



COUNTY ADVISORY BULLETIN

CAB

Published by: County Commissioners Association of Ohio

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Bulletin 2001-06

**August
2001**

**SENATE BILL 5 OF THE 124th GENERAL ASSEMBLY
REFORMS ANNEXATION LAWS
EFFECTIVE OCTOBER 26, 2001;
CREATES FIVE TYPES OF PROCEEDINGS AND
NEW TEST FOR COMMISSIONERS TO USE IN ACTING ON PETITIONS**

Effective Date: October 26, 2001.

Revised Code Sections Affected: 505.62, 709.02, 709.03, 709.032, 709.033, 709.04, 709.13, 709.14, 709.15, 709.19, 709.21, 929.02, 5705.31 (amended) / 709.031, 709.07, 709.11, 709.16 (current section replaced with new section with same number) / 709.013, 709.014, 709.015, 709.021, 709.022, 709.023, 709.024, 709.192, 5705.315 (new section with newly-created section number) / 709.031, 709.07, 709.08, 709.09, 709.11, 709.16, 709.17, 709.18 (repealed).

Lead Sponsor: Wachtmann (R-Napoleon).

Senate Co-Sponsors Harris (R-Ashland), Robert Gardner (R-Madison), Carnes (R-St. Clairsville), Blessing (R-Cincinnati).

House Co-Sponsors: Roman (R-Akron), Driehaus (D-Cincinnati), Coates (D-Forest Park), Distel (D-Ashtabula), Carano (D-Austintown), Sferra (D-Warren), Schmidt (R-Loveland), Flowers (R-Canal Winchester), Hagan (R-Alliance), Willamowski (R-Lima).

Niehaus (R-New Richmond), Metzger (R-New Philadelphia), Seaver (D-Minster), Faber (R-Celina), Peterson (R-Delaware), Aslanides (R-Coshocton), Krupinski (D-Stuebenville), Rhine (D-Springfield), Latell (D-Girard), Cates (R-West Chester).

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INTRODUCTION

After over a decade of debate and compromise, legislation reforming Ohio's annexation law has been signed by the Governor. The Act will become effective on October 26, 2001. The prime sponsor of Amended Substitute Senate Bill 5 (Senate Bill 5) was Senator Lynn Watchmann (R-Napoleon). The purpose of this County Advisory Bulletin (CAB) is to provide an executive summary of the major provisions of the new law. CCAO will prepare an Annexation Manual that will provide considerably more detail than this CAB. The Annexation Manual will also include detailed procedural and technical checklists, flow charts, and sample resolutions for adaptation by counties to help in implementation.

If you have questions about any aspect of Senate Bill 5, please contact Larry Long or Cheryl Subler of CCAO at 614-221-5627 or llong@ccao.org or csubler@ccao.org

FIVE DIFFERENT TYPES OF ANNEXATION UNDER SENATE BILL 5

The new annexation law provides for five separate types of annexation petitions that may be submitted to the board of county commissioners as follows:

1. **Regular Annexation** - Petitions by at least 51% of property owners.
2. **Expedited Type 1 Annexation** - Petitions by all property owners with consent of the municipality and township. The petition must also be accompanied by an annexation agreement or a cooperative economic development agreement between at least the municipality and township.
3. **Expedited Type 2 Annexation** - Petitions by all property owners where territory to be annexed is not excluded from the township. Consent of the municipality and township is not necessarily required.
4. **Expedited Type 3 Annexation** - Petitions by all property owners for undertaking a significant economic development project. The territory to be annexed is not excluded from the township.
5. **Annexation by Petition of a Municipality for Municipal, County or State- Owned Land.** The territory to be annexed is not excluded from the township.

REGULAR ANNEXATION

A regular annexation petition must be submitted with the signatures of at least a majority of the property owners in the area proposed to be annexed. Some of the major provisions related to regular annexations include:

1. Hearing must be held not less than 60 nor more than 90 days after the petition is filed. At the hearing, examination and cross examination of witnesses is allowed.

2. Commissioners may issue subpoenas for witnesses, papers, and documents. The board must issue subpoenas if requested by a party to the proceedings. The Act also includes provisions explaining how to enforce subpoenas.
3. Commissioners must adopt a resolution granting or denying the petition within 30 days after the hearing.
4. The resolution granting or denying the petition must include specific findings of fact that each of the following conditions has or has not been met:
 - a. The petition meets the technical requirements of the statutes.
 - b. The petition was properly filed.
 - c. The persons who signed the petition are owners of the property proposed to be annexed.
 - d. The petition contains a majority of the owners of property in the area proposed to be annexed.
 - e. The municipality has adopted an ordinance stating what services it will provide to the territory to be annexed and the approximate starting date of the provision of the services.
 - f. The territory is not unreasonably large.
 - g. 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 annexation petition is granted. The surrounding area includes the unincorporated area within one-half mile of the territory proposed to be annexed.
 - h. No street or highway will be divided or segmented so as to create a road maintenance problem, or the municipality has agreed to assume road maintenance responsibility as a condition for the annexation
5. The commissioners grant or deny the annexation on the basis of a preponderance of the substantial, reliable, and probative evidence on the whole record.
6. Specified parties may appeal the action of the board in the granting or denying a petition under Ohio Revised Code (ORC) Chapter 2506,

administrative appeals. The former injunction process has been eliminated.

