



Annexation

Handbook

Municipal Association of South Carolina

2012

## **Foreword**

This manual is a guide for interpretation and implementation of the statutes authorizing municipal annexation in South Carolina. Checklists and sample forms are provided where appropriate, and the annexation statutes as amended by Act 250 of 2000 are included in the appendix.

The General Assembly amended the S.C. Code Title 5, Chapter 1 and Chapter 3 in 2000 after federal court decisions declared election methods of incorporation and annexation initiated by freeholder petition to be unconstitutional as a denial of equal protection to electors. The amendments in 2000 remedied the problem by authorizing qualified elector petitions for elections to incorporate or annex property to municipalities.

Municipalities have three methods available for annexing privately-owned property: 100 percent freeholder petition and ordinance method, 75 percent freeholder petition and ordinance method, and the 25 percent elector petition and election method.

The Association offers a separate handbook detailing incorporation procedures.

### **Municipal Association of South Carolina**

1411 Gervais Street  
PO Box 12109  
Columbia, SC 29211  
803.799.9574  
[www.masc.sc](http://www.masc.sc)

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## **Authorized Methods of Boundary Adjustment**

S.C. Code Section 5-3-10 through 5-3-315 authorizes changing the corporate limits of a municipality.

Municipal annexation is purely a state political or legislative matter, entirely within the power of the state legislature to regulate. *Hunter v. Pittsburgh, 28 S. Ct. 40 (1970)*. South Carolina Constitution Art. VIII, Section 8 provides, “The General Assembly shall provide by general law the criteria and the procedures ... for the readjustment of municipal boundaries. No local or special law shall be enacted for these purposes; provided, that the General Assembly may vary such provisions among the alternative forms of Government.”

### **Annexation**

Three methods of annexation of privately owned property are authorized.

- 100 percent freeholder petition and ordinance method *Section 5-3-150(3)*
- 75 percent freeholder petition and ordinance method *Section 5-3-150(1)*
- 25 percent elector petition and election method *Section 5-3-300 - 315*

Annexations of corporate, church or publicly owned property are dealt within several statutes tailored to fit the type of property and body which holds title. A municipality may annex the following property types by petition or owner consent and adoption of an ordinance:

- Property owned by the annexing municipality *Section 5-3-100*
- Public street only *Section 5-3-110*
- Multicounty park property owned by the State *Section 5-3-115*
- Property owned by a corporation only *Section 5-3-120*
- Property owned by a school district *Section 5-3-130*
- Property owned by federal or state government *Section 5-3-140*
- Manmade industrial peninsula *Section 5-3-155*
- Cemeteries *Section 5-3-250*
- Property owned by a church or religious group *Section 5-3-260*

These annexation procedures are treated individually in detail in the following pages.

### **Consolidation**

Consolidation of two or more municipalities may be accomplished by election initiated by ordinance of each municipality desiring consolidation. *Section 5-3-30*. Consolidation may also be accomplished, after a public hearing, by ordinance of the municipalities involved.

The ordinance must include terms of the boundary adjustment pursuant to *Section 5-3-40*.

### **Reduction of Corporate Limits**

Property owned by a municipality or county may be removed from the corporate limits by ordinance. *Section 5-3-285*.

Any other reduction of corporate limits requires an election initiated by petition of a majority of resident freeholders. If a majority of electors voting approve the reduction, council can adopt an ordinance declaring the territory no longer part of the municipality. Council must notify the state Secretary of State, Department of Transportation and the Department of Public Safety of the new boundaries. *Section 5-3-280 and Section 5-3-90*.

## **Policy Considerations**

A municipality can best accomplish municipal boundary adjustment by annexation with an annexation policy that guides initiation of and response to petitions for annexation. A policy could be included in the Comprehensive Plan or stated in a separate resolution or ordinance adopted by council. The policy may include priorities set for areas to be considered based on interest of owners and interest of the municipality. Some factors to consider when adopting an annexation policy are discussed below.

### **Best Interest of Municipality**

A primary concern of council should be whether the proposed annexation would be in the best interest of the residents of the municipality. Growth is generally considered to be good because it expands services in urban areas, expands the tax base, increases population and involves more people in the political processes which affect the level of services they receive.

In some cases, the financial burden of furnishing services to a new area cannot be offset by revenues, taxes and fees derived from the area. The annexation would place an additional burden on existing municipal residents to expand services. In many cases, the long-range benefits outweigh the short-term additional burdens. The council has the duty to weigh all of the relevant factors and make an informed decision on each proposed annexation.

An annexation policy which identifies the factors of concern and provides a method for evaluating the impact could be very helpful.

### **Initiation of Petition by Municipality**

Although electors and freeholders must sign all petitions for annexation and a municipal council cannot initiate the annexation process except for property it owns, there is nothing in statutory law prohibiting a municipality from promoting and financing the circulation of an annexation petition, except for property owned by the municipality. *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961).

### **Annexation Requirement for Services and Nonresident Rates**

Many municipalities in this state and around the nation have a policy of extending municipal utility and fire services to contiguous areas if they agree to be annexed and to noncontiguous areas if the owners execute an agreement to annex the property when it becomes contiguous to municipal corporate limits. Some municipalities require the agreement be recorded in the county land records.

There is no present statute or case law in this state specifically dealing with the validity of such a service policy. The policy is within the Home Rule powers concept, and there is no conflict with state law. It is a reasonable condition of service.

Cases in other states have upheld similar annexation policies against due process, equal protection and First Amendment attacks. In *Blackwell v. City of St. Charles*, 726 F. Supp. 256 (E.D. Mo. 1989), the court held the annexation requirement was “a reasonable means of promoting a legitimate public interest” by promoting orderly development within the immediate planning area, avoiding fragmented corporate limits and furthering the primary purpose of providing municipal services to its own tax paying citizens. The court ruled the policy was “a rational requirement of assent to a particular proposition in order to obtain a benefit to which the would-be recipient has no legal entitlement.” The court noted there was a “distinction between governmental compulsion and conditions relating to governmental benefits.” The nonresident is free to agree to or reject the required assent; there is no compulsion.

There is clear statutory and case law in this state which authorizes a municipality to furnish services to nonresidents by contract on such terms as council deems in the best interest of municipal residents. *Section 5-7-60; Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911); *Childs v. City of Columbia*, 87 S.C. 573, 70 S.E. 299 (1911); and *Calcaterra v. City of Columbia*, 315 S.C. 196, 432 S.E.2d 498 (Ct.App. 1993). In these cases, the Court

ruled a municipality does not owe a public duty to nonresidents to provide services to them on reasonable terms. However, surplus services may be provided on terms determined by the sole discretion of council to be “for the sole benefit of the city at the highest rates obtainable.” A nonresident has only such rights as are acquired by contract with the municipality.

It is common practice in this state to charge nonresidents double the in-city rate for water and sewer services. The Calcaterra case upheld the City of Columbia’s approximately double rates charged nonresidents. In the Childs cases, the rate upheld was four times the in-city rate. There is nothing to prohibit a municipality from using higher nonresident rates to encourage annexation. Municipalities may make a profit on the sale of services to nonresidents. *Sossamon v. Greater Gaffney Metropolitan Utilities Area*, 236 S.C. 173, 113 S.E.2d 534 (1960).

The United States Supreme Court (*Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 99 S.Ct. 383 (1978)) ruled nonresidents had no claim under the equal protection and due process clauses of the Constitution because they could not vote for the municipal officials who set the policy affecting nonresidents. The nonresident has no property interest in or right to municipal service.

In framing an annexation policy applicable to nonresidents, it would be prudent to make a record of the basis for the classification of property to be affected and the public purposes for the policy. The policy should be uniformly applied within a classification.

Unless there are existing contractual obligations to the contrary, a newly adopted policy could be applied to nonresidents already receiving service. Service contracts with no specified term are terminable at the will of either party upon reasonable notice. *Childs v. City of Columbia*, *supra*.

## **Feasibility Study**

The 75 percent petition method of annexation authorized by S.C. Code Section 5-3-150(1), as amended, requires the annexing municipality to conduct a public hearing. During the public hearing, the municipality must present a statement addressing what public services the municipality will assume or provide, the taxes and fees required for those services and a timetable for services. No other annexation method has this requirement. However, the feasibility of providing services is an important consideration for any proposed annexation.

Council should analyze and consider costs, benefits and estimated revenues for a proposed annexation before taking action on the petition. The analysis should include

- an inventory of existing outside services;
- identification of the provider of each service, contractual obligations, including availability of service if desired after annexation;
- identification of services to be assumed or provided by annexing municipality;
- identification of efficient service areas and areas which cannot be fully served;
- determination of the level of additional services needed;
- determination of the most cost effective way to provide services to the area;
- projected timetable for provision of services;
- revenues needed to support services;
- estimated revenues from current taxes, fees and service charges;
- projected level of taxes and fees required to support services;
- comparison of cost to property owners before and after annexation; and
- identification of burdens and benefits of annexation.

It is not unusual to discover revenues from the annexed area will not offset the cost of providing services, particularly in residential areas.



**Benefits to the annexed property owners may include**

- improved services,
- additional services such as utilities and street lights,
- lower service charges,
- higher level of fire protection and law enforcement,
- lower property insurance premiums,
- planning, zoning and land use regulation, and
- participation in municipal government

**Benefits to the annexing municipality may include**

- more individuals participating in municipal government,
- economy of scale in providing services,
- increased revenue sharing and revenue base to support services,
- better planning for the urban area, and
- stronger corporate community of individuals with similar needs.

