



Reprinted
February 16, 1999

HOUSE BILL No. 1608

DIGEST OF HB 1608 (Updated February 15, 1999 8:23 pm - DI 87)

Citations Affected: IC 36-4; noncode.

Synopsis: Annexation provisions. Changes the notice requirements for certain annexations. Specifies the contents of an annexation ordinance. Provides that all landowners within contiguous territory may petition the municipality to annex the territory. Provides that if a municipality annexes territory that has no population, the annexation may take effect in the year preceding a federal decennial census. Requires a municipality to record a waiver of remonstrance received as a condition of providing a municipal service. Extends the deadline for a municipality to provide noncapital and capital services to annexed territory if the municipality implements a tax abatement program in the annexed area. Eliminates the requirement that a municipality hold a public hearing or adopt a fiscal plan in certain annexations. Specifies when an annexation becomes effective. Provides that a municipality is not required to implement a fiscal plan until all appeals have been
(Continued next page)

Effective: Upon passage; July 1, 1999.

Bailey, Klinker, Goeglein, Scholer

January 21, 1999, read first time and referred to Committee on Local Government.
February 10, 1999, amended, reported — Do Pass.
February 15, 1999, read second time, amended, ordered engrossed.

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concluded. Eliminates the procedure that allows landowners to petition the municipal works board for disannexation. Changes the requirements for filing an annexation ordinance or judgment in an annexation proceeding. Provides that in an action against a municipality for failure to provide services, the court must find in favor of the municipality if the failure was due to an emergency. Provides that the legal requirements for filing an annexation or disannexation are met if the annexation is entered by the county auditor on property tax records before July 1, 1999.

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February 16, 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.

HOUSE BILL No. 1608

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 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. This chapter applies to all
3 municipalities except consolidated cities. ~~However, sections 3 and 21~~
4 ~~of this chapter do not apply to towns.~~

5 SECTION 2. IC 36-4-3-2 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 1999]: Sec. 2. Territory may be annexed by a
7 municipality under section 3, ~~or~~ 4, **4.1, 5, or 5.1** of this chapter.
8 However, a municipality may not annex territory that is inside the
9 corporate boundaries of another municipality, although municipalities
10 may merge under IC 36-4-2.

11 SECTION 3. IC 36-4-3-2.1 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.1. (a) A municipality
13 may adopt an ordinance under **section 3, 4, 4.1, or 5** of this chapter
14 only after the legislative body has held a public hearing concerning the
15 proposed annexation. **The municipality shall hold the public hearing**
16 **at least fifteen (15) days after the date the ordinance is introduced.**

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1 All interested parties must have the opportunity to testify as to the
2 proposed annexation.

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

5 (c) **If the ordinance is introduced under section 3 or 4 of this**
6 **chapter, notice of the public hearing must also be sent by certified**
7 **mail to persons owning real property within the territory proposed**
8 **to be annexed as appearing on the records of the county auditor at**
9 **least fifteen (15) days before the hearing.**

10 SECTION 4. 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. Before the**
13 **municipality adopts an annexation ordinance, the municipality**
14 **shall develop a written fiscal plan and establish a definite policy, by**
15 **resolution of the legislative body, that shows the following:**

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

18 (2) The method or methods of financing the planned
19 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
25 provided to the annexed territory within one (1) year after
26 the effective date of annexation and that they will be
27 provided in a manner equivalent in standard and scope to
28 those noncapital services provided to areas within the
29 corporate boundaries regardless of similar topography,
30 patterns of land use, and population density.

31 (5) That services of a capital improvement nature, including
32 street construction, street lighting, sewer facilities, water
33 facilities, and stormwater facilities, will be provided to the
34 annexed territory within four (4) years after the effective
35 date of the annexation, in the same manner as those services
36 are provided to areas within the corporate boundaries,
37 regardless of similar topography, patterns of land use, or
38 population density.

39 (6) The plan for hiring the employees of other
40 governmental entities whose jobs will be eliminated by the
41 proposed annexation, although the municipality is not
42 required to hire any employees.

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1 SECTION 5. IC 36-4-3-2.7 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 1999]: **Sec. 2.7. Before the municipal legislative body may adopt
 4 an annexation ordinance under section 3 or 4 of this chapter, the
 5 municipal legislative body must adopt a resolution establishing a
 6 policy for extending services to the area proposed to be annexed as
 7 set forth in section 13 of this chapter.**

8 SECTION 6. IC 36-4-3-3.5 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 1999]: **Sec. 3.5. (a) An annexation ordinance adopted under this
 11 chapter must contain the following information:**

12 **(1) A description of the boundaries of the territory to be
 13 annexed including any public highway or right-of-way.**

14 **(2) The approximate number of acres in the territory to be
 15 annexed.**

16 **(3) A description of any special terms and conditions adopted
 17 under section 8 of this chapter.**

18 **(b) An ordinance adopted under section 3 or 4 of this chapter
 19 must also contain a description of any property tax abatements
 20 adopted under section 8.5 of this chapter.**

21 SECTION 7. IC 36-4-3-4 IS AMENDED TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 1999]: **Sec. 4. (a) The legislative body of a
 23 municipality may, by ordinance, annex any of the following:**

