



Am. Sub. S.B. 5

124th General Assembly
(As Passed by the General Assembly)

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Effective date: *

ACT SUMMARY

- Revises former 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.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Permits participation of a board of township trustees in annexation proceedings.
- 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 and to issue subpoenas in regard to regular, not special, 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 must be made only 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.

- Makes other changes to the Municipal Annexation Law.

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CONTENT AND OPERATION

Background

Former law provided two methods for the annexation of township territory to an adjacent or contiguous municipal corporation: (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 act changes the procedures associated with both 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

Former law--in general

Petition. Owners of real estate adjacent to a municipal corporation formerly could petition the relevant board of county commissioners to have the *adjacent* unincorporated territory annexed to the municipal corporation. Their petition had to 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 applied when a municipal corporation was situated in two or more counties, or the territory to be annexed was situated in a different county from that in which the municipal corporation or some part of it was situated. In these cases, the annexation proceedings took place in the county in which the territory to be annexed, or some part of it, was situated. If the territory to be annexed was partly in the county in which the municipal corporation was situated and partly in another county, the proceedings had to take place in the county in which there was the largest number of qualified voters residing in the territory to be annexed. (Sec. 709.11.)

Removal of signatures. Any landowner who signed an annexation petition could 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 was delivered to the clerk of the landowner's township. After that time, a signature could be removed only at the hearing on the petition and only if a majority of the board of county commissioners found 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 made by the act

Petition provisions. The act changes the word "adjacent" to "contiguous" and provides that owners of real estate *contiguous* to a municipal corporation may 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 act modifies former law's definition of an "owner" to *include* the state or any political subdivision, and to *exclude* railroad, utility, street, and highway rights-of-way held

in fee, by easement, or by dedication and acceptance. The state or any political subdivision, however, must not be considered an owner and must not be included in determining the number of 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 before 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 former 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 act authorizes a board of county commissioners to establish a *reasonable fee* or schedule of fees to cover its costs incurred in annexation proceedings. The board also may require the payment of an initial deposit when any annexation petition 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 annexation petitions. (Sec. 709.014(A).)



In lieu of a "full description" of the territory proposed for annexation as required under former 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 act 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* (1) in the territory proposed for annexation and (2) located adjacent to that territory or directly across the road from it when the road is adjacent to that territory, 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 former law, may be an official, employee, or agent of the municipal corporation to which annexation is proposed (sec. 709.02(C)(3)).

The petition must include, as under former law, 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. 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 act 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 former law. The act also 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 act replaces the former 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 former sec. 709.11 in Section 2).

Township expenditure of funds. Under former law, a board of township trustees could enter into a contract with, and 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 act 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 of township trustees 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

Former law

Notice. Once an annexation petition was filed with the board of county commissioners, the board's clerk had to 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 was required to send written notice of the filing of the petition to the legislative authority of the municipal corporation to which annexation was proposed and to the clerk of each township any portion of which was included within the territory proposed to be annexed. (Sec. 709.03.)

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

Board action. The petition could 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 did not add to the territory embraced in the petition. If an amendment was permitted that added new territory, the board was required to appoint another time for the hearing, and notice was given of that hearing as described above. (Sec. 709.032.)



The board had to grant or deny the petition within 90 days after the hearing. The board was required to allow the annexation if it found all of the following (sec. 709.033):

- (1) The petition contained all matter required by statute, as generally described above under "Petition," above.
- (2) The required notice had been published.
- (3) The signers of the petition were 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 was proposed to be annexed had adopted a statement of services to be provided, upon annexation, to the territory proposed for annexation.
- (5) The territory included in the petition was not unreasonably large, the map or plat of the territory was accurate, and the general good of the territory would be served if the petition was granted.

Of these conditions, only the one pertaining to whether the territory was unreasonably large gave the board much discretion. All but one of the other conditions called for objective factual determinations, and that one--"the general good of the territory . . . will be served"--had been construed to mean primarily the general good as perceived by the owners of the territory sought to be annexed. The reason for this was that the legislative intent, as interpreted by the courts, was to allow a property owner freedom to choose the governmental subdivision in which the owner desired 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 granted an annexation petition and delivered its orders 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 was proposed, the legislative authority had to be presented with the orders and related papers. It was required to accept or reject the proposed annexation within 120 days after being presented with these documents; failure to act within that period was deemed to be a rejection of the petition. (Secs. 709.033 and 709.04.) If the municipal corporation rejected the proposed annexation, no further proceedings could be had on the petition, but a

new petition could subsequently be filed with the board of county commissioners (sec. 709.05).

