HOUSE BILL No. 1608

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

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

(Continued next page)

Effective: Upon passage; July 1, 1999.

Bailey, Klinker

January 21, 1999, read first time and referred to Committee on Local Government.

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Digest Continued

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 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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Introduced

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. 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:

SECTION 1. IC 36-4-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. This chapter applies to all municipalities except consolidated cities. ~~However, sections 3 and 21 of this chapter do not apply to towns.~~

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

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 **section 3, 4, 4.1, or 5 of** this chapter only after the legislative body has held a public hearing concerning the proposed annexation. **The municipality shall hold the public hearing at least fifteen (15) days after the date the ordinance is introduced.**

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

(b) Notice of the hearing shall be published **one (1) time** 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 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.

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

SECTION 5. IC 36-4-3-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.5. (a) An annexation ordinance adopted under this chapter must contain the following information:**

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

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

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

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

SECTION 6. IC 36-4-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The legislative body of a municipality may, by ordinance, annex any of the following:

(1) Territory that is contiguous to the municipality.

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

(3) Territory that is not contiguous to the municipality but is found by the legislative body to be occupied by a municipally owned or regulated sanitary landfill, golf course, or hospital. However, if territory annexed under this subsection ceases to be used as a municipally owned or regulated sanitary landfill, golf course, or hospital for at least one (1) year, the territory reverts to

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the jurisdiction of the unit having jurisdiction before the annexation if the unit that had jurisdiction over the territory still exists. If the unit no longer exists, the territory reverts to the jurisdiction of the unit that would currently have jurisdiction over the territory if the annexation had not occurred. The clerk of the municipality shall notify the offices required to receive notice of a disannexation under section 19 of this chapter when the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation.

(b) This subsection applies to municipalities in a county having a population of:

(1) more than seventy-three thousand (73,000) but less than seventy-five thousand (75,000);

(2) more than sixty thousand (60,000) but less than sixty-five thousand (65,000);

(3) more than forty-one thousand (41,000) but less than forty-two thousand five hundred (42,500);

(4) more than thirty-eight thousand three hundred (38,300) but less than thirty-eight thousand five hundred (38,500);

(5) more than thirty-five thousand four hundred (35,400) but less than thirty-six thousand (36,000);

(6) more than twenty-four thousand eight hundred (24,800) but less than twenty-five thousand (25,000);

(7) more than twenty-two thousand (22,000) but less than twenty-three thousand (23,000); or

(8) more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

Except as provided in subsection (c), the legislative body of a municipality to which this subsection applies may, by ordinance, annex territory that is not contiguous to the municipality, has its entire area not more than two (2) miles from the municipality's boundary, is to be used for an industrial park containing one (1) or more businesses, and is either owned by the municipality or by a property owner who consents to the annexation. However, if territory annexed under this subsection is not used as an industrial park within five (5) years after the date of passage of the annexation ordinance, or if the territory ceases to be used as an industrial park for at least one (1) year, the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation if the unit that had jurisdiction over the territory still exists. If the unit no longer exists, the territory reverts to the jurisdiction of the unit that would currently have jurisdiction over the territory if the annexation had not occurred. The clerk of the

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municipality shall notify the offices entitled to receive notice of a disannexation under section 19 of this chapter when the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation.

(c) A city in a county with a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) may not annex territory as prescribed in subsection (b) until the territory is zoned by the county for industrial purposes.

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

(1) annexing additional territory:

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

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

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

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

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

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

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

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

(1) is not contiguous to the municipality;

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

(3) does not extend more than:

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

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

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

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

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

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

SECTION 7. IC 36-4-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) ~~If~~ The owners of land located outside ~~of~~ but contiguous to a municipality ~~want to have territory containing that land annexed to the municipality, they~~ may file with the legislative body of the municipality a petition:

(1) signed by at least:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the court shall hear and determine the petition without a jury and shall order the proposed annexation to take place only if the evidence introduced by the parties establishes that:

(1) essential city services and facilities are or can be made available to the residents of the territory sought to be annexed;

(2) the city is physically and financially able to provide city services to the territory sought to be annexed; and

(3) the territory sought to be annexed is contiguous to the city.

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

SECTION 8. IC 36-4-3-5.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec 5.1. (a) If all of the landowners within a territory located outside but contiguous to a municipality want the territory annexed to the municipality, the landowners may file with the legislative body of the municipality a petition requesting an ordinance annexing the territory described in the petition.**

(b) An ordinance adopted under this section is not subject to:

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

(2) a complaint filed under section 16 of this chapter.

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

SECTION 9. IC 36-4-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) A certified copy of an ordinance adopted under section 3 of this chapter is conclusive evidence of the corporate boundaries of the municipality in any proceeding.

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

SECTION 10. IC 36-4-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) After an

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ordinance is adopted under section 3, 4, **4.1,** or 5 of this chapter, it must be published in the manner prescribed by IC 5-3-1. Except as provided in subsection (b) or ~~(c)~~ **(d)**, in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter, the ordinance takes effect:

(1) ~~at least~~ sixty (60) days after its publication; and

(2) upon the filing **and recording** required by section ~~22(a)~~ **22** of this chapter.