EXPEDITED TYPE 1 ANNEXATION

An Expedited Type 1 Annexation must be signed by all property owners in the area proposed to be annexed. In addition, the petition must be accompanied by either an annexation agreement or a cooperative economic development agreement that has been executed between the township and the municipality. The following provisions also apply:

1. No hearing or notice is required.
2. The commissioners must approve such a petition at the next regular session of the board after the filing of the petition.
3. There is no right to appeal.

EXPEDITED TYPE 2 ANNEXATION

As is the case with an Expedited Type 1 Annexation, an Expedited Type 2 Annexation must be signed by all the property owners in the area proposed to be annexed. Unlike a Type 1 Annexation, under a Type 2 Annexation the territory to be annexed may not, at any time, be withdrawn or excluded from the township pursuant to ORC 503.07. The annexed land thus remains subject to the township's real property taxes. The following additional provisions apply to Expedited Type 2 Annexations:

1. Notices to political subdivisions and certain property owners must be sent by the agent for the petitioners.
2. Under this procedure the problem of incompatible land uses on property adjacent to the area to be annexed and remaining in the township is addressed, provided the territory to be annexed was subject to zoning at the time the petition was filed. Provisions are included for zoning buffers by municipalities to protect adjacent property remaining in the township.
3. The township and municipality may consent or object to the proposed annexation on the basis that one or more of the statutory conditions for an Expedited Type 2 Annexation (which are outlined below in provision #6) have not been met.
4. If both the township and municipality consent to the annexation, the commissioners must adopt a resolution granting the petition at their next regular session.
5. If either the township or municipality objects to the annexation, the commissioners must "review" the petition and grant or deny the petition not less than 30 nor more than 45 days after filing. **Please note: this is**

not a hearing.

6. The commissioners must grant the petition if the following conditions have been met:
 - a. The petition meets all of the technical requirements.
 - b. The petition was properly filed.
 - c. The persons who signed the petition are owners of property in the area proposed to be annexed.
 - d. The petition contains the signatures of all of the property owners in the area proposed to be annexed.
 - e. The area proposed to be annexed does not exceed 500 acres.
 - f. The territory proposed to be annexed shares a common boundary with the municipality for a continuous length of at least 5% of the perimeter of the territory to be annexed.
 - g. The annexation will not create an unincorporated area of the township that is completely surrounded by the area proposed to be annexed.
 - h. The municipality has agreed to provide the area proposed to be annexed the services specified in the municipal services statement.
 - i. If a street or highway will be divided by the boundary between the municipality and township so as to create a road maintenance problem, the municipality has agreed, as a condition for annexation, to assume road maintenance responsibility or to otherwise correct the problem.
7. There is no appeal from a Type 2 Annexation. Any party may, however, seek a writ of mandamus to compel the board to perform its duties under this special procedure.

EXPEDITED TYPE 3 ANNEXATION

As is the case for an Expedited Type 2 Annexation, under an Expedited Type 3 Annexation all of the property owners must sign the petition. Likewise, the territory to be annexed may not be withdrawn or excluded from the township. Also, in order to qualify as an Expedited Type 3 Annexation, the proposed annexation must show that significant economic development will result. This is determined on the basis of total real and personal property investments of more than \$10 million and new payroll of at least \$1 million. The following additional provisions also apply to these types of annexations:

1. Notices to political subdivisions and certain property owners must be sent by the agent for the petitioners.
2. The township and municipality may consent or object to the proposed annexation on the basis that one or more of the statutory conditions for an Expedited Type 3 Annexation (which are outlined below in provision #6) have not been met.
3. If both the township and the municipality consent to the annexation, the commissioners must adopt a resolution granting the petition at their next regular session.
4. If either the township or the municipality objects to the annexation, the commissioners must “hear” the petition at their next regular session. Notice of this hearing must be given to the parties by the agent for the petitioners.
5. At the hearing, the parties may give evidence and are entitled to examine and cross examine witnesses.
6. Within 30 days after the hearing, the board must either grant or deny the petition on the basis of the following conditions:
 - a. The petition meets all of the technical requirements.
 - b. The petition was properly filed.
 - c. The persons who signed the petition are owners of the property in the area proposed to be annexed.
 - d. The petition contains signatures of all of the property owners in the area proposed to be annexed.
 - e. No highway will be divided or segmented by the boundary line between a township and municipality so as to create a road maintenance problem, or the municipality has agreed to assume maintenance of the highway, as a condition of the annexation.
 - f. The municipality has adopted a statement indicating what municipal services will be provided upon annexation and the approximate date.
 - g. The Director of the Ohio Department of Development has certified that the significant economic development thresholds specified above have been met.
7. If the commissioners grant the annexation, there is no appeal. If the board denies the petition, only an owner who signed the petition may

appeal under ORC Chapter 2506.

