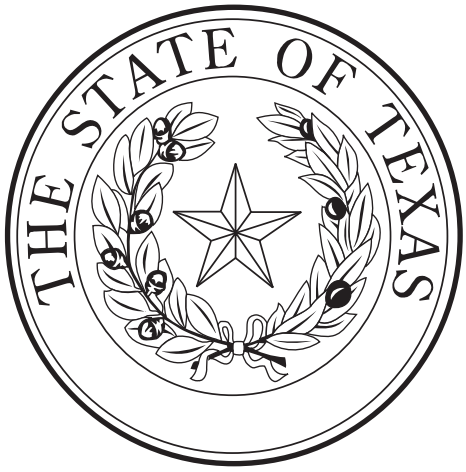
Interim Report
76th Legislature



October 1998

TEXAS SENATE INTERIM COMMITTEE ON ANNEXATION

SENATOR FRANK MADLA
CHAIRMAN

September 3, 1998

The Honorable Bob Bullock
Lieutenant Governor, State of Texas
Post Office Box 12068
Austin, Texas 78711

Dear Governor Bullock:

The Senate Interim Committee on Annexation submits its Interim Report in accordance with the Interim Charges that were issued August 14, 1997. Over the last year, the Committee held hearings in Houston, The Woodlands, San Antonio and Austin in an effort to thoroughly examine current annexation practices and procedures.

In an attempt to find reasonable legislative solutions to the competing interests of municipal governments and residents of adjacent territories, the Committee heard testimony from a variety of groups, such as representatives of city governments, municipal utility districts, and residents of unincorporated subdivisions. The goal was to develop ideas to enable residents of outlying areas to retain a certain degree of local autonomy, while allowing municipalities to plan and direct their growth into the 21st century.

The Committee has worked hard to develop recommendations that will offer workable solutions that will benefit all Texans. We anticipate that the Committee's recommendations will provide the framework needed to assure that our annexation policies are fair and effective.

In compliance with your request, a copy of this report will be circulated to the Secretary of the Senate, the Legislative Reference Library, and the Legislative Council. Thank you for your leadership and support.

Respectfully submitted,

Frank Madla
Chairman

Gonzalo Barrientos

Mario Gallegos
Opposed Rec. #8(b),(c),(d)

Michael Galloway
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Table of Contents

Executive Summary 3

Background 7

Texas Law 10

Interim Charges

Charge #1 - Identify areas of concern and offer recommendations for legislative action, if necessary, regarding extraterritorial jurisdiction and municipal annexation, including the use of strategic partnerships, interlocal agreements and other means to promote regional cooperation. 16

Charge #2 - Determine the degree to which county and school district property tax bases are affected by municipal annexation and how annexation influences the provision of local infrastructure. 18

Charge #3 - Review the powers and duties of municipal utility districts and make recommendations for legislative action, if needed. 19

Recommendations

Recommendation #1 - Grandfather Certain Land Uses Following Annexation 20

Recommendation #2 - Require Cities to Adopt a Three-Year Advance Annexation Plan 21

Recommendation #3 - Strengthen Requirements for Providing Municipal Services to Newly Annexed Areas 23

Recommendation #4 - Accelerate Statutory Schedule for Providing Municipal Services to Newly Annexed Areas 27

Recommendation #5 - Involve Affected Persons in Annexation Service Planning, and Subject Service Plan Disputes to Resolution by a Third Party 28

Recommendation #6 - Provide In-Lieu Contracts as an Alternative to Annexation 31

Recommendation #7 - Add Enforcement and Sanction Provisions to the Annexation Act 34

Recommendation #8 - Strengthen the Definition of Territory Eligible for Annexation 35

Alternative Recommendations 37
Voter Approval
Recourse Outside of Judiciary
Approval by Commissioner's Court

Executive Summary

Annexation has become an increasing source of contention between residents of extraterritorial areas and cities, particularly large cities. The challenge lies in balancing the interests of residents of unincorporated areas with those of annexing authorities. The ability of cities to guide and manage growth and the concerns of residents in outlying areas illustrate the strongly competing interests in the debate over municipal annexation. Since the Municipal Annexation Act was passed by the Texas Legislature in 1963, there have been few successful attempts to limit cities' powers of unilateral annexation.

Cities need some authority in surrounding areas to "promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities" (Section 42.001, Local Government Code). It is necessary that a municipality retain adequate flexibility to control both population and geographic growth while maintaining a sufficient economic base. Municipal expansion may also encourage and promote greater levels of regional cooperation and planning.

However, citizens living outside of a city's limits but within its extraterritorial jurisdiction have justifiable concerns regarding the almost unlimited power of the municipality to annex these areas without consent from residents. Often, citizens move into unincorporated areas to escape the higher property taxes and eroding services of the city. These residents have legitimate concerns that annexation will return them to a situation in which they deliberately escaped.

During the 75th legislature, more than 70 annexation bills were filed. Many of these bills proposed to place additional annexation service requirements on cities; others proposed to restrict cities' annexation powers; while some proposed to allow the disannexation of previously annexed territory.

Lt. Governor Bob Bullock charged the Senate Committee on Annexation with studying current annexation practices and procedures. In an attempt to find reasonable legislative solutions to the competing interests of municipal governments and residents of adjacent territories, the Senate Interim Committee on Annexation heard testimony from a variety of groups, such as representatives of city governments, real estate developers, municipal utility districts and residents of unincorporated subdivisions. The committee studied the feasibility of strategic partnerships and interlocal agreements to increase the interaction between cities and surrounding unincorporated communities. The goal is to develop ideas to enable residents of outlying areas to retain a certain degree of local autonomy, while allowing municipalities to plan and direct their growth into the 21st century.

Information compiled by the Committee made it clear that the current annexation laws do not facilitate orderly annexation planning, fail to ensure a meaningful role in the annexation process for affected ETJ residents, and provide little assurance that newly annexed areas will receive appropriate services. Instead, these laws foster a process under which annexations are often conducted in a hurried manner that causes frustration for affected residents, and leaves disputes over services and other issues to be resolved after the fact. The Committee concluded that the annexation act should be amended to create a framework within which cities have adequate time, prior to annexation, to properly prepare for annexation, and affected parties have a sufficient opportunity to resolve differences over service levels and other matters.