**Public Relations**

The word “annexation” produces widely different reactions from property owners. Those who need and want municipal government and services support annexation. Those who do not want to be in a municipality sometimes vigorously oppose it. Those who want municipal services without municipal government are often the most difficult to deal with.

If the municipality wants to promote annexation, a good public relations program is essential. It is critical to provide accurate information on service capability and timetables, realistic estimates when hard information is unavailable, and a clear picture of benefits and costs, including taxes and service charges. A straightforward educational campaign can correct misinformation and misunderstandings. Information should be inclusive, “warts and all,” to avoid any hint of misleading anyone.

Find key property owners who support annexation and enlist their help in presenting annexation in the best possible light to those who are opposed or undecided. Provide them with all the information needed to give clear answers to questions. Invite them to circulate petitions. Elected municipal officials should be actively involved in annexation efforts.

If appropriate, council should conduct public hearings after providing appropriate notice. Annexation by the 75 percent petition and ordinance pursuant to S.C. Code Section 5-3-150(1) requires a public hearing after giving a 30-day newspaper notice, posting on the municipal bulletin board and providing written notification to the taxpayer of record of all properties within proposed annexed area. Information provided at the public hearing for the 75 percent method must include a map and complete legal description of the proposed annexation area, a statement of public services to be assumed or provided by the municipality, and the taxes and fees required for these services. The notice must include a projected timetable for providing or assuming these services.

**Priorities**

A municipal annexation policy should address setting priorities concerning geographic areas for annexation and the time frame to make the annexation economically feasible.

When setting priorities, council should weigh the added burdens to resident taxpayers against the long-term benefits to the municipality.

A format for identifying the municipal factors in support of and against an annexation and weight given to those factors could be useful. The feasibility study could include the setting of priorities.

## **Strategy**

Developing a logical annexation policy includes creating a strategy for promoting annexation. Base the strategy on a positive, straightforward, enlightening and friendly approach. Stimulate interest without being too aggressive. The municipality should strive to make outside residents feel they are needed to strengthen the urban community. Present the benefits as well as the burdens. Emphasize the role new residents can have in making the city a better place to live and work. The mayor and council should be actively involved in issuing the invitation for annexation, providing information and assisting nonresidents who are considering coming into the city.

In addition, there should be a strategy for dealing with opponents. Often, municipalities are accused of forcing annexation through service policies and rates. There should be a clear explanation of the policies and the municipality's role in providing services. Nonresidents need to understand they have no legal right to municipal services. Extending the services to promote growth of the municipality is consistent with the council's fiduciary responsibility.

## **Tax Relief and Incentives**

Commercial or industrial property owners who consider annexation often request property tax relief, exemption from business license taxes and permit fees, or direct aid in the form of funding or gift of property. The annexation policy could address these matters. There are legal limitations on the types of incentives a council can give.

**Property Taxes.** The South Carolina Constitution, Article X, Section 1, requires property taxes to be levied on uniform assessments in the classifications established in that section. A municipality has no authority to exempt property from ad valorem taxes except pursuant to Article X, Section 3. The state constitution allows a municipality, by ordinance, to exempt the following for a period of not more than five years:

- all new manufacturing establishments;
- all additions to existing manufacturing establishments, including additional machinery and equipment costing more than \$1,000;
- all new corporate headquarters, corporate office facilities, distribution facilities, and additions to such facilities; and
- all facilities of new enterprises engaged in research and development activities, and additions to such facilities.

**Business License Taxes.** There is no authorization for exempting an annexed business from business license taxes. S.C. Code Section 5-21-60 requires business license taxes to be prorated for an annexed business for the number of months it is located in the municipality. A municipality has authority to classify businesses on a rational basis and charge different rates to different classes. However, Fourteenth Amendment equal protection guarantees require that all members who are or should be within the class be treated equally. Exemption of one business in a class while taxing others could be challenged as a denial of equal protection. Classifying businesses solely on the basis of annexation is suspect.

**Grants and Loans.** Article X, Section 11 of the state constitution prohibits direct aid in the form of money from the general fund, a pledge or loan that benefits any individual, company, association, corporation, or religious or private education institution. Also, it prohibits political subdivisions from becoming joint owners or stockholders in any company, association or corporation. All municipal funds are held in trust for use for public purposes. According to Attorney General Opinion No. 77-49, a municipality cannot use tax revenues to support local nonprofit corporations.

**Real Property.** There is some flexibility for disposing real property owned by a municipality. The courts ruled that fair compensation for a conveyance of public property is a matter of discretion exercised by elected officials. The courts will not interfere with that determination so long as there is no illegality, fraud or clear abuse of authority. *See Bobo v. City of Spartanburg, 230 S.C. 396, 96 S.E.2d 67 (1957); and Cooper v. South Carolina Public Service Authority, 264 S.C. 332, 215 S.E.2d 197 (1975).* Attorney General Opinion No. 1986-117 states that city council could convey property for less than fair market value (in effect donating the property for industrial development) to a company which would then locate a major distribution center resulting in providing a large number of jobs. Conveyance of municipal property must be done by ordinance pursuant to S.C. Code Section 5-7-40 and Section 5-7-260. Sale of municipal property may be negotiated, and public auction is not required.

**Service Fees.** Service fees must be used for the services for which the fees are paid and may be required to be kept in a fund separate from the general fund. *Section 6-1-330.* Service charges must be uniform. *Section 5-7-30* In *Brown v. The County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992)*, the court upheld a motor vehicle service charge as uniform because every vehicle owner had to pay the fee. Exempting one recipient of the service could be challenged as a violation of the uniformity requirement.

**Permit Fees.** Exempting the owner or contractor for a newly annexed project from permit and inspection fees gives rise to the issue of denial of equal protection.

## **General Requirements**

General statutory provisions applicable to annexations are described below. Then, each authorized annexation method is explained individually including the statutory legal and procedural requirements, a checklist of steps necessary to complete the process and sample forms where appropriate.

### **Contiguity**

Property annexed pursuant to S.C. Code Section 5-3-150 or Section 5-3-300 must be contiguous to the annexing municipality. Other annexation statutes are silent in this regard or use the terms “abutting” or “adjacent.” However, it is likely a court would require the property for any annexation to be contiguous under the statutory definition in S.C. Code Section 5-3-305:

Contiguous means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

### **Election Time Limitation**

When an annexation is defeated in an election by voters within the municipality or the proposed annexed territory, another annexation election in the territory cannot be initiated within 24 months after the election. *Section 5-3-210.*

### **Freeholder Definition**

For the 75 percent petition, 100 percent petition and 25 percent petition and election annexation methods, reduction of municipal boundaries under Section 5-3-280, a freeholder is any person at least 18 years of age and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate. *Section 5-3-240.*

A property owner is counted as one freeholder regardless of the number of parcels of land owned by that freeholder in the area to be annexed.

## **Assessed Value of Real Property**

**25 percent method and multicounty park.** The assessed value of the real property of any single freeholder shall not at the time of a proposed annexation exceed 25 percent of the assessed value of real property of the existing area of the municipality. *Section 5-3-235*. This limitation does not apply to any other method of annexation. Section 5-3-300(I) contains opt-out provisions for the owner of 25 percent or more of the assessed value of land in the area to be annexed and for the owner of agricultural property. *See notice form on page 29*.

Multicounty park property is considered to have the same assessed valuation it would have if the multicounty park did not exist. *Section 5-3-150(5)*. Consent of the state is required for annexation of state-owned property in a multicounty park.

**Fee in lieu of taxes transaction.** For purposes of the 75 percent petition and ordinance annexation pursuant to Section 5-3-150, real property owned by a governmental entity and leased to any other entity pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or Section 4-29-69 has an assessed valuation equal to the original cost of the real property as determined under Section 4-29-67(D). The lessee is the freeholder with respect to the property. *Section 5-3-150(4)*

**75 percent method.** Annexation pursuant to the 75 percent petition and ordinance method in Section 5-3-150(1) requires signatures of 75 percent of freeholders owning at least 75 percent of assessed value of property in the area to be annexed. When reassessment occurs after the petition is started but before it is acted upon, it appears from the definition of freeholder in Section 5-3-240 that the assessed value as of the date of the petition should be used.

## **Zoning**

Petitioners often request annexed property be zoned in a particular manner. State law does not provide a method for zoning property at the time of annexation. Zoning is a legislative function and cannot be delegated or contracted away by the governing body. Because territorial jurisdiction over the property is not obtained until it is annexed, some zoning ordinances provide for assignment of an interim zoning district designation in the annexation ordinance. The designation is confirmed through the full zoning amendment procedures specified in S.C. Code Section 6-29-760 after annexation. The zoning ordinance should address this subject.

## **Airport Districts**

No property owned by an airport district composed of more than one county may be annexed without prior written approval of the district governing body. *Section 5-3-15*.

## **Special Purpose Districts**

The absence of a general law dealing with annexation of property within a special purpose district resulted in many disputes. The General Assembly in 2000 corrected the problem by amending S.C. Code Section 5-3-310 to apply to all methods of annexation. These amended provisions may have effectively repealed by implication special legislation which was adopted for some municipalities. S.C. Code Section 5-3-310 through 5-3-315 provide a procedure for formulating a plan that balances the equities and interests of the residents and taxpayers of the area annexed and of the district, as well as bondholders of the district.

