

# ***MUNICIPAL ANNEXATION IN TEXAS***



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## **I. INTRODUCTION**

On May 24, 2019, municipal annexation as it existed for over a century was over. On that date, House Bill 347 became effective. The bill requires landowner or voter approval of most annexations by any city in Texas.

History has shown that the state's grant of broad annexation power to Texas' home rule cities has always been one of our least understood and most contentious governance issues. It is also one of the most important from the perspective of how the state dealt with its massive population growth. Interesting is the fact that the legislature rarely acted to broadly limit municipal annexation. Even when major reforms passed, the core authority remained largely intact. Why is that? It was because key legislators understood that cities support the state's economy through the services and growth management they provide.

Texas is now one of the only states in the nation that denies both state financial assistance *and* annexation authority to its cities. Restricting annexation authority without implementing fiscal assistance programs under which the state helps cities pay for the infrastructure on which the entire state depends wasn't well-thought-out.

Prior to H.B. 347, state leaders realized that annexation was a means of ensuring that residents and businesses outside a city's corporate limits who benefit from access to the city's facilities and services share the tax burden associated with constructing and maintaining those facilities and services.

The current legislature lost sight of the reasons behind annexation. In the process, it may deal a punishing blow to Texas. In a state that adds 1,400 people each day to its population, H.B. 347 will curtail the ability of cities to manage that incredible growth. That being said, and in spite of the legislature's confusing, continued efforts to harm the state's economic engines, city officials in Texas are resilient and will find innovative ways to keep the Texas miracle alive.

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## **II. LEGISLATIVE BACKGROUND OF ANNEXATION**

The original method of incorporation of cities under the Republic of Texas, and later the State of Texas, was by special law. In other words, the Congress of Texas or the State Legislature passed a bill, very similar in appearance to a modern home rule charter, that incorporated a city and delineated its powers and duties. For the most part, special law cities had no annexation authority. To expand the city's boundaries, the congress or legislature had to amend the law that created the city.

In 1858, the first statute allowing incorporation of a city under the general laws was passed. An 1858 amendment allowed for annexation by petition, and this law, along

with others passed over the next several years, became the basis for general law annexation by petition as it was known until 2019.

In 1912, the voters of Texas passed the Home Rule Amendment to the Texas Constitution.<sup>1</sup> This amendment and its accompanying legislation in 1913 gave cities over 5,000 population that adopt a home rule charter by election the full power of local self government, including the ability to unilaterally annex property. Of course, the legislature retains control over home rule cities through the language of that section.<sup>2</sup> Except for the Home Rule Amendment, only piecemeal changes were made to annexation laws from 1858 through 1963.

In 1963, the legislature enacted the Municipal Annexation Act.<sup>3</sup> The Act provided procedures for annexation and created the concept of extraterritorial jurisdiction (ETJ). The Act is now codified in Chapters 42 and 43 of the Texas Local Government Code. As mentioned previously, from the enactment of the Act until 2017 with S.B. 6, the Legislature rarely acted on a broad scale to restrict or modify city annexation authority.<sup>4</sup>

Nonetheless, annexation powers have given rise to complaints and have routinely come under attack in the legislature. The residents of unincorporated areas rarely favor being brought into a city involuntarily, and any city that has gone through a major annexation is well aware of how controversial the process can become. Rural landowners and others regularly turned to their legislators for relief from city expansions, with the result that bills to curb unilateral annexations have surfaced in every session for the past fifty years.

During the 1995 session, only one annexation bill passed, but the 1997 legislative session turned out to be a major battle. Opponents of municipal annexation authority began to organize early with the goal of substantially amending annexation laws. The highest priority of those groups was to seek legislation that would allow the residents in an area proposed for annexation to vote on approval or rejection of the annexation. Scores of annexation bills were filed, and legislative committees held numerous hearings on these bills in front of raucous, standing-room-only crowds. City officials from all over the state testified before these committees and contacted their legislators on this issue. In the end, all efforts to erode municipal annexation authority were defeated.

The Lieutenant Governor and the Speaker of the House each appointed legislative committees to study this issue during the 1998 interim. These committees held hearings

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<sup>1</sup> TEX. CONST. Art. XI, §5.

<sup>2</sup> "The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State."

<sup>3</sup> Act of April 29, 1963, Municipal Annexation Act, 58th Leg., R.S., ch. 160, 1963 Tex. Gen. Laws 447.

<sup>4</sup> Most of the previous information in this introduction is summarized from D. Brooks, *Municipal Law and Practice*, 22 Texas Practice Ch. 1 and T. O'Quinn, *History, Status, and Function*, Introduction to Title 28 of the TEX. REV. CIV. STAT. (Vernon 1963).

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