

# SENATE BILL No. 89

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-4-3.

**Synopsis:** Annexation and noncapital services. Allows an involuntarily annexed area to retain the fire protection, police protection, or emergency medical services that served the area before the annexation. Allows a municipality to adopt two fiscal plans that establish that the municipality: (1) either will not provide fire protection and police protection, or will not provide fire protection, police protection, and emergency medical services to the annexed area; and (2) will provide police protection, fire protection, and emergency services to the annexed area. Provides that if a remonstrance is not filed, the plan providing for less than full implementation of noncapital services will take effect. Provides that the annexed area is not responsible for the costs and indebtedness, including pension liability, of the noncapital services not provided by the municipality to the annexed area. Provides that if a remonstrance is filed, the court may  
(Continued next page)

**Effective:** July 1, 1998.

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January 8, 1998, read first time and referred to Committee on Governmental and Regulatory Affairs.

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only consider the fiscal plan providing for a full implementation of noncapital services. Allows the annexed area to file a petition to retain police protection, fire protection, or emergency medical services or any combination of these services after an annexation is effective. Requires a petition to retain noncapital services to be signed by 51% of owners of land in the annexed area or the owners of 75% of the total assessed value of the land for property tax purposes. Provides for a hearing within 60 days of the date the petition is filed. Requires the court to find in favor of retention of services if 51% of the owners of land in the annexed area or the owners of 75% of the total assessed value of the land for property tax purposes support retention of the services specified in the petition. Provides that an annexed area that retains fire, police, or emergency medical services is not responsible for costs or indebtedness, including pension liability, from the municipality's provision of the noncapital services specified in the petition. Requires the municipality to amend its fiscal plan to reflect the court's judgment on the petition. Requires the municipality to submit the amended fiscal plan to the court. States that a petition to retain fire, police, or emergency medical services is not an appeal of the annexation. Provides that a person may file a complaint for the failure of a municipality to implement a fiscal plan not later than one year after the termination of all judicial and appellate review of a petition to retain noncapital services. Provides that a municipality that annexes in a fire protection district may provide fire protection services to the annexed area beginning on the date: (1) the period expires under law for filing a petition to retain noncapital services if no petition is filed; or (2) the date of disposition of all judicial and appellate review of a petition to provide noncapital services. Provides that the one year period for a municipality to provide police protection, fire protection, and emergency medical services begins on: (1) the date the period expires for filing a petition to retain noncapital services if a petition is not filed; or (2) the date of disposition of all judicial and appellate review of a petition to retain noncapital services.



Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

## SENATE BILL No. 89

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A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-4-3-1.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 1998]: **Sec. 1.1 As used in this chapter, "emergency medical  
4 services" has the meaning set forth in IC 16-18-2-110.**

5 SECTION 2. IC 36-4-3-7 IS AMENDED TO READ AS FOLLOWS  
6 [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) After an ordinance is adopted  
7 under section 3, 4, or 5 of this chapter, it must be published in the  
8 manner prescribed by IC 5-3-1. Except as provided in subsection (b) or  
9 (c), in the absence of remonstrance and appeal under section 11 or 15.5  
10 of this chapter, the ordinance takes effect at least sixty (60) days after  
11 its publication and upon the filing required by section 22(a) of this  
12 chapter.

13 (b) An ordinance described in subsection (d) or adopted under  
14 section 3, 4, or 5 of this chapter may not take effect during the year  
15 preceding a year in which a federal decennial census is conducted. An



1 ordinance that would otherwise take effect during the year preceding  
 2 a year in which a federal decennial census is conducted takes effect  
 3 January 2 of the year in which a federal decennial census is conducted.

4 (c) Subsections (d) and ~~(e)~~ (f) apply to fire protection districts that  
 5 are established after June 14, 1987.

6 (d) Except as provided in subsection (b), whenever a municipality  
 7 annexes territory, all or part of which lies within a fire protection  
 8 district (IC 36-8-11), the annexation ordinance (in the absence of  
 9 remonstrance and appeal under section 11 or 15.5 of this chapter) takes  
 10 effect the second January 1 that follows the date the ordinance is  
 11 adopted and upon the filing required by section 22(a) of this chapter.

