

The Special Statute

The fourth method of annexation is available to cities with populations of 25,000 or more. Under this procedure, found at Sections 11-42-40 through 11-42-88, Code of Alabama 1975, a municipality initiates the proceedings with a resolution. No petition containing written consent of a specified percentage of property owners, or number of electors, is required. However, the statute has some serious drawbacks.

Electors residing in the territory must vote in favor of the election as under the general procedure. If the territory is voted into the municipality, it is exempt from city taxation for a minimum of 10 years. An exception to this stipulation is that after five years the annexed territory, if it has a population of 20 or more persons per contiguous 10 acres, becomes subject to city taxation. This exception does not apply to individual property which is exempt for a minimum of 10 years.

Persons residing in the annexed territory are not eligible to vote in municipal elections as long as the territory is tax exempt. No person residing on tax-exempt territory is eligible for municipal office.

No person, firm or corporation in tax-exempt territory shall be liable for a privilege license to the municipality except as provided in the statute. This feature probably costs the municipality revenue because prior to annexation the municipality had the authority to license all businesses in its police jurisdiction in an amount not exceeding one-half of the amount charged similar businesses operating in the corporate limits.

De-annexation through Legislative Act

The corporate limits of a municipality may be reduced in one of two ways, (1) through a local legislative act of the state Legislature or (2) pursuant to the procedures set out in Sections 11-42-200 through 11-42-213, Code of Alabama 1975.

The procedures described above for annexation through local legislative act would also apply to de-annexation by local legislative act.

Statutory Procedures for De-annexation of Property

If a municipal council wishes to reduce the corporate limits of the municipality, the council must pass a resolution defining the proposed corporate limits. Section 11-42-200, Code of Alabama 1975. Once the resolution is adopted, the mayor or council president must file the following with the probate judge of the respective county: (1) a certified copy of the resolution that defines the proposed corporate limits; (2) a plat or map correctly defining the corporate limits proposed to be established; and (3) the names of all qualified electors residing in the territory proposed to be excluded from the area of such corporation. Section 11-42-201, Code of Alabama 1975.

After the above has been filed with the probate judge, the probate judge shall call a hearing at which those individuals residing in the area to be excluded may appear before the judge of probate and show cause as to why the proposed reduction of corporate limits should not take place. Section 11-42-202, Code of Alabama 1975. All persons residing in the affected area should be notified by the probate judge. The date of the hearing must be no less than 10 days from the filing of the resolution and not more than 30 days from the filing. If no one appears at the hearing to object to the reduction, the judge of probate shall order the corporate limits reduced as outlined in the council resolution and map or plat. Section 11-42-203, Code of Alabama 1975. The order shall be recorded in the minutes and the map or plat shall be recorded in the probate office.

Residents who appear at the hearing and protest the reduction must show reasonable cause as to why the reduction should not take place. Section 11-42-204, Code of Alabama 1975.

If the judge of probate determines that reasonable cause is shown, he or she shall order that an election be held by the qualified electors of the municipality. The election shall take place not less than 10 days and not more than 30 days from the order for election. The election will be directed by the probate judge.

The judge shall give notice of election as provided in Section 11-42-205, Code of Alabama 1975. Section 11-42-205 requires one publication of the notice for at least seven days in a newspaper published

in the city or town. If there is no newspaper published in the city or town, the probate judge shall post a notice of election at three public places. The notice shall state the date of the election, describe the proposed limits as stated in the resolution and state that a map of territory to be de-annexed is provided for public inspection in the probate judge office of the respective county. The election shall be held at the regular voting places in the city or town and all qualified electors residing in the city or town shall have a right to vote on the reduction of corporate limits. Section 11-42-206, Code of Alabama 1975. The statute is ambiguous as to polling places, but the League's interpretation is that polling places shall be those designated for the municipal elections.

The probate judge shall conduct the election in accordance with the general election laws and any additional provisions found in Section 11-42-200, et. seq., Code of Alabama 1975. Section 11-42-207, Code of Alabama 1975. The probate judge is not required to provide an official ballot; however, the probate judge is responsible for the appointment of clerks, inspectors and a returning officer. Section 11-42-207, Code of Alabama 1975. Each voter may furnish his or her own ballot with one of the following phrases written or printed:

- "For adoption of the proposed corporate limits."
- Or
- "Against the adoption of proposed corporate limits."

Section 11-42-208, Code of Alabama 1975.

Once the polls are closed, the election inspectors are responsible for determining the result of the election at their respective polling locations and deliver the results to the returning officer, who shall immediately return the results to the probate judge. The judge of probate is responsible for canvassing the results of the election. If a majority vote favors a reduction of the corporate limits, the judge must order on the record adjudging and decreeing that the corporate limits reflect the corporate limits as described in the council resolution. The probate judge shall also designate that the resolution and map or plat have been duly adopted and recorded of the records in the probate office. If a majority vote does not favor a reduction in the corporate limits, the probate judge shall enter an order dismissing the proposal. Section 11-42-208, Code of Alabama 1975.

The results of the election may be contested by any qualified elector who voted in the election in the manner provided for in Section 17-15-1, et. seq., Code of Alabama 1975. Section 11-42-209, Code of Alabama 1975. The party contesting the results of the election shall be responsible for the costs associated with the contest. Section 11-42-213, Code of Alabama 1975. The city or town shall be the contestee. Section 11-42-209, Code of Alabama 1975.

The city or town proposing the reduction in the corporate limits shall be responsible for the costs and expenses incident thereto. Section 11-42-210, Code of Alabama 1975.

The municipal governing body shall exercise the same jurisdiction over the new corporate limits as it exercised over the original corporate limits, including enforcement of laws and ordinances. Section 11-42-212, Code of Alabama 1975.

The municipality seeking to reduce its corporate limits is responsible for paying the probate judge \$10.00 for services surrounding the election. Section 11-42-213, Code of Alabama 1975. All other election officials are entitled to compensation as provided in the general election laws as found in Section 17-6-3, Code of Alabama 1975.

Voting Rights Act

The Voting Rights Act imposes reporting requirements on municipalities when changes are made in the election process. **All annexations or de-annexations of property come within the coverage of the Voting Rights Act.**

Section 5 of the Act prohibits the enforcement in any jurisdiction covered [Alabama is covered] of any voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting which is different from that in force or effect on the date used to determine coverage, until the authority