

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.