Elizabeth K. Mase *Legislative Service Commission*

Sub. S.B. 289*

123rd General Assembly
(As Reported by H. Local Government and Townships)

Sens. Cupp, Kearns, Drake, Wachtmann, Johnson, Finan, Harris, Gardner, White, Carnes, Mumper, Hottinger

BILL SUMMARY

- Revises existing or enacts new standards for the approval of municipal annexations, procedures applicable to municipal annexations, and statutory schedules of payments to be made to townships for the loss of tax revenues as a result of municipal annexations; establishes shorter special annexation procedures that will be available under limited conditions; and makes other changes in the Municipal Annexation Law, including, but not limited to, those summarized below.

- Provides for three special annexation procedures when all property owners sign an annexation petition.

- Requires an annexing municipal corporation to adopt a statement specifying which services will be provided to the territory it annexes and the approximate date by which those services will be provided.

- Permits a board of township trustees to appropriate funds for any expense it considers necessary related to any potential or pending annexation.

- Permits participation of a board of township trustees in annexation proceedings.

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* *This analysis was prepared before the report of the House Local Government and Townships Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Permits a board of township trustees, the agent for the petitioners, an owner of real estate in the territory proposed for annexation, and the legislative authority of the municipal corporation to which annexation is proposed or their representatives to present evidence, examine witnesses, and/or comment on all evidence, including affidavits presented to a board of county commissioners, at an annexation hearing.

- Authorizes a board of county commissioners to charge fees in regard to annexation proceedings.

- Requires a board of county commissioners to issue findings as to whether specified conditions have or have not been met with respect to a proposed annexation.

- Permits a board of county commissioners to use its discretion in making its findings as long as they are based upon "a preponderance of the substantial, reliable, and probative evidence on the whole record" of an annexation hearing.

- Establishes special shortened annexation procedures to be followed when a municipal corporation petitions to annex certain government-owned land.

- Changes the process for appealing the decision of a board of county commissioners granting or denying an annexation petition.

- Provides for annexation agreements between townships and municipal corporations, and specifies matters that those agreements may include.

- Changes payments for the loss of tax revenue made by a municipal corporation to a township from which territory is annexed following annexation, and provides that those payments only must be made if the municipal corporation excludes the annexed territory from the township.

- Enacts special provisions for the division of inside millage between an annexing municipal corporation and a township whose territory is annexed during the time when the annexed territory is not excluded from the township.

- Applies the bill's provisions only to annexation petitions filed on and after April 1, 2001.

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CONTENT AND OPERATION

Background

Current law provides two methods for municipal annexation of adjacent or contiguous township territory: (1) on petition of a majority of the owners of real estate within the territory sought to be annexed and (2) on petition of an annexing municipal corporation. The bill changes the procedures associated with both of these methods and prescribes additional methods for annexation of township territory, called "special procedures," when 100% of the landowners in the territory sought to be annexed sign an annexation petition.

Petition by owners of real estate

Current law--in general

Petition. Owners of real estate adjacent to a municipal corporation may petition the relevant board of county commissioners to have the adjacent unincorporated territory annexed to the municipal corporation. Their petition must be signed by a majority of the owners of real estate in the territory and include (1) a full description and accurate map or plat of the territory to be annexed, (2) a statement indicating the number of owners of real estate in that territory, and (3) the name of the person acting as agent for the petitioners. (Sec. 709.02.)

Proceedings involving more than one county. Special provisions apply when a municipal corporation is situated in two or more counties, or the territory to be annexed is situated in a different county from that in which the municipal corporation or some part of it is situated. In these cases, the annexation proceedings take place in the county in which the territory to be annexed, or some part of it, is situated. If the territory to be annexed is partly in the county in which the municipal corporation is situated and partly in another county, the proceedings must take place in the county in which there is the largest number of qualified voters residing in the territory to be annexed. (Sec. 709.11.)

Removal of signatures. Any landowner who signs an annexation petition may remove the signature by filing a written notice of withdrawal with the clerk of the board of county commissioners within 20 days after a specified notice of the filing of the petition is delivered to the clerk of the landowner's township. After that time, a signature may be removed only at the hearing on the petition and only if a majority of the board of county commissioners finds that the signature was obtained by fraud, duress, undue influence, or misrepresentation (including misrepresentation relating to the provision of municipal services to the territory to be annexed). (Secs. 709.03 and 709.032.)

Changes proposed by the bill

Petition provisions. The bill permits owners of real estate *contiguous* to a municipal corporation to petition for annexation (sec. 709.02(A)). Ownership is determined as of the date the petition is filed with the clerk of the board of county commissioners. The bill modifies existing law's definition of an "owner" to also *include* the state or any political subdivision, and to *exclude* the holding of railroad, utility, street, and highway rights-of-way in fee, by easement, or by dedication and acceptance. However, the state or any political subdivision *must not be considered* owners and must not be included in determining the number of the owners needed to sign a petition unless the Director of Administrative Services, for the state, or an authorized agent, for a political subdivision, signs the petition. Similarly, if the

owner is a corporation, partnership, business trust, estate, trust, organization, association, group, institution, or society, the petition must be signed by a person authorized to sign for that entity. A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, is counted as one owner. (Sec. 709.02(E).)

At least 15 days prior to the hearing on the landowners' petition, the *board of township trustees* of any township containing any territory proposed for annexation and *any owners of real estate* in the territory proposed for annexation may request in writing that reasonable proof be presented of the authority of a person signing the petition on behalf of any person other than a natural being, the state, or any political subdivision. When a request is so filed with the board of county commissioners and with the agent of the landowners petitioning for annexation, the agent for the petitioners must present to the board of county commissioners at the hearing sufficient evidence by affidavit or testimony to establish that (1) the owner is a person other than a natural being, the state, or a political subdivision and (2) the owner authorized the person whose signature is on the petition to sign the petition on its behalf. If the board does not find the evidence sufficient to establish authorization of the signature, it must remove the signature from the petition. (New sec. 709.031(C); repeal of existing sec. 709.031 in Section 2.)

If, after an annexation petition is filed, *one or more other petitions* are filed with the board of county commissioners containing all or part of the territory contained in the first petition, the board is required to hear and decide the petitions in the order in which they were filed. The effect of granting a petition is to delete from a subsequently filed petition any territory contained in the granted petition. If two or more petitions are filed to annex part or all of the same territory and appeals are subsequently filed, the court must decide the appeal on the first-filed petition before considering the appeal in any subsequently filed petition. (Sec. 709.013.)

The bill authorizes a board of county commissioners to establish a *reasonable fee* or schedule of fees to cover its costs incurred in any annexation proceedings under the Municipal Annexation Law. The board also may require an initial deposit to be paid when any petition under the Municipal Annexation Law is filed or promptly thereafter. The clerk of the board is required to maintain an accurate and detailed accounting of all funds received and expended in the processing of those petitions. (Sec. 709.014(A).)

In lieu of a "full description" of the territory proposed for annexation as required under current law, the petition must contain "an accurate legal description of the perimeter" of the territory (sec. 709.02(C)(2)). In lieu of a statement of the number of owners in the territory proposed to be annexed, the bill requires the agent for the petitioners to file with the clerk of the board, at the time of filing the petition, a *list of all tracts, lots, or parcels* in the territory proposed for annexation,

including the name and mailing address of the owner of each tract, lot, or parcel, and the permanent parcel number from the county auditor's permanent parcel numbering system for each tract, lot, or parcel. This list is not to be considered part of the petition, and any error on the list does not affect the validity of the petition. (Sec. 709.02(D).) The agent for the petitioners, who must be named in the petition as under current law, may be an official, employee, or agent of the municipal corporation to which annexation is proposed (sec. 709.02(C)(3)).

As under current law, the petition must include an accurate map or plat of the territory proposed for annexation and must be signed by a majority of the owners of real estate in the territory proposed for annexation. For a petition signature to be valid, the person signing or the petition circulator must write the date the signature was made next to the owner's name. The signature must be obtained no more than 180 days before the petition is filed. Any owner who signs the petition may have the signature removed before the petition is filed, by delivering a signed statement to the agent for the petitioners expressing the owner's wish to have the signature removed. Upon receiving such a statement, the agent must delete the signature from the petition by striking it through. (Sec. 709.02(C)(1) and (2).)

