



February 19, 1999

## SENATE BILL No. 244

DIGEST OF SB 244 (Updated February 17, 1999 6:07 pm - DI 87)

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

**Synopsis:** Annexation. Requires a municipality to mail notice of an annexation to the owners of property within the annexed territory not later than 60 days before the public hearing on the annexation. Requires the municipality to publish notice of the public hearing at least 60 days before the date of the hearing. Provides that a municipality may not adopt an annexation ordinance within 30 days after the public hearing on the annexation. Allows an annexation to be appealed by filing a written remonstrance signed by a majority of the owners of land in the annexed territory or the owners of more than 50%, rather than more than 75%, in assessed valuation of the land in the annexed territory. Allows a remonstrance to be filed not more than 90 days, rather than 60 days, after publication of the annexation ordinance. Removes the requirement that planned services of a noncapital nature and services of a capital improvement nature must be  
(Continued next page)

**Effective:** July 1, 1999.

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**Gard, Wolf, Long**

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January 6, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.  
February 18, 1999, amended, reported favorably — Do Pass.

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provided to the annexed territory in a manner equivalent to the services provided to areas within the municipality with similar topography, patterns of land use, and population density. Provides that if a court finds that a remonstrance is sufficient, the court shall order an annexation not to take place. Allows an owner of real property in the annexed territory or the municipality that is annexing the territory to file an action, not more than 120 days after publication of the annexation ordinance, requesting a court to enter a judgment voiding the annexation ordinance on the grounds that the ordinance does not comply with legal requirements. Prohibits a municipality from making further attempts to annex territory for four years, rather than two years, after the later of the circuit or superior court judgment or the date of the final disposition of all appeals if the municipality is unsuccessful in annexing, unless the landowners in the annexed territory petition for annexation. Prohibits a municipality from making further attempts to annex territory for one year after the later of the circuit or superior court judgment or the date of the final disposition of all appeals if the court voids the annexation ordinance because the municipality failed to satisfy the legal requirements. Provides that least 51% of the owners of land in the territory sought to be annexed or the owners of more than 50% of the assessed valuation of land may file a petition with the municipal legislative body requesting an ordinance annexing the area described in the petition. (Current law provides that a petition must be filed by 51% of the owners of land in the annexed territory or the owners of 75% of the total assessed value of land in the annexed territory.) Requires the municipality's fiscal plan to provide the following: (1) Itemized costs for each municipal department or agency for the planned services to be furnished to the territory to be annexed. (2) An explanation of how specific and detailed expenses will be funded. (3) The specific services that will be provided to the annexed territory and the dates the services will commence. Provides that the act applies to an annexation ordinance adopted after June 30, 1999. Requires a court to order part or all of a territory to be disannexed if the municipality fails to implement the fiscal plan or provide services to the territory. Provides that if a municipality obtains a waiver of remonstrance from a landowner as a condition of connection to water or sewer service, the municipality shall file the waiver in the recorder's office of the county not later than 30 days after the date of the waiver. Provides that the secretary of state and township trustee must receive annexation and disannexation filings. Makes a technical correction.

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February 19, 1999

First Regular Session 111th General Assembly (1999)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## SENATE BILL No. 244

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

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

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

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

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

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



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

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

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

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

32 (1) published in accordance with IC 5-3-1 **except that the notice**  
 33 **shall be published at least sixty (60) days before the hearing;**  
 34 **and**

35 (2) **mailed as set forth in section 2.2 of this chapter.**

36 SECTION 3. IC 36-4-3-2.2 IS ADDED TO THE INDIANA CODE  
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 38 1, 1999]: Sec. 2.2. (a) **Before a municipality may annex territory,**  
 39 **the municipality shall provide written notice of the hearing**  
 40 **required under section 2.1 of this chapter. The notice shall be**  
 41 **mailed at least sixty (60) days before the date of the hearing to each**  
 42 **owner of real property, as shown on the county auditor's current**

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1 tax list, whose real property is located within the territory  
2 proposed to be annexed.

3 (b) The notice required by this section must include the  
4 following:

5 (1) A legal description of the real property proposed to be  
6 annexed.

7 (2) The date, time, location, and subject of the hearing.

