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spotlight

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Meaningful Annexation Reform

Getting through the smoke and mirrors

KEY FACTS: **• The House passed an annexation bill (HB 524) that not only fails to provide real reform, but also makes forced annexation an even greater problem for the 4.1 million North Carolina citizens living in unincorporated areas.**

• Under forced annexation, municipalities may unilaterally force individuals to live in municipalities.

• Meaningful annexation reform would give affected property owners a real voice in the annexation process and provide them at least one necessary service. Giving them a real voice would mean holding a simple majority vote by the affected property owners or, at the very least, county approval of city-initiated annexations.

• Municipalities should not be able to forcibly annex an area that doesn't need any services. The entire purpose of forced annexation is to provide services to annexed property owners that give them a significant benefit.

• Municipalities should be required to pay for the costs of water and sewer infrastructure to annexed properties. Currently, forcibly annexed property owners are also forced to pay for those infrastructure costs.

• HB 524 fails to address those meaningful reforms. Worse, it would allow municipalities to duplicate existing services in an area.

• Under HB 524, affected property owners would no longer have a choice about whether to incur or defer massive costs for water and sewer infrastructure and service; they would be required to pay for those services immediately.

• Also, under HB 524 it would be easy for municipalities to avoid the requirement to provide sewer lines to property owners.

• Unlike HB 524, a Senate annexation reform bill, SB 494, would include a vote, county approval, and necessary services.

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Last year, the North Carolina General Assembly failed to pass meaningful annexation reform. While public opposition to forced annexation has reached new heights, the legislature continued to ignore the calls for reform.

The House did pass an annexation bill (HB 524)[1] that some legislators have tried to characterize as reform.[2] That bill not only fails to provide real reform, however, but it also makes forced annexation an even greater problem for the 4.1 million North Carolina citizens who live in unincorporated areas.[3]

This *Spotlight* discusses the criteria essential to meaningful annexation reform. It then analyzes HB 524 and explains the problems with the bill.

Background

Forced annexation is a process that allows municipalities to unilaterally force individuals to live in municipalities. The general opposition to the existing annexation law is not against all types of annexation, but to *forced* annexation.

The primary proponent of forced annexation, the North Carolina League of Municipalities ("League"), regularly misleads the public about annexation. For example, the League equates forced annexation with *city-initiated* annexations.[4] That equation is inaccurate and makes it sound as if a municipality could never annex an area on its own initiative.

As can be seen in Figure 1, forced annexation is a type of city-initiated annexation. A city can initiate annexations without forcing people to be annexed. In fact, 39 states have city-initiated annexations, including states that allow voting by annexed property owners.[5]

Figure 1: Three Types of Annexation in NC

1. City-Initiated Annexation	A municipality initiates annexation, but it does not have to be a *forced* annexation; it could be contingent upon a majority of affected property owners voting in favor of the annexation, either directly by referendum or indirectly through a vote of county commissioners.
— *Forced Annexation*	A municipality unilaterally forces affected property owners to live within the municipality.
— *Annexation By Consent*	A municipality initiates annexation, but affected property owners must vote directly or indirectly in favor of it; i.e., the property owners must have a real voice in the annexation process. *Note: North Carolina currently does not have this kind of city-initiated annexation.*
2. Voluntary Annexation	Property owners petition a municipality to be annexed into the municipality. This type of annexation could be thought of as property owner-initiated annexations.
— *Satellite Annexation*	A voluntary annexation in which property owners not located contiguous to a municipality seek to be annexed into the municipality.
3. Legislative Annexation	Annexation passed by the legislature.

Meaningful Annexation Reform

Meaningful annexation reform is actually very simple and can be boiled down to the following: *Annexed property owners should have a real voice in the annexation process and they should be provided at least one necessary service.*

Real Voice

A municipality forcibly annexing property owners has no relationship with those property owners. The annexed property owners did not vote for the municipal officials nor had they chosen to live within the municipality.

As a result, they have given no consent to be governed by the municipality. That lack of consent is the critical flaw with forced annexation and is the issue that rightfully generates the most anger from annexation victims. It is no different from a city like Raleigh annexing people living in Cary. Property owners living in Cary have not consented to be governed by Raleigh.

