LEGISLATION OF INTEREST TO MUNICIPAL OFFICIALS

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Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Unaccompanied by the fanfare of publicity given to withholding taxes, higher education, and constitutional and court reform, the package of bills designed to equip North Carolina's cities and counties to meet the challenges of urban growth was enacted by the 1959 General Assembly substantially as recommended.

Acting on the recommendations of two legislative study commissions—the Municipal Government Study Commission and the Tax Study Commission—the General Assembly:

1. Adopted a new system for the periodic revaluation of real property and the uniform assessment of both real and personal property, both measures designed to strengthen the local tax base.
2. Gave almost three-fourths of the state's counties the power to control subdivisions and to zone land outside the jurisdiction of cities and towns.
3. Gave cities and towns in 86 counties the power to annex land without referenda if specified conditions are met.
4. Gave cities and towns in 90 counties the power to zone land lying up to one mile from municipal boundaries.
5. Strengthened the powers of cities and counties to employ technical planning assistance and to cooperate with one another in providing such assistance.
6. Redefined State and municipal responsibilities for urban street systems so as to encourage joint planning and joint action to meet traffic needs in urban areas.

This article is not intended to provide a comprehensive analysis of the impact that this legislation may have on the future of city government and urban development in the state. That analysis should await exercise by the cities and counties of the new powers, for the permissive character of the legislation leads only to the conclusion that the General Assembly has provided a framework within which these powers can be exercised. How well they are exercised is up to the governmental units themselves.

Discussion of this legislation and other legislation of interest to municipal officials will be found in several of the articles in this issue of *Popular Government*. The property tax legislation is discussed under "Local Property Taxes." The planning and zoning legislation is discussed under "Planning." And other legislation of interest to city officials will be found in the articles on "Public Purchasing," "Public Personnel," "Election Laws," "Law Enforcement," "Motor Vehicles and Highway Safety," "Water Resources," "Courts, Judges and Related Officials," and "Education."

TABLE 1

LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

Subject	No. of New Laws		
	1957	1959	No. of Bills Introduced but not Passed—1959
Structure and Organization			
Incorporation and Consolidation	11	15	0
Forms of City Government			
Providing for city manager	4	6	0
Changes in number and term of governing board members	21	22	2
Municipal Election Procedures	41	44	3
Pay of Governing Board Members	29	15	0
Appointment and Qualifications of Officials	8	6	0
Retirement and Civil Service	10	17	0
Charter Revisions	16	13	0
Sale of Property	40	18	1
Sub-Total	190	154	6
Municipal Finance and Fiscal Control			
Taxation and Revenue	21	14	2
Expenditures	9	6	0
Property Tax Collection	10	12	1
Special Assessment	15	7	0
Sub-Total	55	39	3
Planning, Zoning and Extension of Limits			
Planning and Zoning	22	17	0
Annexation	28	35	1
Sub-Total	50	52	1
Miscellaneous			
Streets, Traffic and Parking	4	4	0
Regulatory Powers, other	20	8	0
Police Jurisdiction	15	9	1
Local Courts	27	25	0
Sale of Wine, Beer, and Liquor	7	6	1
Other Municipal Functions	17	13	0
Miscellaneous	3	2	0
Sub-Total	93	67	2
Grand Total	388	312	12

Local legislation affecting cities and towns fell off about 20% in 1959, from a high of 388 new acts in 1957. There seems to be no particular reason for the decrease in volume, but Table 1 shows a comparison by subject matter between 1957 and 1959. Where local bills were considered to have some interest or significance, they have been touched upon in this and other articles concerning municipal legislation.

Extension of Corporate Limits

Perhaps there would have been no Municipal Government Study Commission created by the 1957 General Assembly had that body not had to settle several bitterly-fought annexation proposals, notably in Charlotte and Greensboro. As a consequence, in addition to recommendations in the areas of finance and long-range planning, the members of the Commission insisted on proposals which would permit satisfactory solution of annexation problems at the local level.

After extended study, the Commission issued a report on annexation in February, 1959, and these paragraphs summarize the Commission's basic approach:[1]

In short, the Commission rejected on the one hand the delegation of broad, general powers to cities and on the other the delegation to residents of the areas to be annexed or other agencies the right to impose a veto on reasonable annexation proposals by a city. And in so doing, the Commission came up with possibly the first comprehensive attempt to formulate specific standards defining "urban land" which should be within municipal boundaries.

