

“The Biggest Problem With Annexation — It’s Not Understood”

by Patricia Dusenbury

“To annex” — to join or add to a larger thing — connotes the taking of something without permission. Most North Carolina cities can do just that, annex an area without the permission of residents or property owners, and such actions — called unilateral annexations — are generating a growing controversy in the state. In recent years, property owners in unincorporated areas bordering Raleigh, Charlotte, Greensboro, Monroe, Carrboro, Lenoir, High Point, Asheville, and other North Carolina towns have actively, and sometimes successfully, resisted annexation into the city.

The key issue in an annexation procedure is which party has control, the annexing city or the property owners in the area being considered for annexation. Today, most North Carolina cities control the process, but opposition to the current law seeks to shift that control. Over the years, local politicians have worked through the General Assembly to create exceptions and exemptions from the state annexation laws. In the 1981 General Assembly, some legislators are trying to gain more exceptions, which would further weaken what a variety of experts call one of the best annexation laws in the country, a law that has facilitated orderly urban growth.

Patricia Dusenbury, associate director for urban affairs at the Southern Growth Policies Board (SGPB), recently directed an SGPB project called “Suburbs in the City: Municipal Boundary Changes in the Southern States.”

North Carolina has five procedures for municipal annexation, but annexation laws have been passed, amended, and repealed so many times over the years that today, only five towns out of some 460 active municipalities can now use all five of the methods described below.*

1) Through a special act, the General Assembly can enlarge the boundaries of any municipality in the state. The oldest and at one time the only method of annexation, it is rarely used today. In the 1940s, as urban areas were growing, local annexation bills often crowded the legislative calendar, causing this method to become too cumbersome.

2) In 1947, the General Assembly provided that upon receipt of a petition from property owners, a city could hold a referendum in the area being considered for annexation; if a majority approved, the area was annexed.

3) The 1947 law also allowed the city to hold such a referendum without being petitioned; again, a majority vote meant annexation. The 1947 measure did not allow for orderly expansion of municipal boundaries in growing urban areas. Between 1950 and 1958, two out of every five annexation referendums failed, while others were never put to a vote because defeat was anticipated.

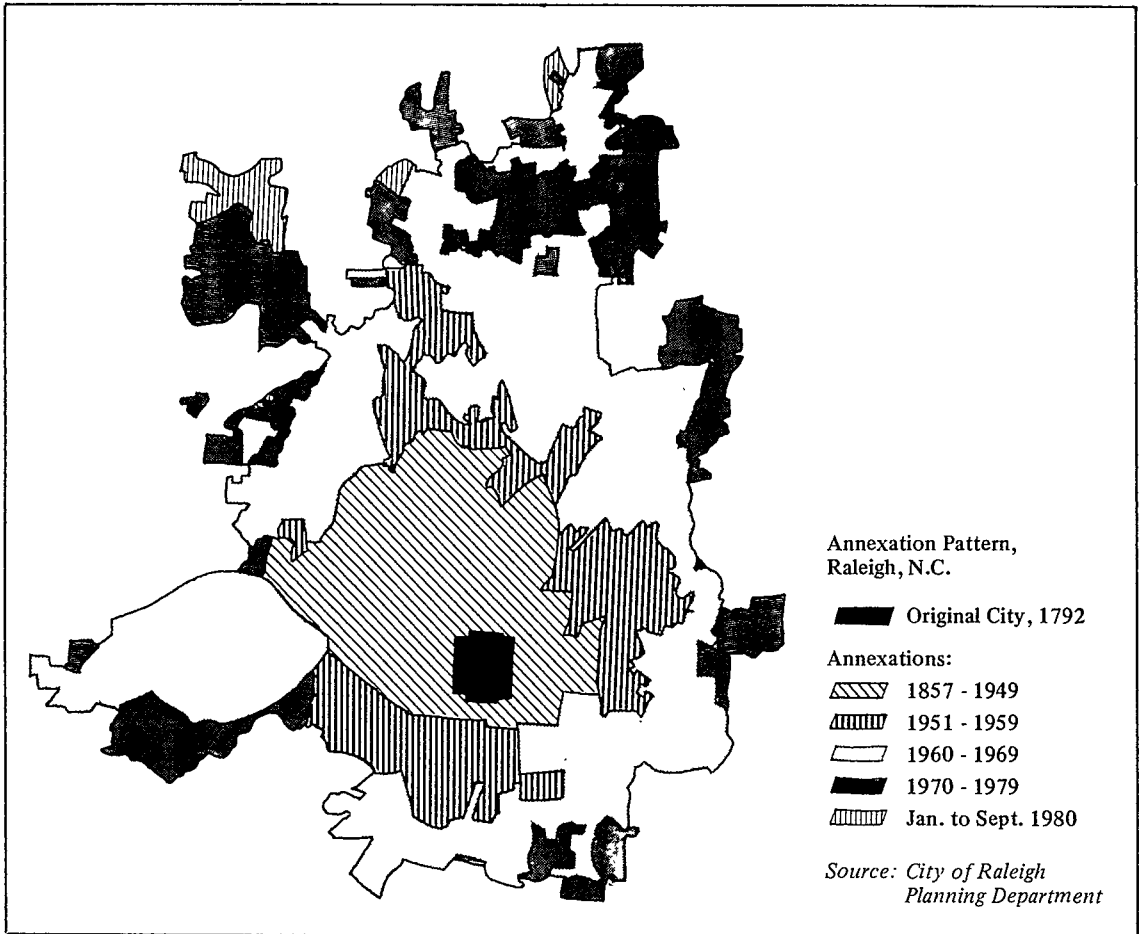
4) In 1959, the General Assembly gave cities the power to annex by ordinance any unincorporated, contiguous area where 100 percent of the property owners had signed a petition requesting annexation. The petition procedure was eventually extended to non-contiguous areas, allowing what is called “satellite” annexation.