The bill also allows removal of an owner's signature within 21 days after the date the agent for the petitioners mails a required notice of the hearing on the petition to the owner, rather than within 20 days after a notice of a petition's filing is delivered to the township clerk as under current law. Finally, the bill removes a requirement that the clerk of the board of county commissioners file the petition in the county auditor's office for public inspection. (Sec. 709.03(A) and (C).)

Proceedings involving more than one county. The bill replaces the current provisions governing situations where more than one county is involved with a requirement that, if the territory proposed for annexation is situated in more than one county, the annexation proceedings must take place in the county in which the majority of acreage of the territory proposed for annexation is situated (new sec. 709.11; repeal of existing sec. 709.11 in Section 2).

Township expenditure of funds. Under current law, a board of township trustees may enter into a contract with, and may appropriate township general revenue fund moneys for the services of, an attorney to represent the township at annexation hearings and appeals of annexation decisions. The bill expands this authority by permitting contracts with the following: an attorney to represent the township, expert witnesses, and other consultants as the board considers necessary for any pending or potential annexation action, including proceedings before a court or the board of county commissioners. In addition, the board may appropriate general revenue fund moneys for any other expenses it considers necessary that are related to any such actions. (Sec. 505.62.)

Hearings and actions on landowners' petitions

Current law

Notice. Once an annexation petition is filed with the board of county commissioners, the board's clerk must enter it upon the record of the board's proceedings, then file it in the county auditor's office for inspection by any interested person. The agent for the petitioners must send written notice of the filing of the petition to the legislative authority of the municipal corporation to which annexation is proposed and to the clerk of each township any portion of which is included within the territory proposed to be annexed. (Sec. 709.03.)

The board of county commissioners must hold a public hearing not less than 60 or more than 90 days after the petition is filed with the county auditor. It must send notice of the hearing's time and place to the agent for the petitioners, who must publish, for four consecutive weeks in a newspaper of general circulation in the county, a notice containing the substance of the petition and the time and place of the hearing. The agent also must deliver a copy of the notice to the clerk of each township any portion of which is included within the territory proposed to be annexed, and to the clerk of the legislative authority of the municipal corporation to which annexation is proposed. (Sec. 709.031(A).) Once the legislative authority receives the notice, it must adopt a statement indicating what services, if any, the municipal corporation will provide upon annexation to the territory proposed to be annexed (sec. 709.031(B)). Any person may appear at the hearing to support or contest the granting of the petition, or may submit affidavits for the board's consideration (sec. 709.032).

Board action. The petition may be amended by leave of the board of county commissioners, with the consent of the agent for the petitioners, and without any other notice, if the amendment does not add to the territory embraced in the petition. If an amendment is permitted that adds new territory, the board must appoint another time for the hearing, and notice must be given of that hearing as described above. (Sec. 709.032.)

The board must grant or deny the petition within 90 days after the hearing. The board must *allow the annexation* if it finds all of the following (sec. 709.033):

(1) The petition contains all matter required by statute, as generally described above under "***Petition***," above.

(2) The required notice has been published.

(3) The signers of the petition are owners of real estate located in the territory described in the petition, and, as of the time the petition was filed with the

board of county commissioners, the number of valid signatures on the petition constituted a majority of the owners of real estate in the territory proposed to be annexed.

(4) The municipal corporation to which the territory is proposed to be annexed has adopted a statement of services to be provided, upon annexation, to the territory proposed for annexation.

(5) The territory included in the petition is not unreasonably large, the map or plat of the territory is accurate, and the general good of the territory will be served if the petition is granted.

Of these conditions, only the one pertaining to whether the territory is unreasonably large gives the board much discretion. All but one of the other conditions call for objective factual determinations, and that one--"the general good of the territory . . . will be served"--has been construed to mean primarily the general good as perceived by the owners of the territory sought to be annexed. The reason for this is that the legislative intent, as interpreted by the courts, is to allow a property owner freedom to choose the governmental subdivision in which the owner desires the property to be located. *In re Lariccia* (1973), 40 Ohio App.2d 250, 253; aff'd 38 Ohio St.2d 99 (1974).

Acceptance by the municipal corporation. At its next regular session occurring more than 60 days after a board of county commissioners grants an annexation petition and delivers its orders in and the papers related to the annexation proceedings to the auditor or the clerk of the legislative authority of the municipal corporation to which annexation is proposed, the legislative authority must be presented with the orders and related papers. It must accept or reject the proposed annexation within 120 days after being presented with these documents; failure to act within this period is deemed to be a rejection of the petition. (Secs. 709.033 and 709.04.) If the municipal corporation rejects the proposed annexation, no further proceedings may be had on that petition, but a new petition may subsequently be filed with the board of county commissioners (sec. 709.05).

Changes proposed by the bill

Notice. Since the bill no longer requires the annexation petition to be filed in the office of the county auditor, it requires that the date set for a hearing be within 60 to 90 days after the petition is filed with the clerk of the board of county commissioners, rather than with the auditor. Within five days after the petition's filing, the board of county commissioners generally must set the date, time, and place of the hearing on the petition and notify the agent for the petitioners of this information. (Sec. 709.03(A).) The bill, however, alternatively authorizes the board, by resolution, to appoint the clerk of the board or the county administrator to set the

date, time, and place for any hearings on annexation proceedings and to provide associated notices (sec. 709.014(B)).

Instead of having notice of the petition and the date, time, and place where it will be heard published for four consecutive weeks in a newspaper of general circulation in the county similar to existing law, the bill requires publication at least once and at least seven days before the hearing date, in a newspaper of general circulation in each county in which territory proposed for annexation is situated. Similar to existing law, this is a responsibility of the agent for the petitioners after being notified of the hearing date. Within ten days after the publication or at the hearing, whichever comes first, the agent for the petitioners must file proof of the publication with the board of county commissioners with which the petition was filed. (Sec. 709.03(B)(3).)

Under the bill, the agent for the petitioners also must provide the following additional notices:

(1) Within five days after being notified of the hearing date, the agent must deliver written notice to the *clerk of the legislative authority* of the municipal corporation to which annexation is proposed, to the *clerk of each township* any portion of which is included within the territory proposed for annexation, and to the *clerk of the board of county commissioners* of each county in which the territory proposed for annexation is located other than the county in which the petition is filed. This notice must (1) include the date and time the petition was filed, the county where it was filed, and the date, time, and place of the hearing, (2) be accompanied by a copy of the petition and any attachments or documents filed with the petition, and (3) either be given by certified mail, return receipt requested, or by personal service on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice. Proof of service must be filed with the board of county commissioners hearing the petition within ten days after the completion of service. (Sec. 709.03(B)(1).)

(2) Within ten days after being notified of the hearing date, the agent for the petitioners must send a copy of the board's notice of the hearing by *regular mail* to *all owners of property* within the territory proposed to be annexed whose names previously were provided to the board by the agent for the petitioners, along with a map of the territory proposed to be annexed and a statement indicating where the full annexation petition can be reviewed. This notice also must include a statement that any owner who signed the petition may remove that signature by filing a written notice of withdrawal with the clerk of the board within 21 days after the date the agent for the petitioners mailed the notice; the agent for the petitioners must include a "certification of the date" of the notice's mailing for this purpose. Within ten days after mailing the notices, the agent for the petitioners must file with the board of

county commissioners a notarized affidavit that a notice was sent by regular mail to the property owners. (Sec. 709.03(B)(2).)

Permanent improvements to be provided by municipal corporation. The statement required of a municipal corporation upon receiving the notice mentioned in (1) above, instead of only indicating the services it will provide to the territory proposed to be annexed as under existing law, must indicate both what services the municipal corporation will provide and the approximate date by which they will be provided. The statement must be filed with the board of county commissioners at least 20 days before the date of the hearing on the annexation petition. The municipal corporation is entitled *in its sole discretion*, however, to provide to the territory proposed to be annexed, upon its annexation, *services in addition to* those mentioned in the statement. (Sec. 709.03(D).)

