

CHAPTER 414

INCORPORATION, DETACHMENT, ANNEXATION

Sec.		Sec.	
414.01	Creation of a commission	414.05	Incorporating or annexing townships according to population
414.02	Incorporation of a village; consolidation of municipality and town	414.06	Detachment of property from a municipality
414.03	Annexation of unincorporated property to a municipality	414.065	State lands, proceedings
414.04	Annexation of incorporated property to a municipality	414.07	Appeals
		414.08	Appeal to supreme court

414.01 CREATION OF A COMMISSION. Subdivision 1. A commission is hereby created to hear petitions for the incorporation of property into villages; the detachment of property from municipalities; and the annexation of property to municipalities. The term "municipalities" as used herein includes villages and cities of all classes.

Subd. 2. The commission shall be composed of three members appointed by the governor, with the advice and consent of the senate, one of whom shall be learned in the law. One of the members shall be a resident of a city of the first class, one shall be a resident of the metropolitan area as defined in Minnesota Statutes 1961, Section 473.02, Subdivision 5 excluding therefrom any resident of any city of the first class and one shall be a resident from the area outside of such metropolitan area as heretofore defined. The commission shall select from its members a chairman who shall have the powers and duties prescribed by the general law applicable to the heads of departments and agencies of the state. In proceedings before the commission for the incorporation of a village, and in proceedings before the commission for the annexation of unincorporated land to a municipality, two county commissioners of the board of the county in which all or a majority of the land to be annexed or incorporated is located shall serve on the commission during such time as the commission shall have under consideration said matter. The secretary of the commission shall upon receipt of a petition for such incorporation or annexation notify the county auditor of the county in which the majority of the property involved is situated of the need for the appointment of the two county commissioners to the commission. At the next succeeding meeting of the county board the commissioners shall designate the two appointed and shall thereupon immediately notify the Minnesota municipal commission secretary of their action.

Subd. 3. All those appointed shall have been residents of the state for at least five years prior to the appointment. The terms of office of all appointed members of the commission in office on May 28, 1965 expire on June 30, 1965. Before June 30, 1965, the governor shall appoint their successors to take office on July 1, 1965, and to serve the following terms and until their successors are appointed and qualify: One member for a term of two years; one member for a term of four years; and one member for a term of six years. Thereafter each appointed member shall serve for six years and until his successor is appointed and has qualified, or until he is removed by the governor for cause after notice and hearing. In case any of the positions shall become vacant, the governor shall appoint a member for the unexpired term who shall thereupon immediately take office and carry on all the duties of the office.

Subd. 4. The commission shall meet once each month at a regular time to be established by the chairman.

Subd. 5. It is authorized to transact business and conduct hearings by a majority of its members. The chairman, in his discretion, may order the consolidation of separate hearings in the interest of economy and expedience. In those proceedings in which the commission is composed of five members, no order of the commission shall be final unless approved by three of the five members, and in all other proceedings unless approved by two of the three members.

Subd. 6. Each member of the commission shall receive \$35 per day only when in attendance at commission meetings or hearings, the chairmen of boards of county commissioners shall be paid \$25 per day for each hearing attended, and

county auditors shall be deemed to be performing duties for the county without additional compensation when serving as ex officio members of the commission. Each member of the commission shall be reimbursed for actual expenses incurred in accordance with regulations relative to travel of state officers and employees.

Subd. 7. The commission shall appoint a secretary not a member of the commission who shall receive a salary in an amount fixed by the commission but not to exceed \$10,000 per year payable semimonthly and shall devote full time to the duties of his office. All correspondence and petitions shall be addressed to the secretary who shall be charged with conducting the administrative affairs of the commission, notifying the members of hearings, and making arrangements for the hearings as to time and place, giving proper notice in the areas affected as hereinafter provided, keeping records and minutes, and providing secretarial service.

Subd. 8. The commission shall have authority to contract with regional, state, county, or local planning commissions or to hire expert consultants to provide specialized information and assistance, and any member of the commission conducting or participating in the conduct of any hearings, shall have the power to administer oaths and affirmations, to issue subpoenas, and to compel the attendance and testimony of witnesses, and the production of papers, books, and documents.

Subd. 9. Subpoenas shall be issued to any of the parties upon request upon a showing of general relevance and reasonable scope of the evidence sought.

Subd. 10. In order to carry out the duties and powers imposed upon the commission, it shall have the power to make such rules and regulations, as are reasonably necessary, in accordance with the procedure prescribed in the general laws relating to departments and agencies of the state.

Subd. 11. The commission may prescribe a schedule of filing fees for any petitions, resolutions or ordinances filed pursuant to this chapter by an appropriate rule promulgated in accordance with the procedure prescribed in the general laws relating to departments and agencies of the state for the issuance of administrative rules and regulations.

Subd. 12. The commission in proceedings pursuant to Minnesota Statutes 1961, Section 414.03, Subdivision 2, as amended by Laws 1963, Chapter 807, Section 8, and Section 414.06, as amended by Laws 1963, Chapter 807, Section 11, may designate by resolution its secretary or any of its members to receive and report evidence. Anyone so designated shall have power to administer oaths to witnesses, examine witnesses, and receive evidence. In any proceeding in which the evidence is received by one commissioner or by the secretary so designated, such commissioner or secretary shall make a full report to the commission. Thereupon, the commission shall proceed to make its decision based on all the evidence presented to the commissioner or secretary so designated and upon the report submitted. The commission's order shall be stayed for a period of 30 days, during which time any party of record may demand an oral review thereof by the full commission.

Subd. 13. All orders of the commission as called for hereunder, whether in connection with annexation, merger, incorporation or detachment shall be issued within one year from the date of the first hearing thereon, provided that the time may be extended for a fixed additional period upon consent of all parties of record. Failure to so order shall be deemed to be a rejection of the same. An appeal may be had from such failure to so order in the same manner as an appeal from an order as provided in Minnesota Statutes 1961, Section 414.07.

