



February 11, 1999

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## HOUSE BILL No. 1491

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DIGEST OF HB 1491 (Updated February 10, 1999 5:39 pm - DI 94)

**Citations Affected:** IC 8-1; IC 36-4; IC 36-9; noncode.

**Synopsis:** Annexation procedures. Provides for certified mail notification of land owners and certain elected officials of an annexation ordinance. Allows an annexation to be appealed by filing a written remonstrance signed by at least 50% of the owners in the territory or the owners of at least 50% in assessed valuation of the land in the annexed territory. Allows a remonstrance to be filed not more than 90 days after publication of the annexation ordinance. Provides that if a court finds that a remonstrance is sufficient, the court shall order an annexation not to take place. Allows an owner of real property in the annexed territory or the municipality that is annexing the territory to file an action not more than 120 days after publication of the annexation ordinance requesting a court to enter a judgment voiding the annexation ordinance on the grounds that the ordinance does not comply with legal requirements. Allows a five year municipal  
(Continued next page)

**Effective:** January 1, 1999 (retroactive); July 1, 1999.

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**Pelath, Mock, Cheney, Alderman,  
Budak, Kruse, Pond, Ruppel,  
Ayres, Smith M, Fry, Torr,  
Whetstone, Herrell, Young M,  
Tincher, Turner, Saunders, Buck**

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January 19, 1999, read first time and referred to Committee on Local Government.  
February 10, 1999, amended, reported — Do Pass.

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HB 1491—LS 7425/DI 87+



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abatement of a portion of municipal property tax liability for residential property. Prohibits a municipality from making further attempts to annex territory for three years after the later of the circuit or superior court judgment or the date of the final disposition of all appeals, unless the landowners in the annexed territory petition for annexation. Requires a municipality to provide noncapital services in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, or population density. Requires a municipality to provide capital services within four years in a manner equivalent in standard and scope to those capital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, or population density. Repeals a provision that allows landowners to petition the municipality to annex territory and requires the municipality to adopt an annexation ordinance if certain requirements are met. Provides that if a court, pursuant to a complaint filed by a landowner, finds that the municipality failed to provide the capital and noncapital services under the fiscal plan, the court is required to order all or part of the territory to be disannexed. Provides that the act applies to an annexation ordinance adopted after January 1, 1999. Requires the filing of a land owners waiver of remonstrance with the county recorder. Voids an annexation that fulfills all of the following requirements: (1) The annexation ordinance was adopted before January 1, 1999. (2) The annexation is effective after January 1, 1999. (3) The annexation ordinance delays the effective date of the annexation for at least one year. (4) A sufficient remonstrance petition was filed against the annexation. Removes the provision that allows a municipality to annex territory if one-fourth of the territory's boundary is contiguous to the municipality and the territory is needed and can be used by the municipality for its development in the reasonably near future. Makes a technical correction.

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February 11, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## HOUSE BILL No. 1491

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 8-1-2.3-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
3 Sec. 6. The boundaries of the assigned service areas of electricity  
4 suppliers may not be changed except under any one (1) of the following  
5 circumstances:  
6 (1) If a municipality which owns and operates an electric utility  
7 system and furnishes retail electric service to the public annexes  
8 area beyond the assigned service area of its municipally owned  
9 electric utility, and the ordinance providing for the annexation  
10 provides that the annexing city has developed a fiscal plan and  
11 has established a definite policy to furnish the territory to be  
12 annexed within a period of three (3) years governmental and  
13 proprietary services substantially equivalent in standard and scope  
14 to the governmental and proprietary services furnished by the  
15 annexing city to other areas of the city which have characteristics

HB 1491—LS 7425/DI 87+



1 of topography, patterns of land utilization, and population density  
 2 similar to the territory to be annexed, then the municipally owned  
 3 electric utility may petition the commission to change the  
 4 assigned service area of the municipally owned electric utility to  
 5 include the annexed area. A municipally owned electric utility  
 6 shall exercise its right to petition the commission to change its  
 7 assigned service area within sixty (60) days after annexation  
 8 becomes final or lose its right under this subdivision. The  
 9 commission shall rule on the petition of the municipally owned  
 10 electric utility within ninety (90) days after its filing. If, upon  
 11 notice and after hearing, the commission decides that it is in the  
 12 public convenience and necessity for the municipally owned  
 13 electric utility to render service to the annexed area, it shall order  
 14 the assigned service area of the municipally owned electric utility  
 15 to be changed to include the annexed area with the right to serve  
 16 and immediate possession to the municipally owned electric  
 17 utility. The commission order is enforceable in court pending an  
 18 appeal of that order. An appellant from a court order enforcing a  
 19 commission order under this subsection shall not be entitled to a  
 20 stay of the court order pending appeal. In determining public  
 21 convenience and necessity, the commission shall give  
 22 consideration to all relevant matters, including but not limited to  
 23 the following:

