



Toward Annexation with Representation

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Key Points

- Texas has periodically revised its annexation laws in the face of controversy, but the Texas Annexation Right to Vote Act is the first significant curtailment of forced annexation.
- The new law requires tier 2 municipalities to obtain consent through election or petition before annexation.
- Texas ought to extend the new law's protections against forced annexation to every Texan, regardless of where they reside.
- In the near term, registered voters can achieve this by petitioning every non-affected county to hold an election to be classified as a tier 2 county under the new annexation law.
- In the long term, state legislators can amend the Texas Annexation Right to Vote Act to prohibit any forced annexation by any city.

Executive Summary

Municipal annexation in Texas has undergone a series of changes in response to periodic controversies and abuses, but only recently has the Legislature taken steps to curtail the policy's involuntary aspect. The Texas Annexation Right to Vote Act, which was passed during the first called special session of the 85th Texas Legislature, sharply limits forced annexations in large counties by requiring affected jurisdictions to hold a public election on the proposition. Affording Texans this opportunity to participate in the democratic process and determine their fate is a major improvement over the status quo. However, forced annexations have not been completely eradicated as only certain large counties are affected by the provisions of the new law. Texans' liberties do not deserve less protection if Texans live or own property in a less populous county. Therefore, local and state officials ought to extend the protections under the new annexation law to every Texan by classifying every county in Texas as a tier 2 county, either by the petition and election process outlined in the law or by state statute.

The History of Municipal Annexation in Texas

Throughout its history, Texas has revised its municipal annexation procedures—the process by which its cities can expand their territorial borders. Originally, a city could only annex additional property by passing a bill through the Legislature ([Fields and Quintero](#), 5). In 1858, Texas began allowing annexation by petition ([Fields and Quintero](#), 5). Annexation by petition remains the basis for annexations by general law cities, with very limited exceptions. A general law city is a city that may only exercise those powers expressly granted to it by the state. Most annexations by general law cities are voluntary and initiated by property owners ([Fields and Quintero](#), 7).

In 1912, Texas adopted the Home Rule Amendment to the Texas Constitution ([Fields and Quintero](#), 5). This amendment allowed cities with a population of 5,000 or more to become a home rule city by adopting a home rule charter ([Texas Constitution Article XI, §5](#)). Whereas general law cities look to the state to tell them what they may do, home rule cities look to the state to tell them what they may not do ([Fields and Quintero](#), 5).

As home rule cities were formed, involuntary or forced annexations initiated by city governments and not by property owners became more frequent. Whereas annexation by petition is voluntary and initiated by property owners, a forced annexation is the unilateral decision of the city, without any requirement to obtain consent by affected property owners. At first, home rule cities had virtually no restrictions on their ability to forcibly annex ([Fields and Quintero](#), 5). However, this began to change in response to controversial annexations, oftentimes involving the city of Houston.

After the “Harris County Annexation War,” where Houston and smaller cities like Pasadena raced to aggressively expand their territories through forced annexations, the Texas Legislature began to check cities' territorial ambitions with the Municipal Annexation Act of 1963 ([Fields and Quintero](#), 6). While home rule cities retained the ability to annex without obtaining consent, the reach of annexation was limited to a city's

extraterritorial jurisdiction, or ETJ), ([Fields and Quintero, 6](#)). However, it should be noted that every time a city annexes within its ETJ, the ETJ then extends further outward from the city's new boundaries ([Texas Local Government Code §42.022](#)).

Houston's controversial annexation of Kingwood prompted the Texas Legislature to again revise municipal authority in the late 1990s. Again, these reforms did not do away with cities' abilities to annex without obtaining consent. They simply required that cities must plan for the annexation and provision of services, and cannot delay for too long in providing services to a newly annexed area ([Fields and Quintero, 6](#)).

As important as these legislative protections were, they did not address the policy's fundamental injustice.

From a fiscal perspective, involuntary annexation was used to prop up a city's financial circumstances, with cities targeting wealthier suburbs for their revenue and bypassing poorer neighborhoods that needed services ([Koppel](#)). This much is confirmed by the Texas Municipal League's research which states that "Most cities annex for two basic reasons: (1) to control development; and/or (2) to expand the city's tax base" ([Houston, 2](#)). From a property rights perspective, Texans residing just outside of a city's limits were in near-constant jeopardy of having a new government forced upon them by city officials they did not elect, to pay off debt and finance services that they did not want. This contradicts our state and nation's philosophical commitment to the principle of "consent of the governed" ([Fields and Quintero, 9](#)).

Fortunately for a majority of the state's residents, the status quo was completely upended in the first called special session of the 85th Texas Legislature.

