideration~~ consideration, fix a date for a public informational meeting, and
39 fix a date for a public hearing on the question of annexation, the annexation. The date for
40 the public informational meeting shall be not less than 45 days and not more than 55 days
41 following passage of the resolution. The date for ~~such~~ the public hearing to be not less
42 than 45-60 days and not more than 90 days following passage of the resolution.

43 (b) Notice of Public Hearing. – The notice of public hearing shall:

- 1 (1) Fix the date, hour and place of the public informational meeting and the
2 date, hour, and place of the public hearing.
- 3 (2) Describe clearly the boundaries of the area under consideration, and
4 include a legible map of the area.
- 5 (3) State that the report required in G.S. 160A-47 will be available at the
6 office of the municipal clerk at least 30 days prior to the date of the
7 public hearing-informational meeting.
- 8 (4) Include a notice of the property owners rights to request water and
9 sewer service in accordance with G.S. 160A-47.

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

39 (c) Action Prior to Hearing-Informational Meeting. – At least 30 days before the
40 date of the public hearing-informational meeting, the governing board shall approve the
41 report provided for in G.S. 160A-47, and shall make it available to the public at the office
42 of the municipal clerk. In addition, the municipality may prepare a summary of the full
43 report for public distribution. In addition, the city shall post in the office of the city clerk,

1 at least 30 days before the public hearing, ~~informational meeting,~~ a legible map of the area
2 to be annexed and a list of persons holding freehold interests in property in the area to be
3 annexed that it has identified.

4 (c1) Public Informational Meeting. – At the public informational meeting a
5 representative of the municipality shall first make an explanation of the report required in
6 G.S. 160A-47. Following such explanation, all persons resident or owning property in
7 the territory described in the notice of public hearing, and all residents of the
8 municipality, shall be given the opportunity to ask questions and receive answers
9 regarding the proposed annexation.

10 (d) Public Hearing. – At the public hearing a representative of the municipality
11 shall first make an explanation of the report required in G.S. 160A-47. Following such
12 explanation, all persons resident or owning property in the territory described in the
13 notice of public hearing, and all residents of the municipality, shall be given an
14 opportunity to be heard.

15 (e) Passage of the Annexation Ordinance. – The municipal governing board shall
16 take into consideration facts presented at the public hearing and shall have authority to
17 amend the report required by G.S. 160A-47 to make changes in the plans for serving the
18 area proposed to be annexed so long as such changes meet the requirements of G.S.
19 160A-47, provided that if the annexation report is amended to show additional
20 subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not
21 listed in the original report, the city must hold an additional public hearing on the
22 annexation not less than 30 nor more than 90 days after the date the report is amended,
23 and notice of such new hearing shall be given at the first public hearing. At any regular or
24 special meeting held no sooner than the tenth day following the public hearing and not
25 later than 90 days following such public hearing, the governing board shall have authority
26 to adopt an ordinance extending the corporate limits of the municipality to include all, or
27 such part, of the area described in the notice of public hearing which meets the
28 requirements of G.S. 160A- 48 and which the governing board has concluded should be
29 annexed. The ordinance shall:

- 30 (1) Contain specific findings showing that the area to be annexed meets the
31 requirements of G.S. 160A-48. The external boundaries of the area to be
32 annexed shall be described by metes and bounds. In showing the
33 application of G.S. 160A- 48(c) and (d) to the area, the governing board
34 may refer to boundaries set forth on a map of the area and incorporate
35 same by reference as a part of the ordinance.
- 36 (2) A statement of the intent of the municipality to provide services to the
37 area being annexed as set forth in the report required by G.S. 160A-47.
- 38 (3) A specific finding that on the effective date of annexation the
39 municipality will have funds appropriated in sufficient amount to
40 finance construction of any major trunk water mains and sewer outfalls
41 and such water and sewer lines as required in G.S. 160A-47(3)(b) found
42 necessary in the report required by G.S. 160A-47 to extend the basic
43 water and/or sewer system of the municipality into the area to be

1 annexed, or that on the effective date of annexation the municipality
2 will have authority to issue bonds in an amount sufficient to finance
3 such construction. If authority to issue such bonds must be secured from
4 the electorate of the municipality prior to the effective date of
5 annexation, then the effective date of annexation shall be no earlier than
6 the day following the statement of the successful result of the bond
7 election.

