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(As Passed by the General Assembly)

Reps. Setzer, Fessler, McGregor, Allen, Seaver, Seitz, Sferra, Wolpert, Willamowski, Barrett, Carano, Chandler, Combs, C. Evans, Flowers, Hughes, Key, Martin, Otterman, T. Patton, Price, Schmidt, Webster

Sen. Jacobson

Effective date: *

ACT SUMMARY

- Requires petitions for the merger of municipal corporations or of one or more municipal corporations and the unincorporated territory of a township to be filed with the legislative authority of each affected political subdivision.
- Requires each affected political subdivision to state and explain its position on the proposed merger at a mandatory public meeting.
- Allows a merger commission's period of existence to be extended in a specified manner.
- Enacts provisions regarding the operation of a merger commission, including the payment of the commission's costs and a collaborative process among commission members.
- Expands the issues that a merger commission must consider in formulating merger conditions to include, when applicable, the increase and decrease of funding sources due to affected unincorporated territory of a township becoming incorporated territory.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Enacts new provisions concerning the submission of merger conditions to the voters of the affected political subdivisions, including preliminary reporting requirements for the merger commission and a change in the general election at which the conditions are submitted for voter approval.
- Requires the board of county commissioners and the legislative authority of the municipal corporation with which merger is proposed, upon voter approval of merger conditions for a merger of unincorporated township territory and one or more municipal corporations, to negotiate an agreement for the temporary continued provision of county services to the unincorporated territory after the merger.
- Enacts other related changes in the Merger Law.
- Permits referendum petitions for the approval or rejection of resolutions adopted by the boards of township trustees of certain limited home rule townships to be submitted to the electors at specified special elections.

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CONTENT AND OPERATION

Merger Law revisions

Overview

Under continuing law, the territory of one or more municipal corporations may be merged with that of an adjacent municipal corporation. Additionally, one

or more municipal corporations may be merged with the unincorporated territory of a township. (R.C. 709.43 and 709.44, not in act.)

Petition for merger

Continuing law. Under continuing law, for a merger of municipal corporations or of one or more municipal corporations and the unincorporated territory of a township (hereafter, political subdivisions) to be proposed, not less than 10% of the electors of each affected political subdivision who voted for the office of governor at the most recent general election for that office must sign a petition proposing the merger. The petition must be filed with the board of elections of the county in which resides the largest portion of the population of the municipal corporation with which merger is proposed; other boards of elections may become involved when territory proposed to be merged crosses county boundaries. Once filed, the board must ascertain the validity of the petition's signatures and, if the petition is sufficient, submit the question of whether a "commission" should be chosen to draw up "conditions" for the merger of the affected political subdivisions for the approval or rejection of the electors of those political subdivisions at the next general election occurring 75 days after the petition's filing. (R.C. 709.45 and 709.46.)

Changes made by the act. The act retains the foregoing requirements of the petition process and adds further requirements to it. Specifically, in addition to filing a copy of the petition with the board of elections, the act requires a copy to be filed with the legislative authority of each affected political subdivision. Then, not less than 30 days before the election at which the question goes before the voters, a public meeting must be held during which each affected political subdivision must state and explain its position on the proposed merger. (R.C. 709.45(C).)

Merger commission

Overview. If the voters approve the question relating to the creation of a commission to draw up conditions for the proposed merger of the affected political subdivisions, continuing law requires that a merger commission, comprised of electors residing in each affected political subdivision who were elected to the commission when the voters approved the question, draw up conditions that will govern the merger (see "**Merger conditions**," below) (R.C. 709.45 and 709.46).¹

¹ *The question must be approved by a majority of those voting on it in each affected political subdivision to trigger the merger commission's creation (R.C. 709.46(A)).*

Under continuing law, when the petition for merger is filed with the board of elections, it must contain lists setting forth the names of not less than five electors from each

Period of existence. Under continuing law, the merger commission must meet as often as necessary to formulate the merger conditions. Those conditions must be satisfactory to a majority of the members of the commission from each affected political subdivision. (R.C. 709.46.)

