

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.

SENATE ENROLLED ACT No. 167

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

- (1) published in accordance with IC 5-3-1 **except that the notice shall be published at least sixty (60) days before the hearing; and**
- (2) **mailed as set forth in section 2.2 of this chapter, if section 2.2 of this chapter applies to the annexation.**

(b) **A municipality may adopt an ordinance under this chapter not earlier than thirty (30) days or not later than sixty (60) days after the legislative body has held the public hearing under subsection (a).**

SECTION 2. IC 36-4-3-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2.2. (a) This section does not apply to an annexation**

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under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter.

(b) Before a municipality may annex territory, the municipality shall provide written notice of the hearing required under section 2.1 of this chapter. The notice must be sent by certified mail at least sixty (60) days before the date of the hearing to each owner of real property, as shown on the county auditor's current tax list, whose real property is located within the territory proposed to be annexed.

(c) The notice required by this section must include the following:

- (1) A legal description of the real property proposed to be annexed.
- (2) The date, time, location, and subject of the hearing.
- (3) A map of the current municipal boundaries and a map of the proposed municipal boundaries.
- (4) Current zoning classifications for the area proposed to be annexed and any proposed zoning changes for the area proposed to be annexed.
- (5) A detailed summary of the fiscal plan described in section 13 of this chapter.
- (6) The location where the public may inspect and copy the fiscal plan.
- (7) A statement that the municipality will provide a copy of the fiscal plan immediately to any landowner in the annexed territory who requests a copy.
- (8) The name and telephone number of a representative of the municipality who may be contacted for further information.

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

SECTION 3. IC 36-4-3-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.1.** (a) This section does not apply to an annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter.

(b) A municipality shall develop a written fiscal plan and establish a definite policy by resolution of the legislative body that meets the requirements set forth in section 13 of this chapter.

(c) Except as provided in subsection (d), the municipality shall establish the written fiscal plan before mailing the notification to landowners in the territory proposed to be annexed under section 2.2 of this chapter.

(d) In an annexation under section 5 of this chapter, the municipality shall establish the written fiscal plan before adopting



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the annexation ordinance.

SECTION 4. IC 36-4-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) **This section does not apply to an ordinance adopted under section 5 of this chapter.**

(b) An ordinance adopted under section 3 or 4 of this chapter ~~may~~ **must** 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)~~ (2) establishing equitable provisions for the future management and improvement of the annexed territory and for the rendering of needed services.

(c) **This subsection applies to territory sought to be annexed that meets all of the following requirements:**

- (1) **The resident population density of the territory is at least three (3) persons per acre.**
- (2) **The territory is subdivided or is parceled through separate ownerships into lots or parcels such that at least sixty percent (60%) of the total number of lots and parcels are not more than one (1) acre.**

This subsection does not apply to an ordinance annexing territory described in section 4(a)(2), 4(a)(3), 4(b), or 4(h) of this chapter. The ordinance must include terms and conditions impounding in a special fund all of the municipal property taxes imposed on the annexed territory after the annexation takes effect that are not used to meet the basic services described in section 13(d)(4) and 13(d)(5) of this chapter for a period of at least three (3) years. The impounded property taxes must be used to provide additional services that were not specified in the plan of annexation. The impounded property taxes in the fund shall be expended as set forth in this section, not later than five (5) years after the annexation becomes effective.

SECTION 5. IC 36-4-3-8.1 IS ADDED TO THE INDIANA CODE



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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 8.1. (a) An advisory board shall be appointed to advise the municipality on the provision of services to the annexed territory that are paid for with the municipal property taxes impounded in a special fund under section 8 of this chapter.**

(b) An advisory board shall be appointed not later than ninety (90) days after an annexation becomes effective by the filing prescribed under section 22 of this chapter.

(c) An advisory board consists of the following seven (7) members:

(1) The township trustee of the township with the largest number of residents living within the annexed territory.

(2) One (1) member of the county fiscal body representing the district with the largest number of residents living within the annexed territory.

(3) One (1) member who is:

(A) the municipal engineer if the annexing municipality has a municipal engineer; or

(B) a licensed professional engineer appointed by the municipal executive if the municipality does not have a municipal engineer.

(4) Two (2) citizen members appointed by the municipal executive who:

(A) own real property within; and

(B) reside within;

the annexed territory.

(5) Two (2) citizen members appointed by the county executive who:

(A) own real property within; and

(B) reside within;

the annexed territory.

(d) Four (4) members of the board constitute a quorum. An affirmative vote of four (4) members is required for the board to take action.

(e) A member of the board may not receive a salary. A member may receive reimbursement for necessary expenses, but only when those necessary expenses are incurred in the performance of the member's respective duties.

(f) A vacancy on the board shall be filled by the appointing authority.

(g) The board shall serve for not longer than the date all municipal property taxes impounded in the fund are expended.

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SECTION 6. IC 36-4-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) Whenever territory is annexed by a municipality under 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) if the annexation is by a city in a county with a population or more than two hundred thousand (200,000) but less than three hundred thousand (300,000):

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

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

(2) if the annexation is by a municipality in a county that is not described in subdivision (1):

(A) at least sixty-five percent (65%) of the owners of land in the annexed territory; or

(B) 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)~~ **ninety (90)** 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 7. IC 36-4-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Except as provided in ~~subsection~~ **subsections (e) and (f)**, at the hearing under section 12 of this 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 set forth in section 3.1 of this chapter. 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. **The plan must present itemized estimated costs for each municipal department or agency.**
 - (2) The method or methods of financing the planned services. **The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.**
 - (3) The plan for the organization and extension of services. **The plan must detail the specific services that will be provided and the dates the services will begin.**
 - (4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those

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noncapital services provided to areas within the corporate boundaries ~~that have~~ **regardless of** 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 within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, ~~that have~~ **regardless of** 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 within four (4) years after the effective date of the annexation and in the same manner as those services are provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, or population density.

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

(e) This subsection does not apply to a city located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). 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) At least sixty-five percent (65%) 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.

~~(e)~~ **(f)** 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)~~ **(g)** 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 8. IC 36-4-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) The court's

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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)~~ **four (4)** years after the later of:

- (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.

SECTION 9. 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

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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 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 10. 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, 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;

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(B) the circuit court clerk, ~~and or~~ 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

(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.

(c) Failure to 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.~~

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

(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 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 chapter.**

(f) 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 11. [EFFECTIVE JULY 1, 1999] (a) This SECTION applies to a municipality that:

(1) adopts an annexation ordinance under IC 36-4-3-3 or IC 36-4-3-4:

(A) before July 1, 1999; and

(B) that becomes effective after July 1, 1999;



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(2) proves the establishment of a fiscal plan under IC 36-4-3-13 before July 1, 1999; and

(3) is subject to IC 36-4-3-8, as amended by this act.

(b) Notwithstanding IC 36-4-3-8, as amended by this act, a municipality described in this SECTION is not required to amend its annexation ordinance and its fiscal plan. However, a municipality described in this SECTION shall comply with IC 36-4-3-8, as amended by this act.

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