- 8 (4) Fix the effective date for annexation. The effective date of annexation
9 may be fixed for any date not less than ~~40 days~~ 70 days nor more than
10 400 days from the date of passage of the ordinance.

11 (f) Effect of Annexation Ordinance. – Except as provided in subsection (f1) of this
12 section, from From and after the effective date of the annexation ordinance, the (f) Effect
13 of Annexation Ordinance. – From and after the effective date of the annexation
14 ordinance, the territory and its citizens and property shall be subject to all debts, laws,
15 ordinances and regulations in force in such municipality and shall be entitled to the same
16 privileges and benefits as other parts of such municipality. Real and personal property in
17 the newly annexed territory on the January 1 immediately preceding the beginning of the
18 fiscal year in which the annexation becomes effective is subject to municipal taxes as
19 provided in G.S. 160A-58.10. Provided that annexed property which is a part of a
20 sanitary district, which has installed water and sewer lines, paid for by the residents of
21 said district, shall not be subject to that part of the municipal taxes levied for debt service
22 for the first five years after the effective date of annexation. If this proviso should be
23 declared by a court of competent jurisdiction to be in violation of any provision of the
24 federal or State Constitution, the same shall not affect the remaining provisions of this
25 Part. If the effective date of annexation falls between June 1 and June 30, and the
26 effective date of the privilege license tax ordinance of the annexing municipality is June
27 1, then businesses in the area to be annexed shall be liable for taxes imposed in such
28 ordinances from and after the effective date of annexation.

29 (f1) Property Subject to Present-Use Value Appraisal. – If an area described in an
30 annexation ordinance includes: agricultural land, horticultural land, or forestland that is,
31 on the effective date of annexation, being taxed at present- use value pursuant to G.S.
32 105-277.4; land that is eligible for present-use value taxation under G.S. 105-277.4, but
33 the owner has not elected to place it under present-use value taxation; or land that is
34 being used for actual production on the effective date of the annexation ordinance and is
35 eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in
36 use for actual production for the required time under G.S. 105-277.3, the annexation
37 becomes effective as to that property pursuant to this subsection.

- 38 (1) Upon the effective date of the annexation ordinance, the property is
39 considered part of the city only (i) for the purpose of establishing city
40 boundaries for additional annexations pursuant to this Article and (ii)
41 for the exercise of city authority pursuant to Article 19 of this Chapter.

- 42 (2) For all other purposes, the annexation becomes effective as to each tract
43 of such property or part thereof on the last day of the month in which

1 that tract or part thereof becomes ineligible for classification pursuant to
2 G.S. 105-227.4. Until annexation of a tract or a part of a tract becomes
3 effective pursuant to this subdivision, the tract or part of a tract is not
4 subject to taxation by the city under Article 12 of Chapter 105 nor is the
5 tract or part of a tract entitled to services provided by the city.

6 (g) Simultaneous Annexation Proceedings. – If a municipality is considering the
7 annexation of two or more areas which are all adjacent to the municipal boundary but are
8 not adjacent to one another, it may undertake simultaneous proceedings under authority
9 of this Part for the annexation of such areas.

10 (h) Remedies for Failure to Provide Services. – If, not earlier than one year from
11 the effective date of annexation, and not later than 15 months from the effective date of
12 annexation, any person owning property in the annexed territory shall believe that the
13 municipality has not followed through on its service plans adopted under the provisions
14 of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer
15 services such person may apply for a writ of mandamus under the provisions of Article
16 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior
17 court

18 (1) If the municipality has not provided the services set forth in its plan
19 submitted under the provisions of G.S. 160A-47(3)a on substantially the
20 same basis and in the same manner as such services were provided
21 within the rest of the municipality prior to the effective date of
22 annexation, and

23 (2) If at the time the writ is sought such services set forth in the plan
24 submitted under the provisions of G.S. 160A-47(3)a are still being
25 provided on substantially the same basis and in the same manner as on
26 the date of annexation of the municipality.

