CHAPTER 5

Change of Boundaries

**SECTION 4‑5‑120.** Procedure for annexing part of a county.

 Whenever the governing body of a county by resolution requests that a part of such county be merged with one or more adjoining counties or whenever ten percent of the registered voters in an area of one county petition in writing that such area be transferred to another county, the county governing body or the petitioners, as the case may be, shall deposit with the clerk of court of such county an amount of money sufficient to cover the expenses of surveys and plats and of the annexation commission and the election to be held to determine whether the proposed annexation shall be effected and shall file such resolution or petition in the office of the clerk of court of such county and transmit the petition or resolution to the Governor.

HISTORY: 1976 Act No. 697 Section 1.

CROSS REFERENCES

Property taxes in territory annexed by one county from another, see Section 12‑45‑390.

LIBRARY REFERENCES

20 C.J.S., Counties Sections 23‑39.

62 C.J.S., Municipal Corporations Sections 42‑46.

Attorney General’s Opinions

Election would not be required to be held in county where proposed area of county sought to be annexed contains no residents or registered voters. 1990 Op Atty Gen No. 90‑67.

Act of General Assembly would be necessary to effect county‑to‑county annexation. 1990 Op Atty Gen No. 90‑67.

The expenditure of public funds by a municipality to assist petitioners in an effort to annex a portion of one county to another county is of doubtful constitutionality. 1987 Op Atty Gen, No. 87‑42, p 115.

The Governor has no authority to vary from the description submitted once a petition for an annexation describing the area to be annexed has been presented to him; (2) The Commission appointed by the Governor to employ surveyors may not alter the original area described in the Petition, unless the Petition is officially amended. 1976‑77 Op Atty Gen, No 77‑58, p. 59.

When city may defray costs of survey. Where an area is proposed for annexation to a city, the city may defray costs of surveying and expenses relating thereto. 1965‑66 Op Atty Gen, No 2191, p 331 [under former Section 4‑5‑30].

**SECTION 4‑5‑130.** Appointment of commission for annexation.

 When a request of a county governing body or a petition as prescribed in Section 4‑5‑120 has been presented to the Governor for changing the boundary line or lines between two counties, whereby a portion of the territory of one county would be annexed to another, the Governor shall within thirty days appoint a commission of four persons, two from the territory proposed to be annexed and two from the other territory of the county or counties from which such territory has theretofore been a part. Two of the persons, if such are to be found, shall be opponents and two advocates of the proposed change of line.

HISTORY: 1976 Act No. 697 Section 2.

Attorney General’s Opinions

The Governor has no authority to vary from the description submitted once a petition for an annexation describing the area to be annexed has been presented to him; (2) The Commission appointed by the Governor to employ surveyors may not alter the original area described in the Petition, unless the Petition is officially amended. 1976‑77 Op Atty Gen, No 77‑58, p. 59.

Composition of commission. The commission is composed of two members from the area proposed to be annexed and two members from the remaining part of the county in which the area proposed for annexation lies. 1965‑66 Op Atty Gen, No 2107, p 212.

**SECTION 4‑5‑140.** Employment of surveyors to survey line; marking line on land.

 The commission may contract for the survey and location of the proposed change of line and for such purpose may employ three competent disinterested surveyors, who are nonresidents of the counties affected, two to be selected by the commission and the third by the two selected by the commission. Such surveyors shall clearly mark the proposed change of line upon the land with due regard to all legal provisions and limitations and certify plats showing such line.

HISTORY: 1976 Act No. 697 Section 3.

Attorney General’s Opinions

Discussion of the effect of a merger of Daniel Island with Charleston County. S.C. Op.Atty.Gen. (Feb. 28, 2014) 2014 WL 1398585.

Governor does not have authority to discharge the surveyors appointed by annexation commissioners nor does he have authority to discharge the annexation commissioners except for persistent neglect of duty. 1980 Op Atty Gen No 80‑88, p 136.

Section 3 of Act 697 of 1976 [1976 Code Section 4‑5‑140] requires that the Annexation Commission employ a team of three surveyors to prepare a plat of the proposed change of line in a county annexation proceeding; section 3 of Act 697 of 1976 requires a ground survey of the entire proposed boundary. 1975‑76 Op Atty Gen, No 4448, p 309.

**SECTION 4‑5‑150.** Filing of plats; deposit of money to cover expenses.

 Certified plats of such line shall be filed with the Secretary of State and with the respective clerks of court of each county affected thereby and a deposit of an amount of money sufficient to cover expenses of survey and plats and other necessary expenses including advertising shall be made with the treasurer of the county whose territory is proposed to be reduced by those requesting or petitioning for the change of line.

HISTORY: 1976 Act No. 697 Section 4.

**SECTION 4‑5‑160.** Commission shall report all relevant facts.

 The commission shall carefully investigate all facts relating to the area, population and assessed property values of the territory proposed to be severed and that remaining, the proximity of the line to any courthouse and the proper amount of indebtedness of the county losing area to be assessed to the county gaining such area and shall report in writing to the Governor upon all such relevant matters as the Governor may direct for his information. The commission shall also report to the Governor an itemized statement of the expense of the survey and plats.

