



Changing Annexation Policy in Ohio: What Will It Mean?

By Beth Walter Honadle, Director, CPAPS

Mention annexation in local government circles, and you are likely to stir up a hornet's nest of controversy. Annexation brings up issues of fairness, economic development, urban sprawl, and property rights, to name just a few.

Some people think the laws make annexation too easy. Others think the laws place undue burdens on parties involved in annexation. Annexation has important consequences for quality of life, economic development, and land use in Ohio.

Two researchers at Indiana University have studied annexation policies in the fifty states and found that, over time, most states have made it more difficult for municipalities to act unilaterally and have increased the power of residents to affect annexation proceedings, including adding the right to referenda.¹ Their research classified state annexation procedures by the type of final decision-making authority they afforded. The annexation procedures for each state were classified as having legislative, popular, municipal, judicial, or quasi-legislative decision-making authority. According to this study, Ohio was classified as having a

"mixed" method and fell under popular (popular determination exercised by majority petition) and quasi-legislative. This study placed 38 states in the "popular" category with the method of popular determination usually being either majority petition or election.

"Like divorce, annexation is about more than just money."

The Center for Policy Analysis & Public Service is publishing this special issue of *CenterLines* to present different perspectives about the sweeping changes to Ohio's annexation law before it takes effect on October 26, 2001. Whatever you may think about annexation, everyone agrees that it is widespread, common, and a perennial issue.

According to the Secretary of State's records, an average of 284 annexations a year became effective between 1997 and 1999. Between 1990 and 1994, 286 filings were opposed by one or more entities. Of these, 192 (67%) were opposed by townships, with the remainder opposed by individuals (83), other entities (7), villages (3), and a city. An annexation is when territory, not previously part of a city or village, becomes part of

that entity. Under the new legislation, county commissioners will have to consider how the annexation affects surrounding property. Previously, the commissioners were required to consider the general good of only the territory to be annexed. In addition, townships will be

reimbursed for some lost tax revenue for twelve years. These moves are somewhat analogous to a court taking into account the effects of a marriage breakup on children before granting a divorce and forcing one partner to pay alimony and child support to the other.

Like divorce, annexation is about more than just money. Almost a decade ago, two scholars² examined cases of annexation and found that, in some instances, annexation resulted in a fiscal gain for the townships and a loss for the cities (the opposite of what is routinely expected). These anomalies were explained by various political factors that were driving cities to seek the annexations and the townships to fight them. The real issues driving

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By Larry L. Long
Executive Director
County Commissioners'
Association of Ohio

Biography

Larry L. Long has worked for the County Commissioners' Association of Ohio since 1974 and has served as Executive Director since 1987.

In addition to his duties as chief lobbyist for CCAO, he is also the editor of several publications, including the County Commissioners Handbook, County Advisory Bulletin, and County News Magazine.

Ready to Play the New Annexation Game?

After more than a decade of debate and compromise, annexation reform is now a fact of life. The new game will be challenging and exciting. Under the old game, the winner was often determined by the first roll of the dice. For County Commissioners and the Summit County Council, the instruction book containing the rules of the game will be longer and more complicated. The game board will also have three separate tracks that can be followed and a couple of forks and detours that can be used. The game board no longer has only one yellow brick road. Sounds like fun, doesn't it? Maybe we should call it Annexopoly!

“...there are no clear winners or losers in the new game of Annexopoly.”

There are three basic ways to play Annexopoly. If at least 51 percent of the property owners desire annexation, there is one set of rules. If all the property owners want to become part of the municipality, there are different rules. If the municipality, on the other hand, wants to annex land it owns or land owned by the county or state, there is yet another rule book.

Now, even when playing Annexopoly during which all owners sign the petition, the owner must pick one of three forks on the game board depending on whether the township and municipality agree; whether the land will not be removed from the township; or whether the annexation is for the purpose of a significant economic development project. Let's all get ready to play Annexopoly. It should be quite an experience!