- 24 (A) Preference of owners, occupiers, and consumers in the  
 25 annexed area.
- 26 (B) Ability of the municipally owned electric utility to render  
 27 service after the assignment of service area.
- 28 (C) Other utility services to be supplied in the annexed area by  
 29 the municipality.
- 30 (D) Proximity and capability of the service repair facilities of  
 31 the electricity suppliers involved.
- 32 (E) Preference of local government officials.

33 However, this subdivision does not apply to incorporations,  
 34 consolidations, mergers, or annexations that are under  
 35 IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or  
 36 IC 36-4-3-4.1, or that are not contiguous. ~~under IC 36-4-3-13(b)~~  
 37 ~~or IC 36-4-3-13(c)~~. If any change in an assigned service area is  
 38 ordered by the commission, all of the electric utility property of  
 39 another electricity supplier which is devoted to retail electric  
 40 service within such additional assigned service area shall be  
 41 acquired at its then reproduction cost new depreciated value; in  
 42 addition, the acquiring electricity supplier shall pay severance



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1 damages limited to, if applicable, the distribution and substation  
 2 facilities dedicated to and located within the annexed area or  
 3 relocated by reason of the annexation, or an amount equal to two  
 4 and one-half (2 1/2) times the previous year's gross electric sales  
 5 from the newly assigned service area, whichever is greater. If the  
 6 parties do not agree on the amount the acquiring electricity  
 7 supplier is to pay, then the commission shall determine said  
 8 amount and order its payment in accordance with this subsection.

9 (2) Upon mutual agreement of the affected electricity suppliers  
 10 and approval of the commission.

11 (3) In the case where a landowner owns a single tract of land  
 12 which is intersected by the boundary lines of two (2) or more  
 13 assigned service areas, and retail electric service can best be  
 14 supplied by only one (1) electricity supplier, or in the case where  
 15 a customer or customers which are housed in a single structure or  
 16 which constitute a single governmental, industrial, or institutional  
 17 operation, and the electricity suppliers involved are unable to  
 18 agree which shall furnish the electric service, any of the electricity  
 19 suppliers may submit the matter to the commission for its  
 20 determination based upon public convenience and necessity. If,  
 21 after notice and hearing, the commission determines that one (1)  
 22 or more electricity suppliers are to supply the required retail  
 23 electric service and the boundaries of an assigned service area are  
 24 to be changed, the assigned service area maps of the electricity  
 25 suppliers shall be changed to reflect the new boundaries.

26 SECTION 2. IC 36-4-3-2.1 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.1. (a) A municipality  
 28 may adopt an ordinance under this chapter ~~only~~ **not less than sixty**  
 29 **(60) days** after the legislative body has held a public hearing  
 30 concerning the proposed annexation. All interested parties must have  
 31 the opportunity to testify as to the proposed annexation.

32 (b) Notice of the hearing shall be published in accordance with  
 33 IC 5-3-1.

34 (c) **If the ordinance is introduced under section 3 or 4 of this**  
 35 **chapter, notice of the public hearing must also be sent by certified**  
 36 **mail to:**

37 (1) **persons owning real property within the territory**  
 38 **proposed to be annexed as appearing on the records of the**  
 39 **county auditor at least fifteen (15) days before the hearing;**