12 (e) The municipality shall:

13 (1) provide fire protection to that territory ~~beginning the date the~~  
 14 ~~ordinance is effective; and beginning on either of the following~~  
 15 ~~dates:~~

16 (A) **If a petition to retain noncapital services is not filed**  
 17 **under section 13.2 of this chapter, the date the period**  
 18 **expires during which a petition may be filed under that**  
 19 **section.**

20 (B) **If a petition to retain noncapital services is filed under**  
 21 **section 13.2 of this chapter and the court's judgment is**  
 22 **adverse to the petition, the date of disposition of all judicial**  
 23 **and appellate review of the petition.**

24 (2) send written notice to the fire protection district of the date the  
 25 municipality will begin to provide fire protection to the annexed  
 26 territory within ten (10) days of the date the ordinance is adopted.

27 ~~(e)~~ (f) **This subsection does not apply to an annexed area that**  
 28 **retains its fire protection services pursuant to a fiscal plan adopted**  
 29 **under section 13.1 of this chapter or amended under section 13.2**  
 30 **of this chapter.** If the fire protection district from which a municipality  
 31 annexes territory under subsection (d) is indebted or has outstanding  
 32 unpaid bonds or other obligations at the time the annexation is  
 33 effective, the municipality is liable for and shall pay that indebtedness  
 34 in the same ratio as the assessed valuation of the property in the  
 35 annexed territory (that is part of the fire protection district) bears to the  
 36 assessed valuation of all property in the fire protection district, as  
 37 shown by the most recent assessment for taxation before the  
 38 annexation, unless the assessed property within the municipality is  
 39 already liable for the indebtedness. The annexing municipality shall  
 40 pay its indebtedness under this section to the board of fire trustees. If  
 41 the indebtedness consists of outstanding unpaid bonds or notes of the  
 42 fire protection district, the payments to the board of fire trustees shall



1 be made as the principal or interest on the bonds or notes becomes due.

2 SECTION 3. IC 36-4-3-10 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) **Except as**  
4 **provided in subsection (c)**, if the township from which a municipality  
5 annexes territory is indebted or has outstanding unpaid bonds or other  
6 obligations at the time of the annexation, the municipality is liable for  
7 and shall pay that indebtedness in the same ratio as the assessed  
8 valuation of the property in the annexed territory bears to the assessed  
9 valuation of all property in the township, as shown by the most recent  
10 assessment for taxation before the annexation, unless the assessed  
11 property within the municipality is already liable for the indebtedness.

12 (b) The annexing municipality shall pay its indebtedness under this  
13 section to the township executive. If the indebtedness consists of  
14 outstanding unpaid bonds or notes of the township, the payments to the  
15 executive shall be made as the principal or interest on the bonds or  
16 notes becomes due.

17 (c) **A municipality is not liable for and may not pay the**  
18 **indebtedness of a township related to:**

- 19 (1) **fire protection services;**  
20 (2) **police protection services;**  
21 (3) **emergency medical services; or**  
22 (4) **any combination of subdivision (1) through (3);**  
23 **if the service or services are retained by the annexed area.**

24 SECTION 4. IC 36-4-3-13, AS AMENDED BY P.L.255-1997(ss),  
25 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26 JULY 1, 1998]: Sec. 13. (a) Except as provided in subsection (e), at the  
27 hearing under section 12 of this chapter, the court shall order a  
28 proposed annexation to take place if the following requirements are  
29 met:

- 30 (1) The requirements of either subsection (b) or (c).  
31 (2) The requirements of subsection (d).

32 (b) The requirements of this subsection are met if the evidence  
33 establishes the following:

- 34 (1) That the territory sought to be annexed is contiguous to the  
35 municipality.  
36 (2) One (1) of the following:  
37 (A) The resident population density of the territory sought to  
38 be annexed is at least three (3) persons per acre.  
39 (B) Sixty percent (60%) of the territory is subdivided.  
40 (C) The territory is zoned for commercial, business, or  
41 industrial uses.



1 (c) The requirements of this subsection are met if the evidence  
2 establishes the following:

3 (1) That the territory sought to be annexed is contiguous to the  
4 municipality as required by section 1.5 of this chapter, except that  
5 at least one-fourth (1/4), instead of one-eighth (1/8), of the  
6 aggregate external boundaries of the territory sought to be  
7 annexed must coincide with the boundaries of the municipality.

8 (2) That the territory sought to be annexed is needed and can be  
9 used by the municipality for its development in the reasonably  
10 near future.

11 (d) The requirements of this subsection are met if the evidence  
12 establishes that the municipality has developed a written fiscal plan and  
13 has established a definite policy, by resolution of the legislative body,  
14 as of the date of passage of the annexation ordinance. The resolution  
15 must show the following:

16 (1) The cost estimates of planned services to be furnished to the  
17 territory to be annexed.