24 **(1) Territory that is contiguous to the municipality.**

25 **(2) Territory that is not contiguous to the municipality and is
 26 occupied by a municipally owned or operated airport or landing
 27 field.**

28 **(3) Territory that is not contiguous to the municipality but is
 29 found by the legislative body to be occupied by a municipally
 30 owned or regulated sanitary landfill, golf course, or hospital.
 31 However, if territory annexed under this subsection ceases to be
 32 used as a municipally owned or regulated sanitary landfill, golf
 33 course, or hospital for at least one (1) year, the territory reverts to
 34 the jurisdiction of the unit having jurisdiction before the
 35 annexation if the unit that had jurisdiction over the territory still
 36 exists. If the unit no longer exists, the territory reverts to the
 37 jurisdiction of the unit that would currently have jurisdiction over
 38 the territory if the annexation had not occurred. The clerk of the
 39 municipality shall notify the offices required to receive notice of
 40 a disannexation under section 19 of this chapter when the territory
 41 reverts to the jurisdiction of the unit having jurisdiction before the**

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- 1 annexation.
- 2 (b) This subsection applies to municipalities in a county having a
- 3 population of:
- 4 (1) more than seventy-three thousand (73,000) but less than
- 5 seventy-five thousand (75,000);
- 6 (2) more than sixty thousand (60,000) but less than sixty-five
- 7 thousand (65,000);
- 8 (3) more than forty-one thousand (41,000) but less than forty-two
- 9 thousand five hundred (42,500);
- 10 (4) more than thirty-eight thousand three hundred (38,300) but
- 11 less than thirty-eight thousand five hundred (38,500);
- 12 (5) more than thirty-five thousand four hundred (35,400) but less
- 13 than thirty-six thousand (36,000);
- 14 (6) more than twenty-four thousand eight hundred (24,800) but
- 15 less than twenty-five thousand (25,000);
- 16 (7) more than twenty-two thousand (22,000) but less than
- 17 twenty-three thousand (23,000); or
- 18 (8) more than two hundred thousand (200,000) but less than three
- 19 hundred thousand (300,000).

20 Except as provided in subsection (c), the legislative body of a

21 municipality to which this subsection applies may, by ordinance, annex

22 territory that is not contiguous to the municipality, has its entire area

23 not more than two (2) miles from the municipality's boundary, is to be

24 used for an industrial park containing one (1) or more businesses, and

25 is either owned by the municipality or by a property owner who

26 consents to the annexation. However, if territory annexed under this

27 subsection is not used as an industrial park within five (5) years after

28 the date of passage of the annexation ordinance, or if the territory

29 ceases to be used as an industrial park for at least one (1) year, the

30 territory reverts to the jurisdiction of the unit having jurisdiction before

31 the annexation if the unit that had jurisdiction over the territory still

32 exists. If the unit no longer exists, the territory reverts to the

33 jurisdiction of the unit that would currently have jurisdiction over the

34 territory if the annexation had not occurred. The clerk of the

35 municipality shall notify the offices entitled to receive notice of a

36 disannexation under section 19 of this chapter when the territory

37 reverts to the jurisdiction of the unit having jurisdiction before the

38 annexation.

39 (c) A city in a county with a population of more than two hundred

40 thousand (200,000) but less than three hundred thousand (300,000)

41 may not annex territory as prescribed in subsection (b) until the

42 territory is zoned by the county for industrial purposes.

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1 (d) Notwithstanding any other law, territory that is annexed under
 2 subsection (b) or (h) is not considered a part of the municipality for the
 3 purposes of:

4 (1) annexing additional territory:

5 (A) in a county that is not described by clause (B); or

6 (B) in a county having a population of more than two hundred
 7 thousand (200,000) but less than three hundred thousand
 8 (300,000), unless the boundaries of the noncontiguous territory
 9 become contiguous to the city, as allowed by Indiana law;

10 (2) expanding the municipality's extraterritorial jurisdictional
 11 area; or

12 (3) changing an assigned service area under IC 8-1-2.3-6(1).

13 (e) As used in this section, "airport" and "landing field" have the
 14 meanings prescribed by IC 8-22-1.

15 (f) As used in this section, "hospital" has the meaning prescribed by
 16 IC 16-18-2-179(b).

17 (g) **This subsection does not apply to a town that has abolished**
 18 **town legislative body districts under IC 36-5-2-4.1.** An ordinance
 19 adopted under this section must assign the territory annexed by the
 20 ordinance to at least one (1) municipal legislative body district.

21 (h) This subsection applies to a municipality having a population of
 22 more than thirty-two thousand (32,000) but less than thirty-three
 23 thousand (33,000) that is located within a county having a population
 24 of more than seventy-three thousand (73,000) but less than seventy-five
 25 thousand (75,000). The legislative body of a municipality may, by
 26 ordinance, annex territory that:

27 (1) is not contiguous to the municipality;

28 (2) has its entire area not more than eight (8) miles from the
 29 municipality's boundary;

30 (3) does not extend more than:

31 (A) one and one-half (1 1/2) miles to the west;

32 (B) three-fourths (3/4) mile to the east;

33 (C) one-half (1/2) mile to the north; or

34 (D) one-half (1/2) mile to the south;

35 of an interchange of an interstate highway (as designated by the
 36 federal highway authorities) and a state highway (as designated
 37 by the state highway authorities); and

38 (4) is owned by the municipality or by a property owner that
 39 consents to the annexation.

