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#### MEMORANDUM

**TO:** Senator Elena Parent

**FROM:** Alexander J. Azarian

**SUBJECT:** Subsequent Changes to Boundaries after Petition Submitted; and  
Pending Incorporation Conflicts with Pending Annexation

As you requested, I have compiled the following statutes from other states that address petition signature requirements when the boundaries of a proposed municipal incorporation have been changed after the petition has been signed. A review of state statutes indicates that the vast majority of states do not address the possibility of this situation. Additionally, I could find no state that prohibits boundary changes after the petition has been signed and submitted. I have also compiled statutes that address when a proposed municipal incorporation is in conflict with a proposed annexation. Although you also requested information about how other states address conflicting cityhood proposals in which boundaries overlap, no state addresses this scenario in statute.

I hope you find this information helpful. Please do not hesitate to contact me at (404) 656-0023 or [alex.azarian@senate.ga.gov](mailto:alex.azarian@senate.ga.gov) should you require more detailed information.

### Subsequent Changes to Boundaries after Petition Submitted

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#### Arkansas

14-38-103(b)(1): In its discretion, the court may permit the agent named in the original petition to amend or change it.  
(2) However, no amendment shall be permitted whereby territory not before embraced shall be added or the character of the proposed city or incorporated town changed from special to general, or from general to special, without appointing another time for a hearing and requiring new notice to be given as provided in § 14-38-101.

#### Florida (Miami-Dade County)

Sec. 20-20(C): The Clerk of the Board of County Commissioners shall notify the County Commission that the petition is complete and contains sufficient signatures. Upon notification of the completeness and sufficiency of the petition and upon sponsorship of the County Commissioner whose district comprises the majority of the area proposed to be incorporated by the petition, the Board of County Commissioners may create a Municipal Advisory Committee ("MAC"), which shall carry out the functions set forth in the resolution or ordinance creating the MAC and be subject to the requirements of Section 20-29 of the Code of Miami-Dade County (the "Code"), excluding the requirement of consent of resident electors. Notwithstanding the creation of a MAC, the procedures for consideration of a petition set forth in Section 20-20 et seq. of the Code shall apply. If the boundaries in the completed petition differ from the boundaries of the MAC study area, the

boundaries of the MAC study area shall supplant and be substituted for the boundaries included in the petition; provided, however, 20% of the electors residing within the boundaries as revised to conform to the MAC study area shall have signed the completed petition indicating their interest in incorporating the area.

#### **Iowa**

368.18: The committee (of the City Development Board) may amend a petition or plan. If a petition or plan is substantially amended, the committee shall continue the hearing to a later date and serve and publish a notice describing the amended petition or plan, as required in section 368.15.

#### **Minnesota**

414.02(3)(d): The chief administrative law judge may alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property which is now, or is about to become, urban or suburban in character, or may exclude property that may be better served by another unit of government.

#### **Mississippi**

§ 21-1-17: ...The chancellor shall have the power, however, in granting any such incorporation to grant same in whole or in part by modifying or decreasing the territory to be included within such municipal corporation.

#### **Missouri (Statewide Method)**

72.080(2): The county (commission) may make changes in the petition to correct technical errors or to redefine the metes and bounds of the area to be incorporated to reflect other boundary changes occurring within six months prior to the time of filing the petition. Petitions submitted by proposing agents may be submitted with exclusions for the signatures collected in areas originally included in the proposal but subsequently annexed or incorporated separately as a city, town or village, although the governing body shall be satisfied as to the sufficiency of the signatures for the final proposed area.

#### **Missouri (St. Louis County Method)**

72.400(6): "Proposing agent", ... a person presenting petitions for incorporation signed by a number of registered voters equal to not less than fifteen percent of the number of votes cast for governor in the last gubernatorial election in the total combined area affected by the boundary change proposal. Petitions submitted by proposing agents may be submitted with exclusions for the signatures collected in areas originally included in the proposal but subsequently annexed or incorporated separately as a municipality, although the commission shall be satisfied as to the sufficiency of the signatures for the final proposed area;

72.405.1(3): If the boundary change is an incorporation proposed pursuant to a petition, the commission may make such changes in the proposal as it finds would result in an acceptable proposal, such changes to include but not be limited to additions, deletions or the modification of a proposal which contains boundaries which overlap those boundaries contained in any other proposal. After submittal, the commission may allow the proposing agent to make minor additions, deletions or modifications which do not substantially alter the proposal....

#### **North Dakota**

40-02-06: ...The board shall have the authority to approve or disapprove, with or without amendment, the petition for incorporation.

#### **Ohio (Villages)**

707.06: ...The board of county commissioners may amend the petition on its leave. 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 707.05 of the Revised Code.

707.07: After the hearing on a petition to incorporate, the board of county commissioners shall enter an order on its journal allowing the incorporation if it finds that:

(A) The petition contains all the matters required in section 707.02 of the Revised Code and the statements in the petition are true.

(B) Notice has been published as is required by section 707.05 of the Revised Code.

(C) The number of valid signatures on the petition constituted fifty-one per cent of the electors within the territory proposed to be incorporated, as determined by the total number of votes cast within that territory for the office of governor at the preceding general election for that office.

