

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1083\*

Second Edition Engrossed 6/13/96

Senate Judiciary II/Election Laws Committee Substitute Adopted 6/20/96

Short Title: Mail ETJ Notice/Hearing on Appointments.

(Public)

Sponsors:

Referred to:

May 14, 1996

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FIRST-CLASS MAIL NOTICE TO ALL PROPERTY OWNERS IN AN AREA PROPOSED FOR ADDITION TO A MUNICIPALITY'S EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION, PROPORTIONAL REPRESENTATION FOR RESIDENTS OF THE ETJ ON THE PLANNING AGENCY, AND A HEARING BEFORE COUNTY APPOINTMENT OF REPRESENTATION TO THE PLANNING AGENCY, TO PROHIBIT A MUNICIPALITY FROM CLAIMING FOR LOST TAX REVENUE DURING THE PENDENCY OF AN APPEAL OF ANNEXATION AND TO AMEND THE STATUTE OF LIMITATIONS FOR APPEALING THE VALIDITY OF A ZONING ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-360 is amended by adding a subsection to read:

"(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of

1 extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior  
2 to adoption of any ordinance extending the area of extraterritorial jurisdiction, as  
3 provided in G.S. 160A-364, and the right of all residents of the area to apply to the board  
4 of county commissioners to serve as a representative on the planning agency and the  
5 board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least  
6 four weeks prior to the public hearing. The person or persons mailing the notices shall  
7 certify to the city council that the notices were sent by first-class mail, and the certificate  
8 shall be deemed conclusive in the absence of fraud."

9 Sec. 2. G.S. 160A-362 reads as rewritten:

10 **"§ 160A-362. Extraterritorial representation.**

11 When a city elects to exercise extraterritorial zoning or subdivision-regulation powers  
12 under G.S. 160A-360, it shall in the ordinance creating or designating its planning agency  
13 or agencies provide a means of proportional representation based on population for  
14 residents of the extraterritorial area to be regulated. Representation shall be provided by  
15 appointing ~~residents~~ at least one resident of the entire extraterritorial zoning and  
16 subdivision regulation area to the planning agency and the board of adjustment that  
17 makes recommendations or grants relief in these matters. For purposes of this section, an  
18 additional member must be appointed to the planning agency or board of adjustment to  
19 achieve proportional representation only when the population of the entire extraterritorial  
20 zoning and subdivision area constitutes a full fraction of the municipality's population  
21 divided by the total membership of the planning agency or board of adjustment.  
22 Membership of joint municipal county planning agencies or boards of adjustment may be  
23 appointed as agreed by counties and municipalities. Any advisory board established prior  
24 to July 1, 1983, to provide the required extraterritorial representation shall constitute  
25 compliance with this section until the board is abolished by ordinance of the city. The  
26 representatives on the planning agency and the board of adjustment shall be appointed by  
27 the board of county commissioners with jurisdiction over the area. When selecting a new  
28 representative to the planning agency or to the board of adjustment as a result of an  
29 extension of the extraterritorial jurisdiction, the board of county commissioners shall hold  
30 a public hearing on the selection. A notice of the hearing shall be given once a week for  
31 two successive calendar weeks in a newspaper having general circulation in the area.  
32 The board of county commissioners shall select appointees only from those who apply at  
33 or before the public hearing. The county shall make the appointments within 45 days  
34 following the public hearing. Once a city provides proportional representation, no power  
35 available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area  
36 solely because county appointments have not yet been made. If there is an insufficient  
37 number of qualified residents of the area to meet membership requirements, the board of  
38 county commissioners may appoint as many other residents of the county as necessary to  
39 make up the requisite number. When the extraterritorial area extends into two or more  
40 counties, each board of county commissioners concerned shall appoint representatives  
41 from its portion of the area, as specified in the ordinance. If a board of county  
42 commissioners fails to make these appointments within 90 days after receiving a  
43 resolution from the city council requesting that they be made, the city council may make

1 them. If the ordinance so provides, the outside representatives may have equal rights,  
2 privileges, and duties with the other members of the agency to which they are appointed,  
3 regardless of whether the matters at issue arise within the city or within the  
4 extraterritorial area; otherwise they shall function only with respect to matters within the  
5 extraterritorial area."

6 Sec. 3. G.S. 160A-50 is amended by adding a new subsection to read:

7 "(m) In any proceeding related to an annexation ordinance appeal under this section,  
8 a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing  
9 in this Article shall be construed to mean that as a result of an appeal a municipality may  
10 assert a claim for property tax revenue lost during the pendency of the appeal."

11 Sec. 4. G.S. 160A-38 is amended by adding a new subsection to read:

12 "(l) In any proceeding related to an annexation ordinance appeal under this section,  
13 a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing  
14 in this Article shall be construed to mean that as a result of an appeal a municipality may  
15 assert a claim for property tax revenue lost during the pendency of the appeal."

16 Sec. 5. G.S. 1-54.1 reads as rewritten:

17 "**§ 1-54.1. ~~Nine~~Two months.**

18 Within ~~nine~~two months an action contesting the validity of any zoning ordinance or  
19 amendment thereto adopted by a county under Part 3 of Article 18 of Chapter 153A of  
20 the General Statutes or other applicable law or adopted by a city under Chapter 160A of  
21 the General Statutes or other applicable law."

22 Sec. 6. G.S. 153A-348 reads as rewritten:

23 "**§ 153A-348. Statute of limitations.**

24 A cause of action as to the validity of any zoning ordinance, or amendment thereto,  
25 adopted under this Part or other applicable law shall accrue upon adoption of the  
26 ordinance, or amendment thereto, and shall be brought within ~~nine~~two months as  
27 provided in G.S. 1-54.1."

28 Sec. 7. G.S. 160A-364.1 reads as rewritten:

29 "**§ 160A-364.1. Statute of limitations.**

30 A cause of action as to the validity of any zoning ordinance, or amendment thereto,  
31 adopted under this Article or other applicable law shall accrue upon adoption of the  
32 ordinance, or amendment thereto, and shall be brought within ~~nine~~two months as  
33 provided in G.S. 1-54.1."

34 Sec. 8. Sections 3 and 4 of this act become effective on and after January 1,  
35 1996. All other sections of this act become effective October 1, 1996.