

# spotlight

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## A BLUEPRINT FOR ANNEXATION REFORM

**KEY FACTS:** Real reform of the state's regressive annexation law does not mean getting rid of annexation generally or even city-initiated annexation. However, it should mean getting rid of the practice of forced annexation that allows municipalities to unilaterally force individuals in unincorporated areas to live within the municipalities.

While many changes should be made to the law, there are four major reforms that are critical:

**1) Meaningful Services.** *Municipalities should only be permitted to annex areas if they are going to provide meaningful and significant services to annexation victims. The North Carolina Supreme Court in a recent case clarified that the purpose of the annexation law was to promote sound urban growth through providing meaningful services to property owners.*

*A municipality should not be allowed to duplicate existing services already in an area or provide additional services (such as more police protection) when existing services are adequate. As a matter of common sense, these services would not be meaningful or significant to property owners.*

**2) Costs and Burden.** *Municipalities should be required to pay for the costs associated with the provisions of services, not the victims. Throughout the whole process, the burden of proof should be on municipalities to establish that a proposed annexation is legally permissible and appropriate.*

**3) Meaningful Oversight.** *There needs to be some meaningful oversight over municipalities during the annexation process. The county commissioners should perform this role and review each annexation proposal. If the commissioners agree that the annexation is appropriate, then they would certify it for a vote.*

**4) Vote.** *There should be a simple majority vote of the affected property owners for or against the annexation proposal.*

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**t**he Joint Legislative Study Commission on Municipal Annexation has an opportunity to recommend real reform to the state's regressive annexation law. The state does not need to get rid of annexation in general or city-initiated annexation, but it does need to end the practice of annexation.

For clarification purposes, *forced annexation* refers to a type of city-initi-

200 W. Morgan, #200  
Raleigh, NC 27601  
phone: 919-828-3876  
fax: 919-821-5117  
www.johnlocke.org

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ated annexation whereby a municipality can unilaterally force individuals in unincorporated areas to live within the municipality. In forced annexation, the affected property owners have no direct or representative voice in the annexation process at all.

Past commissions have tinkered with the annexation law, but in no way did they address the major problems. All previous “efforts” at reform have led to the current environment where opposition to the state’s outdated annexation law has never been stronger.

This *Spotlight* report provides a brief blueprint outlining four changes necessary for real reform. It also identifies the secondary changes (in Appendix A) that also should be made to the law.

## Four Major Reforms

### I. Codify Nolan and Require Meaningful Services

Contrary to what municipalities would like policymakers to believe, the state’s annexation law has absolutely nothing to do with the financial health of municipalities. The North Carolina Supreme Court in the 2006 case *Nolan v. Village of Marvin*<sup>1</sup> clearly explained the purpose of forced annexation in the annexation law:

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.<sup>2</sup> [Emphasis added]

The Court went on to state that the services provided needed to be significant. In simple terms, the purpose of forced annexation is to make sure that there is sound urban growth by providing fringe areas meaningful and significant benefits.

The statute should clarify:

- A) Municipalities must be able to provide police protection, fire protection, and water and sewer services — it is hard to argue that other services such as street maintenance and garbage collection are meaningful and significant enough to justify forced annexation.
- B) A service obviously is not meaningful or significant if property owners already have a service or do not need a service. Therefore, municipalities should not be able to duplicate services that already exist in an area or simply provide more of an existing service, such as providing more police protection unless the municipality can *prove* that the existing service in the area is *clearly inadequate* and could not reasonably be addressed by the property owners. If an area needs just one of the four meaningful services listed above, that would be enough for an area to be annexed.
- C) Municipalities should not be able to get around the law and claim an area is in need of services because one out of thousands of property owners are in need of services. The municipality may only annex properties that need services, unless the municipality can *prove* that excluding the property owner would clearly make the provision of the major services impractical. In no event, however, could an area be annexed if 75 percent or less of the property owners need the municipal services.

## *II. Costs Should Be Paid by Municipalities*

Not only do annexation victims get forced into a municipality against their will, but they also have to pay for the new services that they did not even need or want. They should not be required to pay for any new water and sewer lines and connections. If not for the forced annexation that the victims did not want, these individuals never would have needed to pay for water and sewer from the municipality.

This reform is quite simple. When a municipality wants to annex an area, it should be that city's obligation to pay for the costs of making these services available. The victims should not be victimized twice — first by being forced to use services they never wanted, and second by having to pay for those services.

Some municipalities charge annexation victims something called development fees that can cost thousands of dollars. These fees are charged to subsidize the need for increased capacity of the whole water and sewer system, regardless of whether the annexation victims want to connect to the water and sewer system. These fees should be eliminated.

## *III. County Oversight*

There is one thing that annexation victims and municipalities have in common: they are both part of a county. The county should provide the necessary oversight regarding an annexation.