Annexation by Petition.

The recommendations of the Commission were embodied in HB 506, 507, and 508. HB 507 simply rewrote GS 160-452 to clarify the procedure for annexation by petition, and was enacted without debate as Ch. 713, 1959 Session Laws. As rewritten, the section still requires the petition of 100% of the property owners in the area to be annexed, but no direct or indirect limitation on the size of the area to be annexed by this method is included. The petition procedure is set forth in the act, and just one notice of a public hearing is required instead of the four notices required under the old version.

Most important of the changes in GS 160-452 are these: (1) the governing board may fix the effective date of annexation at any time up to six months following the passage of the ordinance; (2) the word "contiguous" is defined so as to permit annexation of land which is separated from the municipal boundary by a street, creek or river, railroad right-of-way or lands owned by the municipality or some other governmental unit. In passing the ordinance the municipality is authorized to annex these "buffer" areas in order to permit annexation of the petitioners' land.

Annexation by Cities over 5,000.

The other two bills form the heart of the Commission's proposals. Two bills were introduced involving the same general procedure, but one applies to cities and towns having a population of 5,000 or more, while the other (HB 508) applies to towns having less than 5,000 population. The distinction is based on the Commission's finding in HB 506 that "new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this Section are to be attained."

Two major conditions are imposed on a municipality's power to annex. The first is that the land meet certain *standards of development.*

Standards of Development: This was a major hurdle for the Commission to cross. Other states have generally defined "urban land" by authorizing citizens to annex land which, for example, "may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole." No one but an appellate court can finally determine whether a specific proposal meets this vague and general test. As one member of the Commission remarked, "Any such approach would provide a field day for lawyers." So the Commission sought a set of specific standards which would express the intent of the General Assembly without requiring extensive judicial interpretation.

In view of the complicated formulae in the standards, many have wondered how they were developed. The simplest answer was provided by Representative H. P. Taylor in his explanation of the bills before the General Assembly: "The standards were derived from the experience of public health officials, highway, building and other engineers, developers and governmental officials working in all areas of municipal problems. They establish minimum standards of density above which we can reliably expect public health problems, demands for police and fire protection, street and drainage problems, fire and safety hazards, and traffic congestion. The standards were actually set somewhat higher than experienced officials would approve in order to protect land owners in the fringe. The idea was that if a city could be assured of being able to annex, it would not object to expanding services to

1. Municipal Government Study Commission, *Supplementary Report* (February, 1959), p. 9.
"To put it another way, in the vicinity of our growing cities all land (whatever its present use) has potential value for urban-type purposes. Land sold for residential, commercial or industrial purposes in an urban area brings a higher price than the same land in a rural area where agriculture is the highest and best use. In order to assure that land in urban areas is used effectively, such land must sooner or later receive municipal services. Rather than multiply many small and inefficient governmental units to supply these services as need arises—the pattern in many other states—we believe that the existing cities and towns should expand their service systems wherever practical. And the agency best fitted to determine the extent to which municipal facilities *can* be extended is the municipal governing board.

But the General Assembly should not delegate unlimited power to these governing boards. Exercise of discretion to extend corporate boundaries must and should be subject to general standards or limitations imposed by the General Assembly. And we think that the primary standards should be these: (1) that the land to be annexed is either developed for urban purposes or is reasonably expected to be so developed in the near future and (2) that the city give satisfactory assurances that services will be provided and made available to all the land annexed within specified periods following the effective date of annexation."

fringe areas prior to those areas reaching the standards of density set forth in this act."

In considering the standards themselves, it is important to note that there are three general standards which apply in all cases. That is, the entire area must be adjacent or contiguous to the city boundary, no part of the area to be annexed can be included within the boundary of another incorporated municipality, and at least one-eighth of the aggregate external boundaries of the area must coincide with the existing municipal boundary. The last provision is intended to discourage strip annexation for long distances along a highway.

In determining the applicability of the remaining standards, it is helpful to keep in mind the physical pattern of development outside North Carolina cities. Typically, new development grows up on either side of highways leading from the city. New subdivisions grow up on undeveloped land adjacent to streets and highways. Soon development stretches out along streets connecting radial highways, and the developing street system soon features congested development running along the streets and surrounding sometimes large areas of undeveloped land in the "hole" of the street "doughnut." Thus there may be large areas of undeveloped land lying between the city and areas needing or wanting services. And there may be large areas of undeveloped land waiting for streets and utility lines before the owners are ready to develop.

