

By: Birdwell

S.B. No. 408

A BILL TO BE ENTITLED

AN ACT

relating to eliminating distinctions in the application of consent annexation requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. REPEAL OF TIER SYSTEM

SECTION 1.01. The following provisions of Chapter 43, Local Government Code, are repealed:

- (1) Sections 43.001(2), (3), (4), and (5);
- (2) Section 43.011;
- (3) Subchapter B;
- (4) Section 43.0505(b);
- (5) Section 43.052;
- (6) Section 43.053;
- (7) Section 43.056(q);
- (8) Section 43.0561;
- (9) Section 43.0562;
- (10) Section 43.0563;
- (11) Section 43.0564;
- (12) Section 43.061(b);
- (13) Section 43.066;
- (14) Section 43.067;
- (15) Section 43.068;
- (16) Section 43.069;
- (17) Section 43.0751(o);

- (18) Section 43.0752;
- (19) Section 43.103;
- (20) Section 43.105; and
- (21) Subchapter Y.

SECTION 1.02. The heading to Subchapter C-2, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-2. GENERAL ANNEXATION AUTHORITY AND PROCEDURES
REGARDING CONSENT ANNEXATIONS [~~• TIER 2 MUNICIPALITIES~~]

SECTION 1.03. The heading to Subchapter C-3, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-3. ANNEXATION OF AREA ON REQUEST OF OWNERS [~~• TIER 2 MUNICIPALITIES~~]

SECTION 1.04. The heading to Subchapter C-4, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-4. ANNEXATION OF AREAS WITH POPULATION OF LESS THAN
200 BY PETITION [~~• TIER 2 MUNICIPALITIES~~]

SECTION 1.05. The heading to Subchapter C-5, Chapter 43, Local Government Code, is amended to read as follows:

SUBCHAPTER C-5. ANNEXATION OF AREAS WITH POPULATION OF AT LEAST 200
BY ELECTION [~~• TIER 2 MUNICIPALITIES~~]

SECTION 1.06. Section 43.1025(c), Local Government Code, is amended to read as follows:

(c) The area described by Subsection (b) may be annexed under the requirements prescribed by Subchapter C-3, C-4, or C-5, as applicable [~~to a tier 2 municipality~~], but the annexation may not occur unless each municipality in whose extraterritorial jurisdiction the area may be located:

(1) consents to the annexation; and

(2) reduces its extraterritorial jurisdiction over the area as provided by Section 42.023.

SECTION 1.07. Section 43.1211, Local Government Code, is amended to read as follows:

Sec. 43.1211. USE OF CONSENT PROCEDURES ~~[AUTHORITY OF CERTAIN TIER 2 MUNICIPALITIES]~~ TO ANNEX FOR LIMITED PURPOSES. Except as provided by Section 43.0751, beginning December 1, 2017, a ~~[tier 2]~~ municipality described by Section 43.121(a) may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area using the procedures under Subchapter C-3, C-4, or C-5, as applicable.

ARTICLE 2. CONFORMING CHANGES

SECTION 2.01. The following provisions of the Special District Local Laws Code are repealed:

- (1) Section 8374.252(a);
- (2) Section 8375.252(a);
- (3) Section 8376.252(a);
- (4) Section 8377.252(a);
- (5) Section 8378.252(a);
- (6) Section 8382.252(a);
- (7) Section 8383.252(a);
- (8) Section 8384.252(a);
- (9) Section 8385.252(a); and
- (10) Section 8477.302(a).

SECTION 2.02. Section 43.0116(a), Local Government Code, is amended to read as follows:

(a) Notwithstanding any other law and subject to Subsection (b), a municipality may annex all or part of the area located in an industrial district designated by the governing body of the municipality under Section [42.044](#) under the procedures prescribed by Subchapter C-1 ~~[the requirements applicable to a tier 1 municipality]~~.

SECTION 2.03. The heading to Subchapter C, Chapter [43](#), Local Government Code, is amended to read as follows:

SUBCHAPTER C. LIMITATIONS AND REQUIREMENTS REGARDING ANNEXATIONS EXEMPTED FROM CONSENT ANNEXATION PROCEDURES ~~[PROCEDURE FOR AREAS ANNEXED UNDER MUNICIPAL ANNEXATION PLAN: TIER 1 MUNICIPALITIES]~~

SECTION 2.04. Section [43.0505](#)(a), Local Government Code, is amended to read as follows:

(a) This ~~[Except as provided by Subsection (b), this]~~ subchapter applies only to an annexation under Subchapter C-1 ~~[a tier 1 municipality]~~.

