

HOUSE BILL No. 1238

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation services. Provides that when a municipality annexes territory that receives fire protection, emergency medical services, police protection, or parks and recreation services from a county, township, or fire protection district, the county, township, or fire protection district shall continue to provide the services to the annexed territory after the annexation is effective. Prohibits the municipality annexing the territory from increasing the tax rate of the residents of the annexed territory for the cost of providing the services to the other residents of the municipality. Provides that a municipality
(Continued next page)

Effective: July 1, 1998.

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January 13, 1998, read first time and referred to Committee on Local Government.

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Digest Continued

is not liable for and may not pay the indebtedness of a township related to: (1) fire protection services; (2) police protection services; (3) emergency medical services; (4) parks and recreation; or (5) any combination of (1) through (4) if the service or services are provided by the township.

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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.

HOUSE BILL No. 1238

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 36-4-3-7 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) After an ordinance is adopted
3 under section 3, 4, or 5 of this chapter, it must be published in the
4 manner prescribed by IC 5-3-1. Except as provided in subsection (b) or
5 (c), in the absence of remonstrance and appeal under section 11 or 15.5
6 of this chapter, the ordinance takes effect at least sixty (60) days after
7 its publication and upon the filing required by section 22(a) of this
8 chapter.
9 (b) An ordinance described in subsection (d) or adopted under
10 section 3, 4, or 5 of this chapter may not take effect during the year
11 preceding a year in which a federal decennial census is conducted. An
12 ordinance that would otherwise take effect during the year preceding
13 a year in which a federal decennial census is conducted takes effect
14 January 2 of the year in which a federal decennial census is conducted.
15 (c) Subsections (d) and (e) apply to fire protection districts that are



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1 established after June 14, 1987.

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

8 **Except as provided in section 13.1 of this chapter,** the municipality
9 shall:

10 (1) provide fire protection to that territory beginning the date the
11 ordinance is effective; and

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

15 (e) **This subsection does not apply to an annexation if the county,**
16 **township, or fire protection district provides fire protection**
17 **services under section 13.1 of this chapter.** If the fire protection
18 district from which a municipality annexes territory under subsection
19 (d) is indebted or has outstanding unpaid bonds or other obligations at
20 the time the annexation is effective, the municipality is liable for and
21 shall pay that indebtedness in the same ratio as the assessed valuation
22 of the property in the annexed territory (that is part of the fire
23 protection district) bears to the assessed valuation of all property in the
24 fire protection district, as shown by the most recent assessment for
25 taxation before the annexation, unless the assessed property within the
26 municipality is already liable for the indebtedness. The annexing
27 municipality shall pay its indebtedness under this section to the board
28 of fire trustees. If the indebtedness consists of outstanding unpaid
29 bonds or notes of the fire protection district, the payments to the board
30 of fire trustees shall be made as the principal or interest on the bonds
31 or notes becomes due.

32 SECTION 2. IC 36-4-3-10 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) If the township
34 from which a municipality annexes territory is indebted or has
35 outstanding unpaid bonds or other obligations at the time of the
36 annexation, the municipality is liable for and shall pay that
37 indebtedness in the same ratio as the assessed valuation of the property
38 in the annexed territory bears to the assessed valuation of all property
39 in the township, as shown by the most recent assessment for taxation
40 before the annexation, unless the assessed property within the
41 municipality is already liable for the indebtedness.

42 (b) The annexing municipality shall pay its indebtedness under this



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1 section to the township executive. If the indebtedness consists of
 2 outstanding unpaid bonds or notes of the township, the payments to the
 3 executive shall be made as the principal or interest on the bonds or
 4 notes becomes due.

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

- 7 **(1) fire protection services;**
 8 **(2) police protection services;**
 9 **(3) emergency medical services;**
 10 **(4) parks and recreation;**
 11 **(5) any combination of subdivisions (1) through (4);**

12 **if the service or services are provided by the township under**
 13 **section 13.1 of this chapter.**

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

- 20 (1) The requirements of either subsection (b) or (c).
 21 (2) The requirements of subsection (d).

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

- 24 (1) That the territory sought to be annexed is contiguous to the
 25 municipality.
 26 (2) One (1) of the following:

- 27 (A) The resident population density of the territory sought
 28 to be annexed is at least three (3) persons per acre.
 29 (B) Sixty percent (60%) of the territory is subdivided.
 30 (C) The territory is zoned for commercial, business, or
 31 industrial uses.

32 (c) 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 as required by section 1.5 of this chapter, except
 36 that at least one-fourth (1/4), instead of one-eighth (1/8), of the
 37 aggregate external boundaries of the territory sought to be
 38 annexed must coincide with the boundaries of the municipality.
 39 (2) That the territory sought to be annexed is needed and can be
 40 used by the municipality for its development in the reasonably
 41 near future.

