John S. VanNorman *Legislative Service Commission*

Sub. H.B. 256*

125th General Assembly
(As Reported by H. Municipal Government and Urban Revitalization)

Reps. Setzer, Fessler, McGregor, Allen, Seaver

BILL 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.
- 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.

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

- 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.

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CONTENT AND OPERATION

Overview

Under existing 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 bill.)

Petition for merger

Existing 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 proposed by the bill

The bill adds further requirements to the petition process. Specifically, in addition to filing a copy of the petition with the board of elections, the bill requires a copy to be filed with the legislative authority of each affected political subdivision. Then, not less than 30 days before the election date 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, existing 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]

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[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 existing 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 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.)

Period of existence

Under existing 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. However, regardless of whether certain commissions succeed in reaching agreement on merger conditions, they cease to exist on the 75th day before the next general election after their members were elected.[2] (R.C. 709.46.)

Under the bill, *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 bill allows the commission to request an extension of time from the legislative authorities 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 bill 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 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 bill 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 bill 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 bill, a merger commission must attempt, in formulating merger conditions, to work in a collaborative process that results in 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

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[2] *Existing law appears 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).*

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

Existing law provides that the merger conditions that a merger commission formulates may address or must include the following (R.C. 709.46):

- They may provide for the election, before the merger, of new officers to govern the municipal corporation with which merger is proposed, after the merger is complete.

- If more than one municipal corporation is to be included in the merger, they must designate one of them as the municipal corporation into which the other political subdivisions are to be merged.

- They may provide that the municipal corporation with which merger is proposed must amend its existing charter to include specified provisions and may state that the merger, if approved, will 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 may provide for the annexation of a school district located wholly within the township to the school district of the municipal corporation.

The bill retains, but relocates, these provisions (R.C. 709.461(C)) and also expands upon them. Specifically, when a merger proposal includes the unincorporated territory of a township, the bill requires the commission, before adopting its proposed merger conditions, to consider both the increase and

[3] *The bill continues provisions of existing 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)).*

decrease of funding sources due to the unincorporated township territory becoming incorporated territory (R.C. 709.461(B)).

Agreement or no agreement upon merger conditions

Under the bill and apparently under existing law, 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 bill provides, however, that if *no* proposed merger condition can be agreed upon by a majority of the members, they may instead vote on whether the merger should *not occur*. In that situation, if a majority of the members 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 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 existing law, as soon as merger conditions have been agreed upon by a majority of the members of a merger commission from each affected political subdivision, this fact must be reported to the board of elections of each of the counties in which the political subdivisions proposed for merger are located. A question on the approval of the conditions then must 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 disapproves the merger conditions, no further petitions can 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 approves the merger conditions, the merger is 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.)

The bill revises this process in a few respects. First, if merger conditions are agreed upon by a majority of the commission members from each 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

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[4] *It should be noted that both existing law and the bill 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 is not clear under existing law or the bill. (R.C. 709.47.)*

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 existing law pertaining to the majority vote on the question summarized in the preceding paragraph generally continue to operate under the bill--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 bill 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

Existing law states that if a majority of the voters in any of the affected political subdivisions disapprove 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 can be filed proposing the *same* merger for at least three years after the date of that disapproval. The bill 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

Existing law provides 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 is filed with the board of elections, no petition for the annexation of any part of the unincorporated territory of the township can be filed with a board of county commissioners until one of the following occurs (R.C. 709.48):

- The question of forming a merger commission is defeated at an election by a majority of the electors of any of the affected political subdivisions.

- The merger commission fails to reach agreement on merger conditions by 75 days before the next general election after the commission was elected.

- The merger conditions agreed upon by the merger commission are defeated by a majority of the electors of any of the affected political subdivisions.

Consistent with the previously discussed changes allowing a merger commission to request an extension of its existence, the bill 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 after the election 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)).

[5] *Again, see Footnote 4.*

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	07-31-03	p.	1022
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