5) The 1959 law, referred to as the “new law,”

*These five are Kill Devil Hills, Manteo, Nags Head, Scotland Neck, and Southern Shores.

These maps illustrate the sharp contrast between the development patterns of cities under two very different annexation laws.

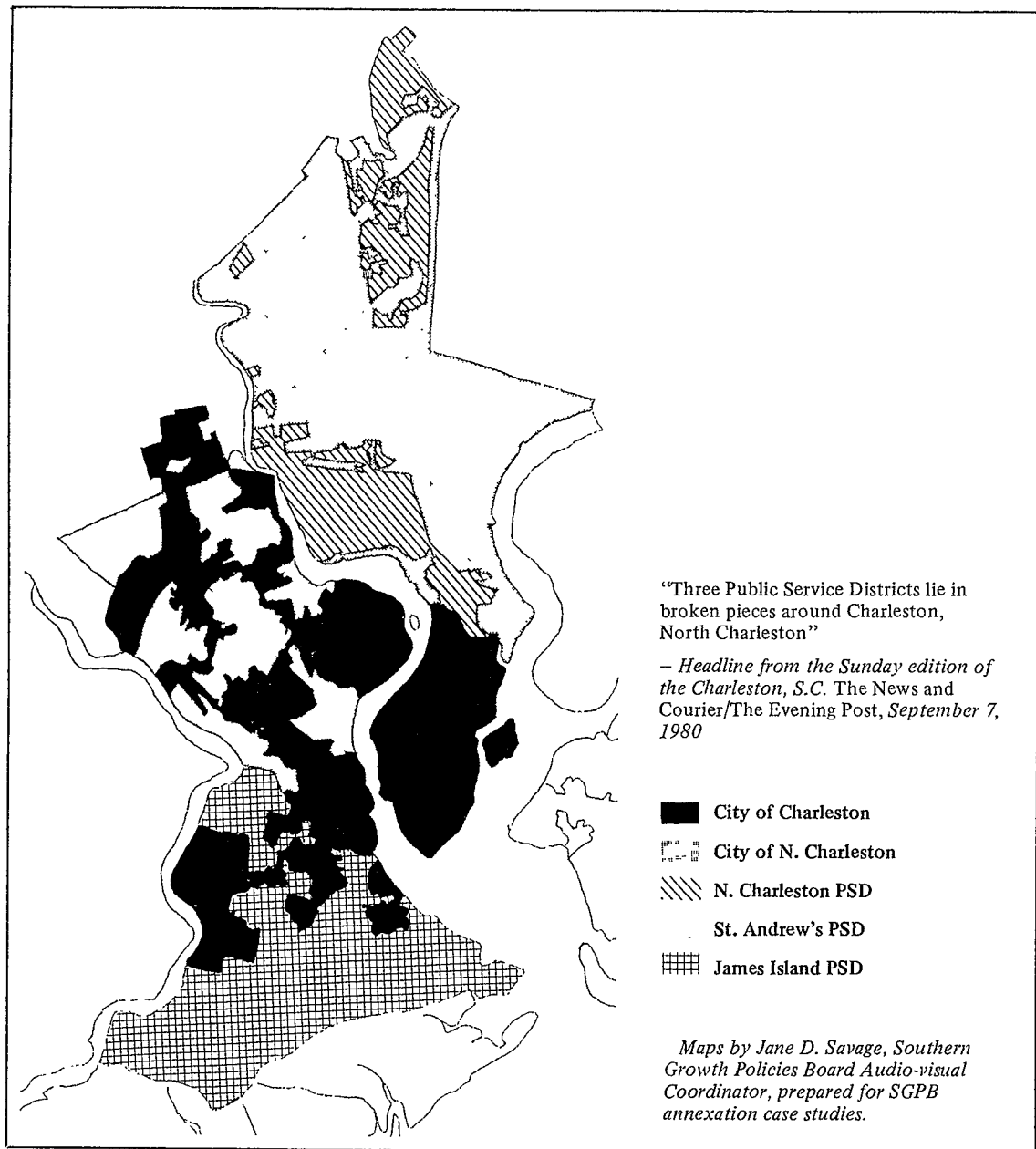
South Carolina has one of the most restrictive laws in the country, from the point of view of the city. North Carolina municipalities have the power of unilateral annexation.