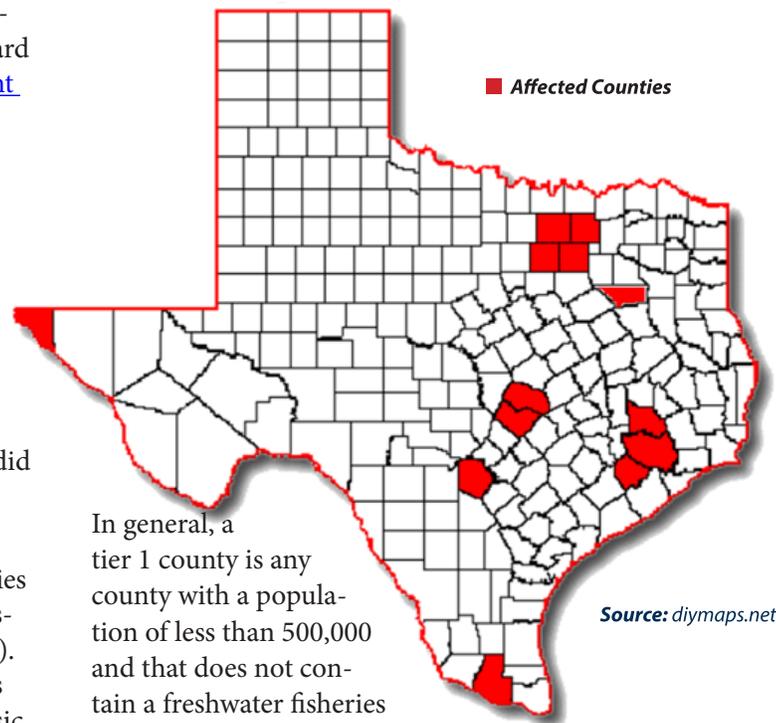
The Texas Annexation Right to Vote Act

To its credit, the 85th Texas Legislature took significant strides toward ending forced annexation by passing the Texas Annexation Right to Vote Act, which became effective on December 1, 2017. In particular, the law requires "tier 2 municipalities" to obtain the consent of a majority of property owners and residents being annexed through either a publicly held election or via a petition process.

Legislative Terminology

To understand the new law, some terminology must first be understood. The important terms to grasp are "tier 1 county," "tier 2 county," "tier 1 municipality," and "tier 2 municipality."

The Texas Annexation Right to Vote Act



In general, a tier 1 county is any county with a population of less than 500,000 and that does not contain a freshwater fisheries center operated by the Texas Parks and Wildlife Department. A tier 2 county is any county that is not a tier 1 county ([Texas Local Government Code §43.001](#)). This means that Henderson County, which has a population below 500,000, but which contains a freshwater fisheries center operated by the Texas Parks and Wildlife Department, is a tier 2 county.

Source: diymaps.net (c)

According to Dr. Lloyd Potter and Dr. Helen You of the Texas Demographic Center, as of January 1, 2016, the counties with a population at or above 500,000 in Texas are Bexar, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Montgomery, Tarrant, Travis, and Williamson counties ([6-10](#)). These twelve counties collectively constitute 63 percent of the state's population. Accordingly, these counties are also now considered tier 2 counties under the law as of December 1, 2017.

A tier 2 municipality is a city partly or wholly located in a tier 2 county. Additionally, when a city wholly located in a tier 1 county tries to annex an area at least partially in a tier 2 county, it is a tier 2 municipality that must first obtain consent under the law ([Texas Local Government Code §43.001](#)).

Tier 1 municipalities are wholly located in one or more tier 1 counties and propose to annex areas wholly located in tier 1 counties ([Texas Local Government Code §43.001](#)). Tier 1 municipalities are still allowed to forcibly annex