Under Ch. 1009 (HB 506), any part of an area to be annexed to a city having a population of more than 5,000 must meet one of the following five additional standards. Any one of them may apply to the entire area, or each of the five may be called into play in determining the total acreage to be annexed. A city can annex

One. An area having a total resident population equal to at least two persons for each acre of land included within its boundaries. Specific population density in a subdivision featuring one-half acre to acre lots will be higher than two persons per acre, but once land used for streets, recreational facilities, churches, schools, and commercial areas is included, the average density will drop. This standard will be particularly helpful in considering apartment projects where the land has not been subdivided so as to be included under Standard Two.

Two. An area having a total resident population equal to at least one person per acre and subdivided into lots and tracts such that (1) at least 60% of the total acreage consists of lots and tracts five acres or less in size and (2) that at least 60% of the total number of lots and tracts are one acre or less in size. A typical subdivision may not be completely developed but so subdivided that the individual parcels, either presently or in the near future, cannot be assured of satisfactory sanitation without public water and sewer supplies. The standard is so drawn that large undeveloped areas cannot be pulled in. For example, in a 100-acre tract, no one piece of land could be larger than 40 acres in size, and once provision is made for streets (typically 15 to 20% of land area), no single lot in the 100-acre tract could be larger than 20 to 25 acres. And the population requirement in practice would require that about thirty homes be constructed in any 100-acre subdivision before annexation would be possible.

Three. An area developed so that at least 60% of the lots and tracts in the area are used for residential, commercial, industrial, institutional or governmental purposes, and so subdivided that at least 60% of the total acreage exclusive of the acreage in use for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts five acres or less in size. Many developed areas outside cities do not fit into simple classifications by use. The intent of this section is to permit a city to annex an area conaining predominantly commercial or industrial areas, or an area where residential development is mixed with commercial and/or industrial uses.

Four. Areas which meet Standards One through Three are defined as areas being used for "urban purposes." As pointed out above, annexation of such areas may leave the "hole in the doughnut," the undeveloped areas surrounded by land which meets the urban definition in Standards One through Three. Cities of 5,000 population or more are authorized *to annex undeveloped land which lies between the municipal boundary and an area meeting the definition in Standards One through Three so that such an "urban area" is either not adjacent to the municipal boundary or cannot be served by the municipality without extension of services and/or water and/or sewer lines through the undeveloped areas.* This statutory language definitely permits "bridges" of undeveloped land to be annexed, but it leaves open for interpretation in particular cases the extent of such "bridges".

Five. Cities are also authorized to annex land not meeting the definition in Standards One through Three if such land is adjacent, on at least 60% of its external boundary, to any combination of the existing municipal boundary and the boundary of an area or areas meeting the definition in Standards One through Three.

In effect, Standards Four and Five are designed to permit cities to annex land which is in the general urban community and is developed for urban purposes where, in order to establish physical connection with such land, annexation of undeveloped or sparsely developed land must be permitted.

General Comment: These are new definitions, new formulae, and although they have been critically examined and approved in principle by city planners, city engineers, city managers and developers in key cities throughout North Carolina, they must still stand the test of application. It may be that they need additional clarification on the basis of experience, but tentative application indicates that they will permit cities to annex those areas which are so developed that they do need services and should be within the city boundary. They do not permit annexation of undeveloped land *beyond* existing urban areas but which are ripe for development at the present time. On the other hand, the standards insure to cities that this land ripe for development may be annexed following development, and to this extent cities may now plan to extend water and sewer service to newly-developing areas without the fear that once having secured such services, newly-developed areas will resist annexation.

The standards require cities to do a great deal of preliminary work in determining acreage of land involved, degree of subdivision, and population. The statute provides some useful shortcuts in determining population and acreage, but under any circumstances much work is involved in determining the degree of land subdivision. This requirement, if the act is extensively used, should encourage better mapping in the vicinity of all cities and towns in the population class of 5,000 or more.

Some of the standards will inevitably be subjected to

judicial interpretation such as the size of the undeveloped "land bridges" which are permitted under the statute. On the whole, however, no state legislature has more completely attempted to define "urban land" and it will be interesting to see if these standards are practical in operation.

