

Commissioners Annexation Manual



**County
Commissioners
Association of Ohio**

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LARRY L. LONG, EXECUTIVE DIRECTOR

County Commissioners and Other Public Officials and Staff,

The 124th General Assembly's enactment of Amended Substitute Senate Bill 5 (SB 5), which changes Ohio's annexation laws, was the result of much debate and compromise over the last decade. For county commissioners and county government, the important charge facing them will be to properly, fairly, and impartially administer the new law and to expeditiously process annexation petitions. The purpose of the *Commissioners Annexation Manual* is to provide guidance to boards of county commissioners who are primarily responsible for the administration of the new annexation law.

The *Commissioners Annexation Manual* attempts to summarize SB 5 in a clear and concise manner. The new law establishes five different types of annexation processes by which to consider petitions. In the regular annexation process, the law provides county commissioners considerably more discretion when granting or denying annexation petitions.

In addition, the *Manual* includes: a series of sample resolutions that can be used as models for modification and adoption by commissioners; flow charts that depict each of the five annexation processes; and both procedural and technical checklists for each type of annexation to assist commissioners, along with clerks and county administrators, who are charged with the administration and implementation of the new law.

The *Commissioners Annexation Manual* is not meant to be light, relaxing reading on a weekend. The *Manual*, like the law, is very detailed and a little overwhelming at first glance. It is primarily a reference document. While this *Manual* should help to orient county officials and staff to the law, we advise all to become familiar with the statute itself. Moreover, we advise county officials and staff to contact their county prosecutor for guidance and legal advice.

The staff of the County Commissioners Association of Ohio (CCAO) devoted a considerable amount of time and effort in compiling this *Manual*. This project has been a major undertaking of CCAO. We hope you find this material to be informative and valuable.

As always, please feel free to contact CCAO if you have any questions or need additional information.

Sincerely,

Larry L. Long
Executive Director



Acknowledgments

Compiling the *Commissioners Annexation Manual* was a major time consuming and thought provoking endeavor for the County Commissioners Association of Ohio's staff. Much of the summer and early-fall of 2001 was spent writing and rewriting and rewriting the *Manual* in order to deliver a comprehensive annexation guidance document to county officials and staff in October 2001, prior to the anticipated effective date of the annexation reform legislation - Amended Substitute Senate Bill 5 of the 124th General Assembly.

Larry Long, CCAO Executive Director, and Cheryl Subler, CCAO Senior Policy Analyst, spearheaded the development of this manual. They spent many long days and nights writing, editing, and laying out the document. In addition, the following staff helped write a manual that is thorough, despite the subject matter being very complex: John Leutz, CCAO Policy Analyst; Doug Putnam, CCAO Research & Information Manager; and Brad Cole, CCAO Senior Policy Analyst. In addition, Suzanne Alexander, CCAO Policy Analyst, assisted along with the other staff in commenting on an early draft of the document, and Carolyn King, CCAO Secretary, assisted in the layout design of the manual.

CCAO sought outside review and comments on an early draft of the *Manual* from individuals who are experts in annexation law and local government. These individuals provided valuable insight and suggestions. Special gratitude is extended to them for their time and support:

Sue Cave, Executive Director, Ohio Municipal League;
Mike Cochran, Executive Director, Ohio Township Association;
Heidi Fought, Director of Government Affairs, Ohio Township Association;
Elizabeth Stanton, Chester, Willcox & Saxbe Law Firm;
William Thorne, Medina County Assistant Prosecutor; and
Don Brosius, Loveland & Brosius Law Firm.

However, any errors in this manual are the sole responsibility of CCAO.

Thanks to Chris Holtman, of CEH Publications, for her assistance in helping to develop a layout design for the manual, as well as to Tom and Bill Patterson, of Patterson Graphics, for assisting with the manual cover. Thanks to Marilyn Smith, at Capitol Square Printing, for her guidance and willingness to accommodate CCAO's requests and deadlines.

In addition to compiling this manual, CCAO staff conducted four regional annexation training seminars for county commissioners and staff. These seminars, offered during October 2001, used this manual as its cornerstone. Mary Jane Neiman, CCAO Public Relations Associate, and Kathy Dillon, CCAO Office Manager, assisted in helping to schedule and conduct the seminars. Janet Erwin, CCAO Administrative Assistant, and Tanya McComas, CCAO Receptionist, organized seminar registrations and manual orders.

Last but not least, it is imperative to recognize the steadfast commitment of a few lawmakers who were the primary sponsors of annexation reform legislation in the Ohio General Assembly over the years. They include: Senator Lynn Wachtmann, sponsor of Senate Bill 5; Senator Bob Cupp, who is currently serving as Allen County Commissioner; Representative George Terwilleger, past Warren County Commissioner, and Representative Ross Boggs. Thank you very much.

How to Use this Manual

The CCAO *Commissioners Annexation Manual* was prepared to provide guidance to county commissioners in the implementation of the new annexation law, Amended Substitute Senate Bill 5 of the 124th General Assembly, scheduled to take effect on October 26, 2001.

The new annexation law provides for five separate types of annexation, each with its own process and unique requirements. The *Manual* includes a separate chapter on each of these types of annexation, along with a series of other chapters on various topics, including a chapter on general provisions of the law that apply generally and a chapter that includes recommendations on the holding of annexation hearings when required by law.

In addition, the Appendix includes a procedural flow chart, a procedural checklist, and a technical checklist for each of the five types of annexations.

While the *Manual* should provide commissioners comprehensive information on the new law, the primary purpose of the *Manual* is as a working document when an annexation petition is filed. CCAO, thus, recommends that when an annexation petition is submitted and a file is opened, copies of the relevant chapter(s) on the type of annexation, the procedural flow chart and the procedural and technical checklists should be reproduced and used for guidance in processing the petition.

The primary purpose of the procedural checklist and flow chart is to help make sure that all steps in the annexation process are met. The technical checklist is designed to ensure that all requirements are met prior to granting or denying an annexation petition by resolution of the board. The technical check list includes those items where a document is to be submitted to the board that will constitute a full record of the proceedings and those items that commissioners must rule on when granting or denying a petition.

Legal Disclaimer

The CCAO *Commissioners Annexation Manual* is a general summary of the new Annexation Law and related statutes that are included as an Appendix to the Manual. The statements included in the *Manual* are not intended to be a substitute for the law or to provide formal legal guidance.

Commissioners are reminded that the county prosecutor is the legal advisor to the board and consultation with the prosecutor is advised.

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Executive Summary

History of Annexation Debate in Ohio

Ohio's growth and development during the last few decades have been marked by steady population increases and expansion into areas that traditionally had a more rural character. This growth brings with it many challenges for all units of local government, as townships, municipalities, and counties struggle to figure out the most effective, fair, and economical way to deliver services to residents and businesses.

Since the 1960's, Ohio's annexation statutes have reflected a policy that encourages urban growth and the extension of municipal services by favoring annexation to municipalities and by limiting statutory remedies available to challenge annexation petitions. Yet, there have been varied annexation strategies and goals around Ohio. In some areas, annexation has typically been a prerequisite to obtaining central water and sewer services. In other areas, it has been a battle over development opportunities, sometimes resulting in forum shopping for zoning, building, and subdivision regulations most favorable. Nevertheless, as the number of annexation proceedings have increased, the subsequent loss of property tax dollars that follow the annexed land out of the township often has led to a shifting of the tax burden to remaining township residents.

County commissioners have frequently found themselves in the middle of annexation debates while having little real authority to make decisions. Court decisions had left commissioners with almost no ability to find against the alleged general good of the territory proposed to be annexed and, yet, some discretion as it related to the "unreasonably large" condition. In addition, commissioners had no authority to evaluate and rule on the impact the annexation may have on the township or property owners and residents remaining in the township in the vicinity of the land being annexed.

The changes made in Amended Substitute Senate Bill 5 (SB 5) reflect a desire on the part of the General Assembly to seek a better balance for all residents in and around the territory proposed to be annexed. The new law also seeks to reduce interjurisdictional conflicts and the costly litigation that annexation has traditionally sparked. This manual attempts to simplify and explain how to implement these objectives and administer the law in a fair, consistent, and impartial manner.

Annexation Reform Enacted

After over a decade of debate and compromise, legislation reforming Ohio's annexation law has been signed by Governor Bob Taft. SB 5 is effective October 26, 2001. The prime sponsor of the legislation was Senator Lynn Watchmann (R-Napoleon).

Five Different Types of Annexation

The new annexation law provides five distinct types of annexation that may be submitted to the board of county commissioners. The types are as follows:

- A. **Regular Annexation** -- Petitions by at least 51% of the property owners within the territory proposed to be annexed.
- B. **Expedited Type 1 Annexation** -- Petitions by all of the property owners within the territory proposed to be annexed, with consent of the municipality and township(s), as evidenced by either an annexation agreement or a cooperative economic development agreement (CEDA) being submitted with the petition.
- C. **Expedited Type 2 Annexation** -- Petitions by all of the property owners within the territory proposed to be annexed with or without the consent of the municipality and township(s). The territory proposed to be annexed is not to be excluded from the township(s), unless otherwise provided by an annexation agreement or a CEDA.
- D. **Expedited Type 3 Annexation** -- Petitions by all of the property owners within the territory proposed to be annexed for the purpose of undertaking a significant economic development project. The territory proposed to be annexed is not to be excluded from the township(s), unless otherwise provided by an annexation agreement or a CEDA.
- E. **Annexation by Petition of a Municipality for Municipal, County, or State Owned Land** -- Petitions by a municipality to annex municipal, county, or state owned land that is contiguous to the municipality. The territory to be annexed is not to be excluded from the township(s).

Regular Annexation

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

- A. 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 are allowed.
- B. 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.
- C. Commissioners must adopt a resolution granting or denying the petition within 30 days after the conclusion of the hearing.
- D. 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:
 - 1. The petition meets the technical requirements of the statutes.
 - 2. The petition was properly filed.
 - 3. The persons who signed the petition are owners of the property proposed to be annexed.
 - 4. The petition contains the signatures of a majority of the owners of property within the area proposed to be annexed.

5. 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.
 6. The territory is not unreasonably large.
 7. 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.
 8. 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.
- E. The commissioners grant or deny the annexation on the basis of a preponderance of the substantial, reliable, and probative evidence on the whole record.
 - F. 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 of the property owners within 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(s) and the municipality. The following provisions also apply:

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

Expedited Type 2 Annexation

An Expedited Type 2 Annexation must be signed by all the property owners within the area proposed to be annexed. Under a Type 2 Annexation the territory to be annexed may not, at any time, be withdrawn or excluded from the township(s) pursuant to ORC 503.07, unless an alternative is provided by either an annexation agreement or a CEDA. The annexed land thus remains subject to the township's real property taxes. The following additional provisions apply to Expedited Type 2 Annexations:

- A. Notices to political subdivisions and certain property owners must be sent by the agent for the petitioners.
- B. Under this procedure the problem of land uses incompatible to the property adjacent to the area to be annexed which remains in the township(s) 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" to be imposed by a municipality upon the owner of the land to protect adjacent property remaining in the township(s).

- C. The township(s) 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 F) have not been met.
- D. If both the township(s) and municipality consent to the annexation, the commissioners must adopt a resolution granting the petition at their next regular session.
- E. If either the township(s) or municipality objects to the annexation, the commissioners must “re-view” 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.
- F. The commissioners must grant the petition if the following conditions have been met:
 - 1. The petition meets all of the technical requirements.
 - 2. The petition was properly filed.
 - 3. The persons who signed the petition are owners of property in the area proposed to be annexed.
 - 4. The petition contains the signatures of all of the property owners in the area proposed to be annexed.
 - 5. The area proposed to be annexed does not exceed 500 acres.
 - 6. 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 proposed to be annexed.
 - 7. The annexation will not create an unincorporated area of the township(s) that is completely surrounded by the area proposed to be annexed.
 - 8. The municipality has agreed to provide the area proposed to be annexed the services specified in the municipal services statement.
 - 9. If a street or highway will be divided by the boundary between the municipality and township(s) 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.
- G. There is no appeal from an Expedited 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

An Expedited Type 3 Annexation must be signed by all of the property owners within the area proposed to be annexed. Also, the territory proposed to be annexed may not be withdrawn or excluded from the township(s), unless alternatives are provided by either an annexation agreement or a CEDA. In order to qualify as an Expedited Type 3 Annexation, the proposed annexation must show that significant economic development will result. A total real and personal property investment of more than \$10 million and new annual payroll of at least \$1 million are required to qualify as a “significant economic development.” The following additional provisions also apply to these types of annexations:

- A. Notices to political subdivisions and certain property owners must be sent by the agent for the petitioners.
- B. The township(s) 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 F) have not been met.

- C. If both the township(s) and the municipality consent to the annexation, the commissioners must adopt a resolution granting the petition at their next regular session.
- D. If either the township(s) 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.
- E. At the hearing, the parties may present evidence and are entitled to examine and cross examine witnesses.
- F. Within 30 days after the hearing, the board must either grant or deny the petition on the basis of the following conditions:
 - 1. The petition meets all of the technical requirements.
 - 2. The petition was properly filed.
 - 3. The persons who signed the petition are owners of the property in the area proposed to be annexed.
 - 4. The petition contains the signatures of all of the property owners in the area proposed to be annexed.
 - 5. No highway will be divided or segmented by the boundary line between a township(s) 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.
 - 6. The municipality has adopted a statement indicating what municipal services will be provided upon annexation and the approximate date.
 - 7. The Director of the Ohio Department of Development has certified that the significant economic development thresholds specified above have been met.
- G. 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 by petition the annexation of contiguous land that is owned by the municipality, the county, or the state. For this type of annexation petition, the following provisions apply:

- A. The board must act on the petition within 30 days after filing.
- B. If the petition is for municipally-owned land, the commissioners have a mandatory duty to grant the petition.
- C. If the petition is for county-owned land, the commissioners have discretion to grant or deny the petition.
- D. If the land is owned by the state and the Director of the Ohio Department of Administrative Ser-

VICES has filed written consent for the annexation, the commissioners have a mandatory duty to grant the petition.

- E. There is no appeal for this type of annexation.
- F. The territory to be annexed may not, at any time, be withdrawn or excluded from the township(s) pursuant to ORC 503.07.
- G. "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

- A. ***Petitions Filed Before October 26, 2001*** - Annexation petitions filed before the effective date of the Act are to be processed and decided by the commissioners on the basis of the current - "old" - law.
- B. ***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.
- C. ***Delegation of Certain Responsibilities to Commissioners' Clerk or County Administrator*** - The board may, by resolution, delegate to the clerk or county administrator the responsibilities to set the date of annexation hearings and to provide required notices of these hearing dates to the agent for the petitioners.
- D. ***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.
- E. ***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.
- F. ***Annexation Agreements*** - The Act grants broad authority for a municipality and township(s) 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(s) if a municipality excludes the annexed land from the township(s) pursuant to ORC 503.07.
- G. ***Mandatory Payments of Compensation to Township(s) by Municipality After Annexation and Withdrawal of the Annexed Land From the Township(s)*** - Commonly referred to as reparations or revenue sharing, the Act provides that after granting an annexation and the exclusion of the annexed territory from the township(s), the municipality will make payments to the township(s) 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.

- H. ***Other Property Tax Provisions*** - The Act includes a variety of other provisions related to property taxes, mainly dealing with inside millage consideration.
- I. ***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.
- J. ***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.

General Provisions of Act

Effective Date of Act and Petitions Filed Prior to Effective Date

Amended Substitute Senate Bill 5 (SB 5) was signed by the Governor on July 27, 2001, and is effective on October 26, 2001. Section 3 of the Act provides that any annexation petition filed prior to the effective date of the Act will be processed under the provisions of the law that existed at the time the petition was filed.

Thus, any annexation petition filed with a board of county commissioners before October 26, 2001, will be processed and decided on the basis of the old law. Any petition filed on or after October 26, 2001, will be processed and decided by the commissioners under the new law.

Fee Schedule and Deposit for Annexation Petitions

The new annexation law specifically authorizes the board of county commissioners to establish a reasonable fee or schedule of fees to cover the costs incurred in annexation proceedings. The board may also require an initial deposit to be paid at the time the petition is filed, or promptly thereafter.

In addition, the law directs the clerk to maintain an accurate and detailed accounting of the funds received and expended in the processing of an annexation petition.

In order to establish fees or an initial deposit, the board must adopt a resolution requiring a deposit and specifying the fees that will be charged. In addition, the clerk should maintain a ledger of receipts and disbursements and should return to the petitioner or the agent for the petitioner any funds remaining after the completion of the proceedings.

ORC 709.014 (A)
ORC 709.032 (B)
ORC 311.17 (A), (B)

The law authorizes, in the case of regular annexation petitions, the board to issue subpoenas either on its own initiative or at the request of one of the necessary parties; necessary parties include the municipality to which annexation is proposed, each township any portion of which is included within the territory proposed to be annexed, and the agent for the petitioners. The subpoena is directed to the sheriff. The fees and mileage of the sheriff and witnesses are the same as those allowed by the court of common pleas in criminal cases. (ORC 311.17 (A) (8) subpoena - \$1.00; and ORC 311.17 (B) (1) mileage - \$0.50 first mile and \$0.20 each additional mile.)

If one of the parties requests the board to issue a subpoena, the commissioners have an obligation to issue the subpoena. The party must pay the expenses in advance. In the case where the board issues a subpoena on its own initiative, the expenses shall be paid out of fees charged for the annexation proceedings.

The commissioners must make a record of the hearing by electronic or some other suitable method. A request may be made and must be filed with the board at least seven days prior to the hearing asking that an official court reporter record the hearing. This request must be accompanied by a deposit to pay the costs of the court reporter. The record of the hearing, however, need not be transcribed unless such a request is made and is accompanied by an amount to cover the cost of transcription. While this provision appears in ORC 709.032 and is directly related to the regular annexation proceedings, the County Commissioners Association of Ohio (CCAO) believes it should be applicable to Expedited Type 3 Annexation proceedings if a hearing is conducted. Furthermore, CCAO believes that the board may require an official court reporter and/or transcription for any and all annexation proceedings, and may recover its costs through a fee schedule. CCAO suggests that the board request the state auditor establish a special revenue fund into which deposits and fee revenue be deposited, and from which expenses be paid that relate to annexation petitions. Please refer to Appendices A and B for additional information and a sample resolution.

Delegation of Responsibility to Clerk or County Administrator to Set Hearings and Provide Associated Notices

Division B of ORC 709.014 generally authorizes the board to appoint the clerk or county administrator to set the date, time, and place for annexation hearings, and to provide associated notices to the agent for the petitioners. It should be noted that this provision is permissive and requires the adoption of a resolution to implement the authority. A sample resolution is included as Appendix C for counties wishing to delegate this authority.

ORC 709.014 (B)

This provision was included in the law to help assure that some of the time deadlines included elsewhere in the law could be met in cases where the regular session schedule of the board would cause a violation of the law. This provision may also avoid the necessity of calling special sessions of the board solely for the purpose of setting hearing dates for an annexation petition.

Order of Hearing Annexation Petitions

The new law includes a provision that specifies how the board processes different petitions that are filed where each contains the same property. In such a case, the board must hear and decide the petitions in the order the petitions were filed. For example, assume an annexation petition is filed on June 1. On June 2, another petition is filed that contains all or part of the territory included in the June 1 petition. In this case, the board must hear and decide on the petition filed on June 1 before it hears and decides the petition filed on June 2. In addition, if the board grants the petition filed on June 1, the effect of this action is to delete the property from the June 2 petition. This could affect whether the June 2 petition is still a valid petition, if the removal of the property would reduce the number of petitioners below the 51% requirement for regular annexation petitions.

ORC 709.013

Annexation Involving Territory in More Than One County

If land in more than one county is included in an annexation petition, it is processed by the board of county commissioners where a majority of the acreage is situated. Thus, even when a majority of the petitioners are owners of land in an other county, the petition must be filed and heard in the county where the majority of land is situated.

ORC 709.11

Substantial Compliance with Procedural Requirements

The statute specifies that the procedural requirements in ORC 709.02-709.21 are directory in nature. Further, the statute provides that substantial compliance with the procedural requirements is sufficient to grant the board jurisdiction to hear and render its decision on an annexation petition. The statute also directs the board to cure a procedural defect. It states that the board shall not deny a petition solely on the basis of a procedural defect.

ORC 709.015

Commissioners need to recognize that this provision applies only to procedural defects, not to substantive defects. At times, however, determining exactly what is procedural and what is substantive is not easy. CCAO advises commissioners to consult the county prosecutor to determine what is procedural and what is substantive.

Authority of Township Trustees to Use Township General Fund Moneys for Annexation Purposes

The new law clarifies existing law to specifically authorize township trustees to appropriate general fund moneys for annexation purposes. This includes authority to contract with the following individuals for services:

- A. Attorney to represent the township.
- B. Expert witnesses.
- C. Other consultants the board of township trustees determines are necessary.

ORC 505.62

The new law also clarifies that township trustees may also appropriate township general fund moneys for any other expenses they consider necessary that are relative to any potential or pending annexation. The services financed with township general fund moneys may be for both potential and pending annexations, and includes proceedings before the board of county commissioners or any court.

Regular Annexations: Petitions by at Least 51% of Property Owners

General Comments

This chapter will discuss those annexation petitions that contain the signatures of at least a majority of the property owners of the territory proposed to be annexed. These annexations will be referred to as “regular annexations.” Subsequent chapters will deal with each of the three types of annexations that require all of the property owners to sign the petition. Such annexations are referred to as “expedited annexations.” Another chapter of this manual will deal with annexations involving county, municipal, or state-owned land where the municipality is the petitioner.

Unlike other annexation procedures, the regular annexation process does not require the territory annexed to remain within the township(s) of origin. However, if the territory is removed, the law requires the municipality to compensate the township(s) for its loss of revenue. This compensation, sometimes referred to as “reparations,” is further discussed in Chapter 11 of this manual.

Filing of Petition

Contents of Petition

A majority of the owners of real estate contiguous to a municipality may petition for annexation. The petition is filed with the clerk of the board of county commissioners of the county in which the territory is located. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. The petition must contain the following information:

- A. Signatures of a majority of the property owners in the territory proposed to be annexed. To be a valid signature, it must be the signature of the owner of the property as of the date the petition is filed.

ORC 709.02 (C)

1. The person who signs or the circulator of the petition must write the date the signature was made next to the owner’s name.
2. Any signature obtained more than 180 days before the petition is filed is not counted in determining whether the petition contains a majority of the property owners.
3. Any owner who signed the petition may have the signature removed before the document is

filed by delivering a signed statement to the agent for the petitioners asking to have it removed. If the agent receives such a statement, the agent must strike through the signature, deleting it from the petition.

- B. Accurate legal description of the perimeter of the territory proposed to be annexed.
- C. Accurate map or plat of the territory.
- D. Name of person or persons to act as the agent for the petitioners. The agent may be an official, employee, or agent of the municipality to which annexation is proposed.

Other Information that Must Be Filed With the Petition But Is Not a Part of the Petition

Other information that must be filed with the petition, but is not a part of the petition includes:

- A. List of all tracts, lots, or parcels in the territory proposed to be annexed, and all tracts, lots, or parcels located adjacent to the territory to be annexed or directly across the road when the road is adjacent to the territory to be annexed.
- B. The list is to include for each tract, lot, or parcel:
 - 1. Name of owner.
 - 2. Mailing address of owner.
 - 3. Permanent parcel number from the county auditor's permanent parcel numbering system (ORC 319.28).
- C. Any error in the list shall not affect the validity of the petition.

ORC 709.02 (D)

Definition of Owner or Owners

The definition of "owner" or "owners" includes any of the following who is seized of a freehold estate in land:

- A. Any adult individual who is legally competent.
- B. The state or any political subdivision as defined in ORC 5713.081.
 - 1. Authorized agent of the state or political subdivision must sign the petition.
 - 2. Authorized agent of the state is the Director of Administrative Services.
 - 3. If authorized agent does not sign, the state or political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition.
- C. Any firm, trustee, or private corporation, except:
 - 1. 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.

ORC 709.02 (E)
ORC 709.031 (C)

2. Township trustees and owners of property in the territory proposed to be annexed may request that proof be presented that the person signing was authorized to sign.

In addition, an owner is determined as of the date the petition is filed with the board of county commissioners.

A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, shall be counted as one owner.

Ownership Interests Specifically Excluded From Definition of Owner or Owners

ORC 709.02 (E)

Items specifically excluded from the definition of “owner” or “owners” include:

- A. Easements.
- B. Any railroad, utility, street, or highway rights-of-way held in fee, by easement, or by dedication and acceptance.
- C. Any person, firm, trustee, private corporation, the state, or any political subdivision that has become an owner of real estate if the primary purpose of the conveyance is to affect the number of owners required to sign an annexation petition.

Steps Leading to the Hearing

After the petition is filed and prior to holding the hearing, the following steps are involved:

A. *Petition Entered Upon Journal*

The clerk of the board shall cause the petition to be entered upon the journal of the board at its next regular session. This is the first official act of the board on the petition.

B. *Referral to County Engineer*

Within 5 days after the petition is filed, the clerk shall refer the legal description of the perimeter and the map or plat to the county engineer for a report on the accuracy of these documents.

ORC 709.03
ORC 709.031
ORC 709.032

C. *Hearing Date Set*

Within 5 days after the petition is filed, the board shall set a date, time, and place for the hearing.

1. The date must be not less than 60 nor more than 90 days after the petition was filed.
2. The board may appoint the clerk or the county administrator to set hearing dates (ORC 709.014 (B)).

D. *Notice of Hearing to Agent for the Petitioners*

1. The board must notify the agent for the petitioners of the date, time, and place of the hearing.
2. The board may appoint the clerk or the county administrator to provide notice to the agent for the petitioners (ORC 709.014 (B)).

E. Notice Provided by Agent for the Petitioners

Upon notification of the date, time, and place of the hearing, the agent for the petitioners must:

1. Within 5 days, cause written notice of the filing of the petition; the date and time of filing; and the date, time, and place of hearing to be delivered to:
 - a) Clerk of each township that has land included in the petition.
 - b) Clerk of the legislative authority of the municipality to which annexation is proposed.
 - c) Clerk of the board of county commissioners of any other county if the land is located in another county.
 - d) The notice must include:
 - 1) The date and time the petition was filed.
 - 2) The county in which it was filed.
 - 3) A copy of the petition.
 - 4) A copy of any other attachments or documents that accompanied the petition as it was filed.
 - e) This notice must be given by certified mail, return receipt requested, or by personally serving the clerks. Proof of service in the case of personal service is an affidavit of the person who delivered the notice to the clerk.
2. Within 10 days, send by regular mail the following information to the following individuals:
 - a) All owners within the territory to be annexed.
 - b) All owners of property adjacent and directly across the street from the territory proposed to be annexed.
 - c) The mailing must include the following items:
 - 1) A copy of the notice the board sent to the agent for the petitioners setting the date, time, and place of the hearing.
 - 2) Map of territory proposed to be annexed.
 - 3) A statement indicating where the full petition can be reviewed.
 - 4) A statement that any owner who signed the petition may remove the signature from the petition by filing with the clerk a written notice of withdrawal within 21 days after the date the agent mailed the notice.
 - 5) A certification of the date the agent mailed the notice to property owners.

F. Agent Files Proof of Service with Board of County Commissioners

1. Within 10 days after the date of completion of service, the agent of the petitioners shall file proof of service of notice on the township(s), municipality and with the board of county commissioners of another county, if applicable.
2. Within 10 days after mailing the notices to the property owners, the agent shall file with the

board of county commissioners a notarized affidavit that a notice was sent by regular mail to the property owners.

G. *Removal of Signatures From Petition*

An owner who signed an annexation petition may remove that signature by filing with the clerk a written notice of withdrawal. This notice must be filed within 21 days after the agent mailed the notice of the hearing to the owner. After this date signatures may only be withdrawn or removed at the hearing if the board finds that the signature was obtained under circumstances that constitute fraud, duress, misrepresentation, or under influence.

H. *Agent to Publish Notice in Newspaper*

The agent for the petitioners must cause notice of the substance of the petition and the date, time and place of the hearing to be published in a newspaper of general circulation within the county. The notice must be published at least once and at least 7 days prior to the hearing date. If land is located in more than one county, the notice must be published in all counties.

I. *Agent to File Proof of Publication With Board of County Commissioners*

Within 10 days after the notice is published, the agent must file proof of publication with the board. If the notice was published fewer than 10 days before the hearing, the proof of publication must be filed at the hearing.

J. *County Engineer to File Report With Board of County Commissioners*

At least 25 days before the hearing, the county engineer must file a report with the board on the accuracy of the legal description of the perimeter and the map or plat. This report is not conclusive upon the board. Failure by the county engineer to make this report does not affect the jurisdiction or duty of the board to proceed.

K. *Municipal Statement of Services Filed With Board of County Commissioners*

At least 20 days before the hearing, the legislative authority of the municipality must file with the board an ordinance or resolution that includes a statement indicating what services it will provide to the territory to be annexed and an approximate date it will provide these services. The municipality is entitled, in its sole discretion, to provide additional services.

L. *Amending Territory Proposed to Be Annexed*

At least 15 days before the hearing, the petition may be amended by the board if the amendment does not add territory to the petition. This can only be done with the consent of the agent for the petitioners. No notice of this action is required.

If the petition is so amended, the board may re-refer the legal description of the perimeter and the map or plat to the county engineer if these items have been revised. The county engineer shall then file a written report on the accuracy of these items on or before the hearing. Again, the report is not conclusive upon the board, and failure to make the report does not affect the jurisdiction or duty of the board to proceed.

M. *Property Owners Or Township Trustees May Request Verification that Persons Who Signed Petition Were Authorized to Sign*

1. At least 15 days before the hearing, the board of township trustees of any township containing territory proposed to be annexed or any owner of property in the area proposed to be annexed

may request reasonable proof of the authority of a person signing the petition on behalf of any person other than a natural being, the state, or a political subdivision. The request must be in writing and filed with both the board of county commissioners and with the agent for the petitioners.

2. If such a request is filed, the agent for the petitioners shall present to the board at the hearing sufficient evidence by affidavit or testimony to establish that the person was authorized to sign the petition. If the board does not find sufficient evidence in this regard, it must remove the signature from the petition.

N. *Filing of Affidavits*

1. At least 15 days before the hearing, affidavits may be filed with the board. However, the board must accept an affidavit after the 15 day period if the purpose of it is to establish the affiant's authority to sign the petition.
2. Affidavits may be in support of or against the annexation.
3. Affidavits also must be served upon the necessary parties, which includes the municipality to which annexation is proposed, each township with land in the area proposed to be annexed, and with the agent for the petitioners at least 15 days before the hearing.
4. Affidavits must be served upon these "necessary parties" as provided in Rule 5 (B) of the Rules of Civil Procedure.
5. An affidavit establishing the affiant's authority to sign the petition may be filed at the hearing when a request has been made for reasonable proof to be presented establishing the authority for a person to sign the petition.

O. *Request for Court Reporter at Hearing*

No later than 7 days before the hearing, a request for a court reporter may be filed with the board. The request must be accompanied by a deposit that must be established in a fee or deposit resolution by the board.

The Hearing

On the date, time, and place previously determined, the board of county commissioners holds the public hearing on the annexation. It may be at either a regular or special session of the board. CCAO believes that statute does not require the hearing to be completed in one day. As is current practice, the hearing may be continued to a subsequent date or dates.

Following are the major provisions of law that apply to the hearing on a regular annexation petition.

Record of Hearing

The board must make a record of the hearing by electronic or some other suitable method. A request may be filed for the board to provide an official court reporter.

- A. Request must be submitted at least 7 days before the hearing.
- B. A request for a court reporter must be accompanied by a deposit to pay costs.

ORC 709.032 (B)

- C. A request that record be transcribed may be filed with the board at any time, although this is usually done at the end of the hearing. There is no duty to transcribe unless a request is made and is accompanied by an amount to cover the cost of transcription.
- D. A fee and deposit resolution should specify amounts of deposit and cost of transcription.

Necessary Parties to an Annexation

Necessary parties to the regular annexation proceeding have certain rights that other persons do not have at an annexation hearing. These rights are explained throughout this chapter. Necessary parties include:

- A. The municipality to which annexation is proposed.
- B. Each township, any portion of, which includes territory proposed to be annexed.
- C. The agent for the petitioners.

ORC 709.032 (A)

Issuance of Subpoenas by Board of County Commissioners

The board is granted authority to issue subpoenas on its own initiative. However, the board must issue a subpoena if requested by a “necessary party.”

- A. Subpoenas may be for witnesses.
- B. Subpoenas may be for documents including books, papers, correspondence, memoranda, agreements, or other documents or records that are relevant or material to the petition.
- C. Subpoenas are directed to the county sheriff of the county where the witnesses, documents, or records are found.
- D. Subpoenas are served and returned in the same manner as allowed by the common pleas court in criminal cases.
- E. Fees and mileage expenses of the county sheriff and witnesses are the same as allowed by common pleas court in criminal cases. (ORC 311.17 (A) (8) subpoena - \$1.00; and ORC 311.17 (B) (1) mileage - \$0.50 for first mile and \$0.20 each additional mile.)
- F. Fees and mileage expenses must be paid in advance by the party requesting the board to issue a subpoena.
- G. If the board issues subpoenas on its own initiative, CCAO believes the expenses may be paid out of fees charged by the board.
- H. Fees related to the subpoena should be included in fee resolution.

ORC 709.032 (B)

Enforcement of Subpoenas

In the case of disobedience or neglect of a subpoena or refusal of a witness to testify to any matter regarding which the witness may be lawfully interrogated, the court of common pleas may compel obedience.

- A. The board of county commissioners or any member of the board, or a necessary party must apply to common pleas court.

ORC 709.032 (B)

- B. Court may impose obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena issued from the court or refusal to testify in court.
- C. An owner of a company, firm, partnership, association, or corporation that is subpoenaed may have an agent or attorney appear on behalf of the owner before the board of county commissioners.

Testimony at Hearing

- A. At the hearing, any person may appear, in person or by attorney, and after being sworn, may support or contest the annexation.
- B. Necessary parties or their representatives are entitled to:
 - 1. Present evidence.
 - 2. Examine witnesses.
 - 3. Cross-examine witnesses.
 - 4. Comment on all evidence, including affidavits.

ORC 709.032 (C)

Removal of Signatures at Hearing

- A. While signatures may be removed from the petition prior to the hearing, any owner who signed the petition may appear at the hearing in an effort to have the owner's signature removed from the petition.
- B. The owner must be sworn as provided in ORC 305.21.
- C. The owner may testify that the signature was obtained by:
 - 1. Fraud.
 - 2. Duress.
 - 3. Misrepresentation, including misrepresentation relating to the provision of municipal services to the territory proposed to be annexed.
 - 4. Undue influence.
- D. Any person, after being sworn, may testify orally in support of or rebuttal to the testimony of the owner.
- E. The owner and any witness who testifies are subject to cross-examination by the necessary parties.
- F. If a majority of the board finds that the owner's signature was obtained under circumstances constituting fraud, duress, misrepresentation, or under influence, it shall find the signature to be void.
- G. The board orders the signature removed from the petition.
- H. Signature is removed as of the time the petition was filed.

ORC 709.032 (D)

The Decision by the Board of County Commissioners

- A. Within 30 days after the conclusion of the hearing, the board must adopt a resolution granting or denying the petition for annexation and enter it upon the board's journal.
- B. In granting or denying the petition, the resolution must include specific findings of fact as to whether each of the conditions listed in ORC 709.033 (A) (1) to (6) have been met. These conditions are listed later in this chapter in the section titled "Conditions for Annexations."
- C. The board shall grant the petition if it finds that each of the conditions listed in ORC 709.033 (A) (1) to (6) have been met, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record.
- D. Upon journalization of the resolution granting or denying a petition, which resolution must include the specific findings of fact as to whether each of the conditions listed in Division (A) (1)-(6) of ORC 709.033 has been met, the clerk must send a certified copy to:
1. The clerk of the legislative authority of the municipality to which annexation is proposed.
 2. The clerk of each township in which territory proposed to be annexed is located.
 3. The clerk of the board of county commissioners of other counties if the territory proposed to be annexed is located in another county.
 4. The agent for the petitioners.
- E. The clerk shall take no further action until the expiration of 30 days after journalization of the resolution. During this 30 day period, appeals may be taken pursuant to ORC 709.07.
- F. If after the expiration of the 30 day period no appeal has been filed and the petition was granted, the clerk shall deliver a certified copy of the entire record of the annexation proceedings to the auditor or clerk of the municipality. The entire record includes:
1. All resolutions of the board, signed by a majority of the members of the board.
 2. The petition.
 3. The map.
 4. All other papers on file.
 5. The recording of the proceedings, if a copy is available.
 6. Exhibits presented at the hearing.
- G. If after the expiration of the 30 day period no appeal has been filed and the petition was denied, the clerk shall send a certified copy of the resolution denying the annexation to:
1. The agent for the petitioners.
 2. The clerk of the municipality to which annexation was proposed.
- H. If an appeal is filed under ORC Chapter 2506, a notice of appeal to the common pleas court is filed with the clerk. This notice of appeal operates as a stay of execution upon the clerk.

ORC 709.033
ORC 709.07

- I. After the common pleas court rules on the case, the clerk of courts must send a certified copy of the court order to the clerk.
- J. If a party appeals to the Court of Appeals or Supreme Court, this party must file a time stamped copy of the notice of appeal with the clerk of the board. This notice of appeal also serves as a stay of execution on the clerk.
- K. The stay upon the clerk shall not be lifted until the appropriate court issues a final order affirming or reversing the decision of the board and the time limits for additional appeals as specified in the certified copy of a court order sent by the clerk of courts has passed without the clerk receiving an additional notice of appeal.
- L. When appeals have been exhausted and if the court determines that the petition should be denied, the board must adopt a resolution denying the annexation, but only if the board's original action was to approve the annexation.
- M. When appeals have been exhausted and if the court determines that the petition should be granted, the board must adopt a resolution granting the petition if the original action of the board was denial. If the petition was originally granted, a new resolution is not required.
- N. The clerk shall then deliver a certified copy of that journal entry and the entire record of the proceedings to the auditor or clerk of the municipality to which annexation is proposed. This includes:
 - 1. All resolutions of the board, signed by a majority of the members of the board.
 - 2. The petition.
 - 3. The map.
 - 4. All other papers on file.
 - 5. The transcript of the proceedings, if available. (If not, CCAO advises a recording of the proceedings, if a copy is available.)
 - 6. Exhibits presented at the hearing.

Conditions for Annexation

- A. When granting or denying a regular annexation, the board must adopt a resolution. The resolution must include specific findings of fact as it relates to each condition for annexation.
- B. If the board grants the annexation, the decision is based upon a preponderance of the substantial, reliable, and probative evidence on the whole record.
- C. Following are the conditions that must be met to grant a regular annexation petition. These conditions are discussed in greater detail in Chapter 3 of this manual.
 - 1. The petition meets all the requirements set forth in, and was filed in the manner provided in, ORC 709.02. (see technical checklist in Appendix H)
 - 2. The persons who signed the petition are owners of real estate located in the territory proposed to be annexed.
 - 3. The number of valid signatures on the petition constituted a majority of the owners of real estate in the territory as of the date the petition was filed.

