January 21, 2000

SENATE BILL No. 118

DIGEST OF SB 118 (Updated January 18, 2000 3:04 PM - DI 101)

Citations Affected: IC 36-2; IC 36-3; IC 36-4; IC 36-5; IC 36-6.

Synopsis: State certifying official references. Changes references to the "state certifying official" in the Indiana Code to "the office of the secretary of state". (The introduced version of this bill was prepared for the census data advisory committee.)

Effective: Upon passage.

Landske, Craycraft, Skillman, Breaux

November 23, 1999, read first time and referred to Committee on Elections.
January 20, 2000, reported favorably — Do Pass.

C o p y

January 21, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

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SENATE BILL No. 118

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

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

SECTION 1. IC 36-2-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) If the resident voters in a specified territory in two (2) or more contiguous counties desire to change the boundaries of their respective counties, they may file a petition with the executives of their respective counties requesting that the territory be transferred. The petition must:

(1) be signed by at least the number of voters resident in the territory requested to be transferred required to place a candidate on the ballot under IC 3-8-6-3;

(2) contain a clear, distinct description of the requested boundary change; and

(3) not propose to decrease the area of any county below four hundred (400) square miles in compliance with Article 15, Section 7 of the Constitution of the State of Indiana.

(b) Whenever a petition under subsection (a) is filed with a county executive, the executive shall determine, at its first meeting after the petition is filed:

(1) whether the signatures on the petition are genuine; and

(2) whether the petition complies with subsection (a).

(c) If the determinations under subsection (b) are affirmative, the executive shall certify the question to the county election board of each affected county. The county election boards shall jointly order a special election to be held, scheduling the election so that the election is held on the same date in each county interested in the change, but not later than thirty (30) days and not on the same date as a general election. The election shall be conducted under IC 3-10-8-6. All voters of each interested county are entitled to vote on the question. The question shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the boundaries of _____ County and _____ County change?".

(d) After an election under subsection (c), the clerk of each county shall make a certified copy of the election returns and not later than five (5) days after the election file the copy with the auditor of the county. The auditor shall, not later than five (5) days after the filing of the returns in the auditor's office, make a true and complete copy of the returns, certified under the auditor's hand and seal, and deposit the copy with the auditor of every other county interested in the change.

(e) After copies have been filed under subsection (d), the auditor of each county shall call a meeting of the executive of the county, which shall examine the returns. If a majority of the voters of each interested county voted in favor of change, the executive shall:

(1) enter an order declaring their boundaries to be changed as described in the petition; and

(2) if the county has received territory from the transfer, adopt revised descriptions of:

(A) county commissioner districts under IC 36-2-2-4; and

(B) county council districts under IC 36-2-3-4;

so that the transferred territory is assigned to at least one (1) county commissioner district and at least one (1) county council district.

(f) The executive of each county shall file a copy of the order described in subsection (e)(1) with:

(1) the **office of the secretary of** state; ~~certifying official designated under IC 3-6-4.2-11;~~ and

(2) the circuit court clerk of the county.

Except as provided in subsection (g), the transfer of territory becomes effective when the last county order is filed under this subsection.

(g) An order declaring county boundaries to be changed may not take effect during the year preceding a year in which a federal decennial census is conducted. An order that would otherwise take

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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.

(h) An election under this section may be held only once every three (3) years.

SECTION 2. IC 36-2-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Whenever the boundaries of a county are changed, the surveyor shall file a revised description of the boundaries of the county with the **office of the secretary of** state ~~certifying official designated under IC 3-6-4.2-11 no~~ **not** later than thirty (30) days after the change takes effect.

(b) The **office of the secretary of** state ~~certifying official~~ shall maintain an accurate file of the boundary descriptions filed under this section.

SECTION 3. IC 36-3-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section governs the transfer of territory that is either:

(1) inside the corporate boundaries of the consolidated city and contiguous to an excluded city; or

(2) inside the corporate boundaries of an excluded city and contiguous to the consolidated city.

IC 36-4-3 does not apply to such a transfer.