SECTION 2.05. Sections [43.056](#)(a), (b), (j), and (k), Local Government Code, are amended to read as follows:

(a) This section applies to a service plan under Section [43.065](#) ~~[Before the first day of the 10th month after the month in which the inventory is prepared as provided by Section [43.053](#), the municipality proposing the annexation shall complete a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality]~~.

(b) The service plan, which must be completed ~~[in the period~~

1 ~~provided by Subsection (a)]~~ before the annexation, must include a
 2 program under which the municipality will provide full municipal
 3 services in the annexed area no later than 2-1/2 years after the
 4 effective date of the annexation, in accordance with Subsection
 5 (e), unless certain services cannot reasonably be provided within
 6 that period and the municipality proposes a schedule for providing
 7 those services, and must include a list of all services required by
 8 this section to be provided under the plan. If the municipality
 9 proposes a schedule to extend the period for providing certain
 10 services, the schedule must provide for the provision of full
 11 municipal services no later than 4-1/2 years after the effective
 12 date of the annexation. However, under the program if the
 13 municipality provides any of the following services within the
 14 corporate boundaries of the municipality before annexation, the
 15 municipality must provide those services in the area proposed for
 16 annexation on the effective date of the annexation of the area:

- 17 (1) police protection;
- 18 (2) fire protection;
- 19 (3) emergency medical services;
- 20 (4) solid waste collection, except as provided by
- 21 Subsection (o);
- 22 (5) operation and maintenance of water and wastewater
- 23 facilities in the annexed area that are not within the service area
- 24 of another water or wastewater utility;
- 25 (6) operation and maintenance of roads and streets,
- 26 including road and street lighting;
- 27 (7) operation and maintenance of parks, playgrounds,

1 and swimming pools; and

2 (8) operation and maintenance of any other publicly
3 owned facility, building, or service.

4 (j) The proposed service plan must be made available for
5 public inspection and explained to the inhabitants of the area at
6 the public hearings held under Section 43.063 [~~43.0561~~]. The plan
7 may be amended through negotiation at the hearings, but the
8 provision of any service may not be deleted. On completion of the
9 public hearings, the service plan shall be attached to the
10 ordinance annexing the area and approved as part of the ordinance.

11 (k) On approval by the governing body, the service plan is a
12 contractual obligation that is not subject to amendment or repeal
13 except that if the governing body determines at the public hearings
14 required by this subsection that changed conditions or subsequent
15 occurrences make the service plan unworkable or obsolete, the
16 governing body may amend the service plan to conform to the changed
17 conditions or subsequent occurrences. An amended service plan must
18 provide for services that are comparable to or better than those
19 established in the service plan before amendment. Before any
20 amendment is adopted, the governing body must provide an
21 opportunity for interested persons to be heard at public hearings
22 called and held in the manner provided by Section 43.063 [~~43.0561~~].

23 SECTION 2.06. The heading to Subchapter C-1, Chapter 43,
24 Local Government Code, is amended to read as follows:

25 SUBCHAPTER C-1. ANNEXATION PROCEDURE FOR AREAS EXEMPTED FROM

26 CONSENT [~~MUNICIPAL~~] ANNEXATION PROCEDURES [~~PLAN: TIER 1~~

27 ~~MUNICIPALITIES~~]

SECTION 2.07. Section 43.061(a), Local Government Code, is amended to read as follows:

(a) Unless otherwise specifically provided by this chapter or another law [~~Except as provided by Subsection (b)~~], this subchapter applies only to an annexation under:

- (1) Section 43.0115 (Enclave);
- (2) Section 43.0116 (Industrial District);
- (3) Section 43.012 (Area Owned by Type-A Municipality);
- (4) Section 43.013 (Navigable Stream);
- (5) Section 43.0751(h) (Strategic Partnership);
- (6) Section 43.101 (Municipally Owned Reservoir);
- (7) Section 43.102 (Municipally Owned Airport); and
- (8) Section 43.1055 (Road and Right-of-Way) [~~area that is proposed for annexation by a tier 1 municipality and that is not required to be included in a municipal annexation plan under Section 43.052(h)~~].

SECTION 2.08. Section 43.062(b), Local Government Code, is amended to read as follows:

(b) This subsection applies only to an area that contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract [~~described by Section 43.052(h)(1)~~]. Before the 30th day before the date of the first hearing required under Section 43.063, a municipality shall give written notice of its intent to annex the area to:

- (1) each property owner in an area proposed for annexation, as indicated by the appraisal records furnished by the

1 appraisal district for each county in which the area is located;

2 (2) each public entity[, ~~as defined by Section~~
3 ~~43.053,~~] or private entity that provides services in the area
4 proposed for annexation, including each:

5 (A) municipality, county, fire protection
6 service provider, including a volunteer fire department, and
7 emergency medical services provider, including a volunteer
8 emergency medical services provider; and

9 (B) municipal utility district, water control
10 and improvement district, or other district created under Section
11 52, Article III, or Section 59, Article XVI, Texas Constitution;
12 and

13 (3) each railroad company that serves the municipality
14 and is on the municipality's tax roll if the company's right-of-way
15 is in the area proposed for annexation.