ORC 709.033 (A)

4. The municipality has complied with ORC 709.03 (D), the requirement to adopt by ordinance or resolution and submit a statement indicating what services it will provide and an approximate date it will provide the service to the territory proposed to be annexed, upon annexation.
5. The territory is not unreasonably large.
6. 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.

“Surrounding area” is defined as the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed.

Note: This condition is extensively discussed in the next chapter of this manual.

7. No street or highway will be divided or segmented by the boundary line between a township and the municipality as to create a road maintenance problem. If a street or highway will be so divided or segmented, the municipality has agreed, as a condition of the annexation, that it will assume the maintenance of that street or highway.

Refer to Appendix for Flow Chart and Checklists

In the appendix of this manual, the following appendices may be helpful in processing a regular annexation:

Appendix F	Procedural Flow Chart for a Regular Annexations
Appendix G	Procedural Checklist for a Regular Annexations
Appendix H	Technical Checklist for a Regular Annexations

Regular Annexations: Conditions for Annexation

General Comments

In order to grant a regular annexation petition, specified statutory conditions must be met. These conditions are listed in ORC 709.033 (A) and are listed later in this chapter.

SB 5 broadened some of these conditions to provide discretion to the board of county commissioners to consider the impact an annexation may have on unincorporated area located outside the territory proposed to be annexed but located one-half mile or less from any of the territory proposed to be annexed. SB 5 also responds to the problems regarding the failure of many annexations to adequately deal with issues of maintenance and jurisdiction of roads which lie adjacent to the annexed territory.

Important Procedural Changes

The board of county commissioners' decision on whether a regular annexation petition meets the conditions for annexation, as specified in ORC 709.033 (A) (1) to (6), must now be entered on the journal no later than 30 days after the completion of the hearing. Prior to SB 5, the law allowed the commissioners 90 days to reach their decision.

The board also is required to provide specific findings of fact as to whether each of the conditions, listed in ORC 709.033 (A) (1) to (6), has been met. The decision of the board must be based upon a preponderance of the substantial, reliable, and probative evidence on the whole record. It will be important for the findings of fact to provide a reference to the record of the proceeding to support the board's conclusion on each condition.

Conditions for Annexation

Following are the conditions that must be met in a regular annexation:

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in ORC 709.02. (see technical checklist in Appendix H) (ORC 709.033 (A) (1))
- B. The persons who signed the petition are owners of real estate in the territory proposed to be annexed. (ORC 709.033 (A) (2))
- C. The number of valid signatures constituted a majority of the owners of real estate in the territory as of the date the petition was filed. (ORC 709.033 (A) (2))

- D. The municipality has complied with ORC 709.03 (D), the requirement to adopt by ordinance or resolution a statement indicating what services it will provide and an approximate date it will provide the services to the territory proposed to be annexed, upon annexation. (ORC 709.033 (A) (3))
- E. The territory is not unreasonably large. (ORC 709.033 (A) (4))
- F. 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. (Note: Text in capital letters denotes new language in SB 5.)

 “Surrounding area” is defined as the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed. (ORC 709.033 (A) (5))
- G. No street or highway will be divided or segmented by the boundary line between a township and the municipality as to create a road maintenance problem, or, if a street or highway will be so divided or segmented, the municipality has agreed, as a condition of the annexation, that it will assume the maintenance of that street or highway. (ORC 709.033 (A) (6))

Discussion of the ORC 709.033 (A) (5) Condition

Under former law, this condition for annexation read as follows:

The general good of the territory sought to be annexed will be served if the annexation petition is granted.

Under SB 5, this condition for annexation now reads as follows:

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. As used in division (A) (5) of this section, “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.

In the preparation of this manual, CCAO requested comments from the Ohio Municipal League, the Ohio Township Association, lawyers that have been active practitioners of annexation law, and others. It is fair to state that the exact meaning of this new condition is open to various interpretations. CCAO believes that the exact meaning of this condition for annexation will not be clear until after it is litigated and there is a body of case law to give commissioners direction.

CCAO believes that most of the interested parties to the controversy that surrounds the meaning of this condition for annexation would, however, agree that there are now two elements to this condition for annexation:

- A. The general good of the territory proposed to be annexed will be served, and
- B. 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.

Beyond this general consensus, the major disagreement concerns how the “on balance” language that is part of this condition for annexation should be interpreted.

General speaking, there are two ways in which this condition for annexation can be read that will be discussed in the following sections.

Approach 1 to the ORC 709.033 (A) (5) Condition

Under Approach 1, the contention is that both elements of this condition for annexation are separately determined and that both must be met in order to grant the petition. Under this interpretation, the commissioners could not grant the petition for annexation unless both of the elements of this condition for annexation have been met.

Under Approach 1, the following questions might be relevant based on a preponderance of the substantial, reliable and probative evidence on the whole record of the annexation proceedings:

- A. On balance, will the general good of the territory proposed to be annexed be served if the petition is granted?
- B. On balance, will the benefits to the territory proposed to be annexed and the surrounding area outweigh the detriments to the territory proposed to be annexed and the surrounding area if the petition is granted?

Under Approach 1, the answer to both questions must be “yes” in order for the petition to be granted.

Approach 2 to the ORC 709.033 (A) (5) Condition

Under Approach 2, the contention is that both elements of this condition for annexation are separately determined, but that both conditions need not be met in order to grant the petition. Under this interpretation, the first element of the condition for annexation would always have to be met - the element dealing with the general good of the territory proposed to be annexed being served. However, a finding that the benefits to the territory proposed to be annexed and the surrounding area does NOT exceed the detriments to the territory proposed to be annexed and the surrounding area would not automatically mean that the commissioners must deny the petition. In this case, the commissioners would have to balance these two separate determinations.

Under Approach 2, the following questions might be relevant based on a preponderance of the substantial, reliable and probative evidence on the whole record of the annexation proceedings:

- A. Will the general good of the territory proposed to be annexed be served if the petition is granted?
- B. Will the benefits to the territory proposed to be annexed and the surrounding area outweigh the detriments to the territory proposed to be annexed and the surrounding area if the petition is granted?
- C. On balance, has the overall condition for annexation, considering both elements of the condition, been met?

It should be noted that the Ohio Township Association strongly believes that Approach 2 is not the intent of the General Assembly, while Approach 1 is. Others feel that Approach 2 is the proper interpretation. Various reviewers urged CCAO to simply include the statutory language given the differences of opinion

on the exact meaning of this language. Others were concerned that our narrative could be used as evidence in litigation that may be instituted to interpret this language. CCAO opted to include the two approaches in an effort to at least alert commissioners to the controversy. CCAO recommends that commissioners meet with their county prosecutor to discuss this condition for annexation in detail. It is the view of CCAO that the exact meaning of this condition for annexation may have to await direction from the courts.

The “Unreasonably Large” Test

Prior to SB 5, commissioner discretion in annexation proceedings was limited to determining general good of the territory proposed to be annexed AND whether the territory was unreasonably large. The “unreasonably large” test remains a separate condition for commissioners to evaluate. The issue of what constitutes an “unreasonably large” area of territory is not numerically or geographically defined in statute and has been the subject of several court cases. While there is no single accepted test, there is general accord on the relevant factors to be weighed. These factors include:

- A. The geographic character, shape, and size of the territory to be annexed in relation to the territory to which it will be annexed (the municipality), AND in relation to the territory remaining after the annexation is completed (the remaining township area).
- B. The ability of the annexing municipality to provide necessary municipal services to the added territory (can consider both geographic and financial “largeness”).
- C. The effect on remaining township territory if annexation is permitted. If the territory sought to be annexed is so great a portion of the township’s tax base that the annexation would render the remaining township incapable of supporting itself, then commissioners can reasonably conclude it is unreasonably large.

Expedited Type 1 Annexations: Petitions by All Property Owners With Consent of All Parties

General Comments

The annexation law establishes three special annexation procedures. We will refer to these types of annexation as “expedited annexations” in this manual.

Chapter 4 will deal with “Expedited Type 1 Annexations” — those authorized under ORC 709.022. Expedited Type 1 Annexations require the signatures of all property owners in the territory proposed to be annexed. In addition, all of the following parties, practically speaking, must consent to the annexation:

- A. The municipality to which annexation is proposed.
- B. Each township, any portion of which is included within the territory proposed to be annexed.
- C. The agent for the petitioners.

Consent is evidenced by the petition being accompanied by an annexation agreement or a cooperative economic development agreement (CEDA) executed by the municipality and each township, any portion of which is included within the territory proposed for annexation, and by the petition containing signatures of all property owners in the territory proposed to be annexed.

Special Nature of Annexation Proceedings

Under an Expedited Type 1 Annexation, the annexation proceedings are conducted under ORC 709.02 (C), (D), and (E) and ORC 709.021 and 709.022 to the exclusion of any other provisions in Chapter 709 of the Revised Code.

In addition, ORC 709.021 provides that the following ORC Sections apply to the granting of this type of annexation:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.015 -- Substantial compliance of procedural requirements provision. (see Chapter 1)
- C. 709.04 -- Municipal consideration of annexation petition.
- D. 709.10 -- Annexation effective 30 days after municipality passes resolution/ordinance accepting annexation.

- E. 709.11 -- Annexation petition to be filed in county in which the majority of acreage of the territory is situated. (see Chapter 1)
- F. 709.12 -- Apportioning of indebtedness of annexed territory.
- G. 709.192 -- Annexation agreements. (see Chapter 10)
- H. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- I. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

Party or Parties to the Annexation

The “party” or “parties” to an Expedited Type 1 Annexation are:

- A. The municipality to which annexation is proposed.
- B. Each township, any portion of which is included within the territory proposed to be annexed.
- C. The agent for the petitioners.

ORC 709.021 (D)

Filing of Petition

Contents of Petition

An Expedited Type 1 Annexation petition must be submitted to the clerk of the board of county commissioners of the county where the territory is located. The petition must specifically request that the board follow ORC 709.022. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. The petition must contain the following information:

- A. Signatures of all of the property owners in the territory proposed to be annexed. To be a valid signature, it must be the signature of the owner of the property as of the date the petition is filed.
 1. The person who signs or the circulator of the petition must write the date the signature was made next to the owner’s name.
 2. Any signature obtained more than 180 days before the petition is filed is not a valid signature.
 3. Any owner who signed the petition may have the signature removed before the document is filed by delivering a signed statement to the agent for the petitioners asking to have it removed. If the agent receives such a statement, the agent must strike through the signature, deleting it from the petition.
- B. Accurate legal description of the perimeter of the territory proposed to be annexed.
- C. Accurate map or plat of the territory.
- D. Name of person or persons to act as the agent for the petitioners. The agent may be an official, employee, or agent of the municipality to which annexation is proposed.

ORC 709.02 (C)
ORC 709.021 (B)

Other Information that Must Be Filed With the Petition, But Is Not a Part of the Petition

Other information that must be filed with the petition, but is not a part of the petition includes:

- A. List of all tracts, lots, or parcels in the territory proposed to be annexed, and all tracts, lots, or parcels located adjacent to the territory to be annexed or directly across the road when the road is adjacent to the territory to be annexed.
- B. The list is to include for each tract, lot, or parcel:
 1. Name of owner.
 2. Mailing address of owner.
 3. Permanent parcel number from the county auditor's permanent parcel numbering system. (ORC 319.28)
- C. Any error in the list shall not affect the validity of the petition.

ORC 709.02 (D)
ORC 709.021 (B)
ORC 709.022 (A)

Since the petition is filed under the Expedited Type 1 Annexation process, the petition must be accompanied by a certified copy of one of the following:

- A. A Cooperative Economic Development Agreement as provided for in ORC 701.07.
- B. An Annexation Agreement as provided for in ORC 709.192.

Such an agreement must be entered into by the municipality and each township, any portion of which is included within the territory proposed to be annexed.

Waiver of Right to Appeal & Special Disclosure Notice on Petition

Under an Expedited Type 1 Annexation, owners who sign the petition requesting the special procedure be used waive their right to appeal any action taken by the board of county commissioners. There is no appeal from the board's decision in law or in equity.

For an Expedited Type 1 Annexation petition to be valid, the petition circulated to collect signatures must contain the following notice in boldface capital letters immediately above the heading of the place for signatures on each part of the petition:

ORC 709.021 (B)
ORC 709.022 (B)

“WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL ANY ACTION ON THE PETITION TAKEN BY THE BOARD OF COUNTY COMMISSIONERS. THERE ALSO IS NO APPEAL FROM THE BOARD’S DECISION IN THIS MATTER IN LAW OR IN EQUITY.”

Definition of Owner or Owners

The term “owner” or “owners” means any of the following who is seized of a freehold estate in land:

- A. Any adult individual who is legally competent.
- B. The state or any political subdivision as defined in ORC 5713.081.

ORC 709.02 (E)
ORC 709.021 (B)

1. Authorized agent of the state or political subdivision must sign the petition.
 2. Authorized agent of the state is the Director of Administrative Services.
 3. If an authorized agent does not sign, the state or political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition.
- C. Any firm, trustee, or private corporation. 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.

In addition, an owner is determined as of the date the petition is filed with the board of county commissioners.

A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, shall be counted as one owner.

Ownership Interests Specifically Excluded from Definition of Owner or Owners

Items specifically excluded from the definition of “owner” or “owners” includes:

- A. Easements.
- B. Any railroad, utility, street, or highway rights-of-way held in fee, by easement, or by dedication and acceptance.
- C. Any person, firm, trustee, private corporation, the state, or any political subdivision that has become an owner of real estate if the primary purpose of the conveyance is to affect the number of owners required to sign an annexation petition.

ORC 709.02 (E)
ORC 709.021 (B)

Action by the Commissioners

Approval of the Petition

After the receipt of an Expedited Type 1 Annexation petition, along with either an annexation agreement or a cooperative economic development agreement, that meets the requirements of the law, the board shall adopt a resolution granting the annexation at the board’s next regular session. No public hearing is required.

After the board grants the annexation, the clerk must deliver a certified copy of the entire record of the annexation proceedings to the clerk or auditor of the municipality to which annexation is proposed.

The entire record of the proceedings includes:

- A. All resolutions of the board, signed by a majority of the members of the board.
- B. The petition.
- C. The map.

ORC 709.022

- D. All other papers on file.
- E. The recording of the proceedings, if a copy is available.

Commentary on Statutory Ambiguities and Other Issues

- A. There are no notice requirements which must be met by either the agent for the petitioners, the clerk, or the board.
- B. The law does not provide for any involvement or public comment regarding the petition. However, since all sessions of the board are open to the public, CCAO believes it is within the discretion of the board to accept public comment during any meeting on the petition.
- C. There is no specific statutory authority given for the board to refer the legal description and map/plat to the county engineer for review. CCAO suggests that such action is inherent in the statutory language that the petition must contain an accurate legal description and plat/map. (ORC 709.02 (C) (2))
- D. Since no hearing is required for an Expedited Type 1 Annexation, commissioners should take special care to assure that the petition is valid. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must conform with all of the statutory requirements as outlined in this chapter. This includes that the petition and attachments, including a certified copy of either an annexation agreement or a cooperative economic development agreement, are accurate and complete, the petition contains the required language waiving the right to appeal; the land is contiguous to the municipality; and, the owners who sign the petition are “owners” as now defined in ORC 709.02.

Refer to Appendix for Flow Chart and Checklists

In the appendix of this manual, the following appendices may be helpful in processing an Expedited Type 1 Annexation:

- | | |
|------------|--|
| Appendix I | Procedural Flow Chart for Expedited Type 1 Annexations |
| Appendix J | Procedural Checklist for Expedited Type 1 Annexations |
| Appendix K | Technical Checklist for Expedited Type 1 Annexations |

Expedited Type 2 Annexations: Petitions By All Property Owners With or Without Consent of Municipality & Township(s)

General Comments

Chapter 5 will deal with “Expedited Type 2 Annexations” — those authorized under ORC 709.023. In Expedited Type 2 Annexations, the petition must include the signatures of all property owners in the territory proposed to be annexed. In addition, the territory annexed is not, at any time, to be excluded from the township(s) under ORC 503.07 (ORC 709.023 (A) & (H)). The territory, thus, remains subject to the township’s real property taxes. The only exception is in the case where an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) has been entered into that allows some or all of the territory to be excluded or removed from the township(s). Furthermore, the annexation may or may not have the consent of the municipality or township(s).

Special Nature of Annexation Proceedings

Under an Expedited Type 2 Annexation, the annexation proceedings are conducted under ORC 709.02 (C), (D), and (E) and ORC 709.021 and 709.023 to the exclusion of any provision in Chapter 709 of the Revised Code.

However, ORC 709.021 provides that the following ORC Sections apply to the granting of this type of annexation:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.015 -- Substantial compliance of procedural requirements provision. (see Chapter 1)
- C. 709.04 -- Municipal consideration of annexation petition.
- D. 709.10 -- Annexation effective 30 days after municipality passes resolution/ordinance accepting annexation.
- E. 709.11 -- Annexation petition to be filed in county in which the majority of acreage of the territory is situated. (see Chapter 1)
- F. 709.12 -- Apportioning of indebtedness of annexed territory.

- G. 709.192 -- Annexation agreements. (see Chapter 10)
- H. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- I. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

Annexed Area Not to Be Excluded From Township

The territory annexed shall not, at any time, be excluded from the township under ORC 503.07. The annexed area, thus, remains subject to the township’s real property taxes.

The only exception to this rule is if the municipality and township have entered into an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) that would allow such exclusion or removal from the township.

ORC 709.023
(A) & (H)

Filing of Petition

Contents of Petition

An Expedited Type 2 Annexation petition must be submitted to the clerk of the board of county commissioners of the county where the territory is located. The petition must specifically request that the board follow ORC 709.023. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. It must contain the following information:

- A. Signatures of all the property owners in the territory proposed to be annexed. To be a valid signature, it must be the signature of the owner of the property as of the date the petition is filed.
 - 1. The person who signs or the circulator of the petition must write the date the signature was made next to the owner’s name.
 - 2. Any signature obtained more than 180 days before the petition is filed is not a valid signature.
 - 3. Any owner who signed the petition may have the signature removed before the document is filed by delivering a signed statement to the agent for the petitioners asking to have it removed. If the agent receives such a statement, the agent must strike through the signature, deleting it from the petition.
- B. Accurate legal description of the perimeter of the territory proposed to be annexed.
- C. Accurate map or plat of territory.
- D. Name of person or persons to act as the agent for the petitioners. The agent may be an official, employee, or agent of the municipality to which annexation is proposed.

ORC 709.02 (C)
ORC 709.021 (B)

Other Information that Must Be Filed With the Petition, But Is Not a Part of the Petition

Other information that must be filed with the petition, but is not a part of the petition includes:

- A. List of all tracts, lots, or parcels in the territory to be annexed, and all tracts, lots, or parcels located adjacent to the territory to be annexed or directly across the road when the road is adjacent to the territory to be annexed.
- B. The list is to include for each tract, lot, or parcel:
 - 1. Name of owner.
 - 2. Mailing address of owner.
 - 3. Permanent parcel number from the county auditor’s permanent parcel numbering system (ORC 319.28).
- C. Any error in the list shall not affect the validity of the petition.

ORC 709.02 (D)
ORC 709.021 (B)

Waiver of Right to Appeal & Special Disclosure Notice on Petition

Under an Expedited Type 2 Annexation, owners who sign the petition requesting the special procedure be used expressly waive their right to appeal, in law or equity, any action taken by the board of county commissioners. The owners also waive any rights they may have to sue on any issue relating to a municipality requiring a buffer and waive any rights to seek a variance that would exempt them from that buffer requirement.

For an Expedited Type 2 Annexation petition to be valid, the petition circulated to collect signatures must contain the following notice in bold face capital letters immediately above the heading of the place for signature on each part of the petition:

ORC 709.021 (B)
ORC 709.023 (A)

“WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY FROM THE BOARD OF COUNTY COMMISSIONERS’ ENTRY OF ANY RESOLUTION PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE.”

Definition of Owner or Owners

The term “owner” or “owners” means any of the following who is seized of a freehold estate in land:

- A. Any adult individual who is legally competent.
- B. The state or any political subdivision as defined in ORC 5713.081.
 - 1. Authorized agent of the state or political subdivision must sign the petition.
 - 2. Authorized agent of the state is the Director of Administrative Services.
 - 3. If an authorized agent does not sign, the state or political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition.
- C. Any firm, trustee, or private corporation. If the owner is a corporation, partnership, business trust, estate, organization, group, institution or society, the petition must be signed by a person authorized to sign for that entity.

ORC 709.02 (E)
ORC 709.021 (B)

In addition, an owner is determined as of the date the petition is filed with the board of county commissioners.

A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, shall be counted as one owner.

Ownership Interests Excluded From Definition of Owner or Owners

Items specifically excluded from the definition of “owner” or “owners” include:

- A. Easements.
- B. Any railroad, utility, street or highway rights-of-way held in fee, by easement, or by dedication and acceptance.
- C. Any person, firm, trustee, private corporation, the state, or any political subdivision that has become an owner of real estate if the primary purpose of the conveyance is to affect the number of owners required to sign an annexation petition.

ORC 709.02 (E)
ORC 709.021 (B)

Consideration of Petition

The petition, signed by all the owners of land contiguous to a municipality, may be filed requesting the special procedure in ORC 709.023 be used. The petition is filed with the clerk of the board of county commissioners in which the territory is located. If the territory is situated in more than one county, the annexation proceedings are to be in the county in which the majority of acreage of the territory is located. After the petition is filed, the following steps are involved.

A. *Petition Entered Upon Journal*

The clerk of the board shall cause the petition to be entered upon the journal of the board at its next regular session. This is the first official act of the board on the petition.

ORC 709.023

B. *Notices to Be Sent by Agent for Petitioners*

1. Within 5 days after filing the petition, the agent for the petitioners must notify:
 - a) Clerk of the legislative authority of the municipality to which annexation is proposed.
 - b) Clerk of each township any portion of which is included in the territory proposed to be annexed.
 - c) Clerk of board of county commissioners of any other county if land is located in another county.
 - d) 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 the road from that territory.
2. The notice must refer to the time and date the petition was filed and the county in which it was filed. The notice must include:
 - a) Copy of the petition.
 - b) Any attachments or documents accompanying the petition as filed.

3. The notice to governmental bodies must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice.
4. The notice to property owners is sufficient if sent by regular U.S. mail to the tax mailing address listed on the county auditor's records.
5. Proof of service of notice on each governmental official, but not on property owners, must be filed with the board of county commissioners.
6. The law does not provide any time requirement for the proof of service.

C. *Filing Statement of Municipal Services With Board of County Commissioners*

1. Within 20 days after the petition is filed, the municipality to which annexation is proposed must adopt an ordinance or resolution relating to municipal services.
2. The ordinance or resolution must state what services the municipality will provide to the territory proposed for annexation, upon annexation.
3. The ordinance or resolution shall also include an approximate date by which the municipality will provide the services.
4. The ordinance or resolution must be filed with the board within 20 days after the petition was filed.
5. The board shall make the ordinance or resolutions available for public inspection.
6. The municipality is entitled in its sole discretion to provide services in addition to those described in the ordinance or resolution to the territory proposed for annexation, upon annexation.

D. *Filing Municipal Statement on Incompatible Land Uses and Zoning Buffer*

1. Within 20 days after the petition is filed, the municipality to which annexation is proposed must adopt an ordinance or resolution relating to land uses and zoning buffers, if the territory proposed to be annexed is currently subject to either county or township zoning.
2. The ordinance or resolution must state:
 - a) if the territory is annexed, and
 - b) becomes subject to municipal zoning, and
 - c) the municipal zoning permits uses in the annexed territory that the municipality determines are clearly incompatible with uses under current county or township zoning in the adjacent land remaining in the township, from which the territory was annexed,then the municipality 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 in the township.
3. The ordinance or resolution must be filed with the board within 20 days after the petition is filed.
4. A buffer is defined to include open space, landscaping, fences, walls, or other structured elements; streets and street rights-of-way; and bicycle and pedestrian paths and sidewalks.

5. If the buffer is not in place before any development of the annexed territory, civil action to enforce compliance may be sought by any owner of land that remains in a township and that is adjacent to the territory annexed.

E. *Township or Municipality Consents or Objects*

1. Within 25 days after the date that the petition is filed, the municipality to which annexation is proposed and each township with land included in the proposed annexation may adopt an ordinance or resolution consenting or objecting to the proposed annexation.
2. An objection to a proposed annexation by a municipality or township(s) must be based solely on the conditions under which commissioners rule on Expedited Type 2 Annexations as specified ORC 709.023 (E). These conditions are listed later in this chapter in the section titled, "Conditions for Annexation in Expedited Type 2 Annexations."
3. Failure by the municipality or township(s) to file an ordinance or resolution within 25 days of the filing of the petition is deemed to constitute consent to the proposed annexation.

F. *Action By County Commissioners When Municipality & Township Consent*

If the municipality and each township file an ordinance or resolution consenting to the annexation within 25 days after the petition was filed, the board at its next regular session shall enter upon its journal a resolution granting the proposed annexation.

G. *Action By County Commissioners When Municipality or Township Objects*

1. If the municipality or any township with territory proposed to be annexed objects to the annexation on the basis of the conditions specified in ORC 709.023 (E), the board must review the petition not less than 30 or more than 45 days after the date that the petition was filed, and determine if each of the conditions for Expedited Type 2 Annexation has been met.
2. If the board determines that each condition has been met, it shall enter upon its journal a resolution granting the annexation.
3. If the board determines that one or more of the conditions have not been met, it shall enter upon its journal a resolution denying the petition and stating which of the conditions have not been met.

H. *Transmittal to Municipality*

If the petition is granted, the clerk is to deliver a certified copy of the entire record of the annexation proceeding to the auditor or clerk of the municipality. The entire record includes:

1. All resolutions of the board, signed by a majority of the members of the board.
2. The petition.
3. The map.
4. All other papers on file.
5. The recording of the proceedings if a copy is available. However, no hearing recording or hearing exhibits would be involved, since no hearing is statutorily required.

If the petition is denied, the statute gives no direction on notification to the parties; however, notification should probably be made.

Conditions for Annexation in Expedited Type 2 Annexations

The following conditions must be met to approve an Expedited Type 2 Annexation:

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in, ORC 709.021. (see technical checklist in Appendix N) (ORC 709.023 (E) (1))
- B. The persons who signed the petition are owners of property located in the territory proposed to be annexed, and they constitute all owners in the territory. (ORC 709.023 (E) (2))
- C. The territory proposed to be annexed does not exceed 500 acres. (ORC 709.023 (E) (3))
- D. The territory proposed to be annexed shares a contiguous boundary with the municipality for a continuous length of at least 5% of the perimeter of the territory proposed to be annexed. (ORC 709.023 (E) (4))
- E. The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed to be annexed. (ORC 709.023 (E) (5))
- F. The municipality has agreed to provide the territory proposed to be annexed the services specified in the municipal services statement. (ORC 709.023 (E) (6))
- G. If a street or highway will be divided or segmented by the boundary line between the municipality and township as to create a road maintenance problem, the municipality has agreed as a condition of annexation to assume maintenance of that street or highway or to otherwise correct the problem. (ORC 709.023 (E) (7))

ORC 709.023 (E)

Appeals and Mandamus Actions

Under Expedited Type 2 Annexation there is no appeal in law or equity from the board's decision. Any party may, however, seek a writ of mandamus to compel the board to perform its duties under this special procedure. It should be noted that the term "party" is not defined by the Ohio Revised Code for Section 709.023 -- Expedited Type 2 Annexation.

ORC 709.023 (G)

Enforcement of Municipal Buffer Zones

The board of county commissioners is not involved in the enforcement of municipal buffer zones. Enforcement is by civil action. Any owner of land remaining in the township that is adjacent to territory annexed under this special procedure and who is directly affected by failure of the municipality to enforce a buffer zone may commence a civil action in common pleas court. The action is against the owner who is not in compliance with the buffer requirement whenever the required buffer is not in place before any development of the annexed territory begins.

ORC 709.023 (I)

Commentary on Statutory Ambiguities and Other Issues

- A. The "review" required if the municipality or township(s) object to the petition is not technically a hearing, and the statute gives no guidance as to how the "review" should be conducted. Therefore, CCAO recommends the following procedure:

1. Conduct the “review” during a meeting of the board in open session.
 2. Invite the municipality, township(s), and agent to the meeting and offer them the opportunity to present a statement regarding the proposed annexation and answer questions that the board might have.
 3. Request the municipality to send a representative to the meeting to verify that it agrees to provide the services it has outlined in its resolution/ordinance which it has filed with the commissioners.
 4. Prior to the review, the board may choose to examine the map to consider whether a road maintenance problem may be created. If the board believes that such a problem will be created, and it was not stated in an objection, the board may request that representatives from the municipality and the township(s) be present at the meeting to discuss the issue.
- B. The law does not provide for any involvement or public comment regarding the petition. However, since all sessions of the board are open to the public, CCAO believes it is within the discretion of the board to accept public comment during any meeting on the petition.
- C. There is no specific statutory authority given for the board to refer the legal description and map/plat to the county engineer for review. It is suggested that such action is inherent in the statutory language that the petition must contain an accurate legal description and plat/map. (ORC 709.02 (C) (2))
- D. It should be noted that unlike Expedited Type 1 (ORC 709.022) and Expedited Type 3 (ORC 709.024) Annexations statutes, Expedited Type 2 (ORC 709.023) Annexation statute includes no definition of “party” as do the other two expedited annexations. ORC 709.021 (D) defines a “party” to be the municipality, township(s), and agent, but only as it related to the other two expedited processes.
- E. Under an Expedited Type 2 Annexation, a hearing is not required. If both the municipality and township(s) consent to the annexation, the commissioners proceed as required by law. If either the municipality or any township objects, the commissioners must “review” the petition, but this does not involve a hearing. Since in either case there is no hearing, commissioners should take special care to assure that the petition is a valid petition and the required conditions for annexation have been met. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must conform with all of the statutory requirements as outlined in this chapter. These include the petition and attachments being accurate and complete; the petition contains the language waiving the right to appeal; the land is contiguous to the municipality; and, the owners who sign the petition are “owners” as now defined in ORC 709.02. In addition, commissioners should assure that the statement of municipal services and statement of incompatible land uses and zoning buffer have been filed. Finally, commissioners must assure that all of the conditions for an Expedited Type 2 Annexation have been met.

Refer to Appendix for Flow Chart and Check Lists

In the Appendix of this manual, the following appendices may be helpful in processing an Expedited Type 2 Annexation:

Appendix L	Procedural Flow Chart for Expedited Type 2 Annexations
Appendix M	Procedural Checklist for Expedited Type 2 Annexations
Appendix N	Technical Checklist for Expedited Type 2 Annexations

Expedited Type 3 Annexations: Petitions By All Property Owners For Undertaking A Significant Economic Development Project

General Comments

Chapter 6 will deal with “Expedited Type 3 Annexations” -- those authorized under ORC 709.024. Expedited Type 3 Annexations are for the purpose of undertaking a significant economic development project.

In Expedited Type 3 Annexations, the territory annexed is not, at any time, to be excluded from the township under ORC 503.07. The territory, thus, remains subject to the township’s real property taxes. The only exception is in the case where an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) has been entered into that allows some or all of the territory to be excluded or removed from the township.

Definition of a Significant Economic Development Project

The term “significant economic development project” means:

- A. One or more economic development projects that can be classified as:
 1. Industrial
 2. Distribution
 3. High Technology
 4. Research & Development
 5. Commercial
- B. These projects may include ancillary residential and retail uses.
- C. The projects also must satisfy all of the following criteria:
 1. Capital investment:
 - a) Total private real and personal property investment shall exceed \$10 million including:

ORC 709.024 (A)

- 1) Land
 - 2) Infrastructure
 - 3) New construction
 - 4) Reconstruction
 - 5) Installation of fixtures & equipment
 - 6) Additional inventory
- b) The \$10 million threshold excludes investment solely related to ancillary residential and retail elements.
 - c) The \$10 million threshold does not include payments in lieu of taxes under:
 - 1) ORC Chapter 725 -- Urban Renewal Debt Retirement Fund Program.
 - 2) ORC Chapter 1728 -- Community Redevelopment Corporation Program.
 - 3) ORC Sections 5709.40 -- 5709.43 -- Municipal Tax Increment Financing.
 - 4) ORC Sections 5709.73 -- 5709.75 -- Township Tax Increment Financing.
 - 5) ORC Sections 5709.78 -- 5709.81 -- County Tax Increment Financing.
2. Additional annual payroll:
 - a) creation of additional annual payroll greater than \$1 million, and
 - b) any payroll arising solely from any retail elements of the project is excluded.
 3. Project has been certified by the state Director of Development as meeting the real and personal property and payroll thresholds as specified above.

Special Nature of Annexation Proceedings

Under an Expedited Type 3 Annexation, the annexation proceedings are conducted under ORC 709.02 (C), (D), and (E) and ORC 709.021 and ORC 709.024 to the exclusion of any other provision of ORC Chapter 709.

However, the following ORC Sections apply to the granting of this type of annexation:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.015 -- Substantial compliance of procedural requirements provision. (see Chapter 1)
- C. 709.04 -- Municipal consideration of annexation petition.
- D. 709.10 -- Annexation effective 30 days after municipality passes resolution/ordinance accepting annexation.
- E. 709.11 -- Annexation petition to be filed in county in which the majority of acreage of the territory is situated. (see Chapter 1)

- F. 709.12 -- Apportioning of indebtedness of annexed territory.
- G. 709.192 -- Annexation agreements. (see Chapter 10)
- H. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- I. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

Annexed Area Not to Be Excluded from Township

Under an Expedited Type 3 Annexation, the territory annexed shall not at any time be excluded from the township under ORC 503.07. The annexed area, thus, remains subject to the township's real property taxes.

ORC 709.024 (H)

The only exception to this rule is if the municipality and township have entered into an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) that would allow such exclusion or removal from the township.

Filing of Petition

Contents of Petition

An Expedited Type 3 Annexation petition must be submitted to the clerk of the board of county commissioners of the county where the territory is located. The petition must specifically request that the board follow ORC 709.024. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. It must contain the following information:

- A. Signatures of all the property owners of the territory proposed to be annexed. To be a valid signature, it must be the signature of the owner of the property as of the date the petition is filed.
 1. The person who signs or the circulator of the petition must write the date the signature was made next to the owner's name.
 2. Any signature obtained more than 180 days before the petition is filed is not a valid signature.
 3. Any owner who signed the petition may have the signature removed before the document is filed by delivering a signed statement to the agent for the petitioners asking to have it removed. If the agent receives such a statement, the agent must strike through the signature, deleting it from the petition.
- B. Accurate legal description of the perimeter of the territory proposed to be annexed.
- C. Accurate map or plat of the territory.
- D. Name of person or persons to act as the agent for the petitioners. The agent may be an official, employee, or agent of the municipality to which annexation is proposed.

ORC 709.02 (C)
ORC 709.021 (B)

Other Information that Must Be Filed With the Petition, But Is Not a Part of the Petition

Other information that must be filed with the petition, but is not a part of the petition includes:

- A. List of all tracts, lots, or parcels in the territory proposed to be annexed, and all tracts, lots, or parcels located adjacent to the territory to be annexed or directly across the road when the road is adjacent to the territory to be annexed.
- B. The list is to include for each tract, lot, or parcel:
 1. Name of owner.
 2. Mailing address of owner.
 3. Permanent parcel number from the county auditor's permanent parcel numbering system. (ORC 319.28)
- C. Any error in the list shall not affect the validity of the petition.

ORC 709.02 (D)
ORC 709.021 (B)

Definition of Owner or Owners

The term "owner" or "owners" means any of the following who is seized of a freehold estate in land:

- A. Any adult individual who is legally competent.
- B. The state or any political subdivision as defined in ORC 5713.081.
 1. Authorized agent of state or political subdivision must sign the petition.
 2. Authorized agent of the state is the Director of Administrative Services.
 3. If an authorized agent does not sign, the state or political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition.
- C. Any firm, trustee, or private corporation. 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.

ORC 709.02 (E)
ORC 709.021 (B)

In addition, an owner is determined as of the date the petition is filed with the board of county commissioners.

A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, shall be counted as one owner.

Ownership Interests Excluded from Definition of Owner or Owners

Items specifically excluded from the definition of "owner" or "owners" include:

- A. Easements.
- B. Any railroad, utility, street or highway rights-of-way held in fee, by easement, or by dedication and acceptance.

- C. Any person, firm, trustee, private corporation, the state, or any political subdivision that has become an owner of real estate if the primary purpose of the conveyance is to affect the number of owners required to sign an annexation petition.

ORC 709.02 (E)
ORC 709.021 (B)

Definition of Party or Parties

The “party” or “parties” to an Expedited Type 3 Annexation are:

- A. The municipality to which annexation is proposed.
- B. Each township, any portion of which is included within the territory proposed to be annexed.
- C. The agent for the petitioners.

ORC 709.021 (D)

Consideration of Petition

The petition, signed by all the owners of land contiguous to a municipality, may be filed requesting the special procedure in ORC 709.024 be used. The petition is filed with the clerk of the board of county commissioners in which the territory is located. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. After the petition is filed, the following steps are involved:

A. *Petition Entered Upon Journal*

The clerk of the board shall cause the petition to be entered upon the journal of the board at its next regular session. This is the first official act of the board on the petition.

B. *Notices to Be Sent By Agent for Petitioners*

1. Within 5 days after filing the petition, the agent for the petitioners must notify:
 - a) Clerk of the legislative authority of the municipality to which annexation is proposed.
 - b) Clerk of each township any portion of which is included in the territory proposed to be annexed.
 - c) Clerk of board of county commissioners of any other county if land is located in another county.
 - d) Owners of property adjacent to the territory proposed to be annexed or adjacent to a road that is adjacent to that territory and located directly across the road from that territory.
2. The notice must refer to the time and date the petition was filed and the county in which it was filed. The notice must include:
 - a) Copy of the petition.
 - b) Any attachments or documents accompanying the petition as filed.
3. The notice to governmental bodies must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice.

ORC 709.024

4. The notice to property owners is sufficient if sent by regular U.S. mail to the tax mailing address listed on the county auditor's records.
5. Proof of service of the notice on each governmental official, but not on property owners, must be filed with the board of county commissioners.
6. The law does not provide any time requirement for this proof of service.

C. *Township or Municipality Consents or Objects*

1. Within 30 days after the date the petition is filed, the municipality to which annexation is proposed and each township with land included in the proposed annexation may adopt an ordinance or resolution consenting or objecting to the annexation.
2. An objection to a proposed annexation by a municipality or township must be based solely on the conditions under which commissioners' rule on Type 3 Expedited Annexations as specified in ORC 709.024 (F). These conditions are listed later in this chapter in the section titled, "Conditions for Annexation in Expedited Type 3 Annexations."
3. As specified in ORC 709.024 (C) (1), failure to file an ordinance or resolution within 30 days of filing is deemed as consent to the proposed annexation by the municipality or township.