Board action. Under the bill's hearing procedures, the board of county commissioners still must consider *affidavits* for or against the annexation petition as under current law, but the bill generally requires that the affidavits be filed with the board, and served upon the "necessary parties" to the annexation proceedings (see below) as provided in the Civil Rules, at least 15 days before the date of the hearing. The board is permitted to accept affidavits after the 15-day period, however, if an affidavit's purpose is to establish the authority of the affiant to sign the petition on behalf of the entity for which the person signed. Necessary parties or their representatives are entitled to comment on these affidavits. (Sec. 709.032(C).)

The bill still limits *amendment of the petition* "without further notice, etc." to situations in which the amendment will not add to the territory included in the original petition. Amendments must be made at least 15 days before the hearing; they require, similar to current law, the consent of the agent for the petitioners and the leave of the board. (New sec. 709.031(B).)

Currently, the board may refer the description and the map or plat of the territory to be annexed to the *county engineer* for a *report on their accuracy*; this reference can occur at any time prior to 30 days before the hearing date (sec. 709.031(C)). The bill instead requires the clerk of the board, within five days after the petition is filed, to refer to the engineer for a report on their accuracy, the legal description *of the perimeter*, and the map or plat, of the territory. The engineer then has until 25 days before the hearing to file a written report with the board based on the engineer's findings. The board also may rerefer any legal description of the perimeter, or map or plat, that has been revised to the engineer for a report on its accuracy. (For example, if the petition was amended and territory was removed, then the boundaries of the territory to be annexed must be adjusted to reflect that amendment.) The engineer's report on a revised legal description of the perimeter, or revised map or plat, must be filed with the board on or before the hearing date. None of the engineer's reports are conclusive upon the board, and failure of the

engineer to make any of these reports does not affect the jurisdiction or duty of the board to proceed with the annexation process. (New sec. 709.031(A) and (B).)

At the hearing, the *"necessary parties"*--the agent for the petitioners or the agent's representative, each township any portion of which is included in the territory proposed for annexation or its representative, and the municipal corporation to which annexation is proposed or its representative--are entitled to present evidence, examine and cross-examine any witnesses, and comment on all evidence (sec. 709.032(A) and (C)).[1] The board is required to make a *record of the hearing*, by electronic means or by some other suitable method. If a request, accompanied by a deposit to pay the costs, is filed with the board not later than seven days before the hearing, the board must provide an official court reporter to record the hearing. The record of the hearing need not be transcribed unless a request, accompanied by an amount to cover the cost of transcribing the record, is filed with the board. (Sec. 709.032(B).)

The bill retains the authorization for an owner who signed the petition to seek the *board's removal of the signature* on grounds that it was obtained by fraud, duress, undue influence, or misrepresentation. But the bill specifically subjects any witness or owner who testifies on that proposed removal to cross-examination by the previously mentioned "necessary parties" to the annexation proceedings. (Sec. 709.032(D).)

After the hearing, the board, by resolution, must issue *findings* as to whether, based upon a preponderance of the substantial, reliable, and probative evidence, each of the *following conditions* has been met (sec. 709.033(A)):

(1) The petition meets all the statutory requirements for annexation petitions filed by landowners and was filed in the required manner.

(2) The persons who signed the petition are owners of real estate located in the territory proposed for annexation, and the number of valid signatures on the petition at the time the petition was filed constituted a majority of those real estate owners.

(3) The municipal corporation has complied with the requirements for a statement regarding what services it will provide, and an approximate date by which it will provide them, to the territory proposed for annexation.

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[1] *Under current law and the bill, any person (such as an owner of real estate in the territory proposed to be annexed) may appear at the hearing to support or contest the granting of the petition, or may submit affidavits for the board's consideration (sec. 709.032(C)).*

(4) As under current law, the territory in the petition is not unreasonably large.

(5) On balance, the *general good of* the *territory* proposed to be *annexed* will be served, *and* the *benefits* to the *territory* proposed to be *annexed and* the *surrounding area* will *outweigh* the *detriments to* the *territory* proposed to be *annexed and* the *surrounding area*, if the petition is granted. As used in this context, "surrounding area" means the territory within the unincorporated area of any township *located one-half mile or less from* any of the *territory* proposed to be *annexed*.

(6) No street or highway will be divided or segmented by the boundary line between a township and the municipal corporation as to create a road maintenance problem, or, if a street or highway will be so divided or segmented, the municipal corporation has agreed, as a condition of the annexation, that it will assume the street's or highway's maintenance.

If the board finds, based upon a preponderance of the evidence, that *all of the conditions described in (1) through (6) above have been met*, it must *grant* the annexation. If it determines that one or more of the conditions described in (1) through (6) above have not been met, the board must deny the annexation. The board is required, within 30 days after the hearing, to enter upon its journal a resolution that states its findings and that so grants or denies the annexation. (Sec. 709.033(A) and (B).)

The bill requires the clerk of the board to send a certified copy of the board's resolution, once it is journalized, to the agent for the petitioners, the clerk of the legislative authority of the municipal corporation to which annexation is proposed, the clerk of each township in which the territory proposed for annexation is located, and the clerk of the board of county commissioners of each county in which the territory proposed for annexation is located other than the county in which the petition is filed. The clerk must take no further action for 30 days after the date of journalization. (Sec. 709.033(B).)

If the petition is granted and if *no appeal* has been filed at the end of 30 days after the journalization of the board's resolution, the clerk must deliver a certified copy of the entire record of the annexation proceedings, including any available copy of the recording of the proceedings and exhibits presented at the hearing, to the auditor or the clerk of the legislative authority of the municipal corporation. The municipal corporation then must proceed as under current law. *If the petition is denied* and if no appeal is timely filed, the clerk must send a certified copy of the resolution to the agent for the petitioners and to the clerk of the municipal corporation. (Secs. 709.033(C) and 709.04.)

If an appeal is filed in a timely manner under section 709.07 of the Revised Code from the determination of the board granting or denying the petition, the clerk of the board must take further action only in accordance with that section (see "***Court appeals***," below) (sec. 709.033(D)).

Special procedures if all owners sign the petition

Overview

When a landowners' petition is filed that includes the signatures of *all* of the owners of real estate in the unincorporated territory proposed for annexation and that, in addition to meeting the requirements for a landowners' petition, includes a request that one of the *three special procedures* described in this portion of the analysis be applied in lieu of the regular statutory annexation procedures, then that special procedure applies. But, as with the regular statutory annexation procedures, before any annexation is complete, the legislative authority of the municipal corporation to which annexation is proposed must vote to accept the landowners' petition for annexation. (Sec. 709.021(A), (B), and (C).)

Annexation with the consent of all parties

The *first special procedure* available when a landowners' petition includes the signatures of all of the owners of real estate in the unincorporated territory proposed for annexation permits an abbreviated annexation process because *all parties*, including the municipal corporation to which annexation is proposed, each township any portion of which is included in the territory proposed for annexation, and the agent for the petitioners, have consented to the annexation (secs. 709.021(D) and 709.022(A)). The annexation petition that includes a request for this special procedure must be accompanied by a certified copy of an annexation agreement or of a cooperative economic development agreement that has been entered into by the municipal corporation and each township in which any portion of the territory proposed for annexation is located. Upon receipt of the petition and applicable agreement, the board of county commissioners, at its next regular session, is required to enter upon its journal a resolution granting the annexation, *without holding a hearing*. (Sec. 709.022(A).)

Landowners who sign a petition requesting annexation under this special procedure expressly waive their right to appeal any action taken by the board. *There is no appeal in law or equity from the board's decision*. (Sec. 709.022(B).) After the board grants the petition, the clerk of the board is required to deliver a certified copy of the entire record of the annexation proceedings to the auditor or the clerk of the legislative authority of the municipal corporation to which annexation is proposed (sec. 709.022(C)).