Unless there is a real voice provided to annexed property owners so that they can have a say in whether they are annexed, forced annexation will remain a serious and embarrassing problem in North Carolina. There are two options that would provide a real voice:

1) Majority Vote. Ideally, North Carolina would allow property owners to have a simple majority vote on whether to be annexed. Two-thirds (67 percent)[6] of the states that have annexation (42 states)[7] allow the property owners to vote on city-initiated annexations.

2) County Approval. Voting by affected property owners is not the only way to give them a voice in the annexation process. Another option, albeit less desirable, is to have county commissioners approve annexations initiated by municipalities. At least in this process, affected property owners would have a representative voice regarding the annexation. About half of the states that have annexation allow counties to approve annexations.[8]

State Representation Is Not a Real Voice

Some forced annexation proponents argue that affected property owners do have representation through the state legislature. That argument is disingenuous at best. It is akin to saying that the state legislature should prohibit city residents from selecting city council members at the polls because the legislature represents the city residents. If the unelected city council decided to raise taxes or impose severe restrictions on affected residents, then under this "representation" argument it would be acceptable since the city residents have representation through the state legislature.

Further, the legislature represents citizens on the annexation law in general, not on specific annexations, except in the rare case of a legislative annexation. At present, affected property owners have no voice with a governmental body making a decision to annex an area.

Necessary Services

Forced annexation victims rightfully point out that municipalities annex them without providing them a single service that they need. That omission is one of the biggest problems with North Carolina's annexation law, and an issue that the North Carolina Supreme Court addressed in 2006.

In a case called *Nolan v. Village of Marvin*,[9] the Court conducted an extensive review of the annexation statutes and legislative reports on annexation. The Court found:

> The primary purpose of involuntary annexation, as regulated by these statutes, is to promote "sound urban development" through the organized extension of municipal services to fringe

> geographical areas. These services must provide a *meaningful benefit* to newly annexed property owners and residents, who are now municipal taxpayers, and must also be extended in a nondiscriminatory fashion.[10] (Emphasis added.)

The underlying issue therefore is whether a municipality can provide a service that offers property owners a meaningful benefit. Two questions should guide this analysis.

1) Does an area need a service? If an area does not need a service, then the service provided could not be meaningful. To establish whether an area would be in need of a service, a municipality would need to show that a current service in the area was clearly inadequate and could not be fixed without municipal assistance. For areas without water and sewer but with wells and septic, the municipality would need to show that the wells and septic systems were failing and could not be fixed without municipal assistance.

Municipalities frequently try to duplicate services.[11] If a municipality provides one extra police officer to an area with excellent police protection, it has done nothing meaningful nor necessary concerning law enforcement, at least not from any common-sense perspective.

2) What types of services should be covered? The pro–forced annexation supplemental report to the legislature's 1958 annexation study explained that water, sewer, and fire were the primary services of concern: "And unquestionably without a high quality of water and sewer service and fire protection, other municipal services have relatively little attraction."[12]

In other words, the services that were considered to be meaningful were only water, sewer, and fire. One could be generous and say the services should include water and sewer, police, fire, and waste collection.

Only after answering those two questions, if an area is found to be in *genuine need* of just one of those services, then a municipality should be able to move forward with its annexation if it can provide the service.

Municipalities Should Pay for Water and Sewer Infrastructure

Municipalities using forced annexation not only force property owners into the municipalities, but they also force them to pay for the water and sewer infrastructure. That adds insult to injury—forcing property owners who neither wanted nor needed water and sewer not only to take it, but also to pay for its infrastructure (and water and sewer infrastructure often costs more than $10,000).[13]

Allowing municipalities to force property owners affected by annexation to pay for that infrastructure is a sterling example of how the legislature has completely ignored and disregarded the well-being of forced annexation victims in favor of the interests of local politicians. The legislature should require municipalities to pay for water and sewer infrastructure. While that reform is not as important giving affected property owners a voice in the process or ensuring they receive necessary services, it would make a legitimate difference to those communities being provided water and sewer by a municipality.