40 SECTION 8. IC 36-4-3-4.1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.1. (a) This section
 42 applies to municipalities:

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1 (1) having a population of:

2 (A) more than ten thousand (10,000) but less than fifteen
3 thousand (15,000); and

4 (B) **more than four thousand (4,000) but less than four**
5 **thousand three hundred (4,300);**

6 located in a county having a population of more than seventy-five
7 thousand (75,000) but less than seventy-eight thousand (78,000);

8 (2) having a population of more than thirty-three thousand
9 (33,000) but less than thirty-three thousand eight hundred fifty
10 (33,850) located in a county having a population of more than one
11 hundred seven thousand (107,000) but less than one hundred
12 eight thousand (108,000); and

13 (3) located in a county having a population of more than four
14 hundred thousand (400,000) but less than seven hundred thousand
15 (700,000).

16 (b) Except as provided in subsection (c), the legislative body of a
17 municipality to which this section applies may, by ordinance, annex
18 territory that:

19 (1) is contiguous to the municipality;

20 (2) in the case of a municipality described in subdivision (a)(1),
21 has its entire area within the township within which the
22 municipality is primarily located; and

23 (3) is owned by a property owner who consents to the annexation.

24 (c) Subsection (b)(2) does not apply to a municipality having a
25 population of:

26 (1) more than six thousand (6,000) but less than six thousand five
27 hundred (6,500); or

28 (2) more than eight thousand seven hundred (8,700) but less than
29 eight thousand nine hundred (8,900);

30 in a county having a population of more than four hundred thousand
31 (400,000) but less than seven hundred thousand (700,000).

32 (d) Territory annexed under this section is exempt from all property
33 tax liability under IC 6-1.1 for municipal purposes for all portions of
34 the annexed territory that is classified for zoning purposes as
35 agriculture and remains exempt from the property tax liability while the
36 property's zoning classification remains agriculture.

37 (e) There may not be a change in the zoning classification of
38 territory annexed under this section without the consent of the owner
39 of the annexed territory.

40 SECTION 9. IC 36-4-3-5 IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) ~~If~~ The owners of land located
42 outside ~~of~~ but contiguous to a municipality ~~want to have territory~~

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1 ~~containing that land annexed to the municipality, they~~ may file with the
 2 legislative body of the municipality a petition:

3 (1) signed by at least:

4 (A) fifty-one percent (51%) of the owners of land in the
 5 territory sought to be annexed; or

6 (B) the owners of seventy-five percent (75%) of the total
 7 assessed value of the land for property tax purposes; and

8 (2) requesting an ordinance annexing the area described in the
 9 petition.

10 (b) If the legislative body fails to pass the ordinance within sixty
 11 (60) days after the date of filing of a petition under subsection (a), the
 12 petitioners may file:

13 (1) a ~~duplicate~~ copy of the petition; and

14 (2) a **written statement of why the annexation should take**
 15 **place;**

16 in the circuit or superior court of a county in which the territory is
 17 located. ~~and shall include a written statement of why the annexation~~
 18 ~~should take place.~~ Notice of the proceedings, in the form of a
 19 summons, shall be served on the municipality named in the petition.
 20 The municipality is the defendant in the cause and shall appear and
 21 answer.

22 (c) The court shall hear and determine the petition without a jury,
 23 and shall order the proposed annexation to take place only if the
 24 evidence introduced by the parties establishes that:

25 (1) essential municipal services and facilities are not available to
 26 the residents of the territory sought to be annexed;

27 (2) the municipality is physically and financially able to provide
 28 municipal services to the territory sought to be annexed;

29 (3) the population density of the territory sought to be annexed is
 30 at least three (3) persons per acre; and

31 (4) the territory sought to be annexed is contiguous to the
 32 municipality.

33 If the evidence does not establish all four (4) of the preceding factors,
 34 the court shall deny the petition and dismiss the proceeding.

35 (d) This subsection does not apply to a town that has abolished town
 36 legislative body districts under IC 36-5-2-4.1. An ordinance adopted
 37 under this section must assign the territory annexed by the ordinance
 38 to at least one (1) municipal legislative body district.

39 (e) In a county having a population of more than two hundred
 40 thousand (200,000) but less than three hundred thousand (300,000), the
 41 court shall hear and determine the petition without a jury and shall
 42 order the proposed annexation to take place only if the evidence

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1 introduced by the parties establishes that:

- 2 (1) essential city services and facilities are or can be made
 3 available to the residents of the territory sought to be annexed;
 4 (2) the city is physically and financially able to provide city
 5 services to the territory sought to be annexed; and
 6 (3) the territory sought to be annexed is contiguous to the city.

7 If the evidence does not establish all three (3) of the preceding factors,
 8 the court shall deny the petition and dismiss the proceeding.