If the municipality and the district cannot agree on a plan within 90 days following annexation, a three-member committee is appointed, following the provisions of Section 5-3-300, to formulate a plan. The plan must take into consideration factors set forth in Section 5-3-312. Either party may object to the plan and appeal to circuit court. Failure to finalize a plan does not delay the annexation, but a district retains the right to operate its system and collect revenues and taxes until a plan is produced. *See S.C. Code Section 5-3-310 through 5-3-315 for procedures to follow*.

## **Filing Notice of Annexation**

After completing an annexation, the municipality must file a notice with the state Secretary of State, Department Transportation and Department of Public Safety that contains a written description of the boundary and a map

or plat clearly defining the new territory. *Section 5-3-90*. The office of the Secretary of State is the repository for incorporation records and boundary adjustment records. The Department of Transportation produces highway maps which reflect municipal boundaries. The Department of Public Safety uses the information to determine who has law enforcement jurisdiction.

The Department of Transportation requires tax map numbers, a surveyor's plat or written description, a tie point identified on a map, statement of portions of SCDOT rights-of-way included or excluded, and a summary listing of parcels annexed by ordinance numbers and tax map numbers. The SCDOT does not require annexation petitions, zoning information, council meeting minutes, notices and demographic information.

Although not required by the annexation statutes, the municipality should file an annexation notice with other interested or affected agencies, including the following:

- all municipal departments, municipal judges and chief magistrate;
- county administration, sheriff, clerk of court, assessor, auditor and treasurer;
- 911 and emergency services;
- SLED;
- county board of voter registration, county and municipal election commissions;
- school and special purpose districts;
- private service providers;
- utility franchisees;
- SCDOT district engineer and county engineer; and
- other interested agencies [Voting Rights Act Section 5 Submission is treated separately.]

### **Voting Rights Act: Section 5 Preclearance**

South Carolina and its political subdivisions must comply with the requirements of Section 5 of the Voting Rights Act of 1965 (*42 U.S.C.A. Section 1973, et seq.*), as amended in 1982. Section 5 prohibits states and political subdivisions from implementing a change in any standard, practice or procedure which might affect voting rights without first obtaining approval from the U.S. District Court for the District of Columbia or from the U.S. Attorney General. The United States Supreme ruled the requirements imposed by Section 5 apply to municipal annexations. *Perkins v. Matthews, 400 U.S. 369 (1971); George v. United States, 422 U.S. 358 (1975); and see 28 C.F.R. Section 51.13(e)*.

If the election initiated by the 25 percent petition pursuant to Section 5-3-300 will be held on a date which has not already been cleared under Section 5 of the Voting Rights Act for a county election, it may be necessary to submit the proposed date to the U.S. Attorney General before giving public notice of the election.

The submission for preclearance of an annexation under Section 5 must be made as soon as the proposed change becomes final. The attorney general will not consider on the merits any change prior to final enactment or administrative decision. *28 C.F.R. Section 51.21 and Section 51.22*. The municipal attorney or the chief administrative official should make the submission within a reasonable time after the municipal council passes the ordinance declaring the territory annexed. Every annexation must be submitted for clearance regardless of the size of the area annexed. If a new submission is made prior to preclearance of an earlier submission, the attorney general may treat it as a supplement to the earlier submission and extend the time for a response an additional 60 days. *28 C.F.R. Section 51.61(b)*. It is best to make a new submission only after preclearance of a pending submission is completed. Without preclearance, voters in an annexed area may not cast ballots in municipal elections, but the annexation is not invalidated or revoked.

**Procedures for Submission to Attorney General Under Section 5 of the  
Voting Rights Act - 28 C.F.R. Part 51**

<p align="center"><b>Mailing or other delivery</b></p>	<p><b>Mail by United States Postal Service:</b> Chief, Voting Section Civil Rights Division Room 7254 - NWB Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530</p> <p><b>Mail by overnight express services:</b> Chief, Voting Section Civil Rights Division Room 7254 - NWB Department of Justice 1800 G St., N.W. Washington, DC 20006</p> <p>Mark envelope and letter: Submission Under Section 5 of the Voting Rights Act</p> <p>Contents of submission: {See 52 CFR Section 51.26, Section 51.27 and Section 51.28.}</p>
<p align="center"><b>Form</b></p>	<p>Submissions may be made in letter or any other written form. <i>Section 51.20</i></p>
<p align="center"><b>Time for submission and response</b></p>	<p>Submit annexations as soon as possible after they become final by adoption of ordinance or certification of election results. Premature submissions will not be considered; however, a change requiring a referendum may be given prior approval. <i>Section 51.22</i></p> <p>The attorney general has 60 days after receipt of a complete submission in which to respond. <i>Section 51.9</i>. Request for additional information extends time.</p>
<p align="center"><b>Who Submits</b></p>	<p>Submissions should be made by the chief legal officer or some authorized person on behalf of the municipality. <i>Section 51.23</i></p>
<p align="center"><b>Withdraw</b></p>	<p>A submission may be withdrawn at any time prior to a final decision by the attorney general. <i>Section 51.25</i></p>
<p align="center"><b>Litigation</b></p>	<p>Notice should be given to the attorney general of any litigation involving an annexation. Such notice is not a submission under Section 5. <i>Section 51.19</i></p>
<p align="center"><b>Contents of submission</b></p>	<p><b>General: Section 51.26</b></p> <ol style="list-style-type: none"> <li>a. Identify source of information.</li> <li>b. Identify source and basis for estimates.</li> <li>c. Present only appropriate information and material.</li> <li>d. Describe the change with particularity.</li> <li>e. Information in earlier submission may be incorporated by specific reference.</li> <li>f. State unavailability of requested information.</li> </ol> <p><b>Required: Section 51.27</b></p> <ol style="list-style-type: none"> <li>a. Copy of annexation ordinance or resolution.</li> <li>b. Copy of any repealed or amended ordinance.</li> <li>c. A clear statement of the change.</li> <li>d. Name, title, address, telephone number of person making submission.</li> <li>e. Name of annexing municipality.</li> <li>f. State and county where municipality is located.</li> </ol>

**Contents  
of  
submission  
(Continued)**

- g. Identify body making change and how change was made (petition-ordinance; petition-election).
- h. Statutory authority and procedure for annexation.
- i. Date of adoption of ordinance or resolution.
- j. Effective date of annexation.
- k. Statement that persons in annexed area have not voted in a municipal election prior to clearance.
- l. Explanation of scope of change in voting rights.
- m. Statement of reasons for annexation.
- n. Anticipated effect of change on minorities.
- o. Past or pending litigation concerning the annexation.
- p. Statement indicating state annexation procedure was precleared.
- q. Items listed in Section 51.28(a)(1), (b)(1) and (c)(3).

**Supplemental: Section 51.28**

- a.
  - 1. Total and voting age population of affected area before and after annexation by race. Reference to census publications may be sufficient.
  - 2. Number of registered voters by precinct and by race for the affected area before and after annexation.
  - 3. Any estimates made of population by race.
- b.
  - 1. Maps in duplicate of area affected showing prior and new boundaries of voting units.
- c.
  - 1. Present and expected future use of annexed land.
  - 2. Estimate of expected population by race when anticipated development is completed.
  - 3. Statement that all prior annexations have been submitted for review or identification of annexations which have not been submitted.

[**Note:** Submission of a new annexation before prior annexations are cleared will be treated as a supplemental submission and will extend the time for review of all submitted annexations for 60 days from the last submission. See Section 51.61(b).]

- d. through g. Usually will not apply to annexations.
  - h. Names, addresses, telephone numbers and organizational affiliation of minority group members familiar with the annexation or who have been active in the political process. The attorney general maintains a Registry of Interested Individuals and Groups. *Section 51-32*

<p><b>Expedited Review</b></p>	<p>Rarely will an annexation justify expedited review in less than the 60-day period. If requested, good reasons must be given. There is no guarantee it will be granted. <i>Section 51.34</i></p>
<p><b>Standard of Review</b></p>	<p>Annexations are reviewed under general standards in <i>Sections 51.51 — 51.61</i>. Additional annexation factors include (1) extent annexations reflect the purpose or effect of excluding minorities while including others; (2) reduction of minority percentage; and (3) whether electoral system fails fairly to reflect minority voting strength in the municipality. <i>Section 51.61(c)</i></p>
<p><b>Response</b></p>	<p>The response of the attorney general will either be an objection or a statement that no objection is interposed at this time. The term “preclearance” is not used. This response does not preclude an objection at a later date. <i>Section 51.52</i></p>



## **Annexation by Freeholder Petition and Ordinance**

S.C. Code Section 5-3-150 authorizes annexation by ordinance when a petition signed by all owners of the property or a petition signed by 75 percent of the freeholders owning 75 percent of the assessed value of the property to be annexed is presented to council. Because there is no election involved in the 100 percent and 75 percent freeholder petition and ordinance methods of annexation, these methods do not have the constitutional problems of the old freeholder petition and election methods stricken by federal courts as violating the equal protection guaranteed to electors by the Fourteenth Amendment. *Muller v. Curran*, 889 F.2d 54 (4th Cir. 1989); *The Harbison Group v. Town of Irmo*, unreported CA 3:90-284-16 (DCSC 1990). This problem for the 25 percent petition and election method was corrected by Act 250 of 2000 by providing for the election to be initiated by a petition of 25 percent of registered electors rather than freeholders.

