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Home Rule Cities and Municipal Annexation in Texas: Recent Trends and Future Prospects Symposium - Selected Topics on Land Use Law.

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ARTICLES

HOME RULE CITIES AND MUNICIPAL ANNEXATION IN TEXAS: RECENT TRENDS AND FUTURE PROSPECTS

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I. INTRODUCTION

Home rule cities in Texas have enjoyed remarkably broad powers of annexation over the past seventy years. Since annexation powers and processes were standardized with the passage of the Municipal Annexation Act[1] in 1963, few significant changes have been introduced. In the succeeding twenty-one years Texas metropolitan areas have experienced significant political, physical, and demographic changes. The effects of these changes have resulted in restrictions on the annexation powers of home rule cities. There is some uncertainty about the extent to which the diminution of the annexation power is likely to continue. This uncertainty results from our present inability to accurately assess the net effects of several diverse and emerging trends.

II. ANNEXATION PRACTICES PRIOR TO 1963

Prior to the adoption of the Home Rule Amendment[2] in 1912, all cities or municipal corporations[3] were creatures of the Legislature and depended upon the Legislature for their very existence.[4] The Legislature could grant municipal corporations the powers neces-

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1. TEX. REV. CIV. STAT. ANN. art. 970a (Vernon 1963).

2. *See* TEX. CONST. art. XI, § 5.

3. Although the term municipal corporation denotes "an organized body consisting of the inhabitants of a designated area . . . created by the Legislature . . . [and] possessing certain delegated powers," Welch v. State, 148 S.W.2d 876, 879 (Tex. Civ. App.—Dallas 1941, writ ref'd), and can be used to apply to entities other than cities, *see* TEX. CONST. art. XI, § 3, for the purposes of this article it will be used interchangeably with city. Any of a variety of urban centers may be incorporated. TEX. REV. CIV. STAT. ANN. art. 966 (Vernon 1963) provides that "any city or town containing 600 inhabitants or over may be incorporated as such." *Id.* A municipal corporation may become a home rule city if it meets the requisites of article XI, section 5 of the Texas Constitution which states: "Cities having more than [5000] inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters . . . [and] said cities may levy, assess and collect such taxes as may be authorized by law or by their charters . . . ." TEX. CONST. art. XI, § 5. Once a city has become a home rule city by adoption or amendment of their charter, it has authority to do anything which the legislature could have previously authorized it to do. *See* Forwood v. City of Taylor, 147 Tex. 161, 168, 214 S.W.2d 282, 286 (1948).

4. *See, e.g.,* Brown v. City of Galveston, 97 Tex. 1, 14-15, 75 S.W. 488, 495 (1903) (municipal corporation cannot exist absent authorization from state Legislature); Vosburg v. McCrary, 77 Tex. 568, 572, 14 S.W. 195, 195-96 (1890) (municipal corporation has only authority necessary to carry out powers vested in it by legislation); Blessing v. City of Galveston, 42 Tex. 641, 657 (1875) (municipal charters revocable by Legislature at any time in furtherance of public good).

sary to perpetuate their existence and could prescribe every detail of their organization.[5] Powers not expressly or impliedly granted could not be exercised.[6] The Legislature could fix and extend a municipality's corporate limits with or without the consent of the residents of the territory to be annexed.[7] Under the general laws cities were granted the right to annex territory without obtaining the permission of the Legislature only when the city owned the land to be annexed or when a majority of the qualified electors of the territory to be annexed indicated their desire to be included in the municipality.[8]

When Texas amended its constitution in 1912 by adopting article XI, section 5, the Home Rule Amendment,[9] which provides that voters in cities with more than 5000 inhabitants[10] may "adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, . . . providing that no charter or any ordinance . . .

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5. *See* Brown v. City of Galveston, 97 Tex. 1, 14, 75 S.W. 488, 495 (1903). The court in *Brown* noted the following:

> Since a municipal corporation cannot exist except by legislative authority, can have no officer which is not provided by its charter, and can exercise no power which is not granted by the Legislature, it follows that the creation of such corporations and every provision with regard to their organization is the exercise of legislative power. . . .

Id. at 15, 75 S.W. at 495.

6. *See* Vosburg v. McCrary, 77 Tex. 568, 572, 14 S.W. 195, 196 (1890) (statutes related to municipal corporations "declare with great particularity what powers they have"; absent express delegation of power, presumption is that Legislature declined to confer it upon municipality); Pye v. Peterson, 45 Tex. 312, 314 (1876) (municipal corporations can exercise only powers which are expressly or impliedly conferred).

7. *See* Madry v. Cox, 73 Tex. 538, 541, 11 S.W. 541, 542 (1889) (styled *Maddrey v. Cox* in Southwestern Reporter). The Legislature's power could be exercised to "extend the boundaries of an existing corporation, without the consent or even against the remonstrance, of . . . all the inhabitants . . . of the territory to be annexed." *Id.* at 541, 11 S.W. at 542.

8. *See* TEX. REV. CIV. STAT. ANN. arts. 965, 974 (Vernon1963).

9. TEX. CONST. art. XI, § 5.

10. *See id.* According to the Handbook of Government in Texas, of the 1,114 incorporated cities in Texas, 235 are home rule cities and 39 have a population of 5000 or more and are not home rule. *See* TEXAS ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, HANDBOOK OF GOVERNMENTS IN TEXAS, *Municipal* III-9-III-46 (March 1983). Twenty-two cities which are home rule have a population of less than 5,000. *See id.* The Texas Almanac offers a possible explanation for the latter figure. "Some [home rule] cities now show fewer than 5,000 . . . , because population has declined since they adopted their home rule charters." DALLAS MORNING NEWS, 1982-1983 TEXAS ALMANAC 528 (1982). Examination of the 1970 and 1980 population figures in the handbook, however, indicates that only one of the twenty-two cities had a population of 5000 in 1970. *See* TEXAS ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, HANDBOOKS OF GOVERNMENTS IN TEXAS, *Municipal* III-9-III-46 (March 1983).

shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State . . .,"[11] the legislative powers were taken from the Legislature and given directly to home rule cities by the constitution.[12] By virtue of Article XI, section 5, home rule cities were given the power to do anything that the Legislature could have given them permission to do,[13] including the power to change boundaries.[14] The role of the Legislature was, thereby, reduced to prescribing limitations on the power of home rule cities.[15] The Legislature could, however, still pass laws prescribing annexation procedures.[16]

When the Legislature met the next year, it passed enabling legislation specifically delineating powers of home rule cities including "[t]he power to fix boundary limits . . . to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent . . . [and] to provide for disannexation of territory within such city. . . ."[17] Home rule city charters did not have to specifically include a power of annexation since its being included in the enabling act[18] resulted in its being included by reference in every

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11. TEX. CONST. art. XI, § 5.

12. *See* Vincent v. State *ex rel.* Wayland, 235 S.W. 1084, 1087-88 (Tex. Comm'n App. 1921, judgmt adopted); City of El Paso v. State *ex rel.* Town of Ascarate, 209 S.W.2d 989, 994 (Tex. Civ. App.—El Paso 1947, writ ref'd).

13. *See* City of Houston v. State *ex rel.* City of W. Univ. Place, 171 S.W.2d 203, 206 (Tex. Civ. App.— Galveston), *rev'd on other grounds,* 176 S.W.2d 928 (Tex. 1943); Cohen v. City of Houston, 205 S.W. 757, 761 (Tex. Civ. App.—Beaumont 1918, writ ref'd).

14. *See* Allen v. City of Austin, 116 S.W.2d 468, 469 (Tex. Civ. App.—Austin 1938, writ ref'd).

15. *See, e.g.,* State *ex rel.* Rose v. City of La Porte, 386 S.W.2d 782, 785 (Tex. 1965) (since power for home rule city to act contained in constitution, city need look to acts of Legislature only to determine if limitations have been imposed); Forwood v. City of Taylor, 147 Tex. 161, 168, 214 S.W.2d 282, 286 (1948) (necessity to look to acts of legislature not "for grants of power to [home rule] cities but only for limitations on their powers"); City of Corpus Christi v. Continental Bus Sys., 445 S.W.2d 12, 16 (Tex. Civ. App.—Austin 1969) (Legislature only limits powers of home rule cities), *writ ref'd per curiam,* 453 S.W.2d 470 (Tex. 1970); *cf.* City of Sweetwater v. Geron, 380 S.W.2d 550, 552 (Tex. 1964) (while state Legislature has power to limit home rule city's powers, "its intention to do so should appear with unmistakable clarity").

16. *See* State *ex rel.* Wilkinson v. Self, 191 S.W.2d 756, 759 (Tex. Civ. App.—San Antonio 1945, no writ). "The Home Rule Amendment did not deprive the Legislature of the power to provide and enact general laws relating to municipal affairs. . . . Therefore, the Legislature could lawfully prescribe and authorize a procedure whereby a Home Rule City could annex additional adjacent territory." *Id.* at 759.

17. TEX. REV. CIV. STAT. ANN. art. 1175(2) (Vernon 1963).

18. *See id.*

home rule city's charter.[19] By virtue of this general grant of power and because courts liberally interpreted the home rule amendment and viewed the power to annex as a legislative power not reviewable by the judiciary,[20] cities annexed as they pleased and were "unbridled in their method of annexation. . . ."[21]

Annexation abuses by home rule cities abounded.[22] Because the first municipality to begin the annexation process obtained jurisdiction of the territory desired,[23] cities were quick to engage in annexa-

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19. *See* Golston v. City of Tyler, 262 S.W.2d 518, 520 (Tex. Civ. App.—Texarkana 1953, writ ref'd) (although charter did not specifically include power of annexation such power included by reference from statute).

20. *See* City of Gladewater v. State *ex rel.* Walker, 138 Tex. 173, 177, 157 S.W.2d 641, 643 (1941) (Legislature having conferred its legislative power on home rule cities, reasons for conferring certain powers "must be addressed to the Legislature and not to the courts") (quoting State v. City of Waxahachie, 81 Tex. 626, 633, 17 S.W. 348, 350 (1891)); City of Houston v. State *ex rel.* City of W. Univ. Place, 171 S.W.2d 203, 206 (Tex. Civ. App.—Galveston) (power to annex territory not subject to judicial review), *rev'd on other grounds,* 176 S.W.2d 928 (Tex. 1943).