Under former law, however, regardless of whether *certain* commissions succeeded in reaching agreement on merger conditions, they ceased to exist on the 75th day before the next general election after their members were elected (R.C. 709.46).² The act establishes new cessation provisions as described below.

Under the act, *any* merger commission, whether or not it succeeds in reaching an agreement on merger conditions, generally ceases to exist on the 75th day before the next general election occurring after the commission members are elected. But, the act allows the commission to request an extension of time from the legislative authority of each affected political subdivision. If such an extension is approved, it may last only until the 75th day before the *second* general election occurring after the election of the commission members. (R.C. 709.462(D).)

The act also provides that, if a merger commission ceases to exist under the original or an extended deadline, no further petitions may be filed proposing the merger *of any or all* of the affected political subdivisions for at least three years after the date the commission ceases to exist (R.C. 709.462(D)).

Commission costs. The act requires a merger commission's costs to be divided among the affected political subdivisions in proportion to the population that each bears to the total population of the proposed merged territory. If the merger involves the unincorporated territory of a township, the township's population must be based solely upon the population of the unincorporated territory to be merged. The act states that it is a proper public purpose for a political subdivision to expend general fund moneys for these payments. (R.C. 709.46(C).)

Collaborative process. Under the act, a merger commission must attempt, in formulating merger conditions, to work in a collaborative process that results in

affected political subdivision who are to be "candidates" for membership on the commission. Then, if the question on the creation of the merger commission is approved upon its submission to the voters, the candidates on these lists are "elected" as commissioners to draw up merger conditions. (R.C. 709.45 and 709.46.)

² *Former law appeared to place this "sunset" only on merger commissions drawing up conditions for merger of one or more municipal corporations and the unincorporated territory of a township (R.C. 709.46).*

a consensus of its members as to the best proposal for all of the political subdivisions involved. To this end, the commission must adopt rules for the orderly operation of its meetings, and those rules must permit all commission members to be co-leaders, as appropriate, so that overall no one member has more authority than any of the other members in determining the proposed conditions. The rules may create a framework for building agreement among the members to adopt proposed conditions, and, if funding permits, the commission may contract with a dispute resolution expert to help make the process more collaborative. Finally, the commission must seek the advice of both public and private sources to help it fully study the merger situation so that appropriate conditions are drafted. (R.C. 709.461(A).)³

Merger conditions

Specific provisions. Former law provided that the merger conditions that a merger commission formulated could address or had to include the following (R.C. 709.46):

- They could provide for the election, before the merger, of new officers to govern the municipal corporation with which merger was proposed after the merger was complete.
- If more than one municipal corporation was to be included in the merger, they had to designate the municipal corporation into which the other political subdivisions were to be merged.
- They could provide that the municipal corporation with which merger was proposed must amend its existing charter to include specified provisions and could state that the merger, if approved, would not be effective until the date on which that municipal charter includes the required provisions.
- In the case of a merger of a township with a single municipal corporation, they could provide for the annexation of a school district located wholly within the township to the school district of the municipal corporation.

³ *The act continues, without substantive change, provisions of law relative to the initial meetings of merger commissions, the election of commission officers, and the conduct of commission meetings in accordance with the Open Meetings Law (R.C. 709.46(A) and (D)).*

The act *retains*, but relocates, these provisions (R.C. 709.461(C)). It also expands upon them. Specifically, when a merger proposal includes the unincorporated territory of a township, the act requires the commission, before adopting its proposed merger conditions, to consider both the increase and decrease of funding sources due to the unincorporated territory becoming incorporated territory (R.C. 709.461(B)).