8 (3) A map of the current municipal boundaries and a map of  
9 the proposed municipal boundaries.

10 (4) Current zoning classifications for the area proposed to be  
11 annexed and any proposed zoning changes for the area  
12 proposed to be annexed.

13 (5) The fiscal plan described in section 2.3 of this chapter.

14 (6) A summary of the annexation process, including a  
15 schedule indicating the required steps in the process and an  
16 explanation of the options of property owners.

17 (7) The name and telephone number of a representative of the  
18 municipality who may be contacted for further information.

19 (c) If the municipality complies with this section, the notice is  
20 not invalidated if the owner does not receive the notice.

21 SECTION 4. IC 36-4-3-2.3 IS ADDED TO THE INDIANA CODE  
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
23 1, 1999]: **Sec. 2.3. Before the municipality adopts an annexation  
24 ordinance, the municipality shall develop a written fiscal plan and  
25 establish a definite policy, by resolution of the legislative body, that  
26 shows the following:**

27 (1) The cost estimates of planned services to be furnished to  
28 the territory to be annexed. The plan must present itemized  
29 costs for each municipal department or agency.

30 (2) The method or methods of financing the planned services.  
31 The plan must explain how specific and detailed expenses will  
32 be funded and must indicate the taxes, grants, and other  
33 funding to be used.

34 (3) The plan for the organization and extension of services.  
35 The plan must detail the specific services that will be provided  
36 and the dates the services will begin.

37 (4) That planned services of a noncapital nature, including  
38 police protection, fire protection, street and road  
39 maintenance, and other noncapital services normally  
40 provided within the corporate boundaries, will be provided to  
41 the annexed territory within one (1) year after the effective  
42 date of annexation.



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1           **(5) That services of a capital improvement nature, including**  
 2           **street construction, street lighting, sewer facilities, water**  
 3           **facilities, and stormwater drainage facilities, will be provided**  
 4           **to the annexed territory within three (3) years after the**  
 5           **effective date of the annexation.**

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

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

15           (1) signed by at least:

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

18               (B) the owners of ~~seventy-five~~ **more than fifty** percent (~~75%~~)  
 19               **(50%)** of the total assessed value of the land for property tax  
 20               purposes; and

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

23           (b) If the legislative body fails to pass the ordinance within sixty  
 24           (60) days after the date of filing of a petition under subsection (a), the  
 25           petitioners may file a duplicate copy of the petition in the circuit or  
 26           superior court of a county in which the territory is located, and shall  
 27           include a written statement of why the annexation should take place.  
 28           Notice of the proceedings, in the form of a summons, shall be served  
 29           on the municipality named in the petition. The municipality is the  
 30           defendant in the cause and shall appear and answer.

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

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

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

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

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

42          If the evidence does not establish all four (4) of the preceding factors,



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1 the court shall deny the petition and dismiss the proceeding.

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

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

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

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

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

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

18 SECTION 6. IC 36-4-3-7 IS AMENDED TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) After an ordinance is adopted  
20 under section 3, 4, or 5 of this chapter, it must be published in the  
21 manner prescribed by IC 5-3-1. Except as provided in subsection (b) or  
22 (c), in the absence of ~~a~~ remonstrance **under section 11 of this chapter,**  
23 **and an appeal under section 11 or 15.5 of this chapter, or an action**  
24 **under section 11.1 of this chapter,** the ordinance takes effect at least  
25 sixty (60) days after its publication and ~~upon the filing required by~~  
26 **when the requirements of section sections 22(a) and 22(e)(5)** of this  
27 chapter **have been satisfied.**

28 (b) An ordinance described in subsection (d) or adopted under  
29 section 3, 4, or 5 of this chapter may not take effect during the year  
30 preceding a year in which a federal decennial census is conducted. An  
31 ordinance that would otherwise take effect during the year preceding  
32 a year in which a federal decennial census is conducted takes effect  
33 January 2 of the year in which a federal decennial census is conducted.