21. Hammonds v. City of Corpus Christi, 226 F. Supp. 456, 459 (S.D. Tex. 1964), *aff'd,* 343 F.2d 162 (5th Cir.), *cert. denied,* 382 U.S. 837 (1965); *see also* O'Quinn, *Annexing New Territory: A Review of Texas Law and the Proposals for Legislative Control of Cities Extending Their Boundaries,* 39 TEXAS L. REV. 172, 173-74 (1960). In State *ex rel.* Graves v. City of Sulphur Springs, 214 S.W.2d 663 (Tex. Civ. App.—Texarkana 1948, writ ref'd n.r.e.), the court expressed its frustration, stating "[n]o municipal corporation should have unbridled legislative authority to annex adjacent territory which bears no reasonable relation to its needs. However, [under cases cited] . . . one is precluded from trying out such issues. . . ." *Id.* at 665. *Contra* Superior Oil Co. v. City of Port Arthur, 553 F. Supp. 511 (E.D. Tex. 1982). When Port Arthur annexed land which had no relation to the needs of the city, a federal court set aside the city's annexation ordinance and characterized the city's annexation of a strip of land one mile wide and 10-1/2 miles long out into the Gulf of Mexico as "nothing more than a land grab, motivated solely by a lust for tax revenue and having no relation to the traditional purposes of municipal government and its legitimate powers." *Id.* at 518. The court further stated that "[t]he services provided . . . are merely post hoc attempts to justify the burden and are insignificant compared to it. The disparity between the tax imposed and the benefits received was clearly so flagrant and palpable as to amount to an arbitrary taking of property without compensation." *Id.* at 518.

22. *See* O'Quinn, *Annexing New Territory: A Review of Texas Law and the Proposals for Legislative Control of Cities Extending Their Boundaries,* 39 TEXAS L. REV. 172, 172-74 (1960). Unlike home rule cities, general law cities may annex contiguous territory to the extent of one-half mile in width only when a majority of the qualified voters living in the area to be annexed petition the city unless the city already owns the land. *See* TEX. REV. CIV. STAT. ANN. arts. 965, 974 (Vernon 1963). Because the amount and location of the territory that can be annexed by a general law city are controlled by statute and because of the voter consent requirements, complaints of annexation abuse naturally were fewer.

23. *See* City of La Porte v. State *ex rel.* Rose, 376 S.W.2d 894, 907 (Tex. Civ. App.—Austin), *rev'd in part on other grounds,* 386 S.W.2d 782 (Tex. 1965).

tion wars and to stake a claim by a "first reading,"[24] a practice unique to Texas[25] whereby a city, though it obtained annexation jurisdiction did not actually annex the territory but prevented other cities from annexing it and prevented the area from incorporating.[26] Thus, cities could put territory in their annexation jurisdiction without being obligated to provide services[27] and never formally annex the area.[28] Although there were reports of some areas being in "first reading" status for nine years,[29] the Texas Legislative Council found such areas represented only a fraction of total annexations.[30] By putting areas in first reading status, cities, in effect, created what was later to be called "extra-territorial jurisdiction" in the Municipal Annexation Act.[31] The same result was also accomplished by annexing a narrow strip of land encircling the area to be protected

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24. Cities frequently, although not necessarily, required three readings of an ordinance before it became law. Once a city had passed first reading of an annexation ordinance, the city, by beginning the annexation process, had staked its claim, had obtained annexation jurisdiction or priority, and no other city could claim the territory. *See, e.g.,* Beyer v. Templeton, 147 Tex. 94, 99, 212 S.W.2d 134, 137 (1948) (city which first commences annexation proceedings in certain territory acquires jurisdiction over such territory); Red Bird Village v. State *ex rel.* City of Duncanville, 385 S.W.2d 548, 550 (Tex. Civ. App.—Dallas 1964, writ ref'd) (first city to take any action towards incorporation obtains priority); State *ex rel.* City of Forth Worth v. Town of Lakeside, 328 S.W.2d 245, 247 (Tex. Civ. App.—Fort Worth 1959, writ ref'd) (city first commencing legal annexation process acquires jurisdiction over territory).

25. *See* TEXAS LEG. COUNCIL, MUNICIPAL ANNEXATION: A REPORT TO THE 57TH LEGISLATURE 5 (1960).

26. *See id.* at 6. In addition to being a method by which a city stakes its claim, first reading was a method by which a city protected its adjacent territory from encroachments by neighboring municipalities. *See id.* at 5-6. This had mixed consequences for the residents in the area to be annexed. Residents of the area to be annexed were not citizens of the municipality; they received no services except those provided on a fee basis, were subject to no municipal ordinances, and paid no taxes. *See id.* at 6.

27. *See* City of Fort Worth v. Taylor, 427 S.W.2d 316, 317-18 (Tex. 1968).

28. *Cf.* Red Bird Village v. State *ex rel.* City of Duncanville, 385 S.W.2d 548, 549-50 (Tex. Civ. App.—Dallas 1964, writ ref'd) (Dallas passed first reading in 1958, took no further action until area released by operation of law in 1963 after passage of Municipal Annexation Act); City of Terrell Hills v. City of San Antonio, 216 S.W.2d 657, 658 (Tex. Civ. App.—San Antonio 1948, writ ref'd) (where charter places no time limit for passage of annexation ordinances, mere passage of time does not render action void); Dallas Morning News, August 18, 1960, § 4, at 1, col. 6 (discussion of annexations to prevent encroachment by other municipalities).

29. *See* Dallas Morning News, July 17, 1960 § 1, at 10, col. 3.

30. *See* TEXAS LEG. COUNCIL, NO. 53-2 MUNICIPAL ANNEXATION, STAFF RESEARCH REPORT 32 (1955).

31. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 3 (Vernon 1963). Section 3(A) of article 970a defines "extraterritorial jurisdiction" as "the unincorporated area, not a part of any

from annexation by another municipality.[32] Home rule cities were free to annex any territory without the consent of owners of or residents in the area to be annexed.[33] Courts which eventually passed upon the validity of an annexation would inquire only into the procedural correctness and adjacency of the annexation and not into the motives of the annexing city[34] or into the reasonableness of the annexation.[35]

Home rule cities could annex *any* land, including land not suitable for any city purpose except as a source for tax revenues[36] or land which had no reasonable relation to the annexing city's present needs or future growth.[37] No limits were placed on the shape of the land or on the character of the land[38] to be annexed. No notice requirements or time limits were imposed on home rule cities initiating the annexation process.[39] Limitations were not imposed on

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other city, which is contiguous to the corporate limits of any city . . . ." *See id.* This concept is not a new one. *See infra* note 58 and accompanying text.

32. *Cf.* City of Pasadena v. State *ex rel.* City of Houston, 442 S.W.2d 325, 327 (Tex. 1969) (attempted annexation of strip of land ten feet wide and more than fifty miles long); TEXAS LEG. COUNCIL, MUNICIPAL ANNEXATION: A REPORT TO THE 57TH LEGISLATURE 57 (1960) (municipalities protected industrial plants by "throwing a protective annexed strip" around them).

33. *See* Allen v. City of Austin, 116 S.W.2d 468, 469 (Tex. Civ. App.—Austin 1938, writ ref'd); Cohen v. City of Houston, 176 S.W. 809, 813 (Tex. Civ. App.—Galveston 1915, writ ref'd).

34. *See* City of Houston v. State *ex rel.* City of W. Univ. Place, 171 S.W.2d 203, 206 (Tex. Civ. App.—Galveston), *rev'd on other grounds,* 176 S.W.2d 928 (Tex. 1943).

35. *See* State *ex rel.* Pan Am. Prod. Co. v. Texas City, 157 Tex. 450, 453, 303 S.W.2d 780, 782 (1957) (arbitrariness or unreasonableness of annexation not sufficient cause for judicial review); State *ex rel.* Graves v. City of Sulphur Springs, 214 S.W.2d 663, 665 (Tex. Civ. App.—Texarkana 1948, writ ref'd n.r.e.) (court precluded from reviewing reasonableness of city action). *But see* Superior Oil Co. v. City of Port Arthur, 553 F. Supp. 511, 514 (E.D. Tex. 1982) (court voided annexation ordinance on grounds that "the annexation of Superior Oil's property and the resultant tax assessed upon it violates the Due Process Clause of the Fourteenth amendment to the Constitution").

36. *See* State *ex rel.* Pan Am. Prod. Co. v. Texas City, 157 Tex. 450, 453, 303 S.W.2d 780, 782 (1957).

37. *See id.* at 454, 303 S.W.2d at 782.

38. *See* State *ex rel.* Pan Am. Prod. Co. v. Texas City, 157 Tex. 450, 453, 303 S.W.2d 780, 783 (1957) (submerged land); City of Wichita Falls v. Bowen, 143 Tex. 45, 47-8, 182 S.W.2d 695, 696 (1944) (annexation of area containing two airfields one of which was U.S. military base and connecting highway).

39. *See* State *ex rel.* Graves v. City of Sulphur Springs, 214 S.W.2d 663, 664-65 (Tex. Civ. App.—Texarkana 1948, writ ref'd n.r.e.) (court only inquires into adjacency and procedural correctness). Surprise annexations were not unknown. *See* Dallas Morning News, February 2, 1956, § 1, at 15, col. 4.

the amount of land that could be annexed so that in 1960 Nederland, a city with a population of 12,036 and an area of 4.35 square miles, annexed 689 square miles on first reading,[40] Houston annexed all of Harris County that was unincorporated,[41] Alvin annexed a 100 foot wide strip encircling 300 square miles,[42] Freeport annexed on first reading a 10 foot wide strip encompassing 650 square miles,[43] and annexations in the Houston area totalled 1200 square miles within one month.[44]

III. THE MUNICIPAL ANNEXATION ACT OF 1963

In response to annexation wars and to prevent such abuses from continuing, the 58th Legislature passed the Municipal Annexation Act in 1963.[45] Basically, the Act restricts cities' annexation powers and provides a process for annexation by home rule cities.[46] Surprise annexations are no longer possible because before a city can annex territory, it must hold a public hearing and publish notice of such hearing.[47] The Act, as originally passed, required a public hearing at which all interested persons were to be heard, to be held ten to twenty days before the institution of annexation proceedings began,[48] and notice of the hearing to be published in a newspaper of

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40. *See* Houston Chronicle, June 17, 1960, § 1, at 1, col. 5, *quoted in* Comment, *An Analysis of Annexation Power of Texas Home Rule Cities in View of the Basic Principles of a Good Annexation Law Proposed by the American Municipal Association,* 39 TEXAS L. REV. 458, 458 (1961).