18 (2) The method or methods of financing the planned services.

19 (3) The plan for the organization and extension of services.

20 (4) **Except as provided in section 13.3 of this chapter**, that  
21 planned services of a noncapital nature, including police  
22 protection, fire protection, street and road maintenance, and other  
23 noncapital services normally provided within the corporate  
24 boundaries, will be provided to the annexed territory within one  
25 (1) year after the effective date of annexation, and that they will  
26 be provided in a manner equivalent in standard and scope to those  
27 noncapital services provided to areas within the corporate  
28 boundaries that have similar topography, patterns of land use, and  
29 population density. However, in a county having a population of  
30 more than two hundred thousand (200,000) but less than three  
31 hundred thousand (300,000), the resolution of a city must show  
32 that these services will be provided in a manner equivalent in  
33 standard and scope to those noncapital services provided to areas  
34 within the corporate boundaries, regardless of similar topography,  
35 patterns of land use, or population density.

36 (5) That services of a capital improvement nature, including street  
37 construction, street lighting, sewer facilities, water facilities, and  
38 stormwater drainage facilities, will be provided to the annexed  
39 territory within three (3) years after the effective date of the  
40 annexation, in the same manner as those services are provided to  
41 areas within the corporate boundaries, that have similar  
42 topography, patterns of land use, and population density, and in



1 a manner consistent with federal, state, and local laws,  
 2 procedures, and planning criteria. However, in a county having a  
 3 population of more than two hundred thousand (200,000) but less  
 4 than three hundred thousand (300,000), the resolution of a city  
 5 must show that these services will be provided to the annexed  
 6 territory within four (4) years after the effective date of the  
 7 annexation and in the same manner as those services are provided  
 8 to areas within the corporate boundaries, regardless of similar  
 9 topography, patterns of land use, or population density.

10 (6) The plan for hiring the employees of other governmental  
 11 entities whose jobs will be eliminated by the proposed  
 12 annexation, although the municipality is not required to hire any  
 13 employees.

14 (e) This subsection applies only to cities located in a county having  
 15 a population of more than two hundred thousand (200,000) but less  
 16 than three hundred thousand (300,000). However, this subsection does  
 17 not apply if on April 1, 1993, the entire boundary of the territory that  
 18 is proposed to be annexed was contiguous to territory that was within  
 19 the boundaries of one (1) or more municipalities. At the hearing under  
 20 section 12 of this chapter, the court shall do the following:

21 (1) Consider evidence on the conditions listed in subdivision (2).

22 (2) Order a proposed annexation not to take place if the court  
 23 finds that all of the following conditions exist in the territory  
 24 proposed to be annexed:

25 (A) The following services are adequately furnished by a  
 26 provider other than the municipality seeking the annexation:

27 (i) Police and fire protection.

28 (ii) Street and road maintenance.

29 (B) The annexation will have a significant financial impact on  
 30 the residents or owners of land.

31 (C) One (1) of the following opposes the annexation:

32 (i) A majority of the owners of land in the territory proposed  
 33 to be annexed.

34 (ii) The owners of more than seventy-five percent (75%) in  
 35 assessed valuation of the land in the territory proposed to be  
 36 annexed.

37 Evidence of opposition may be expressed by any owner of land  
 38 in the territory proposed to be annexed.

39 (f) The federal census data established by IC 1-1-4-5(17) shall be  
 40 used as evidence of resident population density for purposes of  
 41 subsection (b)(2)(A), but this evidence may be rebutted by other  
 42 evidence of population density.



1 SECTION 5. IC 36-4-3-13.1 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW SECTION TO READ AS FOLLOW [EFFECTIVE JULY  
 3 1, 1998]: **Sec. 13.1. (a) This section does not apply to an annexation  
 4 under section 5 of this chapter.**

5 **(b) When a municipality adopts an annexation ordinance, the  
 6 municipality may adopt a resolution establishing the following two  
 7 (2) written fiscal plans:**

8 **(1) A fiscal plan establishing that the municipality will not  
 9 provide:**

10 **(A) police and fire protection; or**

11 **(B) police protection, fire protection, and emergency  
 12 medical services;**

13 **to the annexed area.**

14 **(2) A fiscal plan establishing that the municipality will provide  
 15 police protection, fire protection, and emergency medical  
 16 services to the annexed area.**