40 (2) **the county:**

41 (A) **auditor;**

42 (B) **assessor;**



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- 1 (C) clerk; and  
 2 (D) executive;  
 3 of each county that contains territory within the proposed  
 4 annexation area; and  
 5 (3) the township:  
 6 (A) trustee; and  
 7 (B) assessor;  
 8 of each township that contains territory within the proposed  
 9 annexation area.
- 10 SECTION 3. IC 36-4-3-2.2 IS ADDED TO THE INDIANA CODE  
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 12 JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 2.2. (a) Except as**  
 13 **provided in subsection (b), before the municipality adopts an**  
 14 **annexation ordinance, the municipality shall develop a written**  
 15 **fiscal plan and establish a definite policy, by resolution of the**  
 16 **legislative body, that shows the following:**
- 17 (1) The cost estimates of planned services to be furnished to  
 18 the territory to be annexed.  
 19 (2) The method or methods of financing the planned services.  
 20 (3) The plan for the organization and extension of services.  
 21 (4) That planned services of a noncapital nature, including  
 22 police protection, fire protection, street and road  
 23 maintenance, and other noncapital services normally  
 24 provided within the corporate boundaries, will be provided to  
 25 the annexed territory within one (1) year after the effective  
 26 date of annexation and that they will be provided in a manner  
 27 equivalent in standard and scope to those noncapital services  
 28 provided to areas within the corporate boundaries regardless  
 29 of similar topography, patterns of land use, and population  
 30 density.  
 31 (5) That services of a capital improvement nature, including  
 32 street construction, street lighting, sewer facilities, water  
 33 facilities, and stormwater drainage facilities, will be provided  
 34 to the annexed territory within four (4) years after the  
 35 effective date of the annexation, in the same manner as those  
 36 services are provided to areas within the corporate  
 37 boundaries, regardless of similar topography, patterns of land  
 38 use, or population density.  
 39 (6) The plan for hiring the employees of other governmental  
 40 entities whose jobs will be eliminated by the proposed  
 41 annexation, although the municipality is not required to hire  
 42 any employees.



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1           **(b) A municipality may adopt an annexation ordinance without**  
 2 **a written fiscal plan if:**

3           **(1) the annexation was initiated by at least fifty percent (50%)**  
 4 **of:**

5           **(A) the owners of land in the proposed annexation area; or**  
 6           **(B) the owners of assessed valuation of land in the**  
 7 **proposed annexation area; and**

8           **(2) the**

9           **(A) property owners identified in subdivision (1); and**

10           **(B) officials of the annexing municipality;**

11           **agree on the terms and conditions of the annexation.**

12           SECTION 4. IC 36-4-3-7 IS AMENDED TO READ AS FOLLOWS  
 13 [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: Sec. 7. (a) After  
 14 an ordinance is adopted under section 3 ~~or 4 or 5~~ of this chapter, it  
 15 must be published in the manner prescribed by IC 5-3-1. Except as  
 16 provided in subsection (b) or ~~(c)~~; **(d)**, in the absence of a remonstrance  
 17 **under section 11 of this chapter, and an appeal under section 11 or**  
 18 **15.5 of this chapter, or an action under section 11.1 of this chapter,**  
 19 the ordinance takes effect at least sixty (60) days after its publication  
 20 and upon the filing required by section 22(a) of this chapter.

21           (b) An ordinance described in subsection (d) or adopted under  
 22 section 3 ~~or 4 or 5~~ of this chapter may not take effect during the year  
 23 preceding a year in which a federal decennial census is conducted. An  
 24 ordinance that would otherwise take effect during the year preceding  
 25 a year in which a federal decennial census is conducted takes effect  
 26 January 2 of the year in which a federal decennial census is conducted.

27           (c) Subsections (d) and (e) apply to fire protection districts that are  
 28 established after June 14, 1987.

29           (d) Except as provided in subsection (b), whenever a municipality  
 30 annexes territory, all or part of which lies within a fire protection  
 31 district (IC 36-8-11), the annexation ordinance (in the absence of a  
 32 remonstrance **under section 11 of this chapter, and an appeal under**  
 33 **section 11 or 15.5 of this chapter, or an action under section 11.1 of**  
 34 **this chapter)** takes effect the second January 1 that follows the date the  
 35 ordinance is adopted and upon the filing required by section 22(a) of  
 36 this chapter. The municipality shall:

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

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

42           (e) If the fire protection district from which a municipality annexes



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1 territory under subsection (d) is indebted or has outstanding unpaid  
 2 bonds or other obligations at the time the annexation is effective, the  
 3 municipality is liable for and shall pay that indebtedness in the same  
 4 ratio as the assessed valuation of the property in the annexed territory  
 5 (that is part of the fire protection district) bears to the assessed  
 6 valuation of all property in the fire protection district, as shown by the  
 7 most recent assessment for taxation before the annexation, unless the  
 8 assessed property within the municipality is already liable for the  
 9 indebtedness. The annexing municipality shall pay its indebtedness  
 10 under this section to the board of fire trustees. If the indebtedness  
 11 consists of outstanding unpaid bonds or notes of the fire protection  
 12 district, the payments to the board of fire trustees shall be made as the  
 13 principal or interest on the bonds or notes becomes due.