41. *See* TEXAS LEG. COUNCIL, MUNICIPAL ANNEXATION: A REPORT TO THE 57TH LEGISLATURE 53 (1960).

42. *See id.* at 53.

43. *See id.* at 53 (quoting Houston Post, July 7, 1960, § 1, at 1, col. 4).

44. *See* Dallas Morning News, June 24, 1960, § 1, at 2, col.3.

45. TEX. REV. CIV. STAT. ANN. art. 970a (Vernon 1963).

46. *See* Chapman, *The Texas Municipal Annexation Act,* 29 TEX. B.J. 165, 166 (1966). Because the Act applies to any incorporated city, town or village in the State of Texas, many assumed that general law cities would be able to annex territory without the consent of the residents in the territory to be annexed. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 2 (Vernon 1963); Chapman, *The Texas Municipal Annexation Act*, 29 TEX. B.J. 165, 166 (1966); Wingo, *Public Law-Local Government,* 25 SW. L.J. 187, 190 (1971). The Texas Supreme Court, however, has held that since the Act does not specifically repeal article 974, which requires a general law city to get the consent of the residents of the territory to be annexed, articles 974 and 970a will be read together to prohibit general law cities from annexing territory without the consent of the residents of the area to be annexed. *See* Sitton v. City of Lindale, 455 S.W.2d 939, 941 (Tex. 1970); City of Kyle v. Price, 547 S.W.2d 376, 378 (Tex. Civ. App.—Austin 1977, no writ).

47. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 6 (Vernon 1963).

48. Passing an ordinance on first reading is one way to institute annexation proceed-

general circulation from ten to twenty days before the hearing.[49] Since the Act mandates that a city must complete the annexation process within ninety days of the institution of the annexation process,[50] long delays in annexation are no longer possible.

Wholesale land grabbing was stopped by limiting the amount of land cities can annex in any one year. Only territory amounting to ten percent of the total corporate area as of the first of the calendar year, with certain types of annexations being excluded, can be annexed in any one year.[51] Unused allocations can be carried forward from year to year, but no more than thirty percent of the city's total area may be annexed in any one calendar year.[52]

The Legislature also put a limit on the shape of the territory a city can annex by placing limitations on the location of territory that can be annexed. A city can annex territory only in the contiguous unincorporated area surrounding it,[53] its extra-territorial jurisdiction (ETJ), which extends no more than five miles beyond the corporate limits[54] and which expands as the corporate limits expand.[55] Thus, cities could no longer annex narrow strips which extended limitlessly into unincorporated territory; they could, however, still annex long, narrow meandering strips wholly within their own ETJ.[56] In case of overlapping ETJ's, the Act provides for apportionment by

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ings, but it is not the only way. Introduction of an ordinance and publication can also constitute institution of annexation proceedings. *See id.* § 6; *see also* Knapp v. City of El Paso, 586 S.W.2d 216, 218 (Tex. Civ. App.— El Paso 1979, writ ref'd n.r.e.).

49. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 6 (Vernon 1963).

50. *See id.* § 7(D).

51. *See id.* § 7(B) (Vernon 1963).

52. *See id.* § 7(C).

53. *See id.* § 7(A).

54. *See id.* § 3(A)(1), (2), (3), (4), (5). The extent of a city's ETJ varies with its population. A city with a population of less than 5,000 has an ETJ consisting of all the contiguous unincorporated area within one-half mile of the corporate limits. *See id.* § 3(A)(1). For a city with a population of 5,000 or more but less than 25,000, its ETJ boundary is one mile. *See id.* § 3(A)(2). For a city with a population of 25,000 or more and less than 50,000, it is two miles. *See id.* § 3(A)(3). For a city with a population of 50,000 or more and less than 100,000, it is three and one-half miles. *See id.* § 3(A)(4). For a city with a population of 100,000 or more, it is five miles. *See id.* § 3(A)(5).

55. *See id.* § 3(C).

56. *Cf.* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(A) (Vernon 1963). Cities could still annex narrow strips or "spokes" of land within their ETJ in order to extend their ETJ's. There is, however, no need for long meandering strip annexations to protect adjacent territory from annexation by neighboring cities since, under the Act, cities are precluded from annexing territory in the ETJ of another city. *See id.* § 7(A).

mutual consent or by order of the district court.[57]

A city has some, albeit slight, control over activities within its ETJ.[58] Platting and subdivision regulations can be extended by ordinance to the territory in a city's ETJ[59]; however, zoning regulations and plumbing or electrical codes cannot be so extended.[60] Further, a city cannot tax territory in its ETJ.[61] Should a violation of the city's platting or subdivision ordinances occur, the city is limited to injunctive relief.[62]

To further protect a city from encroachment by another political subdivision, the Act provides that no city,[63] or water or sewer district,[64] can be created in a city's ETJ without the written approval of such city. If the city refuses permission to form a city or water or sewer district, a majority of resident voters and the owners of fifty percent of the land can petition for annexation in the case of those desiring to incorporate as a city[65] or for delivery of such services in

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57. See id. § 3(B). Overlapping ETJ's are still a problem. Correspondence between the City of San Antonio and the City of Converse, for example, indicates that between 1975 and 1979 the two cities had several disputes involving their overlapping ETJ's. *See* Letter from Robert B. Hunter to Mayor Joseph J. Staudt (June 13, 1981); Letter from Robert B. Hunter to Mayor Joseph J. Staudt (October 20, 1978); Letter from Cipriano E. Guerra to Mayor Joseph J. Staudt (October 6, 1975).

58. Even in the late nineteenth century, Texas cities had the authority to control certain activities in their surrounding areas. As early as 1875 cities could make quarantine laws and enforce them within ten miles of the city in order to prevent the introduction of contagious diseases. *See* Law of March 15, 1875, ch. 100 § 30, 1875 Tex Gen. Laws 126, 8 H. GAMMEL, LAWS OF TEXAS 498 (1875) *as amended,* TEX. REV. CIV. STAT. ANN. art. 1015(2) (Vernon 1963). Also in 1875, to prevent the entrance of pestilence and contagious diseases cities were given authority to establish, maintain, and regulate pesthouses or hospitals at a place not exceeding five miles beyond the city limits. *See* TEX. REV. CIV. STAT. ANN. art. 1072 (Vernon 1963). In 1927 cities were given authority to approve or disapprove subdivision plats within five miles of the corporate limits. *See id.* art. 974a (Vernon 1963).

59. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 4 (Vernon 1963).

60. *See id.* § 4. In 1977 a bill was introduced which would have allowed a city to extend its codes to its ETJ. *See* Tex. H.B. 985, 65th Leg. (1977). By requiring certain standards before the extension of its utilities into its ETJ a city may indirectly extend it codes into its ETJ. For example, Austin requires buildings to meet reasonable electrical code requirements before it extends electrical service. *See* J. MEINRATH, EXTRA-TERRITORIAL REGULATIONS AND CONTROLS 12 (1978) (Report by Assistant City Attorney, City of Austin, Texas).

61. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 3(D) (Vernon 1963).

62. *See id.* § 4.

63. *See id.* § 8(A).

64. *See id.* § 8(B).

65. *See id.* § 8(A).

the case of those desiring to create a water or sewer district.[66] Should the city refuse to annex or provide services, the refusal shall constitute permission to institute creation of the desired political subdivision.[67] Time limits in which the creation of the political subdivision must be initiated and finalized are also provided.[68]

The level of services and time in which they were to be provided were also mandated by the Act.[69] With the passage of the Act in 1963, a city had to provide governmental and proprietary services substantially equivalent to those being provided to other parts of the city with similar topography, population density, and patterns of land use within three years of annexation.[70] Failure to provide such services could result in disannexation.[71] It was not clear, however, from a reading of the Act what specific services had to be provided or what standards had to be met.

The establishment of industrial districts, by which a city could guarantee that an area within its ETJ could maintain that status and be exempt from annexation for successive periods of seven years, was also authorized.[72] Since a city cannot tax land in its ETJ,[73] this mechanism was effectively a tax abatement scheme because it allowed the city to protect the industry from annexation and, thereby, taxation.[74] At the time the Act was passed, this was one of the few

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66. *See id.* § 8(B).

67. *See id.* § 8(A), (B).

68. *See id.* § 8(C).

69. *See id.* § 10(A).

70. *See id.* § 10(A).

71. *See id.* § 10(A). Because the act mandated that a city had to provide services substantially equivalent to those being provided in areas similar in landscape, topography, and population density, evidence of areas with similar conditions must be presented or disannexation cannot be had. *See* City of Temple v. Fulton, 430 S.W.2d 737, 741 (Tex. Civ. App.—Austin 1968, no writ). Whether the city has failed to provide substantially similar services involves two questions: 1) are there two separate areas with similar characteristics; 2) are the services substantially similar? *See* City of Heath v. King, 665 S.W.2d 133, 136 (Tex. App.—Dallas 1983, no writ).

72. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 5 (Vernon 1963). In 1977 a section authorizing a city to provide for adequate fire fighting services in industrial districts either directly or by contract was added to the Act. *See id.* § 5(A) (Vernon Supp. 1963-1983).

73. *See id.* § 3(D) (Vernon 1963).

74. Until recently cities had been prohibited by the Texas Constitution from engaging in tax abatement. *See* TEX. CONST. art. VIII, § 1. Only municipal corporate property is excluded from the requirement that "[t]axation shall be equal and uniform." *Id.* Courts which have ruled upon the validity of industrial district contracts entered into by cities pursuant to section 5 of article 970a and article 1187-1, another statutory provision which authorizes such contracts, have uniformly held that they do not result in the imposition of an

devices available which allowed a city to encourage industrial development and to attract new businesses to its ETJ.[75]

Thus, with the passage of the Act, many annexation abuses were curbed, and the process of restricting cities' power to annex, a power which allows cities to maintain their vitality,[76] had begun. At the same time cities were given a process by which to order their growth and stop infringement by other political subdivisions just outside their corporate limits. There have been few changes, and even fewer significant changes, in the Act since its passage twenty-one years ago. The number of attempted changes, i.e., bills introduced in each legislative session which contemplate changing the Act, indicates that significant amounts of dissatisfaction with the annexation powers of cities continue.[77] This dissatisfaction has centered primarily around annexation of strips of land, level of services, consent, and annexation into the Gulf of Mexico.