16 SECTION 2.09. Section 43.0715(c), Local Government Code, is
17 amended to read as follows:

18 (c) At the time notice of the municipality's intent to annex
19 the land within the district is first given in accordance with
20 Section [~~43.052,~~ 43.0683~~]~~ or 43.0693, as applicable, the
21 municipality shall proceed to initiate and complete a report for
22 each developer conducted in accordance with the format approved by
23 the Texas Commission on Environmental Quality for audits. In the
24 event the municipality is unable to complete the report prior to the
25 effective date of the annexation as a result of the developer's
26 failure to provide information to the municipality which cannot be
27 obtained from other sources, the municipality shall obtain from the

1 district the estimated costs of each project previously undertaken
 2 by a developer which are eligible for reimbursement. The amount of
 3 such costs, as estimated by the district, shall be escrowed by the
 4 municipality for the benefit of the persons entitled to receive
 5 payment in an insured interest-bearing account with a financial
 6 institution authorized to do business in the state. To compensate
 7 the developer for the municipality's use of the infrastructure
 8 facilities pending the determination of the reimbursement amount,
 9 all interest accrued on the escrowed funds shall be paid to the
 10 developer whether or not the annexation is valid. Upon placement
 11 of the funds in the escrow account, the annexation may become
 12 effective. In the event a municipality timely escrows all
 13 estimated reimbursable amounts as required by this subsection and
 14 all such amounts, determined to be owed, including interest, are
 15 subsequently disbursed to the developer within five days of final
 16 determination in immediately available funds as required by this
 17 section, no penalties or interest shall accrue during the pendency
 18 of the escrow. Either the municipality or developer may, by
 19 written notice to the other party, require disputes regarding the
 20 amount owed under this section to be subject to nonbinding
 21 arbitration in accordance with the rules of the American
 22 Arbitration Association.

23 SECTION 2.10. Sections [43.0751](#)(b) and (h), Local Government
 24 Code, are amended to read as follows:

25 (b) The governing bodies of a municipality and a district
 26 may negotiate and enter into a written strategic partnership
 27 agreement for the district by mutual consent. ~~[The governing body~~

~~of a municipality, on written request from a district included in the municipality's annexation plan under Section 43.052, shall negotiate and enter into a written strategic partnership agreement with the district. A district included in a municipality's annexation plan under Section 43.052.~~

~~[(1) may not submit its written request before the date of the second hearing required under Section 43.0561, and~~

~~[(2) must submit its written request before the 61st day after the date of the second hearing required under Section 43.0561.]~~

(h) On the full-purpose annexation conversion date set forth in the strategic partnership agreement pursuant to Subsection (f)(5), the land included within the boundaries of the district shall be deemed to be within the full-purpose boundary limits of the municipality without the need for further action by the governing body of the municipality. The full-purpose annexation conversion date established by a strategic partnership agreement may be altered only by mutual agreement of the district and the municipality. However, nothing herein shall prevent the municipality from terminating the agreement and instituting proceedings to annex the district, on request by the governing body of the district, on any date prior to the full-purpose annexation conversion date established by the strategic partnership agreement under the procedures prescribed by Subchapter C-1 ~~[applicable to a tier 1 municipality]~~. Land annexed for limited or full purposes under this section shall not be included in calculations prescribed by Section 43.055(a).

SECTION 2.11. Section 43.07515(a), Local Government Code, is amended to read as follows:

(a) A municipality may not regulate under Section 43.0751 ~~[or 43.0752]~~ the sale, use, storage, or transportation of fireworks outside of the municipality's boundaries.

SECTION 2.12. Section 43.101(c), Local Government Code, is amended to read as follows:

(c) A municipality may annex the [The] area described by this section ~~[may be annexed]~~ without the consent of any owners or residents of the area under the procedures prescribed by Subchapter C-1 ~~[applicable to a tier 1 municipality by:]~~

~~[(1) a tier 1 municipality, and~~
~~[(2)]~~ if there are no owners other than the municipality or residents of the area~~[, a tier 2 municipality]~~.