14 SECTION 5. IC 36-4-3-8.5 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
 16 Sec. 8.5. (a) A municipality may, in an ordinance adopted under section  
 17 3 or 4 of this chapter, abate a portion of the property tax liability under  
 18 IC 6-1.1 for municipal purposes for all property owners in the annexed  
 19 territory.

20 (b) An ordinance adopted under subsection (a) must provide the  
 21 following:

22 (1) A tax abatement program that is in effect for not more than:

23 (A) three (3) taxable years after an annexation occurs **for an**  
 24 **abatement under subdivision (2); and**

25 (B) **five (5) taxable years after an annexation occurs for an**  
 26 **abatement under subdivision (3).**

27 (2) Except single family residential property described by  
 28 subdivision (3), a tax abatement for all classes of property that  
 29 does not exceed:

30 (A) seventy-five percent (75%) of a taxpayer's liability in the  
 31 first year of the abatement program;

32 (B) fifty percent (50%) of a taxpayer's liability in the second  
 33 year of the abatement program; and

34 (C) twenty-five percent (25%) of a taxpayer's liability in the  
 35 third year of the abatement program.

36 (3) ~~For a county having a population of more than two hundred~~  
 37 ~~thousand (200,000) but less than three hundred thousand~~  
 38 ~~(300,000);~~ A tax abatement for single family residential property  
 39 that does not exceed:

40 (A) ninety percent (90%) of a taxpayer's liability in the first  
 41 year of the abatement program;

42 (B) eighty percent (80%) of a taxpayer's liability in the second



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1 year of the abatement program;

2 (C) sixty percent (60%) of a taxpayer's liability in the third  
3 year of the abatement program;

4 (D) forty percent (40%) of a taxpayer's liability in the fourth  
5 year of the abatement program; and

6 (E) twenty percent (20%) of a taxpayer's liability in the fifth  
7 year of the abatement program.

8 (4) The procedure by which an eligible property owner receives  
9 a tax abatement under this section.

10 SECTION 6. IC 36-4-3-11 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
12 Sec. 11. (a) Whenever territory is annexed by a municipality under this  
13 chapter, the annexation may be appealed by filing with the circuit or  
14 superior court of a county in which the annexed territory is located a  
15 written remonstrance signed by **at least**:

16 (1) ~~a majority~~ **fifty percent (50%)** of the owners of land in the  
17 annexed territory; or

18 (2) the owners of ~~more than seventy-five~~ **fifty percent (75%)**  
19 ~~(50%) in of the~~ assessed valuation of the land in the annexed  
20 territory.

21 The remonstrance must be filed within ~~sixty (60)~~ **ninety (90)** days after  
22 the publication of the annexation ordinance under section 7 of this  
23 chapter, must be accompanied by a copy of that ordinance, and must  
24 state ~~the reason why the annexation should not take place: that the~~  
25 **remonstrators are opposed to the annexation.**

26 (b) On receipt of the remonstrance, the court shall determine  
27 whether the remonstrance has the necessary signatures. In determining  
28 the total number of landowners of the annexed territory and whether  
29 signers of the remonstrance are landowners, the names appearing on  
30 the tax duplicate for that territory constitute prima facie evidence of  
31 ownership. Only one (1) person having an interest in each single  
32 property, as evidenced by the tax duplicate, is considered a landowner  
33 for purposes of this section.

34 (c) ~~If the court determines that the remonstrance is sufficient, it shall~~  
35 ~~fix a time, within sixty (60) days of its determination, for a hearing on~~  
36 ~~the remonstrance. Notice of the proceedings, in the form of a summons,~~  
37 ~~shall be served on the annexing municipality. The municipality is the~~  
38 ~~defendant in the cause and shall appear and answer. If the court~~  
39 ~~determines that a remonstrance has the number of signatures~~  
40 ~~required under subsection (a), the court shall order the annexation~~  
41 ~~not to take place.~~

42 (d) **If the court determines that a remonstrance does not have**

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1 the number of signatures required under subsection (a), the court  
2 shall dismiss the remonstrance.