[1959 c 686 s 1; 1961 c 645 s 1; 1963 c 807 s 1-5; 1965 c 45 s 58; 1965 c 899 s 1-5; 1965 c 901 s 22]

414.02 INCORPORATION OF A VILLAGE; CONSOLIDATION OF MUNICIPALITY AND TOWN. Subdivision 1. **Initiating the petition.** This section provides the exclusive method of incorporating a village in any county containing a city of the first or second class, in any county within any metropolitan areas as defined in Minnesota Statutes, Section 473.02, Subdivision 5, or in any other area of Minnesota if a petition is filed to incorporate a new municipality within four miles of the boundary of an existing municipality. In any other area in Minnesota the petition to incorporate shall be filed with the board of county commissioners which shall apply the standards and procedures of this

section in determining whether or not to order an incorporation election as herein provided. Three or more freeholders residing within an area containing a resident population of not less than 500 persons, and which is not included within the limits of any incorporated municipality and which area includes land that has been platted into lots and blocks in the manner provided by law, may initiate proceedings for incorporation as a village. They shall take a census of the resident population in the area or may use a federal census made for the area within one year preceding the date of the petition or may use the latest metropolitan planning commission estimate of the population within the area. If the population of the proposed area is found to be 500 or more, a petition may be prepared and submitted to the secretary of the commission requesting the commission to hold a hearing on the proposed incorporation. The petition shall be attached to the census list or the metropolitan planning commission estimate or the federal census figures and shall state the quantity of land embraced in it, platted and unplatted, the assessed valuation of the property, both platted and unplatted, the estimated number of actual residents, the proposed name of the village, a brief description of the existing facilities as to water, sewage disposal, and fire and police protection, and shall include a map setting forth the boundaries of the territory. It shall be signed by at least 100 freeholders who are residents of the area to be incorporated, and if a census was taken, it shall be verified by the oaths of the census takers declaring that the census was accurately taken, specifying the dates when it was begun and completed, and that the statements in the petition are true.

Subd. 2. Commission's hearing and notice. Upon receipt of a petition, made pursuant to subdivision 1 of this section, the secretary of the commission shall designate a time and place for a hearing on the petition, such time to be not less than 30 nor more than 120 days from the date the petition was received. The place of the hearing shall be within the county in which the greater area of the property to be incorporated is located and is to be established for the convenience of the parties concerned. The secretary shall cause a copy of the petition together with a notice of the hearing to be sent to each member of the commission, to the chairman of the county board and the town board in which all or a part of the property to be incorporated is located, and any duly constituted municipal or regional planning commission exercising authority over all or part of the area. They may submit briefs, prior to the hearing, for or against the proposed incorporation, stating clearly and succinctly the reasons therefor. Notice shall be posted not less than 20 days before the hearing in three public places in the area described in the petition, and the secretary shall cause notice of the hearing to be published two successive weeks in a newspaper qualified as a medium of official and legal publication of general circulation in the area to be incorporated. The cost of publishing and posting is to be borne by the petitioners. The hearing may be adjourned from time to time.

Subd. 3. Commission's order. Pursuant to a hearing on a petition for the incorporation of a village under subdivision 1, the commission shall approve the petition for incorporation if it finds that the property to be incorporated is now, or is about to become, urban or suburban in character. The commission may, in any case, approve the petition if it finds that the existing township form of government is not adequate to protect the public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter. As a guide in arriving at a determination, the commission shall make findings as to the following factors: (1) The population of the area within the boundaries of the proposed incorporation. (2) The area of the proposed incorporation. (3) The area of platted land relative to unplatted land. (4) The character of the buildings on the platted and unplatted lands. (5) Past expansion in terms of population and construction. (6) Prospective future expansion. (7) The assessed value of platted land relative to the assessed value of the unplatted areas. (8) The present and expected necessity and feasibility of providing governmental services such as sewage disposal, water system, zoning, street planning, police, and fire protection. (9) The adequacy of the township form of government to cope with problems of urban or suburban growth in the area proposed for incorporation. The commission shall have authority to alter the boundaries of the proposed incorporation by increasing or de-

creasing 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. In the event the boundaries are to be increased, notice shall be given by three weeks' published notice in a newspaper qualified as a medium of official and legal publication of general circulation in the area affected. Notice thereof shall be mailed to all property owners on record in the office of the county treasurer in the area to be added, and the hearing shall reconvene not less than 20 days after such notice, unless within the 20 days those entitled to notice give their written consent to such action. Notwithstanding any other provision of law to the contrary relating to the number of wards which may be established, the commission may provide for election of trustees by wards, not less than three nor more than seven in number, whose limits are prescribed in the commission order upon a finding that area representation is required to accord proper representation in the proposed incorporated area because of uneven population density in different parts thereof or the existence of agricultural lands therein which are in the path of suburban development; but after four years from the effective date of an incorporation the council of the village may by resolution adopted by a $\frac{2}{3}$ ths vote abolish the ward system and provide for the election of all trustees at large as in other villages. The petition shall be denied if it appears that annexation to an adjoining municipality would better serve the interests of the area. If the proposed incorporation includes a part of an organized township, the commission shall apportion such property and obligations in such manner as shall be just and equitable having in view the value of the township property, if any, located in the area to be incorporated, the assessed value of all the taxable property in the township, both within and without the area to be incorporated, the indebtedness, the taxes due and delinquent and other revenue accrued but not paid to the township. The commission order shall apportion taxes due between the township and annexing municipality on an equitable basis giving due regard to the liability of the annexing municipality to furnish services, or extend utilities to the annexed area. The order shall be issued by the commission within a reasonable time after the termination of the hearing.

