

**MUNICIPAL BOUNDARY ADJUSTMENTS AND
INTERGOVERNMENTAL AGREEMENTS**

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I. Boundary Commission Composition and Jurisdiction

- A. MCL 123.1001, et seq; MSA 5.224(1), et seq, provides for the appointment of a State Boundary Commission consisting of three state appointed members and two from each county appointed by the presiding probate judge acting only in matters involving their particular county. Two alternates are also appointed to serve in case of the absence or disability of the regular members.
- B. The Commission has jurisdiction over incorporation of cities and villages, and consolidation of two or more cities, villages, or townships as a new city subject to a referendum vote.
- C. The Commission also has jurisdiction over annexation of township territory to a city, subject to a referendum vote when the area to be annexed contains more than 100 persons with the following statutory exceptions:
 - 1. Annexation by joint agreement between the township and the city.
 - 2. Annexation of city owned vacant, uninhabited, contiguous land accomplished by city resolution.
 - 3. The substantial immunity of charter townships meeting the following qualifications:
 - (a) Having a SEV of not less than \$25,000,000.
 - (b) Having a minimum population density of 150 persons per square mile.
 - (c) Provides fire protection service by contract or otherwise.
 - (d) Has a comprehensive zoning ordinance or master plan.
 - (e) Provides solid waste disposal services by contract, license or municipal ownership.
 - (f) Provides water or sewer services by contract or otherwise.
 - (g). Provides police protection through contract with the sheriff through intergovernmental contracts or through its own police department.

4. Notwithstanding the foregoing charter township immunity, the Commission retains jurisdiction to straighten irregular boundaries and to approve annexation of enclaves of township territory surrounded by the annexing city.

In addition, the portion of a charter township contiguous to a city or village may be annexed to that city or village upon the filing of a petition with the County Clerk signed by 20% of the registered electors in the township area to be annexed, and the approval of the electors in the city or village voting independently, and the electors in the area petitioned for annexation also voting independently.

II. Transfer of Territory Under Public Act 425 of 1984, as amended

- A. Conditional transfer under Act 425 of 1984, as amended (MCL 124.21, et seq; MSA 5.4087(21, et seq)).
 1. Significant features of the Act.
 - (a) The purpose of any conditional transfer is for the purpose of economic development of existing or proposed commercial, industrial, housing or environmental protection projects.
 - (b) Applies to agreements between cities, townships, villages, and any combination of the same.
 - (c) Allows for revenue sharing between participating units including taxes and other revenues.
 - (d) Involves transfer of full governmental jurisdiction unless the agreement provides for a lesser transfer of functions -- e.g. zoning, police protection, fire protection, sewer or water utility services, taxation, special assessment authority, public improvements, etc.
 - (e) Can extend for up to 50 years with provisions for extension up to an additional 50 years.
 - (f) Allows for return of the territory to its original jurisdiction or permanently to its transferred jurisdiction at the termination of the agreement.
 - (g) Prohibits annexation or transfer of the involved territory during the term of the agreement, and the annexation of territory that is only contiguous through the conditional transferred territory.

2. Procedure involved.
 - (a) Negotiate the terms of the agreement which terms are almost as broad as the negotiators imaginations.
 - (b) Conduct a public hearing in each municipality separately on the agreement preceded by notice under the Open Meetings Act.
 - (c) Wait 30 days from the last public hearing for the acceptance of any referendum petition signed by 20% of the registered electors within the area proposed for transfer, or, if none, signed by 50% of the owners of the lands therein.
 - i. Where no petition is received, the agreement becomes effective upon the date specified and the transfer becomes effective upon filing of the agreement with the Secretary of State.
 - ii. If a referendum petition is filed, an election is held in the municipal unit from which the territory is transferred and the results of the election bind the parties.
 - iii. Because of the right of referendum, the registered electors or property owners, as the case may be, should be surveyed before the agreement is finalized.
 - (d) File a certified copy of the agreement with the County Clerk and Secretary of State. It might also be deemed advisable to file one with the county Register of Deeds and the State Boundary Commission.
3. Act 425 provides for both discretionary and mandatory contract provisions.
 - (a) Under the discretionary provisions, it is advisable to allow some amendment of the agreement (other than extension of the transferred area) to avoid the necessity of additional public hearings and the referendum potential on an amendment.
 - (b) Mandatory provisions include the term of the agreement, specifications for the sharing of taxes and other revenues, remedies for any default, and which unit has permanent jurisdiction over the area at the termination of the agreement.