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

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

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

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

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

(e) **This subsection applies to a fire protection district established after June 14, 1987.** If the fire protection district from which a municipality annexes territory under subsection (d) is indebted or has outstanding unpaid bonds or other obligations at the time the annexation is effective, the municipality is liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the annexed territory (that is part of the fire protection district) bears to the assessed valuation of all property in the fire protection district, as shown by the most recent assessment for taxation before the annexation, unless the assessed property within the municipality is already liable for the indebtedness. The annexing municipality shall pay its indebtedness under this section to the board of fire trustees. If the indebtedness consists of outstanding unpaid bonds or notes of the fire protection district, the payments to the board of fire trustees shall

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

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

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

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

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

SECTION 11. IC 36-4-3-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 7.5. (a) After an ordinance is adopted under section 5.1 of this chapter, it must be published one (1) time in the manner prescribed by IC 5-3-1.**

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

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

SECTION 12. IC 36-4-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. An ordinance adopted under section 3, ~~or~~ 4, **or 5** of this chapter may include terms and conditions fairly calculated to make the annexation equitable to the property owners and residents of the municipality and the annexed territory. The terms and conditions may include:

(1) postponing the effective date of the annexation;

(2) impounding in a special fund all or part of the municipal property taxes imposed on the annexed territory after the annexation takes effect, in an amount and for a period, not to exceed three (3) years, determined by the municipal legislative body, and using the impounded taxes solely for the extension of municipal services and benefits and the making of municipal or public improvements for the benefit of the property owners and residents of the annexed territory; and

(3) establishing equitable provisions for the future management and improvement of the annexed territory and for the rendering of needed services.

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SECTION 13. IC 36-4-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. **(a) A remonstrance under this chapter must be brought as set forth in this section.**

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

(1) a majority of the owners of land in the annexed territory; or

(2) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

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

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

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

SECTION 14. 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.

SECTION 15. IC 36-4-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Except as provided in subsection (e), at the hearing under section 12 of this

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chapter, the court shall order a proposed annexation to take place if the following requirements are met:

(1) The requirements of either subsection (b) or (c).

(2) The requirements of subsection (d).

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

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

(2) One (1) of the following:

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

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

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

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

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

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

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

(A) within one (1) year after the effective date of **the** annexation **if the municipality has not adopted a municipal tax abatement program under section 8.5 of this chapter; or**

(B) within two (2) years after the effective date of the

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annexation if the municipality has adopted a municipal tax abatement program under section 8.5 of this chapter;

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 that have similar topography, patterns of land use, and population density. 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 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

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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:

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

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

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

(i) Police and fire protection.

(ii) Street and road maintenance.

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

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

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

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

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

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

SECTION 16. IC 36-4-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) The court's judgment under section 12 or 15.5 of this chapter must specify the annexation ordinance on which the remonstrance is based. The clerk of the court shall deliver a certified copy of the judgment to the clerk of the municipality. The clerk of the municipality shall:

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

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

(b) If a judgment under section 12 or 15.5 of this chapter is adverse to annexation, the municipality may not make further attempts to annex the territory during the two (2) years after the later of:

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(1) the judgment of the circuit or superior court; or

(2) the date of the final disposition of all appeals to a higher court; unless the annexation is petitioned for under section 5 of this chapter.

(c) If a judgment under section 12 or 15.5 of this chapter orders the annexation to take place, the annexation is effective when the clerk of the municipality complies with the filing requirement of section 22(a) of this chapter.

(d) A municipality is not required to implement the municipality's fiscal plan with respect to the provision of services in the area proposed to be annexed until all appeals have been concluded.

SECTION 17. IC 36-4-3-15.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15.5. (a) An owner of land within one-half (1/2) mile of territory proposed to be annexed under **section 3, 4, or 5 of** this chapter may, within sixty (60) days after the publication of the annexation ordinance, appeal that annexation to a circuit court or superior court of a county in which the annexed territory is located. The complaint must state that the reason the annexation should not take place is that the territory sought to be annexed is not contiguous to the annexing municipality.

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

(c) **Except as provided in subsection (d),** if the court enters a judgment in favor of the municipality, the annexation may not take effect during the year preceding a year in which a federal decennial census is conducted. An annexation that would otherwise take effect

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during the year preceding a year in which a federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

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

SECTION 18. IC 36-4-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Within one (1) year after the expiration of:

(1) the ~~one (1) year~~ period for implementation of planned services of a noncapital nature under section 13(d)(4) of this chapter;

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

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

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

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

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

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

(3) That the annexed territory is not receiving governmental and proprietary services substantially equivalent in standard and scope to the services provided by the municipality to other areas of the municipality that have topography, patterns of land use, and population density similar to the annexed territory. However, in a county having a population of more than two hundred thousand

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(200,000) but less than three hundred thousand (300,000), the plaintiff must establish that the annexed territory is not receiving governmental and proprietary services substantially equivalent in standard and scope to the services provided by the city regardless of similar topography, patterns of land use, or population density.

(c) The court may:

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

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

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

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

(5) grant any other appropriate relief.

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

(1) could not reasonably be foreseen;

(2) threatens the public health, welfare, or safety; and

(3) requires immediate action.

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

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

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

SECTION 19. IC 36-4-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19. (a) If **a vacation or** disannexation is ordered under this chapter ~~by the works board of a municipality and no appeal is taken~~, **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, file a certified copy of the judgment of the circuit court, as affirmed or modified, to** the clerk of the municipality. **The clerk** shall, without compensation and not later than ten (10) days after the ~~order~~ **certified judgment** is ~~made~~ **received**,

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~~make and certify~~ **file** a complete transcript of the disannexation proceedings, ~~to~~ **together with the certified judgment, with:**

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

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

(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

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

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

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

SECTION 20. IC 36-4-3-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22. (a) The clerk of the municipality shall:

(1) file **a certified copy of** each annexation ordinance against which a remonstrance or appeal has 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~~ **county election board**, 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~~ **election division of the secretary of state's office established under IC 3-6-4.2-1**; and

(2) 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 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; or

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

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(c) Failure to:

(1) file the annexation ordinance; or

(2) record the annexation ordinance; ~~as provided in subsection (a)(2);~~

does not invalidate the ordinance.

(d) 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.

(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 21. 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 22. [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 23. **An emergency is declared for this act.**

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