There are a lot of players in the new game of Annexopoly. The municipality. The township. Developers. Property owners. The County Engineer. The Prosecuting Attorney and other lawyers – probably more than we want to imagine. The Board of County Commissioners. And last but not least, Judges. Who will be the winners and the losers in the new game of Annexopoly?

It is my belief that there are no clear winners or losers in the new game of Annexopoly. Unlike earlier annexation bills, the new law will not stop municipal annexation. It certainly will not have significant

adverse impact on state economic development initiatives as was often alleged. What happens when the new game begins is not yet certain, but let's look at some possibilities.

First, I believe that most annexations that will occur in the next few years will involve petitions by all property owners. These so called "expedited procedures" will be predominant. For all annexation petitions signed by at least 51 percent of property owners, County Commissioners will now rule on whether the benefits or detriments are greater in the area to be annexed, as well as the territory within one-half mile of the area to be annexed. Under current law, Commissioners are authorized to look solely at the general good of the area to be annexed when granting or denying a petition. No

one knows for sure what this new standard means, but it will probably be tested in court a lot in upcoming years. Only then will we know exactly what the new standard means. It is clear, however, that the new law gives more discretion to County Commissioners to deny these annexation petitions.

Given this fact, there are increased incentives for municipalities, developers, and townships to come together and craft annexations that all parties can support. Under the old law, there was little incentive for such compromise because those wanting to annex a municipality could often prevail in court. This is no longer true.

Second, annexation petitions with only a majority of the property owners will be a real headache for County Commissioners. The hearing process will probably take more time. Subpoenas may be issued, court reporters may be requested, and the law allows for the examination and cross-examination of witnesses. When granting or denying a petition, Commissioners must make findings of fact to justify their action on the basis of evidence submitted at the hearing or by affidavits. Sounds like a court, doesn't it? Maybe the Commissioners need to visit the Judge in chambers at the courthouse and borrow a black robe!

Third, townships will generally become more powerful in the intergovernmental system. This bill will not mean the end of cities, but it could have the effect of slowing municipal growth. This could have

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By Michael H. Cochran
Executive Director
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Biography

Michael H. Cochran first joined the Ohio Township Association in 1977 and has served as its Executive Director since 1980. In addition to his position with the Township Association, Mr. Cochran is a practicing attorney.

Annexation Reform: Leveling the Playing Field

Annexation reform has been the top legislative priority for the Ohio Township Association (OTA) for more than ten years. The OTA has continually fought for a more level playing field in the annexation process, and the recently passed annexation reform legislation includes several components that allow townships to have a voice in the process. The passage of the legislation accomplishes the OTA's goal for fair and meaningful reform.

In 1998, at the urging of the Ohio Senate leadership, the OTA and the Ohio Municipal League (OML) came together to work toward a comprehensive annexation reform proposal. With the exception of two issues, our associations were able to reach agreement on provisions for a bill, and Senate Bill 289 was introduced as a result of those negotiations. There continued to be changes made to the bill at the suggestion of other interested parties. Senate Bill 289 did not complete the legislative process prior to the end of the 123rd General Assembly.

With the help of Senate President Dick Finan and Senator Lynn Wachtmann, the annexation reform bill (as passed by the House committee version of SB 289) was introduced in the 124th General Assembly as Senate Bill 5. As a result of Senate and House leadership, for the first time in thirty years there will be significant revisions made to the State's annexation laws.

The OTA actively promoted the passage of the legislation while hearings were being held in the

Senate and House, respectively. Right up to the time that the final vote was taken by the House, the OTA continually met with interested parties to work out differences so that a true, compromised annexation reform bill could be passed.