IV. LEGISLATION AND TRENDS AFFECTING MUNICIPAL ANNEXATION

A. *Early Amendments and Attempted Amendments of the Act*

The first significant change occurred in 1973, ten years after pas-

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unconstitutionally unequal tax because the property is outside the corporate limits. *See, e.g.,* Houston Endowment, Inc. v. City of Houston, 468 S.W.2d 540, 543-44 (Tex. Civ. App.—Houston [14th Dist.] 1971, writ ref'd n.r.e.) (payment in lieu of taxes on property outside city's boundaries at different rate not constitutionally infirm); City of Pasadena v. Houston Endowment, Inc., 438 S.W.2d 152, 156-57 (Tex. Civ. App.—Houston [14th Dist.] 1969, writ ref'd n.r.e.) (contract with owners of land in industrial district for payment of consideration in lieu of taxes of sum equal to 30% of normal tax rate upheld under section 5 of Act); City of Houston v. Houston Endowment, Inc., 428 S.W.2d 706, 709 (Tex. Civ. App.—Houston [1st Dist.] 1968, writ ref'd n.r.e.) (industrial district contract provision entered into pursuant to article 1187-1, requiring payment to city of an amount equal to ad valorem tax on comparable property within general city limits upheld).

75. *See* Houston Endowment, Inc. v. City of Houston, 468 S.W.2d 540, 542 (Tex. Civ. App.—Houston [14th Dist.] 1971, writ ref'd n.r.e.).

76. San Antonio has characterized annexation as a matter of "life and death." CITY COUNCIL'S ANNEXATION POLICY ADVISORY COMM., CITY OF SAN ANTONIO ANNEXATION POLICIES (1978).

77. In the 1977, 1979, and 1981 sessions of the Texas Legislature there were at least forty-four bills introduced in both houses which sought to amend the Act. *See, e.g.,* Tex. S.B. 177, 67th Leg. (1981) (60 day notice of hearing requirement); Tex. H.B. 1788, 66th Leg. (1979) (prohibited annexations of territory in a city's ETJ solely because of a previous strip annexation); Tex. H.B. 2104, 65th Leg. (1977) (exception to minimum width requirement). The purpose of the Act may also be circumvented by bills which seek to validate past extra legal acts of cities. *See* TEX. REV. CIV. STAT. ANN. art. 974d-24 (Vernon Supp. 1963-1983).

sage of the Act, when the 63rd Legislature passed a bill adding a section to the Act which prohibited "spoke annexation."[78] Prior to 1973 there had been no minimum on the width of an area that could be annexed and, as explained above, courts would not question any annexation that was adjacent and procedurally correct. After passage of the Act, cities continued to annex long strips, or "spokes" of land, usually along public rights of way.[79] In *City of Pasadena v. State ex rel. City of Houston,*[80] Houston's attempt to annex a strip of land ten feet wide and fifty miles long was invalidated by the Texas Supreme Court not because of the narrowness of the area being annexed but because it was not "adjacent" to Houston: while the tract touched Houston in two places each ten feet wide, it touched Pasadena for five miles.[81] A seemingly contrary, but actually consistent, result was reached when the city of McKinney's annexation of many long meandering strips ten feet wide and from one to three miles long was upheld by a civil appeals court, which described the plan as a "rather unique and unusual plan of annexation."[82] Annexations along rights of way of state highways were not uncommon and were generally upheld.[83]

Spoke annexation had been the subject not only of controversy and litigation but also of legislation before 1973.[84] In 1971, Senate

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78. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983).

79. By annexing state roads, cities were free of any obligation to provide services to the area annexed. *Cf.* May v. City of McKinney, 479 S.W.2d 114, 116 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.).

80. 442 S.W.2d 325 (Tex. 1969).

81. *See* City of Pasadena v. State *ex rel.* City of Houston, 442 S.W.2d 325, 328-30 (Tex. 1969). The court repeated the axiom stated by it in State *ex rel.* Pan Am. Prod. Co. v. Texas City, 157 Tex. 450, 303 S.W.2d 780 (1957) that "the Legislature used the word 'adjacent' in the sense of being 'contiguous' and 'in the neighborhood of or in the vicinity of' a municipality." City of Pasadena v. State *ex rel.* City of Houston, 442 S.W.2d 325, 328 (Tex. 1969); *see also* May v. City of McKinney, 479 S.W.2d 114, 118 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.)(only requirement is that land be adjacent).

82. May v. City of McKinney, 479 S.W.2d 114, 117 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.)

83. *See* Fox Dev. Co. v. City of San Antonio, 468 S.W.2d 338, 338 (Tex. 1971) (city annexation of highway right-of-way not void); City of Wichita Falls v. Bowen, 143 Tex. 45, 49-50, 182 S.W.2d 695, 697-98 (Tex. 1944) (city's annexation of airport, military base, and connecting highway not void; no statute specifies length, width, shape, or amount of land city may annex).

84. *See* Fox Dev. Co. v. City of San Antonio, 468 S.W.2d 338, 338 (Tex. 1971); Tex. S.B. 580, 62d Leg. (1971). In 1973 a section was added to the Act which sought to limit spoke annexations. TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983).

Bill 580, which declared that it was against the public policy of the state to annex narrow strips of territory less than 300 feet wide if the only purpose was to expand the ETJ of the city to developing or developed areas, was passed by both houses.[85] This bill was very controversial because some feared that it would result in San Antonio's losing jurisdiction over The University of Texas at San Antonio;[86] consequently it was vetoed by the Governor.[87] In 1969 there had also been an attempt to prohibit the annexation of long narrow strips for the purpose of expanding a city's ETJ.[88]

The bill which was passed in 1973 prohibited annexation of areas unless the width at its narrowest point was 500 feet.[89] Specifically excluded from this prohibition were annexations initiated for the express purpose of including the site of a state institution or facility within a city.[90] This was intended to alleviate fears that the annexation of the proposed site of the University of Texas at San Antonio would be voided.[91] Interestingly this is the only situation in which motive is relevant.[92]

Another exception to the minimum width resulted in 1975 when House Bill 1530 was passed. This bill excepted cities with population of less than 12,000 from the 500 foot minimum if the property to be annexed was contigious to the annexing city on two sides.[93] Two more exceptions to the minimum width requirement were passed during 1977.[94] Cities making mutually agreeable boundary

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85. *See* Tex. S.B. 580, 62nd Leg. (1971).

86. *See* San Antonio Express, April 17, 1971, at 5A, col. 2; San Antonio Express, June 3, 1971, at 1A, col. 6.

87. *See* Proclamation of Gov. Smith, Tex. S.B. 580, 62nd Leg. (June 17, 1971).

88. *See* Tex. H.B. 1071, 61st Leg. (1969).

89. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983). Several of the bills introduced attempted to set the minimum width at 300 feet. Since a federal highway usually requires a right-of-way of 350 to 400 feet, setting the minimum width at 300 feet would have allowed cities to continue to annex federal highways. *Cf.* Tex. S.B. 580, 62d Leg. (1971) (defined "narrow strip of territory" as one "which is less than [300] feet in width at its greatest width and extends to or beyond one-half the extent of the city's [ETJ]").

90. *See id.* § 7(B-1)(c).

91. *See* San Antonio Express, Apr. 17, 1971, at 5A, col. 2; *id.* June 3, 1971, at 1A, col. 6.

92. *Cf.* State *ex rel.* Graves v. City of Sulphur Springs, 214 S.W.2d 663, 664 (Tex. Civ. App.—Texarkana 1948, writ ref'd n.r.e.)(motive of municipality not reviewable by courts).

93. *See* Tex. H.B. 1530, 64th Leg. (1975), *amending* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983) (in 1977 section 7(B-1)(a) was amended so that there are now two sections denominated section 7(B-1)(a).

94. *See* Tex. S.B. 961, § 1, 65th Leg. (1977); Tex. H.B. 2104, 65th Leg. (1977).

adjustments[95] and cities annexing territory at the request of the owners of the land or of a majority of the voters are permitted to annex land less than 500 feet wide.[96]

Since 1977 there have been few bills affecting annexation of strips of land. Spoke annexation no longer seems to be an issue. Although the abuses seem curbed, in two of the last three sessions of the Legislature there have been attempts to limit the effect of strip annexations.[97] In 1979 and 1981 bills intended to prevent a city from annexing territory which is in the city's ETJ solely because of previous spoke annexation were introduced but were not enacted.[98]

B. *Recent Amendments and Attempted Amendments of the Act*

A second significant change in the Act came in 1981, when the 67th Legislature made changes to insure the delivery of services to annexed areas and to increase the number of required hearings.[99] Prior to 1981 delivery of municipal services to the territory annexed had long been of concern. The Committee on Intergovernmental Affairs had heard many complaints over the years that the three-year limit for the delivery of services had been ignored.[100] Even cities themselves recognized that timely delivery of services was a problem.[101] The Act, as originally passed, was vague as to what services must be provided and what the quality of the services should be. One representative said that "the laws (on annexation) are so nebulous as to city services that the only thing new residents get is the privilege of sending the city a tax payment every year."[102]

During legislative sessions prior to 1981 there had been numerous

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95. *See* Tex. S.B. 961, § 1, 65th Leg. (1977), *amending* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983).

96. *See* Tex. H.B. 2104, 65th Leg. (1977), *amending* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983). With this exception there was also an attempt to reduce the width of the prohibited strips from 500 feet to 300 feet which would have resulted in cities being able to annex federal highways again. The reduction in minimum width was deleted in the final version which passed and became law. *See id.*

97. *See* Tex H.B. 1449, 67th Leg. (1981); Tex. H.B. 1788, 66th Leg. (1979).

