City Attorneys Conference
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2009 Legislation of Interest to City Attorneys

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Exercise of the Police Power

Regulating smoking in public places: SL 2009-27 (HB 2)

The General Assembly moved to regulate second-half smoke this session and in the process expanded the authority of local governments to adopt ordinances and rules in the same area.

The statewide prohibitions are found in new G.S. 130A-496, which (subject to a couple of exceptions) prohibits smoking in "all enclosed areas of restaurants and bars." An enclosed area is an area with a roof or other overhead covering and walls or side coverings of any kind on at least three sides.

There are three exceptions to the statewide prohibition:

1. A lodging establishment can designate up to 20 percent of its guest rooms as smoking rooms.
2. Cigar bars.
3. Private clubs.

The legislation then amends G.S. 130A-498 to permit local governments – which clearly includes cities, counties, and boards of health – to adopt ordinances or rules "that are more restrictive than State law." These local ordinances and rules may apply in local government buildings, local government grounds, local government vehicles, and (most importantly) public places. "Public places" are defined as enclosed areas to which the public is invited or in which the public is permitted. There are several exceptions to the local government power, beginning with the three that are excepted from the Statewide prohibition. The others, in addition to the first three, are:

1. A private residence.
2. A private vehicle (which is defined to not include vehicles used for commercial or employment purposes).
3. A tobacco shop.
4. Premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer or any tobacco leaf grower, processor, or dealer.
5. A movie or TV production set, for the limited purpose of allowing a character to smoke.

The statute specifies and limits the punishment for violation of any local ordinance or rule: it is an infraction, with a maximum fine of $50 against someone smoking where it is not permitted. There are separate, specified penalties against the manager of a public place.

The act is effective January 2, 2010.

Unsafe residential buildings: SL 2009-263 (HB 866).

G.S. 160A-426 has provided a procedure under which cities may condemn *nonresidential* buildings, in community development target areas, because they are vacant and abandoned and cause or contribute to blight. A number of cities have received local legislation, which has been codified as G.S. 160A-425.1, to use the same procedures for *residential* structures in comparable areas. This act repeals the local acts and permits all cities to use this authority, as long as the city council adopts an ordinance providing for the extension of the statute. Before adopting the ordinance, the city must hold the usual public hearing required of all Article 19 legislative actions.

The act becomes effective October 1, 2009, but any ordinances pursuant to the act may be adopted earlier than that if the council wishes to do so; the ordinances do not become effective until October 1.

Housing code enforcement: SL 2009-279 (SB 661).

Most of this act deals with landlord-tenant law, but the final section amends GS 160A-443, dealing with housing code enforcement. It makes two additions to the requirements of the section.

First, under existing law the code enforcement officer may order that a building be repaired or improved. The amendment specifies that such an order may require that the building be vacated until the repair or improvement is made only in limited circumstances – continued occupancy will present a significant threat of bodily harm, taking into account various factors. The order must also state that failure to make the repairs in a timely fashion exposes the property to an order that the city make the repairs or that the property be vacated and closed.

Second, before this second order – entered after the owner has failed to make repairs – may be issued, the council must adopt an ordinance directing the enforcement officer to proceed with respect to this specific property. This is the same process currently required when the city wishes to effectuate itself an order to remove or demolish the structure.

These changes become effective 1 October 2009.

Notice of weed ordinance violations: SL 2009-19 (SB 452).

Most cities have an ordinance that regulates overgrown weeds and grasses on lots. Typically these ordinances require the lot owner to cut the vegetation and, if the owner does not, permit the city to do so directly and make the costs a lien upon the property. The basic authority for such an ordinance, at least with the abatement provision, is G.S. 160A-193, although a number of cities have charter provisions permitting such ordinances as well.

