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**H. 4651**

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Summary: Annexation Fairness Act

**HISTORY OF LEGISLATIVE ACTIONS**

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 12/14/2023 House Referred to Committee on **Judiciary**

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 1/9/2024 House Referred to Committee on **Judiciary** (House Journal‑page 111)

 1/10/2024 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[12/14/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4651_20231214.docx)

[01/10/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4651_20240110.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “ANNEXATION FAIRNESS ACT”; BY ADDING SECTION 5‑3‑95 SO AS TO PROVIDE THE GOVERNING BODY OF THE COUNTY HAS LEGAL STANDING TO CHALLENGE AN ANNEXATION/DEANNEXATION BY A MUNICIPALITY IN THE APPROPRIATE JURISDICTION AND TO SEEK APPROPRIATE RELIEF; BY AMENDING SECTION 5‑3‑10, RELATING TO POWER TO EXTEND CORPORATE LIMITS, SO AS TO PROVIDE THE POWER TO REDUCE CORPORATE LIMITS, AND TO PROVIDE NO REDUCTION MAY result IN THE FORMATION OF UNINCORPORATED ISLANDS OR NONCONTIGUOUS INCORPORATED AREAS; BY AMENDING SECTION 5‑3‑100, RELATING TO THE ALTERNATE ANNEXATION METHOD WHEN THE ENTIRE AREA PROPOSED TO BE ANNEXED IS OWNED BY THE ANNEXING MUNICIPALITY OR COUNTY, SO AS TO INCLUDE DEANNEXATION PROVISIONS; BY AMENDING SECTION 5‑3‑120, RELATING TO THE ANNEXATION ALTERNATE METHOD WHEN THE ENTIRE AREA PROPOSED TO BE ANNEXED IS OWNED BY A CORPORATION, SO AS TO INCLUDE DEANNEXATION PROVISIONS AND PUBLIC HEARING REQUIREMENTS; BY AMENDING SECTION 5‑3‑130, RELATING TO THE ALTERNATE METHOD FOR ANNEXATION WHEN THE ENTIRE AREA PROPOSED TO BE ANNEXED IS OWNED BY a SCHOOL DISTRICT, SO AS TO INCLUDE DEANNEXATION PROVISIONS AND PUBLIC HEARING REQUIREMENTS; BY AMENDING SECTION 5‑3‑140, RELATING TO THE ALTERNATE METHOD WHEN THE ENTIRE AREA PROPOSED TO BE ANNEXED IS OWNED BY THE FEDERAL GOVERNMENT OR STATE GOVERNMENT, SO AS TO INCLUDE DEANNEXATION PROVISIONS AND PUBLIC HEARING REQUIREMENTS; BY AMENDING SECTION 5‑3‑150, RELATING TO THE ALTERNATE METHOD FOR ANNEXATION WHERE PETITIONED BY SEVENTY‑FIVE PERCENT OR MORE OF RELEVANT LANDOWNERS, SO AS TO INCLUDE DEANNEXATION PROVISIONS AND PUBLIC HEARING REQUIREMENTS, AND TO DELETE ORDINANCE REQUIREMENTS; BY AMENDING SECTION 5‑3‑210, RELATING TO SUBSEQUENT ANNEXATION ELECTIONS AFTER DEFEAT OF AN ANNEXATION ELECTION, SO AS TO INCLUDE DEANNEXATION PROVISIONS; BY AMENDING SECTION 5‑3‑235, RELATING TO LIMITS ON THE ASSESSED VALUE OF A SINGLE FREEHOLDER’S REAL PROPERTY AT THE TIME OF PROPOSED ANNEXATIONS, SO AS TO INCLUDE DEANNEXATION PROVISIONS; BY AMENDING SECTION 5‑3‑300, RELATING TO AN ADDITIONAL ANNEXATION PROCEDURE FOR AREAS CONTIGUOUS TO A MUNICIPALITY, SO AS TO INCLUDE DEANNEXATION PROVISIONS; BY AMENDING SECTION 5‑3‑315, RELATING TO PUBLIC HEARING AND NOTICE PROVISIONS RELATING TO PROPOSED ANNEXATIONS, SO AS TO INCLUDE DEANNEXATION PROVISIONS, TO MAKE PUBLIC HEARINGS MANDATORY, AND TO REMOVE PROVISIONS CONCERNING NONCOMPLIANCE WITH NOTICE PUBLICATION REQUIREMENTS; BY AMENDING SECTION 5‑31‑1520, RELATING TO EXTENSIONS OF MUNICIPAL WATER AND SEWER SYSTEMS BEYOND MUNICIPAL LIMITS, SO AS TO PROHIBIT CONDITIONING THE PROVISION OR CONTINUED PROVISION OF SUCH SERVICES ON ANNEXATION STATUS; AND BY REPEALING SECTION 5‑3‑280 RELATING TO PROCEDURES FOR THE REDUCTION OF MUNICIPAL CORPORATE LIMITS.