also allowed cities, without having been petitioned, to annex an unincorporated, contiguous area that was developed for urban uses, as defined by legislative standards, and to which the city was prepared to extend full municipal services. Known as the "standards and services" procedure, it does not require the consent of affected property owners or residents and therefore is called *unilateral annexation*. Since the 1959 law passed, only about three out of twenty annexations have been unilateral, but they have accounted for almost all of the controversies across the state.

The 1959 law passed after 60 local exceptions were put into the bill, but they included only three cities over 5,000 population — Fayetteville, Roanoke Rapids, and Whiteville.* Three years later, the General Assembly repealed the statute

* In addition to Fayetteville, Roanoke Rapids, and Whiteville, this group of exceptions includes: Alliance, Arapahoe, Atkinson, Bailey, Bayboro, Belville, Boiling Spring Lake, Bolivia, Burgaw, Calabash, Caswell Beach, Conetoe, Dortches, Enfield, Falcon, Godwin, Halifax, Harmony, Hertford, High Shoals, Hobgood, Holden Beach, Hope Mills, Leggett, Linden, Littleton, Long



that provided for referendum annexation (passed in 1947), making the “new law” the primary annexation vehicle in the state. In this repeal, the General Assembly allowed 63 municipalities, including all of those which could not use unilat-

eral annexation because of being exempted by the “new law,” to retain the referendum procedure.**

The U.S. Advisory Commission on Intergovernmental Relations has cited the 1959 law as model legislation:

Beach, Love Valley, Macclesfield, Maggie Valley, Mesic, Minnesott Beach, Navassa, Ocean Isle Beach, Oriental, Palmyra, Pilot Mountain, Pinetops, Red Oak, Shallotte, Shady Forest, Southport, Sparta, Speed, Spring Lake, Stedman, Stonewall, Sunset Beach, Surf City, Topsail Beach, Troutman, Vandemere, Wade, Watha, Weldon, Winfall, Yaupon Beach.

** In addition to the 60 towns listed above, Kill Devil Hills, Manteo, and Nags Head were exempted from the 1962 repeal of referendum annexation. Later, the power of referendum annexation was returned to Scotland Neck and Southern Shores.

North Carolina's municipal annexation arrangements constitute a key feature of the state's implicit urban policy. The arrangements encourage the expansion of existing municipalities and discourage the creation of new municipalities or other local governments around them. The state's annexation arrangements are based on the principle that what becomes urban should become municipal and have been cited as a model for the nation since 1967. . . .

The municipal annexation record since 1959, when the principal method was adopted, suggest that annexations are occurring as anticipated. The state's municipal population is growing slightly more rapidly than its total population. That which has become urban generally becomes municipal.*

* Warren Jake Wicker, "Municipal Annexation in North Carolina," paper prepared for the Second Annual Urban Affairs Conference of the University of North Carolina, March 1980.

Annexation— The Best Option for North Carolina Local Governments

In 1980, the N.C. Association of County Commissioners and the N.C. League of Municipalities created a Joint Annexation Study Committee. The excerpt from their report which follows explains why annexation has worked in North Carolina.