4. Form of an Act 425 Agreement.
 - (a) The statute provides for a broad range of negotiated terms.
 - i. Taxation and revenue sharing formula.
 - ii. What, if any, jurisdiction is to be retained by the transferring unit and what is to be transferred if less than total jurisdiction.
 - iii. The length of the conditional transfer. (The records of the Secretary of State's office through August 21, 1995 disclose a large majority of the agreements to be for 50 years with renewal possibilities, although three were for only 5 years with renewal possibilities. The total through that date that had been filed were 99. Professor Lynn Harvey of MSU made the survey.)
 - iv. Remedies for default to include reversion of the area or suit for specific performance, injunction, etc.
 - v. The time or times for a transfer or transfers to occur.
 - vi. The receiving unit's obligations and the dates for the performance of the same.
 - vii. The status of any utility improvements furnished by the receiving municipality upon termination of the transfer.
 - viii. City of Albion/Sheridan Township sample agreement.
5. Use of the Urban Cooperation Act (MCL 124.501; MSA 5.4088(1, et seq)).
 - (a) Don't succumb to its use in lieu of Act 425.
 - (b) It is our opinion that it was not enacted for such use.
 - i. It does not specify authority to transfer jurisdiction over territory.
 - ii. It was designed for joint municipal projects unconcerned with annexation.

- iii. Annexation under such statute permits further annexation of additional territory.
 - iv. Act 425 is specific on transfer of jurisdiction and, in our opinion, controls the field of conditional transfers.
 - (c) Section 3 of the Act provides, "if any provision of this act conflicts with any other statute of this state providing for the authorization or performance of joint or cooperative agreements or undertakings between public agencies of this state...the provisions of such other statutes shall control."
- 6. Availability of Act 425 between townships as a defense to annexation.
 - (a) State Boundary Commission has refused to acknowledge this defense.
 - (b) Issue pending in Court of Appeals.
- C. Detachment of Territory From a Home Rule City.
 - 1. MCL 117.6; MSA 5.2085, provides for detachment of territory from a Home Rule City and its attachment to the contiguous township.
 - 2. The State Boundary Commission is not involved in the proceedings.
 - 3. Statutory procedure for detachment.
 - (a) Initiated by petition signed by qualified electors who are freeholders equal to 1% of the population of the city and township with not less than 10 from each unit, and not less than 100 in total signatures.
 - i. The petition must contain a map or drawing showing clearly the area to be detached and an accurate description of that area.
 - ii. The petition must be verified by one or more petition circulators who are also a petitioner.
 - (b) The detachment petition is filed with the County Clerk and addressed to the County Board of Commissioners.
 - (c) If the board of commissioners finds the petition valid, it calls for an election in the city and township voting collectively.

- (d) After a favorable electoral vote, the territory is detached upon the filing of the Board of Canvasser's Certificate together with the petition and the County Board Resolution, with the County Clerk and Secretary of State.
- (e) Detachment is especially successful where township qualified electors exceed or are close in number to city electors, but such circumstance is not essential.
 - i. In the detachment from the City of Big Rapids of some 2,300 acres, the township electors were only one-third of the city electors.
 - ii. In the detachment from the City of Williamston, township electors were only one-half of the number of electors within the city.
- (f) The Court of Appeals confirmed the detachment procedure in the *City of Williamson v Wheatfield Township, 142 Mich App 714 (1985)*.

D. Township Boundary Adjustments Between Townships.

1. Under MCL 46.14; MSA 5.337, by a vote of three-fifths of all members of the County Board of Commissioners, said Board may vacate, divide or alter a township within the county; may establish a new township; or may consolidate two or more townships.
2. Such action must be initiated by a petition of at least 20% of the freeholders who are residents of each of the townships to be effected.
3. After receipt of a map of all effected townships showing the proposed alterations satisfactory to the Board of County Commissioners, a certified statement of the action of said Board accompanied by the application and a copy of the map, shall be filed with the County Clerk and the Secretary of State in order to effectuate the action.
4. Before the county can act on the application, it must be posted in five public places in each of the effected townships four weeks before submission for decision, and shall also be published once each week for four successive weeks in a newspaper published within the county.