Countervailing perspectives became evident in the course of testimony presented to the Committee by city officials and residents of newly annexed areas. The first, which was expressed by city officials, was that annexation is necessary in order to ensure orderly urban growth and protect the economic vitality of cities. The second perspective, which was expressed by persons who were either recently annexed or felt threatened by imminent annexation, was that the annexation process is arbitrary and unfairly weighted to benefit the cities.

Based on testimony and other information provided by different stakeholders, the Committee concluded that the annexation act should be amended to make the process fairer for ETJ residents. Under the current law, city officials can ignore the concerns of residents who are targeted for annexation, so long as the city complies with the pro forma hearing requirements of the law. The Committee determined that the process would be made more equitable, and resulting in better annexation service planning, by requiring cities to enter into good-faith negotiations with the residents of areas slated for annexations. Further, the process should be made more balanced by involving third-party arbitrators in the resolution of service-related disputes.

The Committee also concluded that complaints concerning the quality of services provided to newly annexed areas would be alleviated by requiring cities to implement advance annexation planning procedures. Combined with a requirement for the more timely provision of services, as well as strengthened service requirements, advance annexation planning would increase the likelihood that newly annexed areas receive all of the services to which they are entitled.

In addition, the Committee found that annexation can unjustly disrupt the land development expectations of ETJ property owners, current law provides few alternatives to outright annexation, and continued use of grandfathered strip annexations to annex larger tracts is undesirable. Accordingly, the Committee has recommended changes to address these three issues.

Recommendation #1 - *Grandfather Certain Land Uses Following Annexation*

The Committee recommends that the annexation laws be amended to grandfather existing or proposed land use for which a complete application has been filed with the appropriate officials prior to adoption of an annexation ordinance.

Recommendation #2 - *Require Cities to Adopt a Three-Year Advance Annexation Plan*

The Committee recommends that cities be required to implement three year rolling annexation plans, and that annual annexations be effectuated in compliance with such plans.

Recommendation #3 - *Strengthen Requirements for Providing Municipal Services to Newly Annexed Areas*

The committee recommends that: cities compile a comprehensive inventory of services and facilities provided by a pubic or private entity in the area proposed for annexation; the city must maintain the level of certain services being provided in an area prior to annexation; the city must not provide a service plan that has the effect of diluting services being provided within the city prior to annexation; emergency medical services be added to the list of services that must be provided to newly annexed areas; and the service determinations based on "different characteristics" are subject to judicial review or review by an arbitrator.

Recommendation #4 - *Accelerate Statutory Schedule for Providing Municipal Services to Newly Annexed Areas*

The Committee recommends that cities be required to provide for public safety, including EMS; solid waste collection; maintenance of utilities and other facilities on the effective date of an annexation. In addition, the Committee recommends that construction of necessary infrastructure be "substantially completed" within two and one-half years of an annexation.

Recommendation #5 - *Involve Affected Persons in Annexation Service Planning, and Subject Service Plan Disputes to Resolution by a Third Party*

The Committee recommends that cities be required to enter into good faith consultations and negotiations with residents of the affected area and in the event of an impasse in negotiations either party may request binding arbitration. In addition, provide that the arbitration award is an enforceable contract if the area subject to the award is finally annexed.

Recommendation #6 - *Provide In-Lieu Contracts as an Alternative to Annexation*

The committee recommends that cities be required to enter into Strategic Partnership Agreement negotiations upon the request by a Municipal Utility District and in the event of an impasse in negotiations, that the city or the MUD may invoke binding arbitration. The committee further recommends the authorization of contracts in-lieu of annexation between cities and the residents of MUDs or other defined ETJ areas.

Recommendation #7 - *Add Enforcement and Sanction Provisions to the Annexation Act*

The committee recommends that if an area is disannexed that the city be required to refund property taxes collected by the city. In addition, upon the determination that a city has failed to provide full municipal services, the court may consider remedies including full services be provided on a date certain; refund of charges to the annexed area for services not rendered; assess the annexing city fines; and assess the annexing city costs and attorney's fees. Also, provide that the city has the burden of proving that they have furnished services in compliance with the annexation service plan.

Recommendation #8 - *Strengthen the Definition of Territory Eligible for Annexation*

The Committee recommends that: an area is eligible for annexation if it is directly adjacent to the boundaries of the city; bodies of water, roads, and other public infrastructure does not qualify as adjacent boundaries; territory that has been annexed by use of an area less that 1,000 feet wide, does not qualify as an adjacent boundary; and if a city annexed noncontiguous territory owned by the city, the ETJ of the city extend only one mile from such property.

Background

The unilateral power of home rule cities to annex dates back to 1912 when Texas voters approved a constitutional amendment granting home rule cities the ability to do anything that was not prohibited by law (Art. 11 Sec. 5). Since annexation was not prohibited, cities were able to attach adjacent territory without the consent of area residents. The amendment created an environment more conducive to the direct governance of municipalities and enabled them to extend their powers to secure adequate resources to meet increased demands for services. While this broad power to incorporate new territory has proved problematic since the adoption of the amendment, over the last 20 years the controversy and conflict resulting from its use has led to a consistent stream of legislation and litigation to address grievances resulting from the annexation process.

In response to annexation wars being waged in Harris County, where Houston, Pasadena and other cities were using annexation to control vast areas and, specifically, to a 1961 attempt by the Houston City Council to annex all the unincorporated territory in Harris County, the Texas Municipal Annexation Act was signed into law in 1963. The Act addressed these conflicts by granting every city in the state an area of extraterritorial jurisdiction [ETJ] within which the city has the exclusive right to annex and within which no other city may incorporate.

Subsequent to its initial enactment, the Texas Municipal Annexation Act has been amended a number of times to reform what is perceived to be related abuses by cities. While the original Act restricted the growth of these cities to ten percent of their existing land area per year, it allowed any portion of the ten percent not used in any given year to be aggregated to the following years; allowing a maximum annexation limit of thirty percent in a three year period. The law also limited “strip annexations”, the annexation of narrow strips of adjacent land areas, and required cities to develop a plan to extend municipal services to the newly annexed territory.

In 1977, the Legislature prohibited strip annexation, of areas less than 500 feet in width, in response to cities annexing strips as narrow as ten feet in order to reach desired areas, such as commercial establishments or residential subdivisions, and in1987, further increased the minimum width to 1000 feet.