An order approving a petition made pursuant to subdivision 1 shall fix a day not less than 20 days nor more than 40 days after the entry of such order when an election shall be held at a place designated by the commission within the area to be incorporated. The secretary shall cause a copy of the order affirming the petition, as submitted or as amended by the commission, including notice of the election, to be posted not less than 20 days before the election in three public places in the area described in the petition, and shall cause notice of the election to be published two successive weeks in a newspaper qualified as a medium of official and legal publication, of general circulation in the area to be incorporated. The commission shall appoint the necessary election judges from voters resident in the area and shall supervise them in their duties. The commission shall designate the polling place or places, using so far as possible the usual polling place or places. The polls shall be open at least 13 hours and until at least 8 p.m. The judges shall conduct the election so far as practicable in accordance with the laws regulating the election of town officers. Only voters residing within the territory described in the commission's order shall be entitled to vote. The ballot shall bear the words "For Incorporation" and "Against Incorporation" with a square before each of the phrases in one of which the voter shall make a cross to express his choice. The ballots, election supplies, posting, publishing, and the judges shall be provided and paid for by the petitioners. The order shall also provide for the submission of "Optional Plan A" at the same time as the incorporation election. The ballot shall bear the words, "If the incorporation is successful, should Optional Plan A (modifying the standard plan by providing for the appointment by the Council of the Clerk and Treasurer) be adopted as the form of government for the new village? Yes ☐ No ☐.

Subd. 3a. Incorporation of entire town. In the event a petition is filed under subdivision 1 of this section and such petition designates the area to be incorporated as an entire township, less any areas previously incorporated therein, and further there is a population of 2,000 or over in such area proposed to be incorporated, the commission's order shall be limited to the area described in the petition unless the petitioner shall agree in writing to an extension of the area described; provided, however, the commission shall have the right to enlarge the area, not to exceed five percent of the area described in the petition in addition to that area

MINNESOTA STATUTES 1965

4089

INCORPORATION, DETACHMENT, ANNEXATION 414.02

consented to by the petitioner without such written consent in the event the commission determines and includes in the order a finding that such additional land is necessary for the best interest of the proposed village.

Subd. 4. Filing of incorporation document. Upon the completion of the counting of the ballots, the judges of the election shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition, and they shall then file the certificate with the secretary of the commission. If the certificate shows that a majority of the votes cast were "For Incorporation," the commission shall execute an incorporation order. The secretary shall attach the certificate to the original petition, the original order affirming the petition as submitted or as amended in the order, and the original proofs of the posting of the election notice and incorporation order. The secretary shall transmit to the secretary of state and to the county auditor or auditors of the county or counties in which the property is located a certified copy of these documents to be then filed as a public record. The incorporation shall be effective as of the date of such filing or on later date as is fixed in the incorporation order. If the vote is adverse, the expense of the attempted incorporation shall be borne by the petitioners. If the vote is favorable, all proper expenses incurred in the incorporation shall be a charge upon the village.

Subd. 5. Consolidation proceedings; municipality and town. (1) On the receipt of a resolution passed by the governing body of a municipality and a petition of 100 freeholders residents of an abutting town indicating mutual desire to form a single new municipality the commission shall order hearings and make findings according to section 414.02. An order for incorporation shall provide for the election of new trustees, the plan of government, establishment of wards, and the giving of such other considerations as may be authorized by law and shall not be effective for at least 60 days after the date thereof. The commission shall call an election upon request, for the new incorporation, if a petition containing the signatures of at least 20 per cent or 500 of the resident freeholders, whichever figure is the smaller, of either the municipality or the abutting township is filed with the secretary of the commission within 60 days after issuance of the commission's order. The election shall be held in the municipality or the abutting township in which the petitioners reside within a reasonable time, the date and place to be designated by an order of the commission.

(2) If the question of consolidation shall fail, the costs of the election shall be paid by the town and village as determined by the Minnesota municipal commission. Election costs shall be paid by the new village if successful.

(3) The results of the election shall be forthwith filed by the judges of the election with the secretary of state, the Minnesota municipal commission, and the county auditor. When such filings have been completed, and if a majority of the voters voting on the question have voted in favor of consolidation, the new village shall come into existence. The validity of the creation of the new village shall not be questioned directly or indirectly in any proceeding or action otherwise than by a contest instituted within ten days after completion of the filings required by this section, and in the manner prescribed by Minnesota Statutes, Chapter 414 and acts amendatory thereof.

(4) Affidavits of candidacy for the election of new village officers shall be filed with clerks of affected towns and villages but shall otherwise be as provided by law for village elections. Officers shall be elected at said election in accordance with Minnesota Statutes, Section 412.021.

(5) Until the election and qualification of such officers, the town board and other officers of the town shall continue to exercise their powers and duties under the town laws in that portion of the village that was formerly the town, and the council and other officers of the former village shall continue to exercise their powers and duties in that portion of the new village included in the former village. Thereafter the town board and the council of the former village shall have no jurisdiction within the new village, and the new village council and other new village officers shall act in respect to any matters previously undertaken by the town board of supervisors or village council within the limits of the new village, including the making of any improvement and the levying of any special assessments therefor, in the same manner and to the same effect as if such improvement

had been undertaken by the new village. Every town ordinance and resolution imposing regulations upon persons or private property within the new village shall continue in effect and become effective throughout the new village until repealed or superseded by new village ordinance. The new village council may continue or discontinue any commissions that may have previously existed in the town or former village.

(6) All moneys, claims and properties, including real estate belonging to, owned, held or possessed by the town or former village, and any proceeds of taxes levied by the town and former village, collected or uncollected, shall become and be the properties of the new village with full power and authority to use and dispose of the same for public purposes as the council of the new village may deem best, subject to the rights of creditors.