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

36 (d) Except as provided in subsection (b), whenever a municipality  
37 annexes territory, all or part of which lies within a fire protection  
38 district (IC 36-8-11), the annexation ordinance (in the absence of  
39 remonstrance **under section 11 of this chapter, and an appeal under**  
40 **section 11 or 15.5 of this chapter, or an action under section 11.1 of**  
41 **this chapter)** takes effect the second January 1 that follows the date the  
42 ordinance is adopted and ~~upon the filing required by~~ **when the**



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1 **requirements of section sections 22(a) and 22(e)(5) of this chapter**  
 2 **have been satisfied.** The municipality shall:

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

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

8 (e) If the fire protection district from which a municipality annexes  
 9 territory under subsection (d) is indebted or has outstanding unpaid  
 10 bonds or other obligations at the time the annexation is effective, the  
 11 municipality is liable for and shall pay that indebtedness in the same  
 12 ratio as the assessed valuation of the property in the annexed territory  
 13 (that is part of the fire protection district) bears to the assessed  
 14 valuation of all property in the fire protection district, as shown by the  
 15 most recent assessment for taxation before the annexation, unless the  
 16 assessed property within the municipality is already liable for the  
 17 indebtedness. The annexing municipality shall pay its indebtedness  
 18 under this section to the board of fire trustees. If the indebtedness  
 19 consists of outstanding unpaid bonds or notes of the fire protection  
 20 district, the payments to the board of fire trustees shall be made as the  
 21 principal or interest on the bonds or notes become due.

22 SECTION 7. IC 36-4-3-11 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) Whenever  
 24 territory is annexed by a municipality under this chapter, the  
 25 annexation may be appealed by filing with the circuit or superior court  
 26 of a county in which the annexed territory is located a written  
 27 remonstrance signed by:

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

29 (2) the owners of more than ~~seventy-five~~ **fifty** percent (~~75%~~  
 30 **50%**) in assessed valuation of the land in the annexed territory.

31 The remonstrance must be filed within ~~sixty (60)~~ **ninety (90)** days after  
 32 the publication of the annexation ordinance under section 7 of this  
 33 chapter, must be accompanied by a copy of that ordinance, and must  
 34 state the reason why the annexation should not take place.

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



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1 (c) If the court determines that the remonstrance is sufficient, it shall  
 2 fix a time, within sixty (60) days of its determination, for a hearing on  
 3 the remonstrance. Notice of the proceedings, in the form of a summons,  
 4 shall be served on the annexing municipality. The municipality is the  
 5 defendant in the cause and shall appear and answer. If the court  
 6 determines that a remonstrance has the number of signatures  
 7 required under subsection (a), the court shall order the annexation  
 8 not to take place.

9 (d) If the court determines that a remonstrance does not have  
 10 the number of signatures required under subsection (a), the court  
 11 shall dismiss the remonstrance.

12 SECTION 8. IC 36-4-3-11.1 IS ADDED TO THE INDIANA CODE  
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 14 1, 1999]: **Sec. 11.1. (a) An owner of real property located within:**

15 (1) the annexed territory; or

16 (2) the municipality annexing the territory;

17 may, not more than one hundred twenty (120) days after the  
 18 annexation ordinance is published as provided under section 7 of  
 19 this chapter, file an action in the circuit or superior court with  
 20 jurisdiction where the annexation is located, requesting the court  
 21 to enter a judgment voiding the annexation ordinance on the  
 22 grounds that the annexation does not comply with the  
 23 requirements of this chapter.

24 (b) The laws providing for change of venue from the county do  
 25 not apply to an action under this section, but a change of judge  
 26 may be had as in other cases. Costs shall be assessed against the  
 27 nonprevailing party.

28 SECTION 9. IC 36-4-3-11.2 IS ADDED TO THE INDIANA CODE  
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 30 1, 1999]: **Sec. 11.2. An annexation may not take effect during the**  
 31 **year preceding the year in which a federal decennial census is**  
 32 **conducted. An annexation that would otherwise take effect during**  
 33 **the year preceding a year in which a federal decennial census is**  
 34 **conducted takes effect January 2 of the year in which a federal**  
 35 **decennial census is conducted.**

36 SECTION 10. IC 36-4-3-11.3 IS ADDED TO THE INDIANA  
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 1999]: **Sec. 11.3. (a) The territory sought to**  
 39 **be annexed is not considered a part of the municipality pending:**