9 SECTION 10. IC 36-4-3-5.1 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 11 1, 1999]: **Sec 5.1. (a) If all of the landowners within a territory
 12 located outside but contiguous to a municipality want the territory
 13 annexed to the municipality, the landowners may file with the
 14 legislative body of the municipality a petition requesting an
 15 ordinance annexing the territory described in the petition.**

16 **(b) An ordinance adopted under this section is not subject to:**
 17 **(1) a remonstrance initiated under section 11 of this chapter;**
 18 **or**
 19 **(2) a complaint filed under section 16 of this chapter.**

20 **(c) This subsection does not apply to a town that has abolished**
 21 **town legislative body districts under IC 36-5-2-4.1. An ordinance**
 22 **adopted under this section must assign the territory annexed by the**
 23 **ordinance to at least one (1) municipal legislative body district.**

24 SECTION 11. IC 36-4-3-6 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) A certified copy
 26 of an ordinance adopted under section 3 of this chapter is conclusive
 27 evidence of the corporate boundaries of the municipality in any
 28 proceeding.

29 (b) A certified copy of an ordinance adopted under section 4, **4.1, 5,**
 30 **or 5.1** of this chapter is conclusive evidence in any proceeding that the
 31 territory described in the ordinance was properly annexed and is a part
 32 of the municipality.

33 SECTION 12. IC 36-4-3-7 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) After an
 35 ordinance is adopted under section 3, 4, **4.1,** or 5 of this chapter, it must
 36 be published in the manner prescribed by IC 5-3-1. Except as provided
 37 in subsection (b) or ~~(c)~~ **(d)**, in the absence of remonstrance and appeal
 38 under section 11 or 15.5 of this chapter, the ordinance takes effect:

39 (1) ~~at least~~ sixty (60) days after its publication; and
 40 (2) upon the filing **and recording** required by section ~~22(a)~~ **22** of
 41 this chapter.

42 (b) **Except as provided in subsection (f),** an ordinance described

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1 in subsection (d) or adopted under section 3, 4, ~~or 4.1, 5, or 5.1~~ of this
 2 chapter may not take effect during the year preceding a year in which
 3 a federal decennial census is conducted. An ordinance that would
 4 otherwise take effect during the year preceding a year in which a
 5 federal decennial census is conducted takes effect January 2 of the year
 6 in which a federal decennial census is conducted.

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

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

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

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

21 (e) **This subsection applies to a fire protection district**
 22 **established after June 14, 1987.** If the fire protection district from
 23 which a municipality annexes territory under subsection (d) is indebted
 24 or has outstanding unpaid bonds or other obligations at the time the
 25 annexation is effective, the municipality is liable for and shall pay that
 26 indebtedness in the same ratio as the assessed valuation of the property
 27 in the annexed territory (that is part of the fire protection district) bears
 28 to the assessed valuation of all property in the fire protection district,
 29 as shown by the most recent assessment for taxation before the
 30 annexation, unless the assessed property within the municipality is
 31 already liable for the indebtedness. The annexing municipality shall
 32 pay its indebtedness under this section to the board of fire trustees. If
 33 the indebtedness consists of outstanding unpaid bonds or notes of the
 34 fire protection district, the payments to the board of fire trustees shall
 35 be made as the principal or interest on the bonds or notes becomes due.

36 (f) **Notwithstanding subsection (b), an ordinance annexing**
 37 **territory with no population takes effect in the following manner:**

38 (1) **If the ordinance is described under subsection (d), the**
 39 **ordinance takes effect as provided in subsection (d).**

40 (2) **If the ordinance is adopted under section 3, 4, 4.1, or 5 of**
 41 **this chapter, the ordinance takes effect as provided in**
 42 **subsection (a).**

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1 **(3) If the ordinance is adopted under section 5.1 of this**
 2 **chapter, the ordinance takes effect as provided in section 7.5**
 3 **of this chapter.**

4 SECTION 13. IC 36-4-3-7.5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 1999]: **Sec. 7.5. (a) After an ordinance is adopted under section**
 7 **5.1 of this chapter, it must be published one (1) time in the manner**
 8 **prescribed by IC 5-3-1.**

9 **(b) Except as provided in section 7(b) and 7(d) of this chapter,**
 10 **an ordinance adopted under section 5.1 of this chapter is effective**
 11 **upon publication and upon the filing and recording required by**
 12 **section 22 of this chapter.**

13 **(c) Notwithstanding section 7(b) of this chapter, an ordinance**
 14 **annexing territory with no population under section 5.1 of this**
 15 **chapter is effective upon publication and upon the filing and**
 16 **recording required by section 22 of this chapter.**

17 SECTION 14. IC 36-4-3-8 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. An ordinance
 19 adopted under section 3, ~~or~~ 4, ~~or~~ 5 of this chapter may include terms
 20 and conditions fairly calculated to make the annexation equitable to the
 21 property owners and residents of the municipality and the annexed
 22 territory. The terms and conditions may include:

- 23 (1) postponing the effective date of the annexation;
 24 (2) impounding in a special fund all or part of the municipal
 25 property taxes imposed on the annexed territory after the
 26 annexation takes effect, in an amount and for a period, not to
 27 exceed three (3) years, determined by the municipal legislative
 28 body, and using the impounded taxes solely for the extension of
 29 municipal services and benefits and the making of municipal or
 30 public improvements for the benefit of the property owners and
 31 residents of the annexed territory; and
 32 (3) establishing equitable provisions for the future management
 33 and improvement of the annexed territory and for the rendering of
 34 needed services.

