



H.B. 796

123rd General Assembly
(As Introduced)

Rep. Mottley

BILL SUMMARY

- Starting in 2002, provides for the incorporation as a city of the unincorporated territory of a township with two noncontiguous portions.
- Permits expedited annexations in 2002 and thereafter of some or all of the smaller portion of this noncontiguous territory using a special annexation procedure.
- Precludes the staying in 2002 of regular annexation petitions because the territory is the subject of a special incorporation petition, but, in 2003 and thereafter, allows the staying of a regular annexation petition for that reason.

CONTENT AND OPERATION

Overview

Current law provides for the incorporation of contiguous township territory into a city or a village depending upon such factors as size, population, and tax base. Current law also provides for the annexation of contiguous township territory by a municipal corporation. The bill addresses the incorporation and annexation of *noncontiguous* unincorporated territory of a township *into a city*, making a narrow exception for the incorporation of two "island" territories comprising one township. The bill also provides special annexation procedures for the smaller of those two "island" territories.

Incorporation of noncontiguous township territory as a city

Conditions

In the year 2002, a special petition for incorporation may be filed with a board of county commissioners on or before April 30 to incorporate as a city all the unincorporated territory of a township, even though all of that territory is not contiguous, when all of the following conditions are met (Section 3(A)(1) and Section 4 of the bill):

(1) There is only one portion of the unincorporated territory that is separate from the largest portion of the unincorporated territory (in other words, only two "island" territories, one larger than the other), and the smaller portion consists of 5% or less of the total unincorporated territory.

(2) The smaller portion of the unincorporated territory is separated from the larger portion of the unincorporated territory by one city, the majority of whose territory is located within the boundaries of the township with the unincorporated territory proposed to be incorporated.

(3) All of current law's criteria for incorporating as a city, except for contiguity, are met. Those criteria are that the territory to be incorporated (a) is not less than four square miles, (b) has a population of not less than 25,000 and a population density of at least 1,000 persons per square mile, (c) has an assessed valuation of real, personal, and public utility property (*including* property that has been exempted from taxation) subject to general property taxation of at least \$2,500 per capita, and (d) does not completely surround an existing municipal corporation (sec. 707.29(A)).

Action on petition

After a special petition is filed, the agent for the petitioners must cause notice of it to be published in a newspaper of general circulation in the county for at least three consecutive weeks. The board of county commissioners must transfer a copy of the petition and other relevant information to the board of elections so that it may determine the sufficiency of the signatures on the petition. The board of elections must make its determination and report its conclusions to the board of county commissioners within 60 days after the date the petition is filed. (Section 3(A)(2)(a) of the bill.)

Within 90 days after the date the special petition is filed, the board of county commissioners must determine whether the petition meets all of the conditions noted above, whether notice was published as described above, and whether other technical requirements of current law for a petition for incorporation

have been met, such as the petition having attached to it the county auditor's statement as to the total assessed valuation of the territory to be incorporated and the Secretary of State's statement that the name proposed in the petition is not being used by another municipal corporation in the state (sec. 707.30(A)).¹ If the board determines that the petition meets all of those conditions and requirements and that the requisite notice was published, the board must so inform the board of elections, and, if the petition has sufficient signatures, the board of elections generally must schedule a special election on the issue of incorporation, to be held at the *general election in 2002*. (Section 3(A)(2)(b) of the bill.)

Special election

Every elector residing within the territory to be incorporated may vote on the issue. If a majority of the voters approve the incorporation, the cost of the special election will be charged to the newly formed city; but, if a majority of the voters disapprove the incorporation, the cost of the special election will be charged to the township whose territory was proposed for incorporation. If a new city is incorporated, any property within it owned by another municipal corporation will be exempt from zoning regulations of the new city as long as the property is used for municipal public purposes. In addition, public service contracts entered into by the township prior to the incorporation must be renegotiated within six months after the incorporation. (Section 3(A)(2)(b), (D), and (E) of the bill; sec 707.30(E) and (F).)

