

# HOUSE RESEARCH ORGANIZATION

*session focus*

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## ***Annexation Vexation***

Annexation is the process of adding areas adjacent to a city into the city's borders. Cities contend that annexation is a vital component of municipal development, preventing population loss and resulting urban decline. Critics of annexation say it should be limited, giving more control to residents of outlying areas to manage their own affairs. Recent controversies in Austin and Houston over specific annexation actions have rekindled interest in annexation issues.

This report briefly summarizes Texas annexation law, reviews a recent Texas Supreme Court decision striking down a local restriction on annexation, examines the recommendations of the House Joint Interim Committee on Regional Issues that studied annexation issues and presents the views of those who favor maintaining the current annexation process and those who would restrict cities' annexation authority.

### **Annexation history**

Before 1912 any annexation by a city required approval of the Legislature. In 1912 Texas voters approved a constitutional amendment, TEX. CONST. Art. XI, sec. 5, allowing cities with more than 5,000 residents to form a home rule city. When a city becomes a home rule city it gains the power to take any action that is not in violation of the Constitution or the laws of the state. One of the broadest powers granted to a home rule city is the power to annex unincorporated areas. Today virtually all home rule cities and hundreds of general law cities have unilateral authority to annex—without the consent of those who live in the area to be annexed.

In 1963 the Legislature enacted the Municipal Annexation Act, now codified as Chapter 43, TEX. LOC. GOV'T CODE, which set certain limits on all annexations. The Municipal Annexation Act

established the concept of extraterritorial jurisdiction (ETJ). An ETJ is the area of land extending beyond the city limits over which the city maintains some control. It can be as little as half a mile beyond the city limits for small cities and as large as five miles for cities with more than 100,000 residents. When a city annexes additional areas its ETJ is also extended. A city's annexation authority is limited to the area within its ETJ.

Additionally, the Municipal Annexation Act prohibits cities from annexing more than 10 percent of their total size in any one year, but if they do not annex the full 10 percent in any year, the remainder can be carried over to the following years, allowing a maximum annexation limit of 30 percent. The Municipal Annexation Act also lays out notice and hearing requirements for annexation proceedings, specifies how an unincorporated area within an ETJ may petition for annexation, restricts the formation of political subdivisions within an ETJ and establishes a procedure for disannexation.

Since the enactment of the Municipal Annexation Act the Legislature has further restricted annexation powers. In 1977 the Legislature prohibited the annexation of land that was less than 500 feet wide, so-called "strip annexation," and in 1987 the minimum width was increased to 1,000 feet. Over the years the Legislature has shortened the time for a city to begin construction or acquisition of capital improvements to provide city services to newly annexed areas. The original requirement was three years, but was it shortened to two years as of 1987.

### **Annexation legislation declared unconstitutional**

In recent sessions the Legislature has considered legislation that would restrict annexation authority

involving certain cities or certain areas, but a recent Texas Supreme Court decision indicated that too specific legislation may run afoul of the constitutional prohibition against enactment of special or local laws.

A municipal utility district (MUD) is a political subdivision of the state authorized in Chapter 54 of the Water Code to provide water and wastewater service to a specific region. In order to accomplish that goal, a MUD may purchase or construct and operate facilities that serve the region; it may issue bonds to finance the purchase or construction of such facilities.

SB 1261 by Barrientos, enacted in 1995 as section 43.082 of the Local Government Code, allowed the board of a MUD with specific debt obligations to dissolve and force the city within whose ETJ the MUD was located to annex the area and assume the debt obligations of the MUD.

Based on the definition specified in the statute, only one MUD in Texas was affected by the provisions of SB 1261: Maple Run at Austin MUD. The Supreme Court in its decision *Maple Run v. Monaghan*, 40 Tex. Sup. Ct. J. 54 (Oct. 19, 1996), declared SB 1261 unconstitutional for violating Art. III, sec. 56 of the Texas Constitution prohibiting the enactment of local or special laws. The court, in a unanimous decision, found that the law violated the Constitution because it singled out a very narrow segment of the population without adequate justification. The court found that there were other MUDs with higher levels of indebtedness or higher taxes that could not benefit from the provisions of the statute.