Changes made by the act

Notice. Because the act no longer requires the annexation petition to be filed in the office of the county auditor, it requires that the hearing date 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 is filed, 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 act, 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 the former requirement that notice of the petition and the date, time, and place for the hearing be published for four consecutive weeks in a newspaper of general circulation in the county, the act 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. As under former law, the agent for the petitioners is responsible for having the notice published after the agent is 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 is filed. (Sec. 709.03(B)(3).)

Under the act, 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 (a) include the date and time the petition was filed, the county where it was filed, and the hearing date, time, and place, (b) be accompanied by a copy of the petition and any attachments or documents filed with it, and (c) 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 (a) to all owners of property within the territory proposed to be annexed and (b) to all owners of property adjacent to that territory or adjacent to a road that is adjacent to that territory and located directly across the road from that territory, 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 mails 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 former 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 act's hearing procedures, the board of county commissioners still must consider *affidavits* for or against the annexation petition as under former law, but the act 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 act generally permits the board to issue subpoenas for witnesses or documents or records relevant or material to the petition. But, it requires the board to issue those subpoenas at the request of any necessary party. Subpoenas must be directed to the sheriff of the county where the witnesses or the documents or

records are found. A sheriff's or witness' fees and mileage must be paid in advance by a requesting necessary party, with the remainder of the expenses being paid out of the fees charged by the board for the annexation proceedings. The board or a necessary party requesting a subpoena may request the appropriate court of common pleas to compel a witness' attendance or production of documents or records, or otherwise be held in contempt of court. However, an owner of a company, firm, partnership, association, or corporation that is subpoenaed may have an agent or attorney appear before the board on that owner's behalf in response to the subpoena. (Sec. 709.032(B).)

The act maintains the former limitation on *amendment of* the petition "without further notice, etc.": to situations in which the amendment does not add to the territory included in the original petition. But, amendments must be made at least 15 days before the hearing; they require, similar to former law, the consent of the agent for the petitioners and the leave of the board. (New sec. 709.031(B).)

Under former law, the board could 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 could occur at any time prior to 30 days before the hearing date (sec. 709.031(C)). The act 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

¹ Under continuing law, 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)).

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 act 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 act 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 on the whole record, 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.

(4) As under former 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 either grants or denies the annexation. (Sec. 709.033(A) and (B).)

The act 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 former 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 generally 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, must 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. The petition circulated to collect signatures for this special procedure must contain a boldface warning of these appeal provisions, or otherwise the petition is invalid. (Secs. 709.021(B) and 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

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*

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, 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, and the owners of property adjacent to the territory proposed for annexation or adjacent to a road that is adjacent to that territory and located directly across that road from that territory. 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. (Sec. 709.023 (B).)

Notice to a property owner is sufficient if sent by regular mail to the tax mailing address listed on the county auditor's records. Notice to the appropriate government officer must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the officer, with proof of service by affidavit of the person who delivered the notice. Proof of service of the notice on each appropriate government officer 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 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

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 act.) 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.



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, expressly waive (1) their right to appeal any action taken by the board, (2) any rights they may have to sue on any issue relating to a municipal corporation requiring a buffer under the circumstances described above, and (3) any rights to seek a variance that would relieve or exempt them from that buffer requirement; the petition circulated to collect signatures for this special procedure must contain a boldface warning of the waiver of the right to appeal any action taken by the board, or otherwise the petition is invalid (secs. 709.021(B) and 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 can be commenced whenever the required buffer is not in place before any development of the annexed territory begins.⁵ (Sec. 709.023(I).)

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.*

⁵ *It is not clear what "development" means in this context.*



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 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 must 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 500 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 5% 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. If the board, upon its review of the petition as described above, instead finds that one or more of the conditions has *not* been met, it must enter upon its journal a resolution that states which of the conditions it finds has not been met and that denies the petition. There is no appeal in law or equity from the board's entry of either type of resolution, but any party may seek a writ of mandamus to compel the board to perform any duty related to this special procedure. (Sec. 709.023(F) and (G).)

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 continuing 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 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, 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, and the owners of property adjacent to the territory proposed for annexation or adjacent to a road that is adjacent to that territory and located directly across that road from that territory. 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. (Sec. 709.024 (B).)