35 SECTION 15. IC 36-4-3-11 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. **(a) A**
 37 **remonstrance under this chapter must be brought as set forth in**
 38 **this section.**

39 ~~(a)~~ **(b) Whenever territory is annexed by a municipality under**
 40 **section 3, 4, or 4.1 of this chapter, the annexation may be appealed by**
 41 **filing with the circuit or superior court of a county in which the**
 42 **annexed territory is located a written remonstrance signed by:**



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- 1 (1) a majority of the owners of land in the annexed territory; or
 2 (2) the owners of more than seventy-five percent (75%) in
 3 assessed valuation of the land in the annexed territory.

4 The remonstrance must be filed within sixty (60) days after the
 5 publication of the annexation ordinance under section 7 of this chapter,
 6 must be accompanied by a copy of that ordinance, and must state the
 7 reason why the annexation should not take place.

8 (b) On receipt of the remonstrance, the court shall determine
 9 whether the remonstrance has the necessary signatures. In determining
 10 the total number of landowners of the annexed territory and whether
 11 signers of the remonstrance are landowners, the names appearing on
 12 the tax duplicate for that territory constitute prima facie evidence of
 13 ownership. Only one (1) person having an interest in each single
 14 property, as evidenced by the tax duplicate, is considered a landowner
 15 for purposes of this section.

16 (c) If the court determines that the remonstrance is sufficient, it shall
 17 fix a time, within sixty (60) days of its determination, for a hearing on
 18 the remonstrance. Notice of the proceedings, in the form of a summons,
 19 shall be served on the annexing municipality. The municipality is the
 20 defendant in the cause and shall appear and answer.

21 SECTION 16. IC 36-4-3-11.7 IS ADDED TO THE INDIANA
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 1999]: **Sec. 11.7. (a) A municipality that
 24 obtains from an owner of real property a waiver against
 25 remonstrance as a condition of receiving one (1) or more municipal
 26 services shall record the waiver with the county recorder of each
 27 county in which the territory that is the subject of the waiver is
 28 located.**

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

32 SECTION 17. IC 36-4-3-13 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Except as
 34 provided in subsection (e), at the hearing under section 12 of this
 35 chapter, the court shall order a proposed annexation to take place if the
 36 following requirements are met:

- 37 (1) The requirements of either subsection (b) or (c).
 38 (2) The requirements of subsection (d).

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

- 41 (1) That the territory sought to be annexed is contiguous to the
 42 municipality.

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- 1 (2) One (1) of the following:
- 2 (A) The resident population density of the territory sought to
- 3 be annexed is at least three (3) persons per acre.
- 4 (B) Sixty percent (60%) of the territory is subdivided.
- 5 (C) The territory is zoned for commercial, business, or
- 6 industrial uses.
- 7 (c) The requirements of this subsection are met if the evidence
- 8 establishes the following:
- 9 (1) That the territory sought to be annexed is contiguous to the
- 10 municipality as required by section 1.5 of this chapter, except that
- 11 at least one-fourth (1/4), instead of one-eighth (1/8), of the
- 12 aggregate external boundaries of the territory sought to be
- 13 annexed must coincide with the boundaries of the municipality.
- 14 (2) That the territory sought to be annexed is needed and can be
- 15 used by the municipality for its development in the reasonably
- 16 near future.
- 17 (d) The requirements of this subsection are met if the evidence
- 18 establishes that the municipality has developed a written fiscal plan and
- 19 has established a definite policy, by resolution of the legislative body,
- 20 as of the date of passage of the annexation ordinance. The resolution
- 21 must show the following:
- 22 (1) The cost estimates of planned services to be furnished to the
- 23 territory to be annexed.
- 24 (2) The method or methods of financing the planned services.
- 25 (3) The plan for the organization and extension of services.
- 26 (4) That planned services of a noncapital nature, including police
- 27 protection, fire protection, street and road maintenance, and other
- 28 noncapital services normally provided within the corporate
- 29 boundaries, will be provided to the annexed territory:
- 30 (A) within one (1) year after the effective date of **the**
- 31 **annexation if the municipality has not adopted a municipal**
- 32 **tax abatement program under section 8.5 of this chapter;**
- 33 **or**
- 34 **(B) within two (2) years after the effective date of the**
- 35 **annexation if the municipality has adopted a municipal tax**
- 36 **abatement program under section 8.5 of this chapter;**
- 37 and that they will be provided in a manner equivalent in standard
- 38 and scope to those noncapital services provided to areas within
- 39 the corporate boundaries that have similar topography, patterns of
- 40 land use, and population density. However, in a county having a
- 41 population of more than two hundred thousand (200,000) but less
- 42 than three hundred thousand (300,000), the resolution of a city

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must show that these services will be provided 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.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory:

(A) within three (3) years after the effective date of the annexation **if the municipality has not adopted a tax abatement program under section 8.5 of this chapter; or**

(B) **within five (5) years after the effective date of the annexation if the municipality has adopted a tax abatement program under section 8.5 of this chapter;**

in the same manner as those services are provided to areas within the corporate boundaries, that have similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria. However, in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the resolution of a city must show that these services will be provided to the annexed territory:

(A) within four (4) years after the effective date of the annexation **if the municipality has adopted a tax abatement program under section 8.5 of this chapter; or**

(B) **within six (6) years after the effective date of the annexation if the municipality has adopted a tax abatement program under section 8.5 of this chapter;**

and in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, or population density.