Annexation of land that is not excluded from a township

The *second special procedure* available when a landowners' petition includes the signatures of all of the owners of real estate in the unincorporated territory proposed for annexation relates to the annexation by a municipal corporation of land that is not to be excluded from a township (sec. 709.023(A)).[2] Under this special procedure, once the petition is filed with the clerk of the board of county commissioners, the clerk must enter the petition upon the board's journal at the next regular session of the board. This entry is the board's first official act on the petition. Within five days after the petition is filed, the agent for the petitioners must notify the clerk of the legislative authority of the municipal corporation to which annexation is proposed, the clerk of each township any portion of which is included in the territory proposed for annexation, and the clerk of the board of county commissioners of each county in which the territory proposed for annexation is located other than the county in which the petition is filed. The notice must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice. The notice must refer to the time and date when the petition was filed and the county in which it was filed, and must have attached a copy of the petition and its accompanying documents. Proof of service of the notice must be filed with the board of county commissioners with which the petition was filed. (Sec. 709.023(B).)

Within 20 days after the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed must adopt an ordinance or resolution stating *what services* the municipal corporation will provide, and an

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[2] *Under the Township Law, if the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or, due to change, a municipal corporation includes territory in more than one township, the legislative authority of the municipal corporation is permitted to petition the board of county commissioners for either a change in township lines (to make them wholly or partially identical with the municipal corporation's limits) or to erect a new township out of the portion of a township included within the limits of the municipal corporation. If such a petition is made by a city, the board is required to change the township boundaries or erect a new township. If, however, the petition is made by a village, the board is permitted, although not required, to make the requested changes. (Sec. 503.07, not in, but referred to in, the bill.) If a municipal corporation does not petition the board, or if the request is made by a village and denied by the board, the land remains part of both the municipal corporation and the township.*

Subsequent references to the prohibited "exclusion" from a township of annexed territory mean exclusion in the manner described above.

approximate date by which it will provide those services, upon annexation, to the territory proposed for annexation. The municipal corporation is entitled in its sole discretion, however, to provide to that territory, upon its annexation, services in addition to those mentioned in the ordinance or resolution. (Sec. 709.023(C).)

In addition, if the territory proposed for annexation is subject to county or township zoning regulations at the time the petition is filed, the legislative authority of the municipal corporation also must adopt an ordinance or resolution stating that, if the territory is annexed and becomes subject to zoning by the municipal corporation and that municipal zoning permits uses in the annexed territory that the *municipal corporation* determines are *clearly incompatible* with the uses permitted under "current" county or township zoning regulations in the adjacent land remaining within the township from which the territory was annexed, the legislative authority of the municipal corporation will require, in the zoning ordinance permitting the incompatible uses, the *owner* of the annexed territory *to provide a buffer* separating the use of the annexed territory and the adjacent land remaining within the township.[3] For purposes of this provision, a "buffer" includes open space, landscaping, fences, walls, and other structured elements; streets and street rights-of-way; and bicycle and pedestrian paths and sidewalks. (Sec. 709.023(C).)

Landowners *who sign a petition* requesting annexation under this special procedure, by their signature, waive (1) any rights they may have to sue on any issue relating to a municipal corporation requiring a buffer under the circumstances described above and (2) any rights to seek a variance that would relieve or exempt them from that buffer requirement (sec. 709.023(A)).[4] Owners of land that *remains within the township* whose territory was annexed and that is adjacent to the annexed territory who are directly affected by the failure of the annexing municipal corporation to enforce compliance with such a buffer requirement, may commence a civil action in the court of common pleas to enforce compliance. This action must be commenced within 60 days after the date of the vote by the legislative authority of the annexing municipal corporation adopting the zoning ordinance that includes the buffer requirement. (See **COMMENT**.) (Sec. 709.023(I).)

The clerk of the legislative authority of the municipal corporation to which annexation is proposed must file the ordinances or resolutions pertaining to services and a potential buffer requirement with the board of county commissioners within

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[3] *It is not clear what "current" is intended to mean in this provision. It could mean what is "current" at the time an annexation petition is filed under the special procedure of that section, or it could mean what is "current" when an annexing municipal corporation adopts or amends a zoning ordinance to encompass newly annexed territory.*

[4] *This waiver does not extend to successor landowners.*

20 days following the date that the petition is filed. The board must make these ordinances or resolutions available for public inspection. (Sec. 709.023(C).)

Within 25 days after the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed and each township any portion of which is included in the territory proposed for annexation may adopt and file with the board of county commissioners an ordinance or resolution either consenting or objecting to the proposed annexation. An objection must be based upon a failure of the petition to meet any of the conditions listed in the "dot points" in the second paragraph below. Failure of the municipal corporation or any of those townships to timely file an ordinance or resolution consenting or objecting to the proposed annexation will be deemed to constitute consent to the proposed annexation. (Sec. 709.023(D).)

If the municipal corporation and each affected township files an ordinance or resolution *consenting to the proposed annexation*, the board, at its next regular session, must enter upon its journal a resolution granting the proposed annexation. (Sec. 709.023(D).) There is no appeal in law or equity from the board's entry of this resolution, but any party may seek a writ of mandamus to compel the board to perform that duty or any other duty related to this procedure (sec. 709.023(G)).

If either the municipal corporation or an affected township files an ordinance or resolution within the 25-day period *objecting* to the proposed annexation, the board of county commissioners must review the petition, not less than 30 or more than 45 days after its filing, to determine if all of the following conditions are met (sec. 709.023(E)):

- The petition meets the requirements of and was filed in the manner required for petitions signed by all landowners.
- The persons who signed the petition are owners of real estate located in the territory proposed for annexation and constitute all of the owners of real estate in that territory.
- The territory proposed for annexation does not exceed 350 acres.
- The territory proposed for annexation shares a contiguous boundary with the municipal corporation to which annexation is proposed for a continuous length of at least 10% of the perimeter of the territory proposed for annexation.
- The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed for annexation.

- The municipal corporation to which annexation is proposed has agreed to provide to the territory proposed for annexation the services specified in its *ordinance or resolution pertaining to services* mentioned above.

- If a street or highway will be divided or segmented by the boundary line between the township and the municipal corporation as to create a road maintenance problem, the municipal corporation has agreed as a condition of the annexation to assume the maintenance of that street or highway or otherwise to correct the problem.

Under this special procedure, as noted above, an ordinance or resolution of a municipal corporation or affected township objecting to a proposed annexation must be based solely upon the petition's failure to meet one or more of the conditions set forth above (sec. 709.023(D)).

If the petition is not granted upon the consent of the municipal corporation and all affected townships but the board of county commissioners, upon its review of the petition as described above, finds that *each condition has been met*, the board, not less than 30 or more than 45 days after the petition is filed, must enter upon its journal a resolution granting the annexation. There is no appeal in law or equity from the board's entry of this resolution, but any party may seek a writ of mandamus to compel the board to perform that duty or any other duty related to this special procedure. (Secs. 709.023(F) and (G).)

If the board of county commissioners, upon its review of the petition as described above, finds that *one or more of the conditions has not been met*, it must enter upon its journal a resolution that *converts* the special procedure petition into one filed in accordance with the general landowners' petition provisions of the Municipal Annexation Law (see previous discussion of sec. 709.02). If the special procedure petition is so converted, the resulting general landowners' petition must be processed using the date the petition was filed under the special procedure as its date of filing for purposes of the general landowners' petition provisions. The entry of the board's conversion resolution upon its journal constitutes its first official act on the general landowners' petition, and the board is required to set a hearing on that petition within five days after the date of that journalization. The notifications required under the general landowners' petition provisions, however, are deemed to be waived. The legislative authority of the municipal corporation to which annexation is proposed may adopt and file a revised ordinance or resolution for purposes of those provisions, stating what services the municipal corporation will provide, and an approximate date by which it will provide them, or, if no such ordinance or resolution is adopted and filed, its services-related ordinance or resolution filed under this special procedure is deemed to meet the requirements of the general landowners' petition provisions. (Sec. 709.023(F).)