The ordinances typically require that the owner be given an opportunity to cut the vegetation before the city acts directly, and as a result there are requirements that the owner be given notice that the vegetation has gotten too long. Many cities find these notice provisions onerous when applied to lot owners who routinely ignore the warnings, and beginning in 1999 a number of cities have sought local legislation that permitted a more streamlined form of notice. That set of local acts has been codified as G.S. 160A-200.

This session another set of cities requested that they be added to G.S. 160A-200, and eventually the General Assembly decided to make the section statewide in its application. The result is SL 2009-19, which deletes the provisions in G.S. 160A-200 that limited its application to a number of named cities and towns.

The gist of the statute is that if a person is a "chronic violator" of an overgrown vegetation ordinance, the city need give that person only a single, annual notice of its intention to self-enforce the ordinance should a lot owned by that person become overgrown. Thereafter, the city may cut the weeds as necessary, and the costs become a lien on the property and can be collected along with city taxes. (That collection method is permitted by G.S. 160A-193.) A chronic violator is a person who owns property that, in the preceding calendar year, was the subject of city action at least three times. Note that it need not be the same property but any property owned by the violator. The single annual notice must be served by registered or certified mail.

The act became law on 23 April, and a city may adopt an ordinance pursuant to it at any time. Such an ordinance, however, may not become effective until 1 October 2009. An existing ordinance, adopted pursuant to the local acts that have now been superseded, remains in effect, however, and may be enforced.

Notice of public nuisance ordinance violations: SL 2009-287 (SB 564).

This act does the same thing for public nuisance ordinances that SL 2009-19 does for weed ordinances. As best I can tell, these ordinances include not just weeds but also trash and noxious animal and vegetable matter.

The existing local acts giving this authority were repealed, and this act has the same effective date provisions as SL 2009-19.

Junked car definitions: SL 2009-97 (HB 867).

There are two statutes that authorize local ordinances for removing junked motor vehicles from public and private property. G.S. 160A-303 permits removal from private property, without the consent of the property's owner, if the city finds that the vehicle is a health or safety hazard. G.S. 160A-303.2 permits such removal simply for aesthetic grounds. Each of the statutes has the same definition of a junked motor vehicle, one of the components of which has been that the vehicle is more than 5 years old and is worth less than $100.

The $100 threshold has been in the law for 25 years or more, and obviously means something quite different than it did in the early 1980s. Because of that a number of cities had, over the last few years, received local act authority to modify their ordinances and define a junked vehicle as one 5 years or more old and worth less than **$500.** This act makes the new number statewide.

As to those cities that have not been subject to the local act modification in the past, this act provides that any local ordinance modification, defining junked cars with a number higher than $100, may not become effective until October 1, 2009 or later.

Golf cart regulation: SL 2009-459 (HB 121).

In the last several legislative sessions a variety of cities had received local act authority to regulate the operation of golf carts of the cities' roads. When a number of additional cities sought comparable authority in 2009, the legislature responded by giving such authority to all cities (and to counties). The act permits cities to regulate the operation of golf carts on city roads on which the speed limit is 35 mph or less; it also permits cities to register carts and establish rules about who may drive them and how they must be equipped.

The existing local acts giving this authority were repealed, and this act has the same effective date provisions as SL 2009-19.

Cistern regulations prohibited: SL 2009-243 (HB 749).

This act amends G.S. 143-138(b), with deals with the content of the State Building Code, to authorize the Code to include rules as to the construction or renovation of residential or commercial buildings that permit the use of cisterns to provide water for flushing toilets or for outdoor irrigation. It specifies that no "local building code or regulation shall prohibit the use of cisterns" for these purposes. It is already effective.

Regulation of Development

Extension of development permits: SL 2009-406 (SB 831).

This act extends the lives of various "development approvals" issued by state or local government. At the local level, it applies to these approvals:

- Issuance of a building permit
- Approval of sketch plans, preliminary plats, subdivision plats, site plans, or other development permits.
- Issuance of certificates of appropriateness from a preservation commission.