5. For consolidation of two or more townships, the petition to the County Board must be signed by registered electors who are residents of the area to be consolidated equal to at least 5% of the total population of each of the effected townships. The petition shall name the consolidated township and state the proposed millage if it is to be a charter township.
6. Where the Board finds the consolidation petition to be in compliance with the statute, it must submit the proposition to a vote of the electors of each of the effected townships voting independently and shall specify the date for the election. This date must be on or before May 1 in the year of a general November election.
7. Where the consolidation is approved by the electors, it shall become effective on November 20 at 12:00 p.m. following the election.
8. Procedures for organizing the consolidated township are specified at MCL 46.16c, et seq; MSA 5.339(3), et seq. The proceedings can apply to the consolidation of a charter township and general law township and can constitute the consolidated township a charter township.
9. In the proper circumstances, the proceedings could be used to enable the altered township or resulting consolidated township to outvote a city and accomplish detachment.
10. Boundary adjustments between Townships or between a township and a village could also be accomplished under the aforesaid Act 425 of 1984.

E. Annexation to a Village or Detachment from a Village.

1. Charter village under 1909 PA 278 (MCL 78.2 etc; MSA 5.1512 etc.).
 - (a) Annexation to or detachment from a village is initiated by a petition of qualified electors residing within the village and township equal to not less than one percent (1%) of the total population of the village and township and by a minimum of 100. If any part of the area proposed to be annexed or detached has been platted, the petition must be signed by qualified electors residing within each plat and within any unsubdivided portion to a number not less than one percent (1%) of the population of each plat or unsubdivided portion. If there are no qualified electors within the platted or unsubdivided portion, the petition shall be signed by persons

who collectively hold title to more than one-half of the land area proposed to be annexed, as well as by the qualified electors in the remainder of the district equal to the aforesaid one percent of the total population. The signers must also be owners of property assessed for taxes within the unsubdivided portions of the area.

- (b) The petition must accurately describe the boundaries of the area to be annexed or detached and is addressed to the county board of commissioners and filed with the county clerk.
- (c) If the petition conforms with the statute, the board of county commissioners must by resolution submit the issue to the qualified electors of the village and township with the electors in the area to be annexed or detached voting separately and the remainder of the qualified electors voting collectively. It must pass in both in order to become effective.
- (d) Upon the filing in the office of the Secretary of State and the clerk of the county, a copy of the petition, resolution and county canvassers certificate (if approved) the area in question shall be annexed or detached to or from the village.
- (e) Provision is included for the division of assets and liabilities between the village and township.
- (f) Where the territory affected is situated in more than one county, the petition is addressed and presented to the Secretary of State for verification of its legality and the calling of an election.

2. General law village under 1895 PA 3 (MCL 74.6; MSA 5.2470).

- (a) Annexation or detachment is initiated by resolution of the village council filed with the county board of commissioners, including a description of the territory proposed to be added or removed and the reasons for the request. The request is signed by the president and clerk of the village.
- (b) Before the request is presented to the board of county commissioners, notice shall be given by the village clerk of the time and place when the same will be presented for consideration by publishing the same in a newspaper published in such village for at least three (3) weeks immediately preceding the presentation. If no newspaper is published in

the village, then the notice must be given by posting the same in at least three of the most public places within the village and in at least three of the most public places in the territory directly affected. The notice must contain a description of the premises proposed to be annexed or removed.

- (c) At the scheduled meeting of the county board of commissioners, all interested parties may appear and be heard on the request.
- (d) After the hearing before the county board, "It shall be the duty of the board of supervisors to order and determine as to whether the prayer contained in the petition or any part thereof shall be granted and they shall make an order of such determination." When the order is entered upon the county records, the boundaries of the village shall be accordingly adjusted. A certified copy of such order shall be transmitted to the clerk of the village and to the Secretary of State. The order shall be "prima facie evidence of such change of boundaries of such village and of the regularity of such proceedings in all courts and places."
- (e) Although it has never been litigated, it is the position of this author that this statute is an unconstitutional delegation of authority without any standards to guide the county board of commissioners.