(7) Any bonded indebtedness of the town and former village shall not be assumed by the new village.

(8) The new village shall be liable for payment of all expenses of incorporation, consolidation and annexation proceedings incurred during the last three previous years by the town and former village.

(9) Until the federal census following the forming of the new village the population of the new village for all purposes shall be the estimated population furnished by the metropolitan planning commission the federal census or other census taken for the purpose of the consolidation proceedings hereunder.

[1959 c 686 s 2; 1961 c 645 s 2; 1963 c 807 s 6, 7; 1965 c 899 s 6-11]

414.03 ANNEXATION OF UNINCORPORATED PROPERTY TO A MUNICIPALITY. Subdivision 1. **Initiating the petition.** A petition for the annexation of adjoining unincorporated property may be initiated by resolution of the annexing municipality, the township containing the area proposed for annexation, or by twenty percent of the freeholders or 100 freeholders, whichever is less, residing in the area to be annexed. If initiated by resolution, the village or city council or town board shall cause a census to be taken of the area showing the buildings in the area used for residences and the number of people living in each, or, if initiated by twenty percent of the freeholders or 100 freeholders, whichever is less, residing in the area, they shall take a census containing the same information, and shall include with the petition a copy of a resolution of the governing body of the annexing municipality approving the proposed annexation. The census list shall be attached to the petition which requests the commission to hold a hearing on the proposed annexation. The petition shall set forth the boundaries of the territory, the quantity of land embraced in it, the number of actual residents, the number and character of the existing buildings in the area and the existing facilities such as water system, zoning, street planning, sewage disposal, fire and police protection. Under both methods of initiating the petition it shall be verified by the oaths of the census takers declaring that the census was accurately taken, specifying the dates when it was begun and completed, and that the statements in the petition are true.

Subd. 2. **Annexation by ordinance.** Except as hereinafter provided, territory abutting on any municipality and not included in any other municipality may be annexed to the municipality without an order of the commission in the manner provided in this subdivision:

If the land is owned by the municipality, the governing body may by ordinance declare the land annexed to the municipality, and any such land is deemed to be urban in character. If the land is 75 percent or more bordered on three sides by a municipality such land may be annexed by serving notice of intent upon the township and giving them 60 days to file objections if any. If no objections are forthcoming within the said 60 day period such land may be annexed by ordinance. If there are objections a municipality may request the municipal commission to conduct hearings according to section 414.04, and the commission may after proper hearing order or deny the annexation.

If the land is completely surrounded by land within the municipal limits, the governing body may by ordinance declare the land annexed to the municipality, and any such land is deemed to be urban in character.

If the land is platted or, if unplatted, does not exceed 200 acres, the owner or a majority of the owners in number may petition the governing body of the municipality to have such land included within the municipality and shall file copies

of the petition with the commission, the town board and county board of the town and county in which all or any part of the land to be annexed is located, and the governing body of any other municipality whose boundaries abut upon the boundaries of the land to be annexed. Within 30 days thereafter, the town board, or the county board, or the governing body of the other municipality may submit written objections to the annexation to the commission and the municipality. Upon receipt of such objections, the municipality shall take no further action on the petition, and the commission shall proceed to hold a hearing and issue its order in accordance with the provisions of subdivisions 3 and 4 of this section. If written objections are not submitted within the time specified hereunder and if the governing body determines that the annexation will be to the best interest of the municipality and of the territory affected, it may by ordinance, except as hereinafter provided, declare such land annexed to the municipality, but if the petition is not signed by all the owners of the land proposed to be annexed, the ordinance shall not be passed until the governing body has held a hearing on the proposed annexation after at least 30 days posted notice. Whenever a petition for annexation is presented to a municipality pursuant to this paragraph and all or any part of the land described therein is included in a petition for incorporation or annexation which is pending before the commission, no action thereon shall be taken by the municipality, unless otherwise provided by an order of the commission, until final disposition has been made of the petition pending before the commission.

Any annexation provided for in this subdivision shall be deemed final upon filing a copy of the ordinance with the commission, the county auditor, and the secretary of state.

Any territory which has been annexed to a municipality prior to the enactment of Laws 1961, Chapter 645, and pursuant to Laws 1959, Chapter 686, Section 3, Subdivision 7, shall be deemed to be suitably conditioned for municipal government and said annexation shall be deemed final upon filing a copy of the annexation ordinance with the commission, the county auditor, and the secretary of state.

Subd. 3. Hearing and notice. Where the property to be annexed is owned by or completely within the boundaries of the annexing municipality no hearing is necessary and the annexation shall be deemed complete upon issuance of an order approving the petition and resolution by the annexing municipality approving the annexation.

If the petition has been initiated by all or a majority of the land owners, in area and number, no hearing or election as hereinafter provided for other annexations is necessary and the commission may proceed to a decision, unless the commission exercises its authority pursuant to this section by increasing the area to be annexed by including additional owners which inclusion eliminates the required majority, in which event the newly included owners shall be notified within five days and a hearing shall be conducted as hereinafter provided unless within 10 days after transmittal of such notice written assent is received from the new owners in sufficient number to provide the required majority.

In all other proceedings, upon receipt of a petition for annexation, the secretary of the commission shall designate a time and place for a hearing on the petition, such time to be not less than 30 nor more than 45 days from the date the petition was received or, when not initiated by the annexing municipality, from the date of receipt of approval of the governing board of the annexing municipality. The place of the hearing shall be within the annexing village or city or the area to be annexed. The secretary shall cause a copy of the petition together with a notice of the hearing to be sent to each member of the commission, and to the chairman of the county board and the town board in which all or a part of the property to be annexed is located, and any duly constituted municipal or regional planning commission exercising authority over all or a part of the area. They may submit briefs prior to the hearing, for or against the proposed annexation, stating clearly and succinctly the reasons therefor. Notice shall be posted not less than 20 days before the hearing in three public places in the area described in the petition and in three public places in the annexing village or city, and the commission secretary shall also cause notice of the hearing to be published two successive weeks in a newspaper qualified as a medium of official and legal publication of general circulation in the area to be annexed.