The key provision is that if any listed approval is valid at any time during the period 1 January 2008 through 31 December 2010, any time limits are suspended during that same period. Here is an important proviso:

- The act does not affect a government's ability to revoke or modify an approval pursuant to law.

Notice of fees increases: SL 2009-436 (SB 698).

This act requires notice on a city's website (if there is one) of proposed increases in certain development-related fees or charges. The fees are those "applicable solely to the construction of development subject to the provisions of Part 2 of Article 19" of G.S. Chapter 160A – subdivision regulation. Notice must be placed on the website at least seven days before the first meeting at which the fee increase is on the council's agenda; and the city must allow for public comment on the increases.

Importantly, the act does not apply if the proposed increases are included in the manager's proposed budget, filed and advertised pursuant to the budget and fiscal control act.

The act became effective September 1, 2009.

(The act imposes identical requirements on counties, sanitary districts, and water and sewer authorities.)

Notice of rezoning: SL 2009-178 (SB 1027).

G.S. 160A-384 sets out the notice requirements when a city council considers a rezoning. Currently the city is responsible for mailing notice, through first class mail, of any proposed rezoning to the owner(s) of the affected property plus the owners of all abutting parcels.

This act adds an additional notice requirement, although not on the city, when the council considers a rezoning that was proposed by someone other than the owner or the city. In such a event, the person or entity applying for the rezoning must certify to the city that the owner of the property (or properties) subject to rezoning has received **actual** notice of the proposed amendment and a copy of the notice of the hearing.

The act goes on to require that this actual notice to the owner(s) be provided pursuant to Rule 4(j) of the NC RCP. Generally, this will require one of the following:

- Personal delivery to the owner
- Being left at the owner's home with a responsible person
- Personal delivery to the owner's appropriate agent
- Registered or certified mail, return receipt requested, with actual delivery
- Deposit with a designated delivery service authorized pursuant to federal law.

If notice cannot be achieved by due diligence through the above methods, the notice may be given by publication consistent with Rule 4(j1).

The act is already effective.

Quasi-judicial procedures: SL 2009-421 (SB 44).

This act establishes a set of statutory rules for appeals to superior court of quasi-judicial land-use decisions by cities and counties. It deals with:

- The form of the petition.
- Standing and intervention.
- The appropriate respondent.
- Service.
- The record.
- When evidence can be taken.
- Scope of review.
- Appropriate decisions by the court.

The act becomes effective as to quasi-judicial actions taken on or after 1 January 2010.

Energy efficiency incentives: SL 2009-95 (SB 52).

In 2007 and 2008 a number of cities and one county received local act authority to adopt ordinances that provide development incentives to developers or builders who agree to construct new development or reconstruct existing development in ways that make a significant contribution to the reduction of energy consumption. The statute specifically mentioned density bonuses but also mentioned "adjustments of otherwise applicable development requirements" or "other incentives." The local government's determination that a development qualifies is to be based on "generally recognized standards established for such purposes."

This act makes this existing legislation statewide and is already effective.

No discrimination against affordable housing: SL 2009-533 (SB 810).

This act amends GS 41A-4 (part of the State Fair Housing Act) to declare that discrimination in land use decisions or permitting based on the presence of affordable housing units in a development constitutes an unlawful discriminatory housing practice under the Act. It makes clear, however, that a local government may properly pursue policies attempting to limit high concentrations of affordable housing.

The act is already effective.

Solar collectors on housing: SL 2009-553 (HB 1387).

G.S. 160A-201 currently prohibits cities from adopting ordinances that have the effect of prohibiting installation of solar collectors on detached single family residences. (There are comparable restrictions on county ordinances and on deed restrictions.) This act extends the prohibition to all residential property.

The act becomes effective December 1, 2009.

Elected Officials

Small cities exception to GS 14-234: SL 2009-226 (HB 682).

G.S. 14-234, the self-dealing statute, includes an important exception for "small cities," which are defined as cities with a population of no more than 15,000. Officials in these cities are permitted a limited amount of self-dealing, if approved by the other members of the governing board.