A manmade industrial peninsula located more than twelve miles from the Atlantic Ocean may be annexed only by the 100 percent or 75 percent petition and ordinance methods in Section 5-3-150. See S.C. Code Section 5-3-155.

### **100 Percent Petition and Ordinance Method**

Annexation of any area or property which is contiguous to a municipality may be initiated by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon agreement to accept the petition and annex the area and enactment of an ordinance by the governing body declaring the area annexed, the annexation is complete. S.C. Code Section 5-3-150(3). No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance.

#### **Procedure**

<b>S.C. Code Section 5-3-150(3) prescribes two simple steps for annexation:</b>
1. Submit a petition signed by 100 percent of the owners of the property to be annexed.
2. Upon acceptance of the petition, the governing body may adopt an ordinance declaring the area annexed to the municipality, <ul style="list-style-type: none"><li>• follow Section 5-3-310, et seq., if property in a special purpose district is annexed,</li><li>• file notice with Secretary of State, SCDOT, and Department of Public Safety, and</li><li>• submit to U.S. Attorney General for Voting Rights Act Section 5 preclearance.</li></ul>

Section 5-3-150(3) uses the term “owners” of the property rather than “freeholders” as provided for by the 75 percent method in Section 5-3-150(1). However S.C. Code Section 5-3-240 defines “freeholder” for the purposes of Section 5-3-150, Section 5-3-280, and Section 5-3-300, and a court would likely apply that definition to “owners” for the 100 percent petition.

**Although no requirements for the form or content of the petition are prescribed, certain minimum information is necessary as suggested in the following two forms.**

**100 Percent Petition Form**

TO THE MAYOR AND COUNCIL OF THE CITY/TOWN OF \_\_\_\_\_:

The undersigned, being 100 percent of the freeholders owning 100 percent of the assessed value of the property in the contiguous territory described below and shown on the attached plat or map, hereby petition for annexation of said territory to the City/Town by ordinance effective as soon hereafter as possible, pursuant to South Carolina Code Section 5-3-150(3).

The territory to be annexed is described as follows:

[**Required:** Insert description of territory. The description may be taken from deeds or may be drawn to cover multiple parcels using known landmarks. It should be definitive enough to accurately fix the location.]

[**Recommended:** The property is designated as follows on the County tax maps: \_\_\_\_\_ ]

[**Recommended:** A plat or map of the area should be attached. A tax map may be adequate.]

[**Optional:** It is requested that the property be zoned as follows: \_\_\_\_\_]

Signature	Street Address, City	Date
-----------	----------------------	------

[Add signature lines as necessary.]

=====

**For Municipal Use:**

Petition received by \_\_\_\_\_, Date \_\_\_\_\_

Description and Ownership verified by \_\_\_\_\_, Date \_\_\_\_\_

Recommendation \_\_\_\_\_

By: \_\_\_\_\_, Date \_\_\_\_\_

**Annexation Ordinance**  
**100 Percent Petition Method**

WHEREAS, a proper petition has been filed with the City/Town Council by 100 percent of the freeholders owning 100 percent of the assessed value of the contiguous property hereinafter described petitioning for annexation of the property to the City/Town under the provisions of S. C. Code Section 5-3-150(3); and

WHEREAS, it appears to Council that annexation would be in the best interest of the property owners and the City/Town;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City/Town of \_\_\_\_\_, South Carolina, this day of \_\_\_\_\_, 20\_\_ that the property herein described is hereby annexed to and becomes a party of the City/Town of \_\_\_\_\_ effective \_\_\_\_\_, 20\_\_\_\_.

[Insert description of property as it appears in the petition.]

The property shall be zoned \_\_\_\_\_ pending confirmation or rezoning pursuant to the Zoning Ordinance.

First reading: \_\_\_\_\_

\_\_\_\_\_

Mayor

Final reading: \_\_\_\_\_

Attest:

\_\_\_\_\_

Clerk

## 75 Percent Petition and Ordinance Method

Annexation of any area or property which is contiguous to a municipality may be initiated by filing with the municipal governing body a petition signed by 75 percent or more of the freeholders owning at least 75 percent of the assessed value of property in the area to be annexed. Upon agreement to accept the petition and annex the area, compliance with required procedures, and enactment of an ordinance by the governing body declaring the area annexed, the annexation is complete. *Section 5-3-150(3)*. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. The 75 percent method is subject to specified procedures. *Section 5-3-150(1)*

S.C. Code Section 5-3-150(1) prescribes the following steps for annexation:

1. The petition must be dated before the first signature is affixed. All necessary signatures must be obtained within six months from the date of the petition.
2. The petition and all signatures are open for public inspection at any time.
3. The petition must state code section under which annexation is sought- <i>Section 5-3-150(1)</i>
4. The petition must contain a description and plat of the area to be annexed.
5. A suit to challenge the annexation may be filed by the municipality, any resident of the municipality, or any resident or owner of property in the area to be annexed.
6. At least 30 days before acting on an annexation petition, the municipality must give notice of a public hearing: <ul style="list-style-type: none"> <li>• in a newspaper of general circulation in the community</li> <li>• by posting on the municipal bulletin board</li> <li>• by written notification to taxpayers of record of properties in area to be annexed</li> <li>• to the chief administrative officer of the county</li> <li>• to all public service or special purpose districts</li> <li>• to all fire departments, whether volunteer or full time</li> <li>• include a projected timetable for provision or assumption of services</li> </ul> <p>At the public hearing, the municipality must provide:</p> <ul style="list-style-type: none"> <li>• a map and complete legal description of the area to be annexed,</li> <li>• a statement of public services to be assumed or provided by the municipality, and</li> <li>• taxes and fees required for these services.</li> </ul>
7. After all procedural requirements are met, the governing body may <ul style="list-style-type: none"> <li>• adopt an ordinance declaring the area annexed to the municipality,</li> <li>• follow Section 5-3-310, et seq., if property in a special purpose district is annexed,</li> <li>• file notice with state secretary of state, SCDOT, and Department of Public Safety, and</li> <li>• submit to U.S. Attorney General for Voting Rights Act Section 5 preclearance.</li> </ul>

**The following three forms may be used to comply with procedural requirements for annexation by the 75 percent petition and ordinance method.**

# 75 Percent Petition Form

TO THE MAYOR AND COUNCIL OF THE CITY/TOWN OF \_\_\_\_\_:

The undersigned, being at least 75 percent of the freeholders owning at least 75 percent of the assessed value of the property in the contiguous territory described below and shown on the attached plat, hereby petition for annexation of said territory to the City/Town by ordinance effective as soon hereafter as possible, pursuant to South Carolina Code Section 5-3-150(1).

The territory to be annexed is described as follows:

**[Required:** Insert description of territory.]

**[Recommended:** The property is designated as follows on the County tax maps:

\_\_\_\_\_ ]

**[Required:** A plat of the area must be attached.]

The first signature was affixed on this Petition on \_\_\_\_\_.

**[Required:** The Petition must be dated before the first signature is affixed, and all signatures must be obtained within six months of that date.]

Signature	Street Address, City	Date

[Add signature lines as necessary.]

=====

**For Municipal Use:**

Petition received by \_\_\_\_\_, Date \_\_\_\_\_

Description and Ownership verified by \_\_\_\_\_, Date \_\_\_\_\_

Recommendation: \_\_\_\_\_

By: \_\_\_\_\_, Date \_\_\_\_\_

## Notice of Public Hearing on Annexation

The Mayor and Council of the City/Town of \_\_\_\_\_ will conduct a public hearing at City/Hall \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_m pursuant to S.C. Code Section 5-3-150(1) on a petition for annexation of the following property:

[Insert property description from petition. It is not necessary to publish a map in the newspaper; however, it is recommended that a map be posted with the notice on the municipal bulletin board and sent to all those entitled to notice listed in Section 5-3-150(1). ]

The following services for the area will be assumed or provided by the City/Town on the following timetable:

[List services to be assumed or provided and a timetable.]

**[Optional]** The taxes and fees required for these services are:

[List taxes and fees with details.]

The petition requests that the property be zoned \_\_\_\_\_.

The petition is available for public inspection at the Municipal Clerk's office in City/Town Hall during normal business hours.

=====

**Publication checklist - 30 days prior to hearing:**

- Publish in a newspaper of general circulation in the community.
- Post on the municipal bulletin board.
- Mail copy of notice to taxpayers of record of properties in area to be annexed.
- Mail to the chief administrative officer of the county.
- Mail to all public service or special purpose districts in the area to be annexed.
- Mail to all fire departments, whether volunteer or full time, in the area to be annexed.

**Annexation Ordinance  
75 Percent Petition Method**

WHEREAS, a proper petition has been filed with the City/Town Council by at least 75 percent of the freeholders owning at least 75 percent of the assessed value of the contiguous property hereinafter described petitioning for annexation of the property to the City/Town under the provisions of S. C. Code Section 5-3-150(1); and

WHEREAS, it appears to Council that annexation would be in the best interest of the property owners and the City/Town; and

WHEREAS, notice and public hearing requirements of S.C. Code Section 5-3-150(1) have been complied with;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City/Town of \_\_\_\_\_, South Carolina, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the property herein described is hereby annexed to and becomes a part of the City/Town of \_\_\_\_\_ effective \_\_\_\_\_, 20\_\_\_\_.