3 SECTION 7. IC 36-4-3-11.1 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
5 JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 11.1. (a) An owner of  
6 real property located within:**

7 (1) the annexed territory; or

8 (2) the municipality annexing the territory;

9 may, not more than one hundred twenty (120) days after the  
10 annexation ordinance is published as provided under section 7 of  
11 this chapter, file an action in the circuit or superior court where  
12 the annexation is located requesting the court to enter a judgment  
13 voiding the annexation ordinance on the grounds that the  
14 annexation does not comply with the requirements of this chapter.

15 (b) The laws providing for change of venue from the county do  
16 not apply to an action under this section, but changes of venue  
17 from the judge may be had as in other cases. Costs shall be paid by  
18 the prevailing party.

19 (c) If:

20 (1) a remonstrance is filed under section 11 of this chapter; or

21 (2) an appeal is filed under section 15.5 of this chapter;

22 the court shall stay an action under this section to void an  
23 annexation ordinance until the court enters a judgment on the  
24 remonstrance or appeal. If the court's judgment on the  
25 remonstrance or appeal is adverse to the annexation, the court  
26 shall dismiss the action filed under this section to void the  
27 annexation ordinance.

28 SECTION 8. IC 36-4-3-11.2 IS ADDED TO THE INDIANA CODE  
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
30 JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 11.2. An annexation  
31 may not take effect during the year preceding the year in which a  
32 federal decennial census is conducted. An annexation that would  
33 otherwise take effect during the year preceding a year in which a  
34 federal decennial census is conducted takes effect January 2 of the  
35 year in which a federal decennial census is conducted.**

36 SECTION 9. IC 36-4-3-11.3 IS ADDED TO THE INDIANA CODE  
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
38 JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 11.3. The territory  
39 sought to be annexed is not considered a part of the municipality  
40 pending:**

41 (1) a remonstrance under section 11 of this chapter;

42 (2) an appeal under section 15.5 of this chapter; or



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1           **(3) an action under section 11.1 of this chapter.**

2           SECTION 10. IC 36-4-3-11.7 IS ADDED TO THE INDIANA  
3 CODE AS A NEW SECTION TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 1999]: **Sec. 11.7. (a) A municipality that**  
5 **obtains from an owner of real property a waiver against**  
6 **remonstrance as a condition of receiving one (1) or more municipal**  
7 **services shall record the waiver with the county recorder of each**  
8 **county in which the territory that is the subject of the waiver is**  
9 **located.**

10          **(b) A waiver obtained under this section is enforceable against**  
11 **all subsequent owners of any part of the real property that is the**  
12 **subject of the waiver.**

13          SECTION 11. IC 36-4-3-13.1 IS ADDED TO THE INDIANA  
14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 13.1. (a)**  
16 **Except as provided in sections 4 and 4.1 of this chapter, an**  
17 **annexation must meet the requirements of subsection (b).**

18          **(b) The requirements of this subsection are met if:**

19           **(1) the territory sought to be annexed is contiguous to the**  
20 **municipality; and**

21           **(2) one (1) of the following conditions is met:**

22               **(A) The resident population density of the territory sought**  
23 **to be annexed is at least three (3) persons per acre.**

24               **(B) Sixty percent (60%) of the territory is subdivided.**

25               **(C) The territory is zoned for commercial, business, or**  
26 **industrial uses.**

27          **(c) In an action under section 11.1 of this chapter, the federal**  
28 **census data established by IC 1-1-4-5(17) shall be used as evidence**  
29 **of resident population density for purposes of subsection (b)(2)(A),**  
30 **but this evidence may be rebutted by other evidence of population**  
31 **density.**

32          SECTION 12. IC 36-4-3-15 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
34 Sec. 15. (a) The court's judgment under section ~~12~~ **11, 11.1**, or 15.5 of  
35 this chapter must specify the annexation ordinance ~~on which the~~  
36 ~~remonstrance is based: that is the subject of the action,~~  
37 **remonstrance, or appeal.** The clerk of the court shall deliver a  
38 certified copy of the judgment to the clerk of the municipality. The  
39 clerk of the municipality shall:

40           (1) record the judgment in the clerk's ordinance record; and

41           (2) make a cross-reference to the record of the judgment on the  
42 margin of the record of the annexation ordinance.