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

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

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- 1 (1) Consider evidence on the conditions listed in subdivision (2).
- 2 (2) Order a proposed annexation not to take place if the court
- 3 finds that all of the following conditions exist in the territory
- 4 proposed to be annexed:
- 5 (A) The following services are adequately furnished by a
- 6 provider other than the municipality seeking the annexation:
- 7 (i) Police and fire protection.
- 8 (ii) Street and road maintenance.
- 9 (B) The annexation will have a significant financial impact on
- 10 the residents or owners of land.
- 11 (C) One (1) of the following opposes the annexation:
- 12 (i) A majority of the owners of land in the territory proposed
- 13 to be annexed.
- 14 (ii) The owners of more than seventy-five percent (75%) in
- 15 assessed valuation of the land in the territory proposed to be
- 16 annexed.
- 17 Evidence of opposition may be expressed by any owner of land
- 18 in the territory proposed to be annexed.
- 19 (f) The federal census data established by IC 1-1-4-5(17) shall be
- 20 used as evidence of resident population density for purposes of
- 21 subsection (b)(2)(A), but this evidence may be rebutted by other
- 22 evidence of population density.
- 23 SECTION 18. IC 36-4-3-15 IS AMENDED TO READ AS
- 24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) The court's
- 25 judgment under section 12 or 15.5 of this chapter must specify the
- 26 annexation ordinance on which the remonstrance is based. The clerk of
- 27 the court shall deliver a certified copy of the judgment to the clerk of
- 28 the municipality. The clerk of the municipality shall:
- 29 (1) record the judgment in the clerk's ordinance record; and
- 30 (2) make a cross-reference to the record of the judgment on the
- 31 margin of the record of the annexation ordinance.
- 32 (b) If a judgment under section 12 or 15.5 of this chapter is adverse
- 33 to annexation, the municipality may not make further attempts to annex
- 34 the territory during the two (2) years after the later of:
- 35 (1) the judgment of the circuit or superior court; or
- 36 (2) the date of the final disposition of all appeals to a higher court;
- 37 unless the annexation is petitioned for under section 5 of this chapter.
- 38 (c) If a judgment under section 12 or 15.5 of this chapter orders the
- 39 annexation to take place, the annexation is effective when the clerk of
- 40 the municipality complies with the filing requirement of section 22(a)
- 41 of this chapter.
- 42 (d) **A municipality is not required to implement the**

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1 **municipality's fiscal plan with respect to the provision of services**
 2 **in the area proposed to be annexed until all appeals have been**
 3 **concluded.**

4 SECTION 19. IC 36-4-3-15.5 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15.5. (a) An owner of
 6 land within one-half (1/2) mile of territory proposed to be annexed
 7 under **section 3, 4, or 5** of this chapter may, within sixty (60) days after
 8 the publication of the annexation ordinance, appeal that annexation to
 9 a circuit court or superior court of a county in which the annexed
 10 territory is located. The complaint must state that the reason the
 11 annexation should not take place is that the territory sought to be
 12 annexed is not contiguous to the annexing municipality.

13 (b) Upon the determination of the court that the complaint is
 14 sufficient, the judge shall fix a time for a hearing to be held not later
 15 than sixty (60) days after the determination. Notice of the proceedings
 16 shall be served by summons upon the proper officers of the annexing
 17 municipality. The municipality shall become a defendant in the cause
 18 and be required to appear and answer. The judge of the circuit or
 19 superior court shall, upon the date fixed, proceed to hear and determine
 20 the appeal without a jury, and shall, without delay, give judgment upon
 21 the question of the annexation according to the evidence introduced by
 22 the parties. If the evidence establishes that the territory sought to be
 23 annexed is contiguous to the annexing municipality, the court shall
 24 deny the appeal and dismiss the proceeding. If the evidence does not
 25 establish the foregoing factor, the court shall issue an order to prevent
 26 the proposed annexation from taking effect. The laws providing for
 27 change of venue from the county do not apply, but changes of venue
 28 from the judge may be had. Costs follow judgment. Pending the appeal,
 29 and during the time within which the appeal may be taken, the territory
 30 sought to be annexed is not a part of the annexing municipality.

31 (c) **Except as provided in subsection (d)**, if the court enters a
 32 judgment in favor of the municipality, the annexation may not take
 33 effect during the year preceding a year in which a federal decennial
 34 census is conducted. An annexation that would otherwise take effect
 35 during the year preceding a year in which a federal decennial census is
 36 conducted takes effect January 2 of the year in which a federal
 37 decennial census is conducted.