[Insert description of property as it appears in the petition.]

The property shall be zoned \_\_\_\_\_ pending confirmation or rezoning pursuant to the Zoning Ordinance.

First reading: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Final reading: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk

## Annexation by Elector Petition and Election

### 25 Percent Petition and Election Method

The 25 percent petition and election method of annexation authorized by S.C. Code Section 5-3-300 adopted in 1988 was not constitutional prior to the 2000 amendment because the election was initiated by a freeholder petition. The amendment changed this provision to a petition of 25 percent of qualified electors residing in the area to be annexed and makes a third method of annexation of private property available. The procedure for this method is specified in detail in the statute and must be carefully followed.

S.C. Code Section 5-3-300 prescribes the following steps for annexation:

1. A petition signed by 25 percent or more of qualified electors who are residents in the area proposed to be annexed is filed with the municipal council.

The petition must contain a description of the area to be annexed, the signature of the qualified elector, the address of residence and the act or code section pursuant to which the proposed annexation is to be accomplished - *Section 5-3-300*.

2. If council finds the petition has been signed by 25 percent or more of qualified resident electors, it may certify that fact to the county election commission by resolution.

3. There are opt-out provisions for freeholders owning 25 percent of assessed value of property to be annexed or freeholders owning 10 acres of agricultural real property.

- a. The municipal clerk must give such freeholders written notice of the proposed annexation by certified mail, return receipt requested. No time for this notice is specified, but it should be sent at the time the petition is certified by resolution.

- b. If the freeholder does not reply at least ten days before the election, the area is included in the area to be annexed.

- c. If the freeholder files a written notice with the municipal clerk objecting to the annexation, the freeholder's property must be excluded from the area to be annexed.

*[See Section 5-3-300(I) for the definition of "agricultural real property." ]*

4. Once it receives the resolution, the county election commission shall order an election to be held within the area proposed to be annexed.

[Note: Preclearance under Section 5 of the Voting Rights Act may be necessary for a date which has not been cleared for a county election.]

- a. The special election must be conducted under S.C. Code Title 7 Chap. 13 and 17.
- b. The commission shall give 30 days newspaper notice in area to be annexed.
- c. Registered qualified electors residing within area to be annexed vote in election.
- d. Election box or boxes shall be in the area proposed to be annexed.
- e. The election commission shall certify the election result to municipal council.

5. If a majority of qualified electors vote in favor of annexation, the council by written resolution must publish the results of the election.



<p>6. After publishing the election results, the municipal council must publish in newspaper of general circulation a notice containing:</p> <ol style="list-style-type: none"> <li>A description of the area to be annexed;</li> <li>The code section under which the proposed annexation is to be accomplished;</li> <li>A statement that qualified electors in the area voted to be annexed; and</li> <li>A statement that the council will approve the annexation unless a petition signed by 5 percent or more of the electors within the municipality is presented to the council within 30 days from the date of the notice requesting an election to be held within the municipality on the question of the annexation.</li> </ol>
<p>7. If a 5 percent petition is not presented to council, the annexation may be completed by enacting the ordinance 30 days after publication of the notice.</p>
<p>8. If a 5 percent petition is presented to council, the council must delay final reading of the annexing ordinance and certify the petition to the municipal election commission.</p> <ol style="list-style-type: none"> <li>The municipal election must be conducted under S.C. Code Title 7 Chap. 13 and 17.</li> <li>The commission shall give at least 30 days' newspaper notice of the election.</li> <li>If a majority of electors of the municipality vote in favor of the annexation, council shall give final reading to the ordinance declaring the area annexed.</li> <li>If a majority of votes are oppose the annexation, council shall publish the results and table the proposed annexation ordinance. Another annexation election may not be initiated within the territory for 24 months from the date of the vote. Section 5-3-210.</li> </ol>
<p>9. If the governing body adopts an ordinance declaring the area annexed to the municipality, it should then:</p> <ul style="list-style-type: none"> <li>follow Section 5-3-310, et seq., if property in a special purpose district is annexed;</li> <li>file notice with state Secretary of State, SCDOT, and Department of Public Safety; and</li> <li>submit to U.S. Attorney General for Voting Rights Act Section 5 preclearance.</li> </ul>

**Forms**

The following forms may be useful in annexing territory pursuant to the 25 percent petition and election method.

Note: The county election commission conducts the election in the area to be annexed. Unless there is an agreement for the county election commission to conduct municipal elections pursuant to S.C. Code Section 5-15-145, the municipal election commission conducts the election within the municipality initiated pursuant to Section 5-3-300(F), (G) and (H) by petition of 5 percent of municipal electors. Because it is unlikely this procedure will be used, forms for an election within the municipality are not provided. Forms for the county election commission procedure may be adapted for this purpose when needed.

## 25 Percent Petition Form

TO THE MAYOR AND COUNCIL OF THE CITY/TOWN OF \_\_\_\_\_:

The undersigned qualified electors resident within the territory described below hereby petition for an election in said territory pursuant to South Carolina Code Section 5-3-300, et seq., on the question of extension of the corporate limits of the municipality by annexation of the described territory.

The territory to be annexed is described as follows:

**[Required:** Insert description of territory. The description may be taken from deeds or may be drawn to cover multiple parcels using known landmarks. It should be definitive enough to accurately fix the location.]

**[Recommended:** The property is designated as follows on the county tax maps:  
\_\_\_\_\_]

**[Recommended:** A plat or map of the area should be attached. A tax map may be adequate.]

**[Optional:** It is requested that the property be zoned as follows: \_\_\_\_\_]

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Signature	Street Address, City	Date
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[Add signature lines as necessary.]

=====

**For Municipal Use:**

Petition received by \_\_\_\_\_, Date \_\_\_\_\_

Description and Ownership verified by \_\_\_\_\_, Date \_\_\_\_\_

Recommendation: \_\_\_\_\_

By: \_\_\_\_\_, Date \_\_\_\_\_

**Resolution**  
**Certifying 25 Percent Annexation Petition**

BE IT RESOLVED by the Mayor and Council of the City/Town of \_\_\_\_\_, South Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as follows:

It is hereby certified that the City/Town of \_\_\_\_\_ has received petitions signed by 25 percent or more of the qualified electors resident within the area described below which is proposed to be annexed to the City/Town pursuant to S. C. Code Section 5-3-300, et seq., and the County Election Commission is hereby requested to conduct an election to be held on \_\_\_\_\_, 20\_\_\_\_, within the area proposed to be annexed on the question of extension of the corporate limits of the municipality by annexation of the following described area:

[Insert description as it appears in the petition.]

The County Election Commission is requested to certify the results of the election to City/Town Council.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City/Town Clerk

=====

[**Note:** If the election is to be held on a date which has not already been precleared under Section 5 of the Voting Rights Act for a county election, it may be necessary to submit the proposed date to the U.S. Attorney General before giving public notice of the election. The attorney general has 60 days in which to respond to a complete submission. *See preclearance references on page 15.*]

**Letter to County Election Commission**  
**Requesting Annexation Election**

To: County Commissioners of Election

We enclose a copy of the Resolution adopted by the Council of the City/Town of \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, certifying that a proper petition has been received asking for annexation of the area described in the resolution generally known as \_\_\_\_\_ and requesting a special election in the described area on \_\_\_\_\_, 20\_\_\_\_, pursuant to S. C. Code Section 5-3-300, et seq., on the question of the annexation.

The election is not a municipal election, but it is a special county election which must be conducted pursuant to S.C. Code Title 7, Chapters 13 and 17, as provided by S.C. Code Section 5-3-300(D).

We also enclose a Notice of Election for your convenience in giving the necessary notice by newspaper at least 30 days prior to the date set for the election in accordance with S. C. Code Section 5-3-300(D), and a form which you may use to report the results of the election.

**[If appropriate:** Because the proposed election date is not a date already precleared by the U.S. Attorney General under Section 5 of the Voting Rights Act for a county election, it was set to allow enough time for a Section 5 submission and response. The municipal attorney will assist with the Section 5 submission.]

Yours very truly,

\_\_\_\_\_  
City/Town Clerk

cc: Municipal Attorney  
County Attorney

**Notice to Owners of Property  
Eligible for Exclusion**

To: Owners of 25 percent of assessed value of property to be annexed and owners of agricultural property in area to be annexed

Pursuant to S. C. Code Section 5-3-300(I), please take notice that the area described in the enclosed Resolution of the Council of the City/Town of \_\_\_\_\_ has been proposed for annexation to the municipality upon favorable vote of electors in the area in an election to be held on \_\_\_\_\_, 20\_\_\_\_.

You may be a freeholder of property eligible for exclusion from the annexation. Written notice of your objection to the annexation of your property must be filed with the undersigned municipal clerk at least ten (10) days prior to the election.

Please refer to S. C. Code Section 5-3-300(I) to determine eligibility for exclusion. A copy is enclosed.

Date mailed \_\_\_\_\_

\_\_\_\_\_  
City/Town Clerk

**Certified Mail  
Return Receipt Requested**

## Notice of Annexation Election

In accordance with the certificate of the Council of the City/Town of \_\_\_\_\_, South Carolina, and pursuant to S.C. Code Section 5-3-300, a special election will be held in the territory described below on \_\_\_\_\_, 20 \_\_\_\_, for the purpose of determining whether said territory shall be annexed to the City/Town of \_\_\_\_\_, South Carolina.