Provisions in the original 1963 Act required municipalities to hold at least one public hearing prior to annexing area within their ETJs. In 1981 changes were made to require an additional public hearing, in certain circumstances, in the area proposed for annexation. Subsequent changes were also made to limit the amount of time municipalities had to provide certain services to newly annexed areas. The changes mandated that public safety, solid waste and infrastructure maintenance services be provided not later than sixty days following the annexation and required that the construction of necessary infrastructure be initiated not later than two and one-half years following the annexation. Additional changes stipulated that the city prepare the service plan prior to the initiation of annexation proceedings.

In addition to increasing the minimum width requirement to 1000 feet for strip annexations, the 1987 amendments reduced the time allowance for the initiation of construction and acquisition of capital improvements in newly annexed areas from two and one-half years to two years. Changes in law also required that infrastructure improvements be substantially completed in the area within four and one-half years.

Changes to the service plan requirements were again made in 1989 and included the extension of "full municipal services" to the newly annexed area. "Full municipal services" are defined as "services funded in whole or in part by municipal taxation and provided by the annexing municipality within its full-purpose boundaries" (Local Government Code §43.056). These traditionally include water and wastewater facilities. Also, restrictions were placed on the city's regulatory authority within its ETJ. Cities retained the right to extend subdivision regulations to the ETJ, but were prohibited from applying certain zoning, building size, or density ordinances.

A change to the annexation act in 1995 provided a remedy for residents of newly annexed areas when an annexing city fails to provide adequate services. The remedy authorizes a person residing in an annexed area to apply for a writ of mandamus to enforce the annexation service plan. If a court issues the writ, the city is obligated to pay the person's costs for bringing the action and granted the option of disannexing the area within thirty days.

While the Texas Legislature has historically, given cities broad authority to control its boundaries by annexation, perceived abuses have led to constant attacks on the annexation powers of cities. Residents of unincorporated areas rarely support being brought into the city limits without consent, and we have seen how controversial the process becomes. In the last legislative session (75R, 1997), members of the legislature filed over seventy bills to leash these powers; however, no legislation passed that substantially altered the current powers of Texas' cities. A continuation of this passionate debate is fully expected during the next session.

Texas Law

Extraterritorial Jurisdiction

The extraterritorial jurisdiction (ETJ) of a city is the area of unincorporated land extending from and contiguous to the city limits over which the city maintains limited control to "promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities" (§42.001, Local Government Code). The amount of area is determined by the population of the city and ranges from one-half mile to five miles from the corporate limits.

City Population	***ETJ***
Fewer than 5,000	½ mile
5,000 to 24,999	1 mile
25,000 to 49,999	2 miles
50,000 to 99,999	3½ miles
100,000 or more	5 miles

(§42.021, Local Government Code)

Upon annexation by a municipality, an ETJ is extended accordingly, but it may not include any area within the existing ETJ of another municipality. Except in cases of judicial apportionment due to overlapping jurisdictions, the ETJ of a municipality may not be reduced unless the municipality gives written consent. In addition, a municipality may not be incorporated in the ETJ of an existing municipality unless the governing body of the existing municipality gives written consent (§42.041, Local Government Code).

Municipal Annexation

General Authority to Annex

- **Home Rule Municipality** - Home rule cities have the power to fix the boundaries of the city limits, provide for the extension of those limits, exchange area with other municipalities, annex adjacent territory and establish procedures for annexation. Home

rule cities may exercise this authority without the consent of the residents or land owners of the area to be annexed (§43.021, Local Government Code).

- **General-Law Municipality** (See Appendix A) - Upon the election of the qualified voters of the area to be annexed, a general-law municipality with a population of more than 5,000 may annex an area contiguous to the municipality and not more than one mile in width (§43.023, Local Government Code). However, a general-law municipality that has a population between 1,000 and 5,000 may annex territory *without consent* of the qualified voters, if the municipality is providing the area with water or sewer service (§43.033, Local Government Code).
- **Type A General-Law Municipality** (See Appendix A) - Upon the election of the qualified voters of the area to be annexed, a Type A general-law municipality may annex an area that is contiguous to the municipality and that is not more than one-half mile in width (§43.024, Local Government Code).
- **Type B General-Law Municipality** (See Appendix A) - A Type-B general law municipality may annex territory upon the election of the qualified voters of the area to be annexed. However, unlike a Type A general-law municipality, it must not be enlarged to exceed area requirements established by §5.901, Local Government Code (§43.025, Local Government Code).

Population	***Total Surface Area***
Fewer than 2,000	2 square miles
2,001 to 4,999	4 square miles
5,001 to 9,999	9 square miles

(§5.901, Local Government Code)

Annexation Procedure

A municipality may only annex territory that it owns or that is located within its ETJ. Prior to the initiation of annexation proceedings, a municipality must conduct two public hearings. If the proceedings are protested by the area's residents, at least one of those hearings must be held in the area proposed for annexation (§43.052, Local Government Code). Notice of the hearings must be published in a newspaper of general circulation at least 10 days prior to the hearing

date. The annexation of an area must be completed within 90 days after the initiation of the annexation proceedings, or the proceedings are void (§43.053, Local Government Code).

Municipalities are restricted in the amount and width of land they may annex. A municipality may not annex a total area greater that ten percent of their existing land area in any given year. However, if the city does not annex the full ten percent, the remainder may be aggregated to the following years, allowing a maximum annexation limit of thirty percent in a three year period (§43.055, Local Government Code). In addition to the amount of land a municipality may annex in a calendar year, cities are also restricted by width. A municipality may not annex a strip of land unless the width of the area at the narrowest point is at least 1,000 feet (§43.054, Local Government Code).

Before publication of notice for the first public hearing, the municipality must prepare a service plan that provides for full municipal services in the annexed area no later than four and one-half years after the effective date of the annexation. Also, the municipality must include a program to provide for the extension of police; fire; solid waste collection; maintenance of water and wastewater facilities; roads and streets; and other publicly owned facilities within sixty days after the effective date of the annexation. For a municipality with a population of 1.5 million or more, certain services are required to be provided by the municipality on, and after, the effective date of the annexation; others within 30 and 60 days after the effective date. A municipality may not provide fewer or lower level services than were in place immediately prior to the annexation or which are available in other parts of the municipality with similar land uses and population densities (§43.056, Local Government Code).