Agreement or no agreement upon merger conditions. Under apparently continuing law that the act makes explicit, once proposed merger conditions have been prepared, the merger commission members must vote on them. If proposed merger conditions are approved, the processes described under **'Submission of merger conditions to the voters,'** below, operate. The act provides, however, that if *no* proposed merger condition can be agreed upon by a majority of the members from each affected political subdivision, the commission members may instead vote on whether the merger should *not occur*. In that situation, if a majority of the commission members from each affected political subdivision vote against the merger, no further proceedings can be had on that petition for merger, and no further petitions can be filed proposing the merger *of any or all* of the affected political subdivisions for at least three years after the date of the commission's vote. (R.C. 709.462(A) and (B).)

Submission of merger conditions to the voters. Under former law, as soon as merger conditions were agreed upon by a majority of the members of a merger commission from each affected political subdivision, this fact had to be reported to the board of elections of each of the counties in which the political subdivisions proposed for merger were located. A question on the approval of the conditions then had to be submitted to the voters of the affected political subdivisions at the *next general election* occurring after the commission members were elected. If a majority of the voters voting on that question in any of the affected political subdivisions disapproved the merger conditions, no further petitions could be filed proposing the *same* merger for at least three years after the date of the disapproval.⁴ However, if a majority of voters voting on that question in each of the affected political subdivisions approved the merger conditions, the merger was effective on January 1 of the year following the certification of the election results by the appropriate board of elections, unless the merger conditions specified a different date. (R.C. 709.46 and 709.47.)

⁴ *It should be noted that former law referred and the act continues to refer in the disapproval provision only to mergers of townships and one or more municipal corporations. The same consequence may apply when a merger of only municipal corporations is disapproved, but this was not clear under former and continues to be so under the act. (R.C. 709.47.)*

The act revises this process in a few respects. First, if merger conditions are agreed upon by a majority of the commission members from each affected political subdivision, the commission must issue a report listing the agreed-to conditions and the reasoning behind adopting each condition. Second, after the next general election occurring after the commission members' election, but not less than 75 days before the second general election occurring after their election, unless the commission has ceased to exist, it must certify the fact of the agreement and a list of the agreed-to conditions to the board of elections of each of the counties in which the affected political subdivisions are located. Third, the question on the approval or rejection of the conditions then must be submitted to the voters of the affected political subdivisions at the *second* general election occurring after the election of the commission members. (R.C. 709.462(C).) The provisions of law pertaining to the majority vote on the question summarized in the preceding paragraph generally continue to operate under the act--but see "*Subsequent petitions for merger*," below (R.C. 709.47).

Temporary continued provision of county services

In a merger of unincorporated township territory and one or more municipal corporations, if the majority of the voters in each of the affected political subdivisions approves the merger conditions, the act requires the board of county commissioners of the county in which the unincorporated township territory is located and the legislative authority of the *municipal corporation with which merger is proposed* to negotiate an agreement requiring the county to continue providing within the unincorporated territory for a determined period of time after the merger's effective date the county services it was providing before that date (R.C. 709.47(D)). As part of the negotiation process, each of the following must occur (R.C. 709.47(D)(1) to (4)):

- Before the merger's effective date, the county and the municipal corporation must each create a *proposed transition plan* that, among other potential issues, addresses (1) the period of time the county will continue to provide the county services to the unincorporated territory and the date upon which the municipal corporation will succeed to the county's responsibility of providing them and (2) payment by the municipal corporation to the county for their continued provision during that period of time.
- On the merger's effective date, the county and the municipal corporation must exchange their proposed transition plans.
- Within 30 days after the merger's effective date, the board of county commissioners and the municipal corporation's legislative authority must meet to discuss the proposed transition plans and the creation of a

compromise transition plan that addresses, among other potential issues, the issues addressed in the proposed transition plans.

- Within 60 days after that meeting, a compromise transition plan must be agreed upon.