The territory proposed to be annexed is described as follows:

[Insert description of area proposed to be annexed.]

Polling places where registered voters residing in the described area may vote are located at:

[List locations of polls.]

The polls will be open from 7:00 AM to 7:00 PM.

---

Chairman, \_\_\_\_\_ County Election Commission

Date: \_\_\_\_\_

**Certification of Election Results  
by County Election Commission**

To: Mayor and Council

City/Town of \_\_\_\_\_

Re: Annexation Election

Area: \_\_\_\_\_

Pursuant to South Carolina Code Section 5-3-300(D), the results of the annexation election conducted this date in the above area described in the Resolution Certifying the 25 percent Annexation Petition are certified to be as follows:

In favor of annexation \_\_\_\_\_ votes

Opposed to annexation \_\_\_\_\_ votes

Contested ballots \_\_\_\_\_

**Total Ballots** \_\_\_\_\_

\_\_\_\_\_ County Election Commission

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Resolution**  
**Publishing Election Results**

BE IT RESOLVED by the Mayor and Council of the City/Town of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as follows:

Pursuant to S. C. Code Section 5-3-300, et seq., an annexation election was held in the area described in the attached notice by the \_\_\_\_\_ County Election Commission which has reported the attached results of election which are hereby published.

The City/Town Clerk is hereby directed to publish the newspaper notice of intent to annex attached hereto as required by S. C. Code Section 5-3-300(E).

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City/Town Clerk



## Notice of Intent to Annex

Pursuant to S. C. Code Section 5-3-300, et seq., the qualified electors of the area described below voted in an election on \_\_\_\_\_, 20\_\_\_\_, to be annexed to the City/Town of \_\_\_\_\_. City/Town Council intends to approve the annexation by ordinance 30 days hereafter unless a petition signed by five percent or more of the electors within the City/Town of \_\_\_\_\_ is presented to City/Town Council within 30 days from the date of publication of this notice requesting an election within the City/Town of \_\_\_\_\_ on the question of annexation of the following area:

[Insert description of area to be annexed.]

=====

[**Note:** This notice must be run in a newspaper of general circulation within the city after the results of the annexation election are published by written resolution of city council. If a petition is received, an election within the city must be held pursuant to S. C. Code Section 5-3-300(G), and annexation must be approved by majority vote.]

# **Annexation of Public Property**

## **Municipal Property**

When an entire area is owned by a municipality and is adjacent thereto, the territory may be annexed by resolution of the council and passage of an ordinance to that effect. *Section 5-3-100.*

## **Consolidation of Municipalities**

Two or more municipal corporations may be consolidated by election in each municipality, initiated by ordinance of each municipal council. *Section 5-3-30*

After a public hearing, the governing bodies may adopt by ordinance agreed terms of consolidation. The consolidation or adjustment of boundaries shall be effective on the date of adoption of the final ordinance. *Section 5-3-40*

## **County Property**

When the territory belongs entirely to the county in which the municipality is located, it may be annexed by passage of an ordinance adopted by both the municipal and county councils. No election is required under this procedure. S.C. Code Section 5-3-100.

## **School Property**

If the area to be annexed is owned by a school district, it may be annexed upon the petition of the school district's board of trustees to the council. Upon agreement of the council to accept the petition and the passage of an ordinance to that effect, the annexation is complete. No election is required. *Section 5-3-130*

## **State Property**

If the territory to be annexed is owned by the state and is adjacent to the municipality, it may be annexed upon petition executed by the State Budget and Control Board. Upon agreement of the council to accept the petition and the passage of an ordinance to that effect, the annexation is complete. No election is required. *Section 5-3-140*

## **Federal Property**

Territory owned entirely by the federal government may be annexed upon petition of the federal government and passage of an ordinance by the council. *Section 5-3-140*

## **Highways and Streets**

Whenever the whole or any part of a street, roadway or highway has been accepted for and is under permanent public maintenance by a municipality, a county or the state Department of Transportation, that portion of any right-of-way not exceeding the width thereof lying beyond but abutting on the corporate limits of the municipality may be annexed to the municipality by adoption of an ordinance, without an election, upon prior consent in writing of any public agency other than the municipality engaged in maintenance of the right-of-way area to be annexed. The director may give consent on behalf of the Department of Transportation. County council gives consent on behalf of any county. *Section 5-3-110*

Roads within an area to be annexed or a road which separates the annexed area from the municipal limits may be included in the description of the area and annexed without consent. The consent requirement applies when an adjacent road right-of-way is the only area being annexed. The director of SCDOT follows this interpretation of Section 5-3-110.

An intervening road does not destroy contiguity as defined in S.C. Code Section 5-3-305 when the property would be contiguous but for the road. However, a road connecting one property to another does not provide contiguity. Annexation of a road to reach property that is not directly across the road from municipal limits is not authorized. *See St. Andrews Public Service District v. City of Charleston, Op. No. 3128 (Ct. App. March 6, 2000).*

## **Multicounty Park**

Property in a multicounty park under S.C. Code Section 4-1-170 owned by the state may be annexed only with prior written consent of the state. If it is owned by a political subdivision of the state, it may be annexed only with prior written consent of the governing body of the political subdivision holding title. In other words, publicly owned property in a multicounty park cannot be annexed by the 75 percent petition and ordinance method without consent of the owner. *Section 5-3-150(5)*

## **Cemeteries**

By ordinance, a municipality may extend its corporate limits to include any cemetery adjoining the municipality, for the purposes of police and sanitary measures only. The municipality cannot tax the cemetery in any manner. *Section 5-3-250*

## **Church Property**

Any area owned by an established church or religious group which is contiguous to a municipality may be annexed to the municipality upon petition by the church or religious group. Upon agreement of the council to accept the petition and passage of an ordinance, the annexation is complete. No election is required. *Section 5-3-260*

## **Corporate Property**

If a corporation owns the entire area to be annexed, the property may be annexed on the petition of the stockholders. Upon agreement by the council to accept the petition and the passage of an ordinance to that effect, the annexation is complete. No election is required. *Section 5-3-120*

S.C. Code Section 5-3-120 was adopted prior to the 75 percent and 100 percent petition methods authorized by S.C. Code Section 5-3-150. Corporate property may be annexed by those methods upon petition of an authorized corporate officer, as well as by the 25 percent petition and election method.

## **Easements**

Under the definition of contiguous in S.C. Code Section 5-3-305, it is clear that contiguity is not destroyed by a road, waterway, right-of-way, easement, railroad track, marshland or utility line which intervenes between two properties which would share a continuous boundary but for the intervening connector. It is also clear that contiguity is not established by such a connector of properties which would not share a boundary without the existence of the connector. Therefore, annexation using the length of an easement, road or other connector to reach property is not permitted. *See St. Andrews Public Service District v. City of Charleston, Op. No. 3128 (Ct. App. March 6, 2000).*

## Appendix

### South Carolina Code of Laws Title 5, Chapter 3

[As amended by Act 250 of 2000, effective May 1, 2000]

#### Change of Corporate Limits

- Section 5-3-10.** Any city or town council may extend the corporate limits of the municipality in the manner set forth in this chapter.
- Section 5-3-15.** No municipality may annex, under the provisions of this chapter, any real property owned by an airport district composed of more than one county without prior written approval of the governing body of the district.
- Section 5-3-30.** When two or more municipal corporations propose to consolidate, no petition shall be required and each municipal corporation desiring to consolidate may call for the election hereinafter provided by ordinance.
- Section 5-3-40.** Whenever it is proposed to extend the corporate limits of any municipality by inclusion of territory of another adjacent municipality in whole or in part, the governing bodies of the municipalities may, after public hearing, stipulate and agree upon terms of consolidation or boundary adjustment by ordinance adopted by each municipality, which shall be binding upon the enlarged municipality, and the consolidation or adjustment shall be effective on the date of adoption of the final ordinance.
- Section 5-3-90.** Any municipality increasing its territory shall file a notice with the Secretary of State, Department of Transportation, and the Department of Public Safety describing its new boundaries. The notice shall include a written description of the boundary, along with a map or plat which clearly defines the new territory added.
- Section 5-3-100.** If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.
- Section 5-3-110.** Whenever the whole or any part of any street, roadway, or highway has been accepted for and is under permanent public maintenance by a city, a county, or the Department of Transportation, that portion of any right-of-way area not exceeding the width thereof lying beyond but abutting on the corporate limits of the city may be annexed to and incorporated within the city by adoption of an ordinance so declaring, without necessity for election of any sort, upon prior consent in writing of any public agency other than the city engaged in maintenance of the right-of-way area to be annexed. Consent on behalf of the Department of Transportation may be given by the director. Consent on behalf of any county may be given by its county commissioners, county board of directors, or other local county agency or governing body having jurisdiction over county roads.
- Section 5-3-115.** Notwithstanding any other provision of law, any real property which is or has been included within a multicounty park under Section 4-1-170 and title to which is held by the State of South Carolina, may be annexed only upon approval by the Budget and Control Board.
- Section 5-3-120.** If the entire area proposed to be annexed belongs to a corporation only, it may be annexed on the petition of the stockholders of the corporation. Upon agreement of the governing body of the municipality to accept the petition and the passage of an ordinance to that effect by the municipality, the annexation is complete.

