

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

STATE BOUNDARY COMMISSION

GENERAL RULES

Filed with the Secretary of State on May 30, 2013

These rules take effect July 1, 2013

(By authority conferred on the director of the department of licensing and regulatory affairs section 4 of 1968 PA 191, MCL 123.1004 and Executive Reorganization Order Nos. 1973-2, 1980-1, 1996-2, 2003-1, 2008-4 and 2011-4, being MCL 299.11, 16.732, 445.2001, 445.2011, 445.2025 and 445.2030)

R 123.1, R 123.4, R 123.21, R 123.22, R 123.23, R 123.24, R 123.44, R 123.51, R 123.52, R 123.53, R 123.54, R 123.55, R 123.61, R 123.62, R 123.63, R 123.64 and R 123.65, of the Michigan Administrative Code are amended and R 123.20, R 123.30, R 123.31, R 123.32, R 123.33, R 123.34, R 123.35, R 123.36, R 123.37, R 123.38, R 123.40, and R 123.56 are added and R 123.6, R 123.25, R 123.26, R 123.27, R 123.41, R 123.42, R 123.45, R 123.46, R 123.47, R 123.66, R 123.67, R 123.68, R 123.69, R 123.71, R 123.72, R 123.73, R 123.74 and R 123.75 are rescinded as follows

PART 1. GENERAL PROVISIONS

R 123.1 Definitions; A to I.

Rule 1. (1) The terms defined in the act have the same meaning when used in these rules.

(2) As used in these rules:

(a) "Act" means 1968 PA 191, MCL 123.1001 to 123.1020 and known as the state boundary commission act.

(b) "Active docket" means an annexation petition or resolution, or incorporation or consolidation petition that is first in line at the time of its filing, or becomes first in line by the removal of a prior blocking petition or court action.

(c) "City incorporation" means the formation of a new city from township territory, 1 or more villages and contiguous township territory, or an incorporated village without change of boundaries.

(d) "Consolidation" means the formation of a new city from 1 of the following:

(i) Two or more cities.

(ii) One or more cities and 1 or more villages.

(iii) One or more cities and 1 or more townships.

(iv) One or more cities and 1 or more villages and 1 or more townships.

(v) One or more cities and 1 or more villages and 1 or more portions of townships.

(e) "Department" means the department of licensing and regulatory affairs.

March 5, 2013

(f) “Director” means the director of the department or an authorized representative of the director.

(g) “Docket” means a boundary adjustment petition or resolution filed with the commission pursuant to the act and these rules.

(h) “Home rule city act” means, 1909 PA 279, MCL 117.1 to 117.38.

(i) “Home rule village act” means 1909 PA 278, MCL 78.1 to 78.28 .

(j) “Inactive docket” means an annexation petition or resolution or incorporation or consolidation petition that must wait in line because of an earlier filed petition describing the same area in part or whole or a petition blocked by legal action.

#### R 123.3 Definitions; P.

Rule 3. (1) “Person” means an individual, partnership, corporation, association, municipality, or the state.

(2) “Petitioner” means a person who has signed, or circulated and verified, a petition for annexation, incorporation or consolidation or who has voted on and passed an annexation resolution as described in sections 7 and 12 of the act and subsections (2) and (7) of section 9 of the home rule city act and who has filed such petition or resolution with the commission.

#### R 123.4 Definitions; V, W.

Rule 4. (1) “Village incorporation” means the formation of a new village from township territory.

(2) “Writing” means communication via mail, personal delivery, or electronic communication.

#### R 123.5 Scope and construction of rules.

Rule 5. These rules govern practice and procedure in all matters before the commission and shall be liberally construed to assure a just, economical and expeditious determination of the issues presented in accordance with the purposes of the act.

#### R 123.6 Rescinded.

### Rule 6. COMMISSION SESSIONS

#### R 123.20 Adjudicative sessions; call; attendance; quorum; presiding officer.

Rule 20. (1) When necessary, the chairperson of the commission shall call an adjudicative session for the purpose of transacting any business described in R 123.21 under the conditions prescribed in R 123.22 and R 123.23. When possible, the sessions shall be attended by all state members serving and by the county members appointed to sit on the commission.