SECTION 2.13. Section 43.102(c), Local Government Code, is amended to read as follows:

(c) A municipality may annex the [The] area described by this section ~~[may be annexed]~~ without the consent of any owners or residents of the area under the procedures prescribed by Subchapter C-1 ~~[applicable to a tier 1 municipality by:]~~

~~[(1) a tier 1 municipality, and~~
~~[(2)]~~ if there are no owners other than the municipality or residents of the area~~[, a tier 2 municipality]~~.

SECTION 2.14. Section 43.1055, Local Government Code, is amended to read as follows:

Sec. 43.1055. ANNEXATION OF ROADS AND RIGHTS-OF-WAY ~~[IN CERTAIN LARGE COUNTIES]~~. Notwithstanding any other law, a ~~[tier 2]~~

1 municipality may by ordinance annex a road or the right-of-way of a
2 road on request of the owner of the road or right-of-way or the
3 governing body of the political subdivision that maintains the road
4 or right-of-way under the procedures prescribed by Subchapter C-1
5 ~~[applicable to a tier 1 municipality]~~.

6 SECTION 2.15. Section 43.141(a), Local Government Code, is
7 amended to read as follows:

8 (a) A majority of the qualified voters of an annexed area
9 may petition the governing body of the municipality to disannex the
10 area if the municipality fails or refuses to provide services or to
11 cause services to be provided to the area:

12 (1) if the area was annexed under Subchapter C-1
13 ~~[municipality is a tier 1 municipality]~~, within the period
14 specified by Section 43.056 or by the service plan prepared for the
15 area under that section; or

16 (2) if the area was annexed under Subchapter C-3, C-4,
17 or C-5 ~~[municipality is a tier 2 municipality]~~, within the period
18 specified by the written agreement under Section 43.0672 or the
19 resolution under Section 43.0682 or 43.0692, as applicable.

20 SECTION 2.16. Section 43.203(b), Local Government Code, is
21 amended to read as follows:

22 (b) On receipt of the district's petition, the governing
23 body of the municipality shall enter into negotiations with the
24 district for an agreement to alter the status of annexation that
25 must:

26 (1) specify the period, which may not be less than 10
27 years beginning on January 1 of the year following the date of the

1 agreement, in which limited-purpose annexation is in effect;

2 (2) provide that, at the expiration of the period, the
3 district's annexation status will automatically revert to
4 full-purpose annexation without following procedures provided by
5 Section [~~Sections~~] [43.014](#) [~~and 43.052 through 43.055~~] or any
6 [~~other~~] procedural requirement for annexation not in effect on
7 January 1, 1995; and

8 (3) specify the financial obligations of the district
9 during and after the period of limited-purpose annexation for:

10 (A) facilities constructed by the municipality
11 that are in or that serve the district;

12 (B) debt incurred by the district for water and
13 sewer infrastructure that will be assumed by the municipality at
14 the end of the period of limited-purpose annexation; and

15 (C) use of the municipal sales taxes collected by
16 the municipality for facilities or services in the district.

17 SECTION 2.17. Section [43.905](#)(a), Local Government Code, is
18 amended to read as follows:

19 (a) A municipality that proposes to annex an area shall
20 provide written notice of the proposed annexation to each public
21 school district located in the area proposed for annexation within
22 the period prescribed for providing the notice of the first hearing
23 under Section [~~43.0561~~] [43.063](#), [43.0673](#), [43.0683](#), or [43.0693](#), as
24 applicable.

25 SECTION 2.18. Sections [43.9051](#)(a) and (b), Local Government
26 Code, are amended to read as follows:

27 (a) In this section, "public entity" includes a county, fire

1 protection service provider, including a volunteer fire
2 department, emergency medical services provider, including a
3 volunteer emergency medical services provider, or special district
4 described~~[, as that term is defined]~~ by Section 43.062(b)(2)(B)
5 [43.052].

6 (b) A municipality that proposes to annex an area shall
7 provide written notice of the proposed annexation within the period
8 prescribed for providing the notice of the first hearing under
9 Section ~~[43.0561,]~~ 43.063, 43.0673, 43.0683, or 43.0693, as
10 applicable, to each public entity that is located in or provides
11 services to the area proposed for annexation.

12 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

13 SECTION 3.01. The changes in law made by this Act apply only
14 to an annexation of an area that is not final on the effective date
15 of this Act. An annexation of an area that was final before the
16 effective date of this Act is governed by those portions of Chapter
17 43, Local Government Code, that relate to post-annexation
18 procedures and requirements in effect immediately before the
19 effective date of this Act, and that law is continued in effect for
20 that purpose.

21 SECTION 3.02. This Act takes effect September 1, 2019.