D. *Filing of Statement of Municipal Services With Board of County Commissioners*

1. Within 20 days after receiving notification by the agent that the petition has been filed, the municipality to which annexation is proposed must adopt an ordinance or resolution relating to municipal services.
2. The ordinance or resolution must state what services the municipality will provide or cause to be provided to the territory proposed to be annexed, upon annexation.
3. The ordinance or resolution shall also include an approximate date by which the municipality will provide or cause to be provided the services .
4. If a hearing is to be held on the petition, the statement must be filed with the clerk at least 20 days before the date of the hearing.

E. *Action by County Commissioners With Consent of All Parties*

If all parties to the annexation consent to the proposed annexation, no hearing shall be held. The board, at its next regular session shall adopt a resolution approving the annexation. There is no appeal in law or in equity of such approval.

F. *Action by County Commissioners Without Consent of All Parties*

If all parties do not consent to the annexation, a hearing must be held on the petition. Objections to the petition must be based solely on the provisions specified in ORC 709.024 (F); these provisions are listed later in this chapter in the section titled "Conditions for Annexation in Expedited Type 3 Annexations." If objections are filed, the following procedure must be followed:

1. The board shall hear the petition at its next regular session.
2. The board shall notify the agent for the petitioners of the hearing date, time, and place.
3. The agent for the petitioners shall give notice to the parties and the owners of property adjacent to the territory proposed to be annexed or adjacent to a road that is adjacent to that territory and located directly across that road from that territory.

4. This notice must be sent within 5 days after receipt of the notice of the hearing from the board.
5. Notice to a property owner is sufficient if it is sent by regular United States mail to the tax mailing address listed on the county auditor's records.
6. At the hearing, the parties and any owner of property within the territory proposed to be annexed may appear, in person or by attorney, to support or contest the petition. The parties or their representatives are entitled to present evidence, examine and cross-examine witnesses, and comment on all evidence.
7. Within 30 days after the hearing the board shall enter upon its journal a resolution granting or denying the proposed annexation.
 - a) The board shall adopt a resolution granting the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of the conditions for annexation has been met.
 - b) The resolution must include specific findings of fact as to whether or not each of the conditions for annexation has been met.

G. *Transmittal to Municipality*

If the petition is granted, the clerk delivers a certified copy of the entire record of the annexation proceedings to the auditor or clerk of the municipality. The following items must be included:

1. All resolutions of the board, signed by a majority of the members of the board.
2. The petition.
3. The map.
4. All other papers on file.
5. The recording of the proceedings, if a copy is available.
6. Exhibits presented at the hearing.

If the petition is denied, the statute does not give direction on notification to the parties; however, CCAO encourages notification be made.

Conditions for Annexation in Expedited Type 3 Annexations

The following conditions must be met to approve an Expedited Type 3 Annexation:

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in, ORC 709.021. (see technical checklist in Appendix Q) (ORC 709.024 (F) (1))
- B. The persons who signed the petition are owners of property located in the territory proposed to be annexed and they constitute all owners in the territory. (ORC 709.024 (F) (2))
- C. No street or highway will be divided or segmented by the boundary line between a township and municipality as to create a road maintenance problem, or if the street or highway will be so divided or segmented, the municipality has agreed, as a condition of annexation, to assume maintenance of that street or highway. (ORC 709.024 (F) (3))

ORC 709.024 (F)

- D. The municipality has adopted an ordinance or resolution containing a statement of municipal services. (ORC 709.024 (F) (4))
- E. The state Director of Development has certified that the project qualifies as a significant economic development project on the basis of the \$10 million property investment threshold and the \$1 million payroll threshold. (ORC 709.024 (F) (5))

Appeals of Expedited Type 3 Annexations

If the board grants the petition, there is no appeal in law or in equity. The only person that has standing to appeal this type of annexation is an owner who signed the petition. Such an owner may appeal the denial of a proposed annexation by the board to the court of common pleas pursuant to ORC 709.07, within 30 days of denial. Subsequent appeals to the court of appeals and Ohio Supreme Court are also possible. If a final order of a court orders the board to grant the petition, the board must adopt a resolution granting the petition.

ORC 709.024 (G)

Municipal Provision of Services

A municipality is entitled, in its sole discretion, to provide to the territory proposed to be annexed, services in addition to those services described in the statement of services it adopted and submitted to the board under ORC 709.024 (C) (2) after annexation occurs.

ORC 709.024 (I)

Commentary on Statutory Ambiguities and Other Issues

- A. The law is vague and offers no specific direction for establishing a hearing date when the municipality or township(s) file an objection to the petition. While the law provides that unless all parties consent, a hearing must be held on the petition at the board's next regular session, it leaves two issues unresolved:
 - 1. While the law provides that all parties are given a 30 day period to consent or object, there is no direction given for when the hearing is to be held if a party objects at any time prior to the 30th day. Since it is clear that once an objection is filed that a hearing must be held, one interpretation is that the date for the hearing must be at the next regular session of the board following the receipt of an objection. Another interpretation is that no hearing should be scheduled until after the expiration of the 30 day period even if an objection is filed prior to the 30th day. Commissioners should consult the county prosecutor on this issue to formulate a county position on this issue. If the prosecutor believes the second interpretation is correct, CCAO advises commissioners to schedule a "tentative hearing" for the first regular session of the board after the expiration of 35 days after the petition is filed. This would account for the 30 days during which objections could be filed and 5 days for the agent to provide notices.
 - 2. While the law gives the agent a 5 day period to notify the parties and owner of the hearing date, it is entirely possible that an objection could occur so that the next regular session of the board will take place prior to the 5 day period the agent has to notify the parties of the date of the hearing. If this situation arises, it is recommended that the hearing be delayed until the next regular session after the expiration of the 5 day period during which notices must be sent by the agent.

- B. While the law provides for participation by the parties and property owners within the territory to be annexed, it does not provide for any involvement or public comment from any member of the public. However, since all sessions of the board are open to the public, it is within the discretion of the board to accept public comment during any hearing on the petition.
- C. There is no specific statutory authority given for the board to refer the legal description and map/plat to the county engineer for review. It is suggested that such action is inherent in the statutory language that the petition must contain an accurate legal description and plat/map. (ORC 709.02 (C) (2))
- D. Under an Expedited Type 3 Annexation no hearing is required if both the municipality and township(s) consent to the annexation. When no hearing is held, commissioners should take special care to assure that the petition is valid and the required conditions for annexation have been met. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must conform with all of the statutory requirements as outlined in this chapter. These include the petition and attachments being accurate and complete; the land is contiguous to the municipality; and, the owners who sign the petition are “owners” as now defined in ORC 709.02. In addition, commissioners should assure that the statement of municipal services has been filed. Finally, commissioners must assure that all of the conditions for an Expedited Type 3 Annexation have been met.

Refer to Appendix for Flow Chart and Checklists

In the appendix of this manual, the following appendices may be helpful in processing an Expedited Type 3 Annexation:

- Appendix O Procedural Flow Chart for Expedited Type 3 Annexations
- Appendix P Procedural Checklist for Expedited Type 3 Annexations
- Appendix Q Technical Checklist for Expedited Type 3 Annexations

Annexations by Petition of Municipality for Municipal, County or State Owned Land

General Authority

The inhabitants, generally, of a municipality may enlarge its limits by annexation of contiguous territory under very limited conditions. The legislative authority of the municipality must pass an ordinance authorizing the annexation. This ordinance directs the village solicitor or city law director or another person named in the ordinance to take the necessary action to accomplish the annexation. The municipality may only initiate annexation proceedings of contiguous territory if it is owned only by the municipality, a county, or the state. Under former law, a municipality could initiate a petition for annexation of contiguous privately owned property. The petition had to be approved by the board and then submitted to the electors of the unincorporated area of the township. This option was repealed by SB 5.

ORC 709.13
ORC 709.14
ORC 709.16

Special Nature of Annexation Proceeding

Proceedings before the board of county commissioners of this type of annexation are conducted under ORC 709.16 to the exclusion of any other provisions of ORC Chapter 709 except for the following sections:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.14 -- Authority for municipality to initiate an annexation as explained by this chapter.
- C. 709.15 -- Description of municipal annexation petition as explained by this chapter.
- D. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- E. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

Territory Not to Be Excluded From Township

Under this type of annexation, the territory annexed shall not be excluded or removed from the township under ORC 503.07.

ORC 709.16 (H)

Contents of Petition

The petition to annex contiguous land owned by the municipality, a county, or the state must contain the following items:

- A. The petition must set forth that under an ordinance of the municipality the territory described in the petition was authorized to be annexed.
- B. An accurate legal description of the perimeter of the territory proposed to be annexed.
- C. An accurate map or plat of the territory proposed to be annexed.

ORC 709.15

Consideration of Petition

A. *Petition Entered Upon Journal*

1. After the petition is filed, the clerk shall cause the petition to be entered upon the board's journal at its next regular session. This entry is the first official act of the board on the petition.
2. The board must act on the petition within 30 days after its receipt.

B. *Action by County Commissioners*

1. LAND OWNED BY A MUNICIPALITY

If the only territory to be annexed is contiguous territory owned by the municipality, the board must adopt a resolution granting the petition.

2. LAND OWNED BY A COUNTY

If the only territory to be annexed is contiguous territory owned by a county, the board may grant or deny the petition, by resolution.

3. LAND OWNED BY THE STATE

If the only territory to be annexed is contiguous territory owned by the state and the Director of Administrative Services has filed a written consent to the granting of the annexation, the board must grant the annexation.

- C. In all cases, the annexation shall be complete upon the entry upon the journal of a resolution granting the annexation.
- D. The clerk has no duty to forward the resolution and complete file of the annexation proceedings to the municipal clerk or auditor. However, CCAO recommends forwarding a copy of the resolution and complete record to the municipal clerk or auditor.

ORC 709.16

Appeals

No appeal in law or in equity shall be allowed from the granting of this type of annexation.

ORC 709.16 (F)

Situation When Annexation of Land Owned by a Municipality Is Void

If a municipality purchases land below an appraised fair market value and sells or agrees to sell it back to the person that sold it to the municipality, an annexation of such land approved under this special procedure is declared to be void.

In this case, the annexed property becomes part of the township from which it was annexed, if it still exists. If the township no longer exists, the board must attach the annexed territory to another township.

ORC 709.16 (G)

Commentary on Statutory Ambiguities and Other Issues

- A. Language contained in ORC 709.16, which encompassed and applied the municipal acceptance process of ORC 709.04, was dropped under SB 5. Thus, it now appears ORC 709.04 does not apply under this section. Consequently, the clerk has no duty to forward to the municipal auditor or clerk the resolution and complete record of the annexation proceedings. However, CCAO recommends that the clerk of the board forward a copy of the board's resolution and complete record to the municipal auditor or clerk.

Likewise, the municipality is not statutorily required to accept the annexation, pursuant to ORC 709.04, after the granting of the petition by the board as is the case in other procedures. Therefore, there is a question as to the responsibility of the municipal clerk to forward materials from the annexation proceedings to the county recorder, county auditor, and Secretary of State, pursuant to ORC 709.06.

- B. The statute prohibits the appeal of any annexation granted under this section but is silent on the opportunity to appeal the denial of an annexation. Since the only denial possible under this procedure is for land owned by the county and the board is specifically given complete discretion in its decision through the use of the word "may" in the statute, the opportunity for a challenge of the board's decision in this case seems unlikely.
- C. The law does not provide for any involvement or public comment regarding the petition. However, since all sessions of the board are open to the public, CCAO believes it is within the discretion of the board to accept public comment during any meeting on the petition.
- D. There is no specific statutory authority given for the board to refer the legal description and map or plat to the county engineer for review. It is suggested that such action is inherent in the statutory language that the petition must contain an accurate legal description and map or plat. (ORC 709.02 (C) (2))
- E. Annexation by petition of a municipality for municipal, county, or state-owned land does not require a hearing. Commissioners, thus, should take special care to assure that the petition is valid and meets all other statutory requirements detailed in this chapter. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must be authorized under an ordinance of the municipality; be contiguous to the municipality; and include an accurate legal description of the perimeter and an accurate map or plat. In the case of state-owned land, written consent of the Director of Administrative Services is also required.

While ORC 709.16 (G) provides that annexation petitions filed under this procedure are void if the municipality purchases property below an appraised fair value and sells or agrees to sell the property back to the person that sold it to the municipality, it appears that there is no requirement for the commissioners to investigate this issue when making its decision. If such an allegation has been made or is suspected in the community, CCAO advises commissioners to immediately consult with the county prosecutor to determine if the board should consider this issue prior to granting the petition. CCAO believes that this provision of the law would generally be operative after the petition is granted through civil action in court.

Refer to Appendix for Flow Chart and Checklists

In the Appendix of this manual, the following appendices may be helpful in processing an Annexation of Contiguous Municipal, County, or State-Owned Land by Petition Submitted by Municipality:

Appendix R	Procedural Flow Chart
Appendix S	Procedural Checklist
Appendix T	Technical Checklist

Annexation Hearing Guidelines

Introduction

The new annexation law provides two things in regards to annexation hearings. First, annexation hearings will be much more complicated to organize, conduct, and control. Second, conducting annexation hearings fairly and to the letter of the law will help to insure that the decision of the board of county commissioners will be upheld if appealed. Under the new law a hearing is not always required depending on the type of annexation that is proposed.

This chapter offers guidance for conducting an actual hearing for a regular annexation under ORC 709.03 for those petitions that have been filed by a majority of the land owners of the proposed territory to be annexed. In these hearings the legal standard for determining whether the annexation should be approved includes a list of conditions and more discretion for the commissioners.

This chapter looks at all of the issues and responsibilities a board will be confronted with as it conducts a regular annexation hearing under the new law. It can also be modified and applied to the other types of annexation petitions discussed in this manual.

When Annexation Hearings Are Required

The following table summarizes when annexation hearings are required under SB 5:

Type of Annexation	ORC Section	Annexation Hearing Required	Other Procedures and Timelines
Regular Annexation	709.03 709.031 709.032 709.033	Yes	The date of the hearing must be not less than 60 nor more than 90 days after petition was filed.
Expedited Type 1 Annexation	709.022	No	Board adopts resolution granting petition at next regular session after the petition was filed, if it meets statutory requirements.

Type of Annexation	ORC Section	Annexation Hearing Required	Other Procedures and Timelines
Expedited Type 2 Annexation	709.023	No	<p>If both municipality and township(s) consent, the board adopts resolution granting petition at next regular session of board after consent ordinance/resolutions were filed, if it meets statutory requirements.</p> <p>If municipality or township(s) objects, the board "reviews" the petition and grants or denies the petition not less than 30 or more than 45 days after petition was filed. This "review," however, does not constitute a hearing.</p>
Expedited Type 3 Annexation	709.024	<p>No - If both municipality and township consent.</p> <p>Yes - If either municipality or township objects.</p>	<p>If both municipality and township consent, the board adopts resolution granting petition at next regular session of board after consent ordinance/resolutions were filed, if it meets the statutory requirements.</p> <p>If municipality or township objects, a hearing on the petition must be held at the next regular session of the board. (see "Commentary" item A in Chapter 6)</p>
Annexation of Municipal, County, or State-Owned Land by Petition of Municipality	709.13 709.14 709.15 709.16	No	<p>The board must adopt a resolution granting or denying the petition within 30 days of filing, if it meets all statutory requirements.</p> <p>Commissioners have complete discretion if land is owned by the county; must approve if land is owned by the municipality; and must approve for state-owned land if Director of Administrative Services consents.</p>

Where hearings are not required, the law requires commissioners grant or deny the petition within a specified time period, if the petition meets the statutory requirements. In these cases no formal hearing is held. It is unclear if the board may receive or accept comment on the proposed annexation, even though it is generally normal practice to allow for public comment during all sessions of the board.

Adoption of Resolution Governing the Annexation Process

While not required by law, the board should consider adopting a resolution governing the process for annexations that come before it. The resolution should specify the procedure that will be followed for annexation hearings in the county and set out the requirements that must be met by the parties and participants in any annexation proceeding before the board. A sample resolution “General Order for Proceedings in Annexation Filed” is provided as Appendix D to this manual.

Commissioners should carefully study this resolution and review it with the clerk, county administrator, and county prosecutor prior to adoption. Some sections of this resolution may create additional administrative work for the board and its staff. However, CCAO believes most sections of the sample resolution will assist in the effective administration of the new law and will inform parties to the petition and the public of the “rules of the game.” Commissioners should understand, though, that after such a resolution has been adopted, the board must follow the general procedures and requirements set forth in the resolution. Naturally, the resolution can always be amended should practical problems become apparent.

Conducting the Hearing for a Regular Annexation

Every county has its own tradition under which it conducts sessions of the board and holds public hearings. While it is understood that every county has unique procedures and protocol, the new annexation law will necessitate that certain aspects of a regular annexation petition come before the board in an organized and consistent manner. The following steps for conducting the annexation hearing are, thus, recommended.

Organizing the hearing by dividing it into six different stages should help to insure that the hearing proceeds in a logical sequence and that the record reflects compliance with various procedural and technical aspects of the law. Within the six recommended states of the hearing, CCAO is suggesting that certain steps be taken to assure compliance with the law. By dividing the hearing into stages and steps, the board will have a systematic and orderly manner to address each of the various issues involved in a regular annexation. This recommended process is designed to provide an efficient way for fairly processing an annexation petition on a regular annexation:

A. *Stage 1 - Convening the Hearing*

The hearing is called to order, introductions are made, the general procedure is explained and opening statements are made by the parties to the annexation.

B. *Stage 2 - Determination of Validity of Petition*

The second stage of the hearing includes a series of steps that helps the board to determine whether the petition, as filed and as before the board at the hearing, is valid. At the conclusion of this stage of the hearing, if the board finds the petition to not be valid, the board, after consulting with the county prosecutor, should dismiss the petition. If the petition is determined to be valid, then the board proceeds to the third stage of the hearing.

C. Stage 3 - Consideration of Procedural Matters

During this stage of the hearing, the board primarily looks at procedural questions to determine if all of the information that is to be before the board is present and whether anything stands in the way of the parties being able to present their full case to the board at that time. At this point, if certain required information is not yet before the board or likely to be unable to be presented at the hearing, the board may wish to continue the hearing to a date when necessary information will be able to be provided.

D. Stage 4 - Hearing on the Merits of the Petition

During this stage of the hearing, testimony is presented by the parties and other persons, and there is the examination and cross-examination of witnesses.

E. Stage 5 - Concluding of the Hearing

This stage of the hearing allows for closing statements by the parties and other final comments as it relates to how the board will proceed to make a decision on the petition.

F. Stage 6 - Post Hearing Activities

During this stage the board makes its decision by making findings of fact on each of the conditions for annexation. The resolution is journalized and transmitted to the parties as required by law.

The focus of this chapter is to detail these specific steps that comprise these recommended six stages of a regular annexation hearing.

Stage 1 Convening the Hearing

Preliminary Matters

- A. The hearing has been scheduled on a meeting agenda.
- B. The proper public notices of the meeting/hearing have been given.
- C. Room configuration:
 - 1. The room is set up so all parties will be able to see and hear each other and have adequate areas from which to work.
 - 2. A proper “gallery” for the public has been established.
 - 3. Making the record.
 - a) If tape recording, microphones are appropriately placed.
 - b) If video recording, the camera is in a position to have an unobstructed view of the proceedings and its microphone can “hear” the entire room. It is suggested that all persons identify themselves before they speak.
 - c) If a court reporter is used, the court reporter is located so that they can view and hear the entire proceedings. Note: the board may choose to use a court reporter.

Call to Order

- A. Announce the “style” (how the particular case will be referred to) for the proceeding.
 - 1. State the name of the agent.
 - 2. State whether the board is proceeding on the petition.
 - a) As filed, or
 - b) As amended
 - 1) Date approved by the commissioners and the agent.
 - 2) At least 15 days prior to the hearing.
- B. Indicate the method by which the hearing will be recorded and identify who is responsible for operating the recording device or introduce the court reporter.
- C. Introductions.
 - 1. Commissioners.
 - 2. County prosecutor’s representative.
 - 3. The “necessary parties.”
 - a) Agent for the petitioners.
 - b) Representatives for municipality.
 - c) Representatives for the township(s).
- D. Refer to the Ohio law and board resolutions governing the proceeding.
 - 1. Hearing is held in accordance with ORC Chapter 709.
 - 2. The various resolutions the board has adopted for annexation proceedings:
 - a) General order.
 - b) Deposit and fee resolution.
 - c) Resolution assigning certain responsibilities to the clerk or county administrator.
 - 3. Indicate:
 - a) All witnesses will be sworn.
 - 1) Each witness will be sworn at the time they begin their testimony.
 - 2) May be sworn in by president of the board or court reporter.

Note: Witnesses may be sworn in as a group. If this is done; however, the president of the board should inquire when each person is called to testify if the person was previously sworn and remind the individual that they are under oath.
 - b) All witnesses will be subject to cross-examination by the necessary parties.
 - c) The commissioners may ask questions of a witness at any time.

d) Each necessary party will be given the opportunity to:

- 1) Present evidence.
- 2) Examine and cross-examine witnesses.
- 3) Comment on all evidence.

E. State the order in which the hearing will proceed.

1. Opening statements.
2. Challenges to validity of petition signatures.
 - a) Owner's request to remove petition signature.
 - b) Challenges to proof of authority of person to sign.
3. Determination of the validity of the petition.
4. Disposition of procedural matters.

Note: This may necessitate taking evidence solely on procedural matters prior to a presentation by the parties on the merits of the case.

5. Presentation of the case by the parties.
 - a) Agent for the petitioners case.
 - b) Municipality case.
 - c) Township case.
6. Testimony from any other person.
7. Closing statements.
8. Continuing the hearing, if necessary
9. Adjournment of hearing.

Opening Statements

- A. An opening statement may be given by any necessary party.
- B. Is a concise summary of what the board is expected to hear during the proceeding given from the perspective of that party.

Stage 2 Determination of Validity of Petition

Owner's Request to Remove Petition Signature

- A. State that any owner who signed the petition may seek to have that signature removed from the petition by showing that it was obtained by:
 1. Fraud.

ORC 709.032 (D)

2. Duress.
 3. Misrepresentation in general.
 4. Misrepresentation relating to the provision of municipal services to the territory proposed to be annexed.
 5. Undue influence.
- B. Testimony on this issue must be given under oath and orally at the hearing.
1. Ask if there are owners who seek removal of their signature from the petition.
 2. The owner seeking to remove their signature from the petition must testify.
 3. Any other person may testify to support or rebut the owner's testimony.
- C. Any testimony given is subject to cross-examination by the necessary parties.
- D. Signature is void if a majority of the board finds that the signature was obtained under circumstances that did constitute fraud, duress, misrepresentation, or undue influence.
- E. If void, then board orders signature removed from petition as of date of petition filing.

Challenges to Proof of Authority of Person to Sign

- A. The law authorizes a "challenge" to the authority of a person to sign the petition on behalf of an entity that is not a person or political subdivision.
- B. A request to challenge a signature has been properly made if it:
1. Was filed at least 15 days prior to the hearing.
 2. Was filed with both the board and the agent for the petitioners.
 3. Made by either:
 - a) Board of township trustees from a township containing territory proposed to be annexed.
 - b) Owner of real estate in territory proposed to be annexed.
 4. Does not challenge a signature on behalf of the state, political subdivision, or another natural being (i.e., an individual).
- C. Agent presents evidence that the owner authorized the person to sign on the owner's behalf through:
1. Affidavit excepted from the 15 day pre-hearing filing requirement.
 2. Testimony at the hearing.
- D. Board action (law is silent - majority vote is assumed).
1. Retains signature on petition if board finds:
 - a) Request was properly made.
 - b) "Evidence sufficient to establish ...the... authority" to sign.
 2. Otherwise, board removes signature from petition.

ORC 709.031 (C)

Determination that the Petition Is Valid

- A. Signatures constitute a majority of owners of the property proposed to be annexed.
1. At time of filing, the petition on its face contained:
 - a) The signatures of “owners” as defined in ORC 709.02.
 - b) The signatures representing a majority of the owners of real estate in the territory proposed to be annexed.
 2. The removal of signatures due to one of the following reasons has not reduced the number of valid signatures below a majority of the owners.
 - a) The signature was not that of an “owner.”
 - b) Signatures withdrawn pursuant to ORC 709.03 (C).
 - 1) The notice to property owners required to be mailed to owners of property within the proposed territory to be annexed pursuant to ORC 709.03 (B) (2) which must contain a statement that an owner who signed the petition may remove their signature by:
 - i) Filing of notice of withdrawal with the clerk of the board.
 - ii) Within 21 days from the certification of date the notice was mailed.
 - 2) The notice of withdrawal was timely filed.
 - i) Clerk establishes the last date for withdrawal of a signature.
 - ii) Based upon the certification of the date of mailing of notice to the property owners required to be sent with the notice pursuant to ORC 709.03 (B) (2).
 - c) Signatures determined to be void pursuant to ORC 709.032 (D).
 - 1) Owner has appeared at the hearing and asked that their signature be removed from the petition.
 - 2) The board found that the signature was void because it was obtained through fraud, duress, misrepresentation, or undue influence.
 - 3) The board has ordered the signature removed from the petition.
 - d) Authority to sign was not established by “sufficient evident” pursuant to ORC 709.031 (C).
 - 1) A request to challenge a signature has been properly made in that it:
 - i) Was filed at least 15 days prior to the hearing.
 - ii) Was filed with the board and the agent for the petitioner.
 - iii) Made by either:
 - (A) Board of township trustees from a township containing territory proposed to be annexed.
 - (B) Owner of real estate in territory proposed to be annexed.

ORC 709.02
ORC 709.03
(B), (C) & (D)
ORC 709.031
(A) & (C)
ORC 709.032 (D)

- 2) The agent presented evidence that the owner authorized the person to sign on the owner's behalf through
 - i) Affidavit (excepted from pre-hearing filing requirement).
 - ii) Testimony at the hearing.
 - 3) The board determined (assumed by a majority vote) there was "insufficient evidence" presented to establish the authority" to sign and removed signature from petition.
- B. Receive the report of the county engineer into the record pursuant to ORC 709.031 (A)
1. Receipt of report serves to support finding by the board as to the accuracy of:
 - a) Legal description of perimeter.
 - b) Map or plat of territory.
 2. Revised report from the county engineer if petition was amended.
- C. Agent has provided required evidence of notifications required to be made by the agent pursuant to ORC 709.03 (B).
1. Notice to governmental entities (ORC 709.03 (B) (1)) proof of service was filed with the board within 10 days of completion of service.
 2. Notice to property owners (ORC 709.03 (B) (2)) proof of service by notarized affidavit was filed with the board within 10 days after mailing of notice.
 3. Notice by publication (ORC 709.03 (B) (3)) proof of publication was filed with the board the earlier of either:
 - a) Within 10 days after publication, or
 - b) At the hearing.

Stage 3 Consideration of Procedural Matters

Disposition of Procedural Matters

- A. Procedural defects (ORC 709.015)
1. Identification of "procedural defect."
 - a) Request necessary parties to identify.
 - b) Board may identify.
 - c) Give necessary parties opportunity to present evidence on procedural issues.
 2. Determine whether substantial compliance with the procedural requirements has been met irrespective of the "procedural defect."
 3. If defect effects substantial compliance:
 - a) Indicate how defect is to be cured.

ORC 709.015
ORC 709.03 (D)
ORC 709.032
(B) & (C)

- b) Direct the appropriate necessary party as to:
 - 1) How they shall cure defect as required by the board.
 - 2) Time frame under which defect shall be cured.
- B. Municipal statement of services (ORC 709.03 (D))
 - 1. Should have been filed by the municipality with the board at least 20 days prior to the hearing.
 - 2. Receive statement into the record of the proceeding.
- C. Use of affidavits (ORC 709.032 (C))
 - 1. Had to have been filed not later than 15 days before the hearing.
 - 2. Must be served upon all necessary parties pursuant to Civil Rule 5 B
 - 3. If submitted into evidence, affidavits are subject to comment by any necessary party.
- D. Status of subpoenas - if issued by the board pursuant to ORC 709.032 (B)
 - 1. Subpoenas were issued by the board.
 - a) Requested by a “necessary party.”
 - 1) Agent for the petitioner.
 - 2) Municipality to which annexation is proposed.
 - 3) Each township any portion of which is included within the proposed annexation.
 - b) On the board’s own initiative.
 - 2. Has there been a failure to comply with a subpoena and is enforcement to be sought from the court of common pleas by:
 - a) The board.
 - b) Any member of the board.
 - c) A “necessary party.”
 - 3. Enforcement follows ORC 2317.21 through 2317.26.
- E. Existence of a potential road maintenance problem (ORC 709.033 (A) (6))
 - 1. Does the petition on its face suggest the possibility of a road maintenance issue?
 - 2. Has the municipality agreed to assume maintenance?

Stage 4 Hearing on the Merits of the Petition

Presentation of the Case by the Parties

- A. Necessary parties present their cases in the following order:
 - 1. Agent for the petitioner case.

2. Municipality case.
 3. Township(s) case(s).
- B. Examination of a witness
1. Party calls witness.
 2. Witness is sworn.
 3. Party conducts its direct examination.
 - a) Board should mark exhibits used and enter them into the record.
 4. Other necessary parties cross-examination.
 5. Rebuttal testimony of witness from party.
 6. Board may allow re-cross-examination based upon rebuttal testimony offered.

Note: Rules of discovery do not apply so there can be no requirement imposed on the parties to disclose their witnesses prior to the hearing.

Testimony From Any Other Person

- A. The law provides that “any person may appear in person or by attorney and, after being sworn, may support or contest the granting of the petition.”
- B. After the completion of the parties’ presentations:
 1. Ask if there is anyone present who wishes to support or contest the granting of the petition for annexation.
 2. Call them up to the witness chair.
 - a) Swear them in.
 - b) Have them state their name and address for the record.
 - c) Ask them if they support or oppose the annexation.
 - d) Remind them that the representatives of the necessary parties will be able to ask them questions after they have finished their testimony.
 3. Take their testimony.
 4. Allow the necessary parties to cross-examine.
 5. Thank and excuse the person.

ORC 709.032 (C)

Stage 5 Concluding the Hearing

Closing Statements

- A. A closing statement may be given by any necessary party.
- B. Is a concise summary of the testimony and evidence presented at the hearing and how it supports the position of that party.

Adjournment of Hearing

- A. Announce that the hearing is now closed and the evidence and testimony received will constitute the record upon which the commissioners' will reach their decision.
- B. Advise the parties as to how they will be notified of the board's decision.
 - 1. Certified copy of the resolution.
 - 2. Sent to:
 - a) Agent for the petitioners.
 - b) Clerk of the legislative authority of the municipal corporation.
 - c) Clerk of each township in which territory proposed for annexation is located.
 - d) Clerk for 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.
- C. Offer the parties the opportunity to file post-hearing briefs:
 - 1. The brief should contain:
 - a) Proposed findings of fact on each of the conditions for annexation.
 - b) References to the hearing testimony or exhibits which support those findings.
 - c) Recommendation as to what the decision of the commissioners should be.
 - 2. Give the date through which a post-hearing brief will be accepted and incorporated as a non-evidentiary exhibit of the record.
- D. Indicate that the parties can expect the board's decision within the time allowed by law.

Continuing the Hearing

- A. Continuing the hearing is an inherent power of the board.
 - 1. There is no statute or case law governing continuations.
 - 2. The most important consideration is to attempt to be fair to all parties.
 - 3. The goal should be to ensure that the hearing is completed in a timely manner and all parties are given a reasonable opportunity to prepare for and present their case.
- B. Factors the board may wish to consider when deciding to continue a hearing:
 - 1. How much time the parties estimate it will take them to present their case.
 - 2. Does the board wish to allocate the entire day or only a partial day in hearing.
 - 3. How does the hearing effect the board's ability to conduct the rest of its business.
 - 4. Involve the parties in establishing a schedule for the hearing prior to beginning the hearing.

Stage 6 Post Hearing Activities

Decision of the Board

- A. By resolution - the board grants or denies the petition for annexation by entering a resolution on its journal. (ORC 709.033 (B))
- B. Timing - the decision must be rendered within 30 days after the hearing. (Note: Prior law allowed 90 days for the commissioners' decision.)
- C. Legal standard for decision - a preponderance of the substantial, reliable, and probative evidence on the whole record. (ORC 709.033 (A))
- D. Specific findings of fact required - the board's decision on each of the conditions for annexation (709.033 (A)(1)-(6)) must be supported by specific findings of fact taken from the record which supports the commissioners' decision on that issue

ORC 709.033

Conditions for Annexation

- A. "The petition meets all the requirements set forth in, and was filed in the manner provided in, Section 709.02 of the Revised Code" in that:
 - 1. The real estate is "contiguous" to the municipal corporation to which annexation is proposed.
 - 2. The petition contains:
 - a) The names of the owners, their signatures, and date each signature was obtained.
 - b) A legal description of the perimeter of the proposed territory to be annexed.
 - c) A map or plat of the proposed territory to be annexed.
 - d) The name and address of the agent for the petitioners.
 - e) Lists of all the parcels and the name and mailing address of the owners of each parcel:
 - 1. Within the proposed territory to be annexed.
 - 2. That lie adjacent or directly across the street from the proposed territory to be annexed.
 - 3. That a majority of the territory proposed for annexation lies within the county.
- B. "The persons who signed the petition are owners of real estate located in the territory proposed to be annexed 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 constitute a majority of the owners of real estate in that territory." In order to be valid signatures:
 - 1. Signatures are of "owners" of property.
 - 2. Were not obtained more than 180 days before the date the petition was filed.
 - 3. Constitute a majority of the owners of the territory proposed for annexation.
- C. "The municipal corporation to which the territory is proposed to be annexed has complied with division (D) of section 709.03 of the Revised Code," the requirement to adopt by ordinance or

ORC 709.02
ORC 709.033 (A)

resolution a statement indicating what services will be provided upon annexation, and an approximate date the services will be provided.

- D. "The territory proposed to be annexed is not unreasonably large."
- E. "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. As used ...here... '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."

NOTE: For a thorough discussion of the two elements of this condition for annexation, see Chapter 3.

- F. "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 maintenance of that street or highway. For the purposes of this division, 'street' or 'highway' has the same meaning as in section 4511.01 of the Revised Code."

Journalization of the Board's Decision

- A. The decision to grant or deny the annexation is to be entered on the board's journal.
- B. Upon journalization the clerk is to send a certified copy of the resolution to:
 - 1. Agent for the petitioners.
 - 2. Clerk of the legislative authority of the municipality.
 - 3. Clerk of each township in which territory proposed to be annexed is located.
 - 4. Clerk for the board of county commissioners of each county in which the territory proposed to be annexed is located other than the county in which the petition is filed.

ORC 709.033 (B)

Clerk's Transmittal to the Municipality

- A. Clerk is prohibited from taking any action during the 30 day period following the journalization of the decision to allow for an appeal to be filed.
- B. If no appeal has been filed within the 30 day period, the clerk:
 - 1. If the petition was granted:
 - a) Delivers a certified copy of the entire record of the annexation proceedings including:
 - 1. All resolutions of the board, signed by a majority of the members of the board.
 - 2. The petition.
 - 3. The map.
 - 4. All others papers on file.
 - 5. The recording of the proceedings, if available.
 - 6. All exhibits presented at the hearing.

ORC 709.033 (C)

- b) To the auditor or clerk of the municipal corporation to which the annexation was granted.
2. If the petition was denied:
 - a) Delivers a certified copy of the resolution denying the annexation.
 - b) Copies go to:
 1. The agent for the petitioners.
 2. The auditor or clerk of the municipality to which annexation was proposed.

Appeal

A. Legal Authority for Appeal

1. ORC 709.07 provides the statutory right of appeal from an annexation decision.
2. All appeals taken by any party are now governed by ORC Chapter 2506.
3. Parties who may appeal are specified in ORC 709.07 (A) as:
 - a) The agent for the petitioner.
 - b) Any owner within the territory proposed for annexation.
 - c) Any township which contains territory proposed for annexation.
 - d) The municipal corporation to which annexation is proposed.

ORC 709.07
ORC 2505.04

B. Notice of Appeal

1. Appeal of annexation is taken to the Court of Common Pleas for the county pursuant to ORC 709.07 (A).
2. Notice of appeal must:
 - a) Be filed with the clerk of the board. (ORC 2505.04)
 - b) Within 30 days after the journalization of the decision of the board. (ORC 2505.07)
 - c) A copy of the notice must also be filed with the clerk of court of common pleas.

NOTE: For a thorough discussion of the appeal process see Chapter 9.

Appeals of County Commissioners' Decision

Introduction

One of the major changes included in SB 5 deals with the process of appealing the granting or denying of an annexation petition by the board of county commissioners. Under former ORC 709.07, any “person interested” or any other “person who appeared” at the annexation hearing could seek an injunction to prohibit the municipality from accepting the annexation. To prevail, the petition for injunction would have to allege and the court would have to find “by clear and convincing evidence” that:

- A. The annexation would adversely affect the legal rights or interests of the petitioner; and
- B. That either one of the following:
 1. There was error in the proceedings before the board or the board’s decision was unreasonable or unlawful, or
 2. There was error in the findings of the board.

Through case law, however, the courts had determined that only the approval of an annexation petition had to be challenged through an injunction action. Challenging the denial of an annexation petition was allowed under Chapter 2506. Since a Chapter 2506 appeal has a much lower standard of proof - “by a preponderance of the evidence” compared to an injunction’s standard of proof - “by clear and convincing evidence,” those who wished to appeal the denial of an annexation had both a much easier process and easier burden of proof to meet than those who wished to appeal the approval of an annexation. Thus, the case law made it much easier for the owners of property or their agent who sought annexation to prevail than for the township or a non-signing owner who wished to overturn the annexation.

Under the new ORC 709.07, all parties authorized to appeal either the granting or denying of an annexation petition by the commissioners are treated equally. An appeal can now only be taken to the common pleas court pursuant to ORC Chapter 2506, the Administrative Appeals Chapter of the Ohio Revised Code. The former provisions for an injunction have been repealed.

Any appeal of the granting or denying of an annexation petition by the board now will always be governed by ORC Chapter 2506. Generally speaking, a transcript of the board’s actions and all records relating to the annexation proceedings will be filed with the court, and the review by the court will be basically limited to the record made at the commissioners’ hearing. While under Chapter 2506 there is the opportunity to present additional evidence to the court, provisions designed to keep this from happening were placed in SB 5. These provisions include entitling the necessary parties to present evidence, examine and cross-examine witnesses, and comment on all evidence; the requirement that all witnesses be sworn; and giving subpoena power to the commissioners.