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

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

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



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1           **(b) The territory sought to be annexed is not considered part of**  
 2 **the municipality during the time within which a remonstrance, an**  
 3 **action, or an appeal under subsection (a) may be filed.**

4           SECTION 11. IC 36-4-3-11.6 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 1999]: **Sec. 11.6. A municipality that obtains**  
 7 **a waiver of remonstrance as a condition of connection to a sewer**  
 8 **or water service shall file the waiver in the office of the county**  
 9 **recorder not later than thirty (30) days after the date of the waiver.**  
 10 **The waiver must specifically set forth the following:**

- 11           **(1) The name of the owner of the land.**  
 12           **(2) The owner's signature and the date.**  
 13           **(3) The latest address of the owner as shown on the property**  
 14 **tax records of the county.**  
 15           **(4) The legal description, street, and number of the**  
 16 **landowner's property.**

17 **The name of the owner and legal description of the lot or land are**  
 18 **sufficient if they are substantially as set forth in the latest entry in**  
 19 **the transfer books described in IC 6-1.1-5-4 of the county auditor**  
 20 **or, if IC 6-1.1-5-9 applies, in the transfer books of the township**  
 21 **assessor at the time of filing of the waiver.**

22           SECTION 12. IC 36-4-3-13.1 IS ADDED TO THE INDIANA  
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 1999]: **Sec. 13.1. (a) Except as provided in**  
 25 **sections 4 and 4.1 of this chapter, an annexation must meet the**  
 26 **requirements of either subsection (b) or (c).**

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

- 28           **(1) the territory sought to be annexed is contiguous to the**  
 29 **municipality; and**  
 30           **(2) one (1) of the following requirements is met:**  
 31           **(A) The resident population density of the territory sought**  
 32 **to be annexed is at least three (3) persons per acre.**  
 33           **(B) Sixty percent (60%) of the territory is subdivided.**  
 34           **(C) The territory is zoned for commercial, business, or**  
 35 **industrial uses.**

36           **(c) The requirements of this subsection are met if:**

- 37           **(1) the territory sought to be annexed is contiguous to the**  
 38 **municipality as required by section 1.5 of this chapter, except**  
 39 **that at least one-fourth (1/4), instead of one-eighth (1/8), of the**  
 40 **aggregate external boundaries of the territory sought to be**  
 41 **annexed must coincide with the boundaries of the**  
 42 **municipality; and**



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

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

9           SECTION 13. IC 36-4-3-15 IS AMENDED TO READ AS  
 10          FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) The court's  
 11          judgment under section ~~12~~ **11, 11.1**, or 15.5 of this chapter must  
 12          specify the annexation ordinance ~~on which the remonstrance is based:~~  
 13          **that is the subject of the remonstrance, action, or appeal.** The clerk  
 14          of the court shall deliver a certified copy of the judgment to the clerk  
 15          of the municipality. The clerk of the municipality shall:

16                 (1) record the judgment in the clerk's ordinance record; and  
 17                 (2) make a cross-reference to the record of the judgment on the  
 18                 margin of the record of the annexation ordinance.

19          (b) If a judgment under section ~~12~~ **11** or 15.5 of this chapter is  
 20          adverse to annexation, the municipality may not make further attempts  
 21          to annex the territory during the ~~two (2)~~ **four (4)** years after the later of:

22                 (1) the judgment of the circuit or superior court; or  
 23                 (2) the date of the final disposition of all appeals to a higher court;  
 24          unless the annexation is petitioned for under section 5 of this chapter.

25          (c) If a judgment under section ~~12~~ or 15.5 of this chapter orders the  
 26          annexation to take place, **if the annexation is voided under section**  
 27          **11.1 of this chapter, the municipality may not make further**  
 28          **attempts to annex the territory for one (1) year after the later of:**

29                 (1) the judgment of the circuit or superior court; or  
 30                 (2) the date of the final disposition of all appeals to a higher  
 31                 court;

32          **unless the annexation is petitioned for under section 5 of this**  
 33          **chapter.**

34          **(d) If a judgment:**

35                 (1) **dismisses an appeal under section 15.5 of this chapter;**  
 36                 (2) **dismisses a remonstrance under section 11 of this chapter;**  
 37                 **or**  
 38                 (3) **affirms the validity of an annexation ordinance under**  
 39                 **section 11.1 of this chapter;**

40          the annexation is effective when the clerk of the municipality complies  
 41          with the filing requirement requirements of section sections 22(a) and  
 42          22(e)(5) of this chapter are satisfied.