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1 (b) If a judgment under section ~~12~~ **11** or 15.5 of this chapter is  
2 adverse to annexation, **or the annexation ordinance is voided under**  
3 **section 11.1 of this chapter**, the municipality may not make further  
4 attempts to annex the territory during the ~~two (2)~~ **three (3)** years after  
5 the later of:

- 6 (1) the judgment of the circuit or superior court; or  
7 (2) the date of the final disposition of all appeals to a higher court.  
8 ~~unless the annexation is petitioned for under section 5 of this chapter:~~

9 (c) If a judgment under section ~~12~~ or ~~15.5~~ of this chapter orders the  
10 ~~annexation to take place;~~ **If a judgment:**

- 11 (1) **dismisses an appeal under section 15.5 of this chapter;**  
12 (2) **dismisses a remonstrance under section 11 of this chapter;**  
13 **or**  
14 (3) **affirms the validity of an annexation ordinance under**  
15 **section 11.1 of this chapter;**

16 the annexation is effective when the clerk of the municipality complies with  
17 the filing requirement of section 22(a) of this chapter.

18 SECTION 13. IC 36-4-3-16 IS AMENDED TO READ AS  
19 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:

20 Sec. 16. (a) Within one (1) year after the expiration of:

- 21 (1) the one (1) year period for implementation of planned services  
22 of a noncapital nature under section ~~13(d)(4)~~ **2.2(4)** of this  
23 chapter; **or**  
24 (2) ~~the three (3) year period for the implementation of planned~~  
25 ~~services of a capital improvement nature under section 13(d)(5)of~~  
26 ~~this chapter;~~ **or**  
27 (3) ~~(2) the four (4) year period for the implementation of planned~~  
28 ~~services of a capital improvement nature under section 13(d)(5)~~  
29 ~~2.2(5) of this chapter by a city municipality for annexed territory;~~  
30 ~~in a county having a population of more than two hundred~~  
31 ~~thousand (200,000) but less than three hundred thousand~~  
32 ~~(300,000);~~

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

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

- 41 (1) That the municipality has without justification failed to  
42 implement the plan required by section ~~13~~ **2.2** of this chapter

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1 within the specific time limit for implementation after annexation.

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

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

19 (c) The court ~~may~~: **shall**

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

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

26 (3) ~~order the annexed territory or any part of it to be disannexed~~  
27 ~~from the municipality.~~

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

31 (5) ~~grant any other appropriate relief.~~

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

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

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

38 SECTION 14. IC 36-4-3-22 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
40 Sec. 22. (a) The clerk of the municipality shall **do the following**:

41 (1) File each annexation ordinance against which a remonstrance,  
42 **an action under section 11.1 of this chapter, or an appeal has**

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not been filed during the period permitted under this chapter ~~or~~  
the certified copy of a judgment ordering an annexation to take  
place with:

- ~~(A)~~ the county auditor of each county in which the annexed territory is located;
- ~~(B)~~ the circuit court clerk; and if a board of registration exists; the board of each county in which the annexed territory is located; and
- ~~(C)~~ the state certifying official designated under IC 3-6-4.2-11; and

as set forth in subsection (b).

**(2) As set forth in subsection (b), file the certified copy of a judgment:**

- (A) dismissing an appeal under section 15.5 of this chapter;**
- (B) dismissing a remonstrance under section 11 of this chapter; or**
- (C) affirming the validity of an annexation ordinance in an action under section 11.1 of this chapter.**

~~(2)~~ **(3)** Record each annexation ordinance adopted under this chapter in the office of the county recorder of each county in which the annexed territory is located.

**(b) The clerk of the municipality shall file the ordinance or judgment as set forth in subsection (a)(1) and (a)(2) with the following:**

- (1) The county auditor of each county in which the annexed territory is located.**
- (2) The circuit court clerk, and, if a board of registration exists, the board of each county in which the annexed territory is located.**
- (3) The secretary of state.**

~~(b)~~ **(c)** The copy must be filed and recorded no later than ninety (90) days after:

- (1) the expiration of the period permitted for a remonstrance or appeal; filing an action under section 11.1 of this chapter; or**
- (2) the delivery of a certified order under section 15 of this chapter.**

~~(c)~~ **(d)** Failure to record the annexation ordinance as provided in subsection ~~(a)(2)~~ **(a)(3)** does not invalidate the ordinance.