How will the annexation reform legislation affect local governments? The most important feature of the new law is that it promotes annexation agreements between a township and municipal corporation. Parties may write their own annexation agreement which may be negotiated or renegotiated for any period of time

“One of the most significant changes in the annexation law is that townships will share revenue with municipalities...”

and may include, but not be limited to territory to be annexed, land-use planning matters, payment in lieu of taxes, and services agreements. The ability to negotiate these agreements will provide additional options through which annexations may occur in a timelier manner and with more flexibility. This will serve to better meet the unique needs and situations of particular townships and municipalities. Annexation agreements will enhance cooperation among local officials on local issues.

When 100% of the owners of a territory proposed to be annexed wish to have their land reside within a municipality, those parties may use the expedited annexation procedures. These expedited procedures were

developed to provide a quicker and less complicated process for annexations in which agreement among the parties can be reached or unique circumstances exist. Neither townships nor municipalities have the ability to appeal the decision made by the board of county commissioners, thus guaranteeing a quicker annexation process. These expedited procedures ensure that annexations will not stop in Ohio and economic development will not be hindered.

On the other hand, in a contested annexation (one in which not all landowners within the proposed

territory to be annexed wish to be included), county commissioners are given more discretion and authority to look beyond simply the proposed territory to be annexed when considering annexation petitions. A new test has been added to the regular process for commissioners to use in majority annexation petition procedures. County commissioners must determine if “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 is granted” (ORC 709.033 [A][5]). “Surrounding area”

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By John K. Mahoney
Deputy Director
Ohio Municipal League

Biography

John K. Mahoney joined the Ohio Municipal League in 1986 and now serves as Deputy Director. Mahoney directs the OML's team of lobbyists, and he is also the editor of the organization's magazine, Cities and Villages. Mahoney also serves as the Executive Secretary of the Ohio Lobbying Association and was recently named the most effective association lobbyist in Ohio.

SB 5: A Challenge for Economic Growth in Ohio

To understand SB 5, it is important to understand its history and the history of annexation law in Ohio. Part of the Ohio Municipal League's (OML) opposition to changes in the law stems from the actual history of the law. Annexation law in Ohio was last changed significantly in the mid-1960's, and it settled into a reliable law upon which property owners and municipalities could base their actions and plans. Due to years of settled case law, annexation provisions of the Ohio Revised Code gave everyone a procedure that, despite frivolous challenges, could be relied upon to give a predictable outcome in the end. Any significant changes to that law could lead to unpredictability, more litigation, and an environment of doubt. From the point of view of those who generally wanted annexations to slow down, this was a good thing. For those who thought annexation was an essential part of Ohio's orderly economic growth, such a change would most likely be a drag on growth and lead to increased litigation.

Certainly the new law, since it upsets many settled issues surrounding annexation, will lead to more litigation about annexation issues. This would be true even if the OML and the Ohio Township Association (OTA) could have reached an agreed upon compromise. In and of itself, increased litigation would not be a reason for the OML to oppose a change in the law. However, such increased litigation could hardly be justified unless the merits of the changes went beyond simply giving one set of lawyers (pro-township) the opportunity to challenge annexations on new grounds.

Unfortunately, the changes put in place by SB 5 do little more than put into place a new set of rules for those attorneys not able to win under the old rules.

In addition, the new set of rules also makes growth more difficult. Except in a few urban townships, municipalities and townships are not competitors for services necessary for growth. As areas urbanize, property owners often need to seek more services in order to develop their property. The only

the growth of a few urban townships since the 1960's made some of that growth possible outside of municipal limits. However, since the current annexation law was adopted, 90% of that orderly growth was and still is possible only through the services and resources available from the cities and villages. Certainly the other 10% did not justify a wholesale change in the annexation law – a change that might cripple most of the economic growth that would have occurred otherwise.

“ . . . the OML does not expect SB 5 to reduce annexation litigation or encourage economic growth in Ohio.”

provider of those services, in many cases, is a municipality. Historically, townships, with lower density development, offer limited services, while municipalities, with higher density development, offer more services. There is simply nothing wrong with this historic relationship. In fact, such a service relationship is efficient and reflects service demands and service costs.