A service plan is a ten-year contractual obligation; renewable at the discretion of the municipality. Unless the governing body determines the service plan unworkable and obsolete, the plan is not subject to amendment or repeal. Persons residing in an annexed area may seek to secure the enforcement of a service plan by applying for writ of mandamus (§43.056, Local Government Code).

Disannexation

- **Home Rule Municipality** (See Appendix A) - A majority of the qualified voters may petition a municipality to disannex an area if the municipality has failed or refused to provide services in concurrence with the service plan requirements. If the city refuses to disannex the area within sixty days, any one of the signers of the petition may bring a cause of action in district court. If the court finds that a valid petition was filed and that the municipality failed to perform its obligations in accordance the service plan or failed to act in good faith, the district court shall order the area disannexed. If the area is disannexed it may not be annexed again within five years after the date of disannexation (§43.141, Local Government Code).
- **General-Law Municipality** (See Appendix A) - At least fifty qualified voters of an area described must petition the mayor of a municipality to order an election on the question of disannexation. If a majority of the votes received in the election favor discontinuing the area, and the discontinuation would not result in the municipality having less area than one square mile, the mayor must declare the area disannexed. However, if the municipality owes any debts, the municipality shall continue to levy a property tax until the taxes collected in the area equal its pro rata share of the indebtedness (§43.143, Local Government Code).

Limited Purpose Annexation

A home-rule municipality with a population greater than 225,000 may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area (§43.121, Local Government Code). The area must be in the city's ETJ, contiguous to the corporate boundaries of the municipality, at least 1,000 feet in width, and not located farther than three miles from the preexisting boundaries of the municipality (§43.121 and §43.122, Local Government Code). The annexation of the area for limited purposes must be completed withing ninety days after the date the governing body institutes the annexation proceedings (§43.126, Local Government Code). In addition, the annexation of an area for limited purposes does not extend the muncipality's ETJ (§43.131, Local Government Code).

The municipality must prepare and make available to the public a report regarding the proposed annexation of an area for limited purposes. The report must contain the results of the planning study and the regulatory plan conducted for the area.

- **Planning Study** - A planning study must:

  (1) project the kinds and levels of development that will occur in the area in the next ten years if the area is annexed for limited purposes and is not annexed for limited purposes;

  (2) describe the need for the annexation of the area for limited purposes and the public benefits to result from the limited purpose annexation;

  (3) analyze economic, environmental, and other impacts annexation of the area for limited purposes will have on residents, landowners, and businesses in the area; and

  (4) identify proposed zoning of the area and inform the public that any comment regarding proposed zoning will be considered at the public hearings.

  (§43.123(c), Local Government Code)

- **Regulatory Plan** - The regulatory plan must also identify the kind of land use and other regulations that will be imposed in the area if annexed for limited purposes; and state the date on or before which the municipality shall annex the area for full purposes, which must be within three years after the date the area is annexed for limited purpose.

  (§43.123(d), Local Government Code)

Before instituting annexation proceedings for limited purposes, a municipality must hold two public hearings to allow each member of the public to present testimony or evidence regarding the proposed annexation. A notice of the hearings must be published in a newspaper of general circulation at least twenty but not more that forty days before the date the annexation proceedings are instituted (§43.124, Local Government Code).

At the time the municipality adopts the ordinance annexing an area for limited purposes, it must also adopt a regulatory plan for the area . The adopted plan must be the same regulatory plan prepared under §43.123, Local Government Code, unless the governing body finds and states reasons for the adoption of a different regulatory plan (§43.125, Local Government Code).

On or before the date established by the regulatory plan, the municipality must annex the area for full purposes. This requirement may be waived by written agreement between the municipality and a majority of the affected landowners and the date for full-purpose annexation postponed (§43.127(a), Local Government Code).

In each of the three years for which an area may be annexed for limited purposes, the municipality must take steps toward the full-purpose annexation of the area. By the end of the first year, the municipality must develop a land use and intensity plan as a basis for services and capital improvements projects planning. By the end of the second year, the municipality must include the area in the municipality's long-range financial forecast and in the municipality's program to identify future capital improvements projects. By the end of the third year, the municipality must include in its adopted capital improvements program the projects intended to serve the area and must identify potential sources of funding for capital improvements (§43.127(b), Local Government Code).

If a municipality fails to annex the area for full purposes as required, any affected person may petition the court to compel the annexation for full purposes or the disannexation of the area. If found that the muncipality failed to annex the area as required, the court shall order the municipality to annex the area for full purposes or to disannex the area. If disannexed, the area may not be reannexed for five years (§43.128, Local Government Code).

Charge #1 - ***Identify areas of concern and offer recommendations for legislative action, if necessary, regarding extraterritorial jurisdiction and municipal annexation, including the use of strategic partnerships, interlocal agreements and other means to promote regional cooperation.***

It is necessary that a municipality retain adequate flexibility to control both population and geographic growth while maintaining a sufficient economic base. Creating additional tools to promote greater levels of regional cooperation and planning was the main focus of this Committee.

Testimony received by the Committee made it clear that the current annexation laws do not facilitate orderly annexation planning and fail to ensure a meaningful role in the annexation process for affected ETJ residents. The committee also heard testimony, from both city officials and residents of newly annexed areas, indicating that the procedural deadlines imposed by the annexation act are unreasonably short, making it difficult to conduct public hearings, prepare service plans, and perform the countless other functions associated with the annexation process. In an effort to promote regional cooperation and planning, the Committee has recommended a three-year rolling annexation plan that will effectuate annual annexations (Recommendation #2). The committee has also recommended a mechanism to involve affected persons in annexation service planning (Recommendation #5).

Additional testimony indicated concerns with regard to strategic partnership agreements (SPAs). Strategic partnerships are written agreements between a municipality and a district, either a water control and improvement or a municipal utility district, that provides for the terms and conditions for service delivery to the district.

District residents found the agreements limiting to the extent that a city is not required to honor a district's request to enter into SPA negotiations. Cities expressed concerns with the two year moratorium on annexation once negotiations are initiated. Another concern expressed is that SPAs do not provide a third party mechanism for resolving disputed issues. Recommendation #6 addresses these concerns and provides alternatives to outright annexation to non-district residents.