The exception has been limited to $12,500 annually of medically related services and $25,000 of other goods and services. This act increases those limits to $20,000 and $40,000 respectively.

The change becomes effective October 1, 2009.

Elected official ethics: SL 2009-403 (HB 1452).

This act requires each elected local government board (city councils, boards of county commissioners, school boards, and sanitary district boards) to adopt a code of ethics for the board's members. It sets out a minimum set of subjects to be included in the code. These codes must be adopted by January 1, 2011.

The act also requires each member of such a board to receive at least 2 hours of ethics education within 12 months of election, re-election or appointment. The act requires that all elected officials subject to the act receive their required training before the end of 2010.

There are no enforcement mechanisms set out in the act.

Health insurance for former board members: SL 2009-564 (SB 468).

During the past year questions have arisen about including retired elected board members in a unit's health insurance plan, and the attorney general's office has written an opinion arguing that there is no authority for counties to include retired commissioners in such a plan. This act provides the necessary authority for counties. There are also problems with doing so under the relevant city statutes, although these problems differ somewhat from the issues under Chapter 153A. The act makes no changes to the city statutes.

Open Government

Public notice of official meetings: SL 2009-350 (HB 81).

This act will amend the notice provisions of the open meetings law, effective for meetings held on or after October 1, 2009.

First, it will require that any public body with regular meetings post the schedule of such meetings on the public body's website, if any. It will also require that notice of both special meetings and recessed meetings be posted to the website before the time of the meeting.

Second, with respect to special meetings, it explicitly permits notice to be given by email as well as regular mail. In addition, if the 48-hour period for giving notice falls over the weekend, the posted notice must be posted on the door to the building or some other accessible site.

Architect's and engineer's seals not public record: SL 2009-346 (HB 1478).

The act adds a new subsection to G.S. 132-1.2, prohibiting a state agency or local government from revealing the seal of a licensed architect, professional engineer, or surveyor when the seal has been submitted as part of an effort to receive a building permit. The unit is required to make the document public – assuming it is otherwise a public record – minus the seal.

The act becomes effective October 1, 2009.

Annexation

Annexation revisions: (HB 524 – Passed the house).

See the separate sheets summarizing the proposed changes in this bill.

Speed limits after annexation: SL 2009-234 (SB 649).

The basic speed limits in North Carolina are set out in G.S. 20-141; they are 35 mph for streets and highways inside cities and 55 mph for streets and highways outside cities. Both cities, within city borders, and DOT, outside, can increase or decrease those limits per standards and procedures set out in the section.

G.S. 20-141(f) deals with State system roads located within a city. A city is permitted to, in essence, propose a higher or lower limit than 35 mph, but DOT must adopt an ordinance agreeing to the change. This act modifies that subsection and provides that when a city annexes a road on the state system, that road's speed limit is to remain unchanged until both the city and DOT adopt concurrent ordinances to change the speed limit. Otherwise, per the title of the act, the speed limit would automatically become 35 mph, simply because the road is now inside a city.

There is one bit of ambiguity to the act. Before annexation, all publicly-maintained roads in the annexation area are on the State system; after annexation, only the major roads will remain on the State system. The language can be read to refer to either all the roads or only those roads that remain on the state system, but the latter makes much more sense. A city has the current authority to modify the speed limit on a city-maintained street without DOT approval; and as to those annexed streets that are transferred to city control, there doesn't seem to be any good reason to require DOT approval of any changes made by the city. In any event, if a secondary road has enough development on it to be annexed to a city, it probably already has a 35 mph speed limit. In addition, once a road is transferred to a city, it is no longer on the State highway system, and so perhaps the statute can be read to no longer apply at that point.

Public Safety

Mandatory evacuations: SL 2009-146 (SB 256).