The OML's view is that annexation law prior to SB 5 reflected that traditional relationship and was designed to address the need for increased services in urban areas as their populations grew and economies expanded. In such areas, centralized water and sewer, full-time police and fire protection, greater land-use control, and other resources necessary to create amenities for urban life become necessary. In many cases, this is possible only through the powers of a municipality. It is true that the growth of regional sewer and water systems in some parts of Ohio and

However, even with its problems in the areas of litigation and potential for hampering growth, SB 5 does provide some benefits. SB 5 is the culmination of years of deliberation by the General Assembly. As a result, some of the provisions included in the bill, such as different procedures for different types of annexations, may be improvements over current law. Certainly those provisions are improvements over proposed provisions first sought by the Ohio Township Association several sessions ago.

From the OML's perspective, the two most onerous parts of the bill are the 1/2 mile provision and the reparations schedule. Under the 1/2 mile segment of the bill, property owners outside of the area to be annexed up to 1/2 mile stand on par with those property owners seeking the annexation. While the OML and OTA both agreed that

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significant consequences to municipal finance, especially if municipalities cannot capture new residents, businesses, and associated payroll tax revenue. This could create problems for counties. Fiscally strong municipal governments are a benefit to counties. On the other hand, fiscally stressed municipal governments mean more pressure on counties to assist

municipalities. It will also create more competition for limited tax dollars. Another possible consequence could be the elimination of certain programs or services now provided by municipalities. For example, some cities invest substantial funds for the homeless, shelters for victims of domestic violence, food banks, and a myriad of crime prevention and drug abuse

programs. If it becomes harder to annex new land and grow municipal revenues, these programs might be eliminated. This could mean additional fiscal challenges for counties that just might end up holding the bag.

The new game of Annexopoly: only time will tell its real impact on Ohio. Municipalities will be playing

“Jeopardy” for the first time. Lawyers will be looking for the “Weakest Link.” Developers will continue to play “Who Wants To Be a Millionaire.” And townships will welcome the opportunity to be able to deal the cards for the first time. For County Commissioners, the game of Annexopoly, this fun new game, may seem more like the game of “Battleship.” ★

Annexation Reform: Leveling the Playing Field

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is defined as the territory within the unincorporated area of any township one-half mile beyond the proposed territory to be annexed. When the annexation law was written in the 1960's, annexations essentially affected only vacant fields. In the 1980's and 90's, annexations began to affect people. The previous laws did not reflect that there are people now in the annexed areas, and they are impacted by the annexation of property around them. This change in law recognizes that annexation does not occur in a vacuum and may affect property owners and communities surrounding the territory.

One of the most significant changes in the annexation law made by Senate Bill 5 is that townships will share revenue with municipalities in all annexation procedures. The notion of revenue sharing is not a new one – the principle has been in Ohio law since 1979. The law was modified in 1982 to allow parties to negotiate their own agreement involving payments to compensate townships for lost tax revenue. In the expedited annexation procedures created under the new law, land annexed must remain part of the township and the township's property tax base, thus guarantee-

ing the township at least its inside millage. Under the majority annexation process, when a municipality excludes land from a township, a twelve-year declining payment schedule based upon the current tax year valuation of the land is triggered. The township would receive a percentage of the real property tax that it would have received if the land had not been annexed. Separate revenue sharing schedules are established for commercial/industrial property and retail/residential property.

The main responsibility of the township under the new law is to

be involved and act responsibly. Township officials will be participants in annexation proceedings through negotiations and participation in hearings. They will need to be prepared and responsible for their participation. Officials must be aware of balancing the township position with that of property owners whose positions may be different. Additionally, townships will have to seek legal representation sooner in the annexation process and probably more often. The township will have more voice in the process, but it will have to be exercised in a timely manner. ★

SB 5: A Challenge for Economic Growth in Ohio

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property owners in surrounding areas have an interest in a proposed annexation, the OML could never agree that the property rights of those outside of an annexing area are equal to the rights and interests of those who own the property involved in the annexation.