~~(d)~~ **(e)** The county auditor shall forward a copy of any annexation ordinance filed under this section to the following:

- (1) The county highway department.**
- (2) The county surveyor.**

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1 (3) Each plan commission, if any, that lost or gained jurisdiction  
 2 over the annexed territory.  
 3 (4) Any state agency that has requested copies of annexations  
 4 filed with the county auditor under this section.  
 5 (f) The county auditor may require the clerk of the municipality  
 6 to furnish an adequate number of copies of the annexation ordinance  
 7 or may charge the clerk a fee for photoreproduction of the ordinance.  
 8 (g) The county auditor shall, upon determining that an  
 9 annexation ordinance has become effective under this chapter, indicate  
 10 the annexation upon the property taxation records maintained in the  
 11 office of the auditor.  
 12 SECTION 15. IC 36-9-24-14 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
 14 Sec. 14. A municipality that leases and operates sewage disposal  
 15 facilities in an area within one (1) mile outside its corporate boundaries  
 16 is considered to be furnishing sewage and sewer service in that area for  
 17 purposes of ~~IC 36-4-3-13~~. **IC 36-4-3-2.2.**  
 18 SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 19 JANUARY 1, 1999 (RETROACTIVE)]: IC 36-4-3-5; IC 36-4-3-12;  
 20 IC 36-4-3-13; IC 36-4-3-14; IC 36-4-3-15.3.  
 21 SECTION 17. [EFFECTIVE JANUARY 1, 1999  
 22 (RETROACTIVE)] **IC 36-4-3, as amended by this act, applies to an  
 23 annexation ordinance adopted after January 1, 1999.**  
 24 SECTION 18. [EFFECTIVE JANUARY 1, 1999  
 25 (RETROACTIVE)] **(a) This SECTION applies to an annexation that  
 26 fulfills all of the following requirements:**  
 27 **(1) The annexation ordinance was adopted before January 1,  
 28 1999.**  
 29 **(2) The annexation is effective after January 1, 1999.**  
 30 **(3) The annexation ordinance delays the effective date of the  
 31 annexation for at least one (1) year.**  
 32 **(4) A remonstrance was filed against the annexation that a  
 33 court determined to be sufficient under IC 36-4-3-11.**  
 34 **(b) An annexation described in subsection (a) is void.**  
 35 SECTION 19. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1491, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 3. IC 36-4-3-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.1. (a) A municipality may adopt an ordinance under this chapter ~~only~~ **not less than sixty (60) days** after the legislative body has held a public hearing concerning the proposed annexation. All interested parties must have the opportunity to testify as to the proposed annexation.

(b) Notice of the hearing shall be published in accordance with IC 5-3-1.

(c) **If the ordinance is introduced under section 3 or 4 of this chapter, notice of the public hearing must also be sent by certified mail to:**

(1) **persons owning real property within the territory proposed to be annexed as appearing on the records of the county auditor at least fifteen (15) days before the hearing;**

(2) **the county:**

(A) **auditor;**

(B) **assessor;**

(C) **clerk; and**

(D) **executive;**

**of each county that contains territory within the proposed annexation area; and**

(3) **the township:**

(A) **trustee; and**

(B) **assessor;**

**of each township that contains territory within the proposed annexation area."**

Page 3, line 28, after "Sec. 2.2." insert "(a) **Except as provided in subsection (b), before**".

Page 3, line 28, delete "Before".

Page 4, between lines 15 and 16, begin a new paragraph and insert:

"(b) **A municipality may adopt an annexation ordinance without a written fiscal plan if:**

(1) **the annexation was initiated by at least fifty percent (50%) of:**

(A) **the owners of land in the proposed annexation area; or**

(B) **the owners of assessed valuation of land in the**

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- proposed annexation area; and**  
**(2) the**  
**(A) property owners identified in subdivision (1); and**  
**(B) officials of the annexing municipality;**  
**agree on the terms and conditions of the annexation."**

Page 8, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 11. IC 36-4-3-11.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 11.7. (a) A municipality that obtains from an owner of real property a waiver against remonstrance as a condition of receiving one (1) or more municipal services shall record the waiver with the county recorder of each county in which the territory that is the subject of the waiver is located.**

**(b) A waiver obtained under this section is enforceable against all subsequent owners of any part of the real property that is the subject of the waiver."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1491 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 7, nays 4.

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