This act first amends G.S. 14-288.12, the statute authorizing ordinances dealing with states of emergency, to expressly authorize the following sorts of actions:

- Ordering evacuations from stricken or threatened areas.
- Prescribing evacuations routes, modes of transportation, and destinations.
- Controlling ingress and egress of a disaster area and movements of persons within such an area.

The second part of the act amends GS 166A-14(a), which creates an immunity from tort liability, as a governmental function, for emergency management activities. The amendment makes clear that this immunity extends to emergency management activities undertaken pursuant to other statutes (as well as G.S. Chapter 166A), with the clear intention that it cover activities associated with a state of emergency as recognized and managed pursuant to Chapter 14.

The act is already effective.

Emergency management certification: SL 2009-192 (HB 377).

This act, which is already effective, directs the Division of Emergency Management to establish a voluntary Emergency Management Certification Program for both state and local government emergency management employees. The act goes on to provide details about the content of the certification program and its administration.

State-local emergency management mutual aid: SL 2009-194 (HB 379).

This act explicitly permits the Governor to enter into emergency management mutual aid agreements with N.C. political subdivisions. The governing board of such a political subdivision must approve the agreement.

Improving local emergency management capabilities: SL 2009-196 (HB 380).

This act clarifies existing authority for state supervision of local emergency management planning and program organization. It also explicitly permits joint emergency management agencies among two or more local governments, although the Interlocal Cooperation Act was probably already sufficient.

The act is effective October 1, 2009.

Emergency management registry: SL 2009-225 (SB 258).

The act, which is already effective, permits the State emergency management program to establish a voluntary model registry for use by local governments in "identifying functionally and medically fragile persons in need of assistance during a disaster." It second permits a local government to either use this state-created registry or to establish one of its own.

In either case, the information in the registry is not subject to public access under the public records law and may be used only for the purposes set forth in the statute – generally to help emergency response agencies in protecting the public during an emergency.

Public safety personnel wearing military medals: SL 2009-240 (HB 631).

This act adds a new G.S. 165-44.01 and permits a uniformed public safety officer – a police officer, firefighter, or EMS employee – to wear military service medals in certain time periods, viz.:

- The business week before Veterans Day, Memorial Day, and the Fourth of July.
- The day of Veterans Day, Memorial Day, and the Fourth of July.
- The business day immediately following Veterans Day, Memorial Day, and the Fourth of July.

The statute conditions the basic authorization, however, by permitting a public safety officer's employer to prohibit the wearing of military service medals "if the employer determines that wearing the . . . medals poses a safety hazard to the uniformed public safety officer or to the public." In addition, any military service medal that is worn pursuant to this legislation may not cover the officer's regular badge. If an employer already has a policy prohibiting the wearing of

such medals, it must be readopted after the effective date of this legislation, which was 30 June 2009.

Deadly-force reports: SL 2009-106 (HB 266).

The act directs the Division of Criminal Statistics, in the DOJ, to collect, maintain, and publish each year the number of deaths, *per law enforcement agency*, caused by the use of deadly force by law enforcement officers.

The act becomes effective 1 January 2010, and it is applicable to uses of deadly force on or after that date.

Secondary metals recycling: SL 2009-200 (HB 323).

This act imposes new record-keeping requirements on secondary metals recyclers, to help prevent theft of certain metals. The law has required such dealers to make their records available to law enforcement. The act permits law enforcement agencies to require the records be transferred to them electronically. Once an agency receives these records, they are characterized as criminal investigation or criminal intelligence information and therefore not public records. Indeed, the statute goes on to require the law enforcement agency to retain and destroy the records in "a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property."

The act becomes effective October 1, 2009.

Finance and Personnel

Furloughs for local government employees: SL 2009-378 (SB 658)

This act permits a local government employer, who has furloughed or will furlough employees who are members of the LGERS, to make a "one-time irrevocable election" and thereby prevent any diminution in the average final compensation under the retirement system of the furloughed employees. If the employer makes the election, it must pay both the employer and the employee contributions to the retirement system, as if the employee were not furloughed.