County commissioners represent all the citizens in the county and are accountable to the voters. As a unit of local government, counties should be familiar with the unique needs of the community and have a better sense of what is in the best interests of an area.

A municipality and the annexation victims should be able to make their case before a county commission. The municipality should be required to carry the burden of proof to demonstrate several requirements have been met (as listed in Appendix B). These requirements are all common sense in nature, such as ensuring that the area needs to be annexed for sound urban development. If even *one* of these requirements is *not* met, the county commission should not be able to certify the annexation for a vote.

The commission also could deny the certification of an annexation for reasons not given in the non-exhaustive list of requirements. For an annexation proposal to move forward, the county would have to provide written findings detailing how the city has met each requirement and stating that the county commission independently believes that the annexation is in the best interests of the municipality, the property owners of the proposed annexed area, and the entire region.

## *IV. The Vote*

The vote is simple: There would be a simple majority vote of the qualified electors in the proposed annexed area to determine if an annexation is adopted. A majority vote is far from perfect because it could still result in many homeowners being annexed against their will. That would, however, be a far more reasonable and democratic process than what currently exists.

## **Conclusion**

The annexation law is fundamentally flawed. Municipalities did not create forced annexation — the legislature in 1959 created this undemocratic policy. Until forced annexation is a thing of the past, the annexation law will be in need of reform.

The major issues are relatively simple:

- 1) Municipalities should provide meaningful services to proposed annexed areas and bear the cost of providing those services.
- 2) Counties should provide proper oversight over municipalities.
- 3) Throughout the process, municipalities should bear the burden of proof to demonstrate why annexations are necessary.
- 4) There should be a vote.

Not one of these points is unreasonable, yet North Carolina still remains stuck in an outdated system rife with potential for discrimination, political gerrymandering, and financial bailouts for mismanaged municipalities, not to mention dissatisfied and frustrated property owners. The question ultimately is whether North Carolina will join virtually every other state in the country in rejecting forced annexation and ensure property rights and democratic principles are indeed secure and respected.

*Daren Bakst, J.D., LL.M., is Legal and Regulatory Policy Analyst for the John Locke Foundation.*

## End Notes

1. *Nolan v. Village of Marvin*, 360 N.C. 256; 624 S.E.2d 305 (2006), [www.aoc.state.nc.us/www/public/sc/opinions/2006/488-05-1.htm](http://www.aoc.state.nc.us/www/public/sc/opinions/2006/488-05-1.htm).
2. *Ibid.*
3. For municipalities with 5,000 people or more: N.C. Gen. Stat. § 160A-48(c), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-48.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-48.html). For municipalities of fewer than 5,000 people, there is no density provision even listed.
4. This citation is to a provision affecting municipalities with 5,000 or more people. The rest of the citations also are to the provisions affecting such municipalities. N.C. Gen. Stat. § 160A-48(d), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-48.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-48.html).
5. N.C. Gen. Stat. § 160A-49, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-49.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-49.html).
6. Currently, property owners must go to the Local Government Commission to seek abatement of taxes if promised major municipal services are not provided within 60 days after the effective date of the annexation (not including water and sewer), See N.C. Gen. Stat. § 160A-49(1), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-49.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-49.html).
7. Currently, annexation victims must request a water and sewer hook-up five days after the public hearing; otherwise they may not receive the hook-up for more than a decade (as what is happening in Fayetteville). See N.C. Gen. Stat. § 160A-47(3)(b), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-47.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-47.html). Please note that the water and sewer request provision is buried in the statute. It is not even located in the section dealing with the annexation procedures, as a reasonable person would expect.
8. N.C. Gen. Stat. § 160A-50, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-50.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-50.html).
9. N.C. Gen. Stat. § 160A-48, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-48.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-48.html).
10. N.C. Gen. Stat. § 160A-53, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-53.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-53.html).

## Appendix A: Important Secondary Changes to the Annexation Law

1) Remove distinctions between the requirements for municipalities of 5,000 people and more, and those with fewer than 5,000.

2) Redefine “Urban in Nature.”

Contrary to popular belief, there are no density requirements for an annexed area.<sup>3</sup> An area, regardless of the size of the municipality, should be required to meet several criteria (modifying existing law) to be considered urban:

- Residential density of 2.3 people per acre (the current density provision)
- 65 percent of the total acreage consists of lots three acres or less in size
- 70 percent of the total number of lots and tracts are one acre or less in size
- At least 70 percent of the lots and tracts are developed and used for residential, commercial, industrial, institutional or governmental purposes.
- No more than 5 percent of the total number of residential lots and tracts may be five acres or more.

3) Delete all the exceptions<sup>4</sup> to the requirement that an area must be “urban.”