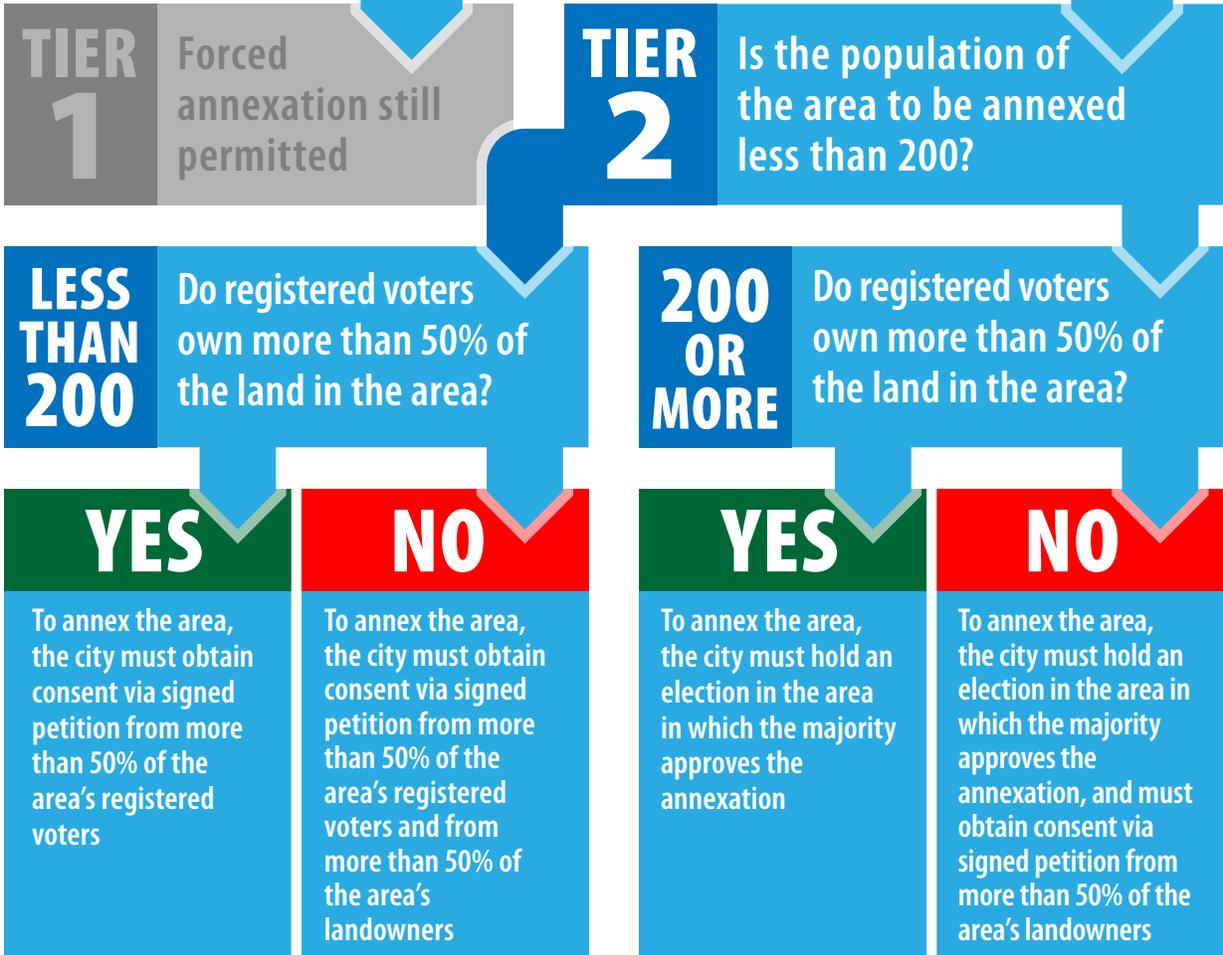
PROCESS FOR TIER 1 COUNTY TO RECLASSIFY AS TIER 2



THE PATH TO ANNEXATION

START HERE

Is the city a Tier 1 or Tier 2 municipality?



without obtaining consent under the law ([Texas Local Government Code Subchapter C](#); [Texas Local Government Code Chapter 43 Subchapter C-1](#)).

Tier 2 Municipality Annexation Process

The most important protections of the law against forced annexation practices apply to annexations by tier 2 municipalities. The law also streamlines voluntary annexations between property owners and tier 2 municipalities.

- **Streamlined Voluntary Annexation**

If every property owner in an area requests an annexation by a tier 2 municipality, then the tier 2 municipality may adopt an ordinance annexing that area as long as it satisfies two conditions. First, the city and the property owners must negotiate and enter into a written agreement for the provision of services in the area. Second, the city must conduct at least two public hearings before adopting the annexation ordinance ([Texas Local Government Code Chapter 43 Subchapter C-3](#)).

- **Annexation of Area with Population Less than 200**

To annex an area with a population of less than 200, a tier 2 municipality must first obtain consent by a petition signed by more than 50 percent of the registered voters in the area. If the registered voters of the area do not own more than 50 percent of the land in the area, then the petition must also be signed by more than 50 percent of the landowners in the area ([Texas Local Government Code Chapter 43 Subchapter C-4](#)).