If a municipality initiates an annexation (i.e., city-initiated annexation), it should be required to pay for water and sewer infrastructure. If a property owner initiates an annexation (i.e., voluntary annexations), then he should have to pay for water and sewer infrastructure.

Figure 2. Meaningful Annexation Reforms Addressed in the Annexation Bill HB 524

Reform	***In HB 524?***
Majority Vote	No
County Approval	No
Necessary Services	No
Water and Sewer Infrastructure Costs Paid by Municipalities	No

Analysis of HB 524

In the 2009 session, the House did pass an annexation bill, HB 524.[14] That bill failed, however, to address *any* of

the meaningful reforms. Annexation victims are still not provided a voice in the process, and municipalities are still not required to provide any necessary services (see Figure 2 for a summary).

HB 524 addresses insignificant issues (such as better notice about being annexed[15]) to make it look like something significant is being done. It does everything but get to the underlying issues. It uses smoke and mirrors to give the impression that real reform is being made.

HB 524's "Vote" Provision

Step 1: Getting the Signatures

To secure a vote, property owners in the affected area must acquire the signatures of 15 percent of the registered voters in the annexed area and the *municipality*.[16] They would have a little over a year to do this. Figures 3 shows the signatures needed in two examples.

Figure 3. Signatures Needed to Secure a Vote on Annexation under HB 524

(To annex an area of 1,000 voters in Raleigh or Goldsboro)

	Raleigh	Goldsboro
*Signatures Needed**	38,207[17]	3,454[18]

*These figures are based on 15 percent of the registered voters in the annexing city and area to be annexed. They do not include the extra signatures that would be needed to make up for rejected signatures.

For a large city like Raleigh, securing that many signatures would be impossible, and even for a much smaller municipality like Goldsboro it still would be highly unlikely. Making it more difficult is the fact that municipal residents would have little or no incentive to sign the petition—after all, they would likely be told that the annexation would increase the municipality's tax base so that they could avoid an increase in property taxes.

Step Two: The "Vote"

If by some chance the signatures were acquired, the municipal residents would vote along with the affected property owners.[19] Since there would be far more municipal voters than voters in the affected area, for all practical purposes, the voice that would be heard at the polls would belong to municipal residents not the annexation victims.

In other words, instead of a city council deciding whether to annex an area, the city residents would make that decision. Moreover, under HB 524, such a vote generally could take place only during general elections to ensure a higher municipal voter turnout.[20]

Annexation victims would be forced to try to convince city residents not to annex them, a difficult task in its own right, but one that would be extremely difficult considering that the municipality would have powerful special interests on its side. As the North Carolina League of Municipalities wrote in an action alert email:

> …this divisive referendum requirement [vote provision in HB 524] would force municipal officials to beg the chamber of commerce or other groups to contribute private funds and run educational campaigns urging voters to approve proposed annexations.[21]

The alert provides a preview of what would happen if there were voting under this proposed system. It also poses the ethical question as to whether municipalities should be begging private groups to lobby on their behalf.

HB 524's Services Provisions

HB 524 does the exact opposite of what forced annexation reformers requested regarding services. Municipalities, under HB 524, would be able to annex an area without providing the area with even one necessary service.

Under current law, there is a possibility that the North Carolina Supreme Court would clarify that municipalities could no longer duplicate services or provide services not needed by an annexed area.

HB 524 would deflect that risk by preempting the Court from protecting property owners. *The bill would expressly allow for the duplication of services.*

"Meaningful Services" Requirements Under HB 524

1) Under HB 524, a municipality must be able to provide two of the following services to its own residents: police, fire, solid waste, street maintenance, water, and sewer.[22] It does not matter if the annexed area already has the service so long as a municipality is providing, for example, solid waste and street maintenance services to its own residents.

2) The service does not have to be provided to municipal residents by the municipality—it can be contracted out to them.[23] A municipality could contract out a service for the affected area even if the area does not need the service, or the area could contract out the same service.

