

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.