(2) A quorum of the commission shall consist of at least 3 members, at least 2 of whom shall be state members. Regardless of the number of commissioners present, at least 3 concurring votes are required to take any adjudicative action.

#### R 123.21 Business.

Rule 21. At an adjudicative session, the commission may take 1 or more of the following actions:

- (a) Decide on the legal sufficiency of a docket before its call for a public hearing.
- (b) Order the date, place, and time for a public hearing.
- (c) Take any appropriate action authorized by the act after the public hearing has been held.

R 123.22 Votes.

Rule 22. At an adjudicative session, a concurring vote of at least 3 commissioners is required to take action. The votes of each commissioner shall be noted in the commission's record. The chairperson shall be a voting member of the commission on all matters. A member of the commission who has a conflict of interest, financial or otherwise, in a docket before the commission shall disclose the interest before the commission takes action on the docket. The disclosures shall be a matter of record in its official proceedings.

R 123.23 Record and finality of action.

Rule 23. A record shall be made of all proceedings at an adjudicative session. Commission action is final when the chairperson signs the findings of fact and conclusions of law, which recommend that the director reject, deny, approve, or approve with adjusted boundaries, and submits the findings of fact and conclusions of law to the director. The effective date of the action on the docket is determined by the order document, which shall be signed by the director. For purposes of judicial review, the action on a docket is not final until the order document is signed by the director.

R123.24 Administrative sessions.

Rule 24. (1) When necessary, the chairperson may call the other state members into an administrative session.

(2) At an administrative session, the state members may take any action to administer the act and to implement its purposes. No docket before the commission shall be discussed at an administrative session.

(3) At an administrative session, the vote of 2 state members is required to take a final action.

(4) At the direction of the chairperson, 1 or more state members may conduct administrative business of the commission that does not require a vote.

R 123.25 Rescinded.

R 123.26 Rescinded.

R 123.27 Rescinded.

**PART 3. PREPARATION AND FILING OF PETITIONS OR RESOLUTIONS AND  
PROCESSING OF DOCKETS**

R 123.30 Forms.

Rule 30. A petition or resolution shall be filed on the forms provided by the department.

R 123.31 Registered electors; certification.

Rule 31. (1) Upon the filing of a petition initiating an annexation by registered electors of the area proposed to be annexed, the township clerk shall certify to the department the number of registered electors in the area proposed to be annexed on the date the petition was filed. The township clerk shall certify whether the signatures are of registered electors in the area proposed to be annexed.

(2) Upon the filing of a petition initiating an incorporation the township or village clerk, whichever is appropriate, shall certify whether the signatures are of qualified electors and freeholders of the area proposed to be incorporated.

(3) Upon the filing of a petition initiating a consolidation, the township, village, or city clerk, whichever is appropriate, shall certify whether the signatures are of qualified electors of the area proposed to be consolidated.

(4) Upon the filing of a referendum petition asking for an election on an annexation, the city or township clerk, whichever is appropriate, shall certify to the department the number of registered voters in the area proposed to be annexed, the remainder of the township and the annexing city, whichever is appropriate, on the filing date of the petition. The city or township clerk, whichever is appropriate, shall certify whether the signatures are of registered electors of the city, of the area proposed to be annexed, or the balance of the township, whichever is appropriate.

(5) Upon the filing of a referendum petition asking for an election on a consolidation or incorporation, the city or township clerk, whichever is appropriate, shall certify to the department the number of registered electors in the area proposed to be consolidated or incorporated on the filing date of the petition. The city or township clerk, whichever is appropriate, shall certify whether the signatures are of qualified electors of the area proposed to be incorporated or consolidated.

#### R 123.32 Filings; notice of filing.

Rule 32. (1) An incorporation, consolidation, or annexation petition or annexation resolution shall be filed with the commission. A statement signed by at least 1 signer of the petition or resolution designating the name and address of a natural person to receive notices on behalf of all signers shall accompany the filing or shall be filed separately within 10 business days from the filing. Notice served by the department or any other person on the designated natural person shall be deemed notice to all signers of the petition or voters on the resolution. Notice to an affected city, village, township, or county shall be through its clerk. Upon the filing of a petition or resolution, the department shall make a notation as to the date and time of filing and assign a docket number. Receipt of a petition or resolution shall not be an acknowledgement that it is legally sufficient.