27 If, not earlier than 24 months from the effective date of the annexation, and not later
28 than 27 months from the effective date of the annexation, any person owning property in
29 the annexed area can show that the plans submitted under the provisions of G.S. 160A-
30 47(3)c require the construction of major trunk water mains and sewer outfall lines and if
31 construction has not been completed within two years of the effective date of the
32 annexation, relief may also be granted by the superior court by an order to the
33 municipality to complete such lines and outfalls within a certain time. Similar relief may
34 be granted by the superior court to any owner of property who made a timely request for
35 a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been
36 completed within two years from the effective date of annexation in accordance with
37 applicable city policies and through no fault of the owner, if such owner petitions for
38 such relief not earlier than 24 months following the effective date of annexation and not
39 later than 27 months following the effective date of annexation.

40 If a writ is issued, costs in the action, including a reasonable attorney's fee for such
41 aggrieved person, shall be charged to the municipality.

42 (i) No resolution of intent may be adopted under subsection (a) of this section
43 unless the city council (or planning agency created or designated under either G.S. 160A-

1 361 or the charter) has, by resolution adopted at least one year prior to adoption of the
2 resolution of intent, identified the area as being under consideration for annexation;
3 provided, adoption of such resolution of consideration shall not confer prior jurisdiction
4 over the area as to any other city. The area described under the resolution of intent may
5 comprise a smaller area than that identified by the resolution of consideration. The
6 resolution of consideration may have a metes and bounds description or a map and shall
7 remain effective for two years after adoption, and shall be filed with the city clerk. A
8 new resolution of consideration adopted before expiration of the two-year period for a
9 previously adopted resolution covering the same area shall relate back to the date of the
10 previous resolution.

11 (j) Subsection (i) of this section shall not apply to the annexation of any area if the
12 resolution of intent describing the area and the ordinance annexing the area both provide
13 that the effective date of the annexation shall be at least one year from the date of passage
14 of the annexation ordinance.

15 (k) If a valid request for extension of a water or sewer line has been made under
16 G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the
17 effective date of the annexation ordinance, the owner of the property may petition the
18 Local Government Commission for abatement of taxes to be paid to the city which have
19 not been levied as of the expiration date of the two-year period, if such petition is filed
20 not more than 60 days after the expiration of the two-year period. If the Local
21 Government Commission finds that the extension to the property was not complete by the
22 end of the two-year period, it shall enter an order directing the city not to levy any further
23 ad valorem taxes on the property until the fiscal year commencing after completion of the
24 extension. In addition, if the Local Government Commission found that the extension to
25 the property was not completed by the end of the two-year period, and if it finds that for
26 any fiscal year during the period beginning with the first day of the fiscal year in which
27 the annexation ordinance became effective and ending the last day of the fiscal year in
28 which the two-year period expired, the city made an appropriation for construction,
29 operation or maintenance of a water or sewer system (other than payments the city made
30 as a customer of the system) from the fund or funds for which ad valorem taxes are
31 levied, then the Local Government Commission shall order the city to release or refund
32 an amount of the petitioner's property taxes for that year in question in proportion to the
33 percentage of appropriations in the fund made for water and sewer services. By way of
34 illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated
35 for water or sewer construction, operation or maintenance from a fund which had total
36 expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one
37 thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00).

38 (l) If a city fails to deliver police, fire protection, solid waste or street maintenance
39 services to property in a newly annexed area within 60 days after the effective date of the
40 annexation on substantially the same basis and in the same manner as they were provided
41 to the rest of the city prior to the annexation, the owner of the property may petition the
42 Local Government Commission for abatement of taxes to be paid to the city for taxes that
43 have been levied as of the end of the 60-day period, if the petition is filed not more than

1 90 days after the expiration of the 60-day period. If the Local Government Commission
2 finds that services were not extended by the end of the 60-day period, it shall enter an
3 order directing the city not to levy any further ad valorem taxes on the property until the
4 fiscal year commencing after extension of the municipal services."