Notice to a property owner is sufficient if sent by regular mail to the tax mailing address listed on the county auditor's records. Notice to the appropriate government officer must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the officer, with proof of service by



affidavit of the person who delivered the notice. Proof of service of the notice on each appropriate government officer 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 fourth 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 must 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*, 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 date, time, and place. Within five days after receiving that notice, the agent for the petitioners must notify the parties and relevant property owners of that date, time, and place. Notice to a property owner is sufficient if sent by regular mail to the tax mailing address listed on the county auditor's records. At the hearing, the municipal corporation, each township any 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

Former law

Former law provided that annexation of contiguous township territory on petition of a municipal corporation be accomplished according to the same procedures set forth for landowners' petitions, "so far as applicable" (sec. 709.16(A)).⁶ *Special procedures* were provided, however, for annexing *certain government-owned lands*. If the territory sought to be annexed was owned by the municipal corporation filing the petition and was located entirely within the same county as the municipal corporation, the board of county commissioners had to pass, upon receiving the petition, a resolution approving the annexation and making appropriate fiscal adjustments (sec. 709.16(B)). If the territory sought to be annexed was owned by the county, upon receiving the petition, the board of county commissioners could, but was not required to, pass a resolution approving the annexation and making appropriate fiscal adjustments (sec. 709.16(C)). No hearing was required under these procedures.

For situations other than the two described in the preceding paragraph, the annexation was subject to approval at an *election* in the unincorporated area of the township from which territory was sought to be annexed. If a majority of electors favored annexation, proceedings to complete the annexation had to begin within 90 days. But electoral approval of an annexation was only advisory, and final approval rested with the board of county commissioners, following the procedures

⁶ *The 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 act amends for technical or conforming purposes.*

required for landowners' petitions. If a majority of the electors were against annexation, no further proceedings could be had for five years. (Sec. 709.17.)⁷

Changes made by the act

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 act'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 is 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 former law, if the territory is owned by the municipal corporation, the board must grant the annexation (new sec. 709.16(B)).

(2) Similar to former law, if the territory is owned by a county, the board has discretion whether to grant or deny 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. (new sec. 709.16(B), (C), (D), and (F).)

If a municipal corporation purchases real property *below its appraised fair market value* and sells or agrees to sell that property back to *the person who originally sold it* to the municipal corporation, any annexation of that property completed under an above-described special procedure will be void. The property

⁷ *The act outright repeals the sections of former 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 act enacts some similar provisions in a new section 709.16, discussed below.*

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).)⁸

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 act 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 provisions or] any other provisions of the Ohio Constitution, or . . . the provisions of a municipal charter," nor may municipal corporations and townships agree 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)):

⁸ *This provision does not explicitly void the transaction if a "straw man" is used in the transaction. In other words, the act does not address the situation where the municipal corporation sells the property to a third party who then sells it back to the owner who originally sold it to the municipal corporation, ultimately accomplishing what this provision of the act prohibits. The municipal corporation also could buy the property at fair market value or a higher price and sell it back to the original owner at that same price or a higher price, and this provision of the act would not be violated.*

- (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;
- (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 act's effective date;⁹
- (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;

⁹ *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)).*

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

(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 act requires that annexation agreements and the powers the act 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

Former law

Former law prescribed 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. Those schedules varied with the length of the "annexation period."¹⁰ Former law provided that, for each of the three schedules, the board of township trustees, upon written notification to the

¹⁰ Former law defined "annexation period" as a period of one, two, or three consecutive 12-month periods, whichever was less, during which one or more municipal corporations annexed territory of a township that included 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 was allowed to include a month that was part of another annexation period. "Base year" was defined as the calendar year immediately preceding an annexation period. (Sec. 709.19(A)(1) and (2).)

county auditor and the chief executive officer of each municipal corporation that annexed township territory during an annexation period, could decline to accept the required payments (sec. 709.19(I)). It also provided that if, after an annexation period for which payments were being made or were to be made to a township by one or more municipal corporations, the remainder of the unincorporated territory of the township was annexed to another municipal corporation or incorporated as a municipal corporation, those payments generally were 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)). Former law, however, permitted a municipal corporation to decline to accept the required payments if the situation described in the preceding sentence occurred (sec. 709.19(I)).

Under the *first schedule*, if the annexation of territory of any township by one or more municipal corporations constituted *an annexation period of 12 consecutive months*, each municipal corporation that annexed territory of that township during that annexation period generally was 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";¹¹
- (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 constituted *an annexation period of 13 to 24 consecutive months*, each municipal corporation that annexed territory of that township during that annexation period generally was required to pay the township

¹¹ *"Township taxes in the annexed territory" formerly was 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 was annexing an international airport that it owned, 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 was to be made, if no annexation had occurred (sec. 709.19(A)(4)).*

the amounts indicated below during each of the six years following the annexation period (sec. 709.19(C)):

- (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 constituted *an annexation period of 25 to 36 consecutive months*, each municipal corporation that annexed territory of that township during that annexation period generally was 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.