- **Annexation of Area with Population of 200 or More**

To annex an area with a population of 200 or more, a tier 2 municipality must hold an election in the area at which qualified voters may vote on the question of annexation, and a majority of the received votes approve the annexation. Additionally, if the registered voters of the area do not own more than 50 percent of the land in the area, the municipality must obtain consent by petition by more than 50 percent of the landowners in the area ([Texas Local Government Code Chapter 43 Subchapter C-5](#)).

Authority to Annex Near Military Bases

The new law also clarifies that a city may annex any part of an area within five miles of a military base where an active training program is located. However, the city must still follow the annexation procedures that apply under the new law ([Texas Local Government Code §43.0117](#)). Therefore, a tier 1 municipality may forcibly annex the area. By contrast, a tier 2 municipality must obtain consent through petition or election, as appropriate.

The law also states that the annexation proposition must give voters in the area the choice between full annexation or simply giving the city the authority to adopt and enforce a land use ordinance for the area in accordance with the most recent joint land use study's recommendations ([Texas Local Government Code §43.0117](#)).

Option for Tier 1 Counties to Choose to Be Tier 2 Counties

Finally, the law outlines a process by which a tier 1 county may become a tier 2 county, and thereby allows its residents to come under the law's protections against forced annexation. First, at least 10 percent of registered voters in the county must sign a petition requesting an election on the question of becoming a tier 2 county to the county commissioner's court. Second, a majority of the registered voters must approve becoming a tier 2 county at the election ([Texas Local Government Code §43.001](#)).

The Continued Problem of Forced Annexation

While the Texas Legislature's accomplishment in sharply curtailing forced municipal annexation should be acknowledged and celebrated, it should be viewed as the first of many necessary reforms. Forced annexation is unjust in principle—whether it is conducted by a tier 1 municipality or by a tier 2 municipality. Indeed, the same arguments against forced annexation by larger cities pertain to forced annexation by smaller cities, and, as such, statewide application is a must.

First, forced annexation violates the principle of consent by the governed ([Fields and Quintero](#), 9). Cities do not have a "right" to annexation. City governments, like all government, derive their authority and power from the people who formed them to secure life and liberty. No city, regardless of size, should force annexation onto people residing outside its limits without obtaining their consent. The practice of forced annexation should be fully ended in Texas.

Further, cities—regardless of size—use forced annexation to extract resources from revenue-rich areas to underwrite unwise financial choices. As Rice University urban planning expert Stephen Klineberg said to *The Wall Street Journal*, "When rich people go out into the suburbs that is where the money is. You can use that tax revenue to develop the urban core" ([Koppel](#)).

Finally, cities underestimate how much it will cost to expand their services to annexed areas, which can mean a decline in the quality or quantity of services. As researchers Mary Edwards and Yu Xiao found in the Urban Affairs Review, cities typically take out debt and issue bonds to finance the costs of annexation ([152](#)). This may be because

they incorrectly believe they can extend services cheaply to annexed areas, despite contrary indications. As the president of the San Antonio Police Officers Association stated in opposition to the city's 2015 annexation plan, "I think [annexation's] a horrible idea. We're barely covering what we've got right now" ([Davila](#)).

Recommendations

For this reason, local and state officials should completely end forced annexation in Texas. This would mean that the entire state would come under the new protections against forced annexation. There are two strategies for this change.

First, many people may not know that the law provides a pathway for a county to change its classification, even if its

population is below 500,000. Tier 1 county officials should disseminate information on the opportunity to classify as a tier 2 county. Further, citizens in tier 1 counties should organize petition drives so that, with the required number of signatures sent to the county commissioner's court, an election may be held.

Alternatively, the Texas Legislature should amend the annexation law to prohibit forced annexation by any city.

The Texas Annexation Right to Vote Act is a remarkable step toward ending forced annexation in Texas. To ensure that all Texans' liberties are respected, regardless of where people live, we should extend the act's protections to every corner of the state. ★

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- Texas Local Government Code. Section 43.0117. [Authority of Municipality to Annex Area Near Military Base](#).

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Prior to joining the Foundation, Bryan negotiated and reviewed federal contracts for research at the University of Texas Medical Branch and worked at the City of Houston Legal Department in the real estate section. His time with the city of Houston ignited his interest in pursuing conservative, market-oriented reforms at the local level.

Bryan hails from Galveston, Tex., where he learned the value of hard work, self-sacrifice, and perseverance from his Indian immigrant parents. He earned his undergraduate degree in government from the University of Texas in Austin, and he left his beloved Texas to attend Vanderbilt University Law School in 2011. While in law school, he had a unique eight-month internship opportunity with the Securities and Exchange Commission Enforcement Office in Atlanta, Ga., Bryan graduated from Vanderbilt in 2014.

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