The act is effective for furloughs on and after January 1, 2009, and before July 1, 2010.

Utility debt collection: SL 2009-302 (HB 1330).

This act limits the ability of a city to disconnect utility service to a customer because there is an outstanding balance in the utility account of a person in the same household. (There is a comparable provision applicable to counties.)

The act is already effective.

Service districts in secondary business districts: SL 2009-385 (SB 618).

The service district statute (GS 160A-536) has permitted creation of service districts for urban area revitalization projects but has limited the statute to cities of 150,000 or more. This act, which is already effective, removes the population restriction and thereby permits all cities to create service districts to support urban revitalization in

- Business districts outside downtown.
- Transportation corridors.
- Areas that are centered around "a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities."

Raffle prize limits: SL 2009-49 (HB 85).

G.S. 14-309.15 permits local governments, as well as nonprofit organizations, to hold raffles. The statute sets the maximum prize that can be offered at a legal raffle, and this act increases the limits, as follows:

1. The maximum cash prize that can be offered in any single raffle is increased from $50,000 to $125,000.

2. The maximum amount of cash prizes awarded in any calendar year is increased from $50,000 to $125,000.

3. The maximum value of cash prizes and merchandise that can be awarded in any calendar year is increased from $50,000 to $125,000.

The statute has prohibited offering real property as a prize, but this act removes that prohibition and establishes a separate maximum that applies to real estate. The maximum value of real property in any single raffle, and the maximum value of real property that can be offered in any calendar year, is $500,000.

The act is already effective.

Local Government Property

Donations to charter schools: SL 2009-141 (HB 96).

In 2007 the General Assembly enacted GS 160A-280, which permits local governments to donate property to other local governments, not just in North Carolina but anywhere within the United States, and to nonprofit organizations located anywhere within the country. This act amends that 2007 statute to expressly permit use of the statute to donate property to a charter school.

It is already effective.

Connections to city utility poles: SL 2009-278 (SB 357).

This act amends the utility statutes by adding a new GS 62-55. It requires any city (which means any electric city) or any electric or telephone membership corporation to allow a "communications services provider" to use its poles, ducts, or conduits for the communications services provider's lines. The parties are to negotiate a reasonable rental rate for such use, and if they cannot, either side may appeal to the Business Court to settle the issue.

A communications services provider provides telephone service, broadband, or cable service.

The act is already effective.

Condemnation of conservation and preservation easements: SL 2009-439 (SB 600).

This act restricts the ability of public condemnors to condemn property subject to an easement for conservation or historic preservation. Basically, the condemnor would have to allege and prove that there was no "prudent and feasible alternative" to the condemnation.

The act does not apply to condemnations for utilities, storm sewers or drainage, or trails associated with greenways.

The act is effective as to condemnations initiated on or after October 1, 2009.

Miscellaneous

ABC store location: SL 2009-36 (HB 186).

Under G.S. 18B-801 the location of new ABC stores has been determined by the appropriate local ABC board, subject to the approval of the state ABC Commission. This act, which is effective October 1, 2009, gives cities a somewhat more formal role in the process but still leaves final decision-making with the state ABC Commission.

The act adds a new G.S. 18B-801(b1), which begins by stating that no local board may establish a new store at a location within a city if the city's governing body has adopted a resolution objecting the store's location. This apparent prohibition, however, turns out not to be true. The statute goes on to provide that even if the city objects to the location, the local ABC board may request the ABC Commission to approve the location, and the Commission still has the final say-so. Perhaps, however, the Commission will be influenced by the formal city action in ways that were not possible when the city's influence was more informal.

If a city wishes to adopt a resolution pursuant to this authority, it must first hold a public hearing, at which it will take evidence concerning the proposed store location. Although there is nothing explicit in the statute on this point, the use of the word evidence suggests that the city may want to swear persons who appear at the hearing. There is no express statutory standard for the city's action, but the ABC Commission is to consider "whether the health, safety, or general welfare of the community will be adversely affected" by a store at the proposed location. Perhaps the idea is that the city will use the same standard, and it may be that the city's action is quasi-judicial in nature, although the statute does not say anything on that point.