Former law also provided that, if a municipal corporation annexed an international airport that it owned, the municipal corporation was 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 proposed to annex unincorporated territory of a township was not required to make any payment required under any of the three schedules if its legislative authority entered into *an agreement* with the board of township trustees of the township in which the territory to be annexed was located, whereby the municipal corporation agreed to make an *annual payment* to the township to compensate for lost tax revenues. The agreement had to 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 act).

Changes made by the act

In general. The act 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)):¹²

(1) In the first through third 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;

(2) In the fourth and fifth 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;

(3) In the sixth and seventh years, 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;

(4) In the eighth and ninth 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;

(5) In the tenth through 12th 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.

¹² 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. Unlike former law, the act does not define the term "taxes" so no special provision is made for tax reduction factors or rollbacks as was found in former law.

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, 80% 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 and fifth 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 sixth through 10th 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 11th and 12th 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 act continues the provisions of law pertaining to a municipal corporation annexing an international airport that it owns and the payments that a municipal corporation must pay a township if it annexes such an airport (sec. 709.19(E) and (F)).

Court appeals

Former law

Grant of annexation. The exclusive remedy for challenging a decision of a board of county commissioners to *grant* an annexation was to file for an *injunction* under the Municipal Annexation Law.¹³ Under this appellate procedure, after the board approved an annexation petition and within 60 days after it delivered the annexation papers to the auditor or the clerk of the legislative authority of the

¹³ *In re* Petition to Annex 320 Acres to the Village of S. Lebanon (1992), 64 Ohio St.3d 585.

municipal corporation involved, a "person interested" and any other person who appeared at the board's annexation hearing could 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) had to set forth both (1) how the proposed annexation adversely affected 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 was unreasonable or unlawful. A petition of any other person described above only had to state the nature of the error in the proceedings before the board, or how the board's findings or order was 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 were stayed during the pendency of the appellate action, if the court ordered them stayed. The court could not hear the petition for the injunction until at least 20 days after the petition was filed, and the named defendants in the action were 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 had to dismiss the petition for the injunction unless it found 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.

Although a person (such as a township trustee) who appeared in the board's annexation hearing, but who was not a "person interested," did not have to set forth in the petition for the injunction how the proposed annexation adversely affected the person's legal rights or interests, the person nonetheless had to establish this matter in court in order to obtain an injunction. A 1985 Ohio court of appeals case indicated, in dicta, that this matter was 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 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 had 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 found that both conditions (1) and (2) listed above were present, it had to enjoin the municipal auditor or clerk from presenting the annexation papers to the municipal corporation's legislative authority, but the injunction was 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 had to send a certified copy of the injunction to the municipal auditor or clerk, who was required to file it with the annexation papers (sec. 709.09, repealed by the act).

If the court did not find both conditions present, it had to 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 continued as if there had never been a petition for the injunction. (Sec. 709.08, repealed by the act.)

Denial of annexation. Under the Local Government Appellate Procedure Law (Chapter 2506.), persons whose rights were determined by a board of county commissioners had a right to appeal to the court of common pleas any board decision denying an annexation petition. A board of township trustees of a township that included territory proposed for annexation which was represented at the board of county commissioners' annexation hearing had standing under the Local Government Appellate Procedure Law to appeal a denial of, but not a granting of, an annexation petition.¹⁴

Changes made by the act

Appeal of the board's decision. The act eliminates the special procedure for an injunction provided under former 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

¹⁴ *In re Annexation of 311.8434 Acres* (1992), 64 Ohio St.3d 581.

governed 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 court's final order 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. (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 act changes a provision of former 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 act 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 act 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 act's effective date. (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.)¹⁶

Prospectivity and conforming provisions

The act's revisions to the Municipal Annexation Law and the act's other related provisions apply only to annexation petitions filed on or after its effective date. Annexation petitions filed before that date must be processed under the provisions of the former Municipal Annexation Law. (Section 3.)

¹⁵ Presumably, the intent is that the greater of the minimum levy of the municipal corporation or of the township would be chosen.

¹⁶ It is possible this division of inside millage could be found unconstitutional since it appears to result in nonuniform tax rates.

Finally, in addition to cross-reference and other technical changes within the Municipal Annexation Law to reflect substantive revisions made by the act in that law, the act 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)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 90
Reported, S. State & Local Gov't & Veterans Affairs	02-22-01	p. 152
Passed Senate (26-7)	02-27-01	pp. 163-164
Reported, H. Local Government and Townships	05-30-01	pp. 606-607
Passed House (81-16)	05-30-01	pp. 607-609
Senate refuses to concur in House amendments (0-33)	06-06-01	pp. 622-623
House agrees to Conference Committee Report (85-14)	06-12-01	pp. 637-638
Senate agrees to Conference Committee Report (25-8)	06-12-01	pp. 642-643

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