Still unclear, however, is whether any other legislation that affects specific areas around Austin may be challenged based on the Supreme Court's decision. Such laws as HB 3193 by Saunders, creating the Southwest Travis County Water District (Circle C), an autonomous water district located wholly within Austin's ETJ and barring its annexation by Austin, may be litigated under the standards set forth in the *Maple Run* case.

### **Regional Issues Interim Committee recommendations**

The House Joint Interim Committee on Regional Issues was charged with studying issues related to extraterritorial jurisdiction, including annexation, regulation and overlapping jurisdictions. The committee held hearings in Houston, San Antonio, Port Arthur, El Paso and Austin. To ameliorate the

problems it found concerning the current state of annexation, the committee concluded that both short term and long term changes were needed. The committee was also charged with examining the issue of city/county consolidation and recommended establishing of a citizens' commission to study the issue further.

For the short term the committee recommended that disclosure of the status of property should be provided to buyers purchasing land to inform them of the likelihood of annexation. The committee recommended requiring cities to develop a "master growth plan" that would outline the proposed growth and services provided over a number of years. The committee recommended that residents of outlying areas play a part in the development of an area's master growth plan.

The committee also recommended long term, more fundamental changes to the annexation process. A regional governance concept, encompassing both cities and their outlying areas, may be explored. The committee drew a contrast between the Houston area, which has one very large central city and relatively few outlying cities of any size, and Dallas, where the surrounding cities are collectively almost as large or larger than the central city. The committee emphasized that Dallas' structure promotes regional cooperation because Dallas is effectively prohibited from annexation because it is completely surrounded by autonomous cities. The Houston situation, on the other hand, gives all the power to the central city because it can annex outlying areas at will and prevent their incorporation as new cities. The committee did not set forth any specific recommendations for how a regional governance structure might be implemented.

### **Alternative annexation proposals**

While not included in the recommendations of the Interim Committee on Regional Issues, several alternative proposals dealing with annexation issues have already been filed, and more are expected. Specific proposals include increasing the restrictions on strip annexation and prohibiting annexations that take a portion of commercial property and ignore surrounding residential property. Other proposals would require the approval of voters in an area and city-wide before that area is annexed by a city. In 1995 HB 564 by Combs, requiring area voter approval before the City of Austin could annex an area, passed the House but died in the Senate.

### Kingwood Annexation prompts debate

Annexation issues recently gained state-wide attention with the fight to prevent the City of Houston's annexation of the affluent Kingwood subdivision in northeast Harris County. Houston formally annexed the Kingwood area on December 11, 1996.

Residents of the Kingwood area, which has a population of over 55,000 and covers 30 square miles, have strongly opposed the action because, they say, it will mean a decrease in the quality of services with an increase in taxes. The residents claim that if there were a local referendum on whether to annex Kingwood, an overwhelming majority of voters in the subdivision and in Houston would vote against annexation. The annexation has also come under fire from those in Houston who claim that the addition of this

predominately Anglo area to the city could dilute the influence of minority voters in city-wide elections. Plans are currently underway to file an objection to preclearance by the Justice Department under the federal Voting Rights Act for the Kingwood annexation.

The City of Houston says that it acted within its legal rights to annex the area. The Kingwood annexation made fiscal sense for the city because it would provide a boost to the tax base without a substantial expenditure for capital improvements that are needed when annexing undeveloped areas. A vast majority of Kingwood residents work in Houston, and nearly all benefit in some way from the city. The area itself would not have grown to its present state without being close to Houston, say city officials. The city has also promised to continue to provide the same level of service to the Kingwood area.

Other long term solutions have been suggested that would allow cities to continue to annex but would allow outlying areas to retain local control. One idea, proposed by the Greater Houston Partnership and the Urban Land Institute, would divide services between the city and smaller communities, both those that will be annexed in the future and those that are already part of the city.

Under the proposal the city would manage major area-wide projects such as public transportation, freeways, solid waste disposal, indigent care and airports. The smaller areas, called "villages," would be responsible for local street maintenance, solid waste collection and traffic management. Other tasks, such as police and fire protection and land use controls, could be negotiated depending on how much responsibility a village wished to take. Village residents would still pay their share of taxes to fund the area-wide projects, but could also fund local needs to whatever degree they could afford. This proposal is included in the appendix of the report by the Interim Committee on Regional Issues.