Under ORC Chapter 2506, the commissioners' decision in an annexation will be reviewed by the court and overturned by the court only if it finds the decision was "unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record." (ORC 2506.04)

Appeal Rights Under SB 5

Because annexation is a statutory process, the General Assembly may limit the right of appeal and may specify who has the right to appeal. The following table shows by the type of annexation whether appeal rights are granted by the law, the parties who may appeal, and a reference to the specific Ohio Revised Code section.

Type of Annexation	Right to Appeal	Parties Who May Appeal	ORC Section
Regular Annexation	Yes	Agent for petitioners Owner of property in area to be annexed Municipality Township	709.07 (A)
Expedited Type 1 Annexation	No	N.A.	709.022 (B)
Expedited Type 2 Annexation	No	N.A.	709.023 (G)
Expedited Type 3 Annexation	No - If all parties consent.	N.A.	709.024 (D)
	Yes - If hearing is required and petition is denied.	Owner who signed the petition	709.024 (G)
Petition by Municipality for Municipal, County, or State-Owned Land	No	N.A.	709.16 (F)

Necessary Parties to an Appeal

Regardless of who files an appeal, the law specifies that there are “necessary parties” to an annexation appeal. These “necessary parties” to an appeal have the right to fully participate in the litigation including filing briefs and participating in oral arguments. The “necessary parties” include:

- A. Agent for the petitioners.
- B. Any township in which territory proposed to be annexed is located.
- C. The municipality to which the territory is proposed to be annexed.

ORC 709.07 (A)

Appeal Procedure

- A. Appeal must be taken within 30 days of the journalization of the commissioners’ decision (ORC 2505.07 and 709.033 (C)) by filing a notice of appeal with the board of county commissioners as required by ORC 2505.04.
- B. A copy of the notice of appeal must also be filed with the clerk of the court of common pleas.
- C. This filing of a copy of the notice of appeal acts as a “stay” against the clerk. The clerk can take no further action on the petition, such as delivering a certified copy of the decision to the municipality for its consideration pursuant to ORC 709.04.
- D. The clerk of the board shall file a complete transcript with the court within 40 days after the filing of the notice of appeal. The cost of the transcript shall be included as part of the “costs” of the appeal. (ORC 2506.02)
- E. Appeal may be had from the court of common pleas to the court of appeals to the Ohio Supreme Court.
- F. As long as the appeals are properly filed with the next highest court after a decision by the court considering the appeal the stay against the clerk of the board remains in place.
- G. After all appeals have been exhausted or the time to file an appeal from a court has expired, the board of county commissioners shall enter on its journal a resolution taking the action granting or denying the annexation as directed by last and highest reviewing court.
- H. If the determination of the court was to grant the annexation, the clerk of the board shall deliver a certified copy of the board’s journal entry in the case and the entire record of the annexation proceedings to the auditor or clerk of the municipal corporation to which the annexation is proposed.

ORC 709.033
ORC 2505.04
ORC 2505.07

Annexation Agreements and Cooperative Economic Development Agreements

Introduction

Annexation agreements and cooperative economic development agreements (CEDA's) were established for the purpose of facilitating cooperation between and among local governments to promote economic development or providing appropriate public services to further growth in a local community. Annexation agreements are authorized and described in ORC 709.192 of SB 5. CEDA's were enacted as ORC 701.07 contained in HB 434 of the 122nd General Assembly and were effective in March 1999.

The provisions regarding their formation and subject matter which may be addressed by the two different agreements are almost identical. There are only very minor variances between the two sections. The emphasis is upon negotiation and agreement between municipal and township governments for a service plan which is structured to benefit a specified territory defined in the agreement.

ORC 701.07
ORC 709.192

These agreements are of relevance to county commissioners in annexation matters in four ways:

- A. The county may be asked to become a party to an agreement.
- B. An agreement is a required element for an Expedited Type 1 Annexation.
- C. Withdrawal of territory from a township may be affected by an agreement.
- D. "Compensation to townships," also referred to as "reparations" or "revenue sharing," required as a result of a regular annexation may be affected by an agreement.

Creation of Agreements

The primary parties to an agreement are municipal and township governments. The county may be a party to an agreement. County participation, however, requires both a resolution of the board and the separate approval of each municipality and township that are parties to the agreement. The State of Ohio or any other entity may also become a party to the agreement with the separate approval of each municipality and township that are parties to the agreement. These agreements may be entered into for any length of time and may be amended or extended at any time. Major distinctions between the creation of an annexation agreement or a CEDA are:

Issue	Annexation Agreement	CEDA
Parties	Only the municipality involved in the annexation and one or more township(s).	One or more cities and/or one or more townships.
State Involvement	Requires approval of the Director of Development.	Requires approval of the Governor.
Public Approval	None required.	Public inspection of the agreement. Available for 30 days prior to a public hearing jointly held by the municipality and township(s).

Contents of Agreements

Ohio law authorizing both types of agreements contains exhaustive lists of services, functions, and activities that any one of the parties may undertake to facilitate the purpose of an agreement. The law also includes a final “catch all” provision which allows the parties to contract on “any other matter” generally concerning annexation or development. The sections also indicate that the terms of an agreement are to be given a liberal construction in order to allow the governments maximum flexibility in accomplishing the goals they intended by the entering into an agreement.

While the agreements may not provide for the sharing of the proceeds of any tax levy between the local governments, they may allow the local government collecting the property tax to use the proceeds to make payments authorized by the agreement. The only restraint upon the terms of an agreement is that it must not be in derogation of municipal “home rule” powers, any other provision of the Ohio Constitution, or of the provisions of the charter of a municipality that is a party to the agreement.

The following table summarizes the permissible provisions of both annexation agreements and cooperative economic development agreements:

Annexation Agreement	Cooperative Economic Development Agreement
Territory to be annexed.	Same.
Periods of time during which no annexations will occur and any areas that will not be annexed.	Same.
Land use planning matters.	No provision.
Provision of joint services and permanent improvements within incorporated and unincorporated areas.	Same.
Provision of services and improvements by municipality in unincorporated areas.	Same.

Annexation Agreement	Cooperative Economic Development Agreement
Provision of services and improvements by township in municipality.	Provision of services and improvements by county or township in municipality.
Payment of services fees to municipality by township.	Payment of services to municipality by county or township.
Payment of service fees to township by municipality.	Payment of service fees to township or county by municipality.
Reallocation of inside millage between municipality and township in areas annexed.	No provision.
Issuance of debt by municipality or township for public purposes authorized under the agreement and provisions for debt retirement.	Issuance of debt by municipality, county, or township for public purpose under the agreement and provisions for debt service.
No provision.	Issuance of industrial revenue bonds by municipality to finance projects under the agreement outside of the municipality and debt service provisions. Municipality may also undertake projects under ORC Chapters 165, 761, or 902 dealing with industrial revenue bonds, municipal economic development, and agricultural finance outside of municipality.
Agreements by municipality and township with owners or developers of land proposed to be annexed concerning the provision of public services, facilities, and permanent improvements.	Agreements by municipality and township or municipality and county with landowner or developers concerning the provision of public services, facilities, and permanent improvements.
The application of tax abatement statutes.	Same.
Changing township boundaries to exclude newly annexed territory under Chapter 503 and the provision of services to the territory.	Same.
No provision.	Earmarking by municipality from its general fund of a portion of utility charges it collects outside of the municipality if agreement does not include matters relating to annexation.
Payments in lieu of taxes to be paid to township by municipality which may be in addition to or in lieu of other payments required by law.	Same.
Any other matter pertaining to annexation or development of publicly or privately-owned territory.	Same.

County Commissioner Considerations

The county may be asked to become a party to an agreement by the municipality and township. Under both types of agreements, a county may become a party to an agreement if it chooses to do so. Commissioners must adopt a resolution authorizing the county's participation, and each municipality and township must also approve the county's participation. In the case of an annexation agreement only, if the State of Ohio is a party, the Director of Development must also approve the county's participation.

Under ORC 709.022 for Expedited Type 1 Annexations, the petition may not even be filed unless accompanied by a certified copy of an annexation agreement or CEDA adopted between the municipality annexing the territory and all the townships which include territory that is part of the proposed annexation.

Under ORC 709.023 for Expedited Type 2 Annexations and ORC 709.024 for Expedited Type 3 Annexations, the territory to be annexed may not be excluded from the township and is to remain a part of the township's tax base. However, if an annexation agreement or CEDA adopted prior to the annexation allows for the property to be excluded, the terms of the agreement take precedent over the statute.

In the case of regular annexations under ORC 709.033, the annexation law provides for "reparation payments" to be made by the municipality to the township if the property is excluded from the township under ORC 503.07. The schedule of payments is explained in Chapter 11 of this manual, and provided for in ORC 709.19. If, however, an annexation agreement or CEDA is executed that makes provisions that are different from the default provisions specified in ORC 709.19, the provisions included in the agreement prevail.

Property Tax Payments to Townships by Municipalities Following Annexation & Removal of Territory

Background

While annexation is the process of extending a municipality's boundaries outward, such process does not automatically result in the removal of land from the township in which it is situated. A second process, commonly referred to as "withdrawal" or the land being "excluded," must occur to remove the land from the township's jurisdiction and change the township's boundaries.

When land is annexed and removed from the township of origin, the new law will require the municipality receiving the territory to provide compensation for lost property tax to the township of origin. These payments are sometimes referred to as "reparations" or "revenue sharing" and are supposed to help compensate, on a limited basis, the township for the loss of the land and its tax revenue.

The new law provides for a 12-year declining payment schedule when land is excluded from the township subsequent to an annexation petition filed under the new law starting October 26, 2001. Withdrawals which occur on or after October 26, 2001, but whose annexation was effective prior to October 26, 2001, are not subject to the mandatory payment schedule outlined in this chapter.

However, a municipality and township may develop an alternative arrangement through annexation agreements, cooperative economic development agreements, and alternative reparations agreements. These agreements apply in lieu of the payment scheduled outlined in this chapter.

Standard Compensation for Residential & Retail Property

The terms "residential" and "retail" property mean property classified as such by the tax commissioner for the purposes of valuing property for taxation. No "retail" property is to be included with property classified as "commercial" property.

When territory is annexed and excluded from the township, the municipality receiving the territory must make payments to the township. The following schedule is based on land that is classified as "residential" or "retail" property using the property valuation for the year that the payment is due (rather than at the time the annexation occurred), and includes the percentage of township taxes due the township if annexation had not occurred:

ORC 709.19
(A) & (D)

- A. Years 1 through 3 — 80.0%
- B. Years 4 through 5 — 52.5%
- C. Years 6 through 10 — 40.0%
- D. Years 11 through 12 — 27.5%
- E. After year 12 — 0%

Standard Compensation for Commercial & Industrial Property

The terms “commercial” and “industrial” property mean property classified as such by the tax commissioner for the purposes of valuing property for taxation. “Commercial” property does not include any property classified as “retail.”

When territory is annexed and excluded from the township, the municipality receiving the territory must make payments to such township. The following schedule is based on land that is classified as “commercial” or “industrial” property using the property valuation for the year that the payment is due (rather than at the time the annexation occurred) and includes the percentage of township taxes due the township for commercial and industrial real, personal, and public utility property taxes due the township if no annexation had occurred:

**ORC 709.19
(A) & (C)**

- A. Years 1 through 3 — 80.0%
- B. Years 4 through 5 — 67.5%
- C. Years 6 through 7 — 62.5%
- D. Years 8 through 9 — 57.5%
- E. Years 10 through 12 — 42.5%
- F. After year 12 — 0%

If tax abatements have been granted by the municipality on all or portions of the territory annexed and excluded, the municipality is still responsible to make the payments outlined above, as if the tax abatements had not been granted. No reduction is granted.

Alternative Compensation Agreements

Alternative compensation agreements may be negotiated and accepted by both the municipality and townships. Two methods are through annexation agreements and cooperative economic development agreements, which are discussed further in Chapter 10.

A third method is through alternative reparations agreements authorized under ORC 709.191 which was not changed by the new annexation law. This section provides that, in lieu of making the standard compensation payments and for any proposed annexation that does not require payments, the municipality and township can enter into an agreement to make annual payments to the township to compensate for lost tax revenues. The agreement must state the amount of the payments and the number of payments to be

**ORC 709.19 (B)
ORC 709.191**

made. It appears, however, that this current section of law may no longer have practical applicability given the changes that have been made in ORC 709.19.

If a municipality fails to make a payment pursuant to a reparations agreement, the township must notify the county budget commission in writing of the amount owed by the municipality. The county budget commission shall reduce the amount apportioned to the municipality from the undivided local government fund by the amount of the payment due the township and increase, by an equal amount, the amount apportioned to the township from the undivided local government fund.

International Airport Provision

A municipality may annex an international airport that the municipality owns. If it does, the municipality must pay the township 100% of the township taxes in the annexed territory that would have been due the township if the annexation had not occurred. The payments are to last for the next 25 years annually, unless the municipality and township enter into an alternative contract.

Under an alternative contract, the township agrees to provide the annexed territory with police, fire, or other services it is authorized to provide in exchange for specific consideration as agreed upon by the municipality and township. In no instance can the consideration received by the township be less than the payments the township would have received without an alternative contract - that is, 100% of the township taxes each year for 25 years.

It should also be noted that no territory annexed as an international airport owned by a municipality shall be considered part of the municipality for the purposes of subsequent annexation, except that the board of county commissioners may authorize subsequent annexation under these circumstances if the board determines that subsequent annexation is necessary to the continued operation of the international airport.

**ORC 709.19
(E) & (F)**

Agricultural Districts: How They Are Affected by Annexations

Background

This chapter very briefly describes the establishment and renewal process of agricultural districts and explains how annexations can impact their existence. An agricultural district is an area of land that is granted certain protections to promote and encourage the preservation of agricultural land and agricultural production. The property owner must initiate the designation of an agricultural district, and the land must meet certain eligibility requirements.

Establishment of Agricultural Districts

Agricultural districts are established by filing an application with the county auditor. Applications are for a period of five years. The auditor reviews the application to determine if the request complies with the following basic eligibility criteria:

- A. The land must have been either devoted exclusively to agricultural production or have been involved in a land retirement or conservation program under a federal agency agreement during the three calendar years before the application is filed.
- B. There must be at least 10 acres of land.
- C. If there is less than 10 acres, the average yearly gross income during the three years prior to the filing of the application was \$2,500 or the owner has evidence of an anticipated gross income of \$2,500.

ORC 929.02

If the county auditor determines that the application does not meet the requirements, the application is denied. The applicant must be notified within 30 days of the filing of the application by certified mail, return receipt requested. The applicant then has 30 days to appeal the ruling to common pleas court. Applications that meet the requirements must also be approved within 30 days, and the applicant must be notified. The effective date of the application is the filing date, not the approval date.

Approval of an agricultural district is for a period of five years and may be renewed. The renewal application may include all or any part of the original district.

The county auditor must keep a record of all land that is within an agricultural district, including any modifications to applications that have been made by municipalities.

Establishment of Districts Affecting Municipalities

Although the same basic eligibility criteria and procedures apply as specified above, where land is located within a municipality or if an annexation has been filed with the county commissioners for any of the land in the application, additional restrictions apply to the application.

Where the land is within a municipality, a copy of the application must also be filed with the clerk of the legislative authority of the municipality. Within 30 days the municipality must hold a public hearing. Notice of the hearing must be published in a newspaper at least seven days prior to the hearing. The applicant must also be notified at least 10 days in advance. If the municipality does not hold the required hearing, the application is automatically approved.

ORC 929.02 (B)

Within 30 days after the hearing, the municipality may approve, modify or reject the application; no action within this time frame results in the petition being approved. Prior to rejecting an application, the municipality must make every effort to modify the application. In addition, if the municipality rejects or modifies the application, it must show that the rejection or modification is necessary to prevent a “substantial or adverse effect” on the following:

- A. The provision of municipal services,
- B. The efficient use of land,
- C. The orderly growth and development, or
- D. The public health, safety, or welfare of the municipality.

Within five days of the decision by the municipality, the applicant and the county auditor must be notified by certified mail, return receipt requested. The applicant then can, within 30 days, appeal the rejection or modification to common pleas court. The effective date of the district is the filing date unless the modification of an application by a municipality provides otherwise. An applicant who disapproves of municipal modifications may withdraw the entire application.

Impact of Annexation on Establishment of Agricultural Districts

In cases where an application for an agricultural district includes land for which an annexation is pending, hearings by the annexing municipality must commence within 30 days after the county commissioners grant the annexation petition. If a pending annexation petition is denied under Section 709.033 of the Revised Code (the “regular process” requiring at least a majority of the property owners to sign the petition) or if a municipality fails to conduct a hearing within the appropriate time, the application is deemed approved if it meets the basic criteria as determined by the county auditor.

ORC 929.02 (B)

Impact of Annexation on Existing Agricultural Districts

Land included in an agriculture district that is later annexed cannot be precluded from being in a district by the municipality if the owner did not sign the annexation petition.

The municipality can only act on any subsequent agricultural district application or renewal application if one of the following applies:

- A. The owner signed the annexation petition.
- B. An owner that opposed annexation has sold or transferred the land to another person.

ORC 902.02 (E)

Other Property Tax Related Provisions

ORC 709.192, as enacted by Senate Bill 5, authorizes a township and a municipality to include, in any annexation agreement they may create under that section, a provision that reallocates the minimum mandated levies or inside millage amounts established under ORC 5705.31. This reallocation in an annexation agreement applies to areas annexed into a municipal corporation after the effective date of the Act (October 26, 2001).

In order for the negotiated reallocation of inside millage to be effective, it must be included by the township and municipality, along with the rest of their annexation agreement, with the annual tax budgets submitted by each to the county auditor. If the agreement with the reallocation is indeed submitted to the auditor, the auditor must allocate the inside millage, to the extent possible, in accordance with the terms of the agreement.

The Act also contains an additional special provision related to the allocation of inside millage in cases where the portion of township land annexed into a municipal corporation remains part of the township. This provision applies only in the annexed territory, only in those tax years in which the annexed territory remains part of the township, and only in annexations that are granted on or after the effective date of the Act (October 26, 2001).

In these situations, the minimum levy pertaining to the annexed territory is an amount that, when added to the minimum levies of the other overlapping subdivisions, equals 10 mills or, if the amount would be lower than ten mills, an amount equal to the minimum levy of the township or the municipal corporation. Presumably, the intent of this provision of the Act is that the greater of the minimum levy of the township or the municipal corporation would be chosen.

Once the minimum levy amount for the annexed territory is determined, it must then be divided between the township and the municipal corporation. The amount to go to each entity may be determined by a voluntary agreement between them. If no agreement can be reached and the amount to go to each entity cannot otherwise be determined, the available inside millage is to be split evenly between the two entities, with each receiving 50%.

Appendix A

A Resolution of the Board of Commissioners of _____ County Establishing Deposit and Fees Regulations for Cost Incurred in Annexation Proceedings

_____ moved to adopt the following resolution:

WHEREAS, Amended Substitute Senate Bill 5 (SB 5) of the 124th General Assembly, changing Ohio's annexation laws, has been passed by the General Assembly and signed by the Governor; and

WHEREAS, the effective date of SB 5 is October 26, 2001; and

WHEREAS, Section 709.014 (A) of the Ohio Revised Code (ORC) as enacted by SB 5 authorizes the Board of Commissioners of _____ County to establish a reasonable fee or schedule of fees to cover the costs incurred by the county in any annexation proceeding that takes place under Chapter 709 of the ORC; and

WHEREAS, Section 709.014 of the ORC as enacted by SB 5 also authorizes the Board to require an initial deposit to be paid at the time a petition for annexation is filed or promptly thereafter; and

WHEREAS, Section 709.032 (B) of the ORC as enacted by SB 5 also provides for the payment of other fees or requires deposits in connection with the processing of annexation petitions; and

WHEREAS, the Board desires to implement a deposit and fee schedule for annexation petitions filed with the Board;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of _____ County as follows:

Section 1.0 Annexation Deposit

Every annexation petition submitted pursuant to Chapter 709 of the ORC shall be subject to a deposit in the amount of \$ _____.

Section 1.1 Time Period In Which To Make Deposit

The deposit required pursuant to Section 1.0 of this resolution shall be filed with the Clerk of the Board within five days after the filing of any petition.

Section 1.2 Deposit by Person Requesting Court Reporter

Any person making a request that an official court reporter be provided at an annexation hearing shall at the time the request is made provide a deposit in the amount of \$ _____ to pay the costs of providing the court reporter. Any request for a court reporter shall be made at least seven days before the date of the hearing.

Section 2.0 Fees for Subpoenas Requested by Necessary Party

If a necessary party to an annexation proceeding, as defined in Section 709.32 (A) of the ORC, requests the Board to issue a subpoena for witnesses or for books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the petition, the party requesting the subpoena shall pay in advance the fees and mileage expenses necessary to serve the subpoena. The remainder of the expenses shall be paid out of fees charged by the Board pursuant to Section 709.014 of the ORC.

Section 2.1 Fees for Subpoenas Issued by a Board Without a Request From a Necessary Party

If the Board issues a subpoena on its own initiative for witnesses or documents specified in Section 2.0, all costs shall be paid out of fees charged by the Board pursuant to Section 709.014 of the ORC.

Section 2.2 Amount of Fees Associated with Subpoenas

The fees and mileage expenses for the Sheriff(s) and witnesses shall be the same as those allowed by the court of common pleas in criminal cases and as maintained on file with the Board of Commissioners of _____ County.

Section 2.3 Fees for Transcription of Record of Hearing

If a request is made to transcribe the record of the hearing, in accordance with Section 709.032 (B) of the ORC, it shall be accompanied by an amount determined by the Clerk of Board of County Commissioners to be necessary to cover the costs of transcribing the record.

Section 2.4 Other Fees

Fees not otherwise provided for in this resolution shall be paid by the agent for the petitioners. In addition to the fees provided for in sections 1.2, 2.0, 2.1, 2.2, and 2.3 of this resolution, fees shall be paid by the agent for the petitioner for other costs incurred by the Board relating to an annexation petition.

These fees include but are not limited to: 1) all costs incurred in preparing and providing copies of notices and documents to the agent for the petitioner, other parties to the proceeding, the County Engineer, the County Prosecutor or other county officials, including the petition and all papers that accompany the petition; 2) certified resolutions of the Board related to the proceeding; 3) duplicate electronic records of the proceeding; 4) any other papers on file that constitute the record of the proceeding; 5) materials, postage, paper and other supplies, long distance telephone charges, and other related costs.

Section 3.0 Deposit of Fee Revenue

The Clerk shall deposit all funds received from deposits or fees for processing annexation petitions into a special revenue fund for the purposes of paying expenses related to the processing of annexation petitions.

Section 3.1 Payment of Expenses

All expenses incurred in the processing of an annexation petition shall be paid from the special revenue fund created under Section 3.0.

Section 3.2 Maintenance of Records and Final Accounting of Fees Paid

The Clerk shall maintain an accurate and detailed accounting of all funds received and expended in processing each annexation petition filed pursuant to Chapter 709 of the ORC. The Clerk may issue invoices to the agent for the petitioners whenever it appears that adequate funds are not on deposit to pay expenses in accordance with the deposit and fee schedule contained in this resolution.

At the conclusion of the annexation proceeding for each petition, the Clerk shall make a final accounting of expenses incurred in processing the petition and shall render an invoice to the agent for the petitioners if adequate funds have not been received. In the event the funds received are in excess of final expenses, the Clerk shall cause any such excess to be refunded to the agent for the petitioners.

This resolution was seconded by _____.

Roll call vote:

_____	_____
_____	_____
_____	_____

Date	Receipt	Expenditures	Balances	Description/Purpose of Receipt, Type of Expenditure/Cost, Notes

Appendix C

A Resolution of the Board of Commissioners of _____ County Appointing the Clerk or County Administrator to Set the Date, Time, and Place for Annexation Hearings and to Provide Associated Notices to the Agent for the Petitioners

_____ moved to adopt the following resolution:

WHEREAS, Amended Substitute Senate Bill 5 (Senate Bill 5) of the 124th General Assembly has been passed by the General Assembly and signed by the Governor; and

WHEREAS, the effective date of SB 5 is October 26, 2001; and

WHEREAS, Section 709.014 (B) of the Ohio Revised Code (ORC) as enacted by SB 5 authorizes the Board of County Commissioners to appoint the (Clerk or County Administrator) to set the date, time, and place for hearings on annexation petitions and to provide associated notices to the agent for the petitioners;

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of _____ County as follows:

Section 1.0 Delegation of Authority to (Clerk or County Administrator) to Set Hearing

The Board hereby appoints the (Clerk or County Administrator) to establish the date, time, and place for annexation hearings.

Section 1.1 Compliance With Law

The (Clerk or County Administrator) shall establish the hearing dates for annexation petitions in order to comply with all statutory requirements of SB 5 and other sections of the ORC. In accordance with Section 709.03 (A) of the ORC and Section 1 of this resolution, the (Clerk or County Administrator) shall, within five days after the petition is filed with the Board, set the time, date, and place of the hearing. The hearing shall occur at least 60 days after but no more than 90 days after the date on which the petition is filed with the Board. In the case of a hearing pursuant to ORC 709.024 (E), the hearing shall be at the next regular session of the Board.

Section 1.2 Delegation of Authority to (Clerk or County Administrator) to Provide Notice to Agent for Petitioners

The Board hereby appoints the (Clerk or County Administrator) to provide notice to the

agent for the petitioners of the time, date, and place of the hearing.

In accordance with Section 709.03 (A) or 709.024 (E) of the ORC, the (Clerk or County Administrator) shall provide this notice immediately after the Clerk determines the date of the hearing.

Section 1.3 Notification to the Board and Entry of the Hearing Date in the Journal

Upon setting the date, time, and place of the hearing pursuant to Section 709.03 (A) of the ORC, the (Clerk or County Administrator shall inform the Board, at its next regular session, of the date, time and place of the hearing and the Board shall cause this information to be entered in its journal.

This resolution was seconded by _____.

Roll call vote

_____	_____
_____	_____
_____	_____

Appendix D

A Resolution of the Board of Commissioners of _____ County Establishing General Orders for the Hearing of Annexation Petitions

Special Note: Commissioners are urged to carefully review this sample resolution with the clerk, county administrator, and county prosecutor and make appropriate modifications prior to adoption.

_____ moved to adopt the following resolution:

WHEREAS, Amended Substitute Senate Bill 5 (Senate Bill 5) of the 124th General Assembly has been passed by the General Assembly and signed by the Governor; and

WHEREAS, the effective date of Senate Bill 5 is October 26, 2001; and

WHEREAS, it is appropriate for the county to establish guidelines and procedures regarding the processing of annexation petitions which are consistent with the provisions of Senate Bill 5; and,

WHEREAS, these procedures will help to insure compliance with the law and appropriate public involvement with the annexation process;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of _____ County as follows:

Section 1.0 Filing of Annexation Petition

A petition for annexation pursuant to Section 709.02 of the Ohio Revised Code (ORC) shall be filed by the agent for the petitions in the office of the clerk of the board. The original and three copies of the petition shall be provided to the Clerk who shall time stamp each document and return one copy to the agent for the petitioners.

Note: Because of the difficulty in reproducing maps and several other aspects of the petition which must be filed, the original and 3 copies are suggested. Distribution would be as follows: the original maintained in the master file; one copy provided to the county engineer; one copy placed in the file for public inspection; and the remaining copy placed in the commissioners "working file" for their use.

Section 1.1 Form of Annexation Petition

The petition when filed shall be in the form and comply with the provisions of ORC 709.02. Failure to file a complete petition in any respect shall be fatal to the petition and be cause for its dismissal.

Section 1.2 Initial Deposit for Costs and Fees

At the time of filing, the agent for the petitioners shall also pay the initial deposit for costs as authorized by ORC 709.014 and Resolution _____ Establishing Deposit and Fees Regulations for Cost Incurred in Annexation Proceedings. Subsequent costs shall be paid as provided in the Resolution.

Section 2.0 All Subsequent Filings

Any notice, request, or document associated with or required to be filed with the Board which relates to an annexation shall be filed in triplicate in the office of the Clerk who shall, upon receipt, time stamp all three copies and return one copy to the filing entity.

Note: Providing three copies of any filing to the Clerk allows for a copy to be placed in the master file and the file for public inspection. Returning a time stamped copy to the party filing a document provides the party filing the document with a dated receipt verifying the filing. This may be particularly important where a filing is time sensitive or is alleged to not have been filed.

Section 3.0 File for Public Inspection

Upon receipt of a petition for annexation, the Clerk shall create a duplicate file for public inspection. This file shall have placed into it and shall contain a copy of each and every document received and filed in the office of the Clerk that relates to the annexation. This file shall be available for inspection by any member of the public during the regular business hours of the office of the Clerk. A copy of any document in the file shall be provided to any member of the public within a reasonable time after its request and upon the payment of a reasonable cost for copying.

Note: Establishing a separate yet complete file for public inspection helps to preserve the integrity of the master annexation file and protect against loss, misplacement, or theft of a document which is a part of the annexation proceeding.

Section 3.1 Notice by Publication

For the purpose of the notice required to be published by the agent pursuant to ORC 709.03 (B) (3), the following newspapers are determined to be newspapers of general circulation in this county: _____.

Note: This provision lists which newspapers can be chosen by the agent to advertise the public notice of the hearing as required by the law. Selection of any one or more of these papers will ensure the agent that he/she has complied with the publication requirement.

Section 3.2 Public Comment

Public comment regarding a petition for annexation will be accepted by the Board during the session of the Board when the petition appears on the agenda as an item of business. The Board president shall have the discretion to limit comment to that which is relevant and non-repetitive.

Note: Although the statute is silent regarding the role of the public in the annexation process, this provision establishes the appropriate time when public comment will be accepted regarding an annexation petition.

Section 4.0 Review of Petitions Filed Pursuant to Section 709.021 of the Ohio Revised Code

A petition filed pursuant to ORC 709.021, seeking annexation under one of the special procedures provided for in ORC 709.022, 709.023, and 709.024, shall be reviewed by the Board to determine whether the contents of the petition meet the statutory requirements of Divisions (C), (D), and (E) of ORC 709.02 and any other particular statutory requirement specific to the section under which it was filed. Failure to meet a requirement shall be fatal to the petition, and the Board shall pass a resolution specifically identifying the deficiency and dismissing the petition. A petition dismissed by the Board may be re-filed at any time upon the correction of the deficiency.

Note: This provision provides a process by which “expedited” petitions, which undergo a “review” rather than a “hearing,” are checked to insure that the petitions actually contain the information they are required by statute and expands upon Section 1.1.

Section 5.0 Annexation Hearing

A hearing before the Board shall be held pursuant to ORC 709.024 (E) or 709.03. The hearing shall be public. The hearing shall commence upon the time and date established by the Board, however, may be continued until its completion at the discretion of the board.

Section 5.1 Personal Testimony

Any person providing testimony to the Board shall first be sworn.

Section 5.2 Affidavit Testimony

Affidavit testimony will be accepted by the Board, but only if the filing of the affidavit has complied with ORC 709.03 (C).

Section 5.3 Rights Conferred by Statute

Ohio law provides certain persons with various opportunities to request that certain actions be taken with regard to an annexation petition or hearing. These requests shall be made in writing and filed in the office of the clerk. The clerk may provide a form upon which these requests must be submitted. These requests include:

Withdrawal of signature, pursuant to ORC 709.03 (C)

Amendment of the petition, pursuant to ORC 709.031 (B)

Challenge of proof of authority to sign, pursuant to ORC 709.031 (C)

Request for the issue of subpoena, pursuant to ORC 709.032 (B)

Request for official court reporter, pursuant to ORC 709.032 (B)

Request for hearing transcript, pursuant to ORC 709.032 (B)

Section 5.4 Record of Hearing

Unless otherwise requested pursuant to ORC 709.032 (B), the official record of the hearing shall be taken by tape recording.

Section 5.5 Request for Copy of the Record

When a hearing is continued, upon recess for the day of that hearing, a necessary party may request a copy of the tape recording of the hearing conducted on that day. The copy will be provided to that party within _____ after the recess of the continued hearing. A copy of a tape recording of the complete hearing will be provided to any person making a written request. A person requesting a copy of a tape recording shall pay the actual cost for the preparation of the copy. In the case where an official court report is being used to record the hearing, a request for a written transcript of the hearing will be accepted as provided for in Section 2.3 of Resolution ____ Establishing Deposit and Fees Regulations for Cost Incurred in Annexation Proceedings.

Note: The first two sentences of this section provide for the opportunity for a “necessary party” to receive a copy of the current day’s proceedings. When a hearing runs over several days or may be held off and on over a long period of time, this provides a party with the opportunity to review the testimony currently before the board and, more appropriately, better prepare for the remainder of the hearing.

Section 5.6 Order of Hearing

The hearing before the Board will be conducted as follows:

- A. Opening statements
- B. Challenges to validity of petition signatures
 1. Owner’s request to void petition signature
 2. Challenges to proof of authority of person to sign
- C. Determination of the validity of the petition
- D. Disposition of procedural matters.
- E. Presentation of the case by the parties
 1. Agent for the petitioners’ case
 2. Municipality’s case
 3. Township’s case (or townships cases, if more than one is involved)
- F. Testimony from any other person wishing to support or contest the petition
- G. Closing statements
- H. Adjournment of hearing

Section 5.7 Continuance of the Hearing

The board may, within its discretion, continue a hearing. The necessity and timing of a continuance will be based upon consultation with the necessary parties in an attempt to be fair to all parties. A continuance will be granted in order to ensure that the hearing is completed in a timely manner and that all parties are given a reasonable opportunity to prepare for and present their case.

Note: There will be instances where a hearing on an annexation petition will be unable to be completed in one sitting. This provision gives guidance to the necessary parties with

regard to the factors that will be considered when deciding whether a continuance will occur.

Section 5.8 Post-hearing Briefs

Necessary parties to the hearing will be given the opportunity to file a post-hearing brief which will be incorporated into the record as a non-evidentiary exhibit. A post-hearing brief will be accepted within 14 days after the adjournment of the hearing. The brief should contain:

- A. Proposed findings of fact on each of the conditions for annexation as requested in either ORC 709.024 (F) or 709.033 (A)
- B. References to the hearing testimony or exhibits which support those findings
- C. Recommendation as to the decision of the board

Note: There are no provisions for a post-hearing brief provided in law; however, these briefs can be very useful to the Board in understanding the parties' positions as well as the strengths and weaknesses of their case. These briefs can be utilized to assist in making the appropriate decision.

Section 5.9 Decision of the Board

The Board shall render its decision within 30 days after the adjournment of the hearing.

This resolution was seconded by _____.

Roll call vote

_____	_____
_____	_____
_____	_____

Note: Upon adoption, Commissioners may want to send a copy of this resolution to all municipalities and townships in the county, to the county prosecutor, to the county bar association, and to the county law library.

Appendix E

Table of Annexation Statutes As Amended by Amended Substitute Senate Bill 5 of the 124th General Assembly

ORC Section	Retained in Current Form	Amended	Repealed	New Section Enacted	Current Section Replaced with New Section with Same Number	Content of ORC Section
505.62		x				Authority for township trustees to use general revenue fund to hire attorneys, expert witnesses, and consultants.
709.01	x					General provisions on annexation and detachment, and special provisions relating to U.S. military bases.
709.011	x					Responsibility of municipality to notify board of elections on boundary changes.
709.012	x					Provisions relating to reduction in number of township firefighters as a result of annexation.
709.013				x		<p>Specifies how commissioners deal with multiple annexation petitions containing the same property.</p> <p>Provides that if more than one annexation petition contains the same property, and if one petition is granted, it has the effect of removing the property from the other petitions.</p> <p>Specifies the order courts will consider appeals when two or more in which petitions are appealed that contain the same property.</p>
709.014				x		<p>Authorizes county commissioners to establish fees and require a deposit, and requires the clerk to account for the funds.</p> <p>County commissioners may appoint the clerk or county administrator to set date, time, and place of hearings and send notices to the agent.</p>

ORC Section	Retained in Current Form	Amended	Repealed	New Section Enacted	Current Section Replaced with New Section with Same Number	Content of ORC Section
709.015				x		Discusses “substantial compliance” with requirements for annexation and directs county commissioners to cure procedural defects.
709.02		x				<p>Owners may petition for annexation.</p> <p>Petition for annexation filed with clerk.</p> <p>Contents of annexation petition.</p> <p>Requires agent for petitioners to also file list of lots, tracts, and parcels in the petition which are not considered part of the annexation petition.</p> <p>Defines an “owner” for purposes of an annexation petition.</p>
709.021				x		<p>Specifies that special or expedited procedures will be used when an annexation petition is signed by all owners -- 100% petitions.</p> <p>Expedited petitions also filed with clerk and contents of petition and definition of “owner” are same as specified in ORC 709.02.</p> <p>Generally, the only sections that apply to 100% petitions are ORC 709.014, 709.015, 709.04, 709.11, 709.12, 709.192, and 709.21.</p> <p>Defines parties for the purpose of two of the special 100% annexation petition procedures, those under 709.022 (Expedited Type 1) and 709.024 (Expedited Type 2). Parties for these types of annexation include only the municipality to which annexation is proposed, the township(s), and the agent.</p>
709.022				x		Provisions related to Expedited Type 1 Annexations -- those with consent of all parties and requiring signatures of all property owners.
709.023				x		Provisions related to Expedited Type 2 Annexations -- those where land will not be excluded from township and requiring signatures of all property owners.
709.024				x		Provisions related to Expedited Type 3 Annexations -- those for the purpose of undertaking a significant economic development project and requiring the land not to be removed from the township and requiring signatures of all property owners.

ORC Section	Retained in Current Form	Amended	Repealed	New Section Enacted	Current Section Replaced with New Section with Same Number	Content of ORC Section
709.03		x				Provisions related to processing "regular" annexation petitions -- those with signatures of at least 51% of the property owners.
709.031					x	Referral of regular annexation petition, legal description, a map/plat to county engineer, amendments to petitions, and questions relating to the authority of persons to sign as owners of property.
709.032		x				Provisions defining necessary parties to a regular annexation, issuance of subpoenas, recording of hearing, requests for a court report, and transcription of hearings. This section also deals with the filing of affidavits, removal of signatures from the petition at the hearing, and other topics related to the hearing.
709.033		x				Adoption of resolutions granting or denying a regular annexation, including the conditions and standards upon which the board of county commissioners makes its decision. This section also includes requirements for notification of parties after the granting or denial of a petition.
709.04		x				Processing of a petition by a municipality after approval by the board of county commissioners.
709.05	x					Provisions relating to municipal rejection of a petition granted by the board of county commissioners.
709.06	x					Provisions relating to filing documents, upon acceptance of annexation by municipality, with county auditor and recorder and transmission to Secretary of State.
709.07					x	Procedures for appeal of the granting or denial of an annexation petition.
709.08			x			Provisions relating to injunctions that have been repealed.