(2) Other items permitted or required to be filed shall be tendered in a legible reproducible form and transmitted to the department.

(3) A person may request, in writing, that the department notify the person in writing when a document has been filed involving a specific docket and the department shall send the notice at the earliest practicable time after the filing of the item.

(4) A person may inspect the file regarding a specific docket at the department during regular business hours, and at the person's own expense may cause the contents of the file to be duplicated.

#### R 123.33 Determination of population of area proposed for annexation.

Rule 33. (1) When an annexation petition or resolution is filed, the filing population on the filing date shall be determined as soon as practicable after the filing by 1 of the following methods:

(a) By joint agreement of the involved township board and city council and their certification of the population.

(b) By submission of either the township board or the city council, or both, of a certified list of the names and addresses of all residents in the area proposed to be annexed on the date the petition or resolution was filed.

(c) By a door-to-door canvas and interviews with the people within the area proposed to be annexed and certification to the department by the involved units of government.

(2) If both legislative bodies file lists, the commission shall examine the lists and using the guidance of applicable statutes, attorney general opinions, or court decisions make a final population determination.

(3) If only 1 legislative body files a resident list, the department shall supply a copy of the filed list to the non-filing board and grant 30 days for that board to file written challenges to any names contained in the filed list. Upon the filing of a written challenge, the commission shall examine the challenge and using the guidance of applicable statutes, attorney general opinions, or court decisions, the commission shall make a final population determination.

(4) If the department receives only 1 filed certified resident list and that list receives no challenge, it shall stand as the determined population and the commission shall so certify.

#### R 123.34 Pleadings.

Rule 34. In addition to petitions required by sections 7 and 12 of the act, MCL 123.1007 and 123.1012, and petitions and resolutions required by sections 9(2) and (7) of the home rule city act, 1909 PA 279, MCL 117.9(2) and (7), objections to the form or substance of a petition or resolution, answers to such objections, a memorandum brief on issues of fact or law, and such other pleadings as the commission may allow may be filed up to 7 days prior to the commissions meeting on the docket.

#### R 123.35 Determination of days to public hearing.

Rule 35. (1) For purposes of determining the minimum 60 days and maximum 220 days from filing of an active docket to the holding of the public hearing, the days shall be counted from the date of the filing.

(2) The 60- and 220-day public hearing requirement shall not apply to inactive dockets until such time that they may become active dockets.

#### R 123.36 Rejected petitions or resolutions.

Rule 36. (1) The department shall reject an annexation petition or resolution for territory that includes all or any part of the territory which was described in any annexation petition or resolution filed within the preceding 2 years and that was denied by the department or was defeated in an election.

(2) The department shall reject a consolidation petition if a proposition to consolidate the identical municipalities had been voted on within the 2 years immediately preceding the filing of the later petition.

(3) Upon this determination, the department shall return the petition or resolution to the petitioner and shall certify the reasons for its rejection.

(4) The 2-year period shall start on the day the prior annexation petition or resolution was filed.

(5) The 2-year period shall not apply to incorporation, consolidation, or annexation petitions or resolutions that were rejected for not being legally sufficient.

R 123.37 Petitions and resolutions; contents.

Rule 37. (1) A petition for incorporation, consolidation, or annexation or an annexation resolution shall identify graphically on a map, labeled “part I”, and by an accurate written legal description, labeled “part III”, the boundaries of the lands that are proposed to be incorporated, consolidated, or annexed.

(2) A “part I” map of any incorporation, consolidation, or annexation petitions or annexation resolutions shall consist of 1 or more sheets of a map clearly showing the territory proposed to be incorporated, consolidated, or annexed. The “part I” map shall be constructed by the petitioner so its minimum size is 8 ½” x 11” and maximum size is 36”x 42”. The “part I” map shall be of sufficient scale and clarity as to be unambiguous to laypersons with respect to the inclusion or exclusion of their own property and shall include all of the following:

(a) All section lines, quarter section lines, and government corners that affect the boundary of the area proposed for annexation, incorporation, or consolidation.

