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Indicates New Matter

COMMITTEE REPORT

April 9, 2014

**S. 723**

Introduced by Senator Thurmond

S. Printed 4/9/14--S.

Read the first time May 23, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 723) to amend Section 5‑3‑310, as amended, Code of Laws of South Carolina, 1976, relating to the procedure for annexation of special purpose districts, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting therein the following:

/ A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, BY ADDING SECTION 5‑3‑320, SO AS TO PROVIDE FOR AN ADDITIONAL METHOD OF ANNEXATION BY RESOLUTION OF A SPECIAL PURPOSE DISTRICT WHEN A PREEXISTING MUNICIPALITY THAT DOES NOT OPERATE AN ELECTRICITY DISTRIBUTION SYSTEM ANNEXES A MAJORITY OF THE POPULATION OF THE DISTRICT OR WHEN A MUNICIPALITY INCORPORATES A MAJORITY OF THE POPULATION OF A DISTRICT.

Whereas, the Constitution of the State of South Carolina encourages and fosters home rule wherever possible, providing that matters of local interest be decided by the persons most impacted by the decision, and encourages communities of interest to unite together where it is possible to do so; and

Whereas, allowing annexation of the remainder of the special purpose district would allow voters in that portion of that district to have representation in the municipal government and provide for a greater community of interest for provision of services; and

Whereas, in *Tovey v. City of Charleston*, 237 S.C. 475, 484, 117 S.E.2d 872, 875 (1961), the South Carolina Supreme Court held that there is no requirement of compactness or unity or regularity of shape of the boundaries of a municipality and that such matters are best left to the determination of the elected officials and voters of the municipality and the territory proposed to be annexed; and

Whereas, when a majority of the registered voters in a special purpose district have been incorporated within a municipality, and they continue to vote for the governing board of a district which determines the allocation of public services, the remaining voters in the district are left at a disadvantage because they have no ability to influence the policies of the municipality which may impact the good of the entire district; and

Whereas, annexation of the remainder of the special purpose district would allow voters in that portion of the district to have representation in the municipal government and provide for a greater community of interest; and

Whereas, special service districts often provide  local government services across the entire district despite breaks in contiguity; and

Whereas, it is a matter best left to the elected officials and voters of the municipality, special purpose district, and the area to be annexed whether the contemplated addition is readily accessible to the municipality or whether the contemplated annexation would cause any difficulties in the administration of the affairs of the municipality or special purpose district or result in any undue hardship to any citizen. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The 1976 Code is amended by adding:

“Section 5-3-320. (A) In addition to any other methods of annexation authorized by this chapter, this method of annexation applies to a municipality that:

(1) at the time of incorporation included the majority of the population or registered voters of a special purpose district; and

(2) does not provide electricity service at the time of incorporation or at the time when this method of annexation is initiated.

(B) For purposes of this section, ‘special purpose district’ means any district as defined by Section 4-8-10 that has an elected board.

(C) This method of annexation allows a municipality that meets the requirements in subsection (A) to annex in a single annexation procedure the remaining unincorporated service area of the special purpose district. This method of annexation is governed exclusively by the election requirements in this section. Compliance with the notice requirements in Section 7-13-35 is not required.

(1) For purposes of this method of annexation, contiguity of the municipality with any part of the district, including any part already incorporated in the municipality, is sufficient to allow annexation of the entire remainder of the district regardless of any break in contiguity in the area where the district currently provides services. Annexation of a special purpose district pursuant to this section does not create contiguity for purposes of annexation of unincorporated areas beyond the boundaries of the special purpose district.

(2) Within three years of the incorporation by a municipality that meets the requirements of subsection (A) or within three years of the effective date of this statute, whichever occurs later, the governing body of the special purpose district, at its sole discretion and after a public hearing, may petition the municipality by resolution to annex the remaining unincorporated portion of the district.

(3) No less than sixty days after receiving a petition by resolution from the district, the municipality must publish in a newspaper of general circulation within the municipality and the district a notice containing:

(a) a description of the area to be annexed;

(b) the act or code section pursuant to which the proposed annexation is to be accomplished;

(c) a statement that the municipal council requests the county election commission to order an election be held on the question of annexation in the area proposed to be annexed.

(4) No less than sixty days after receiving a petition by resolution from the district, the municipal council shall request the county election commission to order an election. The municipal council shall pay all the costs of this election. The county election commission shall give at least thirty days’ notice prior to the date set for the election by publishing the notice of election in a newspaper of general circulation within the municipality and the district. Registered qualified electors residing within the area to be annexed 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 county election commission shall certify the result of the election to the district commission and the municipality.

(5) If a majority of the votes cast by the qualified electors of the area to be annexed are in opposition to the annexation, the municipal council shall publish the result of the election, and the area is not annexed. If a majority of the votes cast by the qualified electors of the area to be annexed are in favor of the annexation, the municipal council shall by resolution declare the area annexed.

(D) If the remainder of the district is annexed by the municipality according to the provisions of subsection (C), the district must be allowed to continue to provide services and collect millage in the entire area of the district incorporated in the municipality. Any effort to dissolve the district as provided in Article 15, Chapter 11, Title 6 or to plan for the transfer of services from the district to the municipality as described in Section 5‑3‑311 through 5‑3‑315, must not be formulated unless a separate referendum occurs after all areas of the district are annexed and represented on the municipal council.

(E) This method of annexation does not have the effect of changing the boundaries of the special purpose district.

(F) The provisions of this section expire three years from the effective date of this act.”

SECTION 2. The provisions of this act are declared by the General Assembly to be nonseverable, and if any portion of this act is declared by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable, or unlawful, the remaining provisions are declared to be null and void.