ORC Section	Retained in Current Form	Amended	Repealed	New Section Enacted	Current Section Replaced with New Section with Same Number	Content of ORC Section
709.09			x			Provisions relating to injunctions that have been repealed.
709.10	x					Effective date of annexation, municipal referendum, and rights and privileges of inhabitants.
709.11					x	If territory proposed to be annexed is in more than one county, proceedings are in county where majority of acreage is located.
709.12	x					Apportionment of indebtedness upon annexation and the division of funds.
709.13		x				General section on municipally-initiated annexations.
709.14		x				Passage of ordinance by municipality authorizing the annexation of contiguous territory owned by the municipality, a county, or the state.
709.15		x				Filing of petition by municipality and contents on petition.
709.16					x	Annexation procedure when by petition of municipality of land owned by the municipality, county, or state.
709.17			x			Election on annexations initiated by a municipality which has been repealed.
709.18			x			Location annexations initiated by a municipality which has been repealed.
709.19		x				Provisions detailing required payments to township by municipality when land is annexed and removed from township of origin.
709.191	x					Alternative payments to township by municipality and enforcement of such agreement.
709.192				x		Authority for municipality and township to enter into annexation agreements.

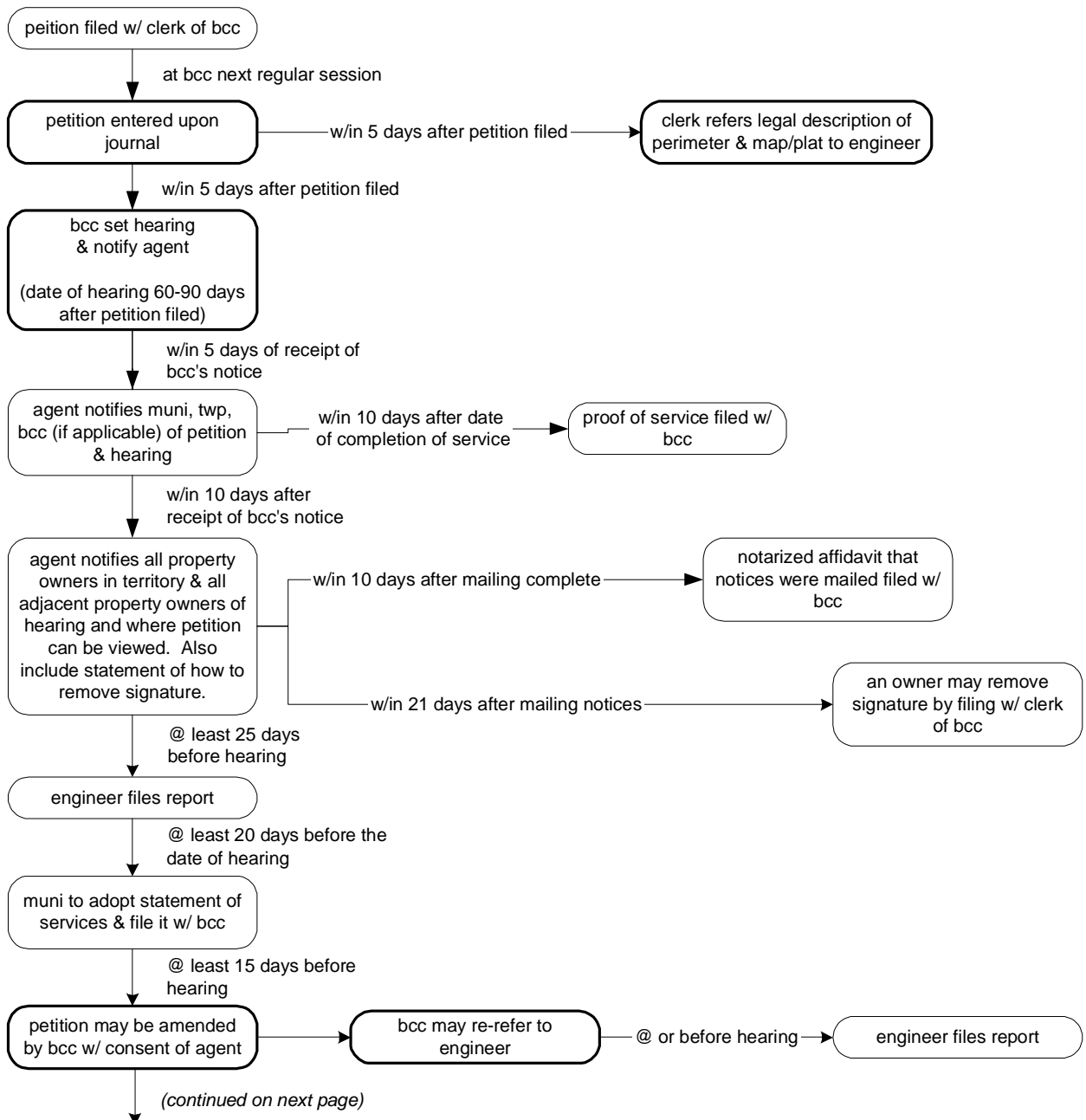
ORC Section	Retained in Current Form	Amended	Repealed	New Section Enacted	Current Section Replaced with New Section with Same Number	Content of ORC Section
709.20	x					Rights and privileges of inhabitants when a municipality initiates the annexation of municipal, county, or state-owned land.
709.21		x				Effect of errors, irregularities, or defects in annexation proceedings when an annexation has become final.
929.02		x				Conforming changes to the Agricultural Districts Law.
5705.31		x				Provisions relating to allocation of inside millage and reallocation of inside millage pursuant to an annexation agreement.
5705.315				x		Allocation of inside millage during a tax year upon annexation.

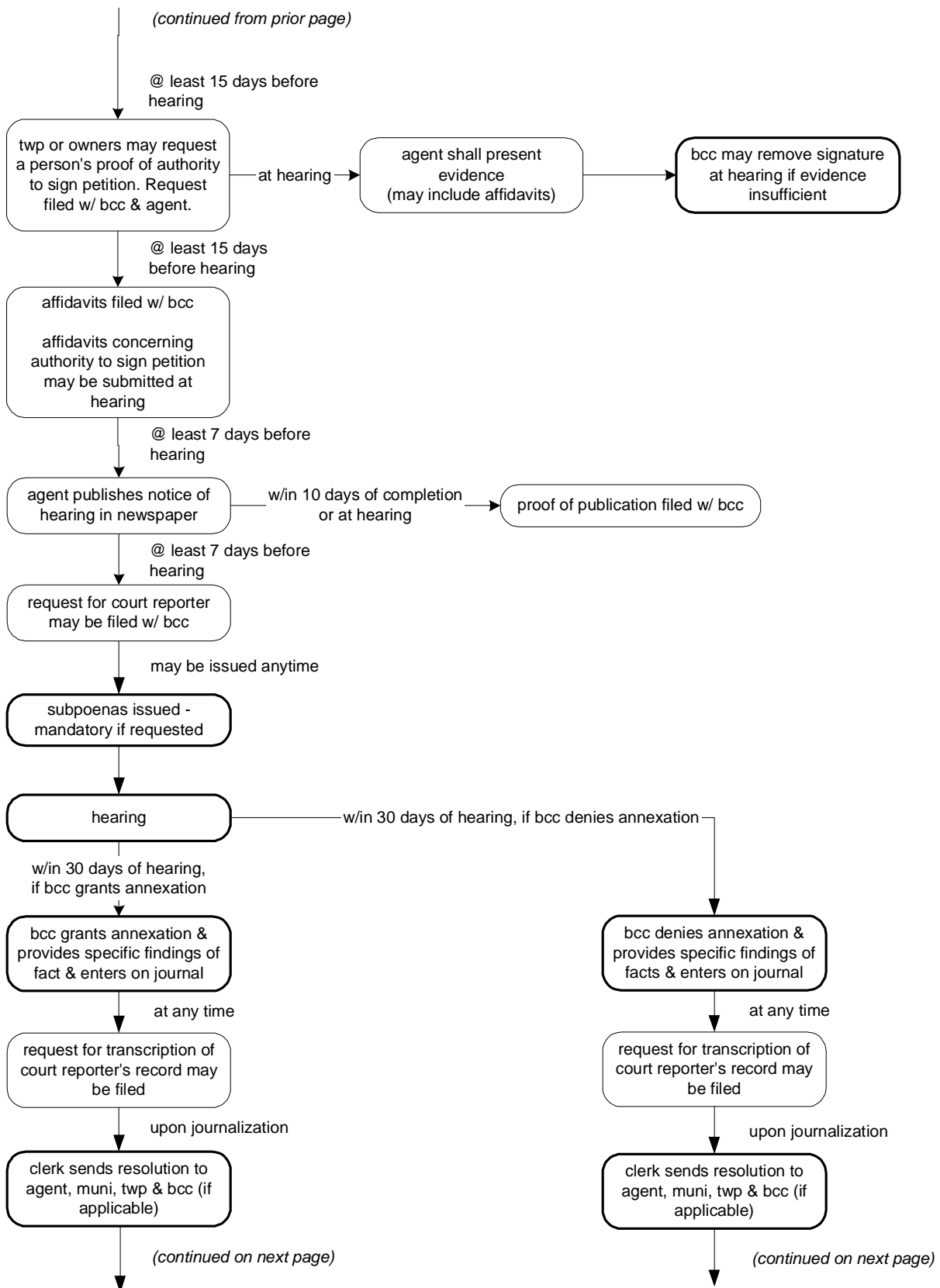
Appendix F

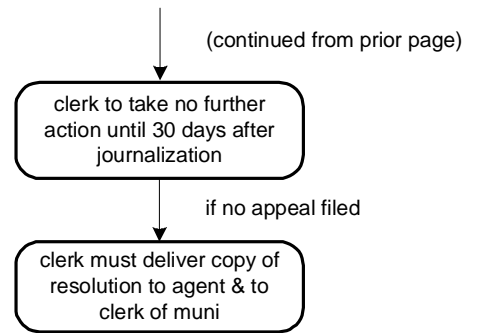
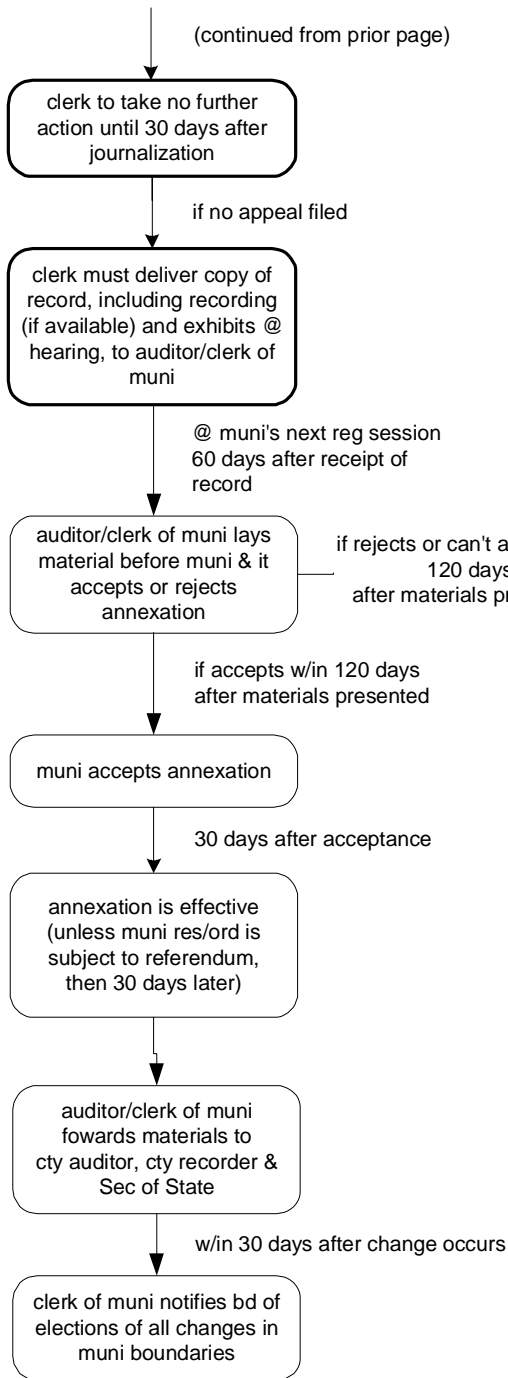
Procedural Flow Chart for Regular Annexations

ORC 709.03, 709.031, 709.032, 709.033

Petitions Submitted By At Least 51% of Property Owners







Appendix G

Procedural Checklist for Regular Annexations ORC 709.03, 709.031, 709.032, 709.033 Petitions Submitted By At Least 51% of Property Owners

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	Petition filed.	
Next regular session of board	Petition entered upon journal. (ORC 709.03 (A))	
Within 5 days after filing of petition	Referral of legal description/map/plat/ to county engineer. (ORC 709.031 (A))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Within 5 days after filing of petition	Setting of hearing date. Hearing must be not less than 60 nor more than 90 days after petition is filed. (ORC 709.03 (A))	
Within 5 days after filing of petition	Notify agent of hearing date, time, and place. (ORC 709.03 (A))	
Within 10 days after completion of service of hearing notices to governmental bodies by agent	Filing of proof of service by agent that required notices to governmental bodies were sent. (ORC 709.03 (B) (1))	
Within 10 days after mailing of notice to property owners	Filing of notarized affidavit by agent that notices were sent to property owners by regular mail. (ORC 709.03 (B) (2))	
Within 10 days after notice is published in a newspaper by agent. If notice is published fewer than 10 days before hearing, proof of publication is filed at the hearing	Filing of proof of publication by agent. (ORC 709.03 (B) (3))	
At least 25 days before hearing	Filing of report by county engineer on accuracy of legal description/map/plat. (ORC 709.03 (A))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Within 21 days after agent mails required notices	Notice(s) to clerk to withdraw signatures from petition by property owners. (ORC 709.03 (C))	
At least 20 days before hearing	Filing of municipal statement of services. (ORC 709.03 (D))	
Up to 15 days before hearing	Amendment to territory to be annexed by board with consent of agent. (ORC 709.031 (B))	
Immediately upon any amendment	Re-referral of legal description/map/plat to county engineer. (ORC 709.031 (B))	
At least 15 days before hearing	Request from township trustees or property owners to require proof that owners who signed the petition had authority to sign the petition. (ORC 709.031 (C))	
At least 15 days before hearing, unless affidavit is related to the owners' authority to sign the petition	Filing of affidavits. (ORC 709.032 (C))	
At least 7 days before hearing	Request for court reporter accompanied by deposit. (ORC 709.032 (B))	
Anytime	Request for transcription of record accompanied by an amount to cover the cost for transcription. (ORC 709.032 (B))	
Anytime	Issuance of subpoenas for witnesses or documents. (ORC 709.032 (B))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
On or before the hearing	Filing of report by county engineer on accuracy of re-referred legal description/map/plat if petition was amended. (ORC 709.031 (B))	
Between 60 and 90 days after petition was filed	County commissioners hearing. (ORC 709.03 (A) & ORC 709.032 (B))	
Any time before or at hearing	Filing of affidavits related to proving that an owner who signed the petition had the authority to sign the petition. (ORC 709.032 (C))	
At hearing	Owner who signed the petition may request that his/her signature be removed on basis of fraud, duress, or misrepresentation. (ORC 709.032 (D))	
Within 30 days after hearing	Board must adopt resolution granting or denying petition. Resolution must include specific findings of fact as to whether each condition listed in ORC 709.033 (A) (1) - (6) has been met. (ORC 709.033 (A) & (B))	
Immediately upon journalization of resolution	Clerk sends certified copy of resolution granting or denying the petition to municipality, township, other county, and agent. (ORC 709.033 (B))	
For 30 days following adoption of resolution granting or denying petition	Clerk takes no further action during a 30 day period during which an appeal to the common pleas court may be taken. (ORC 709.033 (B))	
IF no appeal has been filed within 30 days	If the petition was denied, clerk sends certified copy of resolution denying annexation to agent and clerk or	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	<p>auditor of municipality to which annexation has been proposed. (ORC 709.033 (C) (2))</p> <p>If the petition was granted, clerk delivers a certified copy of the entire record of the annexation proceedings, all resolutions of the board, the petition and map/plat, and all other papers on file, including the recording of the proceedings and exhibits presented at the hearing to the auditor or clerk of legislative authority of municipality. (ORC 709.033 (C) (1))</p>	
IF appeal is filed in common pleas court	Appellant files time stamped notice of appeal to common pleas court with clerk. Notice operates as a stay of execution on clerk. (ORC 709.033 (D), ORC 709.07 (A) & (B))	
When common pleas court rules	Clerk of court of common pleas sends certified copy of common pleas court order to clerk. (ORC 709.07 (B))	
For the number of days allowed for an appeal to the court of appeals (30 days)	Clerk takes no further action during the period of time allowed for an appeal to the court of appeals. (ORC 709.07 (A) & Appellate Rule 4)	
IF appeal is filed in court of appeals	Appellant files a time stamped notice of appeal to the court of appeals with the clerk. Notice operates as a stay of execution on clerk. (ORC 709.033 (D) & ORC 709.07 (A) & (B))	
When court of appeals rules	Clerk of court of appeals sends a certified copy of court of appeals order to the clerk. (ORC 709.07 (B))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
For the number of days allowed for an appeal to the Supreme Court (45 days)	Clerk takes no further action during the period of time allowed for an appeal to the Supreme Court. (ORC 709.07 (A) & Supreme Court Rule II, Sec. 2 (A) (1))	
IF appeal is filed in court of appeals	Appellant files a time stamped copy of notice of appeal to the Ohio Supreme Court. Notice serves as a stay of execution on clerk. (ORC 709.033 (D) & ORC 709.07 (A) & (B))	
When Ohio Supreme Court rules	Clerk of Ohio Supreme Court sends certified copy of Supreme Court's order to Clerk. (ORC 709.07 (B))	
After final order by a court or expiration of time limit for additional appeals	If original resolution of board was to deny the petition and the court orders the board to grant the petition, the board must adopt a resolution granting the petition. (ORC 709.07 (C))	
	If the original resolution of the board was to approve the petition and the court orders the board to deny the petition, the board must adopt a resolution denying the petition. (ORC 709.07 (D))	
	Note: No resolution is required if court affirms the original action of the board.	
Immediately after a court's final order or adoption of board resolution granting or denying a petition	If petition is denied, clerk sends certified copy of resolution to municipality and agent. (ORC 709.033 (C) (2))	
	If petition was granted, clerk delivers certified copy of entire record of the annexation proceedings, all resolutions of the board, the petition and map/plat, and all other papers on file including the recording of the proceedings and exhibits presented at the hearing to the clerk of the legislative authority of the municipality. (ORC 709.033 (C) (1) & ORC 709.07 (C))	

Appendix H

Technical Checklist for Regular Annexation ORC 709.03, 709.031, 709.032, 709.033 Petition Submitted By At Least 51% Property Owners

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
1	Deposit received. (ORC 709.014 (A))			
2	Fees received. (ORC 709.014 (A))			
3	Petition includes signatures of at least 51% of property owners in the area proposed to be annexed. (ORC 709.02 (C) (1))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
4	All signatures are of "owners" as defined in ORC 709.02 (E). Owners must be authorized to sign the petition and have title to property on date petition was filed. (ORC 709.02 (E))			
5	Each signature includes a date it was obtained, and no signature was obtained more than 180 days before petition was filed. (ORC 709.02 (C) (1))			
6	Petition includes accurate legal description of perimeter. (ORC 709.02 (C) (2))			
7	Petition includes accurate map or plat. (ORC 709.02 (C) (2))			
8	Petition includes name and address of agent for petitioners. (ORC 709.02 (C) (3))			
9	List of parcels in area to be annexed and adjacent territory that includes name of owner, mailing address of owner, and permanent parcel number was submitted with petition. (ORC 709.02 (D))			
10	Real estate is contiguous to municipality to which annexation is proposed. (ORC 709.02 (A))			
11	If land is located in more than one county, majority of acreage in territory is within county of filing. (ORC 709.11)			
12	Petition entered on journal at first regular session of board after filing. (ORC 709.03 (A))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
13	Clerk has notified agent for petitioners of the date, time, and place of hearing. (ORC 709.03 (A))			
14	Agent has filed proof of service that notices to governmental bodies were sent within 10 days after completion. (ORC 709.03 (B) (1))			
15	Agent has filed notarized affidavit that notices to property owners were sent by regular mail within 10 days after mailing. (ORC 709.03 (B) (2))			
16	Agent has filed proof of service of publication of notice in newspaper within 10 days after publication. If published fewer than 10 days before hearing, must be filed at hearing. (ORC 709.03 (B) (3))			
17	County engineer has filed report on accuracy of legal description/map/plat at least 25 days before hearing. (ORC 709.031 (A))			
18	Notices to clerk from property owners to withdraw their signature from petition were filed within 21 days after agent mailed notices to property owners. (ORC 709.03 (C))			
19	Municipal ordinance/resolution stating what services will be provided and an approximate date was filed with the board at least 20 days before hearing. (ORC 709.03 (D))			
20	Agent has consented to any amendment to delete territory to be annexed from the petition by board up to 15 days before hearing. (ORC 709.031 (B))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
21	Affidavits have been filed at least 15 days before hearing, except as specified in item #27 below. (ORC 709.032 (C))			
22	Township trustees or owners have filed a request to require proof that owners who signed the petition had authority to sign at least 15 days before hearing. (ORC 709.031 (C))			
23	Request for a court reporter accompanied by a deposit was filed at least 7 days before hearing. (ORC 709.032 (B))			
24	Request was filed asking that record of hearing be transcribed. Note: While this request may be filed at any time, it is more likely that it will be filed later in the process. (ORC 709.032 (B))			
25	Request for subpoenas received or commissioners on their own initiative issue subpoenas. (ORC 709.032 (B))			
26	County engineer has filed report on accuracy of legal description/map/plat if territory was deleted by board as specified in item #20 above. (ORC 709.031 (B))			
27	Affidavits proving that a person had authority to sign petition were filed prior to or at hearing if request was filed as specified in item #22 above. (ORC 709.032 (C))			
28	Commissioners rule on challenges previously filed concerning the authority of a person to sign petition for other than a natural being or on validity of other signatures at hearing. (ORC 709.031 (C))			

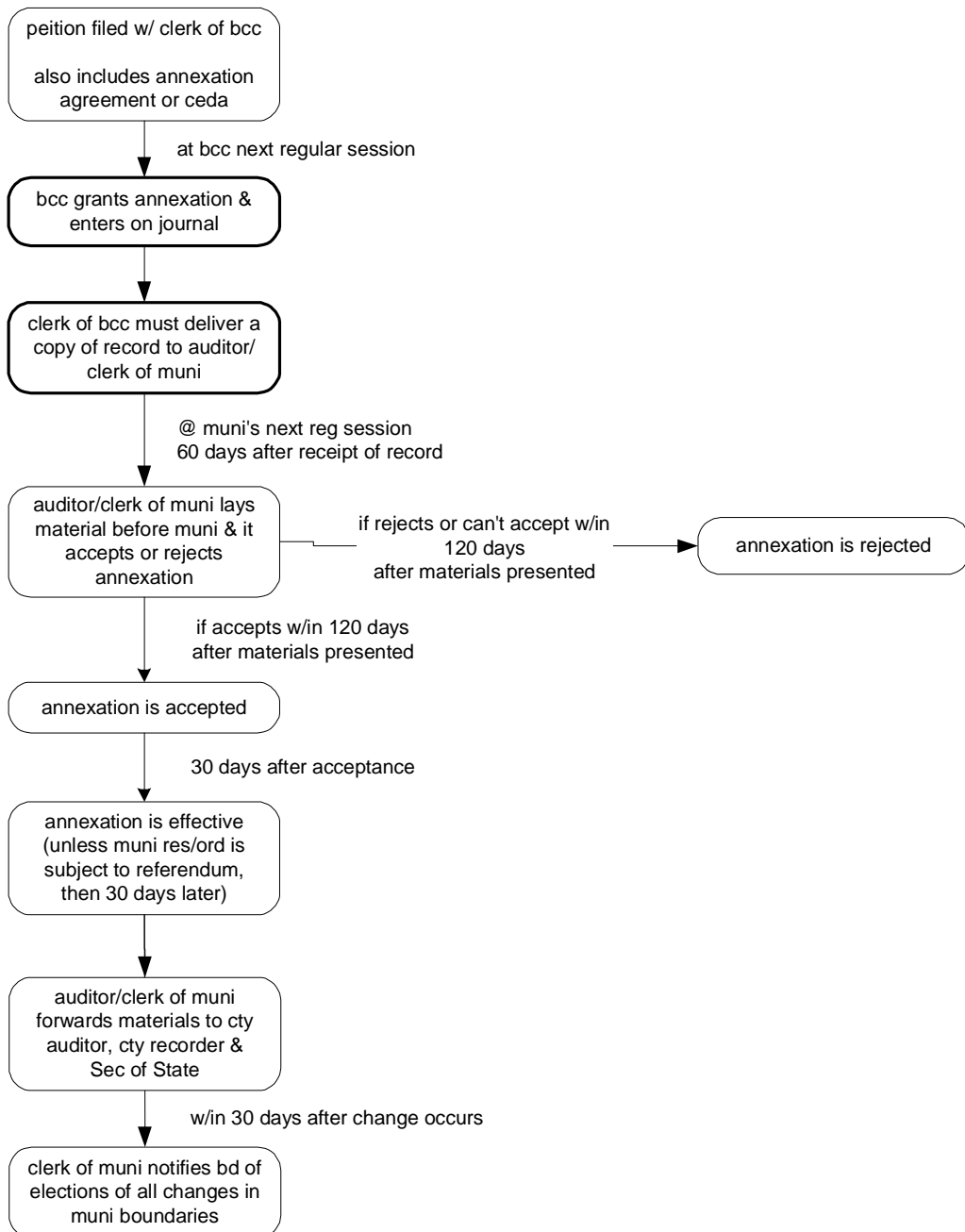
No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
29	Commissioners' order at hearing that a signature shall be removed from petition as a result of fraud, misrepresentation or undue influence. (ORC 709.032 (D))			
30	The petition meets all requirements set forth in and was filed in the manner provided in ORC 709.02. Note: This is essentially a reconfirmation that items 5 - 11 of this checklist have been met. (ORC 709.033 (A) (1))			
31	The persons who signed the petition are owners of real estate located in the territory proposed to be annexed 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 that territory. Note: This is essentially a reconfirmation that items 3 & 4 of this checklist have been met. (ORC 709.033 (A) (2))			
32	The municipality to which the territory is proposed to be annexed has complied with Division D of Section 709.03 of the ORC. Note: This is essentially a reconfirmation that item 19 of this checklist has been met. (ORC 709.033 (A) (3))			
33	The territory is not unreasonably large. (ORC 709.033 (A) (4))			
34	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 (unincorporated territory within one-half mile from the territory proposed to be annexed) will outweigh the detriments to the territory proposed to be annexed and the surrounding area (unincorporated territory within one-half			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
35	<p>mile from the territory proposed to be annexed), if the annexation petition is granted. (ORC 709.033 (A) (5))</p> <p>Municipality has agreed to assume street maintenance or otherwise correct a road maintenance problem if a street is divided or segmented by boundary line between township and municipality that creates a road maintenance problem. This agreement could be included in municipal ordinance/resolution adopted under item #19 above or by a separate ordinance/resolution. (ORC 709.033 (A) (6))</p>			
36	<p>Board has adopted resolution granting or denying petition and entered it upon its journal. The resolution must include specific findings of fact as to whether each condition listed in ORC 709.033 (A) (1) - (6) has been met. (ORC 709.033 (B))</p>			
37	<p>Clerk has sent certified copy of resolution granting or denying the petition to municipality, township(s), agent, and other county upon journalization. (ORC 709.033 (B))</p>			
38	<p>IF AN APPEAL IS TAKEN</p> <p>Time stamped notice of appeal to common pleas court has been filed with clerk. (ORC 709.07 (B))</p>			
39	<p>Clerk of common pleas court has sent certified copy of court order to commissioners clerk. (ORC 709.07 (B))</p>			
40	<p>Time stamped notice of appeal to court of appeals was filed with clerk. Note: If time for appeal has expired, proceed to steps 44 or 45 as applicable. (ORC 709.07 (B))</p>			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
41	Clerk of court of appeals has sent certified copy of court of appeals order to commissioners clerk. (ORC 709.07 (B))			
42	Time stamped notice of appeal to Ohio Supreme Court was filed with clerk. Note: If time for appeal to Supreme has expired, proceed to steps 44 or 45 as applicable. (ORC 709.07 (B))			
43	Clerk of Ohio Supreme Court has sent copy of Supreme Court order to commissioners clerk. (ORC 709.07 (B))			
44	Board has adopted resolution granting petition if its original action was denial and court orders annexation. (ORC 709.07 (C))			
45	Board has adopted resolution denying petition if its original action was approval and court orders annexation should not be granted. (ORC 709.07 (D))			
	IF AN APPEAL IS NOT TAKEN OR AFTER ALL APPEALS ARE EXHAUSTED			
46	Clerk sends certified copy of resolution denying petition to municipality and agent. (ORC 709.033 (C) (2))			
47	If the annexation is granted, clerk has delivered certified copy of the entire record of proceedings to clerk or auditor of municipality. The entire record includes all resolutions of the board signed by a majority of the commissioners, the petition, map, the recording of the hearing, and all other papers on file. (ORC 709.033 (C) (1) & ORC 709.07 (C))			

Appendix I

Procedural Flow Chart for Expedited Type 1 Annexations ORC 709.022 Petitions Submitted By All Property Owners With Consent of All Parties



Appendix J

Procedural Checklist for Expedited Type 1 Annexations ORC 709.022

Petitions Submitted By All Property Owners With Consent of All Parties

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	Petition filed.	
Next regular session of board	Board adopts resolution granting the petition. (ORC 709.022 (A))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Immediately upon adoption of resolution	Clerk delivers certified copy of entire record of annexation proceedings including all resolutions of the board, the petition, map, and all other papers on file, and the recording of the proceeding if a copy is available to the clerk or auditor of municipality. (ORC 709.022 (C))	

Appendix K

Technical Checklist for Expedited Type 1 Annexation ORC 709.022

Petitions Submitted By All Property Owners With Consent of All Parties

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
1	Deposit received. (ORC 709.014 (A))			
2	Fees received. (ORC 709.014 (A))			
3	Petition asks board to follow ORC 709.022. (ORC 709.021 (A), ORC 709.022 (A))			

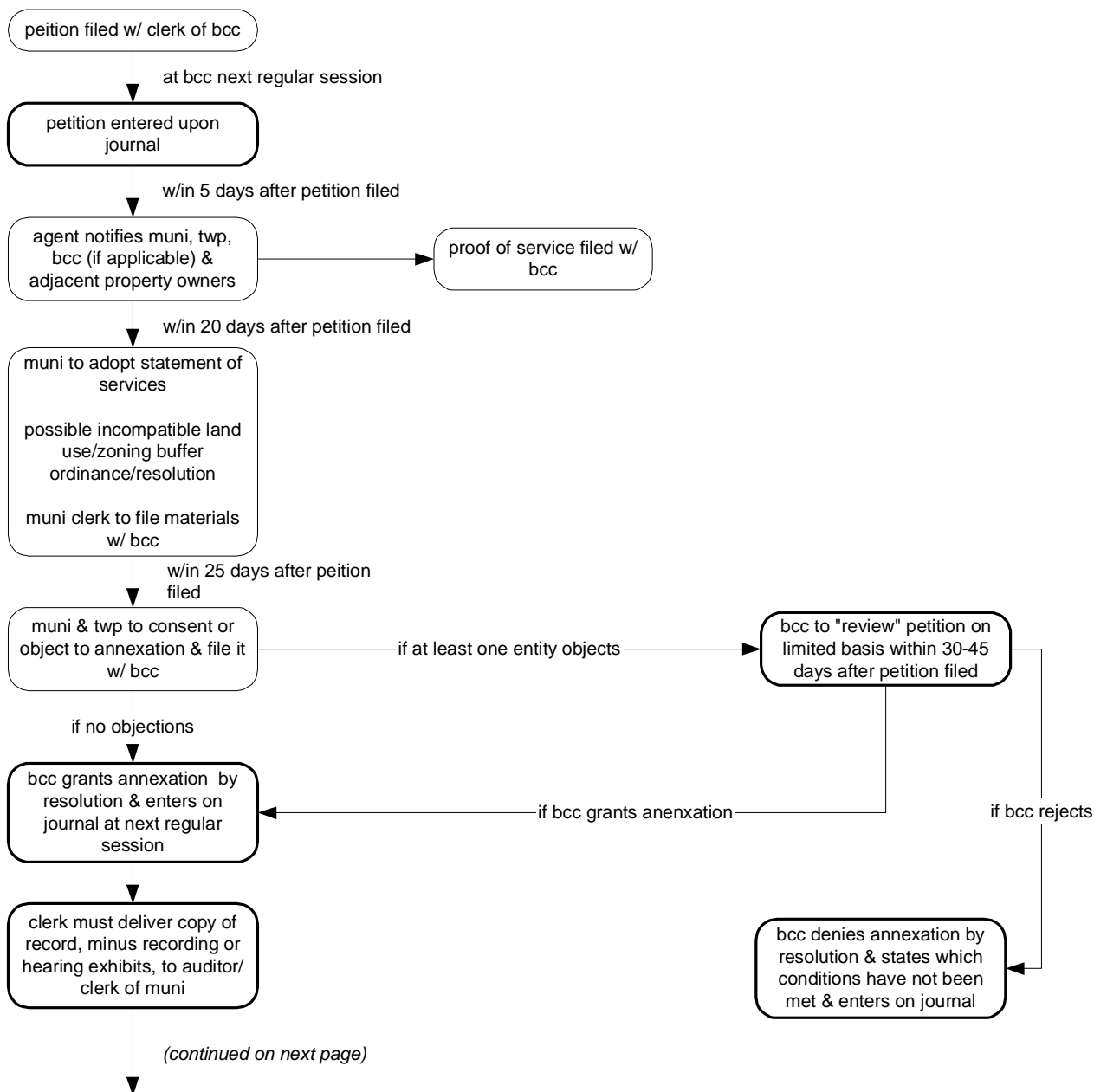
No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
4	Petition includes signatures of all property owners in the area proposed to be annexed. (ORC 709.021 (B))			
5	All signatures are of "owners" as defined in ORC 709.02 (E). Owners must be authorized to sign the petition and have title to property on the date the petition was filed. (ORC 709.02 (E))			
6	Each signature includes a date it was obtained, and no signature was obtained more than 180 days before petition was filed. (ORC 709.02 (C) (1))			
7	Petition includes accurate legal description of perimeter. (ORC 709.02 (C) (2))			
8	Petition includes accurate map or plat. (ORC 709.02 (C) (2))			
9	Petition includes name and address of agent for petitioners. (ORC 709.02 (C) (3))			
10	List of parcels in area to be annexed and adjacent territory that includes name of owner, mailing address and permanent parcel number was submitted with petition. (ORC 709.02 (D))			
11	Real estate is contiguous to municipality to which annexation is proposed. (ORC 709.021 (A))			
12	Petition includes statutory disclosure statement in bold face, capital letters regarding waiver of appeal rights. (ORC 709.022 (B))			

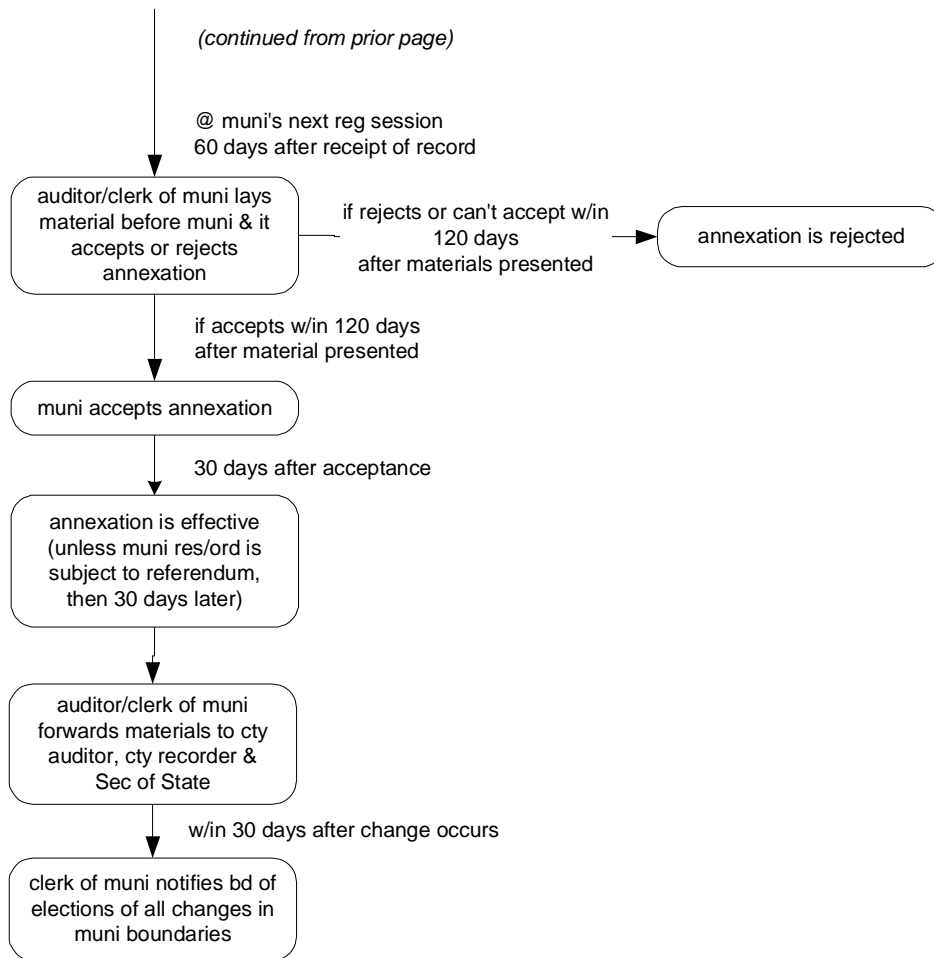
No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
13	Petition was accompanied by a certified copy of either an annexation agreement or a cooperative economic development agreement. (ORC 709.022 (A))			
14	If land is located in more than one county, a majority of acreage is within county of filing. (ORC 709.11)			
15	Commissioners resolution granting petition has been adopted and entered on the journal. No hearing is required. (ORC 709.022 (A))			
16	Clerk has delivered a certified copy of the entire record of proceedings to the clerk or auditor of the municipality. The entire record includes all resolutions of the board signed by a majority of the commissioners, the petition, the map, all other papers on file, and the recording of the proceedings if one is available. (ORC 709.022 (C))			

Appendix L

Procedural Flow Chart for Expedited Type 2 Annexations ORC 709.023

Petitions Submitted By All Property Owners With or Without Consent of Municipality & Township(s)





Appendix M

Procedural Checklist for Expedited Type 2 Annexations ORC 709.023

Petitions Submitted By All Property Owners With or Without Consent of Municipality & Township(s)