(b) All current and proposed municipal boundary lines in the area of and in proximity to the area proposed for annexation, incorporation, or consolidation, including labeling of all adjacent governmental units.

(c) A north arrow.

(d) A map scale that is both stated and represented by a graphical bar.

(e) All roads, streets, and highways that relate to the boundary of the area proposed for annexation, incorporation, or consolidation.

(f) All major geographic features that relate to the boundary of the area proposed for annexation, incorporation, or consolidation.

(g) Labeled parcels of common ownership along the perimeter of the area proposed for annexation, incorporation, or consolidation to avoid splitting parcels under common ownership into separate municipalities.

(h) If there is more than 1 sheet in the “part I” map, there shall be a master sheet that shows how the individual sheets relate to the whole. The master sheet shall clearly show the location of all major features including major roads, section lines, existing local government boundaries, and major geographical features.

(3) For any incorporation, consolidation or annexation petitions or annexation resolutions, the existing municipal boundary lines shown on the “part I” map shall be substantially consistent with the municipal boundary histories on file with the secretary of state’s office of the great seal at the time of the filing.

(4) For an annexation petition or resolution, the area proposed for annexation shall be contiguous to the annexing city as referenced by the municipal boundary histories on file with the secretary of state’s office of the great seal at the time of the filing.

(5) Parts II and IV through VI shall be prepared on forms furnished by the department.

(6) “Part VII” shall contain a map that shows the relationship of the area proposed for incorporation, consolidation, or annexation to the balance of the involved and adjacent units of government. The map may be of a size that the petitioner chooses and shall not be

considered in the determination of legal sufficiency. For the purpose of determining legal sufficiency, a “part I” map and “part III” legal description shall be part of the petition or resolution and shall be substantially accurate and consistent with each other. The commission may order that all or part of the boundaries of the area be reviewed by a professional land surveyor to verify the accuracy and consistency of the “part I” map, and “part III” legal description.

(7) In a petition submitted to the public for signature, the “part I” map shall accompany the signature sheets. Upon discovery of a disparity between various public or private records as to land ownership or the location of local government boundaries, the department shall issue a report on the disparity and notify the commission, the petitioners, and the affected units of government prior to the commission’s meeting on the legal sufficiency.

(8) When documents that are part of the petition or resolution contain reference to additional recorded data or documents that are found to be necessary to determine the accuracy of the petition, resolution, map, or legal description, and copies of these recorded documents are not a part of the docket, the department may request the petitioner to supply copies of these documents by a specified date.

(9) An annexation petition initiated by a firm, corporation, or other formal organization shall contain copies of resolutions, meeting minutes, correspondence, transmittal letters, or other documents that are necessary to show that the petitioner was authorized to file on behalf of the organization.

(10) An annexation resolution initiated by a city shall contain copies of all documents necessary to show that the city council approved the annexation resolution before filing with the department.

(11) Upon filing, each petition or resolution shall stand or fall on its own content. Before the legal sufficiency meeting, the department may provide notice of obvious scrivener’s errors in the docket and allow the petitioner to correct these errors, except for errors on a “part-I” map that accompanied the petition signature sheets. The department shall retain a copy of the docket in its original state for docket proceedings. Modifications, corrections, deletions, or additions to a petition shall not be made except those authorized in this subrule.

#### R 123.38 Withdrawal of petition or resolution.

Rule 38. (1) An annexation resolution filed pursuant to section 9(7)(a) of the home rule city act, 1909 PA 279, MCL 117.9(7)(a), or an annexation petition filed pursuant to section 9(7)(b) of the home rule city act, MCL 117.9(7)(b), may be withdrawn by the legislative body or persons, firms, corporations, or government agencies that have initiated the petition or resolution without commission action through the filing of a written request and by official action, if desired by the petitioner. When an annexation resolution or petition is withdrawn, the docket proceedings shall terminate and another petition or resolution shall be filed for action on a future docket.