5 Section 16. G.S. 160A-49.2 reads as rewritten:

6 **"§ 160A-49.2. Assumption of debt.**

7 (a) If the city has annexed any area which is served by a rural fire department and
8 which is in an insurance district defined under G.S. 153A-233, a rural fire protection
9 district under Article 3A of Chapter 69 of the General Statutes or a fire service district
10 under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of
11 annexation if the city has not contracted with the rural fire department for fire protection,
12 or when the rural fire department ceases to provide fire protection under contract, then
13 the city shall pay annually a proportionate share of any payments due on any debt
14 (including principal and interest) relating to facilities or equipment of the rural fire
15 department, if the debt was existing at the time of adoption of the resolution of intent,
16 with the payments in the same proportion that the assessed valuation of the area of the
17 district annexed bears to the assessed valuation of the entire district on the date the
18 annexation ordinance becomes ~~effective~~ effective or another date for valuation mutually
19 agreed upon by the city and the fire department.

20 (b) The city and rural fire department shall jointly present a payment schedule to
21 the Local Government Commission for approval and no payment may be made until such
22 schedule is approved."

23 Section 17. G.S. 160A-49.3(h) reads as rewritten:

24 "(h) A firm which has given notice under subsection (a) of this section that it
25 desires to contract, and any firm that the city believes is eligible to give such notice, shall
26 make available to the city not later than ~~five~~ 10 business days following a written request
27 of the city all information in its possession or control, including but not limited to
28 operational, financial and budgetary information, necessary for the city to determine if
29 the firm qualifies for the benefits of this section and to determine the nature and scope of
30 the potential contract and/or economic loss. The firm forfeits its rights under this section
31 if it fails to make a good faith response within 10 business days following receipt of the
32 written request for information from the city, provided that the city's written request so
33 states by specific reference to this section."

34 Section 18. G.S. 160A-50 reads as rewritten:

35 **"§ 160A-50. Appeal.**

36 (a) Within ~~30 days~~ 60 days following the passage of an annexation ordinance
37 under authority of this Part, any person owning property in the annexed territory who
38 shall believe that he will suffer material injury by reason of the failure of the municipal
39 governing board to comply with the procedure set forth in this Part or to meet the
40 requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in
41 the superior court of the county in which the municipality is located seeking review of the
42 action of the governing board.

1 (b) Such petition shall explicitly state what exceptions are taken to the action of
2 the governing board and what relief the petitioner seeks. Within ~~five days~~ 10 days after
3 the petition is filed with the court, the person seeking review shall serve copies of the
4 petition by registered mail, return receipt requested, upon the municipality.

5 (c) Within 15 days after receipt of the copy of the petition for review, or within
6 such additional time as the court may allow, the municipality shall transmit to the
7 reviewing court

8 (1) A transcript of the portions of the municipal journal or minute book in
9 which the procedure for annexation has been set forth and

10 (2) A copy of the report setting forth the plans for extending services to the
11 annexed area as required in G.S. 160A-47.

12 (d) If two or more petitions for review are submitted to the court, the court may
13 consolidate all such petitions for review at a single hearing, and the municipality shall be
14 required to submit only one set of minutes and one report as required in subsection (c).

15 (e) At any time before or during the review proceeding, any petitioner or
16 petitioners may apply to the reviewing court for an order staying the operation of the
17 annexation ordinance pending the outcome of the review. The court may grant or deny
18 the stay in its discretion upon such terms as it deems proper, and it may permit
19 annexation of any part of the area described in the ordinance concerning which no
20 question for review has been raised.

21 (f) The court shall fix the date for review of annexation proceedings under this
22 Part, which review date shall preferably be within 30 days following the last day for
23 receiving petitions to the end that review shall be expeditious and without unnecessary
24 delays. The review shall be conducted by the court without a jury. The court may hear
25 oral arguments and receive written briefs, and may take evidence intended to show either

26 (1) That the statutory procedure was not followed, or

27 (2) That the provisions of G.S. 160A-47 were not met, or

28 (3) That the provisions of G.S. 160A-48 have not been met.

29 (g) The court may affirm the action of the governing board without change, or it
30 may

31 (1) Remand the ordinance to the municipal governing board for further
32 proceedings if procedural irregularities are found to have materially
33 prejudiced the substantive rights of any of the petitioners.