Ability to Serve: One of the chief obstacles to successful annexation in most cities has been the fear on the part of the landowner in the fringe area that services would not be provided commensurate with his added tax obligation. Most services are not provided by cities on a "benefit" basis, although streets and utility improvements commonly are, and the Commission was of the opinion that a city wishing to annex should demonstrate its ability and willingness to provide essential services as a condition to annexation.

Before annexation, a municipality is required under Ch. 1009 to make a thorough study and to prepare a report setting forth the following information:

1. A map showing the present and proposed boundaries, the location of present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, and the general land use pattern in the areas to be annexed.

2. A statement showing that the area to be annexed meets the development standards set forth in the act.

3. A statement setting forth the plans of the city for extending to the area to be annexed each major municipal service performed within the city at the time of annexation, and specifically, plans for

a. The extension of police and fire protection, garbage collection, and street maintenance services on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. These plans are not required to call for fire protection of the same quality if water lines are presently not available in the area to be annexed, but the city is to provide "reasonably effective" protection until such lines are available.

b. The extension of major trunk water mains and sewer outfall lines into the area to be annexed so that after construction property owners in the area will be able to tap onto such lines according to the extension policies of the municipality in effect on the date of annexation. In other words, the municipality is not to be obligated to construct lines to the property line but merely to extend lines into the area so that properties can be connected in the same way that they already are connected in the city. For example, some cities extend all lateral lines at city expense, but other cities require the property owners to pay part or all of the cost of the laterals.

c. The timing of construction of the major trunk water mains and sewer outfall lines. The statute requires that the plans must provide for the letting of contracts within 12 months following the effective date of annexation. Since the effective date of annexation may be up to 12 months following the date of passage of the ordinance, the municipality may have up to 24 months from the passage of the ordinance to let the contracts for this construction. And this delay may be a valuable factor in financing the construction.

d. Financing all extensions of services in the area to be annexed.

The Annexation Procedure: The Commission adopted the point of view that the extension of corporate limits should be determined by legislative standards and should not be subject to a vote of the people in the area to be annexed, or to any sort of isolated political decision. At the same time the Commission recognized the necessity for a procedure that would, insofar as possible, protect the rights of owners of land annexed to the city.

The positive requirements for a detailed study and report of services to be provided are one feature of the procedure. Following passage of a resolution of intent to consider annexation and the fixing of a date for a public hearing not less than 30 days nor more than 60 days following passage of the resolution, the governing board must give wide public notice of the public hearing and, at least 14 days before the date of the hearing, approve the report of services described above and make it available to the public in the office of the municipal clerk. Furthermore, the municipality is authorized to prepare a summary of the full report for public distribution.

At the public hearing, following explanation of the report, any interested person may be heard. Then, the governing board must take action no earlier than seven days after the hearing and no later than 60 days following the hearing, and it may amend the plan for services or the description of the area to be annexed in any way that seems advisable on the basis of the evidence.

Insofar as passage of the ordinance is concerned, two points are worthy of note. First, in the ordinance itself the board must find that on the effective date of annexation the municipality will have funds appropriated in sufficient amounts to finance construction of any major trunk water mains and sewer outfalls found necessary in the report setting forth services to be provided; or, in the alternative, find that on the effective date of anexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction.

Secondly, the board is given the authority to fix the effective date of annexation up to twelve months from the date of passage of the ordinance, and if authority to issue bonds for financing water and sewer construction must be secured from the voters, then the effective date of annexation can be no later than the day following the statement of the successful result of the bond election.

Appeal Procedure: Property owners in the area to be annexed have two methods to insure their own protection. First at any time within 30 days following passage of the ordinance, any property owner in the territory to be annexed may appeal to the Superior Court to review the annexation proceedings and determine whether the statutory requirements were in fact met. The statute provides for a speedy hearing and requires the court to remand the case to the municipal governing board (1) for the correction of procedural irregularities which may have materially prejudiced the substantive rights of any petitioner, or (2) for amendment of the boundaries if land which does not meet the statutory standards has been included, or (3) for amendment of the plan of services to be provided if the statutory requirements have not been met.

In the alternative, any property owner may, not sooner than one year following the effective date of annexation and not later than fifteen months from such date, apply

for a writ of mandamus to require the municipality to provide services which it has promised in its plan of services but which have not been provided.