(2) The department may give notice to a petitioner referenced in subrule (1) of this rule that the petition or resolution does not appear to meet the requirements of the act, the home rule city act, the home rule village act, or these rules.

### PART 4. COMMISSION PROCEDURES

#### R 123.40 Petitions and resolutions filed with the commission; notice.

Rule 40. Within 10 days after the filing of an incorporation or consolidation petition or annexation petition or resolution, under the commission's jurisdiction, the department shall complete and transmit to the involved local governmental clerk, the affected county clerk, and the secretary of state a notice of filing with the commission.

R 123.41 Rescinded.

R 123.42 Rescinded.

R 123.43 Legal sufficiency meeting.

Rule 43. Before the public hearing, the commission shall examine the legal sufficiency of the docket at an adjudicative session. The commission shall determine legal sufficiency of a docket pursuant to the act and these rules.

R 123.44 Annexation, consolidation, and incorporation; criteria information; methods of gathering.

Rule 44. After declaring the legal sufficiency of a docket for annexation, incorporation, or consolidation, the commission shall obtain the criteria data or information prescribed in section 9 of the act, MCL 123.1009, by using all or any combination of the following methods:

(a) Instructing the petitioner and the involved units of government to complete and return within 30 days of receiving from the department a criteria data or information evaluation questionnaire.

(b) Directing staff or other personnel to gather the necessary data or information, which shall be made available to the department at a specified date before the public hearing date. In addition, the department may direct that the raw data or information be analyzed, organized, condensed, summarized, and presented to the commission in a compacted form. All raw data shall be maintained as part of the docket.

(c) Directing staff to send written questions or requests for specific information to the petitioner, involved units of government, affected or interested state and federal agencies, affected planning commissions or other interested persons or governmental units to be filed in writing with the department by a specified date.

R 123.45 Rescinded.

R 123.46 Rescinded.

R 123.47 Rescinded.

## PART 5. COMMISSION PUBLIC HEARINGS

R 123.51 Place; notices; adjournment.

Rule 51. (1) A public hearing shall be held in a public place located in or near the territory to be included within a proposed municipal boundary adjustment. Notice shall be given as prescribed in section 8 of the act, MCL 123.1008.

(2) The department shall notify the clerks of the involved units of government and the county clerks of the involved counties under the act and these rules.

(3) If the municipal boundary adjustment is an annexation matter, the department shall notify the property owners located within, and within 300 feet of, the proposed annexation pursuant to the home rule city act and these rules.

(4) When the commission is considering revising the boundaries from those proposed in the petition or resolution, the department shall provide notice as required by the act, the home rule city act, and the home rule village act.

R 123.52 Commissioners present; presiding officers; scope.

Rule 52. (1) Whenever possible, a public hearing as required by section 8 of the act, MCL 123.1008, shall be attended by all state members and the 2 county members. A member not in attendance at a public hearing shall review the public hearing record and so signify to the chairperson to be eligible to vote at subsequent adjudicative sessions. The chairperson or designee shall preside.

(2) The commission shall receive at public hearing information concerning the reasonableness of the proposed incorporation, consolidation, or annexation based on the criteria listed in section 9 of the act, MCL 123.1009. Information presented in oral or exhibit form or comment or analysis of information presented shall be germane and shall become part of the record.

(3) A person may present information at public hearing or make a statement about the effect of the proposed action upon personal interest.

R 123.53 Presenters.

Rule 53. (1) An interested party may speak directly, may be represented by counsel, and may present 1 or more spokespersons and supporting witnesses necessary to present relevant information if the presentation is limited to a reasonable time at the discretion of the chairperson or his designee.

(2) A person shall not address the commission unless recognized by the chairperson. Upon recognition, the chairperson may state the amount of time allotted to the person recognized.

(3) A person may ask to be heard at a public hearing without having filed prior notice of appearance.

(4) The chairperson, or the chairperson's designee, may waive or modify the terms of this rule if necessary for a just disposition of a pending matter or to avoid hardship, and may make such waiver or modification as it deems necessary or appropriate to implement the purpose of the act.

R 123.54 Official notice.