1 SECTION 14. IC 36-4-3-15.3 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15.3. (a) As used in this  
 3 section, "prohibition against annexation" means that a municipality  
 4 may not make further attempts to annex certain territory or any part of  
 5 that territory.

6 (b) As used in this section, "settlement agreement" means a written  
 7 court approved settlement of a dispute involving annexation under this  
 8 chapter between a municipality and remonstrators.

9 (c) Under a settlement agreement between the annexing  
 10 municipality and either:

11 (1) seventy-five percent (75%) or more of all landowners  
 12 participating in the remonstrance; or

13 (2) the owners of more than seventy-five percent (75%) in  
 14 assessed valuation of the land owned by all landowners  
 15 participating in the remonstrance;

16 the parties may mutually agree to a prohibition against annexation of  
 17 all or part of the territory by the municipality for a period not to exceed  
 18 twenty (20) years. The settlement agreement may address issues and  
 19 bind the parties to matters relating to the provision by a municipality  
 20 of planned services of a noncapital nature and services of a capital  
 21 improvement nature (as described in section ~~13(d)~~ **2.3** of this chapter),  
 22 in addition to a prohibition against annexation. The settlement  
 23 agreement is binding upon the successors, heirs, and assigns of the  
 24 parties to the agreement. However, the settlement agreement may be  
 25 amended or revised periodically on further agreement between the  
 26 annexing municipality and landowners who meet the qualifications of  
 27 subsection (c)(1) or (c)(2).

28 SECTION 15. IC 36-4-3-16 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Within one (1)  
 30 year after the expiration of:

31 (1) the one (1) year period for implementation of planned services  
 32 of a noncapital nature under section ~~13(d)(4)~~ **2.3(4)** of this  
 33 chapter; **or**

34 (2) the three (3) year period for the implementation of planned  
 35 services of a capital improvement nature under section ~~13(d)(5)~~  
 36 **2.3(5)** of this chapter; **or**

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

42 any person who pays taxes on property located within the annexed

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1 territory may file a complaint alleging injury resulting from the failure  
 2 of the municipality to implement the plan. The complaint must name  
 3 the municipality as defendant and shall be filed with the circuit or  
 4 superior court of the county in which the annexed territory is located.

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

8 (1) That the municipality has without justification failed to  
 9 implement the plan required by section ~~13~~ **2.3** of this chapter  
 10 within the specific time limit for implementation after annexation.

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

16 (3) That the annexed territory is not receiving governmental and  
 17 proprietary services. ~~substantially equivalent in standard and~~  
 18 ~~scope to the services provided by the municipality to other areas~~  
 19 ~~of the municipality that have topography, patterns of land use, and~~  
 20 ~~population density similar to the annexed territory. However, in~~  
 21 ~~a county having a population of more than two hundred thousand~~  
 22 ~~(200,000) but less than three hundred thousand (300,000), the~~  
 23 ~~plaintiff must establish that the annexed territory is not receiving~~  
 24 ~~governmental and proprietary services substantially equivalent in~~  
 25 ~~standard and scope to the services provided by the city regardless~~  
 26 ~~of similar topography, patterns of land use, or population density.~~

27 (c) The court may:

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

31 (2) award damages to the plaintiff not to exceed one and  
 32 one-fourth ( $1 \frac{1}{4}$ ) times the taxes collected by the municipality  
 33 for the plaintiff's property located in the annexed territory;

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

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

39 (5) grant any other appropriate relief.

40 (d) **The court shall order:**

41 (1) **all or part of the annexed territory to be disannexed from**  
 42 **the municipality; and**

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**(2) the municipality to refund, with interest, the taxes collected by the municipality from the owners of land in the annexed territory that the court orders to be disannexed.**

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

(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.