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

SECTION 1. This act may be cited as the “Annexation Fairness Act”.

SECTION 2. Chapter 3, Title 5 of the S.C. Code is amended by adding:

 Section 5‑3‑95. The governing body of the county has legal standing to challenge an annexation/deannexation by a municipality in the appropriate jurisdiction and to seek appropriate relief.

SECTION 3. Section 5‑3‑10 of the S.C. Code is amended to read:

 Section 5‑3‑10. Any city or town council The governing body of a municipality or the governing body of the county in which the municipality is located may extend or reduce the corporate limits of the municipality in the manner set forth in this chapter. There may be no annexation under this section that results in the formation of one or more unincorporated islands or in part of the area remaining in the municipal corporation no longer being a contiguous area of the municipal corporation.

SECTION 4. Section 5‑3‑100 of the S.C. Code is amended to read:

 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 and the county, the annexation/deannexation is complete.

SECTION 5. Section 5‑3‑120 of the S.C. Code is amended to read:

 Section 5‑3‑120. If the entire area proposed to be annexed/deannexed belongs to a corporation only, it may be annexed/deannexed on the petition of the stockholders of the corporation to the governing bodies of the municipality and the county. The petition must require a public hearing by the governing bodies of the municipality and the county. Upon agreement of the governing body bodies of the municipality and county to accept the petition and the passage of an ordinance to that effect by the municipality and county, the annexation/deannexation is complete.

SECTION 6. Section 5‑3‑130 of the S.C. Code is amended to read:

 Section 5‑3‑130. If the area proposed to be annexed/deannexed belongs entirely to a school district, it may be annexed/deannexed upon the petition of the board of trustees of the school district, to the city or town councilthe governing body of the municipality, and the governing body of the county. The petition must require a public hearing by the governing bodies of the municipality and the county. Upon agreement of the city or town councilmunicipality and the county to accept the petition and the passage of an ordinance to that effect by the municipality and county, the annexation/deannexation is complete.

SECTION 7. Section 5‑3‑140 of the S.C. Code is amended to read:

 Section 5‑3‑140. If the territory proposed to be annexed/deannexed belongs entirely to the federal government or to the State of South Carolina and is adjacent to a municipality or is part of a municipality, it may be annexed/deannexed upon the petition of the federal government or of the State to the city or town council thereofgoverning bodies of the municipality and the county. The petition must require a public hearing by the governing bodies of the municipality and the county. As used in this section, a petition by the State shall mean a petition executed by the State Fiscal Accountability Authority. Upon agreement of the city or town council municipality and county to accept the petition and the passage of an ordinance to that effect by the municipality and the county, the annexation/deannexation is complete.

SECTION 8. Section 5‑3‑150(1), (2), and (3) of the S.C. Code is amended to read:

 Section 5‑3‑150. (1) Any area or property which is contiguous to a municipality may be annexed to the municipality or any area or property that is part of the municipality may be deannexed from the municipality by filing with the municipal and county governing body bodies 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/deannexation. The petition must require a public hearing by the governing bodies of the municipality and the county. 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. Upon agreement of the municipality and the county to accept the petition and the passage of an ordinance to that effect by the municipality and the county, the annexation/deannexation is complete. No member of either the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed/deannexed is eligible to vote on the ordinance. This method of annexation/deannexation is in addition to any other methods authorized by law; however, this property may not be annexed/deannexed unless the following has been complied with:

 (1)(a) 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)(b) 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/deannexation or by anyone owning property in the area to be annexed/deannexed;

 (3)(c) the petition must state the act or code section pursuant to which the proposed annexation/deannexation is to be accomplished;

 (4)(d) the petition must contain a description of the area to be annexed/deannexed and there must be attached to the petition a plat of the area to be annexed/deannexed;

 (5)(e) the municipality or any resident of it and any person residing in the area to be annexed/deannexed 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/deannexation;

 (6)(f) not less than thirty days before acting on an annexation/deannexation petition, the annexing/deannexing 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/deannexed, 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/deannexation area, a complete legal description of the proposed annexation/deannexation 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/deannexation as defined in subsection (1) of this section.

 (3) Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property whichthat is contiguous to a municipality may be annexed to the municipality or any area or property that is part the municipality may be deannexed from the municipality by filing with the municipal and county governing body bodies a petition signed by all persons owning real estate in the area requesting annexation/deannexation. The petition must require a public hearing by the governing bodies of the municipality and the county. 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.Upon agreement of the municipality and the county to accept the petition and passage of an ordinance to that effect by the municipality and the county, the annexation/deannexation is complete. No member of the either governing body who owns property or stock in a corporation owning property in the area proposed to be annexed/deannexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law.

SECTION 9. Section 5‑3‑210 of the S.C. Code is amended to read:

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

SECTION 10. Section 5‑3‑235 of the S.C. Code is amended to read:

 Section 5‑3‑235. Except when the procedures for an annexation/deannexation 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/deannexed, 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 11. Section 5‑3‑300 of the S.C. Code is amended to read:

 Section 5‑3‑300. (A) In addition to other methods of annexation/deannexation authorized by this chapter, any area whichthat is contiguous to a municipality may be annexed to the municipality or any area that is part of the municipality maybe deannexed from the municipality by the filing of a petition with the councilgoverning bodies of the county and the municipality signed by twenty‑five percent or more of the qualified electors who are residents within the area proposed to be annexed/deannexed.

 (B) The petition must contain a description of the area to be annexed/deannexed, the signature of the qualified elector, the address of residence, and the act or code section pursuant to which the proposed annexation/deannexation 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/deannexed, 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 or deannexed from the municipality on the question of extension/reduction 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 or deannexed from the municipality. Registered qualified electors residing within the area proposed to be annexed to or deannexed from 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/deannexed shall vote in a box or boxes to be provided for the purpose within the area proposed to be annexed/deannexed 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/deannexed are in favor of the annexation/deannexation, the council by written resolution must publish the result of the electionthe council shall publish the result and give final reading approval to the ordinance declaring the area annexed/ deannexed. If a majority of the votes cast by the qualified electors of the municipality are in opposition to the annexation/ deannexation, the municipal council shall publish the result of the election and table the proposed ordinance.

 (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/deannexed equal to twenty‑five percent or more of the total assessed value of all real property of the area proposed to be annexed/deannexed and any freeholder owning agricultural real property in the area to be annexed/deannexed shall receive written notice of the proposed annexation/deannexation 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/deannexed for the purposes of the annexation/deannexation election. If the freeholder files written notice objecting to the inclusion/exclusion of his property in the area to be annexed/deannexed 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/deannexed. 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 12. Section 5‑3‑315 of the S.C. Code is amended to read:

 Section 5‑3‑315. Any districtarea or property affected by the proposed annexation/deannexation shall 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/deannexed; 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.

SECTION 13. Section 5‑31‑1520 of the S.C. Code is amended to read:

 Section 5‑31‑1520. Any city or town municipality may extend its system to any property beyond the city limits provided that both the water and sewer systems are extended to such property; provided, however:

 (1) a municipality may not condition the extension of its system on the annexation of such property;

 (2) a municipality that is currently providing water service, sewer service, or both, to an unincorporated part of the county may not use annexation as a condition to continue to provide such service; and

 (3) if part of a municipality is deannexed by any alternative in Chapter 3, the municipality may not halt any existing services previously provided those in the deannexed area or properties.

SECTION 14. Section 5‑3‑280 of the S.C. Code is repealed.

SECTION 15. This act takes effect upon approval by the Governor.

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