Subd. 4. Commission's order. Pursuant to a hearing on a petition for the annexation of unincorporated property to a village or city, or if no hearing was re-

quired under the foregoing provisions, the commission shall approve if it finds that the property to be annexed is now, or is about to become, urban or suburban in character. The commission may, in any case, approve the annexation if it finds that municipal government of the area is required to protect the public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter and if it finds that the annexation would be to the best interest of the village or city and of the territory affected. As a guide in arriving at a determination, the commission shall make findings as to the following factors: (1) The relative population of the annexing area to the annexed territory. (2) The relative area of the two territories. (3) The relative assessed valuation. (4) The past and future probable expansion of the annexing area with respect to population increase and construction. (5) The availability of space to accommodate that expansion. (6) Whether the taxes can be reasonably expected to increase in the annexed territory, and whether the expected increase will be proportional to the expected benefit inuring to the annexed territory as a result of the annexation. (7) The presence of an existing or reasonably anticipated need for governmental services in the annexed territory such as water system, sewage disposal, zoning, street planning, police and fire protection. (8) The feasibility and practicability of the annexing territory to provide these governmental services presently or when they become necessary. (9) The existence of all or a part of an organized township within the area to be annexed and its ability and necessity of continuing after the annexation. (10) The adequacy of the township form of government to cope with problems of urban or suburban growth in the area proposed for annexation. If a complete organized township is included within the area to be annexed, its residents shall remain liable for any existing indebtedness of the township existing prior to the annexation. In the event only a portion of an organized township is ultimately included in the area to be annexed, the commission shall apportion such property, and obligations in such manner as shall be just and equitable having in view the value of the township property, if any, located in the area to be annexed, the assessed value of all the taxable property in the township, both within and without the area to be annexed, the indebtedness, and the taxes due and delinquent. The commission shall have authority to alter the boundaries of the area to be annexed by increasing or decreasing the area so as to include only that property which is now, or is about to become, suburban in character or to add property of such character contiguous to the area proposed for annexation or to preserve or improve the symmetry of the area. The petition shall be denied if it appears that the primary motive for the annexation is to increase revenues for the annexing municipality and such increase bears no reasonable relation to the value of benefits conferred upon the annexed area. The order of the commission shall be issued within a reasonable time after the termination of the hearing. If the order denies annexation, it shall be final. If the order approves annexation, and fixes a date for an election as provided hereafter in subdivision 5, it shall be an intermediate, nonappealable order.

Subd. 5. Annexation election. Where the petition for annexation has not been initiated by a majority of the land-owners in number within the area to be annexed, the order of the commission affirming the petition for annexation shall fix a day, not less than twenty days nor more than ninety days, after the entry of such an order, when an election shall be held at a place designated by the commission within the area to be annexed. The secretary shall cause a copy of the order affirming the petition, including the notice of the election, to be posted not less than 20 days before the election in three public places in the area to be annexed, and shall cause notice of the election to be published two successive weeks in a newspaper qualified as medium of official and legal publication, of general circulation, in the area to be annexed. The commission shall appoint the necessary election judges from voters resident in the area and shall supervise them in their duties. The commission shall designate the polling place or places, using so far as possible the usual polling place or places. The polls shall be open at least 13 hours and until at least 8 p.m. The judges shall conduct the election so far as practicable in accordance with the laws regulating the election of town officers. Only voters residing within the territory described in the commission's order shall be entitled to vote. The ballot shall bear the words "For Annexation" and "Against Annexation" with a square before each of the phrases in one of which the voter shall make a

cross to express his choice. The ballots and election supplies shall be provided and the election judges shall be paid by the petitioners or annexing municipality. Immediately upon completion of the counting of the ballots, the judges of the election shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition, and they shall then file the certificate with the secretary of the commission. If the certificate shows the majority of the votes cast were "For Annexation" the commission shall execute an annexation order. In event an entire town is annexed or a portion of a town which contains a majority of the population of a town is annexed, the commission may provide for election of trustees by wards as provided in Minnesota Statutes, Section 414.02, Subdivision 3, and after four years from the effective date of the annexation the governing body of the municipality may by resolution adopted by an affirmative vote of the total membership of the governing body and provide for the election of all trustees at large. If the elected governing officials from the annexing municipality and the area to be annexed agree in writing, by two thirds vote in each governing body, on a different method of electing councilmen to the merged municipality, said method of representation shall be ordered by the commission, and shall be the method of electing councilmen to the merged municipality for ten years, unless earlier terminated by a four fifths vote of the merged governing body, said vote to be made only when more than two years have elapsed after the merger. The secretary shall attach the certificate to the original petition, the original order affirming the petition as submitted or as amended in the order, and the original proofs of the posting of the election notice, and the annexation order.

Subd. 6. Filing of annexation order. Upon the execution of the annexation order, pursuant to subdivision 5 or subdivision 6 of this section, a certified copy shall be sent to the council of the annexing village or city, the town board of the township in which the annexation area is located, and to the individual petitioners if initiated in that manner. A certified copy of the annexation order shall be sent to the secretary of state and the county auditor of the county or counties in which the property annexed is located. The annexation shall be effective as of the date of such filing or on such later date as is fixed in the annexation order.