Of course there may be an appeal from the Superior Court to the Supreme Court.

It will be said that the appeal procedure is calculated to slow up annexation proceedings. Certainly the statutes require more of the city than that the city merely have exercised "reasonable discretion." And certainly there are same areas where court interpretation of statutory language will be required. And certain it is that the act will be tested in court. On the other hand, if cities follow the statutory intent for a careful study of annexation, and if they follow through on the provision of services, a city should have no more to fear from court review than under today's conditions where a property owner may appeal to the court for a review of the reasonableness of the city's action.

Annexation by Towns Under 5,000: The procedure for municipalities having a population of 5,000 or less differs from the procedure for larger cities in that the declaration of policy states that new urban development in and around such municipalities "tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for large municipalities and still attain the objectives of the legislation."

The significant difference is found in the definition of urban land. The sole standard for small municipalities. other than the three general standards applying to the entire area to be annexed, is Standard Three. In the opinion of officials from smaller towns, this standard will be sufficient for the needs of smaller towns, involve less preparation in defining land to be annexed, and be easier to administer and to understand.

Local Legislation

Despite the publicity given these general laws, or perhaps because of a desire to accomplish annexation easily prior to the 1960 census, many cities and towns asked for and received annexation by legislative act. Annexations in 25 cities and towns were accomplished by legislative act, the largest in terms of area and population being High Point where just short of 20 square miles were annexed. In addition, a major annexation was approved for Asheville pending approval of the voters. All in all, 35 bills dealing with local annexation problems were passed.

Highway Legislation

Although the Municipal Government Study Commission generally concluded that the municipal tax base was sufficient to meet the demands of urban growth, if the property tax system were strengthened, it was concerned over the tremendous expenditures necessary to bring the urban highway system up to necessary standards.

The recommendations of the Commission, designed to make State-municipal partnership more effective in the planning and construction of urban streets, are embodied in Ch. 687 (HB 699). That bill accomplishes several objectives.

1. It more clearly defines, and to some extent expands, the jurisdiction of the State Highway Commission within municipalities. The State Highway System inside municipalities hereafter shall consist of "a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities." Heretofore, the types of streets to come under the State system were left to the sole discretion of the Highway Commission.

2. The Highway Commission shall be responsible for the construction and maintenance of such streets, but because such streets (although of primary benefit to the State in developing a state-wide coordinated system of primary and secondary streets and highways) also have varying degrees of benefit to the municipalities, the act directs that the respective responsibilities of the Highway Commission and the municipalities for the acquisition and cost of rights-of-way for State street improvement projects within corporate limits shall be determined by mutual agreement between the Commission and each municipality.

3. Each municipality, in cooperation with and perhaps with financial or technical assistance from the State Highway Commission, is directed to develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality. Such plans are not to be based simply on present conditions but are to take into consideration prospects for economic and population growth in the community, and patterns of land development in and around the city. The plan is to provide not only for highways as such but for all methods of traffic control.

4. Following completion of the plan, the municipality and the Commission are to adopt the plan as the basis for future street and highway improvements in and around the city. And at the time of adoption, agreement is to be reached as to which of the existing and *proposed* streets and highways shall be a part of the State Highway System. From and after adoption, those streets and highways designated as State responsibility are to become part of the State Highway System. Provision is made for amendments to the plan.

5. With respect to any street improvement project on the State Highway System in and around a municipality, the Highway Commission and the municipal governing body are directed to reach agreement on their respective responsibilities for the acquisition and cost of rights-of-way for such project, taking into consideration the relative importance of the project to a coordinated state-wide system of highways, the relative benefit to the municipality, and the degree to which acquisition cost can be reduced or minimized by action by the municipality and/or the Highway Commission to acquire such rights-of-way well in advance of construction.

Since the requirement that every municipality pay at least 20% of the cost of acquiring right of way for any State Highway System project inside the municipality has been removed, those municipalities which had expressed resentment over heavy right-of-way bills for improvements deemed of no benefit to the municipality will henceforth be protected. They pay only if they agree in advance. On the other hand, the municipality which puts its head in the sand and agrees to pay nothing, whether or not the improvement has benefit to the municipality will probably find that few improvements will be made on system streets within its borders.