Charge #2 - *Determine the degree to which county and school district property tax bases are affected by municipal annexation and how annexation influences the provision of local infrastructure.*

At this time, annexation does not appear to be a major area of concern for school districts statewide. The degree to which an annexation may impact a school district tax base is unknown, as is the degree to which property values of annexed areas are impacted (See Appendix B).

The Committee heard testimony from the Humble Independent School District on the costs which have been incurred and those projected to be incurred as a result of the Kingwood annexation by the City of Houston (See Appendix B). As a direct result, the Humble Independent School District may be forced to increase its tax rate in order to meet the additional operating costs and expenses. However, any effect on the current tax base was not mentioned in testimony. Consequently, the Committee makes no recommendations at this time.

Testimony was solicited from the Texas Association of Counties regarding the affect annexation may have on county tax bases. "The Texas Association of Counties indicates no record of position with respect to the subject of municipal annexation" (The Texas Association of Counties)(See Appendix B). Again, the degree to which annexation may impact county tax bases is unknown at this time; therefore, the Committee makes no recommendations.

Charge #3 - *Review the powers and duties of municipal utility districts and make recommendations for legislative action, if needed.*

A municipal utility district (MUD) is a political subdivision of the state authorized to provide water and wastewater services to a specific region. A MUD may also engage in firefighting, solid waste collection and recreational activities. MUD's were designed to serve the development community by creating a vehicle to finance underground utilities of subdivision developments with tax free bonds.

The growth of our metropolitan areas has been so rapid that it has been impossible for cities to authorize enough bonds to finance the needed extension of water and sanitary sewer services to its suburbs to accommodate this growth. During this period, the vacant tracts within the city limits that could have been developed carried a premium asking price and were generally not adequately served by water and sewer. Larger and more developable tracts could be obtained at much lower costs outside city limits. In order to take advantage of tax free bonding and reduce the cost of ETJ development, Municipal Utility Districts were created to partially finance the underground utilities of these subdivision developments.

Written testimony was submitted by the Texas Municipal League (TML) with regard to the powers and duties of municipal utility districts (See Appendix B). In response to this testimony, the Committee has made several recommendations which include: reducing the mandated two-year moratorium period in strategic partnership agreements (Recommendation #6), prohibiting certain actions taken by MUD's known as "poison pills" that have the affect of making the area less financially attractive to annexing cities (Recommendation #2), and including conspicuous language in the closing documents of land purchases by MUDs stating that the property is subject to annexation (Recommendation #2).

Recommendation # 1
Grandfather Certain Land Uses Following Annexation

Background

Conflicts can arise when a city annexes territory within its ETJ[1] and then applies zoning regulations that nullify pending development plans of affected property owners. In such cases, zoning can greatly diminish the value of property that was planned for development under the rules that were in effect prior to annexation. Although property owners may not have a vested right, under current law, to develop their property in the manner intended prior to annexation, the application of new land use restrictions to newly annexed areas raises property rights concerns.

Recommendation

The committee recommends that the annexation laws be amended to grandfather existing land use, or proposed land use for which a complete application has been filed with appropriate officials prior to adoption of an annexation ordinance.

[1]ETJ, or extraterritorial jurisdiction, is the unincorporated area contiguous to the boundaries of a city within which the city may annex territory. Under the annexation act, all cities are granted an area of ETJ, the extent of which varies according to the city's population. Cities of less that 5,000 population are granted one-half mile, 5,000 to 24,999 population are granted one mile, 24,000 to 49,999 population are granted two miles, 50,000 to 99,999 population are granted three and one-half miles, and 100,000 or more population are granted five miles of ETJ (§42.021, Local Government Code).

Recommendation # 2

Require Cities to Adopt a Three-Year Advance Annexation Plan

Background

The committee heard testimony, both from city officials and residents of newly annexed areas, indicating that the procedural deadlines imposed by the annexation act are unreasonably short. Under §43.053, Local Government Code, the entire annexation process must be completed within 90 days.

From the perspective of municipal officials, a 90 day time frame makes it difficult to conduct public hearings, prepare service plans, and perform the myriad other functions associated with the annexation process. On their part, residents of newly annexed areas stated that they were dismayed by the "surprise" of hurried annexation actions by the city, and that the 90 day schedule did not allow them sufficient time to study the city's proposed annexation service plans or provide meaningful input.

Since 1990, the City of San Antonio has followed a three year "rolling" annexation plan that is mandated by local ordinance. The plan is updated annually, to maintain a continuous three year cycle. For each cycle, scheduled annexations take effect on December 31 of the third year in the plan.

San Antonio's ongoing annexation plans include a service component (e.g., recommending the redeployment of fire services or the construction of new fire stations that will be necessitated by a scheduled annexation). Additionally, the plan shows, for each scheduled annexation, the population, acreage, housing units and demographics of residents in each area.

Recommendation

The committee recommends that cities be required to implement three year rolling annexation plans, and that annual annexations be effectuated in compliance with such plans. The amendment should provide the following:

(a) such plans be phased in to allow annexations in the first and second year of the first plan adopted under this requirement;

(b) upon inclusion into the three year plan, prohibit the area from:

(i) reducing the area's tax rate;

(ii) voluntary transfers of assets made without consideration;

(iii) entering into contacts that extend beyond the three year period; and

(iv) from incurring debt in which the payments would extend beyond the three year period;

(c) provide exceptions including consensual annexation, annexation by petition, and the prevention of nuisances;

(d) notification to property owners and prospective buyers of inclusion in the three year plan; and

(e)(i) if a city chooses to remove an area from the three year annexation plan prior to the end of the first year, it shall be prohibited for one year from including the area in a three year annexation plan; (ii) if a city chooses to remove an area from the three year annexation plan between the first and second year of the plan, it shall be prohibited for five years from including the area in a three year annexation plan; (iii) if a city removes the area from the three-year annexation plan after the second year of the plan, it shall be prohibited for five years from including the area in a three year annexation plan.