38 (d) **If the court enters a judgment in favor of the municipality**
 39 **with respect to an ordinance annexing territory with no**
 40 **population, the annexation takes effect upon the filing and**
 41 **recording required by section 22 of this chapter.**

42 SECTION 20. IC 36-4-3-16 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Within one (1)
2 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) of this chapter;

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

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

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

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

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

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

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

40 (c) The court may:

41 (1) grant an injunction prohibiting the collection of taxes levied
42 by the municipality on the plaintiff's property located in the

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- 1 annexed territory;
- 2 (2) award damages to the plaintiff not to exceed one and
- 3 one-fourth (1 1/4) times the taxes collected by the municipality
- 4 for the plaintiff's property located in the annexed territory;
- 5 (3) order the annexed territory or any part of it to be disannexed
- 6 from the municipality;
- 7 (4) order the municipality to submit a revised fiscal plan for
- 8 providing the services to the annexed territory within time limits
- 9 set up by the court; or
- 10 (5) grant any other appropriate relief.

11 **(d) The court may find in favor of the municipality under this**
 12 **section if the municipality was unable to implement services in**
 13 **accordance with section 13(d) of this chapter due to an emergency.**
 14 **As used in this subsection, "emergency" means a situation that:**

- 15 **(1) could not reasonably be foreseen;**
- 16 **(2) threatens the public health, welfare, or safety; and**
- 17 **(3) requires immediate action.**

18 ~~(d)~~ (e) A change of venue from the county is not permitted for an
 19 action brought under this section.

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

22 ~~(f)~~ (g) The provisions of this chapter that apply to territory
 23 disannexed by other procedures apply to territory disannexed under this
 24 section.

25 SECTION 21. IC 36-4-3-19 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19. (a) If a vacation or
 27 disannexation is ordered under this chapter by the works board of a
 28 municipality and no appeal is taken, the clerk of the court shall,
 29 immediately after the judgment of the court or after a decision on
 30 appeal to the supreme court or court of appeals if the judgment on
 31 appeal is not reversed, file a certified copy of the judgment of the
 32 circuit court, as affirmed or modified, to the clerk of the
 33 municipality. The clerk shall, without compensation and not later than
 34 ten (10) days after the order certified judgment is made received,
 35 make and certify file a complete transcript of the disannexation
 36 proceedings, to together with the certified judgment, with:

- 37 (1) the auditor of each county in which the disannexed lots or
- 38 lands lie;

39 and to the state certifying official designated under IC 3-6-4.2-11. The
 40 county auditor shall list those lots or lands appropriately for taxation.
 41 The proceedings of the works board shall not be certified to the county
 42 auditor if an appeal to the circuit court has been taken.

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- (2) the election division of the secretary of state's office established under IC 3-6-4.2-1; and
- (3) the county election board, and if a board of registration exists, the board of each county in which the lands or lots affected are located.

(b) In all proceedings begun in or appealed to the circuit court, if vacation or disannexation is ordered, the clerk of the court shall immediately after the judgment of the court, or after a decision on appeal to the supreme court or court of appeals if the judgment on appeal is not reversed, certify the judgment of the circuit court, as affirmed or modified, to:

- (1) the auditor of each county in which the lands or lots affected lie, on receipt of one dollar (\$1) for the making and certifying of the transcript from the petitioners for the disannexation;
- (2) the state certifying official designated under IC 3-6-4.2-11; and
- (3) the circuit court clerk, and if a board of registration exists, the board of each county in which the lands or lots affected are located.

(b) **The clerk of the municipality shall record the certified judgment in the office of the county recorder of each county in which the disannexed territory is located.**

(c) The county auditor shall **list those lots or lands appropriately for taxation and** forward a list of lots or lands disannexed under this section to the following:

- (1) The county highway department.
- (2) The county surveyor.
- (3) Each plan commission, if any, that lost or gained jurisdiction over the disannexed territory.
- (4) ~~Any state agency that has requested copies of disannexations filed with the county auditor under this section.~~ **The township trustee of each township that lost or gained jurisdiction over the disannexed territory.**

The county auditor may require the clerk of the municipality to furnish an adequate number of copies of the list of disannexed lots or lands or may charge the clerk a fee **in accordance with IC 5-14-3** for photoreproduction of the list.

(d) A disannexation described by this section takes effect upon the filing of the ~~order~~ **certified judgment** with the ~~circuit court~~ **municipal clerk.** ~~and the state certifying official.~~

(e) **Except as provided in subsection (f),** a disannexation order under this chapter may not take effect during the year preceding a year

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1 in which a federal decennial census is conducted. A disannexation
 2 order that would otherwise take effect during the year preceding a year
 3 in which a federal decennial census is conducted takes effect January
 4 2 of the year in which a federal decennial census is conducted.

5 **(f) If a court orders the disannexation of territory with no**
 6 **population, the disannexation takes effect upon the filing and**
 7 **recording required under section 22 of this chapter.**

8 **(g) The county auditor shall, upon receipt of a disannexation**
 9 **order, indicate the disannexation upon the property taxation**
 10 **records maintained in the office of the county auditor.**

11 SECTION 22. IC 36-4-3-22 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22. (a) The clerk of the
 13 municipality shall:

14 (1) file **a certified copy of** each annexation ordinance against
 15 which a remonstrance or appeal has not been filed during the
 16 period permitted under this chapter or the certified copy of a
 17 judgment ordering an annexation to take place with:

18 (A) the county auditor of each county in which the annexed
 19 territory is located;

20 (B) the ~~circuit court clerk~~ **county election board**, and if a
 21 board of registration exists, the board of each county in which
 22 the annexed territory is located; and

23 (C) the ~~state certifying official designated under IC 3-6-4.2-11~~
 24 **election division of the secretary of state's office**
 25 **established under IC 3-6-4.2-1;** and

26 (2) record each annexation ordinance adopted under this chapter
 27 in the office of the county recorder of each county in which the
 28 annexed territory is located.