[1959 c 686 s 3; 1961 c 645 s 3; 1963 c 621 s 1, 2; 1963 c 807 s 8, 9; 1965 c 899 s 12, 13, 18]

414.04 ANNEXATION OF INCORPORATED PROPERTY TO A MUNICIPALITY. Subdivision 1. **Initiating the petition.** This section provides the exclusive method of annexing one municipality to another municipality in any county containing a city of the first or second class and in any county within any metropolitan area as defined in Minnesota Statutes, Section 473.02, Subdivision 5. It shall not apply to such annexations in any other area in Minnesota. Incorporated municipalities may be annexed to contiguous municipalities which have a greater population in accordance with the following procedure: A petition for hearing on the subject of annexation of a municipality to a contiguous municipality may be initiated by resolution, either by the proposed annexed or annexing municipality, or by notice thereof to the affected municipalities by the commission of its own motion, or by resident legal voters of the proposed annexed municipality equivalent in number to 10 percent or more of the legal voters of the municipality, according to the number of votes cast for mayor at the last municipal election, or, where no mayor is elected, five percent or more of the legal voters of the municipality who voted for governor at the last general election. The term "contiguous" for the purposes of this section shall include municipalities sharing a common boundary. The term shall also include a situation where three or more municipalities are the subject of a single petition and are all connected by common boundaries, so that each municipality shares a common boundary with at least one of the included municipalities or the annexing municipality and the annexing municipality shares a common boundary with at least one of the municipalities to be annexed, in which case the municipalities to be annexed shall be deemed contiguous to the annexing municipality. The petition shall include maps indicating the boundaries of the proposed annexed municipality and of the annexing municipality and shall set forth the quantity of land embraced in each municipality, the number of actual residents based on the last federal decennial census and the estimate of population based on the computations contained in the county auditor's office in the county wherein the municipalities are located, the existing governmental facilities such as water

system, sewage, disposal, zoning, street planning, fire and police protection, and the existing debts and assessed valuation of each municipality.

Where the petition for annexation has not been initiated by the annexing municipality, a copy shall be sent to the clerk of the annexing municipality for approval or rejection by resolution of the governing body within 30 days.

Subd. 2. Hearing and notice. Upon receipt of a petition for the annexation of an incorporated municipality or upon motion of the commission made pursuant to subdivision 1 of this section, the secretary of the commission shall designate a time and place for a hearing on the petition, such time to be not less than 30 nor more than 120 days from the date the petition was received. The place of the hearing shall be within the county in which the greater area of the property to be incorporated is located and is to be established for the convenience of the parties concerned. The secretary shall cause a copy of the petition together with a notice of the hearing to be sent to each member of the commission, and to the chairman of the county board in which all or a part of the municipality to be annexed is located, and any duly constituted municipal or regional planning commission exercising authority or advisory jurisdiction over all or a part of the area. Notice shall be posted not less than 20 days before the hearing in three public places in the area described in the petition, and the commission secretary shall also cause notice of the hearing to be published two successive weeks in a newspaper qualified as a medium of official and legal publication of general circulation in the area to be annexed.

Subd. 3. Commission's order. Pursuant to a hearing on a petition or motion of the commission for the annexation of a municipality to an adjoining municipality, the commission shall approve the petition if it finds that the annexed municipality is so conditioned and so located as properly to be made a part of the annexing municipality, and if it finds that the annexation will be for the best interests of the municipalities. As a guide in arriving at a determination, the commission shall make findings on the factors as enumerated in subdivision 1 of this section and in addition thereto: (1) Whether the results of the annexation will be to provide more economical and efficient governmental services such as water system, sewage disposal, road maintenance, public recreation and planning, fire, and police protection. (2) The existing indebtedness of both municipalities.

The commission shall not have authority to alter the boundaries of the municipality or municipalities to be annexed. The petition shall be denied if it appears that the primary motive for the annexation is to increase the revenues of the annexing municipality and such increase bears no reasonable relation to the value of benefits conferred upon the annexed municipality. The order of the commission shall be final and if the petition is denied, no petition for the annexation of the same municipality or municipalities may be submitted within two years after the date of the commission's order, which shall be issued by the commission within a reasonable time after the termination of the hearing.

Upon completion of the annexation proceeding, the newly formed municipality shall be liable as a whole for any indebtedness thereafter incurred. The order shall provide that each municipality shall remain separately liable for its debts existing and outstanding at the time of annexation.

Where the ward system of electing councilmen exists in an annexing municipality, the commission shall establish wards in the annexed municipality consistent with the existing wards or the prescribed method of establishing wards of the annexing municipality. Where the ward system does not exist in the annexing municipality, the commission may provide for the ward system in its order in which event it shall establish not less than three nor more than seven wards in the merged municipality from which one trustee shall be elected from each ward. When more than two years have elapsed after merger, the governing body may, by a four-fifths vote, abolish the ward system.

Where the petition for annexation has not been initiated by the annexing municipality, a copy shall be sent to the clerk of the annexing municipality for approval or rejection by resolution of the governing body within 30 days. Where the petition is initiated by the annexing municipality an order approving the petition shall submit the order to the governing body or bodies of the municipality or municipalities to be annexed for approval by resolution within 30 days. If rejected by such resolution or resolutions, the proceedings are then terminated as to the municipality or municipalities rejecting. If approved, and in all other cases, the

order shall then fix a day not less than 20 days nor more than 40 days, after the entry of such order, when an election shall be held at a place designated by the commission within each municipality to be annexed. The secretary shall cause a copy of the order approving the petition, including the notice of the election, to be posted not less than 20 days before the election in three public places in each municipality to be annexed, and shall cause notice of the hearing to be published two successive weeks in a newspaper qualified as a medium of official and legal publication, of general circulation in each municipality to be annexed. The commission shall also appoint three electors resident in the area to act as judges of election and shall fix a time, not less than six hours and until at least 7 o'clock p. m., when the polls shall be open at the election. The judges from each municipality shall conduct the election in accordance with the laws or charter formerly regulating the election of municipal officers in the annexed municipality. Only voters residing within the municipality or municipalities to be annexed shall be entitled to vote. The ballot shall bear the words "For Annexation" and "Against Annexation" with a square before each of the phrases in one of which the voters shall make a cross to express his choice. The ballots and election supplies shall be provided and the judges of election shall be paid by the petitioners or the annexing municipality where the proceedings are initiated by the commission.