Finally, under this special procedure, if the *petition is granted*, either by unanimous consent or by the finding of the board of county commissioners that all of the required conditions are met, the clerk of the board must deliver a certified copy of the entire record of the annexation proceedings (minus any recording or hearing exhibits) to the auditor or the clerk of the legislative authority of the municipal corporation to which annexation is proposed (sec. 709.023(G)). Notwithstanding anything to the contrary in the provision of existing law pertaining to the conforming of township boundaries (see Footnote 2), unless otherwise provided in the annexation agreement or in a cooperative economic development agreement, territory annexed into a municipal corporation pursuant to this special procedure must not at any time be excluded from the township, and remains subject to the township's real property taxes (sec. 709.023(H)).

Annexation for undertaking a significant economic development project

The *third special procedure* available when a landowners' petition includes the signatures of all of the owners of real estate in the unincorporated territory proposed for annexation relates to the annexation of land for the purpose of undertaking a *significant economic development project*. A "significant economic development project" means one or more economic development projects that can be classified as industrial, distribution, high technology, research and development, or commercial; residential and retail uses may be included if they are "ancillary" to the other permissible aspects of a project. In order to be classified as a "significant" economic development project, the project must satisfy the following: (1) total private real and personal property investment in the project must be in excess of $10 million through land and infrastructure, new construction, reconstruction, installation of fixtures and equipment, or the addition of inventory and (2) the project must create additional annual payroll in excess of $1 million. Further, to be so classified, the state Director of Development must certify that the project satisfies both of those conditions. For the purpose of condition (1), investment solely related to the ancillary residential and retail elements of a project must be excluded, as well as any payments in lieu of taxes made by property owners on account of tax increment financing-type property tax exemptions granted by a subdivision. For the purpose of condition (2), payroll arising solely out of any retail elements of a project must be excluded. (Sec. 709.024(A).)

Under this special procedure, once the petition is filed with the clerk of the board of county commissioners, the clerk must enter the petition upon the board's journal at the next regular session of the board. This entry is the board's first official act on the petition. Within five days after the petition is filed, the agent for the petitioners must *notify* the clerk of the legislative authority of the municipal corporation to which annexation is proposed, the clerk of each township any portion of which is included in the territory proposed for annexation, and the clerk of the

board of county commissioners of each county in which the territory proposed for annexation is located other than the county in which the petition is filed. The notice must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice. The notice must refer to the date and time when the petition was filed and the county in which it was filed, and must have attached a copy of the petition and its accompanying documents. Proof of service of the notice must be filed with the board of county commissioners with which the annexation petition was filed. (Sec. 709.024(B).)

Within 30 days after the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed and each township any portion of which is included in the territory proposed for annexation *may adopt* and file with the board of county commissioners an ordinance or resolution either consenting or objecting to the proposed annexation. An objection must be based solely on the petition's failure to satisfy the conditions specified in the "dot points" in the third paragraph below, upon which the board must make findings of fact. Failure of the municipal corporation or any of those townships to timely file an ordinance or resolution consenting or objecting to the proposed annexation will be deemed to constitute consent to the proposed annexation. (Sec. 709.024(C)(1).)

The municipal legislative authority, within 20 days after receiving the notice mentioned above, *must adopt*, by ordinance or resolution, a statement indicating what *services* it will provide (or cause to be provided), and an approximate date by which it will provide them (or cause their provision), to the territory proposed for annexation. If a hearing will be held on the petition, the municipal legislative authority is required to file the statement with the clerk of the board of county commissioners at least 20 days prior to the hearing. (Sec. 709.024(C)(2).)

If the municipal corporation to which annexation is proposed, each township any portion of which is included in the territory proposed for annexation, and the agent for the petitioners *all consent to the annexation, no hearing* will be held. The board of county commissioners, at its next regular session, must enter upon its journal a resolution granting the annexation. There is no appeal in law or equity from the board's entry of this resolution. Once the resolution is entered upon the journal, the clerk of the board must deliver a certified copy of the entire record of the annexation proceedings to the auditor or the clerk of the legislative authority of the municipal corporation to which annexation is proposed (secs. 709.024(D) and 709.033(C)(1)).

If any of the parties *objects to the proposed annexation* or *fails to adopt an ordinance or resolution consenting or objecting* to the proposed annexation, a hearing must be held on the petition. The board of county commissioners must hear the petition at its next regular session and must notify the agent for the petitioners of

the hearing's date, time, and place. The agent for the petitioners must notify the parties of that date, time, and place. At the hearing, the municipal corporation, any township a portion of which is included in the territory proposed for annexation, the agent for the petitioners, and any owner of real estate within the territory proposed to be annexed are entitled to appear for the purpose of supporting or contesting the granting of the petition. (Sec. 709.024(E).)

The board of county commissioners, within 30 days after such a hearing, must enter upon its journal a resolution granting or denying the proposed annexation. The resolution must include specific findings of fact as to whether or not each of the *following conditions* has been met (sec. 709.024(F)):

- The petition meets all of the requirements of and was filed in the manner required for petitions signed by all landowners.

- The persons who signed the petition are owners of real estate located in the territory proposed to be annexed and constitute all of the owners of real estate in that territory.

- No street or highway will be divided or segmented by the boundary line between a township and the municipal corporation as to create a road maintenance problem, or the municipal corporation has agreed, as a condition of annexation, to assume the maintenance of any street or highway so divided or segmented.

- The municipal corporation has adopted the required ordinance or resolution indicating what services it will provide (or cause to be provided), and an approximate date by which it will provide them (or cause their provision), to the territory proposed to be annexed.

- The state Director of Development has certified that the project satisfies the conditions necessary for it to constitute a significant economic development project. The Director's certification is binding on the board of county commissioners.

The board of county commissioners must grant the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of those conditions has been met. If the board grants the annexation, the clerk of the board must deliver a certified copy of the entire record of the annexation proceedings to the auditor or the clerk of the legislative authority of the municipal corporation to which annexation is proposed. (Secs. 709.024(F) and 709.033(C)(1).)

Only an owner who signed the petition is permitted to appeal a decision of the board of county commissioners *denying* the proposed annexation (see "***Court appeals***," below). If the board *grants* the annexation petition, there is no appeal in law or equity, and the annexing municipal corporation cannot exclude the annexed territory from the townships involved unless an annexation agreement or a cooperative economic development agreement permits the exclusion. Nonexcluded annexed territory remains subject to township real property taxation. (Sec. 709.024(G) and (H).)

Finally, a municipal corporation to which annexation is proposed under this special procedure is entitled in its sole discretion to provide to the territory proposed for annexation, upon annexation, services in addition to those described in the services-related ordinance or resolution adopted by its legislative authority (sec. 709.024(I)).

Petition by a municipal corporation

Current law

Current law provides that annexation of contiguous township territory on petition of a municipal corporation is to be accomplished according to the same procedures set forth for landowners' petitions, "so far as applicable" (sec. 709.16(A)).[5] *Special procedures* are provided, however, for annexing *certain government-owned lands*. If the territory sought to be annexed is owned by the municipal corporation filing the petition and is located entirely within the same county as the municipal corporation, the board of county commissioners *must*, upon receiving the petition, pass a resolution approving the annexation and making appropriate fiscal adjustments (sec. 709.16(B)). If the territory sought to be annexed is owned by the county, the board of county commissioners *may*, but is not required to, upon receiving the petition, pass a resolution approving the annexation and making appropriate fiscal adjustments (sec. 709.16(C)). No hearing is required under these procedures.