## **Oregon**

221.040(2): ...The court may alter the boundaries as set forth in the petition to include all territory which may be benefited by being included within the boundaries of the proposed incorporated city, but shall not modify boundaries so as to exclude any land which would be benefited by the formation of the proposed city. No land shall be included in the proposed city which will not, in the judgment of the court, be benefited. If the court determines that any land has been improperly omitted from the proposed city and the owner has not appeared at the hearing, it shall continue the hearing and shall order notice given to the nonappearing owner requiring the owner to appear before it and show cause, if any the owner has, why the owner's land should not be included in the proposed city....

## **Washington State**

RCW 36.93.150(5): Unless the (Boundary Review Board) board disapproves a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW 35.13.130 or 35A.14.120.

## **Pending Incorporation Conflicts with Pending Annexation**

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### **Arizona**

9-101(H): The board of supervisors shall exclude from the community proposed to be incorporated...any territory which has been included in an annexation ordinance adopted by a city or town pursuant to law after the incorporation petition has been filed.... If the remaining community fails to meet the qualifications for incorporation, the board of supervisors shall reject the petition.

### **Michigan**

123.1006: Except as otherwise provided in this act, the (State Boundary) commission shall process all petitions and resolutions in the order in which they are filed and shall finally dispose of a petition or resolution before taking up any other petitions or resolutions which deal with all or any part of the same territory. With respect to petitions for annexation proceedings filed with the board of supervisors or the secretary of state and petitions or resolutions for boundary adjustment proceedings filed with the commission, covering all or any part of the same territory, the petition or resolution first filed shall be processed before and take precedence over a petition or resolution subsequently filed.

### **Missouri (St. Louis County Method)**

72.403(1): ...For the purposes of this subsection, the term "pending" means any proposal submitted to the commission which has not yet been approved by the commission as a simplified annexation or approved for submission to the qualified voters of the voting jurisdictions. No simplified boundary change involving territory already described in an annexation resolution or incorporation petition filed with the commission shall occur unless the annexation or incorporation proposal has been disapproved by the commission or defeated by voters. If more than one proposed change is received from the same proposing agency, the review of each additional proposed change shall begin not later than thirty days after the date that review was commenced for the next preceding proposed change or thirty days after receipt of the proposed changes were received by the commission; except that, if more than one proposed change is received by the commission from the same proposing agency on the same date, the commission may establish the order of review.

72.407(3): Questions concerning the annexation of an area covered by sections 72.400 to 72.423 and the incorporation of the same area shall not be put to the voters at the same election. Any such election where the questions of annexation and incorporation have been put to the voters shall be void in the area covered by both propositions. This subsection shall not affect the results of that election in areas where both questions were not put to the voters at the same time. When

boundary change proposals for annexation and for incorporation cover the same area, the proposal for annexation shall be put to the voters first.

### **Oregon**

221.032: After a person files a petition for incorporation under ORS 221.031, a city or district may not commence annexation proceedings for any part of the area that is included in the boundaries of the area proposed to be incorporated until after a county court removes that part of the area from within the boundaries of the proposed city or the later of the following:

- (1) The county court rejects the petition; or
- (2) The voters do not approve the question of incorporation at an election called by the county court.

### **Washington State**

RCW 35.13.176: After a petition proposing an annexation by a city or town is filed with the city or town or the governing body of the city or town, or after a resolution proposing an annexation by a city or town has been adopted by the city or town governing body, no territory included in the proposed annexation may be annexed by another city or town or incorporated into a city or town unless: (1) The boundary review board modifies the boundaries of the proposed annexation and removes the territory; (2) the boundary review board or review board created under RCW 35.13.171 rejects the proposed annexation; or (3) the city or town governing body rejects the proposed annexation or voters defeat the ballot proposition authorizing the annexation.

### **Wisconsin**

66.0203(6): Any municipality whose boundaries are contiguous to the territory may also file with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory designated in the incorporation petition. The resolution shall be filed at or prior to the hearing on the incorporation petition, or any adjournment granted for this purpose by the court.

(7)(c)1 The court shall determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated under s. 66.0217, 66.0219, or 66.0223. A court shall consider an annexation proceeding under s. 66.0223 to have been initiated upon the posting of a meeting notice by a city or village that states that the city or village is considering enacting an ordinance under s. 66.0223.

2. If the court determines that an annexation proceeding...was initiated before the publication of the notice (for incorporation) ..., the court shall refer the petition to the board when the annexation proceeding is final. If the annexation is determined to be valid, the court shall exclude the annexed territory from the territory proposed to be incorporated when it refers the petition to the (Incorporation Review) Board.

3. If the court determines that an annexation proceeding...was initiated after, and within 30 days after, the publication of the notice ..., the annexation may not proceed until the validity of the incorporation has been determined. If the incorporation is determined to be valid and complete, the annexation is void. If the incorporation is determined to be invalid, the annexation may proceed.

4. If the court determines that an annexation proceeding ... was initiated on the same date as the publication of the notice ..., the court shall determine which procedure was begun first on that date and that action may proceed and the other action may not proceed unless the first action fails.

5. If the court determines that an annexation proceeding ... was initiated more than 30 days after the publication of the notice ..., the annexation is void.