29 (b) The copy must be filed and recorded no later than ninety (90)
 30 days after:

31 (1) the expiration of the period permitted for a remonstrance or
 32 appeal; or

33 (2) the delivery of a certified order under section 15 of this
 34 chapter.

35 (c) Failure to:

36 **(1) file the annexation ordinance; or**

37 **(2) record the annexation ordinance; as provided in subsection**
 38 **(a)(2);**

39 does not invalidate the ordinance.

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

42 (1) The county highway department.

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- (2) The county surveyor.
- (3) Each plan commission, if any, that lost or gained jurisdiction over the annexed territory.
- (4) ~~Any state agency that has requested copies of annexations filed with the county auditor under this section. The township trustee of each township that lost or gained jurisdiction over the annexed territory.~~

(e) The county auditor may require the clerk of the municipality to furnish an adequate number of copies of the annexation ordinance or may charge the clerk a fee **in accordance with IC 5-14-3** for photoreproduction of the ordinance.

(f) The county auditor shall, upon ~~determining that an annexation ordinance has become effective under this chapter~~ **receipt of an annexation ordinance**, indicate the annexation upon the property taxation records maintained in the office of the auditor.

SECTION 23. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1999]: IC 36-4-3-4.5; IC 36-4-3-17; IC 36-4-3-18.

SECTION 24. [EFFECTIVE UPON PASSAGE] (a) **Notwithstanding IC 36-4-3-22, as amended by this act, the requirements of IC 36-4-3-22(a), as amended by this act, are satisfied if the annexation is entered by the county auditor on the property tax records before July 1, 1999.**

(b) **Notwithstanding IC 36-4-3-19, as amended by this act, the requirements of IC 36-4-3-19(a), as amended by this act, are satisfied if the disannexation order is entered by the county auditor on the property tax records before July 1, 1999.**

SECTION 25. 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 1608, 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 15, line 19, delete "must" and insert "**may**".

and when so amended that said bill do pass.

(Reference is to HB 1608 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1608 be amended to read as follows:

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

"SECTION 1. IC 36-4-3-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.1. (a) This section applies to municipalities:

(1) having a population of:

(A) more than ten thousand (10,000) but less than fifteen thousand (15,000); and

(B) **more than four thousand (4,000) but less than four thousand three hundred (4,300);**

located in a county having a population of more than seventy-five thousand (75,000) but less than seventy-eight thousand (78,000);

(2) having a population of more than thirty-three thousand (33,000) but less than thirty-three thousand eight hundred fifty (33,850) located in a county having a population of more than one hundred seven thousand (107,000) but less than one hundred eight thousand (108,000); and

(3) located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Except as provided in subsection (c), the legislative body of a municipality to which this section applies may, by ordinance, annex territory that:

(1) is contiguous to the municipality;

(2) in the case of a municipality described in subdivision (a)(1), has its entire area within the township within which the municipality is primarily located; and

(3) is owned by a property owner who consents to the annexation.

(c) Subsection (b)(2) does not apply to a municipality having a population of:

(1) more than six thousand (6,000) but less than six thousand five hundred (6,500); or

(2) more than eight thousand seven hundred (8,700) but less than eight thousand nine hundred (8,900);

in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(d) Territory annexed under this section is exempt from all property tax liability under IC 6-1.1 for municipal purposes for all portions of the annexed territory that is classified for zoning purposes as agriculture and remains exempt from the property tax liability while the

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property's zoning classification remains agriculture.

(e) There may not be a change in the zoning classification of territory annexed under this section without the consent of the owner of the annexed territory."

Renumber all SECTIONS consecutively.

(Reference is to HB 1608 as reprinted February 11, 1999.)

WHETSTONE

HOUSE MOTION

Mr. Speaker: I move that House Bill 1608 be amended to read as follows:

Page 2, between lines 9 and 10, begin a new paragraph and insert: "SECTION 4. IC 36-4-3-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 2.2. Before the municipality adopts an annexation ordinance, the municipality shall develop a written fiscal plan and establish a definite policy, by resolution of the legislative body, that shows the following:**

- (1) **The cost estimates of planned services to be furnished to the territory to be annexed.**
- (2) **The method or methods of financing the planned services.**
- (3) **The plan for the organization and extension of services.**
- (4) **That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided 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, and population density.**
- (5) **That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater facilities, will be provided to the annexed territory within four (4) years after the effective date of the annexation, in the same manner as those services are provided to areas within the corporate boundaries,**



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regardless of similar topography, patterns of land use, or population density.

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

Renumber all SECTIONS consecutively.

(Reference is to HB1608 as printed February 11, 1999.)

GOEGLEIN

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