17 **(c) The fiscal plans adopted under subsection (b) must establish  
 18 that the municipality will provide all other noncapital services  
 19 required of a fiscal plan under section 13 of this chapter.**

20 **(d) A fiscal plan adopted under subsection (b)(1) must provide  
 21 that the annexed territory is not liable for the percentage of the  
 22 annexing municipality's tax levy attributable to:**

23 **(1) the costs of providing the noncapital services that the  
 24 municipality does not provide to the annexed area under the  
 25 fiscal plan; and**

26 **(2) the indebtedness of the municipality, including pension  
 27 liability, related to the noncapital services that the  
 28 municipality does not provide to the annexed area under the  
 29 fiscal plan.**

30 **(e) If two (2) fiscal plans are adopted and a remonstrance with  
 31 the necessary signatures is not filed under section 11 of this  
 32 chapter, the fiscal plan adopted under subsection (b)(1) will take  
 33 effect.**

34 **(f) If two (2) fiscal plans are adopted and a remonstrance is filed  
 35 with the necessary signatures under section 11 of this chapter, the  
 36 court shall only consider the fiscal plan adopted under subsection  
 37 (b)(2) at the hearing under section 12 of this chapter. A  
 38 remonstrance filed in an annexation in which two (2) fiscal plans  
 39 have been adopted is a remonstrance against the annexation and  
 40 both of the fiscal plans.**

41 SECTION 6. IC 36-4-3-13.2 IS ADDED TO THE INDIANA CODE  
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1 1, 1998]: Sec. 13.2. (a) This section does not apply to an annexation  
2 under section 5 of this chapter.

3 (b) As used in this section, "noncapital services" means:

- 4 (1) police protection;  
5 (2) fire protection;  
6 (3) emergency medical services; or  
7 (4) any combination of subdivision (1) through (3).

8 (c) The annexed area may petition the circuit or superior court  
9 of the county in which the annexed territory is located to allow the  
10 annexed area to retain the noncapital services it received before the  
11 annexation. The petition is solely for the purpose of allowing the  
12 annexed area to retain its noncapital services. The petition must  
13 specify which noncapital services the annexed area wants to retain.

14 (d) A petition to retain noncapital services must be filed as  
15 follows:

16 (1) If the effective date of the annexation is set forth in the  
17 annexation ordinance, the petition must be filed not later than  
18 ninety (90) days after the effective date of the annexation.

19 (2) If the annexation ordinance does not specify the effective  
20 date of the annexation, the petition must be filed as follows:

21 (A) If a remonstrance or an appeal is not filed during the  
22 period permitted under this chapter, the petition must be  
23 filed not later than ninety (90) days after the date the  
24 ordinance is effective under section 7 of this chapter.

25 (B) If the court's judgment on a remonstrance under  
26 section 13 of this chapter or an appeal under section 15.5  
27 of this chapter is not appealed to a higher court, the  
28 petition must be filed not later than ninety (90) days after  
29 the date of the judgment of the circuit or superior court.

30 (C) If the court's judgment on a remonstrance under  
31 section 13 of this chapter or section 15.5 of this chapter is  
32 appealed to a higher court, the petition must be filed not  
33 later than ninety (90) days after the date of the disposition  
34 of all judicial and appellate review.

35 (e) A petition filed on behalf of an annexed area must be signed  
36 by at least:

37 (1) fifty-one percent (51%) of the owners of land in the  
38 annexed area; or

39 (2) the owners of seventy-five percent (75%) of the total  
40 assessed value of the land for property tax purposes.

41 (f) The court shall schedule a hearing on the petition not later  
42 than sixty (60) days after the petition is filed. Notice of the



1 proceedings in the form of a summons shall be served on the  
 2 annexing municipality. The municipality is the defendant in the  
 3 cause and shall appear and answer.

4 (g) If the court determines that a percentage of landowners as  
 5 set forth in subsection (e) are in favor of retaining the noncapital  
 6 services specified in the petition, the court shall without delay enter  
 7 judgment in favor of the petitioners.

8 (h) An annexed area that retains noncapital services is not liable  
 9 for the percentage of the municipality's tax levy attributable to the:

10 (1) costs of providing the noncapital services specified in the  
 11 petition; or

12 (2) indebtedness of the municipality, including pension  
 13 liability, related to the noncapital services specified in the  
 14 petition.