Subsequent petitions for merger

Former law stated that if a majority of the voters in any of the affected political subdivisions disapproved the merger conditions agreed upon by a merger commission pertaining to a merger of a township and one or more municipal corporations, no further petitions could be filed proposing the *same* merger for at least three years after the date of that disapproval. The act amends this provision so that no further petitions may be filed proposing the merger *of any of the territory within that proposed merger* for that time period. (R.C. 709.47(A).)⁵

Annexation prohibition

Former law provided that, on and after the date a petition pertaining to a merger of the unincorporated territory of a township and one or more municipal corporations was filed with the board of elections, no petition for the annexation of any part of the unincorporated territory of the township could be filed with a board of county commissioners until one of the following occurred (R.C. 709.48):

- The question of forming a merger commission was defeated at an election by a majority of the electors of any of the affected political subdivisions.
- The merger commission failed to reach agreement on merger conditions by 75 days before the next general election occurring after the commission was elected.
- The merger conditions agreed upon by the merger commission were defeated by a majority of the electors of any of the affected political subdivisions.

The act generally retains these provisions, but, consistent with the previously discussed changes allowing a merger commission to request an extension of its existence, the act modifies the second condition to provide that an annexation cannot occur until the commission fails to reach agreement on merger conditions by 75 days before the next general election occurring after the election

⁵ See Footnote 4.

of the commission members or, if the commission's life is extended, by the date the extension ceases, whichever is later (R.C. 709.48(B)).

Referendum petitions concerning resolutions adopted by a limited home rule township

Continuing law

Under continuing law, resolutions adopted by the board of township trustees of a limited home rule township may be submitted to the electors residing in the unincorporated area of that township for their approval or rejection by referendum. To cause a resolution to be so submitted for approval or rejection, the referendum petition must contain the signatures of not less than 10% of the total number of electors in the township's unincorporated area who voted for the office of Governor at the most recent election for that office in that area and must be filed with the township's clerk--apparently within 30 days after the board adopted the resolution. If it is timely filed, the clerk must transmit the referendum petition, together with a certified copy of the text of the resolution, to the board of elections within a prescribed time. The board of elections, in turn, is required to examine all signatures on the referendum petition (for purposes of determining the number of the township's electors who signed it), return the referendum petition to the clerk (with a statement attesting to the number of those electors) within ten days, and submit the resolution to the electors for their approval or rejection *at the next general election* occurring subsequent to 75 days after the clerk certifies the sufficiency and validity of the referendum petition to the board. (R.C. 504.14 and 731.29--not in the act.)

Changes made by the act

Although the act does not amend these provisions of codified law (they, thus, generally continue to apply in the described manner to limited home rule townships), for a period of one year after the act's effective date, in any limited home rule township *with a population of 50,000 or more*, at the option of the board of township trustees and if the conditions listed below apply, a referendum petition for the approval or rejection of a resolution adopted by the board may be submitted to the electors in the township's unincorporated territory at a *special* election occurring (a) *earlier* than the next general election but (b) subsequent to 75 days after the township clerk certified the sufficiency and validity of the referendum petition to the local board of elections. Under the act, submission at a special election is permitted only if the following conditions are met (Section 3):

- The referendum petition must have been certified as to its sufficiency and validity by the township clerk to the board of

elections before the act's effective date and have been pending submission to the electors on that effective date.

- The board of township trustees must adopt a resolution stating that it has chosen to submit the referendum petition at a special election. The township clerk must submit this resolution to the board of elections along with the referendum petition and the resolution that is being submitted for approval or rejection.

The act provides that the expenses for the special election are to be paid in the same manner as other special elections submitted by political subdivisions (Section 3(A); R.C. 3501.17--not in, but referred to in, the act).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-31-03	p. 1022
Reported, H. Municipal Gov't & Urban Revitalization	05-25-04	p. 1955
Passed House (99-0)	05-26-04	pp. 2014-2015
Reported, S. State & Local Gov't & Veterans Affairs	12-02-04	p. 2368
Passed Senate (29-0)	12-07-04	pp. 2390-2391
House concurred in Senate amendments (96-0)	12-08-04	p. 2384

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