98. *See* Tex. H.B. 1449, 67th Leg. (1981); Tex. H.B. 1788, 66th Leg. (1979).

99. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 10 (Vernon Supp. 1963-1983) (delivery of services); *id.* § 6 (required public hearings).

100. *See* HOUSE COMM. ON INTERGOVERNMENTAL AFFAIRS, BILL ANALYSIS, Tex. H.B. 2143, 66th Leg. (1979).

101. *See* CITY COUNCIL'S ANNEXATION ADVISORY COMM., CITY OF SAN ANTONIO ANNEXATION POLICIES 1 (1978).

102. Fort Worth Star Telegram, Feb. 24, 1979, § A, at 10, col. 4 (Rep. Coody).

attempts to require annexing cities to provide municipal services which the 1963 Act had, in fact, required. These attempts were made in three ways: by defining the services and time limits in which they were to be provided, by allowing disannexation more easily if services were not provided, and by allowing citizens to create municipal utility districts [MUD's] if services were not provided.[103] In 1977 a bill that specified which basic services must be provided within three years of annexation and required cities to provide those services by September 1, 1980 to areas annexed before August 23, 1963, the effective date of the act, failed.[104] In the next session, the 66th Legislature in 1979, legislators introduced two bills calling for services to be provided within one year of annexation, requiring only five percent of the voters of the area, instead of a majority of the voters and owners of 50% of the land as in the original Act, to petition for disannexation and giving the city only sixty days to disannex the area after receipt of the petition before one of the petitioners could file a disannexation action in district court.[105] Both failed. Another bill introduced that session would have required services to be provided within one year of annexation.[106] Had the services not been provided the taxpayers would have been allowed to create a MUD and to deduct taxes paid to the MUD from their city property taxes. A third bill in 1979 would have re-

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103. *See* Tex. H.B. 1443, 66th Leg. (1979) (required governmental and proprietary services to be provided within two years); Tex. S.B. 650, 66th Leg. (1979); Tex. H.B. 1054, 66th Leg. (1979) (required services to be provided within one year and allowed 5% rather than majority of voters to petition for disannexation); Tex. H.B. 676, 66th Leg. (1979) (allowed creation of MUD by area residents if basic services not timely provided).

104. *See* Tex. H.B. 868, 65th Leg. (1977). The original Act itself is silent as to services to areas annexed before the effective date of the Act. It merely provides that the Act will apply to areas annexed after the effective date. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 10(A) (Vernon 1963). An annexing city must provide comparable services within three years after annexation only as to all land annexed "[f]rom and after the effective date of this Act. . . ." *Id.* § 10(A). Disannexation cannot be granted to areas annexed prior to the effective date of the Act. *See* City of Fort Worth v. Taylor, 427 S.W.2d 316, 317 n.1, 319 (Tex. 1968) (citing section 10(A) and stating "[t]he language of the statute makes it clear that it was the intention of the Legislature that the provisions of the Act should apply only in cases where cities annex a particular area '[F]rom and after the *effective* date' of the Act.") (emphasis in original).

105. *See* Tex. H.B. 1054, 66th Leg. (1979); Tex. S.B. 650, 66th Leg. (1979). These bills required that a level of services substantially equivalent to those provided by the annexing city to the "subdivision . . . within the city that has the highest valuation for county ad valorem taxes." Tex. H.B. 1054, 66th Leg. (1979); Tex. S.B. 650, 66th Leg. (1979).

106. *See* Tex. H.B. 676, 66th Leg. (1979).

quired services to be provided within two years of annexation.[107] This latter bill also provided that if a city annexed a MUD, the district could not be abolished until the city was able to provide comparable services and that MUD taxpayers would get a credit equal to the taxes paid to the MUD on their city property taxes.[108]

House Bill 2143, also introduced in 1979, was similar to the bill which eventually passed in 1981 in that it called for the annexing city to prepare a plan for the delivery of services substantially similar to those being provided in similar areas of the annexing city within two years of annexation.[109] The bill drew much opposition including that of the Texas Municipal League and the cities of Houston, Fort Worth, and San Antonio.[110]

Attempts to amend the service provisions of the Act were finally successful in 1981 when the 67th Legislature made significant changes in section 10.[111] House Bill 1952, a compromise piece of legislation backed by the Texas Municipal League,[112] required that a city proposing an annexation must first prepare a service plan which provides for the extension of municipal services into the areas to be annexed and which must be available for inspection at the annexation hearings.[113] The basic municipal services—police and fire protection, garbarge collection, maintenance of water and waste water facilities—maintenance of streets and publicly owned areas and facilities, must be provided within sixty days of the effective date of annexation.[114] Capital improvements, if necessary for the provision of municipal services, must begin within two and one half years of annexation.[115] Under no circumstances is the plan to allow fewer or a lower level of services than already in existence.[116] This

107. *See* Tex. H.B. 1443, 66th Leg. (1979).

108. *See id.*

109. *Compare* Tex. H.B. 2143, 66th Leg. (1979) *with* Tex. H.B. 1952, 67th Leg. (1981), *amending* TEX. REV. CIV. STAT. ANN. art. 970a, § 10(B) (Vernon 1963).

110. *See* HOUSE COMM. ON INTERGOVERNMENTAL AFFAIRS, BILL ANALYSIS, Tex. H.B. 2143, 66th Leg. (1979).

111. *See* Tex. H.B. 1952, 67th Leg. (1981), *amending* TEX. REV. CIV. STAT. ANN. art. 970a, § 10 (Vernon 1963).

112. *See* Speech by Robert K. Nordhaus, Texas City Attorney's Ass'n (October 26, 1981).

113. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 10(A) (Vernon 1963) (preparation of plan); *id.* § 10(E) (plan to be made available at hearing).

114. *See id.* § 10(B)(1).

115. *See id.* § 10(B)(2).

116. *See id.* § 10(C).

plan, which can be amended or repealed under some circumstances but which cannot have services deleted from it, is to be treated as a contractual obligation of the city.[117] Failure to effect the plan can result in disannexation which can be had upon a petition of a majority of qualified voters in the area annexed to the governing body of the annexing city.[118] If the petition is refused or not accomplished within sixty days, one of the signers may go to court to compel disannexation.[119] Upon a finding that the city failed to perform its contractual obligations in good faith or in accordance with the plan, the court must enter a disannexation order. A MUD may then be created without the consent of the city.[120]

Several bills introduced in 1981 calling for extension of municipal services were more severe than the one passed. One would have required services to be provided before actual annexation if the owner of the territory to be annexed requested them.[121] Another would have required a disannexation election upon petition of twenty percent of the qualified voters.[122]

Even after the 1981 changes there was still dissatisfaction with the services provision of the Act as evidenced by several bills introduced in the 1983 session of the Legislature. Requiring a city to initiate capital improvements for the provision of all municipal services other than basic services by acquisition or construction within one year of annexation was the object of House Bill 1697.[123] Another bill would have allowed residents of all or any portion of a territory comprising a water or sewer district to apply for a disannexation election of the area and incorporation as a municipality if the district continued to exist on the ninety-first day after annexation.[124] If

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117. *See id.* § 10(E) (amendment of plan allowed only if changed conditions make original plan unworkable or obsolete).

118. *See id.* § 10(F). Formerly, it was necessary that a majority of the voters residing in the annexed area and the owners of fifty percent of the land petition for disannexation. *Compare* TEX. REV. CIV. STAT. ANN.art. 970a, § 10 (Vernon 1963)(amended by Tex. H.B. 1952, 67th Leg. (1981)) *with* TEX. REV. CIV. STAT. ANN. art. 970a, § 10(F) (Vernon Supp. 1963-1983) (majority of area's qualified voters).

119. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 10(F) (Vernon Supp. 1963-1983).

120. *See id.* § 10(F) (court shall order disannexation of area upon finding that city failed or refused to provide services); *id.* § 8(B) (Vernon 1963) (authorization for creation of other political subdivision).

121. *See* Tex. H.B. 1426, 67th Leg. (1981).

122. *See* Tex. H.B. 1506, 67th Leg. (1981).

123. *See* Tex. H.B. 1697, 68th Leg. (1983).

124. *See* Tex. H.B. 2130, 68th Leg. (1983).

the disannexation proposition were adopted, the disannexation would have been immediate.[125] House Bill 2265 would have allowed citizens of the territory within the ETJ of two or more cities, only one of which is willing and able to provide water and wastewater services, to elect to be annexed by the ready and willing city.[126]

The number and timing of annexation hearings was also changed with the passage of House Bill 1952 in 1981. Two hearings, rather than one as originally required, must now be held twenty to forty days before the institution of annexation proceedings.[127] The 1981 bill mandated that one of the hearings was to be held in the area to be annexed.[128] Because of implementation difficulties,[129] this provision was changed in the 1983 session to require a hearing in the area to be annexed only when twenty adult residents of the area to be annexed protest in writing the institution of annexation proceedings.[130] Hearings had also been the subject of attempted legislation in 1979.[131] House Bill 2143 would have required a hearing in the area to be annexed if a suitable facility existed; if one did not exist, the hearing would have to have been held at a site not more than five miles from the proposed annexation.[132]

Curbs on the power of cities to annex have also been attempted through legislation to change the notice provisions of the Act. Had they passed, some of the bills would have placed onerous burdens on cities. In 1979, 1981, and 1983 bills requiring publication of the notice of the annexation hearing one year before the annexation hearing and mailed notice to all business operators, residents, and

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125. *See id.*

126. *See* Tex. H.B. 2265, 68th Leg. (1983).

127. *Compare* TEX. REV. CIV. STAT. ANN. art. 970a, § 6 (Vernon Supp. 1963-1983) (two public hearings twenty to forty days prior to institution of annexation proceedings) *with id.* § 6 (Vernon 1963) (amended by Tex. H.B. 1952, 67th Leg. (1981)) (one public hearing ten to twenty days prior to institution of annexation proceedings).

128. *See id.* § 6 (Vernon Supp. 1963-1983).

129. For example, when the owner of some agricultural land to be annexed refused to give the City of Freeport permission to hold the required hearing on the property, the City hired a helicopter to drop a council quorum into the area for the hearing. *See* Speech by Robert K. Nordhaus, Texas City Attorney's Association (October 26, 1981).