Subd. 4. Filing of annexation order. Upon the completion of the counting of the ballots, the judges of the election shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition, and they shall then file the certificate with the secretary of the commission. If the certificate shows that a majority of all votes cast were "For Annexation" in the case of a single municipality proposed for annexation, or if the majority of the votes cast were for annexation when considering two or more municipalities proposed for annexation in the same petition, the commission shall execute an annexation order. The secretary shall attach the certificate to the original petition, the original order approving the petition as submitted or as amended in the order, and the original proofs of posting of the election notice and annexation order. The secretary shall forthwith make and transmit to the secretary of state and to the county auditor or auditors of the county or counties in which all affected municipalities are located, a certified copy of the documents to be then filed as a public record. The annexation shall be effective as of the date of such filing or on such later date as is fixed in the annexation order, and the annexing municipality shall assume and be charged with all the outstanding bonds and obligations of such annexed municipality or municipalities unless the commission has provided otherwise and in either event all moneys, claims, and properties, including real estate, and the proceeds of all taxes levied and collected and to be collected belonging to, owned, held, or possessed by such annexed municipality or municipalities shall become and be the properties of such annexing municipality with full power and authority to use and dispose of the same for public purposes as the council of such annexing municipality may deem best.

The new municipality shall assume the name of the annexing municipality unless previous to the election another name is chosen by joint resolution of a majority of the municipalities involved in the petition.

The number of license privileges existing in the municipalities prior to annexation and pursuant to state law shall not be diminished as a result of the single municipality created by the annexation.

All proper expenses incurred in the annexation proceedings shall be a charge upon the municipality initiating the proceeding. If the proceedings result in annexation, remaining unpaid charges shall be paid by the newly merged municipality. Where the annexation proceedings are initiated by the commission of its own motion, expenses shall be a charge upon the annexing municipality.

If the vote is adverse, no subsequent petition to annex the same municipality shall be entertained by the commission within two years after the election, and the expenses of the attempted annexation shall be borne by the petitioners, except where the petitioners are individuals, in which case the expense shall be borne by the municipality in which they reside.

Subd. 5. Consolidation. In any area not included in subdivision 1 of this section, whenever the boundary line of any municipality is coincident with the boundary line of any other municipality for any part of its length or where any two

or more municipalities are separated in any part of their boundaries by any meandered body of water, such municipalities may be consolidated as one municipality under this subdivision. A resolution proposing consolidation shall be submitted to the councils of the two municipalities. If it is approved in identical form by the two councils, it shall be referred to the voters of each municipality at any general or special election for approval or rejection. If a majority of the voters in each municipality voting on the question vote in favor of the proposal, a certificate of the results of the election and a certified copy of the resolution shall be filed by the clerk of each municipality in the office of the county auditor of the county or counties in which the municipalities are located, and a similar certification shall be filed in the office of the secretary of state. The consolidation shall thereupon take effect in accordance with the terms of the resolution. Every resolution proposing consolidation shall contain: (1) the proposed name of the consolidated municipality; (2) the date when such consolidation shall be effective; (3) if the municipalities are villages, provisions for operation of the consolidated village under either the standard plan or any optional plan authorized by Minnesota Statutes, Chapter 412 for a village of similar size; (4) provisions on what happens to incumbent officers; (5) such other provisions relating to consolidation, not inconsistent with this section, as the councils deem necessary to effect consolidation. Where two villages are consolidated the resolution may also constitute each constituent village as a separate ward and provide for the election of at least one trustee from each ward; but any time after four years from the effective date of consolidation, the council of the village may, by resolution adopted by a four-fifths vote voting on the question of approval at a general or special election, abolish the ward system and provide for the election of all trustees at large as in other villages.

[1959 c 686 s 4; 1961 c 645 s 4; 1963 c 807 s 10]

414.05 INCORPORATING OR ANNEXING TOWNSHIPS ACCORDING TO POPULATION. Subdivision 1. Townships containing population in excess of 2,000. Within one month after the effective date of each federal or state census, the commission shall cause to be determined the townships which have a population in excess of 2,000 exclusive of any municipality or part of a municipality within the township.

Subd. 2. **Incorporation or annexation of such townships.** The commission shall determine whether all or a part of the township area will best be served by incorporation, annexation, or to remain as a township. The land contained in such area shall be deemed to be urban or suburban in character for the purpose of incorporation or annexation.

Subd. 2a. **Hearing.** Before any order is issued under section 414.05 a hearing shall be held and the county members shall have voting powers, and the hearing shall be conducted according to the requirements of section 414.02 or section 414.03, whichever is applicable.

Subd. 3. **Incorporation order.** If the commission determines that incorporation as a village will best serve the area, it shall issue its order providing for an election incorporating the town or part thereof or including contiguous unincorporated area not within the township as described in the order, as a village, under the same name, or in the event of duplication, under a name selected by the commission. If only a part of the township is to be incorporated the order shall apportion such property and obligations in such manner as shall be just and equitable having in view the value of the township property, if any, located in the area to be incorporated, the assessed value of the taxable property in the township, both within and without the area to be incorporated, the indebtedness, the taxes due and delinquent, and other revenues accrued but not paid to the township. The commission shall provide an election to be governed by the terms of section 414.02, subdivisions 3 and 4, and, if the majority of the votes cast are for incorporation, they shall appoint three electors resident in the area to act as judges of election who shall be supervised in their duties by the commission and who shall be paid by the town board and the first election of village officers shall be controlled by the law applicable to the first election of officers in villages newly incorporated pursuant to petition.

