

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 362

Short Title: Vote on ETJ Extensions. (Public)

Sponsors: Representatives Allred; Almond, Blackwood, Capps, Current, Dockham, Dollar, Kiser, LaRoque, Starnes, Walend, Walker, West, and Wilson.

Referred to: Judiciary I.

February 24, 2005

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE VOTER APPROVAL FOR THE EXTENSION OF
2 MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION.
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 160A-360 reads as rewritten:

6 "**§ 160A-360. Territorial jurisdiction.**

7 (a) All of the powers granted by this Article may be exercised by any city within
8 its corporate limits. In addition, any city may exercise these powers within a defined
9 area extending not more than one mile beyond its limits. With the approval of the board
10 or boards of county commissioners with jurisdiction over the area, a city of 10,000 or
11 more population but less than 25,000 may exercise these powers over an area extending
12 not more than two miles beyond its limits and a city of 25,000 or more population may
13 exercise these powers over an area extending not more than three miles beyond its
14 limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all
15 powers conferred in this Article. No city may exercise extraterritorially any power
16 conferred by this Article that it is not exercising within its corporate limits. In
17 determining the population of a city for the purposes of this Article, the city council and
18 the board of county commissioners may use the most recent annual estimate of
19 population as certified by the Secretary of the North Carolina Department of
20 Administration.

21 (a1) Any municipality planning to exercise extraterritorial jurisdiction under this
22 Article shall notify the owners of all parcels of land proposed for addition to the area of
23 extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent
24 by first-class mail to the last addresses listed for affected property owners in the county
25 tax records. The notice shall inform the landowner of the effect of the extension of
26 extraterritorial jurisdiction, of the landowner's right to participate in a public hearing
27 prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as
28 provided in G.S. 160A-364, and the right of all residents of the area to apply to the

1 board of county commissioners to serve as a representative on the planning agency and
2 the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at
3 least four weeks prior to the public hearing. The person or persons mailing the notices
4 shall certify to the city council that the notices were sent by first-class mail, and the
5 certificate shall be deemed conclusive in the absence of fraud.

6 (a2) In addition to any other requirement of this section or any local act, in order
7 for a city to exercise powers under this Article in any area beyond the corporate limits
8 of the city, the extension of jurisdiction must be approved under subsection (a3) of this
9 section.

10 (a3) Conduct of Election. – If a referendum is required under subsection (a2) of
11 this section, the city council shall order the board or boards of elections which conduct
12 elections for that city to call an election to determine whether or not the proposed
13 territory shall be included in the extraterritorial planning jurisdiction of the city or town.
14 Within 90 days after receiving the order from the governing body, the county board of
15 elections shall proceed to hold an election on the question.

16 The election shall be called by a resolution or resolutions of the county board of
17 elections which shall:

18 (1) Describe the territory proposed to be included in the extraterritorial
19 planning jurisdiction of the city or town as set out in the order of the
20 local governing body.

21 (2) Provide that the matter of inclusion of the territory shall be submitted
22 to the vote of the qualified voters of the territory proposed to be
23 included.

24 (3) Provide for registration of voters in the territory proposed to be
25 included for the election in accordance with G.S. 163-288.2.

26 The resolution shall be published in one or more newspapers of the county once a
27 week for 30 days prior to the closing of the registration books. All costs of holding the
28 election shall be paid by the city or town. Except as herein provided, the election shall
29 be held under the same statutes, rules, and regulations as are applicable to elections in
30 the municipality whose corporate limits are being enlarged.

31 In the election, the question on the ballot shall be:

32 [] FOR [] AGAINST

33 Inclusion in the extraterritorial planning jurisdiction of [INSERT NAME OF
34 MUNICIPALITY].'

35 If a majority of the votes cast from the area proposed for inclusion shall be 'For
36 Inclusion', the ordinance shall become effective as provided by this section.