130. *See* TEX. REV. CIV. STAT. ANN. 970a, § 6 (Vernon Supp. 1963-1983) (as amended by Tex. H.B. 555, 68th Leg. (1983)).

131. *See* Tex. H.B. 2143, 66th Leg. (1979) (would have amended notice requirements for annexation hearings).

132. *See id.*

property owners thirty days before the hearings were introduced but did not pass.[133] Sixty days notice published in a newspaper of general circulation would have been required under Senate Bill 177 and House Bill 435 introduced in the 1981 session.[134]

During the last four sessions of the Legislature many attempts to require consent of the residents in the area to be annexed have been made.[135] Some of the bills would have required only the consent of a majority of the voters in the area to be annexed;[136] others would have required voter consent if the annexation involved territory in two counties.[137] Still others would have prohibited annexation if a majority of voters in the area to be annexed signed a petition opposing the annexation after notice of the proposed annexation was published.[138] Interestingly there have also been bills introduced which would do away with any consent requirements.[139] Obviously these bills were an attempt to increase the annexation power of general law cities. This was also the objective of several joint resolutions which would have reduced the minimum population required for a city to adopt or amend a home rule charter.[140]

Many of the sections added to the Act seem tailored to solve the annexation problems of particular cities. These are in addition to the numerous validation acts which also solve specific annexation

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133. *See* Tex. H.B. 788, 68th Leg. (1983); Tex. H.B. 1273, 67th Leg. (1981); Tex. H.B. 1443, 66th Leg. (1979).

134. *See* Tex. S.B. 177, 67th Leg. (1981); Tex. H.B. 435, 67th Leg. (1981).

135. For an interesting discussion of the consent issue, see generally TEX. LEG. COUNCIL, MUNICIPAL ANNEXATION: REPORT TO THE 57TH LEGISLATURE 64-74 (1960) (outlining three alternative approaches); Comment, *An Analysis of the Annexation Power of Texas Home Rule Cities in View of the Basic Principle of a Good Annexation Law Proposed by the American Municipal Association,* 39 TEXAS L. REV. 458, 461-62 (1961). Discussing the "democratic approach" that no consent should be required: "the mere fact that an individual's land is taken . . . cannot be attacked as being 'undemocratic,' as it is in the very nature of a democratic society that the will and best interests of the majority are to control." *Id.* at 461 (citing State *ex rel.* Carter v. Harper, 196 N.W. 451 (Wis. 1923)).

136. *See* Tex. H.B. 1054, 66th Leg. (1979).

137. *See, e.g.,* Tex. H.B. 1281, 68th Leg. (1983) (annexation of contiguous territory which crosses county boundary); Tex. H.B. 554, 67th Leg. (1981) (annexation of adjacent inhabited territory in another county); Tex. H.B. 624, 66th Leg. (1979) (annexation of adjacent inhabited territory in another county).

138. *See* Tex. S.B. 177, 67th Leg. (1981); Tex. H.B. 435, 67th Leg. (1981).

139. *See* Tex. H.B. 557, 66th Leg. (1979); Tex. H.B. 1043, 65th Leg. (1977).

140. *See* Tex. S.J. Res. 52, 65th Leg. (1977); Tex. H.R.J. Res. 53, 63rd Leg. (1973).

problems introduced each session. For example, in 1977 a bill[141] was passed adding section 7a which allows a general law city to annex a reservoir, owned by the city and used to supply water to the city, along with adjoining land, and the most direct public right of way of a road or highway connecting the city to the reservoir.[142] The details of the bill make it applicable to a very limited number of situations.[143]

In 1979 another exception for the annexation of certain municipal airports owned by a city and outside its ETJ was added.[144] The original bill[145] applied to general law cities but the final version simply said "A city. . . ."[146] In spite of the language indicating it applies to all cities, the specifics of the bill leave no doubt that the intention of the maker was to allow one city to annex its municipally owned airport which was in the ETJ of another.[147]

Many of the bills attempting to change annexation law introduced by Houston area legislators to solve the problems of the Clear Lake area of Houston illustrate the complexity of annexation problems. Clear Lake, an area in Houston's ETJ served by the Clear Lake Water Authority, wanted to incorporate. Houston refused to give permission for the incorporation and, after a legislative attempt to

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141. *See* Tex. H.B. 883, 65th Leg. (1977), *adding* TEX. REV. CIV. STAT. ANN. art. 970a, § 7a (Vernon Supp. 1963-1983).

142. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 7a(A) (Vernon Supp. 1963-1983).

143. This bill was intended to benefit Boerne, a small town north of San Antonio. Telephone Interview with Don Rains, Former Representative, Texas House of Representatives (February 20, 1984) (author of Texas House Bill 883).

144. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 7b (Vernon Supp. 1963-1983).

145. *See* Tex. H.B. 1808, 66th Leg. (1979).

146. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 7b (a) (Vernon Supp. 1963-1983).

147. *See* City of Waco v. City of McGregor, 523 S.W.2d 649, 655 (Tex. 1975)(Pope, J., dissenting). Prior to passage of House Bill 1808, the Texas Supreme Court had held void the McGregor city ordinance which attempted to annex the municipal airport owned and maintained by the City of McGregor but located in the ETJ of the city of Waco. The majority rejected the assertion by the City of McGregor that the Texas Legislature intended to validate such ordinances by enacting article 974d-12 despite Justice Pope's argument that the court lacked jurisdiction to repeal the validation statute. *See id.* at 655; *see also* TEX. REV. CIV. STAT. ANN. art. 974d-12 (Vernon Supp. 1963-1983). The subsequent passage in 1981 of TEX. REV. CIV. STAT. ANN. art. 970a, § 7b (Vernon Supp. 1963-1983) seems tailor-made to obviate the McGregor-Waco dispute. It provides that "[a] city may annex an airport owned by the city and the right-of-way of any public roads or highways connecting the airport to the city by the most direct route, even though the annexed area is outside the city's [ETJ] and within another city's [ETJ] or is narrower than five hundred (500) feet. . . ." *Id.* § 7b (a).

allow the incorporation of Clear Lake,[148] annexed the area in 1977.[149] Normally, Houston would have taken over the water authority, assumed its debts, and provided services to the area covered, but since the water authority covered four other cities, Houston could not take it over. Consequently, the area residents were paying taxes to the water authority and to the city of Houston. This situation led to a series of bills in the Legislature.

Several bills which were introduced in 1977 by Houston area legislators would have limited further a city's right to annex if they had been passed. House Bill 791 would have allowed the incorporation of a city within the ETJ of another city without permission from that city if the proposed city had a population greater than 15,000 and an area less than fifteen square miles.[150] Others would have prohibited annexations that cut into the geographical center of another city[151] or limited the ETJ of an annexing city to one-half of its statutory distance for one year immediately after the effective annexation date.[152] These last three bills were introduced by Representative Bill Caraway who represented the Clear Lake area.

A deannexation bill, which was introduced by Representative Caraway and which was intended to allow Clear Lake to disannex from Houston, failed to pass the Senate.[153] This bill would have permitted a conservation and reclamation district furnishing water and sewer services to householders annexed by a city and still existing on the ninety-first day after annexation to be disannexed and incorporated as a city upon petition to the county judge and election to accept the disannexation. Representative Caraway described attempts to limit annexation power of cities as an "uphill battle."[154]

Houston's problem is not unique. San Antonio experienced problems similar to those of Houston when an area inside its ETJ

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148. *See* Tex. H.B. 1278, 65th Leg. (1977), *amending* TEX. REV. CIV. STAT. ANN. art. 966i, §§ 1-5 (Vernon Supp. 1963-1983) (voided by its own terms).

149. *See* Dallas Times Herald, May 22, 1978, § C, at 1, col. 3.

150. *See* Tex. H.B. 791, 65th Leg. (1977).

151. *See* Tex. H.B. 792, 65th Leg. (1977).

152. *See* Tex. H.B. 793, 65th Leg. (1977).

153. *See* Tex. H.B. 1410, 65th Leg. (1977). This same bill was introduced in the 1981 and 1983 sessions. *See* Tex. H.B. 2130, 68th Leg. (1983); Tex. H.B. 472, 67th Leg. (1981); Tex. S.B. 238, 67th Leg. (1981). In committee hearings on House Bill 472 many representing Clear Lake testified in favor of its passage. *See* HOUSE COMM. ON INTERGOVERNMENTAL AFFAIRS, BILL ANALYSIS, Tex. H.B. 472, 67th Leg. (1981).

154. *See* Houston Chronicle, March 1, 1979, § 1, at 5, col. 1.

wanted to incorporate.[155] Threatened by the possibility of legislation allowing the incorporation and not wanting to annex immediately, San Antonio succumbed and allowed the incorporation of Helotes.

C. *Other Legislative Enactments Affecting Municipal Annexation*

Recent changes in the Natural Resources Code have also had a restricting effect on municipal annexation in Texas. Coastal cities annexing into the Gulf of Mexico such as Port Arthur have found themselves in a conflict not only with oil companies but also with the State of Texas which owns the oil and gas reserves under the submerged lands extending into the Gulf for 10.5 miles.[156] State officials argued that allowing cities to annex into the Gulf would inhibit the development of natural resources there and result in a reduction of revenues received by the State and the public school fund because oil companies, not wanting to pay local taxes, would move further out into the Gulf beyond the State's jurisdiction.[157] In 1981 a limitation of one mile into the Gulf was put on the annexation powers of general law cities.[158] Home rule cities were specifically exempted.[159] A two year moratorium on annexation into the Gulf by home rule cities was also passed that session.[160] In 1983 the 68th session of the Legislature passed a law limiting home rule cities' annexation into the Gulf to one approximately marine league (3.41 miles). To the extent that a home rule city's boundary violates this section, the boundary is void.[161]

D. *Federal Legislation*

Only one restriction on annexation powers has come from the federal government. The Voting Rights Act, enacted in 1965 to guarantee to all citizens that "no voting qualification . . . or standard, practice or procedure shall be imposed . . . by any State or political subdivision in a manner which results in a denial or

155. San Antonio Express, Feb. 12, 1981, at 2C, col. 1.

156. *See* SENATE COMM. ON NAT'L RESOURCES, BILL ANALYSIS,Tex. S.B. 551, 68th Leg. (1983).