There are, of course, other means of bringing local government services and functions to an area that is urban in character and that needs typical municipal services and functions. Several possibilities exist in North Carolina. A simple approach would be to incorporate a new town beside the existing one. A county government could provide many services. If only a few services or functions were needed, a fire district, a water and sewer district, a sanitary district, or some other form of special-purpose local government might be created. Some services can be provided to such an area by an existing city without annexing if it is near one. For example, water and sewer services are frequently extended by cities to areas outside their boundaries. In

Not all North Carolinians share this high opinion of the state's annexation law. Property owners in unincorporated areas adjacent to cities — that is, people who stand to be annexed whether they wish it or not — have objected strenuously, usually because they have no vote in the annexation procedure affecting their property. "We have nothing to say about those city officials, who weren't elected by us, perpetrating all this on us," said Hugh J. Lee, a resident of the Brookhaven area north of Raleigh, during annexation battles in the late 1970s. "We have everything in Brookhaven: peace, quiet, tranquility, no city police radar, adequate streets, and sewage." The Brookhaven residents, like other groups across the state, organized and raised funds to challenge the city's proposed annexation. They were successful in fighting off annexation in 1972 and 1979 and, in 1980, in limiting the amount of the area that was finally annexed into Raleigh.

Upon annexation, property is added to the municipal tax rolls while remaining on the county

some other states, cities and counties have consolidated, forming a single government with the powers of both cities and counties and providing services throughout their jurisdictions as needed.

North Carolina has examples of all these approaches to providing services and functions except city-county consolidation. For many years, however, the state's policy has strongly favored annexation over the other alternatives, and properly so.

Unlike the arrangements in most states, essentially all local government responsibilities in North Carolina are vested in counties and cities. Over 98 percent of all local government expenditures in North Carolina are made through city and county governments. In other states, special districts and authorities are responsible for many functions that are city and county responsibilities in North Carolina.

The 1977 Census of Governments reports that North Carolina has nine units of local government for each county area. The national average is 26 governments per county area. At the high extreme are Pennsylvania with an average of 78 units for each county and Cook County, Illinois, which has 520 local government units.

City and county governments in North Carolina are meeting their local governmental responsibilities well. There seems to be no need to adopt policies that would encourage the creation of additional types of local government.

Central to the roles of cities and counties in North Carolina are their jurisdictions and location. Every part of the state is within a county.

tax rolls. No one looks forward to paying higher taxes, and critics of unilateral annexation frequently link the voting issue to the inevitable tax increase that will follow. But this is not "taxation without representation." Rarely is a property tax levy the subject of a referendum, for newly annexed or longtime city residents. (Proposition 13 in California was a notable exception.) Moreover, voters in the annexed area become municipal voters, having the same rights as any other voter to reject local officials who may be asking for too high a tax.

The report of the 1957-59 Municipal Government Study Commission, which drafted the 1959 law, addressed the right to vote in the annexation context:

We believe in protection of the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe

that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby acquires the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself with an urban population, to assume the responsibilities of urban living, and to reap the benefits of such location. . . . Thus we believe that individuals who choose to live on urban-type land adjacent to a city must anticipate annexation sooner or later. And once annexed, they receive the rights and privileges of every other resident of the city, to participate in city elections, and to make their point of view felt in the development of the city. This is the proper arena for the exercise of political rights as North Carolina's General Assembly has evidenced time and again in passing annexation legislation without recourse to an election.

Thus functions and responsibilities that should be available to every citizen and at approximately the same level are properly placed within county governments. Health, education and welfare are prominent among these. Police and fire protection, streets and sidewalks, sanitation, and recreation illustrate services that are needed at higher levels in urban areas and for which cities are organized.

Furthermore, the pattern of urban growth in North Carolina has resulted in the development of cities that are physically separate. Only 84 of North Carolina's 457 cities are within one mile of another city or town. Of the 38 cities with 1970 populations over 10,000, only nine have a smaller city or town within one mile of their boundaries. Under these circumstances extending present city boundaries to include adjacent urbanizing territory is a logical approach to providing the area with local governmental services. Efficiency and economy dictate that this approach be taken. A recognition that the state's separate urban areas are almost uniformly a single social and economic unit suggests annexation in preference to other possible approaches.