37 (b) Any council wishing to exercise extraterritorial jurisdiction under this Article
38 shall adopt, and may amend from time to time, an ordinance specifying the areas to be
39 included based upon existing or projected urban development and areas of critical
40 concern to the city, as evidenced by officially adopted plans for its development.
41 Boundaries shall be defined, to the extent feasible, in terms of geographical features
42 identifiable on the ground. A council may, in its discretion, exclude from its
43 extraterritorial jurisdiction areas lying in another county, areas separated from the city
44 by barriers to urban growth, or areas whose projected development will have minimal

1 impact on the city. The boundaries specified in the ordinance shall at all times be drawn
2 on a map, set forth in a written description, or shown by a combination of these
3 techniques. This delineation shall be maintained in the manner provided in
4 G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the
5 office of the register of deeds of each county in which any portion of the area lies.

6 (c) Where the extraterritorial jurisdiction of two or more cities overlaps, the
7 jurisdictional boundary between them shall be a line connecting the midway points of
8 the overlapping area unless the city councils agree to another boundary line within the
9 overlapping area based upon existing or projected patterns of development.

10 (d) If a city fails to adopt an ordinance specifying the boundaries of its
11 extraterritorial jurisdiction, the county of which it is a part shall be authorized to
12 exercise the powers granted by this Article in any area beyond the city's corporate
13 limits. The county may also, on request of the city council, exercise any or all these
14 powers in any or all areas lying within the city's corporate limits or within the city's
15 specified area of extraterritorial jurisdiction.

16 (e) No city may hereafter extend its extraterritorial powers under this Article into
17 any area for which the county at that time has adopted and is enforcing a zoning
18 ordinance and subdivision regulations and within which it is enforcing the State
19 Building Code. However, the city may do so where the county is not exercising all three
20 of these powers, or when the city and the county have agreed upon the area within
21 which each will exercise the powers conferred by this Article.

22 (f) When a city annexes, or a new city is incorporated in, or a city extends its
23 jurisdiction to include, an area that is currently being regulated by the county, the
24 county regulations and powers of enforcement shall remain in effect until (i) the city has
25 adopted such regulations, or (ii) a period of 60 days has elapsed following the
26 annexation, extension or incorporation, whichever is sooner. During this period the city
27 may hold hearings and take any other measures that may be required in order to adopt
28 its regulations for the area.

29 (f1) When a city relinquishes jurisdiction over an area that it is regulating under
30 this Article to a county, the city regulations and powers of enforcement shall remain in
31 effect until (i) the county has adopted this regulation or (ii) a period of 60 days has
32 elapsed following the action by which the city relinquished jurisdiction, whichever is
33 sooner. During this period the county may hold hearings and take other measures that
34 may be required in order to adopt its regulations for the area.

35 (g) When a local government is granted powers by this section subject to the
36 request, approval, or agreement of another local government, the request, approval, or
37 agreement shall be evidenced by a formally adopted resolution of that government's
38 legislative body. Any such request, approval, or agreement can be rescinded upon two
39 years' written notice to the other legislative bodies concerned by repealing the
40 resolution. The resolution may be modified at any time by mutual agreement of the
41 legislative bodies concerned.

42 (h) Nothing in this section shall repeal, modify, or amend any local act which
43 defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or
44 courses and distances.

1 (i) Whenever a city or county, pursuant to this section, acquires jurisdiction over
2 a territory that theretofore has been subject to the jurisdiction of another local
3 government, any person who has acquired vested rights under a permit, certificate, or
4 other evidence of compliance issued by the local government surrendering jurisdiction
5 may exercise those rights as if no change of jurisdiction had occurred. The city or
6 county acquiring jurisdiction may take any action regarding such a permit, certificate, or
7 other evidence of compliance that could have been taken by the local government
8 surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided
9 in this subsection, any building, structure, or other land use in a territory over which a
10 city or county has acquired jurisdiction is subject to the ordinances and regulations of
11 the city or county.

12 (j) Repealed by Session Laws 1973, c. 669, s. 1."

13 **SECTION 2.** This act applies with respect to all extensions of extraterritorial
14 jurisdiction under this section approved on or after the date this act becomes law.

15 **SECTION 3.** This act is effective when it becomes law.