Subd. 4. **Annexation order.** If it is determined that annexation to an adjoining municipality will best serve the interest of the area, it shall initiate proceed-

MINNESOTA STATUTES 1965

4097

INCORPORATION, DETACHMENT, ANNEXATION 414.065

ings for annexation which shall be controlled as near as is practical by the law relative to the annexation of unincorporated areas.

[1959 c 686 s 5; 1961 c 645 s 5; 1965 c 899 s 14]

414.06 DETACHMENT OF PROPERTY FROM A MUNICIPALITY. Subdivision 1. **Petition for detachment.** Property which is situated within the corporate limits of and adjacent to the municipal boundary, unplatted, and occupied and used exclusively for agricultural purposes may be detached from the municipality according to the following procedure: The petition may be initiated by resolution of the municipality to which the land is attached or by all of the land owners of land to be detached if the area is less than 40 acres and by 75 percent of the owners if over 40 acres. The petition shall set forth the boundaries and the area of the land to be detached, the number and character of the buildings, the resident population, and the municipal improvements, if any, in the area.

Subd. 2. **Concurrent detachment and annexation.** Property in one municipality and contiguous to another may be concurrently detached and annexed by an adjoining municipality where that intention is signified by concurrent resolutions of the governing bodies of the annexing municipality and the municipality to be detached. Upon filing of each resolution with the commission, the commission may enter its order accomplishing the proposed detachment and annexation and such order shall be final.

Subd. 3. **Hearing and notice.** If identical petitions are submitted by the municipality and the owners of the land to be detached, as provided in subdivision 1 of this section, or in situations covered by subdivision 2 of this section, no hearing is necessary. In any other case, upon receipt of a petition, the secretary of the commission shall designate a time and place for a hearing on the petition such time to be not less than 30 nor more than 120 days from the date the petition was received. The place of the hearing shall be within the municipality to which the land is attached as the secretary may direct. The secretary shall cause a copy of the petition and notice of hearing to be sent to each member of the commission and to be sent to the council of the municipality to which the property is attached, and shall cause notice of the hearing to be published two successive weeks in a newspaper qualified as a medium of official and legal publication, of general circulation within the municipality and notice thereof shall be mailed to all property owners on record in the office of the county treasurer in the area to be detached.

Subd. 4. **Commission's order.** Pursuant to a hearing under this section pursuant to subdivision 1 of this section, the commission shall grant the petition for detachment if it finds that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is unplatted and used and occupied exclusively for agricultural purposes, that the property is within the boundaries of the municipalities and is adjacent to a boundary, that the detachment would not unreasonably affect the symmetry of the settled municipality, and that the land is not needed for reasonably anticipated future development. The commission shall have authority to decrease the area of property to be detached and may include only a part of the proposed area in its order. If the tract adjoins more than one township, it shall become a part of each township, being divided by projecting through it the boundary line between the townships. The detached area may be relieved of the existing indebtedness of the municipality and be required to assume the indebtedness of the township of which it becomes a part, in such proportion as the commission shall deem just and equitable having in view the amount of taxes due and delinquent and the indebtedness of each township and the municipality affected, if any, and for what purpose the same was incurred, all in relation to the benefit inuring to the detached area as a result of the indebtedness and the last assessed value of the taxable property in each township and the municipality.

Subd. 5. **Filing of detachment order.** Upon completion of the order, the secretary of the commission shall transmit a copy thereof to the secretary of state, the county auditor or auditors of the county or counties, town board, school district, and municipality in which the land is situated. Thereupon the order is to be deemed final.

[1959 c 686 s 6; 1961 c 645 s 6; 1963 c 807 s 11; 1965 c 899 s 15]

414.065 STATE LANDS, PROCEEDINGS. In any case in which the state is the fee owner of land partly or wholly within any area proposed to be annexed,

incorporated, or detached, the executive council of the state of Minnesota may petition for, or consent to, any action proceeding under Minnesota Statutes, Chapter 414, if the council deems such action to be in the best interests of the state.

[1965 c 899 s 16]

414.07 APPEALS. Any person aggrieved by any incorporation, annexation, detachment, or annexation-detachment order of the commission may appeal to the district court upon the following grounds:

1. That the commission had no jurisdiction to act;
2. That the commission exceeded its jurisdiction;
3. That the order of the commission is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected;
4. That the order is based upon an erroneous theory of law.

The appeal shall be taken in the district court in the county in which the majority of the area is located. The appeal shall not stay the effect of the order.

If the court shall determine that the action of the commission involved is unlawful or unreasonable or is not warranted by the evidence in case an issue of fact is involved, the court may vacate or suspend the action of the commission involved, in whole or in part, as the case may require, and thereupon the matter shall be remanded to the commission for further action in conformity with the decision of the court.

To render a review effectual, the aggrieved person shall file with the clerk of the district court of the county wherein the majority of the area is located, within 30 days of such order, an application for review together with the grounds upon which the review is sought.

An appeal lies from the district court to the supreme court in accordance with the provisions of Minnesota Statutes, Chapter 605.

[1959 c 686 s 7; 1961 c 645 s 7]

414.08 APPEAL TO SUPREME COURT. An appeal may be taken under the provisions of Minnesota Statutes 1961, Section 605.09, as amended, to the supreme court by the municipal commission created by Minnesota Statutes 1961, Section 414.01, Subdivision 1, from a final order or judgment made or rendered by the district court upon an appeal under Minnesota Statutes 1961, Section 414.07, when the municipal commission determines that the final order or judgment adversely affects the public interest.

[1965 c 834 s 1]