42 (d) The requirements of this subsection are met if the evidence

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1 establishes that the municipality has developed a written fiscal plan and
2 has established a definite policy, by resolution of the legislative body,
3 as of the date of passage of the annexation ordinance. The resolution
4 must show the following:

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

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

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

9 (4) **Except as provided in section 13.1 of this chapter**, that
10 planned services of a noncapital nature, including police
11 protection, fire protection, street and road maintenance, and
12 other noncapital services normally provided within the corporate
13 boundaries, will be provided to the annexed territory within one

14 (1) year after the effective date of annexation, and that they will
15 be provided in a manner equivalent in standard and scope to
16 those noncapital services provided to areas within the corporate
17 boundaries that have similar topography, patterns of land use,
18 and population density. However, in a county having a
19 population of more than two hundred thousand (200,000) but
20 less than three hundred thousand (300,000), the resolution of a
21 city must show that these services will be provided in a manner
22 equivalent in standard and scope to those noncapital services
23 provided to areas within the corporate boundaries, regardless of
24 similar topography, patterns of land use, or population density.

25 (5) **Except as provided in section 13.1 of this chapter**, that
26 services of a capital improvement nature, including street
27 construction, street lighting, sewer facilities, water facilities, and
28 stormwater drainage facilities, will be provided to the annexed
29 territory within three (3) years after the effective date of the
30 annexation, in the same manner as those services are provided
31 to areas within the corporate boundaries, that have similar
32 topography, patterns of land use, and population density, and in
33 a manner consistent with federal, state, and local laws,
34 procedures, and planning criteria. However, in a county having
35 a population of more than two hundred thousand (200,000) but
36 less than three hundred thousand (300,000), the resolution of a
37 city must show that these services will be provided to the
38 annexed territory within four (4) years after the effective date of
39 the annexation and in the same manner as those services are
40 provided to areas within the corporate boundaries, regardless of
41 similar topography, patterns of land use, or population density.

42 (6) The plan for hiring the employees of other governmental

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1 entities whose jobs will be eliminated by the proposed
 2 annexation, although the municipality is not required to hire any
 3 employees.

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

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

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

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

17 (i) Police and fire protection.

18 (ii) Street and road maintenance.

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

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

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

24 (ii) The owners of more than seventy-five percent
 25 (75%) in assessed valuation of the land in the territory
 26 proposed to be annexed.

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

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

33 SECTION 4. IC 36-4-3-13.1 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 1998]: **Sec. 13.1. (a) This section applies to:**

36 **(1) an annexation under section 3 or 4 of this chapter; and**

37 **(2) annexed territory that, on the date the annexation**
 38 **ordinance is adopted, receives the following services from the**
 39 **county, township, or fire protection district:**

40 **(A) Fire protection.**

41 **(B) Emergency medical services.**

42 **(C) Police protection.**



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(D) Parks and recreation.

(b) This section does not apply to an annexation under section 5 of this chapter.

(c) The county, township, or fire protection district shall continue to provide services to the annexed territory after the annexation is effective.

(d) A municipality may not include the services provided by the county, township, or fire protection district in the municipality's fiscal plan for the annexed area under section 13 of this chapter.

(e) The municipality annexing the territory may not increase the tax rate of the residents of the annexed territory for the cost of providing the services described in subsection (a) to the other residents of the municipality.

SECTION 5. IC 36-4-3-16, AS AMENDED BY P.L.255-1997(ss), SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) Within one (1) year after the expiration of:

- (1) the one (1) year period for implementation of planned services of a noncapital nature under section 13(d)(4) of this chapter;
- (2) the three (3) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter; or
- (3) the four (4) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter by a city for annexed territory in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);

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

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

- (1) That the municipality has without justification failed to implement the plan required by section 13 of this chapter within the specific time limit for implementation after annexation.
- (2) That the municipality has not provided police protection, fire protection, sanitary sewers, and water for human consumption within the specific time limit for implementation, unless:

(A) one (1) of these services is being provided by a separate

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1 taxing district or by a privately owned public utility; or
2 **(B) the county, township, or fire protection district**
3 **provides police or fire protection as prescribed in**
4 **section 13.1 of this chapter.**

5 (3) That the annexed territory is not receiving governmental and
6 proprietary services substantially equivalent in standard and
7 scope to the services provided by the municipality to other areas
8 of the municipality that have topography, patterns of land use,
9 and population density similar to the annexed territory. However,
10 in a county having a population of more than two hundred
11 thousand (200,000) but less than three hundred thousand
12 (300,000), the plaintiff must establish that the annexed territory
13 is not receiving governmental and proprietary services
14 substantially equivalent in standard and scope to the services
15 provided by the city regardless of similar topography, patterns of
16 land use, or population density.

17 (c) The court may:

18 (1) grant an injunction prohibiting the collection of taxes levied
19 by the municipality on the plaintiff's property located in the
20 annexed territory;

21 (2) award damages to the plaintiff not to exceed one and
22 one-fourth (1 1/4) times the taxes collected by the municipality
23 for the plaintiff's property located in the annexed territory;

24 (3) order the annexed territory or any part of it to be disannexed
25 from the municipality;

26 (4) order the municipality to submit a revised fiscal plan for
27 providing the services to the annexed territory within time limits
28 set up by the court; or

29 (5) grant any other appropriate relief.

30 (d) A change of venue from the county is not permitted for an
31 action brought under this section.

32 (e) If the court finds for the plaintiff, the defendant shall pay all
33 court costs and reasonable attorney's fees as approved by the court.

34 (f) The provisions of this chapter that apply to territory disannexed
35 by other procedures apply to territory disannexed under this section.

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