3) For a municipality that would be providing police protection to an annexed area, the municipality only needs to provide a "higher level of service."[24] This means just *one* extra police officer to an area that already has excellent police protection.[25] The police officer could even be contracted out with the county.[26]

One of the most important annexation reforms would be to prohibit duplication of services and instead to ensure necessary services. HB 524 ignores the need for that reform and, in fact, helps ensure that municipalities are able to annex areas without providing a necessary service. This flaw by itself makes HB 524 worse than existing law.

Water and Sewer Within Three Years

HB 524 does, on its face, require municipalities to provide water and sewer services within three years[27]—a change that may seem significant. It does not, however, address any of the major flaws of the existing law. This change might limit the size of annexations, although that is unlikely.

1) No Sewer Requirement at All. Under existing law, when municipalities are required to provide water and sewer to property owners, the only way they could avoid the sewer requirement would be if the "installation of sewer is not economically feasible *due to the unique topography of the area*."[28] (Emphasis added.) In that case, they must "provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated."[29]

Under HB 524, when municipalities are required to provide water and sewer to property owners, they may get out of the sewer requirement for *any* fiscal reason (i.e., the reason is no longer connected to the topography).[30] They must "provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated."[31]

A municipality can easily skirt the three-year requirement to provide sewer service—it needs only to claim it does not have the money for it. If a *municipality* decides that providing the sewer is not fiscally feasible for any reason, then it does not have to provide it for many years (until "properties similarly situated" receive sewer service, whatever this vague language means).

2) Property Owners Have to Pay Immediately. Under existing law, annexed property owners have some ability to delay paying for water and sewer infrastructure and service.[32] They do not have to request water and sewer to their properties—if they do make the request, municipalities are required to run the water and sewer lines within two years (not three).[33] It is true that even property owners who do not request water and sewer would eventually have to pay for water and sewer—for example, property owners could be forced to pay for the "availability" of water and sewer lines near their properties.[34]

Under HB 524, however, property owners would have to pay for water and sewer no matter what—their choice would be removed. Under existing law, property owners who could have delayed significant costs would now have to incur them immediately,[35] although HB 524 does allow for a 20-year payment plan.[36]

Conclusion

Since the House passed HB 524, it now is the Senate's turn to consider annexation reform. In the upcoming short session, the Senate should ignore HB 524 and consider SB 494 instead. The Senate bill on annexation reform includes a vote, county approval, and necessary services.[37] While not a perfect bill, SB 494 does address most of the meaningful reforms discussed in this paper.

Supporters of HB 524 claim that it is a "start" or a positive, incremental step in the right direction. When a bill does not address a single meaningful reform but would actually makes the annexation statute worse, it would not constitute a "start" to anything but more annexation abuse.

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End Notes

1. North Carolina House Bill 524 (2009), *http://www.ncga.state.nc.us/Sessions/2009/Bills/House/HTML/H524v5.html*.
2. See, e.g., Benjamin Niolet, "Annexation bill pleases no one," *The News and Observer* (Raleigh), July 23, 2009, *http://www.newsobserver.com/2009/07/23/92392/annexation-bill-pleases-no-one.html*.
3. The 2007 data come from the North Carolina Office of State Budget and Management, *http://www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/demog/ctotm07.htm*.
4. See, e.g., "Annexation Q & A," North Carolina League of Municipalities, *http://www.nclm.org/documents/annexationqa.pdf*.
5. Steinbauer et al., "An Assessment of Municipal Annexation in Georgia and the United States: A Search for Policy Guidance," Carl Vinson Institute of Government, University of Georgia, August 2002, *http://www.cviog.uga.edu/publications/pprs/53.pdf*; see also Rex Facer, "Annexation Activity and State Law in the United States," *Urban Affairs Review*, Vol. 41, No. 5, May 2006, *http://www.uar.sagepub.com/cgi/content/abstract/41/5/697*.
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*; 48 percent of the states that have annexation have county approval.
9. *Nolan v. Village of Marvin*, 360 N.C. 256; 624 S.E.2d 305 (2006), *http://www.aoc.state.nc.us/www/public/sc/opinions/2006/488-05-1.htm*.
10. *Ibid.*
11. As just one example, Pinehurst is annexing a community called Pinewild. The community of Pinewild has every meaningful service that Pinehurst could possibly provide, and even has its own water and sewer lines. See *http://www.sttop.us/factsqa.html*.
12. "Report of the Municipal Government Study Commission, Supplementary Report" North Carolina General Assembly, February 26, 1959, *www.sog.unc.edu/programs/annexation/docs/mgsc-supplemental%20report.pdf*.
13. Town of Cary, Comprehensive Annexation Plan, Adopted March 9, 2006. These numbers likely do not reflect the true costs to property owners as there have been many reports by property owners of having to pay more than $20,000 for the full costs of water and sewer infrastructure. These data also do not include costs such as connecting lines from a house to the public water and sewer system, connection fees, or the cost of abandoning wells and septic systems.
14. *Op. cit.*, note 1.
15. *Ibid.* at Section 10 of HB 524 amending § 160A-49(b). This is the section for municipalities with populations of 10,000 or more people. There also is a comparable section for municipalities with less than 10,000 people.
16. *Ibid.* at Section 13.(b) adding § 160A-58.11.
17. Wake County Statistics Report, Bert Database Current as of February 26, 2010, Wake County Board of Elections, *http://msweb03.co.wake.nc.us/bordelec/downloads/7stats/7statslist/muni.pdf*. There are 253,716 registered voters in Raleigh.