One has only to consider an alternative to illustrate the desirability of encouraging annexation as a state policy in most cases. In 1900 Raleigh's population was about 13,600. Today it is estimated at about 160,000. If Raleigh's boundaries had not been expanded over this period and the surrounding area had grown as it has, Raleigh could be encircled today with 12 cities equal to its 1900 size. Or by 15 cities of Garner's

current size. Or with an even larger number of overlapping special districts. It is difficult to imagine that the citizens of the area would be served better by such a large number of governments than they are by a single city. But in the absence of annexation by Raleigh, some alternate arrangement would have been necessary.

By both Constitution and statute North Carolina has appropriately given preference to expanding existing cities as opposed to creating new ones. Both discourage incorporating new cities and towns near existing ones. Except by a three-fifths majority, the General Assembly may not incorporate a new city closer than one mile to an existing city of 5,000-10,000 population, within three miles of one with 10,000-25,000 population, within four miles of one with 25,000-50,000 population, and within five miles of one with over 50,000 population. Similar limitations are placed on administrative incorporations by the Municipal Board of Control.

North Carolina has some 460 cities and towns. About 55 percent of these have populations of less than 1,000. They are spread about the state, and most of the state's urbanization is taking place near one of the existing cities and towns. Under these circumstances the state's policy of encouraging annexation — which means enlarging the existing water plant rather than building a new one, or enlarging an existing police force rather than creating a new one — seems clearly in the best interests of all citizens when done with the safeguards that are built into North Carolina's annexation statutes. □

In addition to the "no-vote" complaint, opposition to unilateral annexation often arises from competition between the annexing city and the entity providing city-type services for the area to be annexed. Non-municipal service providers include special districts, private firms, and more and more often, county governments. North Carolina has fewer special districts than most states, but there are still numerous rural fire districts, rescue squads, and water and sewer districts providing services to unincorporated areas. Annexation removes an area from any special district that had been serving it, which may cause financial problems for the district. Many counties provide funds to the special districts which stand to lose customers to the annexing city.

Where annexation has been slow to follow urban development, the county has often stepped in, or a special district has been created, to meet the needs of area residents. Buncombe County provides a vivid example of what happens when annexation is delayed. Because Asheville, the Buncombe County seat, went bankrupt during the Depression, it was put under a bondholders' agreement for almost 50 years and could not annex. Large communities grew up around Asheville, and the city extended some services. But when it tried to annex, opposition was so strong that the General Assembly imposed a moratorium (1975-81) on annexations by Asheville to allow the city and county to reach an accord on water and sewer service responsibilities.

Union County illustrates another reason why county leaders oppose annexation. According to Joe Hudson, chairman of the County Commissioners, Union County provides such a broad range of services — water and sewer, garbage, fire protection, police protection, ambulance, landfill, zoning, and building inspection — that he questions whether municipalities are really required. As a result, he says that "county commissioners' approval should be required before annexation can occur."

Other county commissioners have joined the battle against unilateral annexation because the people who feel strongly enough to base their vote for county commissioner on this issue are property owners resisting unilateral annexation. Finally, because state revenues from intangibles and sales taxes are distributed according to population, annexation can reduce the county's share of these revenues, to which county commissioners object.

After the new law was passed in 1959, county opposition to unilateral annexation came mostly from commissioners who owned property susceptible to being annexed. But in the seventies, county opposition has developed a broader base. Commis-

sioners in Onslow, Union, and Caldwell counties, among others, have become involved in resisting annexation. And a number of local bills to limit municipal annexation have been introduced in various sessions of the General Assembly. Despite the higher visibility of some county government opposition, however, the self-interest of counties is less clear-cut than that of municipalities. As Butch Gunnels, attorney for the North Carolina Association of County Commissioners, explains, "There are 100 different counties with 100 different stories."

In response to the growing controversy about municipal annexations, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities created a Joint Annexation Study Committee, which issued a 40-page report in June 1980. The Report made three related points: 1) it supported North Carolina's annexation law and the philosophy behind it, as articulated by the 1957-59 Study Commission; 2) it proposed three changes in the law to improve its implementation; and 3) it recommended several procedural changes, again to improve the implementation, that could be effected without new legislation.