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

SECTION 16. IC 36-4-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19. (a) If disannexation is ordered under this chapter by the works board of a municipality and no appeal is taken, the clerk of the municipality shall, without compensation and not later than ten (10) days after the order is made, make and certify a complete transcript of the disannexation proceedings to 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~~ **and to the office of the secretary of state.** 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 **or to the office of the secretary of state** if an appeal to the circuit court has been taken.

(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~~ **office of the secretary of state;** 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.

(c) The county auditor shall 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

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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.~~

(5) **The office of the secretary of state.**

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 for photoreproduction of the list.

(d) ~~A disannexation described by this section takes effect upon the clerk of the municipality filing of the order with: the circuit court clerk and the state certifying official:~~

(1) ~~the county auditor of each county in which the annexed territory is located; and~~

(2) ~~the circuit court clerk, or if a board of registration exists, the board of each county in which the annexed territory is located.~~

(e) **The clerk of the municipality shall notify the office of the secretary of state of the date a disannexation is effective under this chapter.**

~~(e)~~ (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.

SECTION 17. IC 36-4-3-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22. (a) The clerk of the municipality shall **do the following**:

(1) File each annexation ordinance against which a remonstrance, **an action under section 11.1 of this chapter**, or an 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; and if a board of registration exists; the board of each county in which the annexed territory is located; and

(C) the state certifying official designated under IC 3-6-4.2-11; and

as set forth in subsection (b).

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- (2) **As set forth in subsection (b), file the certified copy of a judgment:**
  - (A) **dismissing an appeal under section 15.5 of this chapter;**
  - (B) **dismissing a remonstrance under section 11 of this chapter; or**
  - (C) **affirming the validity of an annexation ordinance in an action under section 11.1 of this chapter.**
- (3) Record each annexation ordinance adopted under this chapter in the office of the county recorder of each county in which the annexed territory is located.
- (b) **The clerk of the municipality shall file the ordinance or judgment as set forth in subsection (a)(1) and (a)(2) with the following:**
  - (1) **The county auditor of each county in which the annexed territory is located.**
  - (2) **The circuit court clerk, or if a board of registration exists, the board of each county in which the annexed territory is located.**
- (c) The copy must be filed and recorded no later than ninety (90) days after:
  - (1) the expiration of the period permitted for a ~~remonstrance or appeal~~; **filing an action under section 11.1 of this chapter;** or
  - (2) the delivery of a certified order under section 15 of this chapter.
- ~~(c)~~ (d) Failure to record the annexation ordinance as provided in subsection ~~(a)(2)~~ (a)(3) does not invalidate the ordinance.
- ~~(d)~~ (e) The county auditor shall forward a copy of any annexation ordinance filed under this section to the following:
  - (1) The county highway department.
  - (2) The county surveyor.
  - (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.**
  - (5) **The office of the secretary of state.**
- ~~(e)~~ (f) 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 for photoreproduction of the ordinance. **The county auditor shall notify the office of the secretary of state of the date that the annexation ordinance is effective under this**

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

SECTION 18. IC 36-9-24-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. A municipality that leases and operates sewage disposal facilities in an area within one (1) mile outside its corporate boundaries is considered to be furnishing sewage and sewer service in that area for purposes of ~~IC 36-4-3-13~~. **IC 36-4-3-2.3.**

SECTION 19. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1999]: IC 36-4-3-12; IC 36-4-3-13; IC 36-4-3-14.

SECTION 20. [EFFECTIVE JULY 1, 1999] **The amendments and additions to IC 36-4-3 by this act apply to an annexation ordinance adopted after June 30, 1999.**

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SENATE MOTION

Mr. President: I move that Senator Wolf be added as second author and Senator Long be added as coauthor of Senate Bill 244.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill No. 244, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 15, reset in roman "at least (A) fifty-one percent (51%) of the owners of".

Page 5, line 15, after "least" insert ":".

Page 5, line 15, beginning with "(A)" begin a new line double block indented.

Page 5, line 16, reset in roman "land in the territory sought to be annexed; or (B)".

Page 5, line 16, beginning with "(B)" begin a new line double block indented.

Page 7, line 25, after "by" insert ":".

Page 7, line 26, reset in roman line 26.

Page 7, line 27, reset in roman "(2)".

and when so amended that said bill do pass.

(Reference is to SB 244 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 0.

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