Rule 54. The commission may take notice of facts and of a general, technical, or scientific nature within its specialized knowledge. The commission may use its experience, technical competence, and general and specialized knowledge in the evaluation of the information presented. This rule does not permit the commission to take notice of information contrary to any statute or other law.

R 123.55 Participation by department staff.

Rule 55. (1) The department's staff may appear in an adjudicative or administrative session or a public hearing and present information as to the results of its investigations, field studies, inspection and other technical investigations and studies. The department's staff may file reports, make statements of positions or otherwise make recommendations on the record which it believes proper and lawful, based on the information presented and the department staff's knowledge. Department staff presentations may include information by members of other governmental agencies either specific to the pending docket or providing relevant background information.

R 123.56 Additional information.

Rule 56. (1) During the 30 days immediately following a public hearing, the commission may receive additional or supplemental public hearing information including exhibits, written comments, statements, arguments, briefs, replies, or any other information that properly could have been presented at the public hearing, including information derived from the specialized knowledge of the commission or department staff. When practicable, such information shall be in a format suitable for reproduction.

(2) A person wishing to be notified of the filing of additional information shall notify the department in writing. The department shall keep a list of the interested parties and notify each person on the list of all filings.

(3) All parties shall have 7 business days, from the sending of the notice of the filing in subrule (2) of this rule, to respond to any additional information presented under subrule (1) of this rule.

## PART 6. POST-HEARING PROCEDURES

R 123.61 Disposition resolution; referendum.

Rule 61. (1) After a public hearing and consideration of the criteria in section 9 of the act, MCL 123.1009, the commission shall present findings of fact and conclusions of law at an adjudicative session. The commission shall by resolution recommend the director dispose of the docket by doing 1 of the following:

(a) Denying the docket.

(b) Approving the docket.

(c) Revising the boundaries as proposed in the petition or resolution and approve the docket with the revised boundaries.

(2) When the area approved for annexation contains a population of 100 or less, the director's order shall contain the effective date of the annexation.

(3) When the area approved for annexation contains a population of more than 100, the director's order becomes effective pursuant to the home rule city act unless a valid referendum election request petition is filed.

(4) When the area is approved for consolidation or incorporation, the director's order becomes effective pursuant to the act unless a valid referendum election request petition is filed.

R 123.62 Referendum election petition.

Rule 62. (1) If a valid referendum petition is filed pursuant to the act or the home rule city act to ask for an election on the proposed annexation, consolidation or incorporation, the

commission shall adopt a resolution recommending that the director dispose of the request by ordering the question be placed on the ballot at some future date, or by setting the date of the special election.

(2) If an annexation referendum election is held and each area affected voting separately on the question approves the annexation by a majority vote, the commission shall adopt a resolution recommending the effective date of the annexation for the director's approval.

(3) If a referendum election is held on the question of incorporation and a majority of the electorate in the area proposed for incorporation approves, by majority vote, the incorporation, the director's order becomes final.

R 123.63 Lists of consolidation charter commission candidates.

Rule 63. Within 5 days after the deadline for filing nominating petitions for candidates for consolidation charter commissioners, the village, township, or city clerks shall transmit to the county clerk and the department a certified list of charter commission candidates.

R 123.64 Notice to charter commissioners.

Rule 64. Immediately after being notified of the canvass of a vote for charter commissioners, the department shall notify the elected charter commissioners in writing that they shall meet within 10 days and furnish a certificate to be completed and returned by the charter commission certifying that it has met within the required 10 days.

R 123.65 Notice of final action.

Rule 65. (1) Upon the completion of all its actions on an active city or village annexation petition or resolution, a city or village council or township board shall notify the department in writing.

(2) Upon the completion of all action on an active incorporation or consolidation docket or a home rule city annexation docket under the jurisdiction of the commission, the department shall notify in writing the clerks of the involved local governments, the county clerk, and secretary of state that action on the docket is closed.

R 123.66 Rescinded.

R 123.67 Rescinded.

R 123.68 Rescinded.

R 123.69 Rescinded.

R 123.71 Rescinded.

R 123.72 Rescinded.

R 123.73 Rescinded.

R 123.74 Rescinded.

R 123.75 Rescinded.