It should be emphasized that this statute has nothing to do with city influence on the business location of ABC permittees.

Animal shelter operations: SL 2009-304 (SB 467).

This act creates a series of rules for dealing with animals that turn up in animal shelters, with the overall intention of assisting in recovering lost pets.

The act is effective January 1, 2010.

Road maintenance materials: SL 2009-332 (HB 881).

This act, in part, permits DOT to furnish road maintenance materials to cities, at prices established by the department.

The act is effective August 1, 2009.

Energy efficiency revolving loan funds: SL 2009-522 (HB 1389).

This act authorizes cities (and counties) to establish revolving loan funds in order to make loans "to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements" permanently affixed to real property.

The act is already effective.

Water-use reduction by car washes: SL 2009-480 (HB 1236).

This act permits a trade organization representing commercial car washes to develop, subject to DNER approval, a voluntary certification program for water conservation and efficiency; the act requires that such a program require participants to reduce water use by at least 20 percent from their current use levels. If a car wash achieves such certification, a local government that implements a tiered response stage in its water shortage response plan must credit the entity with the reduction achieved under the certification program; in addition, the local government may not require such a business to reduce water consumption more than any other class of commercial or industrial users.

The act becomes effective January 1, 2010.

Proposed 2009 Changes to the Annexation Laws – HB 524

David Lawrence, School of Government

1. The referendum requirement

The House finance committee added a provision permitting a referendum on involuntary annexations, and the House appropriations committee left the provision in. The referendum is triggered by a petition from 15% of the registered voters in the combined area of the annexing city and the proposed annexation area. The referendum itself is also in the combined area, and there is a single count of votes (not separate votes in the city and in the annexation area). If the referendum goes against the city, the city is not permitted to begin annexation proceedings for the affected area for at least five years.

This provision's addition to the bill has caused the League of Municipalities to change its position from supporting to opposing the bill.

2. The increased role of the Local Government Commission

The bill directs that the LGC "provide oversight" of involuntary annexations. There is a bit more than the following, but these are the core of this new responsibility:

- The LGC is to assess the fiscal feasibility of all proposed involuntary annexations – are the proposed expenditures reasonable to meet the needs created by the annexation, and will the city have the necessary revenues.
- The LGC is to prohibit further annexations by a city that has not provided required services to an existing annexation that was effective more than 12 months earlier.
- The LGC is to prohibit further annexations and, in addition, abate all property taxes in any annexation area, if the city has not provided required services within 3 years after the effective date of an annexation.

The bill also requires new reports by an annexing city to the LGC, reporting on whether services were extended as set out in the annexation report.

This provision occasioned the bill's being sent to the House Appropriations committee, because of the costs that might have to be incurred by the LGC to do this work. The bill provides that the LGC may change a "reasonable fee" to recover its costs associated with the fiscal feasibility review.

3. No involuntary annexation by cities that do not provide services

The bill prohibits involuntary annexation by a city that does not provide at least two "meaningful services" to the existing city. (There are six "meaningful services," which are the same as the "major" municipal services under the current law – police, fire, street maintenance, solid waste collection, water, and sewer.) To count, a service must be provided by the city, by a joint agency in which the city is a "full participating member," or by a contract between the city and a third party. (It's not clear whether the city has to make any payments under this contract to the third party.) For a contract with the sheriff's department to count, the sheriff must provide a higher level of service within the city than is true generally in the unincorporated area.

4. The population cut-off between statutes is changed from 5,000 to 10,000

The current statutes have one procedure for cities of up to 5,000 population, and a second for larger cities. The bill moves the split from 5,000 to 10,000.