For *situations other than* the two described in the preceding paragraph, the annexation is subject to *approval at an election* in the unincorporated area of the township from which territory is sought to be annexed. If a majority of electors favor annexation, proceedings to complete the annexation must begin within 90 days. But electoral approval of an annexation is only advisory, and final approval rests with

[5] *Current law governing a municipal corporation's adoption of an ordinance authorizing a proposed annexation of township territory and subsequent preparation of an annexation petition is contained in sections 709.13, 709.14, and 709.15, all of which the bill amends for technical or conforming purposes.*

the board of county commissioners, following the procedures required for landowners' petitions. If a majority of the electors are against annexation, no further proceedings may be had for five years. (Sec. 709.17.)[6]

Changes proposed by the bill

In addition to being part of a landowners' petition in an annexation that includes municipally owned land, a municipal corporation may petition for annexation under the bill's special procedures described below (new section 709.16). A municipal corporation may petition the board of county commissioners to annex contiguous territory owned by (1) the municipal corporation, (2) a county, or (3) *the state*. Once the petition has been filed, the clerk of the board is required, at the board's next regular session, to enter the petition upon the board's journal. This entry is the first official act of the board upon the petition. (New sec. 709.16(A).) The board is required to act on a petition filed under the special procedures within 30 days after the petition is received (new sec. 709.16(E)). The following provisions apply to annexations under these special procedures, depending on whether the territory to be annexed is owned by the municipal corporation, a county, or the state:

(1) Similar to current law, if the territory is owned by the municipal corporation, the board must grant the annexation (new sec. 709.16(B)).

(2) Similar to current law, if the territory is owned by a county, the board has discretion whether to approve or disapprove the annexation (new sec. 709.16(C)).

(3) If the territory is owned by the state, the board must grant the annexation if and only if the Director of Administrative Services files with the board a written consent to the annexation (new sec. 709.16(D)).

An annexation, under these special procedures, is complete when the board of county commissioners enters a resolution granting the annexation upon its journal. There is no appeal in law or equity from the granting of an annexation under these special procedures. (Sec. 709.16(B), (C), (D), and (F).)

If a municipal corporation purchases real property below its appraised fair market value, then sells or agrees to sell that property back to the person who

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[6] *The bill outright repeals the sections of current law discussed in this portion of the analysis as well as a statute pertaining to jurisdiction when a municipal corporation or territory sought to be annexed is located, respectively, in two or more counties or another county (repeal of secs. 709.16, 709.17, and 709.18 in Section 2). But, the bill enacts some similar provisions in a new section 709.16, discussed below.*

originally sold it to the municipal corporation, any annexation of that property completed under an above-described special procedure will be void. The property again must become part of the township from which it was annexed, if it still exists. If the township no longer exists, the board of county commissioners is required to attach the annexed territory to another township. (New sec. 709.16(G).)[7]

Finally, township territory annexed under an above-described special procedure must not be excluded from the township from which it was annexed (new sec. 709.16(H)).

Annexation agreements

The bill permits the legislative authority of a municipal corporation, by ordinance or resolution, and the board of township trustees of one or more townships, by resolution, to enter into annexation agreements (sec. 709.192(A)). The *state* may become a party to an annexation agreement in order to promote economic development or to provide appropriate state functions and services to any part of the state, but only upon the approval of the Director of Development and with the written consent of the legislative authority of each of the governmental entities that is a party to the agreement (sec. 709.192(F)). A *board of county commissioners*, by resolution, or *any person*, upon request, also may become a party to an annexation agreement, but only upon the approval of the legislative authority of each of the governmental entities that is a party to the agreement and, if the state is a party to the agreement, of the Director of Development (sec. 709.192(G)).

An annexation agreement may be entered into for any period of time and may be amended at any time in the manner it was initially authorized (sec. 709.192(B)). Annexation agreements must not be in derogation of the "home rule" powers granted to municipal corporations by the Ohio Constitution or any municipal charter, and must not include an agreement for municipal corporations and townships to share proceeds of any tax levy, although those proceeds may be used to make payments authorized in an annexation agreement (sec. 709.192(D)).

Annexation agreements may provide for any of the following (sec. 709.192(C)):

(1) The territory to be annexed;

(2) Any periods of time during which no annexations will be made and any areas that will not be annexed;

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[7] *It is not clear how, on a practical level, this provision would be implemented.*

(3) Land use planning matters;

(4) The provision of joint services and permanent improvements within incorporated or unincorporated areas;

(5) The provision of services and improvements by a municipal corporation in the unincorporated areas;

(6) The provision of services and improvements by a township within the territory of a municipal corporation;

(7) The payment of service fees to a municipal corporation by a township;

(8) The payment of service fees to a township by a municipal corporation;

(9) The reallocation of minimum mandated levies established under the Tax Levy Law between a municipal corporation and a township *in areas annexed* after the bill's effective date;[8]

(10) The issuance of notes and bonds and other debt obligations by a municipal corporation or township for public purposes authorized by or under an annexation agreement, and provision for the allocation of the payment of the principal of, interest on, and other charges and costs of issuing and servicing the repayment of the debt;

(11) Agreements by a municipal corporation and township, with owners or developers of land to be annexed, or with both those landowners and developers, concerning the provision of public services, facilities, and permanent improvements;

(12) The application of tax abatement statutes within the territory covered by the annexation agreement subsequent to its execution;

(13) The exclusion of newly annexed territory from the original township and the provision of services to that territory;

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[8] *The annexation agreement must be submitted with the municipal corporation's annual tax budget and the township's annual tax budget to the county auditor under the Tax Levy Law in order for the reallocation to apply. If the annexation agreement is so submitted, the county auditor must allocate, to the extent possible, the minimum levies within the ten-mill limitation for the current expense and debt service of the municipal corporation and township in accordance with that agreement (sec. 5705.31(D)).*

(14) Payments in lieu of taxes, if any, to be paid to a township by a municipal corporation, which payments may be in addition to or in lieu of other municipal corporation payments to the township required by law;

(15) Any other matter pertaining to the annexation or development of publicly or privately owned territory.

If any party to an annexation agreement believes the other party has failed to perform its part of any provision of that agreement, including the failure to make any payment of moneys due under the agreement, that party must give notice to the other party clearly stating what breach has occurred. The party receiving the notice has 90 days from its receipt to cure the breach. If the breach has not been cured within that 90-day period, the party that sent the notice may sue for recovery of the money due under the agreement, sue for specific enforcement of the agreement, or terminate the agreement upon giving notice of termination to all of the other parties. (Sec. 709.192(E).)

The bill requires that annexation agreements and the powers the bill grants regarding those agreements be liberally construed to allow parties to the agreements to carry out the agreements' provisions relevant to government improvements, facilities, and services, and to promote and support economic development and the creation and preservation of economic opportunities (sec. 709.192(H)).

Municipal payments to compensate townships for certain lost tax revenues

Current law

Current law prescribes three alternative schedules of municipal corporation payments to a township to compensate the township for the loss of certain tax revenues from territory being annexed from it. These schedules vary with the length of the "annexation period."[9] Current law provides that, for each of the three schedules, the board of township trustees, upon written notification to the county auditor and the chief executive officer of each municipal corporation that annexes township territory during an annexation period, may decline to accept the required payments (sec. 709.19(I)). It also provides that if, after an annexation period for

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[9] *Current law defines "annexation period" as a period of one, two, or three consecutive 12-month periods, whichever is less, during which one or more municipal corporations annex territory of a township that includes at least 15% but less than 100% of the total taxable value of the real, public utility, and tangible personal property subject to taxation in the township in the "base year." No annexation period is allowed to include a month that is part of another annexation period. "Base year" is defined as the calendar year immediately preceding an annexation period. (Sec. 709.19(A)(1) and (2).)*

which payments are being made or are to be made to a township by one or more municipal corporations, the remainder of the unincorporated territory of the township is annexed to another municipal corporation or incorporates as a municipal corporation, these payments generally are required to be made to the municipal corporation to which the remainder of the township territory was annexed or to the municipal corporation incorporated from the remainder of the township territory (sec. 709.19(G)). Current law, however, permits a municipal corporation to decline to accept the required payments if the situation described in the preceding sentence occurs (sec. 709.19(I)).

Under the *first schedule*, if the annexation of territory of any township by one or more municipal corporations constitutes *an annexation period of 12 consecutive months*, each municipal corporation that annexed territory of that township during that annexation period generally is required to pay the township the amounts indicated below during each of the seven years following the annexation period (sec. 709.19(B)):

(1) In each of the first three years, 100% of the "township taxes in the annexed territory";[10]

(2) In the fourth year, 80% of the township taxes in the annexed territory;

(3) In the fifth year, 60% of the township taxes in the annexed territory;

(4) In the sixth year, 40% of the township taxes in the annexed territory;

(5) In the seventh year, 20% of the township taxes in the annexed territory.