Recommendation # 3
Strengthen Requirements for Providing Municipal Services to Newly Annexed Areas

Background

Concerns over substandard service levels are a main driving force behind ETJ residents' opposition to being annexed. Many of the witnesses who testified at the committee's hearings in Houston and Austin complained that the quality of their services had deteriorated after annexation. Most of the criticisms centered around police, fire and solid waste services.

Municipal officials, however, told the committee that it was normal practice for cities to allocate all of the resources necessary to provide quality services to newly annexed areas. Numerous examples were cited of budget increases, police, fire and EMS redeployment, and other advance actions taken by cities to ensure the provisions of appropriate services to newly-annexed areas.

Conflicting views also were expressed with respect to the intent of §43.056, Local Government Code, relating to annexation service plans. Many municipal officials interpret this section as requiring cities to provide newly annexed areas with *services comparable to the services provided elsewhere in the city having similar land uses and populations*. Under this interpretation, if a newly annexed area has poor quality services, the city is required to raise service levels up to city wide standards. Conversely, if the new area has superior services, the city can downgrade those services to the city-wide norm.

Many newly annexed residents construe the law as requiring cities to furnish new areas with *services comparable to the services that existed in the area prior to the annexation*. Under this interpretation if the new area had superior services, prior to annexation, the city is required to maintain this same level of services after annexation.

With regard to the actual language of §43.056, the relevant portions read as follows:

(e) A service plan may not;

(3) provide fewer services or lower levels of services in the area:

(A) Than were in existence in the area immediately preceding the date of the annexation; or

(B) Than are otherwise available in other parts of the municipality with land uses and population densities similar to those reasonably contemplated or projected in the area.

(k) This section does not require that a uniform level of full municipal services be provided to each area of the municipality if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of services.

Read separately, each of these phrases has a clear meaning. Read together, however, the phrases have a totally different connotation.

§43.056 becomes even more problematic as the result of Subsection (k), above, which allows cities to provide fewer services to areas with certain characteristics. An example of a situation covered under Subsection (k) would be a newly annexed farm, where the city determines that it cannot feasiblely provide the same level of utility services, roads, sidewalks and other amenities that is furnished to inner city neighborhoods.

Cities interpret a 1988 Attorney General's Opinion (see Appendix C) as granting cities the sole discretion under Subsection (k) to determine whether a newly annexed area will receive fewer services because of its different characteristics.[2] This precludes an opportunity for third party review of the question of whether specific "different characteristics" do in fact justify the provision of reduced services.

[2]"In regard to territory annexed by city, determination of city governing body as to whether the topography, land use, and population density factors are a sufficient basis for providing a given level of services...to the annexed territory is, in the first instance, the prerogative of the annexing city; however, a service plan which is itself legally defective might be subject to relief other than disannexation." Op. Atty. Gen. 1988, No. JM-944.

Further, the annexation act does not provide a method for defining service levels. Although the act enumerates the services that must be provided to newly annexed areas, and refers generally to the "level" of services that must be provided, the act does not reference performance standards or other benchmarks for measuring the scope and quality of services.

Recommendations

The committee recommends that the annexation act be amended as follows:

(1) Amend §43.056 to provide that:

(a) in newly-annexed areas with low-quality service levels, the city must provide the level of services that are comparable to those provided elsewhere in the city;

(b) in newly annexed areas with a level of service comparable to those provided elsewhere in the city, the city must maintain the level of such services;

(c) in newly annexed areas with a level of services that are superior to those provided elsewhere in the city, the city must provide maintenance of roads, recreation facilities, and any other publicly owned facility or building at a level that is equal to or better than the level that existed in the newly annexed area prior to the annexation; and

(d) the city may not provide a service plan that has the effect of diluting services being provided within the city prior to annexation.

(2) Amend Subsection (k), §43.056, to provide that service determinations based on "different characteristics" are subject to judicial review or review by an arbitrator.

(3) Add emergency medical services to the list of services that must be provided to newly annexed areas on the effective date of annexation.

(4) Require cities to compile a comprehensive inventory of services and facilities provided by public or private entities, either directly or by contract, in each area proposed for annexation. "Public entities" include municipalities, municipal utility districts, water districts, volunteer fire agencies and volunteer EMS agencies.

(a) the provider of services must provide information to the cities;

(b) the year of measure is year prior to inclusion in three year plan;

(c) the inventory must be completed and made available for public inspection not later than December 31 of the second year of the three year annexation cycle described under Recommendation No. 2.

(d) for utilities, roads, drainage structures and other infrastructure, the inventory must include:

(i) an existing engineer's report which describes the physical condition of all infrastructure elements; and

(ii) a summary of expenditures during a recent twelve month period for infrastructure maintenance and improvements.

(e) for police, fire and emergency medical services, the inventory must include, for each service:

(i) average dispatch and average delivery time;

(ii) a schedule of vehicles and other equipment;

(iii) a staffing schedule which shows the certification and training levels of personnel; and

(iv) operating and capital expenditures during a recent twelve month period.

Recommendation # 4

Accelerate Timetable for Providing Municipal Services to Newly Annexed Areas

Background

Under current law, cities must:

(a) within 60 days of the effective date of an annexation, provide police, fire and solid waste services (but not EMS) to the annexed area;

(b) within 60 days of an annexation, assume the responsibility for maintaining existing water, wastewater, roads, parks and other facilities in the annexed area;

(c) within two years, begin the construction of utilities, roads and other infrastructure necessary to serve the annexed area; and

(d) within four and one-half years, substantially complete construction of the necessary infrastructure.

Witnesses who testified before the committee questioned the fairness of requiring newly annexed residents to pay city taxes for 60 days without receiving public safety services, and wait four and one-half years for infrastructure improvement. Conversely, cities need a reasonable period of time to implement services and construct infrastructure.

Recommendation

Implementation of the three year annexation plans, Recommendation #2, would enable cities to plan the provision of services and infrastructure on an orderly and timely basis. Accordingly, the committee recommends that cities be required to:

(a) provide or make adequate provisions for police, fire, solid waste and emergency medical services on the effective date of an annexation;

(b) assume responsibility for maintaining existing water, wastewater, roads, parks and other facilities on the effective date of an annexation; and

(c) substantially complete the construction of necessary infrastructure within two and one-half years of an annexation.

Recommendation # 5

Involve Affected Persons in Annexation Service Planning, and Subject Service Plan Disputes to Resolution by a Third Party.