SECTION 3. This act takes effect January 1, 2016. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

A. SHANE MASSEY MARLON KIMPSON

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

There is no fiscal impact on the General Fund of the State or on federal and/or other funds.

**LOCAL GOVERNMENT IMPACT:**

The State Budget Division surveyed municipalities regarding the impact of this bill. Respondents indicated there would be no fiscal impact with this bill.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 5‑3‑310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROCEDURE FOR ANNEXATION OF SPECIAL PURPOSE DISTRICTS, SO AS TO PROVIDE FOR AN ADDITIONAL METHOD OF ANNEXATION BY RESOLUTION OF A SPECIAL PURPOSE DISTRICT WHEN A PREEXISTING MUNICIPALITY ANNEXES A MAJORITY OF THE POPULATION OF THE DISTRICT OR WHEN A MUNICIPALITY INCORPORATES A MAJORITY OF THE POPULATION OF A DISTRICT.

Be it enacted by the General Assembly of the State of South Carolina:

Whereas, the Constitution of the State of South Carolina encourages and fosters home rule wherever possible, providing that matters of local interest be decided by the persons most impacted by the decision, and encourages communities of interest to unite together where it is possible to do so; and

Whereas, Sections 5‑3‑300 through 5‑3‑315 of the South Carolina Code of Laws contemplate a municipality providing services within its corporate limits that were formerly provided by a special purpose district; and

Whereas, the plan formulated in Section 5‑2‑312 allows for possible provision of services by the municipality to any remaining unannexed portion of the district; and

Whereas, allowing annexation of the remainder of the special purpose district would allow voters in that portion of that district to have representation in the municipal government and provide for a greater community of interest for provision of services, and

Whereas, special purpose districts may already provide services throughout the district despite often minor breaks in contiguity; and

Whereas, in Tovey v. City of Charleston, 237 S.C. 475, 484, 117 S.E.2d 872, 875 (1961), the South Carolina Supreme Court held that there is no requirement of compactness or unity or regularity of shape of the boundaries of a municipality and that such matters are best left to the determination of the elected officials and voters of the municipality and the territory proposed to be annexed; and

Whereas, mere irregularity in shape furnishes no justification for interference by the courts in the determination by local elected officials and voters that an annexation is to the best interest of both the municipality and the area to be annexed; and

Whereas, it is a matter best left to the elected officials and voters of the municipality and the area to be annexed whether the contemplated addition is readily accessible to the municipality or whether the contemplated annexation would cause any difficulties in the administration of the affairs of the municipality or result in any undue hardship to any citizen; and

Whereas, advances in technology, transportation, and communication, among others, have eliminated the advantage once obtained by immediate contiguity of areas within a municipality as to the provision of services and homogeneity of communities, as decades of practice by the municipalities of this state have proven; and

Whereas, practice over past decades demonstrates that crossing areas in an intervening municipality provides an efficient route for the provision of services to areas included in a different municipality and offers no insult to the sovereignty of the intervening municipality, and thus presents no rational impediment to the annexation of areas separated by the intervening municipality. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 5‑3‑310 of the 1976 Code, as last amended by Act 250 of 2000, is amended to read:

“Section 5‑3‑310. (A) 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.

(B) In addition to the provisions of subsection (A), if a municipality annexes an area which includes the majority of the population or registered voters of a special purpose, special taxing district, then the district, at its sole discretion and after a public hearing, may petition the municipality by resolution to annex the remaining unincorporated portion of the district. This method of annexation is in addition to any other provided by law.

(1) Contiguity of the municipality with any part of the district, including any part already incorporated in the municipality, is sufficient to allow annexation of the entire remainder of the district regardless of any break in contiguity in the area where the district currently provides services.

(2) After receiving a petition by resolution from the district, the municipality, at its sole discretion and after public hearing, may annex the remainder of the district by ordinance.

(3) No less than thirty days prior to the final reading of the ordinance for annexation, the municipality must publish in a newspaper of general circulation within the municipality and the district a notice containing:

(a) a description of the area to be annexed;

(b) the act or code section pursuant to which the proposed annexation is to be accomplished;

(c) 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 of the area to be annexed is presented to the district commission within thirty days from the date of the notice requesting that the district commission order an election to be held on the question of annexation in the area proposed to be annexed.

(4) 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 item (3). However, if within thirty days from the date of the publication of the notice required by item (3), a petition meeting the requirements of item (3) is presented to the district commission, the municipal council shall delay final reading and approval of the ordinance declaring the area annexed until the result of any such election is published.

(5) If within thirty days from the date of the publication of the notice required in item (3), a petition is presented to the district commission requesting an election to be held within the area to be annexed on the question of annexation, the district commission shall notify the municipality, and after verifying that at least five percent of the qualified electors within the area proposed to be annexed have signed the petition, shall certify that fact to the county election commission which shall order an election. The county election commission shall give at least thirty days’ notice prior to the date set for the election by publishing the notice of election in a newspaper of general circulation within the municipality and the district. Registered qualified electors residing within area to be annexed 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 county election commission shall certify the result of the election to the district commission and the municipality.

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

(C) If the remainder of the district is annexed by the municipality according to the provisions of subsection (B), any plan for the transfer of services from the district to the municipality described in Section 5‑3‑311 through 5‑3‑315, shall be formulated after all areas of the district have had an opportunity to vote for the election of municipal officers. Until such municipal elections have been held, the district must be allowed to continue to provide services in the entire area of the district incorporated in the district.

(D) For purposes of subsection (B), a municipality initially incorporated so that it includes all or part of a district existing at the time of incorporation shall be considered as having annexed that same portion of the district.”

SECTION 2. This act takes effect upon approval by the Governor.

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