Under the *second schedule*, if the annexation of territory of any township by one or more municipal corporations constitutes *an annexation period of 13 to 24 consecutive months*, each municipal corporation that annexed territory of that township during that annexation period generally is required to pay the township the amounts indicated below during each of the six years following the annexation period (sec. 709.19(C)):

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[10] *"Township taxes in the annexed territory" is defined as the taxes against the real, public utility, and tangible personal property subject to taxation in the base year in territory annexed from the township to a municipal corporation during an annexation period or, if a municipal corporation is annexing an international airport that it owns, the taxes against the real, public utility, and tangible personal property that would have been subject to taxation in the annexed territory in the year immediately preceding the year in which the payment is to be made, if no annexation had occurred (sec. 709.19(A)(4)).*

(1) In each of the first two years, 100% of the township taxes in the annexed territory;

(2) In the third year, 80% of the township taxes in the annexed territory;

(3) In the fourth year, 60% of the township taxes in the annexed territory;

(4) In the fifth year, 40% of the township taxes in the annexed territory;

(5) In the sixth year, 20% of the township taxes in the annexed territory.

Under the *third schedule*, if the annexation of territory of any township by one or more municipal corporations constitutes *an annexation period of 25 to 36 consecutive months*, each municipal corporation that annexed territory of that township during that annexation period generally is required to pay the township the amounts indicated below during each of the five years following the annexation period (sec. 709.19(D)):

(1) In the first year, 100% of the township taxes in the annexed territory;

(2) In the second year, 80% of the township taxes in the annexed territory;

(3) In the third year, 60% of the township taxes in the annexed territory;

(4) In the fourth year, 40% of the township taxes in the annexed territory;

(5) In the fifth year, 20% of the township taxes in the annexed territory.

Current law also provides that, if a municipal corporation annexes an international airport that it owns, the municipal corporation is required to pay the township 100% of the township taxes in the annexed territory that would have been due the township, if no annexation had occurred, for each of the 25 years following the annexation (sec. 709.19(E)).

A municipal corporation that proposes to annex unincorporated territory of a township need not make any payment required under any of the three schedules if its legislative authority enters into *an agreement* with the board of township trustees of the township in which the territory to be annexed is located, whereby the municipal corporation agrees to make an *annual payment* to the township to compensate for lost tax revenues. The agreement must set forth the amount of the annual payment and the number of payments to be made (sec. 709.19(I) and sec. 709.191, not in the bill).

Changes proposed by the bill

In general. The bill replaces the three schedules described above with two new schedules of payments to be made by an annexing municipal corporation to a township and makes other changes, as described below. A municipal corporation that has annexed territory is required to make payments to the township from which the territory was annexed upon and only upon *exclusion* of that territory from the township. If, however, the municipal corporation's legislative authority enters into an agreement under the Municipal Annexation Law with the township from which the territory was annexed that makes alternate provisions regarding payments by the municipal corporation, then those payment provisions, and not the provisions detailed below, must be applied. (Sec. 709.19(B).)

First new schedule. Except as provided below, a municipal corporation that annexes territory must make the following payments to the township from which the territory is annexed with respect to *commercial and industrial real, personal, and public utility property taxes* (hereafter, covered taxes), using the property valuation for the year that the payment is due (sec. 709.19(C)(1)):[11]

(1) In the first through third years, 100% of the township taxes in the annexed territory that would have been due the township for the covered taxes if no annexation had occurred;

(2) In the fourth and fifth years, 80% of the township taxes in the annexed territory that would have been due the township for the covered taxes if no annexation had occurred;

(3) In the sixth and seventh years, 67.5% of the township taxes in the annexed territory that would have been due the township for the covered taxes if no annexation had occurred;

(4) In the eighth year, 62.5% of the township taxes in the annexed territory that would have been due the township for the covered taxes if no annexation had occurred;

(5) In the ninth through 11th years, 57.5% of the township taxes in the annexed territory that would have been due the township for the covered taxes if no annexation had occurred;

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[11] *Each "year" referred to in this portion of the analysis is a year following annexation and exclusion of the territory from the township under section 503.07 of the Revised Code.*

(6) In the 12th through 15th years, 42.5% of the township taxes in the annexed territory that would have been due the township for the covered taxes if no annexation had occurred.

If, however, the municipal corporation has granted *an exemption from covered taxes* for any annexed property, there can be *no reduction* in the payments owed to the township because of that exemption. The municipal corporation is required to make the above payments to the township, calculated as if the exemption had not occurred. (Sec. 709.19(C)(2).)

Second new schedule. A municipal corporation that annexes territory must make the following payments to the township from which the territory is annexed with respect to *residential and retail real property taxes*, using the property valuation for the year that the payment is due (sec. 709.19(D)):

(1) In the first through third years, 85% of the township taxes in the annexed territory that would have been due the township for the real property taxes if no annexation had occurred;

(2) In the fourth through seventh years, 52.5% of the township taxes in the annexed territory that would have been due the township for the real property taxes if no annexation had occurred;

(3) In the eighth through 11th years, 40% of the township taxes in the annexed territory that would have been due the township for the real property taxes if no annexation had occurred;

(4) In the 12th through the 15th years, 27.5% of the township taxes in the annexed territory that would have been due the township for the real property taxes if no annexation had occurred.

Miscellaneous. The bill does not affect the provisions in current law pertaining to a municipal corporation annexing an international airport that it owns or the payments that a municipal corporation must pay a township if it annexes such an airport (sec. 709.19(E) and (F)).

Court appeals

Current law

Grant of annexation. The exclusive remedy for challenging a decision of a board of county commissioners to *grant* an annexation is to file for an *injunction* under the Municipal Annexation Law.[12] Under this appellate procedure, after the

[12] In re Petition to Annex 320 Acres to the Village of S. Lebanon *(1992), 64 Ohio St.3d 585.*

board approves an annexation petition and within 60 days after it delivers the annexation papers to the auditor or the clerk of the legislative authority of the municipal corporation involved, a "person interested" and any other person who appeared at the board's annexation hearing may petition the court of common pleas for an injunction to restrain the municipal auditor or clerk from presenting the annexation papers to the municipal corporation's legislative authority (sec. 709.07(A)).

The *petition of a "person interested"* (this term appears to have been interpreted by the Ohio Supreme Court to refer to owners of real estate in the territory to be annexed) must set forth both (1) how the proposed annexation adversely affects the legal rights or interests of the petitioner and (2) the nature of the error in the proceedings before the board, or how the board's findings or order is unreasonable or unlawful. A *petition of any other person* described above need only state the nature of the error in the proceedings before the board, or how the board's findings or order is unreasonable or unlawful (but see the following paragraph, explaining a petitioner's burden of proof at the injunction hearing). (Sec. 709.07(A).)

Annexation proceedings are stayed during the pendency of the appellate action, if the court orders them stayed. The court may not hear the petition for the injunction until at least 20 days after the petition is filed, and the named defendants in the action are the municipal auditor or clerk as well as the agent for the petitioners in the annexation proceedings. (Sec. 709.07(B) and (C).) The court must dismiss the petition for the injunction unless it finds by "clear and convincing evidence" both of the following (sec. 709.07(D)):

(1) The annexation would adversely affect the legal rights or interests of the petitioner for the injunction.

(2) There was error in the annexation proceedings before the board of county commissioners or in the board's findings, or the board's decision was unreasonable or unlawful.

While a person (such as a township trustee) who appeared in the board's annexation hearing but who is not a "person interested" does not have to set forth in the petition for the injunction how the proposed annexation adversely affects the person's legal rights or interests, to obtain an injunction the person must still establish this matter in court. A 1985 Ohio court of appeals case indicates, in dicta, that this matter is not established by a statement of a board of township trustees that its interest is to preserve the territorial integrity of the unincorporated area of the township, combined with a financial interest in the revenue produced in the territory. *In re Petition for Annexation of 7.5622 Acres* (1985), 29 Ohio App.3d 130, 133. Another case has found that township trustees could not meet this requirement, but

could only benefit under the injunction proceeding in a tangential manner, where a party with an interest has an injunction granted on that party's own behalf. *Bd. of Trustees of Perry Twp. v. Cicchinelli* (1986), 35 Ohio App.3d 173, 178.