ANNEXATION BY PETITION OF MUNICIPALITY FOR MUNICIPAL, COUNTY, OR STATE-OWNED LAND

A municipality may initiate annexation of contiguous land that is owned by the municipality, the county, or the state by petition. For this type of annexation petition, the following provisions apply:

1. The board must act on the petition within 30 days after filing.
2. If the petition is for municipally-owned land, the commissioners have a mandatory duty to grant the petition.
3. If the petition is for county-owned land, the commissioners have discretion to grant or deny the petition.
4. If the land is owned by the state, the commissioners have a mandatory duty to grant the petition as long as the Director of the Ohio Department of Administrative Services has filed written consent for the annexation with the board.
5. There is no appeal for this type of annexation.
6. The territory to be annexed may not, at any time, be withdrawn or excluded from the township pursuant to ORC 503.07
7. Strawman annexations are prohibited. Strawman annexations occur when a municipality purchases property below fair market value and sells or agrees to sell the property back to the person that sold it to the municipality subsequent to the municipality annexing the land.

OTHER PROVISIONS OF SENATE BILL 5

1. **Petitions Filed Before October 26, 2001** - Annexation petitions filed before the effective date of the Act are to be processed and decided on the basis of the current – “old” – law.
2. **Costs of Processing Annexation Petitions** - The Act authorizes the commissioners to establish fees or a schedule of fees and a deposit for the processing of annexation petitions. Fees or deposits must be established by resolution of the board, and the clerk is required to keep an accurate accounting of the moneys received and expended. The Act also requires the costs of court reporters, transcribing of the record, and subpoenas to be paid by the requesting party.
3. **Delegation of Certain Responsibility to Commissioners’ Clerk or County Administrator** - The board may, by resolution, delegate to the

clerk or county administrator the responsibility to set the date of annexation hearing and to provide required notices of these hearing dates to the agent for the petitioners.

4. **Land Situated in More Than One County** - If an annexation petition includes land in more than one county, it is heard in the county that has the greatest amount of acreage included in the petition.
5. **Definition of Owner** - The Act modifies the definition of an owner for the purposes of signing an annexation petition. It also includes provisions that define how to determine if certain persons have the authority to sign a petition for corporate and institutional entities. The Act also allows certain parties to require the agent of the petitioners to prove that a person actually had the authority to sign the petition on behalf of corporate and institutional entities.
6. **Annexation Agreements** - The Act grants broad authority for a municipality and township to enter into a new intergovernmental agreement referred to as an Annexation Agreement. This agreement, or a Cooperative Economic Development Agreement which is authorized under current law, is required for an Expedited Type 1 Annexation. Such an agreement may also modify the schedule of scaled payments required to be made by the municipality to the township if a municipality excludes the annexed land from the township pursuant to ORC 503.07.
7. **Mandatory Property Tax Payments to Townships by Municipalities After Annexation and Withdrawal of the Annexed Land From the Township** - Commonly referred to as reparations, the Act provides that after annexation and the withdrawal of the annexed territory from the township, the municipality will make payments to the township for lost property tax revenue for a period of twelve years. The property tax reimbursement schedule varies depending on the classification of the property with residential and retail property following one schedule and commercial and industrial following a second schedule.
8. **Other Property Tax Provisions** - The Act includes a variety of other provisions related to property taxes, mainly dealing with inside millage considerations.
9. **Impact on Agricultural Districts Law** - The Act makes some consistency changes relating to agricultural districts established under ORC Chapter 929. These changes primarily deal with the rights of municipalities to disapprove the establishment or renewal of agricultural districts including land that has been annexed.
10. **Substantial Compliance With Procedural Requirements** - The Act specifies that the procedural requirements are “directory” in nature. It states that substantial compliance is sufficient to grant the board

jurisdiction to hear an annexation and render a decision. If a procedural defect is found, it directs the board to cure the defect. Finally, the Act states that the board shall not deny a petition solely on the basis of a procedural defect.

CONCLUSION

If you have questions about Senate Bill 5, please contact Larry Long or Cheryl Subler of CCAO at 614-221-5627 or llong@ccao.org or csubler@ccao.org.