157. *See id.*

158. *See* TEX. NAT. RES. CODE ANN. § 11.013(c) (Vernon Supp. 1982-1983).

159. *See id.* § 11.013(c).

160. *See* TEX. NAT. RES. CODE ANN. § 11.0131(d) (repealed 1983).

161. TEX. NAT. RES. CODE ANN. § 11.0131(d) (Vernon Supp. 1982-1983).

abridgement of the right . . . to vote on account of race or color. . .,"[162] required that jurisdictions which had used a test or device as a voting qualification and which had less than fifty per cent of the voting age population register to vote or participate in the 1964 presidential election obtain federal approval from the district court in Washington, D.C. or the Justice Department for all changes in election procedures and practice.[163] The Act affected Texas for the first time in 1975 when its protections were extended to include citizens who are members of a language minority.[164] Since the preclearance requirements were retained and since the Act applies to cities[165] and to annexation and boundary changes,[166] Texas cities are now required to obtain federal approval for even minor alterations which would affect their election laws.[167]

V. Demographic Factors Influencing Annexation Activities

Many of the changes in the annexation power of home rule cities can be accounted for by reference to urban population growth and to annexation activity data over the past several decades. Substantial increases in state-wide population, in the number of municipalities, and in the number of urban residents coupled with the pursuit of an aggressive annexation policy by most major Texas cities provide the background information from which both past changes in annexation law can be understood and future annexation activity in general can be predicted.

Between the adoption of the Home Rule Amendment in 1912 and the passage of the Municipal Annexation Act in 1963, Texas' population changed dramatically from rural to urban. In 1910, 24.1% of

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162. *See* 42 U.S.C. § 1973 (a) (1982).

163. *See* 42 U.S.C. § 1973b (a), (b) (1982).

164. *See* 42 U.S.C. § 1973b (f), (2) (1982).

165. *See* Crowe v. Lucas, 472 F. Supp. 937, 943-44 (N.D. Miss. 1979) (if city a subdivision of covered state it too is covered by Act).

166. *See* Perkins v. Matthews, Mayor of Canton, 400 U.S. 379, 384-85 (1971) (annexations and boundary changes which have "discriminatory purpose or effect" subject to Voting Rights Act); City of Port Arthur, Texas v. United States, 517 F. Supp. 987, 1021 (D.D.C. 1981) (city expansion through annexation legitimized by Voting Rights Act despite original discriminatory purpose).

167. *See* Allen v. State Bd. of Elections, 393 U.S. 544, 571 (1969).

the State's population lived in urban places[168] while fifty years later in 1960, 75% of Texans resided in urban places.[169] The number of urban places increased from 91 in 1910 to 320 in 1960.[170] There were 300,000 fewer people living in rural Texas in 1960 than in 1910 while there were over six million more urban Texans in 1960 than in 1910.[171] The use and abuse of the annexation power prior to 1963 should be viewed in the context of the rapid increase in the number of urban places and residents and the effect which this significant change had on the social, economic, and political systems, both local and state-wide.

Since the passage of the Municipal Annexation Act in 1963, the pace and nature of urban population growth in Texas have been undergoing a transformation. Some of the historical trends have continued while others have experienced a declination or even a reversal. Table 1 indicates that the urban population of Texas appears to be leveling off at approximately 80% of the State's total.

TABLE 1

POPULATION OF THE STATE OF TEXAS RESIDING IN URBAN AND RURAL TERRITORY
1950 TO 1980

	Percent of Total State Population	
Year	Urban	Rural
1950	62.7	37.3
1960	75.0	25.0
1970	79.7	20.3
1980	79.6	20.4

Source: U.S. Bureau of the Census, U.S. Census of Population: 1960, 1970, and 1980. Vol. 1, Characteristics of The Population. Part 45, Texas.

Texas' urban areas will continue to experience substantial growth as the State itself increases in population (e.g., between 1970 and 1980 Texas' population increased by over three million persons, an in-

168. *See* U.S. BUREAU OF THE CENSUS, 1, 1960 CENSUS OF THE POPULATION, CHARACTERISTICS OF THE POPULATION, PART 45, TEXAS 20 (1963).

169. *See id.* at 19.

170. *See id.* at 19.

171. *See id.* at 19.

crease of 27.1% for the decade).[172] As Table 2 reveals, the overall

TABLE 2

TEXAS POPULATION IN GROUPS OF PLACES ACCORDING TO SIZE 1950 TO 1980

	Percent of Total State Population	
Year	Within Urbanized Areas	Within Central Cities
1950	36.5	32.0
1960	54.3	46.3
1970	61.8	48.1
1980	64.1	46.4

Note: In 1950, there were 12 central cities, 24 in 1960, 33 in 1970 and 37 in 1980.

Source: U.S. Bureau of the Census, U.S. Census of Population: 1960, 1970, and 1980. Vol. 1, Characteristics of The Population. Part 45, Texas.

TABLE 3

TEXAS POPULATION INSIDE URBANIZED AREAS BY SIZE OF CITY 1950 TO 1980

	1950		1960		1970		1980	
	Number of Places	Percent of Total State Population	Number of Places	Percent of Total State Population	Number of Places	Percent of Total State Population	Number of Places	Percent of Total State Population
Cities of 1,000,000 or More	0	—	0	—	1	11.0	1	11.2
Cities of 500,000 to 1,000,000	1	7.7	3	23.0	2	13.4	2	11.9
Cities of 250,000 to 500,000	3	14.5	2	6.6	3	8.6	3	8.1
Cities of 100,000 to 250,000	3	4.8	6	8.8	4	5.3	5	5.4
Cities of 50,000 to 100,000	5	4.9	9	6.6	11	7.0	13	6.9
Cities under 50,000	N/A	N/A	4	1.3	12	2.8	13	2.9
Totals	12	31.9	24	46.3	33	48.1	37	46.4

Source: U.S. Bureau of the Census, U.S. Census of Population: 1960, 1970, and 1980. Vol. 1, Characteristics of The Population. Part 45, Texas.

172. *See* U.S. BUREAU OF THE CENSUS, 1, 1980 CENSUS OF THE POPULATION, GENERAL POPULATION CHARACTERISTICS, PART 45, TEXAS 7 (1982).

urban population is becoming increasingly concentrated within urbanized areas[173] and the character of the urbanized area itself is changing.

The gap has been and is growing between the people residing in central cities and the growing number of urban residents living in suburbia. Although Table 3 indicates the continuing trend toward more and bigger cities in Texas, the collective data point toward the significant demographic emergence of more urban Texans living within the urban fringe[174] of the larger cities. These suburban residents, many of whom reside within the ETJ of major central cities, have become increasingly active in initiating changes to curb the annexation power of home rule cities as the examples of Helotes and Clear Lake illustrate. The number of legislative and judicial attempts to constrain the annexation power should continue as the influence of the suburban population increases with its increase in size (the suburbanite has frequently been joined by the significant number, 12.3% in 1980,[175] of rural residents found within Texas' Standard Metropolitan Statistical Areas[176]).

The environment within which changes to the annexation power have taken place has been affected by the previously mentioned urbanization and suburbanization processes as well as by the rate of annexation activity, particularly in recent years, in the major metropolitan areas of Texas. The combined effects of municipal popula-

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173. An urbanized area consists of a central city, or cities and the surrounding closely settled territory. A central city is one which has 50,000 inhabitants or more. Cities may mean twin cities, i.e., cities with contigous boundaries and whose combined population totals at least 50,000 with the smaller of the twin cities having a population of at least 15,000. *See* U.S. BUREAU OF THE CENSUS, 1, 1970 CENSUS OF THE POPULATION, PART A, § 1, at XIII (1972).

174. *See id.* at XIII (discussion of "urban fringe area").

175. *See* U.S. BUREAU OF THE CENSUS, BOUNDARY AND ANNEXATION SURVEY 1970-1979 5 (1980).

176. *See* U.S. BUREAU OF THE CENSUS, 1, 1970 CENSUS OF THE POPULATION, PART A, § 1, at XIV (1972).

> [A] standard metropolitan statistical area is a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more, or twin cities with a combined population of at least 50,000. In addition to the county, or counties, containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are socially and economically integrated with the central city.

Id. § 1, at XIV.

TABLE 4

ANNEXATION CHANGES FOR MUNICIPALITIES OF 2,500 OR MORE POPULATION
TEXAS AND THE UNITED STATES
1970 TO 1979

ANNEXATIONS

	Number	Estimated Area (Square Miles)	Estimated Population
United States	61,356	8,770.6	3,168,000
Texas	3,964	1,472.2	456,000
Texas as a Percent of the United States	6.5%	16.8%	14.4%

Source: Bureau of the Census, Boundary and Annexation Survey 1970-1979. December 1980.

tion growth and growth by corporate expansion have frequently led to the problems which changes and proposed changes in the annexation power have attempted to address. Annexation activity during the 1970s mirrors, to some extent, the activity undertaken to change the annexation power.

Between 1970 and 1979, 86% of the municipalities in Texas with a population over 2,500 reported boundary changes.[177] Table 4 compares the annexation activity in Texas with that for the country as a whole.

Texas' share of the national annexation activity for the decade is substantial, particularly when measured in terms of area and population annexed. With the exception of the total number of annexations reported for the State of Illinois (11,415), Texas led all states in the three measures of annexation activity for the decade.[178]

Within the State of Texas annual annexation activity was relatively constant for the period 1970-1979.[179] As table 5 shows, both

177. *See* U.S. BUREAU OF THE CENSUS, BOUNDARY AND ANNEXATION SURVEY 1970-1979 4 (1980). Boundary changes encompass both annexations and detachments. *See id.* at 4.

178. *See id.* at 9.

179. *See id.* at 9-19.

the number of cities reporting annexations and the number of annexations reported remained remarkably consistent when viewed year by year.