HISTORY: 1976 Act No. 697 Section 5.

**SECTION 4‑5‑170.** Governor shall order election; voting place; eligible electors.

 (A) Upon satisfactory compliance with Sections 4‑5‑120 to 4‑5‑160, the Governor shall order an election to be held in an area sought to be transferred and an election to be held in the county to which the area is proposed to be transferred. If there is no established voting place in the area proposed to be transferred, the Governor in his order of election shall designate the place or places at which the voters in the area shall vote. All qualified electors of the area proposed to be annexed and the county to which the area is proposed to be annexed are eligible to vote in the elections.

 (B) Where the area proposed to be annexed is less than fifty acres in size and is titled in the name of ten or fewer freeholders as defined in Section 5‑3‑240 and upon satisfactory compliance with Sections 4‑5‑120 through 4‑5‑160, the Governor shall order the county board of elections in the county in which the area proposed to be annexed is located to canvass the qualified electors residing in the area as to whether the area proposed to be annexed should be transferred to the annexing county. Notice of the canvassing must be given to the qualified electors residing in the area proposed to be annexed by certified mail. The canvassing of the qualified electors must be in the form of a census taken by the county board of elections on the third Tuesday after the notice is given or attempted. If the county commission of elections certifies that two‑thirds of the qualified electors in the area proposed to be annexed favor annexation, the governing body of the county to which the area is proposed to be transferred, upon the concurring vote of the governing body of the county from which the area is proposed to be transferred, may vote to require the General Assembly to ratify the transfer of property under Section 4‑5‑220.

HISTORY: 1976 Act No. 697 Section 6; 1988 Act No. 520, eff May 18, 1988.

Effect of Amendment

The 1988 amendment made grammatical changes, redesignated the first paragraph as subsection (A), and added subsection (B) relating to canvassing.

CROSS REFERENCES

Alteration of county lines by the General Assembly, see Section 4‑5‑220.

Canvassing of returns in the annexing area, see Section 4‑5‑200.

Conduct of elections, see Section 4‑5‑180.

Election results and the canvass of returns in annexed areas, see Section 4‑5‑190.

Qualifications and registration of electors, see Section 7‑5‑10 et seq.

LIBRARY REFERENCES

62 C.J.S., Municipal Corporations Section 58.

Attorney General’s Opinions

Election would not be required to be held in county where proposed area of county sought to be annexed contains no residents or registered voters. 1990 Op Atty Gen No. 90‑67.

Duty of Governor to order election. Where a valid petition for annexation is presented, it is Governor’s duty to order election held and subsequent petitions seeking to remove certain portions of areas from first annexation petition do not affect the original petition. 1965‑66 Op Atty Gen, No 2181, p 314 [under former Section 4‑5‑20].

In a regularly proposed annexation of a portion of one county to another where all the constitutional and statutory prerequisites to election are met, even in the face of dissenting petitions, which under law the Governor has no power to implement, the chief executive is subject to mandamus and has no alternative to issuing his order for elections. 1965‑66 Op Atty Gen, No 2176, p 309 [under former Section 4‑5‑20].

**SECTION 4‑5‑180.** Conduct of elections.

 Except as provided in Section 4‑5‑170(B), the elections called for must be conducted at the time specified in the Governor’s order by the respective election commissions of the two counties in accordance with the applicable constitutional and statutory provisions relating to elections.

HISTORY: 1976 Act No. 697 Section 7; 1988 Act No. 520, eff May 18, 1988.

Effect of Amendment

The 1988 amendment added a reference to Section 4‑5‑170(B).

CROSS REFERENCES

Conduct of elections generally, see Sections 7‑1‑10 et seq.

Attorney General’s Opinions

Notice of election. Although there is no statutory provision for notice of elections where a portion of one county is proposed to be annexed to another, adequate and reasonable notice sufficient to insure the will of the electorate being fairly expressed should be given. The determination of notice is within the Governor’s discretion. 1965‑66 Op Atty Gen, No 2133, p 259 [under former Section 4‑5‑70].

**SECTION 4‑5‑190.** Election results; canvass of returns in annexed area.

 Except as provided for in Section 4‑5‑170(B), the commissioners of elections for the county from which the area is proposed to be transferred shall canvass the returns of the managers of each precinct in the area seeking annexation in their county as the returns are canvassed in general elections and shall certify the results of the canvassing in a tabulated statement of the vote at each precinct to the Secretary of State who shall transmit a tabulated statement of the vote at each precinct of the county to the Senate and House of Representatives at its next session.

HISTORY: 1976 Act No. 697 Section 8; 1988 Act No. 520, eff May 18, 1988.

Effect of Amendment

The 1988 amendment added a reference to Section 4‑5‑170(B) and made grammatical changes.

CROSS REFERENCES

Canvass of votes, see Section 7‑17‑20.