4) Implement the following process, which modifies existing law.<sup>5</sup> It is not exhaustive:

<i><b>Action</b></i>	<i><b>Time in Process</b></i>
Resolution of Preliminary Intent	Start of process
Resolution of Intent	1-2 years later
Approval of Annexation Report	45 days before public info meeting
Public Information Meeting	45-55 days after resolution of intent
Public Hearing	90-100 after resolution of intent
County Hearing	60-90 days after municipal public hearing
County Denial or Certification for Vote	30-60 days after county hearing
Vote	60-90 days after certification
Legal Challenge in Superior Court	60 days after voting results are finalized
Effective Date of Annexation	70-400 days after election
Services Must Be Provided (not including water and sewer)	60 days after effective date
Apply for Writ for Failure to Provide Services	2-3 months after 60-day period
Water and Sewer Service Provided	Within 2 years of effective date
Apply for Writ for Failure to Provide Water and Sewer	30-60 days after 2-year period

5) Annexation victims should not be required to pay city taxes until services are provided.<sup>6</sup>

6) Anyone that has requested a water and sewer hook-up before the effective date of the annexation shall be provided these services within the two year period.<sup>7</sup>

7) The resolution of intent should provide detailed information to affected property owners. In addition to notifying property owners of their rights, it also should include at a minimum:

- A map and metes and bounds description of the proposed annexed area
- The “meaningful services” that will be provided to each property owner and why such services are “meaningful and significant benefits” to the property owner
- The estimated taxes, water and sewer charges, and other costs that the property owner could incur
- A detailed description and schedule of the annexation process
- Information about how to challenge an annexation
- Contact information for city officials in case the property owner has additional questions
- A copy of the resolution of preliminary intent
- Reports, analysis, minutes, and any other documents used in or related to the consideration of the resolution of preliminary intent. A prominently highlighted link to this information on the municipality’s web site would be suitable — in general, the municipality should have a dedicated web page on the specific annexation, which should be easily accessible from the municipality’s home page.
- A preliminary assessment of short-term and long-term costs to the municipality
- A preliminary assessment of short-term and long-term financial gains (or losses)
- A preliminary assessment of the costs to the county
- A certification that the annexation is being proposed in order to promote sound urban development through the provision of meaningful services and that the annexation would not have been considered *but for* the need to provide meaningful services to the proposed annexed area.

8) Affected property owners should have meaningful recourse in court and be able to recoup attorney fees if they prevail. Under current law, they must prove that the annexation is illegal in some manner.<sup>8</sup> The burden should instead be on municipalities to prove they have met all the necessary requirements. *Throughout the whole annexation process, the burden always should be on municipalities — after all, they are the ones seeking to annex property owners.*

9) While this blueprint has focused on forced annexation, there is one critical issue regarding voluntary annexation that should be addressed. As of now, a voluntary annexation generally will occur even if the law is not being followed. Surrounding communities should be provided standing through the annexation statute. This would permit them to protect themselves and to ensure that voluntary annexations are in fact lawful.

10) Proper notice should be given to affected property owners. At the time that a municipality passes a resolution of intent, notice should be mailed by certified mail to affected property owners and include the actual forms to request water and sewer.

11) Municipalities should be prohibited from annexing areas outside the counties where they are located.

12) Annexed property owners with animals are in no way affected by any municipal law related to animal ownership.

## **Appendix B: Requirements for County Certification**

Municipalities must prove all of the following to counties in order for a county to certify an annexation for a vote (the list is not exhaustive):

### *Financial Requirements*

- The municipality's financial situation is strong enough to go forward with the annexation
- Municipal residents are unlikely to pay additional taxes or fees due to the annexation
- Mismanagement by the municipality has not led to the need for annexation
- The annexation will not financially harm the county in a significant manner
- Proposed costs and fees on affected property owners are reasonable
- The forced annexation is not being proposed because of financial reasons. The municipality is annexing an area in order to promote sound urban development through providing meaningful services and would have annexed the area even if there had not been a financial benefit.

### *Service and Area Requirements*

- Meaningful services will be provided as promised within the time allotted by the law
- Water and sewer service can be provided to all annexed property owners within two years
- There are no improper motives such as a desire to gerrymander an area or unlawfully discriminate against citizens
- There are no eligible areas that are in more dire need of meaningful services
- The municipality is able to provide police protection, fire protection, and water and sewer (i.e., meaningful services)
- The annexed area is in need of at least one of the meaningful services, as described in the text of this report
- The annexation is necessary in order to promote sound urban development for the municipality and affected area
- There would not be a significant harm caused to the surrounding community, including other unincorporated areas and municipalities
- The area is urban in nature, as described in the text of this report
- The area meets other "character"<sup>9</sup> requirements such as being contiguous — the definition of *contiguous* needs to be revised so that it actually means a municipality abuts an area. Under current law, an area is "contiguous" to a municipality even if land owned by another political subdivision separates the area proposed to be annexed and the municipality.<sup>10</sup>