15 (i) If the court finds in favor of a petition for retaining  
 16 noncapital services, the municipality shall amend the annexation  
 17 fiscal plan to reflect the judgment and submit the amended plan to  
 18 the court. The municipality may only amend the fiscal plan to  
 19 eliminate the costs and indebtedness associated with providing  
 20 noncapital services to the annexed area.

21 (j) A petition to retain noncapital services under this section is  
 22 not an appeal from the court's judgment in a hearing under section  
 23 12 of this chapter or the court's judgment in a proceeding under  
 24 section 15.5 of this chapter.

25 SECTION 7. IC 36-4-3-13.3 IS ADDED TO THE INDIANA CODE  
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 27 1, 1998]: Sec. 13.3 (a) As used in this section "noncapital services"  
 28 means the following:

29 (1) Police protection.

30 (2) Fire protection.

31 (3) Emergency medical services.

32 (b) The one (1) year period for a municipality to provide  
 33 noncapital services to an annexed area begins on:

34 (1) the date the ninety (90) day period for filing a petition to  
 35 retain noncapital services expires under section 13.2 of this  
 36 chapter, if a petition to retain noncapital services is not filed;  
 37 or

38 (2) the date of disposition of all judicial and appellate review  
 39 of the petition to retain noncapital services, if a petition to  
 40 retain noncapital services is filed under section 13.2 of this  
 41 chapter, and the court's judgment is adverse to the petition.

42 SECTION 8. IC 36-4-3-16, AS AMENDED BY P.L.255-1997(ss),



1 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 1998]: Sec. 16. (a) Within one (1) year after the expiration of:

3 (1) the one (1) year period for implementation of planned services  
4 of a noncapital nature under section 13(d)(4) **and 13.3** of this  
5 chapter;

6 (2) the three (3) year period for the implementation of planned  
7 services of a capital improvement nature under section 13(d)(5)  
8 of this chapter; or

9 (3) the four (4) year period for the implementation of planned  
10 services of a capital improvement nature under section 13(d)(5)  
11 of this chapter by a city for annexed territory in a county having  
12 a population of more than two hundred thousand (200,000) but  
13 less than three hundred thousand (300,000);

14 any person who pays taxes on property located within the annexed  
15 territory may file a complaint alleging injury resulting from the failure  
16 of the municipality to implement the plan. The complaint must name  
17 the municipality as defendant and shall be filed with the circuit or  
18 superior court of the county in which the annexed territory is located.

19 (b) The court shall hear the case within sixty (60) days without a  
20 jury. In order to be granted relief, the plaintiff must establish one (1) of  
21 the following:

22 (1) That the municipality has without justification failed to  
23 implement the plan required by section 13 of this chapter within  
24 the specific time limit for implementation after annexation.

25 (2) That the municipality has not provided police protection, fire  
26 protection, sanitary sewers, and water for human consumption  
27 within the specific time limit for implementation, unless one (1)  
28 of these services is being provided by a separate taxing district or  
29 by a privately owned public utility.

30 (3) That the annexed territory is not receiving governmental and  
31 proprietary services substantially equivalent in standard and scope  
32 to the services provided by the municipality to other areas of the  
33 municipality that have topography, patterns of land use, and  
34 population density similar to the annexed territory. However, in  
35 a county having a population of more than two hundred thousand  
36 (200,000) but less than three hundred thousand (300,000), the  
37 plaintiff must establish that the annexed territory is not receiving  
38 governmental and proprietary services substantially equivalent in  
39 standard and scope to the services provided by the city regardless  
40 of similar topography, patterns of land use, or population density.

41 (c) The court may:

42 (1) grant an injunction prohibiting the collection of taxes levied



- 1 by the municipality on the plaintiff's property located in the
- 2 annexed territory;
- 3 (2) award damages to the plaintiff not to exceed one and
- 4 one-fourth (1 1/4) times the taxes collected by the municipality
- 5 for the plaintiff's property located in the annexed territory;
- 6 (3) order the annexed territory or any part of it to be disannexed
- 7 from the municipality;
- 8 (4) order the municipality to submit a revised fiscal plan for
- 9 providing the services to the annexed territory within time limits
- 10 set up by the court; or
- 11 (5) grant any other appropriate relief.
- 12 (d) A change of venue from the county is not permitted for an action
- 13 brought under this section.
- 14 (e) If the court finds for the plaintiff, the defendant shall pay all
- 15 court costs and reasonable attorney's fees as approved by the court.
- 16 (f) The provisions of this chapter that apply to territory disannexed
- 17 by other procedures apply to territory disannexed under this section.