**Section 5-3-130.** If the area proposed to be annexed belongs entirely to a school district, it may be annexed upon the petition of the board of trustees of the school district to the city or town council. Upon agreement of the city or town council to accept the petition and the passage of an ordinance to that effect, the annexation is complete.

**Section 5-3-140.** If the territory proposed to be annexed belongs entirely to the federal government or to the State of South Carolina and is adjacent to a municipality, it may be annexed upon the petition of the federal government or of the State to the city or town council thereof. As used in this section, a petition by the State shall mean a petition executed by the State Budget and Control Board. Upon agreement of the city or town council to accept the petition and the passage of an ordinance to that effect, the annexation is complete.

**Section 5-3-150.** (1) Any area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by seventy-five percent or more of the freeholders, as defined in Section 5-3-240, owning at least seventy-five percent of the assessed valuation of the real property in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law; however, this property may not be annexed unless the following has been complied with: (1) the petition must be dated before the first signature is affixed to it and all necessary signatures must be obtained within six months from the date of the petition; (2) the petition and all signatures to it are open for public inspection at any time on demand of any resident of the municipality or area affected by the proposed annexation or by anyone owning property in the area to be annexed; (3) the petition must state the act or code section pursuant to which the proposed annexation is to be accomplished; (4) the petition must contain a description of the area to be annexed and there must be attached to the petition a plat of the area to be annexed; (5) the municipality or any resident of it and any person residing in the area to be annexed or owning real property of it may institute and maintain a suit in the court of common pleas, and in that suit the person may challenge and have adjudicated any issue raised in connection with the proposed or completed annexation; (6) not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing by publication in a newspaper of general circulation in the community, by posting the notice of the public hearing on the municipal bulletin board, and by written notification to the taxpayer of record of all properties within the area proposed to be annexed, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full time. This public hearing must include a map of the proposed annexation area, a complete legal description of the proposed annexation area, a statement as to what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services. The notice must include a projected timetable for the provision or assumption of these services.

(2) The conditions relating to petitions set forth in this section apply only to the alternate method of annexation as defined in subsection (1) of this section.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law.

(4) For purposes of this section any real property owned by a governmental entity and leased to any other entity pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or 4-29-69 is considered to have an assessed valuation equal to the original cost of the real property as determined under Section 4-29-67(D). For purposes of this section, the lessee of real property pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or 4-29-69 is the freeholder with respect to the property.

(5) For purposes of this section, any real property included within a multicounty park under Section 4-1-170 is considered to have the same assessed valuation that it would have if the multicounty park did not exist. Notwithstanding any other provision of law, any real property which is or has been included within a multicounty park under Section 4-1-170 and title to which is held by the State of South Carolina, only may be annexed with prior written consent of the State of South Carolina, and when title to real property in the park is held by a political subdivision of the State, the property may be annexed only with prior written consent of the governing body of the political subdivision holding title.

**Section 5-3-155.** An area in this State located more than twelve miles from the Atlantic Ocean, which is a peninsula being predominately industrial in character, separating a freshwater reservoir from a body of brackish water subject to tidal influences, and created by the construction of a manmade canal and manmade dam, may be annexed by a municipality only under the provisions of Section 5-3-150.

**Section 5-3-210.** When an annexation election is defeated either by the voters inside the municipality concerned or within the territory proposed to be annexed, or both, another annexation election within the territory proposed to be annexed shall not be initiated within a period of twenty-four months from the date upon which the voting took place.

**Section 5-3-235.** Except when the procedures for an annexation provided for in Sections 5-3-100, 5-3-110, 5-3-120, 5-3-130, 5-3-140, and 5-3-150 are followed, the assessed value of real property of any single freeholder to be annexed, as defined in Section 5-3-240, shall not at the time of a proposed annexation exceed twenty-five percent of the assessed value of real property of the existing area of a municipality.

**Section 5-3-240.** For the purposes of Sections 5-3-150, 5-3-280, and 5-3-300, a ‘freeholder’ is defined as any person eighteen years of age, or older, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.

**Section 5-3-250.** Any municipality may extend its corporate limits so as to include any or all cemeteries adjoining the municipality, for the purposes only of police and sanitary measures, by the passage of an ordinance declaring them to be a portion of the municipality. But the inclusion of these cemeteries shall not give to the municipality the right to tax them in any manner.

**Section 5-3-260.** Any area owned entirely by an established church or religious group which is contiguous to a municipality may be annexed to the municipality upon the petition of the governing body of the church or religious group being submitted to the governing body of a municipality. Upon agreement of the governing body of the municipality to accept the petition, and the passage of an ordinance to that effect, the annexation is complete.

**Section 5-3-270.** When the limits of a municipality are ordered extended, no contest thereabout shall be allowed unless the person interested therein files, within sixty days after the result has been published or declared, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located, a notice of his intention to contest the extension, nor unless, within ninety days from the time the result has been published or declared an action is begun and the original summons and complaint filed with the clerk of court of the county in which the municipality is located.

**Section 5-3-280.** Whenever a petition is presented to a city or town council signed by a majority of the resident freeholders of the municipality asking for a reduction of the corporate limits of the city or town, the council shall order an election after not less than ten days’ public advertisement. This advertisement shall describe the territory that is proposed to be cut off. If a majority of the qualified electors vote at the election in favor of the release of the territory, the council must issue an ordinance declaring the territory no longer a portion of the municipality and must notify the Secretary of State of the new boundaries of the municipality.

**Section 5-3-285.** Territory proposed to be removed from within the corporate limits of a municipality which is owned entirely by that municipality may be removed from within the corporate limits by ordinance of the governing body of the municipality. Territory proposed to be removed from within the corporate limits of a municipality which is owned entirely by a county or jointly by a county and a municipality may be removed from within the corporate limits by ordinance of the governing body of the municipality upon receipt of a resolution from the county governing body requesting the removal.

**Section 5-3-290.** The word ‘municipality’ as used in this chapter shall be construed to mean any incorporated city or town located within this State.

**Section 5-3-300.** (A) In addition to other methods of annexation authorized by this chapter, any area which is contiguous to a municipality may be annexed to the municipality by the filing of a petition with the council signed by twenty-five percent or more of the qualified electors who are residents within the area proposed to be annexed.

(B) The petition must contain a description of the area to be annexed, the signature of the qualified elector, the address of residence, and the act or code section pursuant to which the proposed annexation is to be accomplished.

(C) If the municipal council finds that the petition has been signed by twenty-five percent or more of the qualified electors resident within the area proposed to be annexed, the council may certify that fact to the county election commission of the county in which the area is situated. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election to be held within the area proposed to be annexed to the municipality on the question of extension of the corporate limits of the municipality by annexation of the area proposed to be annexed.

(D) The election ordered pursuant to this section is a special election and not a municipal election and must be held, regulated, and conducted with the provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this section. The county election commission shall give at least thirty days’ notice in a newspaper of general circulation within the area proposed to be annexed to the municipality. Registered qualified electors residing within the area proposed to be annexed to the municipality shall have the same qualifications to vote in this election as are required of registered qualified electors to vote in state and county general elections. At the election, the registered qualified electors residing within the area proposed to be annexed shall vote in a box or boxes to be provided for the purpose within the area proposed to be annexed by the county election commission. The county election commission shall certify the result of the election to the municipal council of the municipality. If a majority of the votes cast by the qualified electors of the area proposed to be annexed are in favor of the annexation, the council by written resolution must publish the result of the election.

(E) After publishing the result of the election, the municipal council shall publish in a newspaper of general circulation within the municipality a notice which must contain:

- (1) a description of the area to be annexed;
- (2) the act or code section pursuant to which the proposed annexation is to be accomplished;
- (3) a statement that the qualified electors of the area to be annexed voted to be annexed to the municipality; and
- (4) a statement that the municipal council will approve the annexation of the area unless a petition signed by five percent or more of the qualified electors within the municipality is presented to the municipal council within thirty days from the date of the notice requesting that the municipal council order an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed.

(F) The municipal council may give final reading approval to an ordinance declaring the area annexed not less than thirty days from the date of the publication of the notice required by subsection (E). However, if within thirty days from the date of the publication of the notice required by subsection (E), a petition signed by five percent or more

of the qualified electors within the municipality is presented to the municipal council requesting an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed, the municipal council shall delay final reading approval of the ordinance declaring the area annexed until the results of the election within the municipality are published.

(G) If within thirty days from the date of the publication of the notice required by subsection (E), a petition is presented to the municipal council requesting an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed, the municipal council, after verifying that at least five percent of the qualified electors within the municipality have signed the petition, shall certify that fact to the municipal election commission and order an election. The election ordered pursuant to this subsection is a municipal election and must be held, regulated, and conducted by the municipal election commission pursuant to provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this subsection. The municipal election commission shall give at least thirty days' notice prior to the date set for the election by publishing the notice in a newspaper of general circulation within the municipality. Registered qualified electors residing within the municipality shall have the same qualifications to vote in this election as are required of registered qualified electors to vote in the state and county general elections. The municipal election commission shall certify the result of the election to the municipal council.

(H) If a majority of the votes cast by the qualified electors of the municipality are in favor of the annexation, the council shall give final reading approval to the ordinance declaring the area annexed. If a majority of the votes cast by the qualified electors of the municipality are in opposition to the annexation, the municipal council shall publish the result of the election and table the proposed ordinance.