## Arguments

### *Annexation supporters say:*

Cities need broad annexation authority to prevent urban decay. The pattern of what follows after a city loses annexation powers has been well documented as many cities, especially in the Northeast, have fallen

into decline. When a city is severely restricted from annexing surrounding territory, those people who can afford to will move outside of the city in order to lower their tax burden and attempt to escape from other urban problems. Without the ability to put those people back into the tax base, the city will lose revenue while the demand for services increases because suburban flight often increases inner city unemployment and commuter needs. In order to meet these new demands, the city will increase taxes just to keep up, driving even more people out of the city. This downward spiral continues until the city can no longer sustain itself and must rely on aid from other sources, such as the state.

Texas cities receive the lowest national levels of direct state aid because they have been allowed to grow without substantial state interference. Cities in other states that have lost the ability to annex end up requiring financial help from the state, either in direct aid or through other means of boosting local revenue, such as commuter taxes. According to the Texas Municipal League (TML), at least 21 states have severely restricted the annexation authority of their cities. Of these states, the per capita state aid to local governments ranges from \$34 to \$525 per year. In Texas, the corresponding figure is \$3.65, by far the lowest in the nation, according to TML.

The purpose of city authority in the ETJ is to monitor environmental conditions and provide for the safety of new construction. These functions are important and benefit the entire region. Those

opposed to such authority contend that the residents of the ETJ moved there specifically to escape the city's restrictions. However, the people who choose to live in a city's ETJ do so mostly because of opportunities and amenities provided by the central city. If not for the benefits of the central city, affluent subdivisions of thousands of people would not likely spring up in isolated areas. It is unrealistic for residents of a city's ETJ to believe that they will not eventually become part of a growing city.

If a local vote were required to annex an area, it would effectively end annexation. The city would be forced to spend millions to educate the public about the benefits of annexation and counter the arguments of those who oppose annexation because of the possibility of higher taxes. Only very small areas that cannot afford to pay for services themselves would be added to the city. Areas that are self-sufficient and, therefore, more beneficial to the city's tax base, would almost always vote against annexation no matter how essential it may be to the survival of the central city.

Any legislation that limits a city's right to annex or removes land from a city's ETJ should apply to all cities and not single out one particular city or particular area. Local control is meaningless if special interests on the losing end of local land use policies can exert political influence at the state level to have them overridden.

### ***Annexation opponents say:***

Unilateral annexation, as it is practiced by most Texas cities, gives the city all the power and leaves residents in the ETJ at the mercy of a city council whom they have not elected. When a city decides to annex outlying areas it usually means increased taxes for residents in those areas. As the residents to be annexed have had no say in the process of the annexation, or in the formulation of the taxes to that

point, annexation amounts to taxation without representation.

If there is a legitimate reason for annexation and if the quality of service to the area to be annexed will be improved as a result of annexation, voters will approve it. If, however, annexation is done simply to engulf a revenue-rich area and will actually result in a decrease in the quality of services, the residents will rightly reject the proposal.

Residents of localities targeted for annexation may be willing to pay their fair share to the city for area-wide necessities, but see little justification for increasing their taxes for local services when the quality of such services actually suffers.

Requiring cities to create a master growth plan allows developers and residents to know when changes will come and plan accordingly. In many areas ETJ residents anticipate annexation, but can never be certain of when it will happen. Such uncertainty hurts services and the companies that provide them, as they are often displaced unexpectedly by annexations. Requiring a five year plan and being able to hold cities to that plan would help alleviate such problems. Cities should also be required to give the affected areas an opportunity to participate in the development of such growth plans.

Strip annexation allows cities to acquire or control profitable areas far from the city center and ignore areas that require more expenditures for city services than they provide in tax revenues. Strip annexation can also be used to greatly increase a city's ETJ without adding areas that need services. By annexing along major roads, a city can expand its ETJ without having to provide costly water and wastewater services associated with annexation of residential areas.

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