

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 143
SENATE BILL 199

AN ACT TO AUTHORIZE CITIES TO ENTER INTO AGREEMENTS
CONCERNING ANNEXATIONS.

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

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

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

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

The General Assembly of North Carolina enacts:

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

"Part 6. Annexation Agreements.

"§ 160A-58.21. Purpose.

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

"§ 160A-58.22. Definitions.

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

- (1) 'Agreement' means any written agreement authorized by this Part.
- (2) 'Annexation' means any extension of a city's corporate limits as authorized by this Article, the charter of the city, or any local act applicable to the city, as such statutory authority exists now or is hereafter amended.
- (3) 'Participating city' means any city which is a party to an agreement.

"§ 160A-58.23. Annexation agreements authorized.

Two or more cities may enter into agreements in order to designate one or more areas which are not subject to annexation by one or more of the participating cities. The agreements shall be of reasonable duration, not to exceed 20 years, and shall be

approved by ordinance of the governing board and executed by the mayor of each city and spread upon its minutes.

"§ 160A-58.24. Contents of agreements; procedure.

(a) The agreement shall:

- (1) State the duration of the agreement.
- (2) Describe clearly the area or areas subject to the agreement. The boundaries of such area or areas may be established at such locations as the participating cities shall agree. Thereafter, any participating city may follow such boundaries in annexing any property, whether or not such boundaries follow roads or natural topographical features.
- (3) Specify one or more participating cities which may not annex the area or areas described in the agreement.
- (4) State the effective date of the agreement.
- (5) Require each participating city which proposes any annexation to give written notice to the other participating city or cities of the annexation at least 60 days before the adoption of any annexation ordinance; provided, however, that the agreement may provide for a waiver of this time period by the notified city.
- (6) Include any other necessary or proper matter.

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

(c) No agreement may be entered into under this Part unless each participating city has held a public hearing on the agreement prior to adopting the ordinance approving the agreement. The governing boards of the participating cities may hold a joint public hearing if desired. Notice of the public hearing or hearings shall be given as provided in G.S. 160A-31(c).

(d) Any agreement entered into under this Part may be modified or terminated by a subsequent agreement entered into by all the participating cities to that agreement. The subsequent agreement shall be approved by ordinance after a public hearing or hearings as provided in subsection (c).

(e) No agreement entered into under this Part shall be binding beyond three miles of the primary corporate limits of a participating city which is permitted to annex the area under the agreement, unless approved by the board of county commissioners with jurisdiction over the area. Provided however, that an area where the agreement is not binding because of failure of the board of county commissioners to approve it, shall become subject to the agreement if subsequent annexation brings it within three miles. The approval of a board of county commissioners shall be evidenced by a resolution adopted after a public hearing as provided in subsection (c).

(f) A participating city may terminate an annexation agreement unilaterally or withdraw itself from the agreement, by repealing the ordinance by which it approved the agreement and providing five years' written notice to the other participating cities.

Upon the expiration of the five-year period, an agreement originally involving only two cities shall terminate, and an agreement originally involving more than two cities shall terminate unless each of the other participating cities shall have adopted an ordinance reaffirming the agreement.

"§ 160A-58.25. Effect of agreement.

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

"§ 160A-58.26. Part grants no annexation authority.

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

"§ 160A-58.27. Relief.

(a) Each provision of an agreement shall be binding upon the respective parties. Not later than 30 days following the passage of an annexation ordinance concerning territory subject to an agreement, a participating city which believes that another participating city has violated this Part or the agreement may file a petition in the superior court of the county where any of the territory proposed to be annexed is located, seeking review of the action of the city alleged to have violated this Part or the agreement.

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

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

- (1) A transcript of the portions of the ordinance or minute book in which the procedure for annexation has been set forth;
- (2) A copy of resolutions, ordinances, and any other document received or approved by the respondent city's governing board as part of the annexation proceeding.

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

- (1) That the provisions of this Part were not met; or
- (2) That the provisions of the agreement were not met.

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

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

- (1) Remand to the respondent city's governing board any ordinance adopted pursuant to Parts 2 or 3 of this Article, as the same exists now or is hereafter amended, for amendment of the boundaries, or for such other action as is necessary, to conform to the provisions of this Part and the agreement.
- (2) Declare any annexation begun pursuant to any other applicable law to be void. If the respondent city shall fail to take action in accordance with the court's instructions upon remand under subdivision (d)(1) of this section within three months from receipt of such instructions, the annexation proceeding shall be void.

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

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

(i) A participating city which is prohibited from annexing into an area under a binding agreement may file a petition in the superior court where any of the territory proposed to be annexed is located, or a response in a proceeding initiated by another participating city, seeking permission to annex territory in the area notwithstanding the agreement. If the territory qualifies for annexation by the city seeking to annex it, the court may enter an order allowing the annexation to proceed with respect to all or a portion of the territory upon a finding that there is an imminent threat to public health or safety that can be remedied only by the city seeking annexation. The procedural provisions of this section shall apply to proceedings under this subsection, so far as applicable.

"§ 160A-58.28. Effect on prior local acts.

This Part does not effect Chapter 953, Session Laws of 1983, Chapter 847, Session Laws of 1985 (1986 Reg. Sess.), or Chapters 204, 233, or 1009, Session Laws of 1987, authorizing annexation agreements, but any city which is authorized to enter into agreements by one of those acts may enter into future agreements either under such act or this Part."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1989.