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	Petition filed.	
Next regular session of board	Petition entered upon the journal. (ORC 709.023 (B))	
Anytime	Filing proof of service by agent that notices to each	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	appropriate governmental official has been completed within 5 days after filing of petition. Note: Proof of service is limited to governmental officials even though notices to adjacent property owners must be sent by regular first class mail. (ORC 709.023 (B))	
Within 20 days after filing of petition	Filing of municipal statement of services. (ORC 709.023 (C))	
Within 20 days after filing of petition	Filing of municipal statement of incompatible land use and zoning buffer if area to be annexed is currently subject to county or township zoning. (ORC 709.023 (C))	
Within 25 days after filing petition	Filing of ordinance or resolution by municipality or township(s) consenting or objecting to the annexation. If no ordinance or resolution is submitted within 25 days, it is presumed to be consent. (ORC 709.023 (D))	
At next regular session of board IF both municipality and township(s) consent	Board must adopt a resolution granting annexation. (ORC 709.023 (D))	
Not less than 30 or more than 45 days after filing of petition IF either municipality or township(s) objects.	Board must "review" the petition and grant or deny the petition by resolution if it meets all of the conditions listed in ORC 709.023 (E) (1) - (7).	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Immediately upon journalization of resolution granting or denying petition.	<p>If petition is granted, clerk delivers certified copy of entire record of annexation proceedings, all resolutions of the board, the petition, and map, and all other papers on file to the clerk or auditor of municipality.</p> <p>If petition is denied, clerk should send a certified copy of all resolutions to the municipality and agent. Note: The law is silent on this issue; however, CCAO recommends it be done. (ORC 709.023 (G) & ORC 709.033 (C) (1))</p>	
After adoption of resolution denying petition	Writ of Mandamus to compel the board to perform its duties may be sought by any party. (ORC 709.023 (G))	

Appendix N

Technical Checklist for Expedited Type 2 Annexations ORC 709.023

Petitions Submitted By All Property Owners With or Without Consent of Municipality & Township(s)

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
1	Deposit received. (ORC 709.014 (A))			
2	Fees received. (ORC 709.014 (A))			
3	Petition asks board to follow ORC 709.023. (ORC 709.021 (A) & ORC 709.023 (A))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
4	Petition includes signatures of all property owners in the area to be annexed. (ORC 709.021 (B))			
5	All signatures are of “owners” as defined in ORC 709.02 (E). Owners must be authorized to sign the petition and have title to property on date petition was filed. (ORC 709.02 (E))			
6	Each signature includes a date it was obtained, and no signature was obtained more than 180 days before petition was filed. (ORC 709.02 (C) (1))			
7	Petition includes accurate legal description of perimeter. (ORC 709.02 (C) (2))			
8	Petition includes accurate map or plat. (ORC 709.02 (C) (2))			
9	Petition includes name and address of agent for petitioners. (ORC 709.02 (C) (3))			
10	List of parcels in area to be annexed and adjacent territory that includes name of owner, mailing address of owner, and permanent parcel number was submitted with petition. (ORC 709.02 (D))			
11	Real estate is contiguous to municipality to which annexation is proposed. (ORC 709.021 (A))			
12	Petition includes statutory disclosure statement in bold face, capital letters regarding waiver of appeal rights and right to sue or seek a variance from buffer requirements. (ORC 709.023 (A))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
13	If land is located in more than one county, a majority of acreage in territory within county of filing. (ORC 709.011)			
14	Territory does not exceed 500 acres. (ORC 709.023 (E) (3))			
15	Territory shares a contiguous boundary with municipality for a continuous length of at least 5% of the perimeter. (ORC 709.023 (E) (4))			
16	Annexation will not create an unincorporated area completely surrounded by territory to be annexed. (ORC 709.023 (E) (5))			
17	Petition entered on journal at next regular session of board after filing. (ORC 709.023 (B))			
18	Agent has filed proof of service that notices to governmental bodies has been completed. Note: While proof of service to adjacent property owners is not required, such notice must be sent by the agent by regular first class mail. (ORC 709.023 (B))			
19	Municipal ordinance/resolution stating what services will be provided and an approximate date was filed with the board within 20 days after petition was filed. (ORC 709.023 (C) & ORC 709.023 (E) (6))			
20	Municipal ordinance/resolution dealing with clearly incompatible land uses and zoning buffers was filed IF land proposed to be annexed is subject to county or township zoning. (ORC 709.023 (C))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
21	Municipality has filed ordinance/resolution consenting or objecting to annexation. If not filed within 25 days after petition was filed, it is deemed consent. (ORC 709.023 (D))			
22	Township has filed resolution consenting or objecting to annexation. If not filed within 25 days after petition was filed, it is deemed consent. (ORC 709.023 (D))			
23	IF a resolution is filed objecting to the petition, commissioners must “review” petition between 30 and 45 days after petition is filed. This “review” is not a “hearing.” (ORC 709.023 (E))			
24	The petition meets all the requirements set forth in and was filed in the manner specified in ORC 709.021. Note: This is essentially a reconfirmation that items 3 and 6 - 13 of this checklist have been met. (ORC 709.023 (E) (1))			
25	The persons who signed the petition are owners of the real estate located in the territory proposed to be annexed and constitute all of the owners of real estate in that territory. Note: This is essentially a reconfirmation that items 4 and 5 of this checklist have been met. (ORC 709.023 (E) (2))			
26	The territory proposed to be annexed does not exceed 500 acres. Note: This is essentially a reconfirmation that item 3 has been met. (ORC 709.023 (E) (3))			
27	The territory proposed to be annexed shares a contiguous boundary with the municipality to which annexation is proposed for a continuous length of at least five per cent of the			

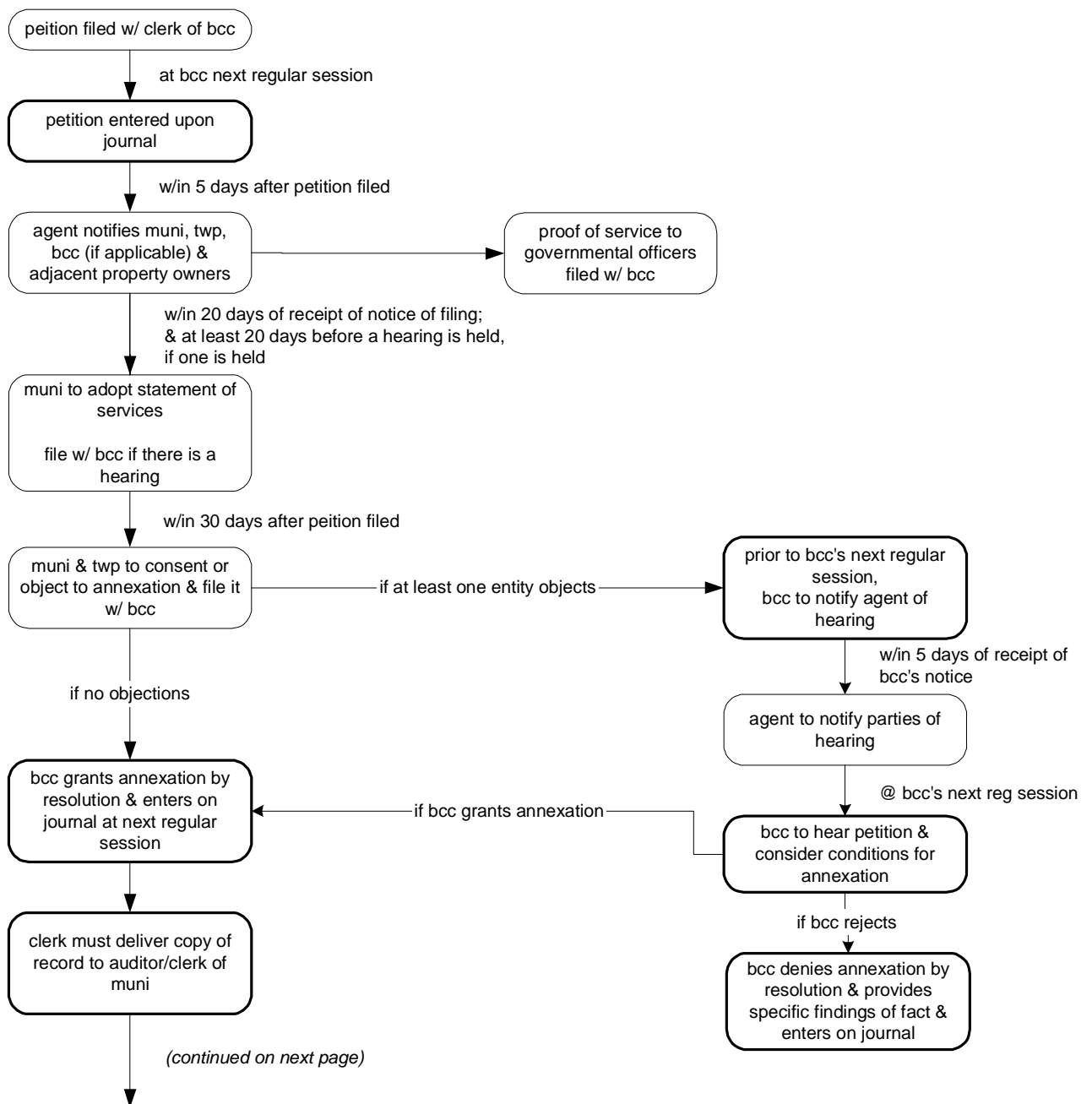
No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
	<p>perimeter of the territory proposed to be annexed. Note: This is essentially a reconfirmation that item 15 of this checklist has been met. (ORC 709.023 (E) (4))</p>			
28	<p>The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed to be annexed. Note: This is essentially a reconfirmation that item 16 of this checklist has been met. (ORC 709.023 (E) (5))</p>			
29	<p>Municipality has agreed to provide the services specified in the ordinance/resolution specified in item #19 above. Could be part of ordinance/resolution adopted under item #20 above or by a separate ordinance/resolution. Not required if both municipality and township consent. (ORC 709.023 (E) (6))</p>			
30	<p>Municipality has agreed to assume street maintenance or otherwise correct a road maintenance problem if a street is divided or segmented by boundary line between township and municipality that creates a road maintenance problem. This agreement could be included in municipal ordinance/resolution adopted under item #19 above or by a separate ordinance/resolution. Not required if both municipality and township consent. (ORC 709.023 (E) (7))</p>			
31	<p>Commissioners' resolution granting or denying the petition has been adopted and entered on the journal. If petition denied, the resolution must state which condition(s) listed in ORC 709.023 (E) (1) - (7) has not been met.</p>			
32	<p>If the annexation is granted, clerk has delivered certified copy of the entire record of proceedings to clerk or auditor of municipality. The entire record includes all resolutions of</p>			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
33	<p>the board signed by a majority of the commissioners, the petition, map, and all other papers on file. (ORC 709.023 (G))</p> <p>If the annexation is denied, clerk should send a certified copy of all resolutions to the municipality and agent. Note: the law is silent on this issue; however, CCAO recommends it be done.</p> <p>Writ of mandamus filed to compel board to perform its duties. (ORC 709.023 (G))</p>			

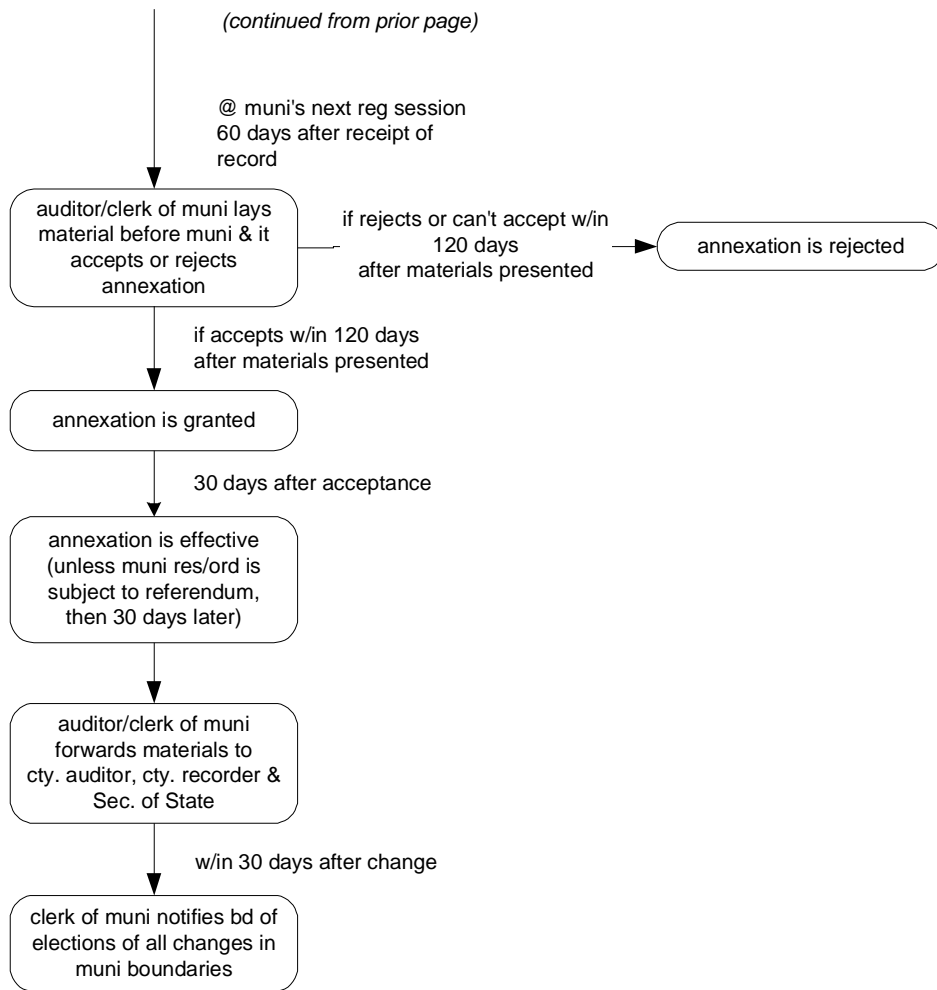
Appendix O

Procedural Flow Chart for Expedited Type 3 Annexations ORC 709.024

Petitions Submitted By All Property Owners For Undertaking A Significant Economic Development Project



(continued from prior page)



Appendix P

Procedural Checklist for Expedited Type 3 Annexations ORC 709.024

Petitions Submitted By All Property Owners For Undertaking A Significant Economic Development Project

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	Petition filed.	
Next regular session of board	Petition entered upon the journal. (ORC 709.024 (B))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Anytime	Filing proof of service by agent that notices to each governmental officer has been completed within 5 days after filing petition. Note: Proof of service is limited to governmental officers even through notices to adjacent property owners must be sent by regular first class mail. (ORC 709.024 (B))	
Within 20 days after filing of petition if a hearing is to be held. IF no hearing is to be held, must be filed before consideration by board.	Filing of municipal statement of services. (ORC 709.024 (C) (2))	
Within 30 days after filing of petition	Filing of ordinance or resolution by municipality or township(s) consenting or objecting to the annexation. If no ordinance or resolution is submitted within 30 days, it is presumed to be consent. (ORC 709.024 (C) (1))	
At next regular session of board IF both municipality and township(s) consent	<p>Board must adopt a resolution granting the petition. (ORC 709.024 (D))</p> <p>Note: If an objection is filed by either a municipality or any township, a hearing must be held at the next regular session of the board. The question that arises in this situation is: When is the hearing held if an objection is filed before the 30th day? One interpretation is that the date of the hearing must be at the next regular session of the board following the receipt of an objection. Another interpretation is that no hearing should be scheduled until after the expiration of the 30 day period even if an objection is filed prior to the 30th day. If the county prosecutor believes the second interpretation is correct, CCAO advises commissioners to schedule a “tentative hearing” for the first regular session of the board after the expiration of 35 days after the petition is filed. This would account for the 30 days during which objections could be filed and 5 days for the agent to provide notices. (ORC 709.024 (E))</p>	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Immediately upon receipt of an objection to the petition by either municipality or township(s) OR at the expiration of 30 day period for filing objections (see note above)	Notification of agent of date, time, and place of hearing at next regular session of board. (ORC 709.024 (E))	
At next regular session of board IF either municipality or township(s) objects OR at at next regular session of board after expiration of 35 days from filing of petition (see note above)	Hearing on petition by board at regular session. (ORC 709.024 (E))	
Within 30 days after hearing	Board adopts a resolution granting or denying petition. Resolution must include specific findings of fact as to whether each condition listed in ORC 709.024 (F) (1) - (5) have been met. (ORC 709.024 (F))	
Immediately upon journalization of resolution granting the petition	Clerk delivers certified copy of entire record of annexation proceedings, all resolutions of the board, the petition, map, and all other papers or file, the recording of the proceeding, if available, and exhibits presented at the hearing to the auditor or clerk of municipality. (ORC 709.024 (D) & ORC 709.033 (C) (1))	
For a period of 30 days after adoption of a resolution denying the petition	Any owner of property who signed the petition may appeal denial of petition to common pleas court. (ORC 709.024 (G) & ORC 709.07 (A))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
IF appeal is filed in common pleas court	Appellant files notice of appeal to common pleas court with clerk. Notice operates as a stay of execution on clerk. (ORC 709.07 (A) & (B))	
When common pleas court rules	Clerk of court of common pleas sends certified copy of common pleas court order to clerk. (ORC 709.07 (B))	
For the number of days allowed for an appeal to the court of appeals (30 days)	Clerk takes no further action during the period of time allowed for an appeal to the court of appeals. (ORC 709.07 (A), Appellate Rule 4)	
IF appeal is filed in the court of appeals	Appellant files a time stamped notice of appeal to the court of appeals with the clerk. Notice operates as a stay of execution on clerk. (ORC 709.07 (A) & (B))	
When court of appeals rules	Clerk of court of appeals sends a certified copy of court of appeals order to the clerk. (ORC 709.07 (B))	
For the number of days allowed for an appeal to the Ohio Supreme Court (45 days)	Clerk takes no further action during the period of time allowed for an appeal to the Ohio Supreme Court. (ORC 709.07 (A), Supreme Court Rule II, Sec. 2 (A) (1))	
IF appeal is taken to the Ohio Supreme Court	Appellant files a time stamped copy of notice of appeal to the Ohio Supreme Court. Notice serves as a stay of execution on clerk. (ORC 709.07 (A) & (B))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
When Ohio Supreme Court rules	Clerk of Ohio Supreme Court sends certified copy of Supreme Court's order to clerk. (ORC 709.07 (B))	
After final order by a court and expiration of time limit for additional appeals	If the court orders board to grant petition, the board must adopt a resolution granting the petition. (ORC 709.07 (C))	
Immediately after a court's final order or adoption of board resolution granting or denying a petition	If petition is denied, clerk sends certified copy of resolution to municipality and agent. Note: The law is silent on this issue; however, CCAO recommends it be done.	
	Clerk delivers certified copy of entire record of the annexation proceedings, all resolutions of the board, the petition and map/plat, and all other papers on file including the recording of the proceedings and exhibits presented at the hearing to the clerk of the legislative authority of the municipality. (ORC 709.024 (F), ORC 709.033 (C) (1) & ORC 709.07 (C))	

Appendix Q

Technical Checklist for Expedited Type 3 Annexations ORC 709.024

Petitions Submitted By All Property Owners For Undertaking A Significant Economic Development Project

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
1	Deposit received. (ORC 709.014 (A))			
2	Fees received. (ORC 709.014 (A))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
3	Petition asks board to follow ORC 709.024. (ORC 709.021 & 709.024 (A))			
4	Petition includes signatures of all property owners in the area to be annexed. (ORC 709.021 (B))			
5	All signatures are of "owners" as defined in ORC 709.02 (E). Owners must be authorized to sign the petition and have title to property on date petition was filed. (ORC 709.02 (E))			
6	Each signature includes a date it was obtained, and no signature was obtained more than 180 days before petition was filed. (ORC 709.02 (C) (1))			
7	Petition includes accurate legal description of perimeter. (ORC 709.02 (C) (2))			
8	Petition includes accurate plat or map. (ORC 709.02 (C) (2))			
9	Petition includes name and address of agent for petitioners. (709.02 (C) (3))			
10	List of parcels in area to be annexed and adjacent territory that includes name of owner, mailing address of owner, and permanent parcel number was submitted with petition. (ORC 709.02 (D))			
11	Real estate is contiguous to municipality to which annexation is proposed. (ORC 709.021 (A))			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
12	If land is located in more than one county, a majority of the acreage is within county of filing. (ORC 709.11)			
13	Petition entered on journal at next regular session of board after filing. (ORC 709.024 (B))			
14	Agent has filed proof of service that notices to governmental bodies has been completed. Note: While proof of service to adjacent property owners is not required, such notices must be sent by the agent by regular first class mail. (ORC 709.024 (B))			
15	Municipality has filed ordinance/resolution consenting or objecting to annexation. If not filed within 30 days after petition is filed, it is deemed consent. (ORC 709.024 (C) (1))			
16	Township has filed resolution consenting or objecting to annexation. If not filed with 30 days after petition is filed, it is deemed consent. (ORC 709.024 (C) (1)) Note: If no resolution objecting is filed, no hearing is required.			
17	The petition meets all the requirements set forth in and was filed in the manner provided in ORC 709.021. This is essentially a reconfirmation of items 3 and 6 - 11 of this checklist. (ORC 709.024 (F) (1))			
18	The persons who signed the petition are owners of real estate located in the territory proposed to be annexed in the petition and constitute all of the owners of real estate in that territory. This is essentially a reconfirmation of items 4 & 5 of this checklist. (ORC 709.024 (F) (2))			

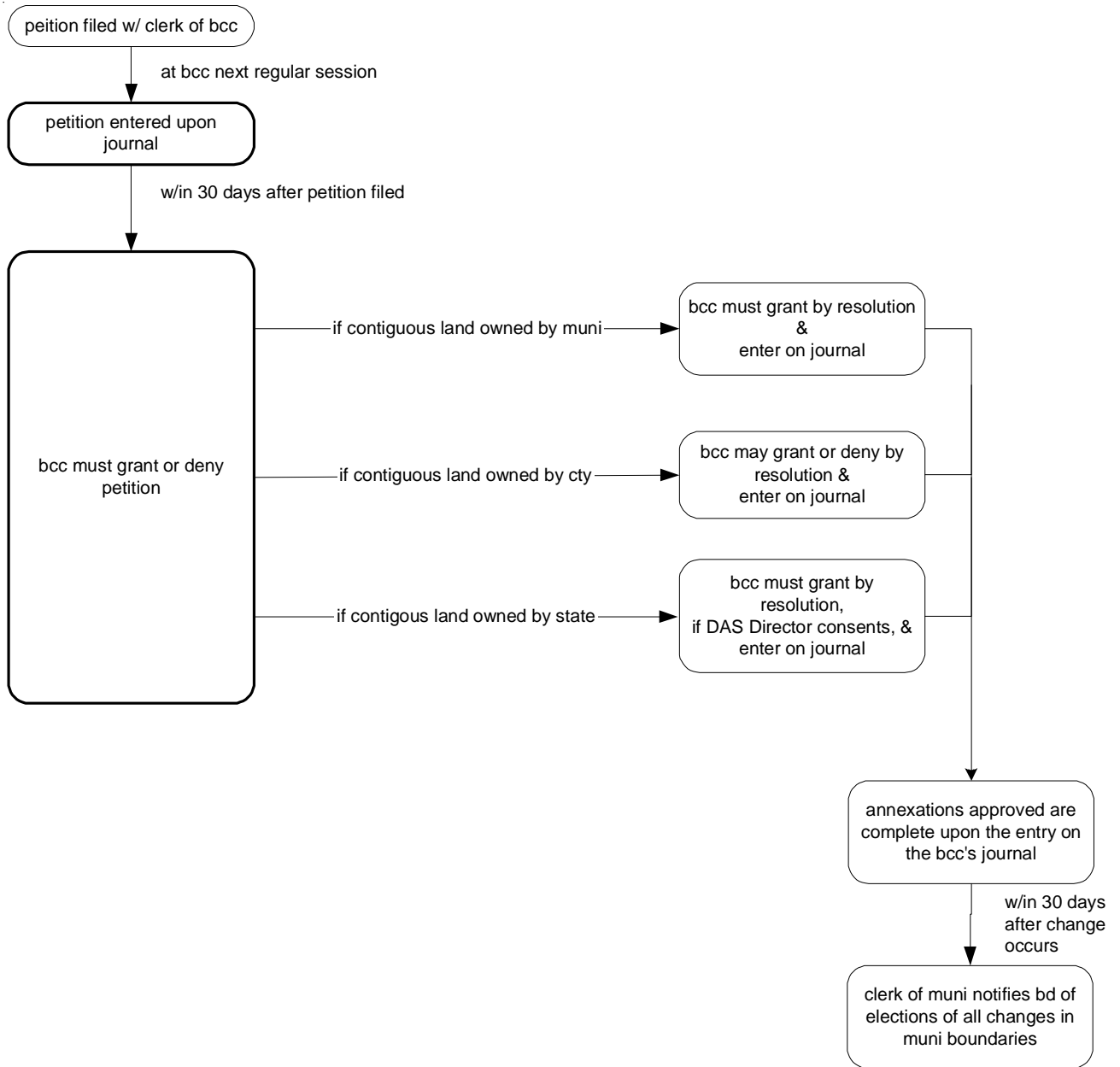
No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
19	Municipality has agreed to assume street maintenance responsibility if a street is divided or segmented by a boundary line between a township and municipality so as to create a road maintenance problem. This agreement could be included in municipal ordinance/resolution under item #18 or by a separate ordinance/resolution. Not required if both municipality and township consent. (ORC 709.024 (F) (3))			
20	Municipal ordinance/resolution stating what services will be provided and an approximate date was filed within 20 days after receiving notice from the agent. If a hearing is to be held, statement must be filed at least 20 days before the hearing. (ORC 709.024 (C) (2) & ORC 709.024 (F) (4))			
21	Director of Development has certified that the property tax and payroll thresholds for significant economic development have been met. (ORC 709.024 (F) (5))			
22	IF hearing is required, clerk has notified agent for petitioners of date, time, and place of hearing at next regular session of board. (ORC 709.024 (E))			
23	IF hearing is required, agent has verified that notices to necessary parties and adjacent property owners was completed within 5 days of receiving notice of hearing from clerk. Note: This is not required specifically by law; however, CCAO recommends it be done. (ORC 709.024 (E))			
24	Board resolution granting or denying the petition has been adopted and entered on its journal within 30 days after hearing. The			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
25	<p>resolution must include specific findings of fact as to whether each of the conditions listed in ORC 709.024 (F) (1) - (5) has been met. (ORC 709.024 (F))</p> <p>If the annexation was granted, clerk has delivered certified copy of the entire record of the proceedings to the clerk or auditor of the municipality. The entire record includes all resolutions of the board, signed by a majority of the commissioners, the petition, map, all other papers on file, and the recording of the hearing, if available, and if one was held. (ORC 709.024 (F) & ORC 709.033 (C) (1))</p> <p>If petition is denied, clerk should send a certified copy of resolution to the municipality and agent. Note: The law is silent on this issue; however, CCAO recommends it be done.</p>			
26	<p>IF AN APPEAL BY OWNER IS TAKEN FOR DENIAL OF PETITION</p> <p>Time stamped notice of appeal to common pleas court has been filed with the clerk. (ORC 709.07 (B))</p>			
27	<p>Clerk of common pleas court has sent certified copy of court order to commissioners clerk. (ORC 709.07 (B))</p>			
28	<p>Time stamped notice of appeal to court of appeals has been filed with clerk. Note: If time for appeal to court of appeals has expired, proceed to step 32 or 33. (ORC 709.07 (B))</p>			
29	<p>Clerk of court of appeal has sent a certified copy of court of appeals order to commissioners clerk. (ORC 709.07 (B))</p>			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
30	Time stamped notice of appeal to Ohio Supreme Court was filed with clerk. Note: If time for appeal to Ohio Supreme Court has expired, proceed to step 32 or 33. (ORC 709.07 (B))			
31	Clerk of Ohio Supreme Court has sent copy of Supreme Court order to clerk. (ORC 709.07 (B))			
32	<p>AFTER ALL APPEALS ARE EXHAUSTED</p> <p>If the decision of the highest reviewing court grants the petition and overturns the board's denial of that petition, the board adopts a resolution granting the annexation, and clerk has delivered certified copy of the entire record of the proceedings to the clerk or auditor of the municipality. The entire record includes all resolutions of the board, signed by a majority of the commissioners, the petition, map, all other papers on file, and the recording of the hearing, if available.</p>			
33	<p>If the decision of the highest reviewing court affirms the board's denial of the petition, the clerk should send a copy of the court's final order to the municipality and agent. Note: The law is silent on this issue; however, CCAO recommends it be done.</p>			

Appendix R

Procedural Flow Chart for Annexations of Municipal, County, or State-Owned Land by Petition Submitted by Municipality ORC 709.16



Appendix S

Procedural Checklist for Annexations of Municipal, County, or State-Owned Land by Petition Submitted by Municipality ORC 709.16

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
	Petition filed.	
Next regular session of board	Petition entered upon the journal. (ORC 709.16 (A))	

Statutory Time Frame/Requirement	Description of Provision/Requirement	Date Received/ Completed
Written 30 days after petition is filed	Director of Department of Administrative Services (DAS) has filed written consent if annexation is state-owned land. (ORC 709.16 (D))	
Within 30 days after petition is filed	<p>Board adopts resolution:</p> <p>granting petition if land is contiguous land owned by municipality. (ORC 709.16 (B) & (E))</p> <p>granting or denying petition if land is contiguous land owned by county. (ORC 709.16 (C) & (E))</p> <p>granting petition if land is contiguous land owned by state and Director of DAS files written consent. (ORC 709.16 (D) & (E))</p> <p>denying petition if land is contiguous land owned by state and Director of DAS has not filed written consent. (ORC 709.16 (D) & (E))</p>	
Upon journalization of resolution granting petition	Annexation is complete. (ORC 709.16 (B), (C) & (D))	

Appendix T

Technical Checklist for Annexations of Municipal, County, or State-Owned Land by Petition Submitted by Municipality ORC 709.16

Petition Number _____

Name of Agent _____

Agent's Address _____

Agent's Phone # _____

Agent's Fax # _____

Agent's E-mail _____

Municipality to Which Annexation Is Proposed _____

Township(s) Included In Proposed Annexation _____

Other County Included in Annexation _____

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
1	Deposit received.			
2	Fees received.			
3	Petition was entered on board's journal at first regular session after it was filed.			

No.	Technical Requirement	Yes	No	Comments/Explanation/Notes
4	Petition indicates that the territory was authorized to be annexed by ordinance passed by municipal legislative authority.			
5	The territory is contiguous to municipality and is entirely owned by the municipality, county, or state.			
6	Petition includes an accurate legal description of the territory.			
7	Petition includes an accurate map/plat.			
8	If land is state-owned land, written consent by the Director of Administrative Services has been filed.			
9	Resolution of board approving annexation was adopted. Commissioners may deny petition only for county-owned land.			

Appendix U

Ohio's Annexation Law Containing All Provisions of SB 5 and Other Current Sections of the Ohio Revised Code Relating to Annexation Not Changed by SB 5

Following are the sections from SB 5 and sections of the Ohio Revised Code relating to Annexation Law, which have been specifically mentioned in this manual. The sections which have text either underlined or struck-through are the sections comprising SB 5. The underlined text represents the new language provided by SB 5 while the text struck-through is the language removed by SB 5. Those sections which do not show changes and list a statutory history are sections of the Ohio Revised Code which were not changed by SB 5 and, thus, have been retained in law.

Sec. 305.21. Oath.

Any county commissioner may administer any oath necessary in the discharge of the duties of the board of county commissioners.

HISTORY: RS § 857; S&C 246; 51 v 422, § 15; GC § 2417; Bureau of Code Revision. Eff 10-1-53.

Sec. 311.17. Fees for Subpoenas.

For the services specified in this section, the sheriff shall charge the following fees, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor:

(A) For the service and return of the following writs and orders:

(1) Execution:

(a) When money is paid without levy or when no property is found, five dollars;

(b) When levy is made on real property, for the first tract, twenty dollars, and for each additional tract, five dollars;

(c) When levy is made on goods and chattels, including inventory, twenty-five dollars;

(2) Writ of attachment of property, except for purpose of garnishment, twenty dollars;

(3) Writ of attachment for the purpose of garnishment, five dollars;

(4) Writ of replevin, twenty dollars;

(5) Warrant to arrest, for each person named in the writ, five dollars;

(6) Attachment for contempt, for each person named in the writ, three dollars;

(7) Writ of possession or restitution, twenty dollars;

- (8) Subpoena, for each person named in the writ, if in a civil case three dollars, if in a criminal case one dollar;
- (9) Venire, for each person named in the writ, if in a civil case three dollars, if in a criminal case one dollar;
- (10) Summoning each juror, other than on venire, if in a civil case three dollars, if in a criminal case one dollar;
- (11) Writ of partition, fifteen dollars;
- (12) Order of sale on partition, for the first tract, twenty-five dollars, and for each additional tract, five dollars;
- (13) Other order of sale of real property, for the first tract, twenty dollars, and for each additional tract, five dollars;
- (14) Administering oath to appraisers, one dollar and fifty cents each;
- (15) Furnishing copies for advertisements, fifty cents for each hundred words;
- (16) Copy of indictment, for each defendant, two dollars;
- (17) All summons, writs, orders, or notices, for the first name, three dollars, and for each additional name, fifty cents.

(B) In addition to the fee for service and return, the sheriff may charge:

- (1) On each summons, writ, order, or notice, a fee of fifty cents per mile for the first mile, and twenty cents per mile for each additional mile, going and returning, actual mileage to be charged on each additional name;
- (2) Taking bail bond, one dollar;
- (3) Jail fees, as follows:
 - (a) For receiving a prisoner, four dollars, and for discharging or surrendering a prisoner, four dollars;
 - (b) Taking a prisoner before a judge or court, per day, three dollars;
 - (c) Calling action, fifty cents;
 - (d) Calling jury, one dollar;
 - (e) Calling each witness, one dollar;
 - (f) Bringing prisoner before court on habeas corpus, four dollars;
- (4) Poundage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate, one per cent;
- (5) Making and executing a deed of land sold on execution, decree, or order of the court, to be paid by the purchaser, twenty-five dollars.

When any of the foregoing services are rendered by an officer or employee, whose salary or per diem compensation is paid by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case, and when such fees are collected they shall be paid into the general fund of the county.

The sheriff shall charge the same fees for the execution of process issued in any other state as he charges for the execution of process of a substantively similar nature that is issued in this state.

HISTORY: RS § 1230; S&S 364; S&C 639; 73 v 127, § 11; 76 v 117, § 20; 77 v 116; GC § 2845; 102 v 277;

108 v PtlI, 1203(1214); Bureau of Code Revision, 10-1-53; 128 v 542 (Eff 7-17-59); 135 v S 208 (Eff 12-17-73); 138 v H 278 (Eff 6-12-80); 140 v H 897. Eff 12-26-84.

Sec. 503.07. Exclusion from Township.

When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. The board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, shall upon the petition of a city change the boundaries of the township or erect such new township, and may upon the petition of a village change the boundaries of the township or erect such new township.

HISTORY: RS § 1380; S&C 1548; 70 v 4, § 480; 89 v 63; GC § 3249; Bureau of Code Revision, 10-1-53; 129 v 1300. Eff 10-20-61.

Sec. 505.62. Township May Hire Attorney & Consultants.

A board of township trustees may enter into a contract with, and may appropriate township general revenue fund moneys for the services of, an attorney to represent the township ~~at annexation hearings before the board of county commissioners and upon any appeal of the board's decision pursuant to section 709.07 or Chapter 2506. of the Revised Code.~~

~~The board of township trustees of a township that includes territory that is proposed to be annexed has standing in any appeal of the board of county commissioners' decision on the annexation of township territory that is taken pursuant to section 709.07 or Chapter 2506. of the Revised Code, if the board of township trustees was represented at the annexation hearing before the board of county commissioners, expert witnesses, and other consultants as the board determines are necessary for any potential or pending annexation action, including proceedings before a board of county commissioners or any court. The board also may appropriate general revenue fund moneys for any other expenses it considers necessary that are related to any potential or pending annexation actions.~~

Sec. 701.07. Cooperative Economic Development Agreements.

(A) The legislative authority of one or more municipal corporations, by ordinance or resolution, and the board of township trustees of one or more townships, by resolution, may enter into a cooperative economic development agreement under this section. The board of county commissioners of one or more counties may become a party to a cooperative economic development agreement upon the written consent of the legislative authority of each municipal corporation and the board of township trustees of each township that is a party to the agreement.

Before entering into a cooperative economic development agreement pursuant to this section, the parties to the agreement shall jointly hold a public hearing concerning the agreement. The parties shall provide to residents of the territory affected by the agreement at least thirty days' public notice of the time and place of the public hearing in one or more newspapers of general circulation in that territory. During the thirty-day period prior to the public hearing, each party to the agreement, except the state or any state agency or any person or private entity that becomes a party to the agreement under division (C)(10) or (F) of this section, shall make available for public inspection a copy of the proposed agreement.

(B) A cooperative economic development agreement may be amended at any time in the same manner as it was initially authorized. A cooperative economic development agreement shall designate the territory the agreement covers.

(C) A cooperative economic development agreement may provide for any of the following:

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

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

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

(4) The payment of service fees to a municipal corporation by a township or county;

(5) The payment of service fees to a township or a county by a municipal corporation;

(6) The issuance of notes and bonds and other debt obligations by a municipal corporation, county, or township for public purposes authorized by or under a cooperative economic development 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;

(7) The issuance of industrial development notes, bonds, and debt obligations by a municipal corporation to finance projects in territory located outside the municipal corporation but located within the territory covered by a cooperative economic development 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. To implement division (C)(10) of this section, a municipal corporation may undertake projects under Chapter 165., 761., or 902. of the Revised Code even though the project is in territory located outside the municipal corporation.

(8) The territory to be annexed to a municipal corporation when agreed to by the municipal corporation to which annexation is proposed and the township in which the territory to be annexed is located;

(9) Any periods of time during which no annexations will occur and any areas that will not be annexed during the period when agreed to by the municipal corporation and township affected by the annexation moratorium;

(10) Agreements by a municipal corporation and a township, or by a municipal corporation and a county, with landowners or developers of land that is to be annexed, or with both such landowners and land developers, concerning the provision of public services, facilities, and permanent improvements. Any person or other private entity described in division (C)(10) of this section that enters into an agreement with a municipal corporation and a township, or with a municipal corporation and a county, pursuant to this division shall be considered to be a party to the agreement.

(11) The application of tax abatement statutes within the territory covered by the cooperative economic development agreement;

(12) Changing township boundaries under Chapter 503. of the Revised Code to exclude newly annexed territory from the original township and providing services to that territory;

(13) The earmarking by a municipal corporation for its general revenue fund of a portion of the utility charges it collects in territory located outside the municipal corporation but located within the territory covered by a cooperative economic development agreement, but only if the cooperative economic development agreement does not cover any matters relating to annexation;

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

municipal corporation.

(15) Any other matter pertaining to the annexation or development of territory, whether the territory is owned by a governmental entity or a person or private entity.