If the court finds that both conditions (1) and (2) listed above are present, it must enjoin the municipal auditor or clerk from presenting the annexation papers to the municipal corporation's legislative authority, but the injunction is not a bar to a subsequent application to the board of county commissioners to annex the same territory (sec. 709.07(E)). The clerk of the court must send a certified copy of the injunction to the municipal auditor or clerk, who must file it with the annexation papers (sec. 709.09, repealed by the bill).

If the court does not find both conditions present, it must dismiss the petition for the injunction and send a certified copy of the dismissal order to the municipal auditor or clerk. Proceedings on the annexation petition then continue as if there had never been a petition for the injunction. (Sec. 709.08, repealed by the bill.)

Denial of annexation. Under the Local Government Appellate Procedure Law (Chapter 2506.), persons whose rights are determined by a board of county commissioners have a right to appeal to the court of common pleas any board decision denying an annexation petition. In addition, a board of township trustees of a township that includes territory proposed for annexation which was represented at the board of county commissioners' annexation hearing has standing under the Local Government Appellate Procedure Law to appeal a *denial* of, but not a granting of, an annexation petition. [13]

Changes proposed by the bill

Appeal of the board's decision. The bill eliminates the special procedure for an injunction provided under current law and instead permits appeals under the Local Government Appellate Procedure Law. An appeal from an order of the board of county commissioners granting or denying a landowners' petition may be filed by (1) the agent for the petitioners, (2) any owner of real estate in the territory proposed for annexation, (3) any township in which territory proposed for annexation is located, and (4) the municipal corporation to which the territory is proposed to be annexed. The agent for the petitioners, any such township, and any such municipal corporation are "necessary parties" to any such appeal. (New sec. 709.07(A).)

With one exception, described below, an appeal from a decision of a board of county commissioners granting or denying a landowners' petition is to be governed

[13] In re Annexation of 311.8434 Acres *(1992), 64 Ohio St.3d 581.*

by and proceed under the Local Government Appellate Procedure Law. Filing a notice of appeal with the clerk of the board operates as a *stay of execution* upon that clerk and all parties to the appeal, which stay cannot be lifted until the court having jurisdiction over the proceedings enters a final order affirming or reversing the decision of the board and the time limits for an appeal of that decision have passed without a notice of appeal being filed. (New sec. 709.07(A).)

Any party filing an appeal from the court of common pleas or court of appeals decision in an annexation matter must serve on the clerk of the board of county commissioners a time-stamped copy of the notice of appeal. Upon issuance of a final order of any court regarding an annexation appeal, the clerk of the court must forward a certified copy of the court's order to the clerk of the board of county commissioners that rendered the annexation decision that was appealed. (New sec. 709.07(B).)

If, after all appeals have been exhausted, the final determination of the court is that the annexation petition *should be granted*, the board of county commissioners must enter upon its journal a resolution granting the annexation, if such a resolution has not already been journalized, and the clerk of the board must deliver a certified copy of that journal entry and the entire record of the annexation proceedings to the auditor or the clerk of the legislative authority of the municipal corporation to which annexation is proposed. The auditor or clerk then must present the annexation papers and a copy of the court's order to the legislative authority, which must either accept or reject the annexation petition at its next regular meeting. (New sec. 709.07(C).)

If, after all appeals have been exhausted, the final determination of the court is that the annexation petition *should be denied*, the board of county commissioners must enter upon its journal a resolution denying the annexation, if such a resolution has not already been journalized (new sec. 709.07(D)).

Effect of procedural errors

The bill changes a provision in current law regarding the effect of errors in annexation proceedings. The revised provision declares that no error, irregularity, or defect in proceedings under the Municipal Annexation Law renders them invalid *once (1) annexation has become final* and (2)(a) the annexed territory has been recognized as a part of the annexing municipal corporation, (b) taxes levied upon it as such have been paid, and (c) it has been subjected to the authority of the municipal corporation's legislative authority. (Sec. 709.21.)

The bill also specifies that the procedural requirements set forth in the Municipal Annexation Law are *directory* in nature and that *substantial compliance* with the requirements is sufficient to grant a board of county commissioners

jurisdiction to hear and render its decision on a petition filed under that law. A board must cure procedural defects and cannot deny a petition solely on the basis of those defects. (Sec. 709.015.)

Division of inside millage in annexed territory

The bill contains special provisions related to the allocation in the annual tax budget process of the minimum levies within the ten-mill limitation for the current expense and debt service of an annexing municipal corporation and a township whose territory is annexed. These special provisions apply only (1) *in the annexed territory*, (2) for those tax years in which annexed territory remains part of a township after annexation, and (3) for annexations that are granted on or after the bill's effective date.[14] (Sec. 5705.315.)

Under these circumstances, the minimum levy under the Tax Levy Law *as pertains to the annexed territory* is an amount that, when added to the minimum levies of the other overlapping subdivisions, equals ten mills or, if the amount would be *lower*, an amount equal to the minimum levy of the municipal corporation *or* township.[15] This formula is stated to be for the purpose of preserving the minimum levies of overlapping subdivisions so that the full amount of taxes within the 10-mill limitation may be levied to the extent possible. (Sec. 5705.315.)

Once determined, the minimum levy amount pertaining to the annexed territory then must be divided between the municipal corporation and the township. The amount to go to each is to be determined either by an agreement between them or, if no agreement can be reached and the amount to go to each cannot be determined otherwise, by dividing the available millage determined for the annexed territory so that the municipal corporation and the township each receive one-half. (Sec. 5705.315.)

Prospectivity and conforming provisions

The bill's revisions to the Municipal Annexation Law and the bill's other related provisions apply only to annexation petitions filed on or after April 1, 2001. Annexation petitions filed before that date must be processed under the current provisions of the Municipal Annexation Law. (Section 3.)

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[14] *It is unclear whether these provisions apply when there is an annexation agreement that provides otherwise.*

[15] *Presumably, the intent is that the* greater *of the minimum levy of the municipal corporation or of the township would be chosen; this may need clarification.*

Finally, in addition to cross-reference and other technical changes within the Municipal Annexation Law to reflect substantive revisions made by the bill in that law, the bill technically amends a statute pertaining to *agricultural districts* to repeal or modify certain cross-references within the statute to the proposed Municipal Annexation Law (sec. 929.02(B) and (E)).

COMMENT

Affected landowners in adjacent township territory may not know when an annexing municipal corporation *votes on a municipal zoning ordinance* that includes a buffer requirement for landowners in annexed territory and, consequently, know when the 60-day window to sue for enforcement of that requirement commences under section 709.023(I). In addition, this 60-day period must be shortened by whatever time is permitted in the annexing municipal corporation for a *referendum* petition to be filed, since the ordinance will not be effective until after, at least, that time. For example, if the statutory time period in section 731.29 of the Revised Code for a referendum is used (30 days), the adjacent township property owner only would have from the 31st to the 60th day to sue for compliance with the buffer requirement. If the annexing municipal corporation uses a longer referendum time period than 30 days, the window for the suit will be even shorter or nonexistent.

Under the bill, the landowner in the municipal corporation who should be complying with the buffer requirement must fail to complete the construction of the buffer within that same 60-day period in order for the adjacent township property owner to be able to sue for noncompliance with that requirement within that period. Possibly, a municipal landowner must begin construction of a buffer, *which is not yet legally required*, before the referendum time runs or risk failing to be in compliance with the buffer requirement within the 60-day period. It is not clear then how these buffer requirement provisions would work practically.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-11-00	p.	1586
Reported, S. State & Local Gov't & Veterans Affairs	09-20-00	p.	2088
Passed Senate (27-6)	09-20-00	pp.	2097-2098
Reported, H. Local Government & Townships	---		---