(I) When the procedure for annexation provided for in this section is followed, any freeholder owning real property in the area to be annexed equal to twenty-five percent or more of the total assessed value of all real property of the area proposed to be annexed and any freeholder owning agricultural real property in the area to be annexed shall receive written notice of the proposed annexation by certified mail, return receipt requested, from the municipal clerk. Unless the freeholder files written notice with the municipal clerk at least ten days before the election provided for in subsection (D), the freeholder's property must be considered as part of the area proposed to be annexed for the purposes of the annexation election. If the freeholder files written notice objecting to the inclusion of his property in the area to be annexed with the municipal clerk at least ten days before the election provided for in subsection (D), the freeholder's property must be excluded from the area to be annexed. For purposes of this section, 'agricultural real property' means:

(1) land used to grow timber, if the size of the tract is ten acres or more. Tracts of timberland of less than ten acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of timberland of less than ten acres are agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For purposes of this item, tracts of timberland must be actively devoted to growing trees for commercial use;

(2) all other agricultural real property, if the size of the tract is ten acres or more. Tracts of other than timberland of less than ten acres which are contiguous to a tract which meets the minimum acreage requirement are treated as part of the qualifying tract;

(3) tracts of other than timberland not meeting the acreage requirement qualify if the freeholder reported at least one thousand dollars of gross farm income on his federal income tax return Schedule E or F for at least three of the five taxable years preceding the year of the annexation. The municipal clerk may require the freeholder (a) to give written authorization consistent with privacy laws allowing the clerk to verify farm income from the South Carolina Department of Revenue or the Internal Revenue Service and (b) to provide the Agriculture Stabilization and Conservation Service (ASCS) farm identification number of the tract and allow verification with the ASCS office.

**Section 5-3-305.** For purposes of this chapter, 'contiguous' means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road,



waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

**Section 5-3-310.** When all or part of the area of a special purpose district as defined in Section 6-11-1610 or a special taxing district created pursuant to Section 4-9-30 or Section 4-19-10, et seq. or an assessment district created pursuant to Chapter 15 of Title 6, or any other special purpose district or special taxing or assessment district is annexed into a municipality under the provisions of Section 5-3-150 or 5-3-300, the following provisions apply:

- (1) At the time of annexation or at any time thereafter the municipality may elect at its sole option to provide the service formerly provided by the district within the annexed area. The transfer of service rights must be made pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.
- (2) Until the municipality upon reasonable written notice elects to displace the district's service, the district must be allowed to continue providing service within the district's annexed area.
- (3) Annexation does not divest the district of any property; however, subject to the provisions of item (4) below, real or tangible personal property located within the area annexed must be transferred to the municipality pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.
- (4) In any case in which the municipality annexes less than the total service area of the district, the district may, at its sole discretion, retain ownership and control of any asset, within or without the annexed area, used by or intended to be used by residents within the district's unannexed area or used or intended to be used to provide service to residents in the unannexed area of the district.
- (5) Upon annexation of less than the total area of the district, the district's boundaries must be modified, if at all, by the plan formulated pursuant to the provisions of Sections 5-3-300 through 5-3-315. The plan must specify the new boundaries of the district.

**Section 5-3-311.** The plan contemplated by Sections 5-3-300 through 5-3-315 may be formulated by agreement of the district and the annexing municipality. If, however, the district and municipality do not agree on such a plan within ninety days following a favorable vote at the last referendum election required to be held to authorize the annexation, the district and the municipality must appoint a committee to formulate such a plan in accordance with the following:

- (1) The district and municipality shall each select a member of the committee and the two members so selected shall select a third member.
- (2) If the two members fail to select a third member within thirty days after the second of them is appointed, either member may petition the court of common pleas for the county in which the annexed area or any part thereof lies to appoint a third member.
- (3) Within ten days after appointment of a third member, the three members must select a committee chairman from among themselves.
- (4) Within sixty days after selection of a chairman, the committee must develop a plan and present it to the district and the municipality.
- (5) If either the annexing municipality or the district objects to the plan, it may appeal the plan to the court of common pleas for the county in which the annexed area or any part thereof lies. The appeal must be instituted within thirty days of the date the district or municipality receives the committee's plan.
- (6) The court may modify the plan forwarded by the committee only upon finding an error of law, abuse of discretion, or arbitrary or capricious action by the committee.
- (7) The fact that a plan has not been finalized may not in any way alter or delay the effective date of annexation; however, the district shall retain the right to operate its existing system, collect revenues, and collect taxes from or within the area annexed until such time as the municipality and the district agree on a plan or a plan is

presented to the municipality and the district under item (4) above. In the event a plan is appealed to the courts, the court of common pleas for the county in which the annexed area or any part thereof lies may enter such orders under its general equitable powers as are necessary to protect the rights of parties pending final resolution of any appeal.

**Section 5-3-312.** The plan formulated under Sections 5-3-300 through 5-3-315 shall seek to balance the equities and interests of the residents and taxpayers of the annexed area and of the area of the district not annexed. The plan may be formulated with regard to any factors bearing on such balance of equities and interests in accordance with the following:

(1) The plan may provide for certain service contracts to be entered into between the municipality and the district. The municipality has the right, in its sole discretion, to determine whether the municipality will provide service to the area annexed directly or by contract with the district. At the option of the district, the plan may provide for service contracts by which the municipality will provide service to residents of unannexed areas of the district.

(2) In any case in which less than the total service area of the district will be annexed by the municipality, the plan shall:

(a) protect the district's ability to serve the residents of the district's unannexed area economically and efficiently and protect the district's ability to continue to expand or otherwise make service available throughout its unannexed area;

(b) protect the ability of the municipality to serve residents of the annexed area of the district economically and efficiently;

(c) protect the rights of the district's bondholders.

(3) To carry out the requirements of subitem (a) of item (2) above, the plan shall require the municipality to assume contractually the obligation to pay debt service on an amount of the district's bonded indebtedness or other obligations including lease purchase obligations adequate to offset the district's loss of net service revenue or tax revenue from the area annexed, in accordance with the following:

(a) specifically included within this amount must be revenues, if any, projected under the provisions of any governmentally approved plan promulgated pursuant to federal pollution control legislation;

(b) as the district retires bonded indebtedness existing at the time of annexation, the municipality's payment obligation under this provision must be reduced by the proportion which the principal amount of the indebtedness retired bears to the total principal amount of bonded indebtedness of the district at the time of annexation;

(c) as used herein, net service revenue means revenue from fees, charges, and all other sources, attributable to service provided in the area annexed, less the actual cost of operating and maintaining the system or facilities needed to serve that area; however, debt service or other payments required to finance capital assets may not be considered to be part of such operating and maintenance expenses. Tax revenue means taxes collected from property owners within the annexed area.

(4) Under any plan whereby the district must disconnect or reintegrate its facilities, the municipality shall bear the reasonable cost of such disconnection or reintegration. In the event that the plan contemplates that the district will continue to provide service by contract within the incorporated limits of the municipality, the municipality shall agree to provide the district with all permits or authority necessary to use municipal streets, alleys, ways, and other public spaces for the provision of such service.

(5) In no event may any provision be incorporated in any plan which will impair the rights of bondholders, or which will impair the statutory liens created by Section 6-21-330 or Title 7 of the United States Code, Section 1926(b), or which will accelerate the requirement to repay bonds, or which would violate the conditions of any grant.

(6) In no event may any plan require that the residents in the annexed area be taxed or assessed by both the municipality and the district for the provision of the same service, except as provided by the laws of this State.

(7) Absent consent of the district, neither annexation nor any plan hereunder entitles the municipality to any cash, securities, or other liquid assets of any kind of the district.

(8) Subject to the provisions of Article VIII, Section 15 of the Constitution of this State, the service provided or made available through any district may not be curtailed or limited by inclusion of the area served by the district within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area in a manner which would impair any of the district revenue bonds.

**Section 5-3-313.** The auditor and treasurer of the county or counties in which the annexed area is located shall take such action as is appropriate to conform with the plan finally established pursuant to the terms of Sections 5-3-300 through 5-3-315, including releasing or adjusting any levy of district taxes within any annexed area. The annexing municipality and the district shall execute and deliver such documents, including any deeds or bills of sale, appropriate to the implementation of such a plan.

**Section 5-3-314.** In no event under any plan or otherwise may the obligation between the district and its general obligation bondholders or, in the case of a special tax or assessment district, the obligation between the district and the holders of the county bonds issued on its behalf, be disturbed. If adequate provision is not made for the levy of taxes or for payment of the principal and interest on such bonds, it is the duty of the auditor of the county to levy, and of the treasurer of the county to collect, an ad valorem tax, without limit as to rate or amount, upon all taxable property within the district as it was constituted on the dates those bonds were issued sufficient to pay principal and interest as they become due. Only bondholders or agents or trustees acting on their behalf may proceed at law or in equity to enforce this requirement.

**Section 5-3-315.** Any district affected by the proposed annexation may conduct a public hearing within sixty days prior to the required election. The district must give at least fourteen days' notice of the time and place of this public hearing in a newspaper of general circulation within the area proposed to be annexed; however, failure to conduct a public hearing or failure to publish proper notice of the hearing may not delay any election or other proceedings herein.