As used in division (C)(2) of this section, "improvement" includes, but is not limited to, sewers, roadways, public utilities, and the acquisition of land.

(D) Cooperative economic development agreements shall not be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of a municipal charter, nor shall municipal corporations and townships, or municipal corporations and counties, agree to share proceeds of any tax levy, although such proceeds may be used to make payments authorized in a cooperative economic development agreement.

(E) If any party to a cooperative economic development agreement believes any other party has failed to perform its part of any provision of the agreement, including the failure to make any payment of moneys due under the agreement, the complaining party shall give notice to the other party clearly stating what breach the complaining party believes has occurred. The party receiving the notice has ninety days from the receipt of that notice to cure the breach. If the breach has not been cured within that ninety-day period, the complaining party may sue for the recovery of the money due under the agreement, sue for specific enforcement of the agreement, or terminate the agreement by giving notice of termination to all other parties.

(F) In order to assist economic development or to provide appropriate state functions and services to any part of the state, the state or any state agency may become a party to a cooperative economic development agreement upon the approval of the governor and the written consent of the legislative authority or governing board of each government entity that is a party to the agreement and upon the approval of each person or private entity described in division (C)(10) of this section that is party to the agreement.

(G) A cooperative economic development agreement entered into under this section is in addition to any other agreements authorized by law between municipal corporations and counties or between municipal corporations and townships.

(H) The powers and authorizations provided for under this section and under any cooperative economic development agreement entered into pursuant to this section shall be liberally construed to allow parties to enter into cooperative economic development agreements and to carry out such an agreement by providing government improvements and facilities and services, by promoting and supporting economic development, by creating and preserving employment opportunities, and by allowing for the sharing by counties and townships in the benefits of economic development even if the economic development does not occur in an unincorporated area.

HISTORY: 147 v H 434. Eff 3-22-99.

Sec. 709.01. Annexation and Detachment of Territory.

Territory may be annexed to, or detached from, municipal corporations, in the manner provided in sections 709.01 to 709.47 of the Revised Code. No territory lying within the boundaries of a military base, camp, or similar installation under the jurisdiction of a military department of the United States government, that is used for the housing of members of the armed forces of the United States and is a center for military operations of the department shall be annexed to a municipal corporation under sections 709.01 to 709.21 of the Revised Code without the approval of the secretary of defense of the United States, his designee, or other person having authority under federal law to give such approval.

HISTORY: RS Bates § 1536-30; 96 v 21, § 6; GC § 3547; Bureau of Code Revision, 10-1-53; 133 v H 590 (Eff 11-21-69); 136 v H 1482. Eff 10-1-76.

Sec. 709.011. Duties of Municipal Clerks; Notification to Board of Elections.

The clerk or clerk of council of a municipal corporation shall notify the board of elections of all vacancies caused by death, resignation, or otherwise in the elective offices of the municipal corporation. Such notification shall be made in writing and filed not later than ten days after the vacancy occurs with the board of elections of the county or counties in which the municipal corporation is located.

The clerk or clerk of council of a municipal corporation shall notify the board of elections of all changes in the boundaries of the municipal corporation. Such notification shall be made in writing and contain a plat clearly showing all boundary changes and shall be filed with the board of elections of the county or counties in which the municipal corporation is located within thirty days after such change occurs.

HISTORY: 125 v S 242 (Eff 1-1-54); 132 v S 220. Eff 12-1-67.

Sec. 709.012. Reduction in Number of Township Firefighters; Order of Dismissal; Priority for Employment in Municipal Fire Department.

When a municipal corporation annexes township territory which results in a reduction of the firefighting force of the township or joint township fire district, the reduction shall be made by dismissal of firefighters in the inverse order of seniority, with the employee with least time of service being dismissed first. The annexing municipal corporation shall offer employment in the inverse order of dismissal by the township to such firefighters if a vacancy exists in the municipal fire department and if they:

(A) Were full-time paid active members of the township or joint township firefighting force for at least six months prior to dismissal and have made application to the municipal corporation within sixty days after the effective date of dismissal;

(B) Have passed a physical examination as prescribed by the physician of the annexing municipal corporation and meet the requirements necessary to perform firefighting duties;

(C) Meet minimum standards of the municipal corporation with respect to moral character, literacy, and ability to understand oral and written instructions as determined by an interview conducted by the fire department of the municipal corporation. The applicant shall be at least twenty-one years of age on the date of application.

(D) Are able to qualify for membership in the Ohio police and fire pension fund.

If no vacancy exists in the municipal fire department at the time of the application referred to in division (A) of this section, the application shall be held until a vacancy occurs. When such a vacancy occurs, the applicant shall be entitled to employment in accordance with the requirements of divisions (A), (B), (C), and (D) of this section. So long as any application for employment has been made and is being held under this section, the municipal corporation shall not fill any vacancy in its fire department by original appointment. If there are individuals who are entitled to reinstatement in the municipal fire department and the vacancies therein are insufficient to permit both such reinstatements and employment of all those applying for employment under division (A) of this section, the persons having the greatest length of service, whether with the municipal or township fire department, shall be entitled to fill the vacancies as they occur.

A person employed under this section, upon acceptance into the municipal fire department, shall be given the rank of "firefighter" and entitled to full seniority credit for prior service in the township or joint township fire district. The person shall be entitled to the same salary, future benefits, vacations, earned time, sick leave, and other rights and privileges as the municipal fire department extends to other employees with the same amount of prior service. The person may take promotional examinations only after completion of one year of service with the municipal fire department and after meeting any applicable civil service requirements for such examination.

Compliance with this section is in lieu of compliance with section 124.42 of the Revised Code or any other requirements for original appointment to a municipal fire district.

HISTORY: 134 v H 665 (Eff 3-22-72); 137 v H 1 (Eff 8-26-77); 148 v H 222. Eff 11-2-99.

Sec. 709.013. Consider Petitions in Order Filed.

(A) If, after a petition for annexation is filed with the board of county commissioners, one or more other petitions are filed containing all or a part of the territory contained in the first petition, the board shall hear and decide the petitions in the order in which they were filed.

(B) The effect of granting any petition under division (A) of this section shall be to delete from any subsequently filed petition any territory contained in the petition that was granted.

(C) If two or more petitions for annexation are filed seeking to annex part or all of the same territory and appeals are subsequently filed under section 709.07 of the Revised Code, each court shall decide the appeal on the first-filed petition before considering the appeal in any subsequently filed petition.

Sec. 709.014. Fee Schedule & Delegation of Duties to Clerk or County Administrator.

(A) The board of county commissioners may establish a reasonable fee or schedule of fees to cover its costs incurred in any annexation proceedings that take place under this chapter. The board also may require an initial deposit to be paid at the time a petition for annexation is filed under sections 709.02 to 709.21 of the Revised Code or promptly after that time. The clerk of the board shall maintain an accurate and detailed accounting of all funds received and expended in the processing of a petition for annexation filed under sections 709.02 to 709.21 of the Revised Code.

(B) Notwithstanding anything to the contrary in division (E) of section 709.024 and division (A) of section 709.03 of the Revised Code, the board of county commissioners, by resolution, may appoint the clerk of the board or the county administrator to set the date, time, and place for hearings, and to provide associated notices to the agent for the petitioners, required under those divisions instead of the board.

Sec. 709.015. Substantial Compliance with Procedural Requirements.

The procedural requirements set forth in sections 709.02 to 709.21 of the Revised Code are directory in nature. Substantial compliance with the procedural requirements of those sections is sufficient to grant the board of county commissioners jurisdiction to hear and render its decision on a petition for annexation filed under those sections. The board shall cure a procedural defect and shall not deny a petition for annexation solely upon the basis of procedural defects.

Sec. 709.02. Annexation of Adjacent Territory; Petition; Owner Defined.

(A) The owners of real estate ~~adjacent~~ contiguous to a municipal corporation may, ~~at their option, cause such territory to be annexed thereto, petition for annexation to a municipal corporation~~ in the manner provided by sections ~~709.03~~ 709.02 to 709.11 of the Revised Code. ~~Application~~

(B) ~~Application~~ for such annexation shall be ~~made~~ by a petition, ~~addressed to~~ filed with the clerk of the board of county commissioners of the county in which the territory is located, ~~and signed by a majority of the owners of real estate in such territory.~~ Such

(C) The petition required by this section shall contain the following:

~~(A) A full (1) The signatures of a majority of the owners of real estate in the territory proposed for annexation. The person who signs or the circulator of the petition also shall write the date the signature was made next to the owner's name. No signature obtained more than one hundred eighty days before the date on which the petition is filed shall be counted in determining the number of signers of the petition. Any owner who signed the petition may have the signature removed before the document 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 a signed statement, the agent for the petitioners shall strike through the signature, causing the signature to be deleted from the petition.~~

~~(2) An accurate legal description of the perimeter and an accurate map or plat of the territory sought to be annexed proposed for annexation;~~

~~(B) A statement of the number of owners of real estate in the territory sought to be annexed;~~

~~(C)(3) The name of a person or persons to act as agent for the petitioners. The agent for the petitioners may be an official, employee, or agent of the municipal corporation to which annexation is proposed.~~

~~(D) At the time of filing the petition for annexation, the agent for the petitioners also shall file with the clerk of the board a list of all tracts, lots, or parcels in the territory proposed for annexation, and all tracts, lots, or parcels located adjacent to that territory or directly across the road from it when the road is adjacent to it, 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 established under section 319.28 of the Revised Code for each tract, lot, or parcel. This list shall not be considered to be a part of the petition for annexation, and any error on the list shall not affect the validity of the petition.~~

~~(E) As used in sections 709.02 to 709.21 and, 709.38, and 709.39 of the Revised Code, "owner" or "owners" means any adult individual seized of a freehold estate in land who is legally competent, the state or any political subdivision as defined in section 5713.081 of the Revised Code, and any firm, trustee, or private corporation that, any of which is seized of a freehold estate in land; except that individuals, firms, and corporations holding easements and any railroad, utility, street, and highway rights-of-way held in fee, by easement, or by dedication and acceptance are not included within such those meanings; and no person, firm, trustee, or private corporation, the state, or any political subdivision, that has become an owner of real estate by a conveyance, the primary purpose of which is to affect the number of owners required to sign an annexation a petition for annexation, is included within such those meanings. For purposes of sections 709.02 to 709.21, 709.38, and 709.39 of the Revised Code, the state or any political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign a petition unless an authorized agent of the state or the political subdivision signs the petition. The authorized agent for the state shall be the director of administrative services.~~

~~An owner is determined as of the date the petition is filed with the board of county commissioners. If the owner is a corporation, partnership, business trust, estate, trust, organization, association, group, institution, society, state, or political subdivision, the petition shall be signed by a person who is 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, shall be counted as one owner for purposes of this chapter.~~

Sec. 709.021. Expedited Annexation Petition Filing; Definition of Party.

~~(A) When a petition signed by all of the owners of real estate in the unincorporated territory of a township proposed for annexation requests the annexation of that territory to a municipal corporation contiguous to that territory under one of the special procedures provided for annexation in sections 709.022, 709.023, and 709.024 of the Revised Code, the annexation proceedings shall be conducted under those sections to the exclusion of any other provisions of this chapter unless otherwise provided in this section or the special procedure section chosen.~~

(B) Application for annexation shall be made by a petition filed with the clerk of the board of county commissioners of the county in which the territory is located, and the procedures contained in divisions (C), (D), and (E) of section 709.02 of the Revised Code shall be followed, except that all owners, not just a majority of owners, shall sign the petition. To be valid, each petition circulated for the special procedure in section 709.022 or 709.023 of the Revised Code shall contain the notice provided for in division (B) of section 709.022 or division (A) of section 709.023 of the Revised Code, whichever is applicable.

(C) Except as otherwise provided in this section, only this section and sections 709.014, 709.015, 709.04, 709.10, 709.11, 709.12, 709.192, 709.20, and 709.21 of the Revised Code apply to the granting of an annexation described in this section.

(D) As used in sections 709.022 and 709.024 of the Revised Code, “party” or “parties” means the municipal corporation to which annexation is proposed, each township any portion of which is included within the territory proposed for annexation, and the agent for the petitioners.

Sec. 709.022. Expedited Type 1 Annexation Petitions: Consent of All Parties with Either an Annexation Agreement or Cooperative Economic Development Agreement.

(A) A petition filed under section 709.021 of the Revised Code that requests to follow this section is for the special procedure of annexing land with the consent of all parties. The petition shall be accompanied by a certified copy of an annexation agreement provided for in section 709.192 of the Revised Code or of a cooperative economic development agreement provided for in section 701.07 of the Revised Code, that is entered into by the municipal corporation and each township any portion of which is included within the territory proposed for annexation. Upon the receipt of the petition and the applicable agreement, the board of county commissioners, at the board’s next regular session, shall enter upon its journal a resolution granting the annexation, without holding a hearing.

(B) Owners who sign a petition requesting that the special procedure in this section be followed expressly waive their right to appeal any action taken by the board of county commissioners under this section. There is no appeal from the board’s decision under this section in law or in equity.

The petition circulated to collect signatures for the special procedure in this section shall contain in bold-face capital letters immediately above the heading of the place for signatures on each part of the petition the following: “WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL ANY ACTION ON THE PETITION TAKEN BY THE BOARD OF COUNTY COMMISSIONERS. THERE ALSO IS NO APPEAL FROM THE BOARD’S DECISION IN THIS MATTER IN LAW OR IN EQUITY.”

(C) After the board of county commissioners grants the petition for annexation, the clerk of the board shall deliver a certified copy of the entire record of the annexation proceedings, including all resolutions of the board, signed by a majority of the members of the board, the petition, map, and all other papers on file, and the recording of the proceedings, if a copy is available, to the auditor or clerk of the municipal corporation to which annexation is proposed.

Sec. 709.023. Expedited Type 2 Annexation Petitions: Petitions by All Property Owners With or Without Consent of Municipality & Township(s).

(A) A petition filed under section 709.021 of the Revised Code that requests to follow this section is for the special procedure of annexing land into a municipal corporation when, subject to division (H) of this section, the land also is not to be excluded from the township under section 503.07 of the Revised Code. The owners who sign this petition by their signature expressly waive their right to appeal in law or equity from the board of county commissioners’ entry of any resolution under this section, waive any rights they may have to sue on any issue relating to a municipal corporation requiring a buffer as provided in this section,

and waive any rights to seek a variance that would relieve or exempt them from that buffer requirement.

The petition circulated to collect signatures for the special procedure in this section shall contain in bold-face capital letters immediately above the heading of the place for signatures on each part of the petition the following: "WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY FROM THE BOARD OF COUNTY COMMISSIONERS' ENTRY OF ANY RESOLUTION PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE."

(B) Upon the filing of the petition in the office of the clerk of the board of county commissioners, the clerk shall cause the petition to be entered upon the board's journal at its next regular session. This entry shall be the first official act of the board on the petition. Within five days after the filing of the petition, the agent for the petitioners shall notify in the manner and form specified in this division 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 within 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 shall refer to the time and date when the petition was filed and the county in which it was filed and shall have attached or shall be accompanied by a copy of the petition and any attachments or documents accompanying the petition as filed.

Notice to a property owner is sufficient if sent by regular United States mail to the tax mailing address listed on the county auditor's records. Notice to the appropriate government officer shall 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 shall be filed with the board of county commissioners with which the petition was filed.

(C) Within twenty days after the date that the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed shall adopt an ordinance or resolution stating what services the municipal corporation will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon annexation. The municipal corporation is entitled in its sole discretion to provide to the territory proposed for annexation, upon annexation, services in addition to the services described in that ordinance or resolution.

If the territory proposed for annexation is subject to zoning regulations adopted under either Chapter 303. or 519. of the Revised Code at the time the petition is filed, the legislative authority of the municipal corporation also shall 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. For the purposes of this section, "buffer" includes open space, landscaping, fences, walls, and other structured elements; streets and street rights-of-way; and bicycle and pedestrian paths and sidewalks.

The clerk of the legislative authority of the municipal corporation to which annexation is proposed shall file the ordinances or resolutions adopted under this division with the board of county commissioners within twenty days following the date that the petition is filed. The board shall make these ordinances or resolutions available for public inspection.

(D) Within twenty-five days after the date that 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 within the territory proposed for annexation may adopt and file with the board of county commissioners an ordinance or resolution consenting or objecting to the proposed annexation. An objection to the proposed annexation shall be based solely upon the petition's failure to meet the conditions specified in division (E) of this section.

If the municipal corporation and each of those townships timely files an ordinance or resolution consenting to the proposed annexation, the board at its next regular session shall enter upon its journal a resolution granting the proposed annexation. If, instead, the municipal corporation or any of those townships files an ordinance or resolution that objects to the proposed annexation, the board of county commissioners shall proceed as provided in division (E) of this section. Failure of the municipal corporation or any of those townships to timely file an ordinance or resolution consenting or objecting to the proposed annexation shall be deemed to constitute consent by that municipal corporation or township to the proposed annexation.

(E) Unless the petition is granted under division (D) of this section, not less than thirty or more than forty-five days after the date that the petition is filed, the board of county commissioners shall review it to determine if each of the following conditions has been met:

(1) The petition meets all the requirements set forth in, and was filed in the manner provided in, section 709.021 of the Revised Code.

(2) The persons who signed the petition are owners of the real estate located in the territory proposed for annexation and constitute all of the owners of real estate in that territory.

(3) The territory proposed for annexation does not exceed five hundred acres.

(4) 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 five per cent of the perimeter of the territory proposed for annexation.

(5) The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed for annexation.

(6) The municipal corporation to which annexation is proposed has agreed to provide to the territory proposed for annexation the services specified in the relevant ordinance or resolution adopted under division (C) of this section.

(7) 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 to which annexation is proposed has agreed as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem. As used in this section, "street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(F) Not less than thirty or more than forty-five days after the date that the petition is filed, if the petition is not granted under division (D) of this section, the board of county commissioners, if it finds that each of the conditions specified in division (E) of this section has been met, shall enter upon its journal a resolution granting the annexation. If the board of county commissioners finds that one or more of the conditions specified in division (E) of this section have not been met, it shall enter upon its journal a resolution that states which of those conditions the board finds have not been met and that denies the petition.

(G) If a petition is granted under division (D) or (F) of this section, the clerk of the board of county commissioners shall proceed as provided in division (C)(1) of section 709.033 of the Revised Code, except that no recording or hearing exhibits would be involved. There is no appeal in law or equity from the board's entry of any resolution under this section, but any party may seek a writ of mandamus to compel the board of county commissioners to perform its duties under this section.

(H) Notwithstanding anything to the contrary in section 503.07 of the Revised Code, unless otherwise provided in an annexation agreement entered into pursuant to section 709.192 of the Revised Code or in a cooperative economic development agreement entered into pursuant to section 701.07 of the Revised Code, territory annexed into a municipal corporation pursuant to this section shall not at any time be excluded from the township under section 503.07 of the Revised Code and, thus, remains subject to the township's real property taxes.

(I) Any owner of land that remains within a township and that is adjacent to territory annexed pursuant to this section who is directly affected by the failure of the annexing municipal corporation to enforce compliance with any zoning ordinance it adopts under division (C) of this section requiring the owner of the annexed territory to provide a buffer zone, may commence in the court of common pleas a civil action against that owner to enforce compliance with that buffer requirement whenever the required buffer is not in place before any development of the annexed territory begins.

Sec. 709.024. Expedited Type 3 Annexation Petitions: Petitions by All Property Owners For Undertaking a Significant Economic Development Project.

(A) A petition filed under section 709.021 of the Revised Code that requests to follow this section is for the special procedure of annexing land into a municipal corporation for the purpose of undertaking a significant economic development project. As used in this section, "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, which projects may include ancillary residential and retail uses and which projects shall satisfy all of the following:

(1) Total private real and personal property investment in a project shall be in excess of ten million dollars through land and infrastructure, new construction, reconstruction, installation of fixtures and equipment, or the addition of inventory, excluding investment solely related to the ancillary residential and retail elements, if any, of the project. As used in this division, "private real and personal property investment" does not include payments in lieu of taxes, however characterized, under Chapter 725. or 1728. or sections 5709.40 to 5709.43, 5709.73 to 5709.75, or 5709.78 to 5709.81 of the Revised Code.

(2) There shall be created by the project an additional annual payroll in excess of one million dollars, excluding payroll arising solely out of the retail elements, if any, of the project.

(3) The project has been certified by the state director of development as meeting the requirements of divisions (A)(1) and (2) of this section.

(B) Upon the filing of the petition under section 709.021 of the Revised Code in the office of the clerk of the board of county commissioners, the clerk shall cause the petition to be entered upon the journal of the board at its next regular session. This entry shall be the first official act of the board on the petition. Within five days after the filing of the petition, the agent for the petitioners shall notify in the manner and form specified in this division 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 within 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 shall refer to the time and date when the petition was filed and the county in which it was filed and shall have attached or shall be accompanied by a copy of the petition and any attachments or documents accompanying the petition as filed.

Notice to a property owner is sufficient if sent by regular United States mail to the tax mailing address listed on the county auditor's records. Notice to the appropriate government officer shall 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 shall be filed with the board of county commissioners with which the petition was filed.

(C)(1) Within thirty 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 within the territory proposed for annexation may adopt and file with the board of county commissioners an ordinance or resolution consenting or objecting to the proposed annexation. An objection to the proposed annexation shall be based solely upon the petition's failure to meet the conditions specified in division (F) of this section. Failure of the municipal corporation or any of those townships to timely file an ordinance or resolution consenting or objecting to the proposed annexation shall be deemed to constitute consent by that municipal corporation or township to the proposed annexation.

(2) Within twenty days after receiving the notice required by division (B) of this section, the legislative authority of the municipal corporation shall adopt, by ordinance or resolution, a statement indicating what services the municipal corporation will provide or cause to be provided, and an approximate date by which it will provide or cause them to be provided, to the territory proposed for annexation, upon annexation. If a hearing is to be conducted under division (E) of this section, the legislative authority shall file the statement with the clerk of the board of county commissioners at least twenty days before the date of the hearing.

(D) If all parties to the annexation proceedings consent to the proposed annexation, a hearing shall not be held, and the board, at its next regular session, shall enter upon its journal a resolution granting the annexation. There is no appeal in law or in equity from the board's entry of a resolution under this division. The clerk of the board shall proceed as provided in division (C)(1) of section 709.033 of the Revised Code.

(E) Unless the petition is granted under division (D) of this section, a hearing shall be held on the petition. The board of county commissioners shall hear the petition at its next regular session and shall notify the agent for the petitioners of the hearing's date, time, and place. The agent for the petitioners shall give, within five days after receipt of the notice of the hearing from the board, to the parties and property owners entitled to notice under division (B) of this section, notice of the date, time, and place of the hearing. Notice to a property owner is sufficient if sent by regular United States mail to the tax mailing address listed on the county auditor's records. At the hearing, the parties and any owner of real estate within the territory proposed to be annexed are entitled to appear for the purposes described in division (C) of section 709.032 of the Revised Code.

(F) Within thirty days after a hearing under division (E) of this section, the board of county commissioners shall enter upon its journal a resolution granting or denying the proposed annexation. The resolution shall include specific findings of fact as to whether or not each of the conditions listed in this division has been met. If the board grants the annexation, the clerk of the board shall proceed as provided in division (C)(1) of section 709.033 of the Revised Code.

The board shall enter a resolution granting the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of the following conditions has been met:

(1) The petition meets all the requirements set forth in, and was filed in the manner provided in, section 709.021 of the Revised Code.

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

(3) 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 the 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 maintenance of that street or highway. For the purposes of this division, “street” or “highway” has the same meaning as in section 4511.01 of the Revised Code.

(4) The municipal corporation to which the territory is proposed to be annexed has adopted an ordinance or resolution as required by division (C)(2) of this section.

(5) The state director of development has certified that the project meets the requirements of divisions (A)(1) and (2) of this section and thereby qualifies as a significant economic development project. The director’s certification is binding on the board of county commissioners.

(G) An owner who signed the petition may appeal a decision of the board of county commissioners denying the proposed annexation under section 709.07 of the Revised Code. No other person has standing to appeal the board’s decision in law or in equity. If the board grants the annexation, there shall be no appeal in law or in equity.

(H) Notwithstanding anything to the contrary in section 503.07 of the Revised Code, unless otherwise provided in an annexation agreement entered into pursuant to section 709.192 of the Revised Code or in a cooperative economic development agreement entered into pursuant to section 701.07 of the Revised Code, territory annexed into a municipal corporation pursuant to this section shall not at any time be excluded from the township under section 503.07 of the Revised Code and, thus, remains subject to the township’s real property taxes.

(I) A municipal corporation to which annexation is proposed is entitled in its sole discretion to provide to the territory proposed for annexation, upon annexation, services in addition to the services described in the ordinance or resolution adopted by the legislative authority of the municipal corporation under division (C)(2) of this section.

Sec. 709.03. Petition Filed; Notice Requirements; Hearing Set.

The (A) Once a petition required by described in section 709.02 of the Revised Code shall be is filed in, the office clerk of the board of county commissioners and the clerk shall cause the petition to be entered upon the record of proceedings journal of the board, which at its next regular session. This entry shall be the first official act of the board on the annexation petition, and shall cause the petition to be filed in the office of the county auditor, where it shall be subject to the inspection of any interested person. The agent for the petitioners shall cause written notice of the filing of the petition with the board of county commissioners and the date of such filing to be delivered to the clerk of the legislative authority of the municipal corporation to which annexation is proposed and to the clerk of each township any portion of which is included within the territory sought to be annexed. Any person. Within five days after the filing of the petition, the board shall set the date, time, and place for the hearing on the petition and shall notify the agent for the petitioners. The date for the hearing shall be not less than sixty or more than ninety days after the petition is filed with the clerk of the board.

(B) Upon being notified of the date of the hearing, the agent for the petitioners shall do all of the following:

(1) Within five days cause written notice of the filing of the petition with the board of county commissioners, the date and time of the filing, and the date, time, and place of the hearing, to be delivered 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. The notice shall state the date and time when the petition was filed and the county in which it was filed and shall have attached or shall be accompanied by a copy of the petition and any attachments or documents accompanying the petition as filed. The notice shall be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who

delivered the notice. Within ten days after the date of completion of service, the agent for the petitioners shall file proof of service of the notice with the board of county commissioners with which the petition was filed.

(2) Within ten days send by regular mail a copy of the notice of the board of county commissioners of the hearing to all owners of property within the territory proposed to be annexed, and to all owners of property adjacent to the territory proposed to be annexed or adjacent to a road that is adjacent to that territory and located directly across that road from that territory, whose names were provided by the agent for the petitioners under division (D) of section 709.02 of the Revised Code, along with a map of the territory proposed to be annexed and a statement indicating where the full petition for annexation can be reviewed. The notice also shall include a statement that any owner who signed the petition may remove the owner's signature by filing with the clerk of the board of county commissioners a written notice of withdrawal of the owner's signature within twenty-one days after the date the agent mails the notice; the agent shall include with each mailed notice a certification of the date of its mailing for this purpose. Within ten days after the mailing of the notices, the agent shall file with the board of county commissioners with which the petition was filed, a notarized affidavit that a notice was sent by regular mail to these property owners.

(3) Cause a notice containing the substance of the petition, and the date, time, and place of the hearing, to be published at least once and at least seven days prior to the date fixed for the hearing, in a newspaper of general circulation in each county in which territory proposed for annexation is situated. Within ten days after the date of completion of the publication or at the hearing, whichever comes first, the agent for the petitioners shall file proof of publication of the notice with the board of county commissioners with which the petition was filed.

(C) Any owner who signed the petition for annexation may remove his ~~that~~ signature by filing with the clerk of the board of county commissioners a written notice of withdrawal of ~~his~~ the owner's signature within ~~twenty~~ twenty-one days after ~~such a notice of filing is delivered to the clerk of the township in which he resides~~ the date the agent for the petitioners mailed the notice of the hearing to the owner as provided in division (B)(2) of this section. Thereafter, signatures may be withdrawn or removed only in the manner authorized by section 709.032 of the Revised Code.

(D) Upon receiving the notice described in division (B)(1) of this section, the legislative authority of the municipal corporation shall adopt, by ordinance or resolution, a statement indicating what services the municipal corporation will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon annexation. The statement shall be filed with the board of county commissioners at least twenty days before the date of the hearing. The municipal corporation is entitled in its sole discretion to provide to the territory proposed for annexation, upon annexation, services in addition to the services described in the ordinance or resolution it adopts under this division.

Sec. 709.031. Legal Description to County Engineer; Petition Amendments; Proof of Authority to Sign Petition.

(A) Within five days after the petition for annexation is filed with the board of county commissioners, the clerk of the board shall refer the legal description of the perimeter and the map or plat of the territory proposed to be annexed to the county engineer for a report upon the accuracy of the legal description of the perimeter, map, or plat. Upon receiving these items, the county engineer shall file, at least twenty-five days before the hearing, a written report with the board based on the engineer's findings, which shall not be conclusive upon the board. Failure of the engineer to make the report shall not affect the jurisdiction or duty of the board to proceed.

(B) The petition may be amended without further notice by leave of the board of county commissioners and with the consent of the agent for the petitioners if the amendment does not add to the territory embraced in the original petition and is made at least fifteen days before the date of the hearing. The board

may rerefer the legal description of the perimeter, map, or plat to the county engineer if revisions are made in them, for a report on their accuracy. Upon receiving these items, the county engineer shall file, on or before the date of the hearing, a written report with the board based on the engineer's findings, which shall not be conclusive upon the board. Failure of the engineer to make the report shall not affect the jurisdiction or duty of the board to proceed.

(C) 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 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 a political subdivision of the state. The request shall be in writing and be filed with the board of county commissioners and with the agent for the petitioners at least fifteen days prior to the hearing on the petition. When such a request is filed, the agent for the petitioners shall present to the board of county commissioners at the hearing held under section 709.032 of the Revised Code sufficient evidence by affidavit or testimony to establish that the owner is a person other than a natural being, the state, or a political subdivision of the state and that 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 this authority, it shall remove the signature from the petition.

Sec. 709.032. Necessary Party Defined; Subpoenas; Hearing Testimony.

(A) As used in this section, "necessary party" means the municipal corporation to which annexation is proposed, each township any portion of which is included within the territory proposed for annexation, and the agent for the petitioners.

(B) The hearing provided for in section ~~709.034~~ 709.03 of the Revised Code shall be public. ~~Any~~ The board of county commissioners may, or at the request of any necessary party shall, issue subpoenas for witnesses or for books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the petition, directed to the sheriff of each county where the witnesses or documents or records are found, which subpoenas shall be served and returned in the same manner as those allowed by the court of common pleas in criminal cases. The fees and mileage of sheriffs and witnesses shall be the same as those allowed by the court of common pleas in criminal cases. The fee and mileage expenses incurred at the request of a party shall be paid in advance by the party, and the remainder of the expenses shall be paid out of fees charged by the board for the annexation proceedings. In case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the court of common pleas of the county in which the disobedience, neglect, or refusal occurs, or any judge of that court, on application of the board, any member of the board, or a necessary party, may compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. 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.

The board of county commissioners shall make, by electronic means or some other suitable method, a record of the hearing. 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 shall 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.

(C) Any person may appear, in person or by attorney, and, after being sworn, may support or contest the granting of the prayer of the petition provided for by section 709.02 of the Revised Code. Affidavits presented in support of or against the prayer of such petition shall be considered by the board, but only if the affidavits are filed with the board and served as provided in the Rules of Civil Procedure upon the necessary parties to the annexation proceedings at least fifteen days before the date of the hearing; provided

that the board shall accept an affidavit after the fifteen-day period if the purpose of the affidavit is only to establish the affiant's authority to sign the petition on behalf of the entity for which the affiant signed. Necessary parties or their representatives are entitled to present evidence, examine and cross-examine witnesses, and comment on all evidence, including any affidavits presented to the board under this division.

~~(D)~~ At the hearing, any owner who signed the petition for annexation may appear; and, after being sworn as provided by section 305.21 of the Revised Code, testify orally that ~~his~~ the owner's signature was obtained by fraud, duress, misrepresentation, including any misrepresentation relating to the provision of municipal services to the territory proposed to be annexed, or undue influence. Any person may testify orally after being so sworn in support of or rebuttal to ~~such~~ the prior testimony by the owner. ~~The commissioners, the agent for the petitioners or his attorney, and such owner or his attorney may examine such witnesses, including the owner~~ Any witnesses and owners who testify shall be subject to cross-examination by the necessary parties to the annexation proceedings. If a majority of the county commissioners find that ~~such~~ the owner's signature was obtained under circumstances that did constitute fraud, duress, misrepresentation, or undue influence, they shall find the signature to be void; and shall order it removed from the petition as of the time the petition was filed.

~~The petition may be amended without further notice by leave of the county commissioners with the consent of the agent for the petitioners where such amendment does not add to the territory embraced in the original petition. If any amendment is permitted, whereby territory not before embraced is added, the board shall appoint another time for the hearing, of which notice shall be given as specified in section 709.031 of the Revised Code.~~

Sec. 709.033. Conditions for Annexation; Commissioners Grant or Deny Annexation.

~~(A)~~ After the hearing on a petition ~~to annex~~ for annexation, the board of county commissioners shall enter an order upon its journal allowing a resolution granting the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of the following conditions has been met:

~~(A)(1)~~ The petition contains all matter required in meets all the requirements set forth in, and was filed in the manner provided in, section 709.02 of the Revised Code.

~~(B)~~ Notice has been published as required by section 709.031 of the Revised Code.

~~(C)(2)~~ The persons whose names are subscribed to who signed the petition are owners of real estate located in the territory proposed to be annexed 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 ~~that~~ territory proposed to be annexed.

~~(D)(3)~~ The municipal corporation to which the territory is proposed to be annexed has complied with division ~~(B)(D)~~ of section 709.031 709.03 of the Revised Code.

~~(E)(4)~~ The territory included in the annexation petition proposed to be annexed is not unreasonably large; ~~the map or plat is accurate; and,~~

(5) On balance, the general good of the territory sought 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. As used in division (A)(5) of this section, "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 maintenance of that street or highway. For the purposes of this division, "street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(B) The board of county commissioners shall ~~grant~~ enter upon its journal a resolution granting or deny denying the petition for annexation within ~~ninety~~ thirty days after the hearing ~~set pursuant to~~ provided for in section ~~709.034~~ 709.032 of the Revised Code. The resolution shall include specific findings of fact as to whether each of the conditions listed in divisions (A)(1) to (6) of this section has been met. Upon journalization of the resolution, the clerk of the board shall send a certified copy of it 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 of the board shall take no further action until the expiration of thirty days after the date of journalization.

(C) After the expiration of that thirty-day period, if no appeal has been timely filed under section 709.07 of the Revised Code, the clerk of the board of county commissioners shall take one of the following actions:

(1) If the board of county commissioners ~~grants~~ granted the petition for annexation it, the clerk shall enter on its journal all the orders of the board relating to the annexation and deliver a certified transcript of ~~copy~~ of the entire record of the annexation proceedings, including all ~~orders~~ resolutions of the board, signed by a majority of the members of the board, the petition, map, and all other papers on file, the recording of the proceedings, if a copy is available, and exhibits presented at the hearing relating to the annexation proceedings, to the auditor or clerk of the municipal corporation to which annexation is proposed.

(2) If the board of county commissioners ~~denies~~ denied the petition for annexation, it the clerk shall send a certified copy of its ~~order~~ resolution denying the annexation to the agent for the petitioners and to the clerk of the municipal corporation to which the annexation was proposed. ~~If, on any appeal of any such annexation denial, a court holds that the board's denial was contrary to law, and if the court orders the clerk of the board of county commissioners to enter on the journal of the board an order approving the annexation, then the clerk shall enter the order.~~

(D) If an appeal is filed in a timely manner under section 709.07 of the Revised Code from the determination of the board of county commissioners granting or denying the petition for annexation, the clerk of the board shall take further action only in accordance with that section.

Sec. 709.04. Acceptance of Territory by Annexing Municipal Corporation.

At the next regular session of the legislative authority of the municipal corporation to which annexation is proposed, after the expiration of sixty days from the date of ~~filing with him as~~ the delivery required by ~~division (C) of section 709.022 or division (C)(1) of section~~ 709.033 of the Revised Code, the auditor or clerk of ~~such~~ that municipal corporation shall lay the ~~transcript~~ resolution of the board granting the petition and the accompanying map or plat and petition ~~required by such section~~ before the legislative authority. Thereupon ~~the~~ The legislative authority, by resolution or ordinance, ~~then~~ shall accept or reject the ~~application~~ petition for annexation. If the legislative authority fails to pass an ordinance or resolution accepting the ~~application~~ petition for annexation within a period of one hundred twenty days after ~~the transcript is~~ those documents are laid before it by the auditor or clerk, the ~~application~~ petition for annexation shall be deemed considered rejected by the legislative authority, ~~unless it has been prevented from acting by a temporary restraining order, a temporary injunction, or some other order of a court.~~

Sec. 709.05. Rejection of Application; Effect.

If the resolution or ordinance required by section 709.04 of the Revised Code is a rejection of the applica-

tion for annexation, no further proceedings shall be had. Such rejection shall not be a bar to application thereafter to the board of county commissioners on the same subject.

HISTORY: RS § 1592; Bates § 1536-34; 66 v 265, § 683; GC § 3551; Bureau of Code Revision. Eff 10-1-53.

Sec. 709.06. Proceedings When Application Allowed.

If the resolution or ordinance required by section 709.04 of the Revised Code is an acceptance of the proposed annexation, the auditor or clerk of the municipal corporation to which annexation is proposed shall make three copies, containing the petition, the map or plat accompanying the petition, a transcript of the proceedings of the board of county commissioners, and resolutions and ordinances in relation to the annexation, with a certificate to each copy that it is correct. Such certificate shall be signed by the auditor or clerk in his official capacity, and shall be authenticated by the seal of the municipal corporation if there is any. The auditor or clerk shall forthwith deliver one such copy to the county auditor and one such copy to the county recorder, who shall make a record thereof in the proper book of records and file and preserve it. The other copy shall be forwarded by the auditor or clerk to the secretary of state.

HISTORY: RS § 1593; Bates § 1536-35; 66 v 265, § 684; GC § 3552; Bureau of Code Revision, 10-1-53; 132 v S 220. Eff 12-1-67.

Sec. 709.07. Appeals.

(A) The agent for the petitioners, any owner of real estate in the territory proposed for annexation, any township in which territory proposed for annexation is located, and the municipal corporation to which the territory is proposed to be annexed may file an appeal under Chapter 2506. of the Revised Code from a resolution of the board of county commissioners granting or denying the petition. The agent for the petitioners, any township in which the territory proposed for annexation is located, and any municipal corporation to which the territory is proposed to be annexed are necessary parties in an appeal. The filing of a notice of appeal with the clerk of the board of county commissioners shall operate as a stay of execution upon that clerk and all parties to the appeal, which stay shall not be lifted until the court having jurisdiction over the proceedings enters a final order affirming or reversing the decision of the board of county commissioners and the time limits for an appeal of that final order have passed without a notice of appeal being filed.