The second item of concern for the OML is a provision in the bill that requires a municipality to pay reparations for several years to a township for lost tax revenue on all annexations that are withdrawn

from the township. Under that scheme, the municipality pays a township a percentage of the property taxes yielded by the property based on the township's millage. For instance, if a city annexes land from a township at the property owner's request, and the land yields \$100 a year to the township when annexed and later yields an equivalent township tax value of \$1000, the township gets a portion of that increase for over a decade. These free “taxes without services” dollars flow to the township, even though its service

requirements were reduced by the annexation. Further, the township, in many cases, lost the property because its services could not support the development. This schedule of reparations is purely punitive to the city.

Obviously, from the OML's point of view, SB 5 is not an improvement in the annexation law. As stated earlier, it is a bill that is better than other bills introduced in past sessions of the General Assembly, but the OML does not expect it to reduce annexation litigation or

encourage economic growth in Ohio. However, because SB 5 is a procedural bill that attempts to outline how townships, municipalities and counties will sort out local boundaries, the current viewpoints of the OML, the townships, and the counties will have to change over time as local officials and the courts sort out the practical meaning of the bill. While the OML does not have much faith that SB 5 will bode well for Ohio's economic growth, only time will really give us a clear picture of the true impact of the bill. ★



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New Publication Available from CPA&PS

The Center for Policy Analysis & Public Service is pleased to announce the September release of:

A Guide to Public Policy Research at Bowling Green State University, 1997-2001

The research guide was developed in response to the growing interest of state legislators and other policymakers to become more acquainted with the diverse range of policy research being done at BGSU. The information was compiled over a period of nine months and represents policy-related studies

conducted or published in 1997 through March 2001.

To request a complimentary copy of *A Guide to Public Policy Research at Bowling Green State University, 1997-2001*, please contact CPA&PS. Multiple copies are also available for a nominal charge. The Guide will be available in October 2001. *Request your copy now.* ★

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County Commissioners' Association of Ohio

The County Commissioners' Association of Ohio was founded in 1880 to promote the best practices and policies in the administration of county government for the benefit of Ohio residents. CCAO provides legislative representation, technical assistance, and educational opportunities for county commissioners and their staffs. ★

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Ohio Township Association

The Ohio Township Association is a statewide organization dedicated to the promotion and preservation of township government in Ohio. The OTA was founded in 1928 and is organized in eighty-seven Ohio counties. The OTA has over 5200 active members, made up of trustees and clerks from Ohio's

1309 townships, and over 4000 associate members. ★

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Changing Annexation Policy in Ohio...

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annexation conflicts included change of lifestyle, loss of "community," and the ability to shape the future of the area. In other words, the driving force behind the annexations was not money.

Time will tell what impact these changes to Ohio's annexation law will have on the frequency, form, and contentiousness of future annexations. It is clear that the rules of the game have changed, but it will be interesting to see if the results are what the players in this policy change are expecting.

In this special edition of our newsletter, we present our readers with reactions to these policy changes from representatives of municipalities, counties, and townships because these are the units of government most involved in the front lines of annexation struggles. ★

¹ See: Jamie L. Palmer and Greg Lindsey, "Classifying State Approaches to Annexation," *State and Local Government Review*, Winter 2001, pp. 60 – 73.

² See: Gerrit Knaap and Steve Juelich, "The Fiscal Impacts of Detachment: Is it Better to Give Than to Receive?" *State and Local Government Review*, Winter 1992, pp. 28 – 35.

Ohio Municipal League

The Ohio Municipal League was incorporated as a non-profit corporation in 1952 by city and village officials who saw the need for a statewide association that would serve the interests of Ohio municipal governments. The OML is a voluntary organization that represents the collective interest of more than 800 cities and villages before the Ohio General

Assembly, as well as state-elected and administrative offices. ★

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