Background

A concern frequently expressed at the committee's hearings was that the residents of annexed areas do not have a meaningful voice in the annexation process. For example, though cities must prepare service plans prior to an annexation, the residents of the area proposed for annexation do not have the right to participate in planning the services that will affect their property and their lives. Also, the law requires two public hearings on a proposed annexation; however, the city is not required to heed the recommendations of those who will be annexed.

In addition, the law is so written that it is virtually impossible for affected persons to stop or delay an annexation, even if the city is unable to provide services to the new area.[3] Their only recourse, after the fact, is to seek a writ of mandamus to be disannexed on the basis that the city failed to provide adequate services. However, disannexation is impractical in an area where volunteer EMS, fire and other services were dismantled upon annexation. It is noteworthy that there are no known examples of successful disannexation actions following enactment of the mandamus section in 1995.

The committee also heard testimony from newly annexed persons who complained that services had deteriorated following annexation, because the city had not planned and allocated sufficient resources for the new area. This problem could have been alleviated by requiring cities to prepare comprehensive service plans; involving affected persons in the development of those plans; and, as necessary, involving an unbiased third party in the service planning process.

[3]Landowner's allegations that service plan of annexation ordinance was inadequate...raised issues that would render annexation ordinance voidable rather that void and thus could properly be presented by state in quo warranto proceeding but were insufficient grounds for private challenge; overruling City of Duncanville v. City of Woodland Hills 489 S.W.2d 557. Alexander Oil Co. v. City of Seguin (Sup. 1991) 825 S.W.2d 434, rehearing overruled.

Recommendation

The committee recommends that the annexation act be amended to:

(a) require cities to enter into good faith consultations and negotiations with residents of the affected area;

(b) provide minimum population and area requirements of the "affected area";

(c) provide that:

(i) where a MUD is scheduled for annexation, the MUD board will represent the district in negotiations with the city; and

(ii) where a MUD is not involved, procedures by which the affected persons of the area proposed for annexation will select representatives to negotiate with the city;

(d) provide, in the event of an impasse in negotiations, that either the city or representatives of the area proposed for annexation may request the appointment of a binding arbitration tribunal. The request must be made in writing not later than 90 days following the publication of the inventory of services compiled by the city at the end of the second year of the three year annexation cycle.

(i) the arbitration tribunal shall consist of one person chosen by the city and the representatives of an area to be annexed; or

(ii) if either party has not responded within 30 days to the request for arbitration or agreed to a mutually acceptable person to serve as the arbitration panel, the chief administrative district judge in any county with jurisdiction over either party shall select by random drawing a state visiting judge who is not a resident of a city or county in which either party is located. The visiting judge shall appoint a qualified person who is not a resident of a city or county in which either party is located to serve as the arbitration tribunal. Selection of the visiting judge and arbitration tribunal shall be completed in not more than thirty days.

(e) provide time limit on arbitration of not more than 120 days ;

(f) provide that arbitration costs will be paid by the city;

(g) provide that the jurisdiction of the arbitration tribunal is restricted to determining whether the disputed elements of the proposed service plan comply with the service requirements of the annexation act; and

(h) provide that the arbitration award is an enforceable contract if the area subject to the award is finally annexed.

Recommendation # 6

Provide In-Lieu Contracts as an Alternative to Annexation

Background

Numerous witnesses who appeared before the committee noted that the annexation act provides few alternatives to outright annexation. Even in cases where a city and ETJ residents may wish to enter into financial arrangements in lieu of annexation, the act does not provide the necessary flexibility. This hiatus in the law may cause cities to proceed with controversial annexations for lack of a suitable alternative.

The annexation act authorizes just two forms of in-lieu arrangements, the first of which is industrial district contracts. Under §42.044, Local Government Code, a city and the owner of industrial property in the city's ETJ may enter into a contact under which: (a) the property will be immune from annexation for a defined period of time; (b) the city will provide stipulated services to the property during the term of the contract; and (c) the owner will make payments to the city during the term of the contract. The amount of the owner's in-lieu payments usually is expressed as a percentage of the property taxes the owner would pay if the property were inside the city. In-lieu contracts may be for a term of up to 15 years, and, upon expiration of the contract, are subject to renewal and annexation.

The second form of in-lieu arrangement is set forth in §43.0751, Local Government Code, which authorizes cities and municipal utility districts (MUDs) to enter into strategic partnership agreements (SPAs). An SPA may provide for the following:

(a) limited-purpose annexation of the district and imposition of the one-cent city sales tax, while continuing the existence of the district;

(b) payments by the city to the MUD for services provided by the district;

(c) full-purpose annexation and ad valorem taxation of commercial property in the district;

(d) either full-purpose annexation of the MUD within 10 years and conversion of the district to a limited district, or payment of in-lieu fees by the district to the city; and

(e) such other terms and conditions as may be agreed to by the parties.

For MUD residents, §43.0751 is limiting to the extent that a city is not required to honor the request of a MUD to enter into SPA negotiations. Also, §43.0751 does not include a third-party mechanism for resolving disputed issues.

Recommendation

The committee recommends that §43.0751, Local Government Code, relating to strategic partnership agreements, be amended to require cities to enter into SPA negotiations upon request by a MUD. §43.0751 should also be amended to provide, in the event of an impasse in SPA negotiations, that the city or the MUD may invoke binding arbitration.

The committee further recommends that the annexation act be amended to authorize the execution of in-lieu contracts between cities and the residents of MUDs or other defined ETJ areas. A "defined area" would be one in which there is a community association, homeowner association or other formally organized association representing a distinct geographical area. The amendment should provide for the following:

(a) minimum population and area requirements of the "defined area";

(b) eliminate the requirement that limited purpose annexations be authorize under city charter;

(c) upon request by the residents of a MUD or other defined area within a city's ETJ included in a three year annexation plan, the city must enter into good-faith negotiations with representatives of the area, with the goal of approving an agreement in lieu of annexation. Such negotiations must not begin later than December 31 of the second year of the three year annexation cycle.

(d) where a MUD is not involved, provide processes and procedures under which the affected area will create a Special District;

(e) provide, in the event of an impasse in negotiations, that either the city or representatives of the area proposed for annexation may request the appointment of a binding arbitration tribunal. The request must be made in writing not later than 90 days following the publication of the inventory of services compiled by the city at the end of the second year of the three year annexation cycle.