TABLE 5

ANNUAL ANNEXATION ACTIVITY FOR TEXAS CITIES
1970 TO 1979

Year	Number of Municipalities Surveyed	Cities Reporting Changes		Number of Annexations Reported	Estimated Area Annexed (Square Miles)	Estimated Population Annexed
		Number	Percent of Total Surveyed			
1970	375	136	36	331	149	18,000
1971	380	163	43	514	139.9	19,000
1972	380	182	48	567	236.6	128,000
1973	380	177	47	439	179.7	14,000
1974	389	149	38	305	97.2	18,000
1975	390	127	33	250	107.7	31,000
1976	390	149	38	335	100.6	15,000
1977	393	161	41	410	162.8	118,000
1978	394	166	42	419	213.3	77,000
1979	394	164	42	394	89.2	17,000

Source: Bureau of the Census, Boundary and Annexation Survey 1970-1979. December 1980.

Only when the annual area and population annexed are considered do the data indicate some variation and then it is arguable if the annual differences are significant. There is, however, little doubt that cities in Texas have been very active in using their annexation powers frequently and with substantial effect.

The data in Table 6 shows no decrease in annexation, with the exceptions of Austin and San Antonio, for the last three years of the 1970s when compared to the first seven years. The later years represent those first years of annexation activity after the extension of the federal Voting Rights Act to Texas.

TABLE 6

ANNEXATION ACTIVITY FOR SELECTED TEXAS CITIES
1970 TO 1979

	ANNEXATIONS			
	1970 to 1976		1977 to 1979	
City	Number	Area (Square Miles)	Number	Area (Square Miles)
Abilene	—	—	1	1.3
Amarillo	14	10.7	5	5.0
Austin	181	39.7	33	3.8
Beaumont	—	—	1	1.2
Corpus Christi	23	75.1	15	1.5
Dallas	22	56.4	10	24.9
El Paso	19	42.8	6	78.6
Fort Worth	36	31.1	8	3.8
Galveston	2	.1	2	132.9
Houston	14	72.5	19	50.4
Lubbock	5	8.6	5	4.2
Odessa	21	6.6	7	4.4
San Antonio	46	79.6	1	.1
Waco	35	13.3	17	1.0
Wichita Falls	9	34.3	3	1.7

Source: Bureau of the Census, Boundary and Annexation Survey 1970-1979. December 1980.

Table 7 depicts the impact of annexation activity on fifteen Texas cities which reported the greatest increase in land area, due to annexation, during the 1970s. The data show that only in the case of some very rapidly growing cities, e.g., Arlington, Houston and Plano, did the rate of population growth exceed the rate of growth by corporate expansion for the decade.

TABLE 7

TEXAS MUNICIPALITIES REPORTING THE GREATEST NET INCREASE IN LAND AREA 1970 TO 1979

Municipality	Land Area as of December 31, 1979 (Square Miles)	Net Change 1970-1979		Percent Change in Population 1970 to 1979
		Land Area (Square Miles)	Percent Increase	
Aransas Pass	38.6	31.8	467.6	23.4
Arlington	86.9	25.7	42.0	76.6
Austin	115.6	43.5	60.3	37.2
Corpus Christi	177.2	76.6	76.1	13.4
Dallas	346.2	80.6	30.3	7.1
El Paso	239.7	121.4	102.6	32.0
Fort Worth	237.5	32.5	15.9	−2.1
Galveston	54.0	33.0	157.1	0.2
Houston	536.6	102.7	23.7	29.4
Irving	62.4	22.1	54.8	13.0
McAllen	32.0	18.5	137.0	76.1
Plano	32.7	22.7	227.0	304.7
Port Arthur	77.6	29.4	61.0	6.8
San Antonio	263.6	79.6	43.3	20.1
Temple	40.8	18.2	80.5	27.1

Source: Bureau of the Census, 1980 Census of Population. Vol. 1, Characteristics of the Population. Part 45, Texas. July 1983.
Bureau of the Census, Boundary and Annexation Survey 1970-1979. December 1980.

VI. FUTURE PROSPECTS

It appears from the data contained in Table 8 that, at least for the major cities in Texas, there has been no substantial weakening in the pace of annexation activity during the first four years of the present decade. It is true, however, that the amount of land area being annexed has declined particularly for cities such as Houston and Dallas. Comparing annexation activity between 1980-81 and 1982-83 indicates that the imposition of the service plan requirement, which became effective on September 1, 1981,[180] had no

180. *See* TEX. REV. CIV. STAT. ANN. art. 970a, § 10 (Vernon Supp. 1963-1983).

TABLE 8

ANNEXATION ACTIVITY 1980-1983 FOR THE TEN LARGEST MUNICIPALITIES IN TEXAS

	ANNEXATIONS			
	CALENDAR YEARS 1980-1981		CALENDAR YEARS 1982-1983	
	Number	Total Area (Square miles)	Number	Total Area (Square miles)
Houston	0	0	14	9.566
Dallas	2	.387	0	0
San Antonio	15	4.46	8	1.344
El Paso	4	.350	2	.127
Fort Worth	9	5.110	12	1.608
Austin	31	5.974	21	15.923
Corpus Christi	11	5.571	23	1.515
Lubbock	4	2.300	2	.700
Arlington	5	1.261	9	1.145
Amarillo	4	2.100	4	.902
TOTALS	85	27.513	95	32.83

Source: Telephone interview with the planning department of each city during week of March 5-9, 1984.

dampening effect on these major cities' pace of annexation.

After twenty years the Municipal Annexation Act which was passed in 1963 has not only proved its usefulness but has withstood repeated attempts to curb the powers which it authorizes home rule cities to employ. Except for purely corrective actions, most attempts to amend the Act have occurred in reaction to annexation power abuses or in general reaction to periods of very rapid municipal annexation.[181] It seems likely that in the future many of the environmental conditions which provoked previous attempts to curtail the annexation powers of cities will continue although their effects may

181. *See, e.g.,* TEX. REV. CIV. STAT. ANN. art. 970a, § 7(B-1)(a) (Vernon Supp. 1963-1983) (sought to remedy perceived abuses due to spoke annexation); *id.* § 7(B-1)(b) (remedied abusive annexation of offshore lands for sole purpose of raising tax revenue); *id.* § 10 (required provision of public services to eliminate arbitrary annexation which deprives residents of required services).

well be less significant. From our present vantage point it seems unlikely that we will again see the massive annexations which characterized some past decades; nor are we likely to see successful legislative attempts to limit significantly the present powers conferred by the Annexation Act.

There is little doubt that over the next several decades Texas cities will capture a large portion of the State's expected rapid population growth. Because of the present dynamics of metropolitan areas it appears likely that Texas will continue to experience many new municipal incorporations[182] as well as a reinforcement, economically, politically, physically, and socially of the divisions between the central city and suburbia. The expected net effect of these anticipated trends should be an increase in action to limit further the annexation powers of Texas home rule cities. There also appear to be, however, a number of countervailing trends which collectively should serve to restrain the real or perceived effects of large scale unilateral municipal annexations.

Over the past decade in Texas there has been a subtle yet perceptible change in the attitude of decision-makers in many urban areas about the value of rapid areal expansion and particularly of growth by corporate expansion. No longer are many public officials willing to embrace unhesitatingly and to support actively annual attempts to undertake large scale annexation. There is a growing realization that annexation has costs as well as benefits to the annexing entity. This realization has brought about an increased sophistication in the methods employed by many Texas municipalties to judge the fiscal wisdom of any given annexation action. With the increasing role of the computer and, a refinement of available analytical tools the fiscal impact of annexation will become increasingly important as an evaluation criteria. The role of public finance in the annexation decision making process will increase as communities become more aware of annexation costs, experience additional limitations in revenue, and begin to face the realities associated with significant replacement and maintenance costs of the long neglected infrastructure within the existing city limits.

Not only has the cost/finance sensitivity surrounding annexation

182. From 1970 through 1979 there were reported, for the entire United States, 678 new incorporated municipalities. *See* U.S. BUREAU OF THE CENSUS, BOUNDARY AND ANNEXATION SURVEY 1970-1979 5 (1980). Of these, 25% (170) were reported in Texas. *See id.* at 5.

curtailed the ardor with which annexation was pursued in the past but it has also given rise to other factors which have had some noticeable limiting effects. A number of Texas cities have developed and adopted annexation policies which serve as a guide for determining when and why a city will undertake annexation actions. These policies which are usually developed within the context of a city's long range planning function provide the framework for consistent and effective annexation decisions.

The "cost" of annexation is not just a public sector cost but in some cases may be a significant cost to the consumer. With the dramatic change in housing finance which has occurred since 1979, the addition of even relatively minor monthly housing costs effectively disqualifies large numbers of housing consumers from the ability to afford a new single-family house. One of these relatively minor additions is the property tax levied by most municipalities in Texas. Due to this apparent financial penalty some Texas cities are becoming reluctant to annex vacant land which is likely to be developed for single-family housing. Instead cities wait until development has taken place and consumers have purchased their housing without the cost of city taxes before considering annexation action.

Another emerging limitation on municipal annexation is related to some of the political effects of the extension of the federal Voting Rights Act to Texas in 1975.[183] Although previous discussion of historical data tend to indicate that the Act's preclearance requirement has not had a discernable negative effect on municipal annexation activity, the political realities of some of the structural changes which stem from the Act may well lead to a more cautious posture toward annexation on the part of elected officials. Many Texas cities changed from an at-large to a district system of electing city council members as a direct or indirect result of the federal Act. With the advent of councilmanic districts many incumbent council members become very sensitive politically to which district newly annexed territory will be appended and to the change in constitutency which results from the addition. The district/ward political effects of annexation have become as important in some Texas cities as the city-wide effects used to be. In addition, the council member elected from a district has, by necessity, become more responsive to

183. *See* 42 U.S.C. § 1973 (1982).

the present needs of his or her existing district than to the less immediate need for city-wide municipal annexation. The official elected from a district frequently votes the "district" when there may be conflict between his or her established old constituents and the potentially new, via annexation, constituents. This split has become most significant in those communities where conflict has arisen over growth and its effects (e.g., old vs. new residents, who pays for the cost of growth, etc.).

VII. CONCLUSION

It seems likely that as the metropolitan areas of Texas become more complex, partially as a result of growth, that these above identified countervailing factors will exert additional influence on how cities employ their annexation power. These influences will tend to balance those other growth factors that stimulated annexation activity in the past. Texas statutes will continue to permit and Texas cities will continue to pursue relatively liberal annexation policies because both the Legislature and municipalities realize that without the growth that annexation allows, cities cannot long maintain their vitality.