**SECTION 4‑5‑200.** Election results; canvass of returns in annexing area.

 Except as provided in Section 4‑5‑170(B), the commissioners of election for the county to which the area is proposed to be transferred shall canvass the returns of the managers of each voting place in the county as the returns are canvassed in the general elections and shall certify the results of the canvass in a tabulated statement of the vote at each polling place to the Secretary of State who shall transmit a tabulated statement of the vote at each polling place to the General Assembly for action as provided for in Section 4‑5‑220.

HISTORY: 1976 Act No. 697 Section 9; 1988 Act No. 520, eff May 18, 1988.

Effect of Amendment

The 1988 amendment made grammatical changes and added a reference to Section 4‑5‑170(B).

CROSS REFERENCES

Canvass of votes, see Section 7‑17‑20.

**SECTION 4‑5‑210.** Protests or contests; appeals.

 The commissioners of election respectively as judicial officers shall decide all cases of protest or contest in the areas of their jurisdiction that may arise in such elections and their decisions shall be final and conclusive evidence of the result of the elections unless appealed from within five days to the Court of Common Pleas of the county in which the election was held.

HISTORY: 1976 Act No. 697 Section 10.

**SECTION 4‑5‑220.** Alteration of county line or lines by General Assembly.

 The General Assembly upon receipt of the certified returns shall as soon as practicable alter the county line or lines in accordance with the request or petition if two‑thirds of the qualified electors voting or otherwise indicating their preference, under Section 4‑5‑170(B), on the question in the area to be transferred vote or otherwise indicate, under Section 4‑5‑170(B), in favor of the transfer and if a majority of the qualified electors voting in the county to which the transfer is proposed or the members of the county governing boards, under Section 4‑5‑170(B), vote in favor of the transfer, provided that all the constitutional requirements for the alteration of county lines have been complied with, all of which must be determined by the General Assembly. The annexation must then become effective.

HISTORY: 1976 Act No. 697 Section 11; 1988 Act No. 520, eff May 18, 1988.

Effect of Amendment

The 1988 amendment added references to Section 4‑5‑170(B).

CROSS REFERENCES

Canvassing, see Section 4‑5‑170(B).

LIBRARY REFERENCES

20 C.J.S., Counties Section 24.

62 C.J.S., Municipal Corporations Sections 70 et seq.

Attorney General’s Opinions

Election would not be required to be held in county where proposed area of county sought to be annexed contains no residence or registered voters. 1990 Op Atty Gen No. 90‑67.

Act of General Assembly would be necessary to effect county‑to‑county annexation. 1990 Op Atty Gen No. 90‑67.

NOTES OF DECISIONS

In general 1

1. In general

Alteration of county lines in prescribed manner is final. Where, under this section [Code 1962 Section 14‑101], county lines have been moved, they may not be changed by further act of the General Assembly. Clarendon County v. Sumter County (S.C. 1921) 116 S.C. 258, 108 S.E. 103.

**SECTION 4‑5‑230.** Payment of costs by annexing county; special tax.

 When one portion of a county is annexed to another county, the county to which it is annexed shall levy a special tax upon all property in such annexed area to cover the cost of survey and transfer or so much thereof as the governing body of the county to which the annexation or addition is made shall deem just and proper, and such governing body may levy upon the property within the original lines of their county such tax as in their judgment shall seem just and fair to augment the amount raised by taxation within the annexed area to reimburse and refund those who made the deposit as provided in Section 4‑5‑120 for the cost of annexation.

HISTORY: 1976 Act No. 697 Section 12.

CROSS REFERENCES

Property taxes in territory annexed by one county from another, see Section 12‑45‑390.

**SECTION 4‑5‑240.** Compensation and expenses of commissioners.

 The commissioners appointed by the Governor in accordance with Section 4‑5‑130 shall each be entitled as compensation for services to twenty‑five dollars per day for not exceeding five days and necessary traveling expenses to be voted and paid as expenses of survey. Upon filing of their report and certified plats as herein required, the commissioners may draw their warrant upon the county treasurer with whom deposit has been made as herein required for payment of the expenses of survey and a warrant shall be payable only out of such deposit.

HISTORY: 1976 Act No. 697 Section 13.

**SECTION 4‑5‑250.** Subsequent election after defeat of proposal.

 Upon the defeat of any proposed change of boundary line of a county at any election thereon, no election upon the same or any modified change of such boundary line shall be held within four years thereafter.

HISTORY: 1976 Act No. 697 Section 14.

**SECTION 4‑5‑260.** State aid to subdivisions for county government; allocation formula for annexed county.

 With respect to state aid to subdivisions for county government and the allocation formula for an annexed county, where a portion of one county is annexed to another county, the total amount allocated to the two counties shall not exceed the total which would be allocated to the two counties separately. However, the population of the annexed areas must be taken into consideration in determining the proportionate share of the total allocation due to each county.

HISTORY: 1995 Act No. 145, Part II, Section 33, eff June 29, 1995.