5. Urban development standards and other annexation standards have been modified

In general the bill has modified a number of annexation standards, mostly (but not entirely) to make annexations more difficult. Here are the important changes:

- Smaller cities are, for the first time, permitted to use the density standard, which remains at 2.3 people per acre.
- Cities are permitted to annex donut holes, regardless of their level of development.
- The contiguity between the annexation area and the city is increased from 12.5% of the area's circumference to 20%.
- The use test in the use and subdivision standard is increased from 60 to 65 percent.
- The maximum size of a lot that meets the subdivision test in the use and subdivision standard is decreased from 3 to 2.5 acres.
- The minimum density required for the density and subdivision standard is increased from 1 to 2.5 people per acre. As a result, this standard is unlikely ever to be used except as a backup.
- A new standard is added that prohibits a city from annexing an area that is provided water and sewer by another "municipality," unless (1) there is an annexation agreement between the two cities, or (2) the system is operated pursuant to an interlocal agreement to which the annexing city is party, or (3) the system is operated by an authority or joint agency of which the annexing city is a full member.
- A new standard is added that prohibits a city from annexing less than all of a residential subdivision (except for those lots, if any, that are already in the city or those lots, if any, in a second county).

6. All water and sewer lines must be constructed within three years

The current statutes require cities to install water mains and sewer outfalls within specified periods, roughly two years, and then provide that extensions to individual properties are to be made pursuant to existing city policies. As a result, it can often be several years – sometimes more than a decade – before the annexed properties receive water or sewer service.

The bill requires that all lines – mains, outfalls, and distribution and collection lines – be constructed within three years, again pursuant to existing city policies.

The bill also anticipates that many cities will use special assessments to pay for these extensions, and amends the special assessment statute to give property owners up to 20 years (as opposed to the present law's 10 years) to pay their assessments.

7. Utility service plans

The annexation laws are amended to create the possibility of utility service plans between counties and one or more cities within the cities' "future utility service area." This area is:

- Within 1 mile of cities of under 10,000.
- Within 2 miles of cities of 10,000 to 25,000.
- Within 3 miles of cities of 25,000 or more.

If the future utility service areas of two or more cities overlap, the plan must be agreed to by all affected counties and the overlapping cities. Once an agreement is reached, a city may only provide utility services pursuant to the plan.

A city may not annex within this utility service area unless (1) the county waives its authority to initiate the process leading to agreement; (2) the parties have tried to reach agreement and, after 90 days, have failed; or (3) there is an agreement in place.

8. Meaning of contiguity

The bill would make clear that property *across* a road, stream, etc. is contiguous, not property *along* the road.

9. The voluntary annexation statute is modified to facilitate annexation of poorer areas

The voluntary annexation statute is amended to facilitate the annexation of "distressed areas," defined as areas in which at least 51% of the households have incomes that are 200% or less than the federal government's current poverty thresholds. There are two ways such an area can be annexed under the statute.

- The petition is signed by the owners of at least 75% of the parcels in the area. In this case, annexation appears to be mandatory.
- The petition is signed by at least one adult resident of at least 75% of the resident households in the area. In this case, annexation appears to still be discretionary with the council.

10. All annexations are to be effective June 30.

The bill would require that all annexation ordinances be made effective on the next June 30 after adoption of the ordinance. If an annexation is appealed and the city wins, the existing proration statute would come into effect, but the city could by resolution provide that the annexation is to become effective on the next June 30.

11. There are procedural changes

The bill includes a number of changes in the procedure, which are not summarized here.

12. Annexation agreements with extraterritorial utility customers are recognized

The bill explicitly authorizes agreements under which a city extends utilities in return for a promise to either seek annexation or not oppose annexation, whenever the city decides to annex the property. The agreements can be recorded and thereby run with the land – that is, they would be binding on later owners of the property. (Many cities do this already, but the law is not settled as to the enforceability of the agreements.)

The bill, if enacted, currently calls for an effective date of October 1, 2009. If a city has in place an existing resolution of intent, beginning an involuntary annexation, it may complete that annexation under the existing law.