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

(C) If, after all appeals have been exhausted, the final determination of the court is that the petition for annexation should be granted, the board of county commissioners shall enter on its journal a resolution granting the annexation, if such a resolution has not already been journalized, and the clerk of the board shall deliver a certified copy of that journal entry and of the entire record of the annexation proceedings, including all resolutions of the board, signed by a majority of the members of the board, the petition, map, and all other papers on file, the transcript of the proceedings, and exhibits presented at the hearing relating to the annexation proceedings, to the auditor or clerk of the municipal corporation to which annexation is proposed. The municipal auditor or clerk shall lay these certified papers, along with the copy of the court's order, before the legislative authority at its next regular meeting. The legislative authority then shall proceed to accept or reject the petition for annexation as provided under section 709.04 of the Revised Code.

(D) If, after all appeals have been exhausted, the final determination of the court is that the petition for

annexation should be denied, the board of county commissioners shall enter on its journal a resolution denying the annexation, if such a resolution has not already been journalized.

Sec. 709.08. Repealed.

Sec. 709.09. Repealed.

Sec. 709.10. Effective Date and Rights of Inhabitants.

The annexation shall become effective thirty days after the passage of the resolution or ordinance by the legislative authority of the municipal corporation accepting annexation, provided that if the resolution or ordinance is subjected to a referendum, the annexation, if approved by the electors, shall become effective thirty days after such approval. The territory annexed is a part of the municipal corporation, and the inhabitants residing therein shall have all the rights and privileges, and shall be subject to the powers, of the municipal corporation as are the inhabitants within the original limits of such municipal corporation.

HISTORY: RS § 1597; Bates § 1536-39; 66 v 266, § 688; GC § 3556; Bureau of Code Revision, 10-1-53; 132 v S 220 (Eff 12-1-67); 133 v H 1. Eff 3-18-69.

Sec. 709.11. Petition to Be Filed in County with Majority of Acreage.

If the territory proposed for annexation under this chapter is situated in more than one county, the annexation proceedings shall be in the county in which the majority of acreage of the territory proposed for annexation is situated.

Sec. 709.12. Apportioning of Indebtedness of Annexed Territory; Division of Funds.

When proceedings have been commenced to annex a portion of a township, or portions of more than one township, to a municipal corporation upon which the tax levies made by the board of township trustees for the payment of the township debt do not apply, the county auditor shall ascertain and apportion the amount of existing net indebtedness of the township which shall be assumed and paid by the municipal corporation. The apportionment shall be made in the proportion of the total duplicate for the annexed territory transferred to the municipal corporation to the total tax duplicate remaining in and for the unannexed portion of the township. The auditor shall ascertain, adjust, and divide between the municipal corporation and the unannexed portion of the township any unencumbered balance on hand to the credit of any fund of such township, in the same proportion as is provided in this section for the division and apportionment of indebtedness. No division shall be made of a balance in any fund of a township that is required for the retirement of its indebtedness. In case any net indebtedness is assumed by the municipal corporation as provided in this section, the legislative authority of such municipal corporation shall provide for the payment of such indebtedness by the levy of taxes therefor, or by the appropriation from an appropriate fund. The proceeds of such levy or appropriation shall be transferred to the proper authorities of the township for the final redemption of its indebtedness.

HISTORY: GC § 3557-1; 112 v 215; Bureau of Code Revision, 10-1-53; 132 v S 220. Eff 12-1-67.

Sec. 709.13. Annexation of Territory Upon Action by Inhabitants Generally.

The inhabitants, generally, of a municipal corporation may enlarge the limits of such ~~the~~ the municipal corpo-

ration by the annexation of contiguous territory in the manner provided by sections 709.14 to ~~709.21~~, inclusive; 709.16 of the Revised Code.

Sec. 709.14. Preliminary Action by Legislative Authority.

The legislative authority of a municipal corporation ~~which that~~ proposes to annex contiguous territory shall pass, by a vote of not less than a majority of the members elected ~~thereto to the legislative authority~~, pass an ordinance authorizing the annexation to be made; and directing the village solicitor or city director of law of the municipal corporation, or ~~some one~~ someone to be named in the ordinance, to prosecute the proceedings necessary to effect it.

Sec. 709.15. Petition to Board of County Commissioners.

The application of a municipal corporation to the board of county commissioners requesting the annexation of contiguous territory under section 709.16 of the Revised Code shall be by a petition; setting forth that, under an ordinance of the legislative authority of the municipal corporation, the territory described in the petition was authorized to be annexed to the municipal corporation. The petition shall contain an accurate legal description of the ~~territory perimeter~~ and shall be accompanied by an accurate map or plat ~~thereof of the territory proposed for annexation~~.

Sec. 709.16. Board of County Commissioners Acts on Municipal Petition.

(A) A municipal corporation may petition the board of county commissioners to annex contiguous territory owned only by the municipal corporation, a county, or the state. The clerk of the board shall cause the petition to be entered upon the board's journal at its next regular session. This entry shall be the first official act of the board upon the petition. Proceedings on the petition shall be conducted under this section to the exclusion of any other provisions of this chapter except for sections 709.014, 709.14, 709.15, 709.20, and 709.21 of the Revised Code.

(B) If the only territory to be annexed is contiguous territory owned by a municipal corporation, the board of county commissioners, by resolution, shall grant the annexation. The annexation shall be complete upon the entry upon the journal of the board of the resolution granting the annexation.

(C) If the only territory to be annexed is contiguous territory owned by a county, the board of county commissioners, by resolution, may grant or deny the annexation. The annexation shall be complete upon the entry upon the journal of the board of a resolution granting the annexation.

(D) If the only territory to be annexed is contiguous territory owned by the state and the director of administrative services has filed a written consent to the granting of the annexation with the board of county commissioners, the board, by resolution, shall grant the annexation. The annexation shall be complete upon the entry upon the journal of the board of a resolution granting the annexation.

(E) The board of county commissioners shall act upon a petition for annexation filed under this section within thirty days after receipt of the petition.

(F) No appeal in law or in equity shall be allowed from the granting of an annexation under this section.

(G) When a municipal corporation purchases real property below an appraised fair market value and sells or agrees to sell the property back to the person that sold it to the municipal corporation, an annexation of that property completed under this section shall be void, and the annexed property shall 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 shall attach the annexed territory to another township.

(H) Territory annexed under this section shall not be excluded from the township under section 503.07 of the Revised Code.

Sec. 709.17. Repealed.

Sec. 709.18. Repealed.

Sec. 709.19. Reparations.

(A) As used in this section:

(1) ~~“Annexation period” means a period of one, two, or three consecutive twelve-month periods, whichever is less, during which one or more municipal corporations annex territory of a township that includes at least fifteen per cent but less than one hundred per cent of the total taxable value of the real, public utility, and tangible personal property subject to taxation in that township in the base year. No annexation period shall include a month that is part of another annexation period.~~

(2) ~~“Base year” means the calendar year immediately preceding an annexation period.~~

(3) ~~“Taxes” means the real and public utility property taxes charged by a township in the base year or, in an annexation under division (F) of this section, the real, public utility, and tangible personal property taxes that would have been charged by the township, if no annexation had occurred, in the year immediately preceding the year in which the payment is made, and payable after the reduction required by section 319.301 of the Revised Code but prior to the reduction required by section 319.302 of the Revised Code, and the taxes levied for such year by the township against tangible personal property. “Taxes” excludes taxes for the payment of debt charges.~~

(4) ~~“Township taxes in the annexed territory” means 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, in an annexation under division (F) of this section, the taxes against the real, public utility, and tangible personal property that would have been subject to taxation in the annexed territory in the year immediately preceding the year in which the payment is to be made, if no annexation had occurred.~~

(5) ~~“International airport” means any airport that is:~~

(a) Designated as an international airport or a landing rights airport by the United States secretary of the treasury;

(b) Owned and operated by a municipal corporation;

(c) An unincorporated area not contiguous to the municipal corporation that owns it.

(2) “Commercial,” “industrial,” “residential,” and “retail,” in relation to property, mean property classified as such by the tax commissioner for the purposes of valuing property for taxation, except that “commercial,” in relation to property, does not include any property classified as “retail.”

(B) ~~If the annexation of territory of any township by one or more municipal corporations under this chapter constitutes an annexation period of twelve consecutive months, except as provided in division (G) of this section, each municipal corporation that annexed territory of that township during that annexation period shall pay the township during each of the seven years following the annexation period:~~

(1) ~~In each of the first three years, one hundred per cent of the township taxes in the annexed territory;~~

~~(2) In the fourth year, eighty per cent of the township taxes in the annexed territory;~~

~~(3) In the fifth year, sixty per cent of the township taxes in the annexed territory;~~

~~(4) In the sixth year, forty per cent of the township taxes in the annexed territory;~~

~~(5) In the seventh year, twenty per cent of the township taxes in the annexed territory.~~

~~(C) If the annexation of territory of any township by one or more municipal corporations under this chapter constitutes an annexation period of thirteen to twenty-four consecutive months, except as provided in division (C) of this section, each municipal corporation that annexed territory of that township during that annexation period shall pay the township during each of the six years following the annexation period:~~

~~(1) In each of the first two years, one hundred per cent of the township taxes in the annexed territory;~~

~~(2) In the third year, eighty per cent of the township taxes in the annexed territory;~~

~~(3) In the fourth year, sixty per cent of the township taxes in the annexed territory;~~

~~(4) In the fifth year, forty per cent of the township taxes in the annexed territory;~~

~~(5) In the sixth year, twenty per cent of the township taxes in the annexed territory.~~

~~(D) If the annexation of territory of any township by one or more municipal corporations under this chapter constitutes an annexation period of twenty-five to thirty-six consecutive months, except as provided in division (C) of this section, each municipal corporation that annexed territory of that township during that annexation period shall pay the township during each of the five years following the annexation period:~~

~~(1) In the first year, one hundred per cent of the township taxes in the annexed territory;~~

~~(2) In the second year, eighty per cent of the township taxes in the annexed territory;~~

~~(3) In the third year, sixty per cent of the township taxes in the annexed territory;~~

~~(4) In the fourth year, forty per cent of the township taxes in the annexed territory;~~

~~(5) In the fifth year, twenty per cent of the township taxes in the annexed territory unincorporated territory is annexed to a municipal corporation and excluded from a township under section 503.07 of the Revised Code, upon exclusion of that territory, the municipal corporation that annexed the territory shall make payments to the township from which the territory was annexed only as provided in this section, except that, if the legislative authority of the municipal corporation enters into an agreement under section 701.07, 709.191, or 709.192 of the Revised Code with the township from which the territory was annexed that makes alternate provisions regarding payments by the municipal corporation, then the payment provisions in that agreement shall apply in lieu of the provisions of this section.~~

~~(C)(1) Except as provided in division (C)(2) of this section, the municipal corporation that annexed the territory shall make the following payments to the township from which the territory was annexed with respect to commercial and industrial real, personal, and public utility property taxes using the property valuation for the year that the payment is due:~~

~~(a) In the first through third years following the annexation and exclusion of the territory from the township, eighty per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;~~

~~(b) In the fourth and fifth years following the annexation and the exclusion of the territory from the township, sixty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;~~

~~(c) In the sixth and seventh years following the annexation and exclusion of the territory from the township,~~

sixty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;

(d) In the eighth and ninth years following the annexation and exclusion of the territory from the township, fifty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;

(e) In the tenth through twelfth years following the annexation and exclusion of the territory from the township, forty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred.

(2) If there has been an exemption by the municipal corporation of commercial and industrial real, personal, or public utility property taxes pursuant to section 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Revised Code, there shall be no reduction in the payments owed to the township due to that exemption. The municipal corporation shall make payments to the township under division (C)(1) of this section, calculated as if the exemption had not occurred.

(D) The municipal corporation that annexed the territory shall make the following payments to the township from which the territory was annexed with respect to residential and retail real property taxes using the property valuation for the year that the payment is due:

(1) In the first through third years following the annexation and exclusion of the territory from the township, eighty per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;

(2) In the fourth and fifth years following the annexation and exclusion of the territory from the township, fifty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;

(3) In the sixth through tenth years following the annexation and exclusion of the territory from the township, forty per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;

(4) In the eleventh and twelfth years following the annexation and exclusion of the territory from the township, twenty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred.

(E) If, pursuant to division (F) of this section, a municipal corporation annexes an international airport that it owns, the municipal corporation shall pay the township one hundred per cent of the township taxes in the annexed territory that would have been due the township; if no annexation had occurred; for each of the twenty-five years following the annexation.

(F)(1) Notwithstanding any other provision of this chapter, a board of county commissioners may authorize a municipal corporation to annex an international airport that the municipal corporation owns. Unless a contract is entered into pursuant to division (F)(2) of this section, any municipal corporation that annexes an international airport under this division shall make payments to the township from which the international airport is annexed, in the manner provided in division (E) of this section. No territory annexed pursuant to this division shall be considered part of the municipal corporation for the purposes of subsequent annexation, except that the board of county commissioners may authorize subsequent annexation under this division if the board determines that ~~such~~ subsequent annexation is necessary to the continued operation of the international airport.

(2) The chief executive of a municipal corporation that annexes territory pursuant to this division may enter

into a contract with the board of township trustees of the township that loses the territory whereby the township agrees to provide the annexed territory with police, fire, or other services it is authorized to provide in exchange for specified consideration as agreed upon by the board of township trustees and the chief executive. In no instance shall the consideration received by the township be less than the payments that would be required under division (F)(1) of this section if no contract were entered into.

~~(G) If after an annexation period for which payments are being made or are to be made to a township by one or more municipal corporations under division (B), (C), or (D) of this section, the remainder of the unincorporated territory of the township is annexed to another municipal corporation or incorporates as a municipal corporation, the balance of the payments due the township under division (B), (C), or (D) of this section shall 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.~~

~~No payment shall be made to a municipal corporation pursuant to this division unless the remainder of the unincorporated territory of the township referred to in this division constitutes at least fifty per cent of the area of the unincorporated area of the township prior to the annexation period.~~

~~(H) After consultation with the chief executive officer of the municipal corporation and the board of township trustees, the county auditor shall determine by which of the following methods the municipal corporations that annexed township territory shall pay the township the amounts prescribed in divisions (B) to (F) of this section, except that if the payments are made pursuant to division (G) of this section, they shall be made by the first method listed below:~~

~~(1) The county auditor shall issue a warrant semiannually against the taxes charged and payable against real and public utility property located in the municipal corporation and the taxes levied against tangible personal property located in the municipal corporation, and the county treasurer shall distribute such amount to the township or, pursuant to division (G) of this section, 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; or~~

~~(2) The county budget commission shall pay such amounts to the township from the amount apportioned to the municipal corporations from the undivided local government fund. The payment shall be over and above the amount apportioned to the township pursuant to section 5747.51 or 5747.53 of the Revised Code, and the apportionment of the municipal corporations shall be reduced by like amounts.~~

~~(I) Upon written notification to the county auditor and the chief executive officer of each municipal corporation that annexes township territory during an annexation period, a board of township trustees may decline to accept the payments required under divisions (B), (C), (D), and (F) of this section, and a municipal corporation may decline to accept the payments required under division (G) of this section.~~

~~A municipal corporation need not make any payment required by this section if its legislative authority enters into an agreement under section 709.191 of the Revised Code.~~

Sec. 709.191. Agreement for Annual Payments to Compensate for Lost Tax Revenues.

In lieu of making any of the payments required by section 709.19 of the Revised Code and for any proposed annexation which does not require payments under that section, the legislative authority of a municipal corporation which proposes to annex unincorporated territory of a township may enter into an agreement with the board of township trustees of the township in which the territory to be annexed is located, whereby the municipal corporation agrees to make an annual payment to the township to compensate for lost tax revenues. The agreement shall set forth the amount of the annual payment and the number of payments to be made.

If a municipal corporation fails to make an annual payment pursuant to an agreement entered into under

this section, the board of township trustees shall notify the county budget commission in writing of the amount owed by the municipal corporation to the township. The county budget commission shall reduce the amount apportioned to the municipal corporation from the undivided local government fund pursuant to section 5747.51 or 5747.53 of the Revised Code by the amount of the payment due the township under the municipal- township agreement and shall increase, by an amount equal to this reduction, the amount apportioned to the township from the undivided local government fund.

HISTORY: 139 v H 19. Eff 2-2-82.

Sec. 709.192. Annexation Agreements.

(A) The legislative authority of one municipal corporation, by ordinance or resolution, and the board of township trustees of one or more townships, by resolution, may enter into annexation agreements under this section.

(B) An annexation agreement may be entered into for any period of time and may be amended at any time in the same manner as it was initially authorized.

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

(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 the minimum mandated levies established pursuant to section 5705.31 of the Revised Code between a municipal corporation and a township in areas annexed after the effective date of this section;

(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 land developers, concerning the provision of public services, facilities, and permanent improvements;

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

(13) Changing township boundaries under Chapter 503. of the Revised Code to exclude newly annexed territory from the original township and providing 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 payments required by law to be made to the township by that municipal corporation;

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

(D) Annexation agreements shall not be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, by any other provisions of the Ohio Constitution, or by the provisions of a municipal charter, nor shall 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.

(E) If any party to an annexation agreement believes another 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 shall give notice to the other party clearly stating what breach has occurred. The party receiving the notice has ninety days from the receipt of that notice to cure the breach. If the breach has not been cured within that ninety-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 the other parties.

(F) In order to promote economic development or to provide appropriate state functions and services to any part of the state, the state may become a party to an annexation agreement upon the approval of the director of development and with the written consent of the legislative authority of the municipal corporation and each of the boards of township trustees that are parties to the agreement.

(G) The board of county commissioners, by resolution, or any person, upon request, may become a party to an annexation agreement, but only upon the approval of the legislative authority of the municipal corporation and each of the boards of township trustees that are parties to the agreement, except that, if the state is a party to the agreement, the director of development is responsible for giving the approval.

(H) The powers granted by this section and any annexation agreement entered into under this section shall be liberally construed to allow parties to these 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. 709.20. Rights When Annexation Complete.

When the annexation of the territory described in the petition mentioned in section 709.15 of the Revised Code has been completed, such territory is a part of the annexing municipal corporation, and the inhabitants residing in the territory shall have all the rights and privileges of the inhabitants residing within the original limits of such municipal corporation.

HISTORY: RS § 1604; Bates § 1536-47; 66 v 267, § 695; GC § 3564; Bureau of Code Revision. Eff 10-1-53.

Sec. 709.21. Errors Not Fatal to Proceedings.

No error, irregularity, or defect in the proceedings under sections 709.01 to 709.20, ~~inclusive,~~ of the Revised Code, shall render them invalid, if once annexation has become final and the annexed territory has been recognized as a part of the annexing municipal corporation, and taxes levied upon it as such have been paid, and it has been subjected to the authority of the legislative authority of such the annexing municipal corporation, ~~without objection from the inhabitants of such territory.~~

Sec. 929.02. Application to Place Land in Agricultural District; Auditor to Notify Owner; Withdrawal Penalty.

(A) Any person who owns agricultural land may file an application with the county auditor to place the land in an agricultural district for five years if, during the three calendar years prior to the year in which that

person files the application, the land has been devoted exclusively to agricultural production or devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government and if:

- (1) The land is composed of tracts, lots, or parcels that total not less than ten acres; or
- (2) The activities conducted on the land produced an average yearly gross income of at least twenty-five hundred dollars during that three-year period or the owner has evidence of an anticipated gross income of that amount from those activities. The owner shall submit with the application proof that the owner's land meets the requirements established under this division. If the county auditor determines that the application does not meet the requirements of this section, the county auditor shall deny the application and notify the applicant by certified mail, return receipt requested, within thirty days of the filing of the application. The applicant may appeal the denial of the application to the court of common pleas of the county in which the application was filed within thirty days of the receipt of the notice. If the county auditor determines that the application meets the requirements of this section, the county auditor shall approve the application and notify the applicant within thirty days of the filing of the application. An application that is not denied shall be deemed to be approved. The county auditor shall provide an applicant with a copy of an approved application within thirty days of the filing of the application. An application that is approved is effective upon the date of the filing of the application.

The county auditor shall keep a record of all land in the county that is within an agricultural district, including a copy of the final action taken by a legislative body regarding applications modified by a legislative body pursuant to division (B) of this section.

(B) If the land of a person who files an application under division (A) of this section is within a municipal corporation or if an annexation petition that includes the land has been filed with the board of county commissioners under section ~~709.03~~ 709.02 of the Revised Code at the time of the filing, the owner also shall file a copy of the application for inclusion in an agricultural district with the clerk of the legislative body of the municipal corporation. No later than thirty days after the filing of an application; or, in the case of an annexation petition filed pursuant to section ~~709.03~~ 709.02 of the Revised Code, no later than thirty days after the petition has been granted, the legislative body shall conduct a public hearing on the application. The clerk of the legislative body shall cause a notice containing the substance of the application and the time and place where it will be heard to be published in a newspaper of general circulation in the county in which the application or annexation petition is filed no later than seven days prior to the time fixed for the hearing. The clerk of the legislative body also shall notify the applicant of the time and place of the hearing by certified mail sent no later than ten days prior to the hearing. Any interested person or representative of an interested person may appear in support of or to contest the granting of the application. Affidavits presented in support of or against the application shall be considered by the legislative body. Within thirty days of the hearing, the legislative body may approve the application, modify the application and approve the application as modified, or reject the application. An application that is not modified or rejected by a majority vote of the members of the legislative body shall be deemed to be approved. Prior to rejecting an application, the legislative body shall make every effort to modify the application. Modifications may include the length of time during which land is considered to be within an agricultural district, size of the agricultural district ~~as well as, and~~ and any provisions of sections 929.03 to 929.05 of the Revised Code. If the applicant disapproves of the modifications made by the legislative body, the applicant may withdraw the application to place the land in an agricultural district. In rejecting or modifying an application to place land in an agricultural district, the legislative body shall demonstrate that the rejection or modification is necessary to prevent a substantial, adverse effect on the provision of municipal services within the municipal corporation, efficient use of land within the municipal corporation, the orderly growth and development of the municipal corporation, or the public health, safety, or welfare.

If an annexation petition is denied under section ~~709.03~~ 709.033 of the Revised Code, ~~or~~ if a legislative body fails to conduct a hearing in the time prescribed by this section, or if an application is approved, the application shall be deemed to have been approved and shall become effective as of the date the applica-

tion was filed. An application approved with modifications shall become effective as of the date the application was filed unless the modification provides otherwise.

The clerk of the legislative body shall notify the applicant by certified mail, return receipt requested, sent within five days of the decision to approve, modify, or reject an application for inclusion of land in an agricultural district. The clerk of the legislative body shall also transmit a copy of the decision to approve, modify, or reject an application to the county auditor. An applicant may appeal a decision to modify or reject an application to the court of common pleas of the county in which the application was filed within thirty days of the receipt of the notice of modification or rejection.

(C) At any time after the first Monday in January and prior to the first Monday in March of the year during which an agricultural district terminates, the owner of land in the agricultural district may file a renewal application to continue the inclusion of all or part of the owner's land in an agricultural district for a period of time ending on the first Monday in April of the fifth year following the renewal application. The requirements for continued inclusion in the agricultural district and the renewal application procedure shall be the same as those required for the original application for placing land in an agricultural district. The county auditor shall notify owners of land in agricultural districts eligible to file a renewal application for continued inclusion in an agricultural district on or prior to the first Monday in February or the date upon which the county auditor notifies owners of land valued at agricultural use value for real property tax purposes of the necessity of filing a renewal application to continue valuing the land at agricultural use value. On or before the second Tuesday after the first Monday in March, the county auditor shall determine whether the owner of any land in an agricultural district eligible to file a renewal application failed to file a renewal application with respect to such ~~that~~ land and shall forthwith notify each such owner of the land by certified mail that unless a renewal application is filed prior to the first Monday in April, the land will be removed from the agricultural district upon its termination date. An approved renewal application is effective on the termination date of the preceding agricultural district. Failure of an owner to file a renewal application prior to the first Monday in April of the year during which the owner's agricultural district terminates shall not prevent the owner from filing an application to include the owner's land in an agricultural district.

Land that is transferred to a new owner during the period in which the land is an agricultural district shall continue in the agricultural district under the terms of the existing district unless the new owner elects to discontinue inclusion in the agricultural district and files the election with the county auditor within sixty days after the transfer. Failure of the new owner to continue inclusion in the agricultural district for the duration of the period in which the land is in the agricultural district is withdrawal from an agricultural district subject to penalty.

(D) If, at any time during which land is in an agricultural district, the owner withdraws the land from the district, the owner shall notify the county auditor of the withdrawal and shall pay to the county auditor a withdrawal penalty calculated as follows:

(1) If the owner's action also disqualifies the owner's land for any tax savings that it had been receiving under sections 5713.30 to 5713.38 of the Revised Code, the owner shall pay a percentage of the amount charged under section 5713.34 of the Revised Code that is equal to the average bank prime rate at the time the amount charged under that section is required to be paid. The withdrawal penalty shall be in addition to the amount charged under that section.

(2) If the land had not been receiving any tax savings under those sections, or if the owner's action does not disqualify the land for tax savings under them, the owner shall pay a percentage of the amount that would have been charged under section 5713.34 of the Revised Code if the owner's land had been receiving tax savings and became disqualified for them in an amount that is equal to the average bank prime rate at the time the amount that would have been charged under that section would have been required to be paid.

For the purposes of divisions (D)(1) and (2) of this section, the county auditor shall determine the average bank prime rate using statistical release H.15, "selected interest rates," a weekly publication of the federal

reserve board, or any successor publication. If the statistical release H.15, or its successor, ceases to contain the bank prime rate information or ceases to be published, the county auditor shall request a written statement of the average bank prime rate from the federal reserve bank of Cleveland or the federal reserve board.

The county auditor shall calculate the amount of the withdrawal penalty that is due and shall notify the owner of it. The auditor also shall note the withdrawal in the auditor's records.

The county auditor shall distribute the moneys collected under division (D) of this section in the manner provided in section 5713.35 of the Revised Code for moneys that the county auditor collects under that section.

(E) Land that is included in an agricultural district under this section and that is subsequently annexed by a municipal corporation shall not be subject to division (B) of this section either at the time of annexation or at the time of any subsequent application or renewal application for inclusion in the district if, at the time of annexation, its owner did not sign a petition favoring annexation under section 709.02 of the Revised Code ~~or vote for annexation in an election held in accordance with section 709.17 of the Revised Code~~. If its owner did sign a petition favoring annexation ~~or vote for annexation~~, as provided in ~~those sections~~ that section, or if the owner who opposed annexation has sold or transferred the land to another person who is keeping the land in the agricultural district, the land shall be subject to division (B) of this section at the time of any subsequent application or renewal application for inclusion in the district.

(F) The director of agriculture shall prescribe the application and renewal forms required under this section and shall furnish them to county auditors. In prescribing the forms, the director shall consult with the tax commissioner to determine if a single form can be developed for the purposes of this section and section 5713.31 of the Revised Code.

Sec. 5705.31. Powers of Budget Commission to Reduce Tax Levies; Limitation.

The county auditor shall present to the county budget commission the annual tax budgets submitted to ~~him~~ under sections 5705.01 to 5705.47 of the Revised Code, together with an estimate prepared by ~~such~~ the auditor of the amount of any state levy, the rate of any school tax levy as previously determined, the tax commissioner's estimate of the amount to be received in the county library and local government support fund, and such other information as the commission requests or the tax commissioner prescribes. The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units ~~therein~~ in the county.

The commission shall ascertain that the following levies have been properly authorized and, if so authorized, shall approve them without modification:

(A) All levies in excess of the ten-mill limitation;

(B) All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes;

(C) The levies prescribed by division (B) of sections 742.33 and 742.34 of the Revised Code;

(D) A Except as otherwise provided in this division, a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit, which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years the fifteen-mill limitation was in effect unless such subdivision or taxing unit requests an amount requiring a lower rate. Except as provided in section 5705.312 of the Revised Code, if the levies required in divisions (B) and (C) of this section for the subdivision or taxing unit equal or exceed the entire minimum levy of the subdivision as fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the commission to provide for the levies and an operating

levy for the subdivision. Such additional levy shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but the operating levy for a school district shall not be reduced below a figure equivalent to forty-five per cent of the millage available within the ten-mill limitation after all the levies in divisions (B) and (C) of this section have been provided for.

If a municipal corporation and a township have entered into an annexation agreement under section 709.192 of the Revised Code in which they agree to reallocate their shares of the minimum levies established under this division and if that annexation agreement is submitted along with the annual tax budget of both the township and the municipal corporation, then, when determining the minimum levy under this division, the auditor shall allocate, to the extent possible, the minimum levy for that municipal corporation and township in accordance with their annexation agreement.

(E) The levies prescribed by section 3709.29 of the Revised Code.

Divisions (A) to (E) of this section are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions.

If any debt charge is omitted from the budget, the commission shall include it therein.

Sec. 5705.315. Levies.

With respect to annexations granted on or after the effective date of this section and during any tax year or years within which any territory annexed to a municipal corporation is part of a township, the minimum levy for the municipal corporation and township under section 5705.31 of the Revised Code shall not be diminished, except that in the annexed territory and only during those tax year or years, and in order to preserve the minimum levies of overlapping subdivisions under section 5705.31 of the Revised Code so that the full amount of taxes within the ten-mill limitation may be levied to the extent possible, the minimum levy of the municipal corporation or township shall be the lowest of the following amounts:

(A) An amount that when added to the minimum levies of the other overlapping subdivisions equals ten mills;

(B) An amount equal to the minimum levy of the municipal corporation or township, provided the total minimum levy does not exceed ten mills.

The municipal corporation and the township may enter into an agreement to determine the municipal corporation's and the township's minimum levy under this section. If it cannot be determined what minimum levy is available to each and no agreement has been entered into by the municipal corporation and township, the municipal corporation and township shall each receive one-half of the millage available for use within the portion of the territory annexed to the municipal corporation that remains part of the township.

Sec. 2317.21. Attachment of Witness Who Disobeys Subpoena.

When a witness, except a witness who has demanded and has not been paid his traveling fees and fee for one day's attendance when a subpoena is served upon him, as authorized by the provisions of section 2317.18* of the Revised Code, fails to obey a subpoena personally served, the court or officer, before whom his attendance is required, may issue to the sheriff or a constable of the county, a writ of attachment, commanding him to arrest and bring the person named in the writ before such court or officer at the time and place the writ fixes, to give his testimony and answer for the contempt. If such writ does not require the witness to be immediately brought, he may give bond for a sum fixed by the court of common pleas or the court which issued the subpoena, with surety, for his appearance, which sum shall be endorsed on the back of the writ, except that, if no sum is so endorsed, it shall be one hundred dollars. When

the witness was not personally served, the court, by a rule, may order him to show cause why such writ should not issue against him.

HISTORY: RS § 5253; S&C 1039; 51 v 57, § 323; GC § 11511; Bureau of Code Revision, 10-1-53; 129 v 325 (Eff 10-2-61); 139 v S 114. Eff 10-27-81.

* Repealed, 133 v H 1201. See now CivR 45(B).

Sec. 2317.22. Punishment for Contempt.

Punishment for the acts of contempt specified in section 2317.20* of the Revised Code shall be as follows: When the witness fails to attend in obedience to a subpoena, the court or officer may fine him not more than fifty dollars; in other cases, not more than fifty dollars nor less than five dollars; or the court or officer may imprison such witness in the county jail, there to remain until he submits to be sworn, testifies, or gives his deposition.

HISTORY: RS § 5254; S&C 1039; 77 v 42, 45; GC § 11512; Bureau of Code Revision. Eff 10-1-53.

* Repealed, 133 v H 1201. See now CivR 45(E).

Sec. 2317.23. Disposition of Fines.

A fine imposed under section 2317.22 of the Revised Code by the court shall be paid into the county treasury; that imposed by an officer shall be for the use of the party for whom the witness was subpoenaed. The witness also shall be liable to the party injured for any damages occasioned by his failure to attend, or refusal to be sworn, to testify, or to give his deposition.

HISTORY: RS § 5254; S&C 1039; 77 v 42, 45; GC § 11513; Bureau of Code Revision. Eff 10-1-53.

Sec. 2317.24. Release of Witness from Imprisonment.

A witness imprisoned by an officer under section 2317.22 of the Revised Code may apply to a judge of the supreme court, court of appeals, court of common pleas, or probate court, who may discharge him if it appears that such imprisonment is illegal.

HISTORY: RS § 5255; S&C 1040; 51 v 57, § 325; 82 v 16, 33; GC § 11514; 103 v 405(426); Bureau of Code Revision. Eff 10-1-53.

Sec. 2317.25. Contents of Attachment or Order to Commit.

Every attachment for the arrest or order to commit a witness to prison by a court or officer, pursuant to sections 2317.21 and 2317.22 of the Revised Code, must be under seal of the court or official seal of the officer, if he has one, and must particularly specify the cause of the arrest or commitment. When committed for a refusal to answer a question, the question must be stated in the order.

HISTORY: RS § 5256; S&C 1040; 51 v 57, § 326; GC § 11515; Bureau of Code Revision. Eff 10-1-53.

Sec. 2317.26. Order of Commitment.

The order of commitment mentioned in section 2317.25 of the Revised Code may be directed to the sheriff or a constable of the county where the witness resides, or is at the time, and shall be executed by

committing him to the jail of such county, and delivering a copy of it to the jailer.

HISTORY: RS § 5256; S&C 1040; 51 v 57, § 326; GC § 11516; Bureau of Code Revision, 10-1-53; 139 v S 114. Eff 10-27-81.

Sec. 2506.02. Filing of Transcript.

Within forty days after filing the notice of appeal, the officer or body from which the appeal is taken, upon the filing of a praecipe, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. The costs of such transcript shall be taxed as a part of the costs of the appeal.

HISTORY: 127 v 963 (Eff 9-16-57); 141 v H 412. Eff 3-17-87.

Sec. 2505.04. Appeal Perfected.

An appeal is perfected when a written notice of appeal is filed, in the case of an appeal of a final order, judgment, or decree of a court, in accordance with the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court, or, in the case of an administrative-related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved. If a leave to appeal from a court first must be obtained, a notice of appeal also shall be filed in the appellate court. After being perfected, an appeal shall not be dismissed without notice to the appellant, and no step required to be taken subsequent to the perfection of the appeal is jurisdictional.

HISTORY: GC § 12223-4; 116 v 104; Bureau of Code Revision, 10-1-53; 141 v H 412. Eff 3-17-87.

Sec. 2505.07. Time for Perfecting Appeal.

After the entry of a final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality, the period of time within which the appeal shall be perfected, unless otherwise provided by law, is thirty days.

HISTORY: GC § 12223-7; 116 v 104; 117 v 615; 118 v 78; 121 v 366; Bureau of Code Revision, 10-1-53; 125 v S 158 (Eff 10-27-53); 129 v 582(743) (Eff 1-10-61); 141 v H 412. Eff 3-17-87.

Sec. 4511.01. Definition of “Street” or “Highway” (excerpt).

(BB) “Street” or “highway” means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

HISTORY: GC § 6307-2; 119 v 766, § 2; 120 v 221; 124 v 514; Bureau of Code Revision, 10-1-53; 126 v 392(408) (Eff 3-17-55); 126 v 790 (Eff 9-14-55); 126 v 115 (Eff 10-1-56); 127 v 54 (Eff 8-27-57); 128 v 1270 (Eff 11-4-59); 129 v 1273 (Eff 10-26-61); 130 v 1068 (Eff 8-5-63); 130 v 1074 (Eff 10-10-63); 131 v 1094 (Eff 10-15-65); 132 v H 634 (Eff 11-24-67); 132 v H 380 (Eff 1-1-68); 132 v H 878 (Eff 12-14-67); 132 v S 451 (Eff 2-29-68); 135 v H 200 (Eff 9-23-73); 135 v S 108 (Eff 11-21-73); 135 v H 995 (Eff 1-1-75); 136 v H 338 (Eff 1-9-76); 136 v S 56 (Eff 5-25-76); 136 v H 235 (Eff 10-1-76); 137 v S 100 (Eff 4-1-78); 138 v S 9 (Eff 6-20-79); 139 v H 53 (Eff 7-1-82); 143 v H 258 (Eff 11-2-89); 143 v H 319 (Eff 7-2-90); 143 v S 272 (Eff 11-28-90); 143 v S 382 (Eff 12-31-90); 144 v H 485 (Eff 10-7-92); 144 v S 98 (Eff 11-12-92); 144 v H 356 (Eff 12-31-92); 146 v S 293 (Eff 9-26-96); 148 v H 484. Eff 10-5-2000.

Sec. 5713.081. Collection of Delinquent Taxes on Publicly Owned Property.

No application for real property tax exemption and tax remission shall be filed with, or considered by, the tax commissioner in which tax remission is requested for more than three tax years, and the commissioner shall not remit more than three years' delinquent taxes, penalties, and interest.

All taxes, penalties, and interest, that have been delinquent for more than three years, appearing on the general tax list and duplicate of real property which have been levied and assessed against parcels of real property owned by the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership, shall be collected by the county auditor of the county where the real property is located. Such official shall deduct from each distribution made by him, the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership thereof, passing under his control, or which come into his possession, and such deductions shall be made on a continuing basis until all delinquent taxes, penalties, and interest noted in this section have been paid.

As used in this section, "political subdivision" includes townships, municipalities, counties, school districts, boards of education, all state and municipal universities, park boards, and any other entity whose ownership of real property would constitute public ownership.

HISTORY: 132 v S 351 (Eff 11-24-67); 136 v H 920 (Eff 10-11-76); 140 v H 260 (Eff 9-27-83); 144 v H 399. Eff 11-28-91.

Civil Rules of Procedures Rule 5 B.

(B) Service: how made. Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or party shall be made by delivering a copy to the person to be served, transmitting it to the office of the person to be served by facsimile transmission, mailing it to the last known address of the person to be served or, if no address is known, leaving it with the clerk of the court. The served copy shall be accompanied by a completed copy of the proof of service required by division (D) of this rule. "Delivering a copy" within this rule means: handing it to the attorney or party; leaving it at the office of the person to be served with a clerk or other person in charge; if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion then residing in the dwelling house or usual place of abode. Service by mail is complete upon mailing. Service by facsimile transmission is complete upon transmission.

Ohio Rules of Appellate Procedure Rule 4 A.

(A) Time for appeal. A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58 (B) of the Ohio Rules of Civil Procedure.

Rules of Practice of the Supreme Court Rule II, Section 2 (A) (1) (excerpt).

(A) Perfection of Appeal.

(1) To perfect an appeal from a court of appeals to the Supreme Court, other than in a certified conflict

case (which is addressed in S. Ct. Prac. R. IV), the appellant shall file a notice of appeal in the Supreme Court within 45 days from the entry of the judgement being appealed. The date the court of appeals filed its judgement entry to journalization with its clerk, in accordance with App. R. 22 (E), shall be considered the date of entry of the judgment being appealed. ...