Only one of these proposed legislative changes involves a substantive change in the law. Cities would be *required* to annex areas meeting the standards for annexation if area residents petitioned for annexation. Thus municipalities would then have the responsibility, as well as the privilege, of annexing adjacent urban areas. In practice, these areas usually petition for annexation when their services or infrastructure are so inadequate that it would cost the annexing city a great deal to bring the area up to the level of the city. Cities, on the other hand, respond to this situation in various ways, depending on their financial resources and the costs that would be incurred. If the proposed changes were made, the city would have to annex, subject to safeguards to prevent severe fiscal stress.

The North Carolina League of Municipalities endorsed the Report and included the suggested new legislation in its "1981 Municipal Legislative Goals and Policies." The co-sponsor, the North Carolina Association of County Commissioners, neither endorsed nor rejected it.

The Report did not satisfy political opposition to unilateral annexation, and again the issue surfaced in the 1981 session of the General Assembly. A number of local bills have been introduced to create various exceptions to the 1959 law: 1) House Bill (HB) 137 and Senate Bill (SB) 85 would require referendum approval of annexation in New Hanover County; 2) SB 223 would link

Cities or Suburbs — Who Should Control?

In 1980, the Southern Growth Policies Board issued a report on annexation procedures throughout the South, "Suburbs in the City: Municipal Boundary Changes in the Southern States." The excerpt from that report which follows provides an historical perspective on the annexation issue. Specifically, it points out the contrast between North Carolina towns and northeastern urban centers, where control over annexation in most cases was taken away from the cities and given to the suburbs some 75 years ago.

Before 1900, annexation was readily accomplished and frequently employed by large cities through unilateral action, special legislative act, or a single referendum encompassing both the city and the territory being considered for annexation. However, increasing suburbanization, with the tendency of lower-income residents to occupy the urban core while the more affluent moved to newly developed suburban areas, engendered suburban resistance to annexation. Suburban residents were able to get changes in state laws that limited annexation opportunities by changing the procedures.

[They] succeeded in getting changes in state constitutions and statutes to forestall absorption by their larger neighbors. Many states gave fringe area residents exclusive authority to initiate annexation proceedings, and required separate majority votes in both the annexing city and the territory to be annexed. New villages and cities gradually were incorporated around the edges of central cities. . . .*

This made possible the balkanization of older metropolitan areas, which is associated with the severe financial problems facing many large central cities today. Disparities between local revenue resources and the costs of providing needed facilities and services afflict urban areas which have been divided into several separate municipalities.

Annexation of high-income, urban-fringe neighborhoods against residents' wishes for the benefit of the annexing city's fisc has been characterized as an abuse of annexation power.** However, the harsh reality of financial pressures upon central cities plus a growing awareness of the costs that nonresidents using city infrastructure and services create for the city have made the fiscal motivation for annexation more prevalent and somewhat more respectable.□

* *Alternative Approaches to Governmental Reorganization in Metropolitan Areas*, Advisory Commission on Intergovernmental Relations, June 1962, p. 59.

** *Adjusting Municipal Boundaries: Law and Practice*, National League of Cities, December 1966, p. 79.

annexation in New Hanover County with a guaranteed solid waste disposal system; 3) HB 397 would prohibit Wilmington from annexing at all until after June 1, 1981; 4) SB 228 would require referendum approval of annexation in Forsyth County; 5) HB 465 would prohibit annexation in Davidson County by any city located primarily in another county, i.e., High Point; 6) HB 228 would limit annexation in Davie County.

While these local bills appear to be dead for this session, the issue is still very much alive. SB 4, introduced by Senator Craig Lawing (D-Mecklenburg), would authorize the Legislative Research Commission to study the annexation laws, and SB 10, introduced by Senator Donald Kincaid (R-Caldwell), calls for a study, coupled with a state-wide, three-year moratorium on annexation. Senator Lawing's bill has broad support and good prospects for passage. The League of Municipalities, which opposes all local legislation creating additional exceptions to the 1959 legislation,

supports the bill calling for a study but not for the moratorium. "If there is this much concern, the legislature should be given a chance to fully review the concepts behind this law," says Leigh Wilson, executive director of the N.C. League of Municipalities. "The biggest problem with annexation is, it's not understood."

In 1959, the General Assembly dealt with the annexation issue by passing a law allowing cities to control the annexation process within the limitation of legislatively set standards for urban development and requirements for service provision. Although most would agree that the law has provided for orderly growth of urban areas in North Carolina, a rising tide of political opposition is leading the state's lawmakers to reconsider the decision made in 1959. Their action will affect the future pattern of development across the state, and its impact will be especially great in the current era of rapid urban growth.□