Post-2002 special petitions

The bill also authorizes the filing of similar special petitions for incorporation under codified law provisions that will take effect on January 1, 2003. If a similar special petition for incorporation is filed on or after that date, the petition must be filed by April 30 in any given year, and a special election on it held at the general election in November of that year. The procedures for these special petitions are the same as those described above for special petitions filed in the year 2002. (Section 4 of the bill; secs. 707.29(B)(1), 707.30, and 707.31(A), (C), and (E).)

¹ *The board may refer the description and the map or plat of the territory to be incorporated to the county engineer for a report on their accuracy. Failure of the county engineer to make a timely report does not affect the board's jurisdiction to proceed on the special petition.*

Annexation of unincorporated territory

Types of annexation petitions

If a special petition for incorporation as a city is filed in the year 2002, within 60 days of the date that the special petition is filed, a *municipal corporation contiguous* to the territory proposed to be incorporated may file with the board of county commissioners a special petition for annexation of all or any portion of the territory proposed to be incorporated *that is separate from the larger portion* of that territory (in other words, annexation of territory in the smaller "island" portion). In addition, a regular petition for annexation that includes any or all of the territory proposed to be incorporated may be filed, and it cannot be stayed simply because the special petition for incorporation has been filed.² (Section 3(B)(1) and (C) of the bill.)

Procedures with regard to special petitions for annexation

If a special petition for annexation is filed, the board of county commissioners must send regular mail notice of it to every resident freeholder in the territory proposed to be annexed. The cost of that mailing is to be charged to the requesting municipal corporation. The notice must inform those freeholders that they have a right to object to the annexation in a signed writing that must be submitted to the board within 60 days of the date on the notice. Those residents may object individually or submit an objection petition with multiple signatures. All submitted signatures must be verified by the board of elections, which must notify the board of county commissioners within 70 days of the date on the notice of the validity of those signatures. (Section 3(B)(1) of the bill.)

At least 60 but no more than 70 days after the notice is mailed to the freeholders, and after receiving verification of the signatures of those objecting to the annexation, the board of county commissioners must find whether (1) the special petition was filed within the permitted time period, (2) the territory proposed to be annexed is separate from the larger portion of the unincorporated territory proposed to be incorporated and is contiguous to the municipal corporation with which annexation is proposed, (3) notices were timely mailed to all relevant freeholders, and (4) a majority of them did not object to the annexation in writing. If the board finds that all of these conditions are met, it must approve the annexation. Only an action for a writ of mandamus or a writ of quo warranto

² A regular annexation petition would be processed following regular annexation procedures.

may be filed concerning any action taken regarding the special petition for annexation.³ (Section 3(B)(2), (3), and (4) of the bill.)

Impact on special petition for incorporation

If a special petition for annexation is approved before the question on a special petition for incorporation is voted on, the board of county commissioners must adopt a resolution amending the special incorporation petition to remove the annexed territory from the description of the area proposed to be incorporated that will be placed on the special election ballot. When the board of elections receives a copy of that resolution from the board of county commissioners, it must amend the ballot language to reflect the new description. (Section 3(A)(2)(c) of the bill.)

Post-2002 special petitions for annexation

The bill also authorizes the filing of similar petitions for annexation under codified law provisions that will take effect on January 1, 2003. If a special petition for incorporation is filed on or after that date, a municipal corporation may file a special petition for annexation following the same procedures and limitations described above for special petitions for annexation in the year 2002. However, nothing in the Municipal Annexation Law would prevent a *regular petition for annexation* of territory included within a special petition for incorporation from being stayed because of the filing of the special petition for incorporation (as there is in the year 2002). (Secs. 707.29(B)(2), 707.31(B) and (D), 709.15(B), and 709.151.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-03-00	p. 2303

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³ *An action for a writ of quo warranto is a civil action to determine whether a person exercising power is legally entitled to do so.*

The bill also specifies that no appeal in law or equity relative to an approved or denied special petition for annexation is permitted.