(i) the arbitration tribunal shall consist of one person chosen by the city and the representatives of an area to be annexed; or

(ii) if either party has not responded within 30 days to the request for arbitration or agreed to a mutually acceptable person to serve as the arbitration panel, the chief administrative district judge in any county with jurisdiction over either party shall select by random drawing a state visiting judge who is not a resident of a city or county in which either party is located. The visiting judge shall appoint a qualified person who is not a resident of a city or county in which either party is located to serve as the arbitration tribunal. Selection of the visiting judge and arbitration tribunal shall be completed in not more than thirty days.

(f) provide time limit on arbitration of not more than120 days;

(g) provisions of an in-lieu agreement may include the payment of fees by the residents of the defined area to the city, or other provisions acceptable to the two parties;

(h) in-lieu agreements may be for a term of up to 15 years, and may, upon expiration, be extended; and

(i) upon approval of an in-lieu agreement by the governing body of the municipality and the representatives of the defined area or MUD, an in-lieu agreement shall be binding on both parties.

(j) if a city rejects an arbitration award, the area cannot be annexed for five years.

Recommendation # 7

Add Enforcement and Sanction Provisions to the Annexation Act

Background

The annexation act has no enforcement provisions, nor is a city subject to sanctions for failure to comply with the service requirements of the law. Currently, the only remedies for newly annexed residents who are not provided with the services required by law is to seek a writ of mandamus to enforce the service plan, or petition the municipality to disannex the area.

Recommendation

The Committee recommends that the annexation act be amended as follows:

(a) if an area is disannexed, require the city to refund property taxes and fees collected, offset by city expenditures in the area, during the time the area was inside the corporate limits;

(b) if an area is disannexed due to the city's failure to provide services, prohibit the reannexation of the area for ten years;

(c) upon the determination by a district court that a city has failed to provide full municipal services to an annexed area in accordance with §43.056, the court may consider remedies including but not limited to:

(i) order that services be provided by the city on a date certain;

(ii) a refund of charges to the annexed area for services not rendered;

(iii) assess the annexing city fines for the period of time in which services are delinquent or are not being provided; or

(iv) assess the annexing city costs and reasonable attorney's fees.

(d) amend §43.056, Local Government Code, relating to writs of mandamus, to provide that the city has the burden of proving that the city has furnished services in compliance with the annexation service plan at issue.

Recommendation # 8
Strengthen the Definition of Territory Eligible for Annexation

Background

The 1963 annexation act did not prohibit strip annexations. Consequently, some cities extended their corporate limits by annexing strips as narrow as 10 feet.[4] In 1973, The act was amended to prohibit the annexation of strips less than 500 feet, and in 1987 the minimum permissible width was increased to 1,000 feet. However, both amendments grandfathered previously annexed strips, enabling cities to continue to use the strips annexed prior to the enactment of the 1973 and 1987 amendments.

§43.021, Local Government Code, simply requires that an area be "adjacent to the municipality," in order to be subject to annexation. This phrase could be interpreted to mean that the legislature intended to limit annexation to territory contiguous to the principal area of the city. However, the phrase has been construed to permit cities to annex areas located a considerable distance from the principal area of the city, so long as the area is connected at some point to the city limits.[5] This practice raises public policy questions as to whether using narrow strips to annex remote areas facilitates orderly urban planning, and whether the use of grandfathered strips of less that 1,000 feet is consistent with the intent of §43.021.

[4]Ordinances which annexed strips of land that were 10 feet wide and 5,280 feet long, touched city limits...were not void since land annexed was contiguous...May v. City of McKinney (Civ.App.1972) 479 S.W.2d 114, ref. n.r.e. "Spoke" ordinance whereby city annexed 0.11 square miles of land which was in fact right-of-way of highway from boundary of city and which was 116.16 feet in width by five miles in length was not void on ground that such annexed strip of land was not adjacent to city. Fox Development Co. v. City of San Antonio (Sup. 1971) 468 S.W.2d 338.

[5]"Adjacent" -- means contiguous and in the neighborhood of or in the vicinity of Grand Prairie. City of Arlington v. City of Grand Prairie (Civ.App.1970) 451 S.W.2d 284, ref. n.r.e.

Recommendation

The committee recommends that §43.021, Local Government Code, be amended to provide:

(a) an area is eligible for annexation only if it is directly adjacent to the boundaries of the city, and the area within the city that connects the area proposed for annexation has a width of at least 1,000 feet at any point. Provide exceptions for areas completely surrounded by incorporated land, areas requesting annexation, and city-owned property.

(b) bodies of water and other public infrastructure such as roads should not qualify as adjacent city boundaries;

(c) that territory which has been annexed by use of an area less than 1,000 feet wide that connects the territory to city boundary, may not qualify as an adjacent boundary until the connecting area is at least 1,000 feet wide; and

(d) if a city annexes non contiguous territory owned by the city, the extraterritorial limits of the city extend only one mile from such property. The city may annex territory in that one mile ETJ, but such annexations do not further increase the ETJ of the city.

Alternative Recommendations

Alternative Recommendation #1 - Senator Michael Galloway

Voter Approval - Citizens of forcible annexed areas must have the right to vote. This problem will never be solved until citizens are given the authority to exercise their right of self determination. We must empower communities to be equal partners in regional growth planning, rather that requiring them to be passive bystanders while cities determine their futures in an arbitrary and capricious manner. As long as citizens are denied the right to vote, there will be annexation disputes, many of which will involve the Texas legislature and court systems.

Alternative Recommendation #2 - Senator Michael Galloway

Recourse Outside of Judiciary - Citizens of forcibly annexed areas must have recourse outside the judiciary. The only recourse for communities that have been forcibly annexed is to bring the dispute to an already crowded court system. Current law is unclear regarding many matters involved in an annexation, including the jurisdiction of such a proceeding. Furthermore, the cost of such recourse is clearly a significant impediment to annexed communities.

Alternative Recommendation #3 - Senator Michael Galloway

Approval by Commissioner's Court - Require any annexation to be approved by the commissioner's court of the county where the affected area is located. Delegation of such powers allows for a more equitable distribution of authority and more input by locally elected officials in a matter which directly involves county government.