18. Phone conversation with Wayne County Board of Elections, data search made and data provided during conversation, March 10, 2010. There are 22,028 registered voters in Goldsboro.
19. *Op. cit.*, note 16.
20. *Ibid.* Please note, however, "If the municipality's next general election is to be held more than two years from the determination regarding a sufficient petition and the municipality does not abandon the proposed involuntary annexation, the resolution setting the date for the referendum shall make that date coincide with the next countywide general election."

    Most members of municipal governing boards serve either two-year terms or four-year staggered terms where the voting is "at large" or "district at large"—in other words, every two years, most municipalities will have general elections for governing board members. See this UNC School of Government web page summarizing the methods of election in North Carolina, *http://www.sog.unc.edu/pubs/FOG/view_summary.php*.
21. Email from Julie Timm, Chair, North Carolina Chapter of the American Planning Association (NCAPA), Legislative Committee, to the UNC School of Government NCPlan listserve highlighting a North Carolina League of Municipalities (NCLM) action alert from Gerald Jones, President, NCLM, July 7, 2009.
22. *Op. cit.*, note 1, Section 7.(b) amending § 160A-46 and also Section 12.(b) adding § 160A-53(3). There also is a comparable section for municipalities with less than 10,000 people.
23. *Ibid.* at Section 7.(b) amending § 160A-46. There also is a comparable section for municipalities with fewer than 10,000 people.
24. *Ibid.*
25. *Ibid.*
26. *Ibid.*
27. *Op. cit.*, note 1, Section 8, amending § 160A-47(3)(c). There also is a comparable section for municipalities with fewer than 10,000 people.
28. N.C. Gen. Stat. § 160A-47(3)(b).
29. *Ibid.*
30. *Op. cit.*, note 1, Section 8, amending § 160A-47(3)(b). There also is a comparable section for municipalities with fewer than 10,000 people.
31. *Ibid.*
32. *Op. cit.*, note 28.
33. N.C. Gen. Stat. § 160A-47(3)(c).
34. See, e.g., this Greensboro web page: "You will need to contact a licensed plumber to connect the lateral line from your property line to your home," *http://www.greensboro-nc.gov/residents/annexation/services/water.htm*; see also "Annexation: Methods, Purposes, Services, Costs," City of Raleigh, revised July 7, 2008. This document states that "When utilities are made available to an annexed property, the assessment fees must be paid regardless of whether the property owner connects to the service."
35. It is unclear whether affected property owners would be required to pay for sewer lines right away if a municipality could not extend the sewer lines within three years because it was not fiscally feasible. However, even if those property owners did not have to pay immediately in that situation, they would not be getting the sewer lines within three years.
36. *Op. cit.*, note 1, Section 15 amending § 160A-232.
37. North Carolina Senate Bill 494 (2009), *http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/HTML/S494v1.html*.