34 (2) Remand the ordinance to the municipal governing board for amendment
35 of the boundaries to conform to the provisions of G.S. 160A-48 if it
36 finds that the provisions of G.S. 160A-48 have not been met; provided,
37 that the court cannot remand the ordinance to the municipal governing
38 board with directions to add area to the municipality which was not
39 included in the notice of public hearing and not provided for in plans for
40 service.

41 (3) Remand the report to the municipal governing board for amendment of
42 the plans for providing services to the end that the provisions of G.S.
43 160A-47 are satisfied.

1 (4) Declare the ordinance null and void, if the court finds that the ordinance
2 cannot be corrected by remand as provided in subdivisions (1), (2), or
3 (3) of this subsection.

4 If any municipality shall fail to take action in accordance with the court's instructions
5 upon remand within three months from receipt of such instructions, the annexation
6 proceeding shall be deemed null and void.

7 (h) Any party to the review proceedings, including the municipality, may appeal to
8 the Court of Appeals from the final judgment of the superior court under rules of
9 procedure applicable in other civil cases. The superior court may, with the agreement of
10 the municipality, permit annexation to be effective with respect to any part of the area
11 concerning which no appeal is being made and which can be incorporated into the city
12 without regard to any part of the area concerning which an appeal is being made.

13 (i) If part or all of the area annexed under the terms of an annexation ordinance is
14 the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the
15 effective date of the ordinance, then the ordinance shall be deemed amended to make the
16 effective date with respect to such area the last day of the next full calendar month
17 following the date of the final judgment of the superior court or appellate division,
18 whichever is appropriate, or the date the municipal governing board completes action to
19 make the ordinance conform to the court's instructions in the event of remand. For the
20 purposes of this subsection, a denial of a petition for rehearing or for discretionary review
21 shall be treated as a final judgement.

22 (j) If a petition for review is filed under subsection (a) of this section or an appeal
23 is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the
24 time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-
25 49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year
26 for that annexation.

27 (k) The provisions of subsection (i) of this section shall apply to any judicial
28 review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g).

29 (l) In any proceeding related to an annexation ordinance appeal under this section,
30 a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing
31 in this Article shall be construed to mean that as a result of an appeal a municipality may
32 assert a claim for property tax revenue lost during the pendency of the appeal.

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

37 Section 19. G.S. 160A-54 is rewritten to read:

38 "**§ 160A-54. Population and land estimates.**

39 In determining population and degree of land subdivision for purposes of meeting the
40 requirements of G.S. 160A-48, the municipality shall use methods calculated to provide
41 reasonably accurate results. In determining whether the standards set forth in G.S. 160A-
42 48 have been met on appeal to the superior court under G.S. 160A-50, the reviewing
43 court shall accept the estimates of the ~~municipality~~ municipality unless the actual

1 population, total area, or degree of land subdivision falls below the standards in G.S.
2 160A-48:

- 3 (1) As to population, if the estimate is based on the number of dwelling
4 units in the area multiplied by the average family size in such area, or in
5 the township or townships of which such area is a part, as determined by
6 the last preceding federal decennial census; or if it is based on a new
7 enumeration carried out under reasonable rules and regulations by the
8 annexing municipality; provided, that the court shall not accept such
9 estimates if the petitioners demonstrate that such estimates are in error
10 in the amount of ten percent (10%) or more.
- 11 (2) As to total area if the estimate is based on an actual survey, or on county
12 tax maps or records, or on aerial photographs, or on some other
13 reasonably reliable map used for official purposes by a governmental
14 agency, unless the petitioners on appeal demonstrate that such estimates
15 are in error in the amount of five percent (5%) or more.
- 16 (3) As to degree of land subdivision, if the estimates are based on an actual
17 survey, or on county tax maps or records, or on aerial photographs, or
18 on some other reasonably reliable source, unless the petitioners on
19 appeal show that such estimates are in error in the amount of five
20 percent (5%) or more."

21 Section 20. This act becomes effective January 1, 1999. Sections 2 and 3 shall
22 not apply to any incorporation proposal originally presented to the Joint Legislative
23 Commission on Municipal Incorporation prior to the effective date.