(b) If the owners of land located in territory described in subsection (a) want to have that territory transferred from one (1) municipality to the other, they must file:

(1) a petition for annexation of that territory with the legislative body of the contiguous municipality; and

(2) a petition for disannexation of that territory with the legislative body of the municipality containing that territory.

Each petition must be signed by at least fifty-one percent (51%) of the owners of land in the territory sought to be transferred. The territory must be reasonably compact in configuration, and its boundaries must generally follow streets or natural boundaries.

(c) Each legislative body shall, not later than sixty (60) days after a petition is filed with it under subsection (b), either approve or disapprove the petition, with the following results:

(1) Except as provided in subsection (g), if both legislative bodies approve, the transfer of territory takes effect:

(A) on the effective date of the approval of the latter legislative body to act; and

(B) when a copy of each transfer approval has been filed under subsection (f).

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(2) If the legislative body of the contiguous municipality disapproves or fails to act within the prescribed period, the proceedings are terminated.

(3) If the legislative body of the contiguous municipality approves but the legislative body of the other municipality disapproves or fails to act within the prescribed period, the proceedings are terminated unless there is an appeal under subsection (d).

(d) In the case described by subsection (c)(3), the petitioners may, not later than sixty (60) days after the disapproval or expiration of the prescribed period, appeal to the circuit court. The appeal must allege that the benefits to be derived by the petitioners from the transfer outweigh the detriments to the municipality that has failed to approve, which is defendant in the appeal.

(e) The court shall try an appeal under subsection (d) as other civil actions, but without a jury. If the court determines that:

(1) the requirements of this section have been met; and

(2) the benefits to be derived by the petitioners outweigh the detriments to the municipality;

it shall order the transfer of territory to take effect on the date its order becomes final, subject to subsection (g), and shall file the order under subsection (f). However, if the municipality, or a district of it, is furnishing sanitary sewer service or municipal water service in the territory, or otherwise has expended substantial sums for public facilities (other than roads) specially benefiting the territory, the court shall deny the transfer.

(f) A municipal legislative body that approves a transfer of territory under subsection (c) or a court that approves a transfer under subsection (e) shall file a copy of the approval or order, setting forth a legal description of the territory to be transferred, with:

(1) the **office of the secretary of** state; ~~certifying official designated under IC 3-6-4.2-11;~~ and

(2) the circuit court clerk of each county in which the municipality is located.

(g) A transfer of territory under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A transfer of territory 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.

(h) A petition for annexation or disannexation under this section may not be filed with respect to land as to which a transfer of territory has been disapproved or denied within the preceding three (3) years.

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(i) The legislative body of a municipality annexing territory under this section shall assign the territory to at least one (1) municipal legislative body district under IC 36-3-4-3 or IC 36-4-6 ~~no~~ **not** later than thirty (30) days after the transfer of territory becomes effective under this section.

SECTION 4. IC 36-4-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) Except as provided in subsection (c), a merger approved under this chapter takes effect when:

(1) the officers of the new municipality are elected and qualified, as prescribed by section 13 of this chapter; and

(2) a copy of the agreement under section 2 of this chapter or the certified election results under section 7 of this chapter are filed with:

(A) the **office of the secretary of** state; ~~certifying official designated under IC 3-6-4.2-11;~~ and

(B) the circuit court clerk of each county in which the municipality is located.

(b) On the effective date of the merger, the merging municipalities cease to exist and are merged into a single municipality of the class created by the combined population of the merging municipalities. The new municipality shall be governed by the laws applicable to that class.

(c) A merger approved under this chapter may not take effect during the year preceding a year in which a federal decennial census is conducted. A merger 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 5. IC 36-5-1-10.1, AS AMENDED BY P.L.86-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.1. (a) Except as provided in subsection (g), if the county executive makes the findings required by section 8 of this chapter, it may adopt an ordinance incorporating the town. The ordinance must:

(1) provide that:

(A) all members of the town legislative body are to be elected at large (if the town would have a population of less than three thousand five hundred (3,500); or

(B) divide the town into not less than three (3) nor more than seven (7) districts; and

(2) direct the county election board to conduct an election in the town on the date of the next general or municipal election to be held in any precincts in the county.

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An election conducted under this section must comply with IC 3 concerning town elections. If, on the date that an ordinance was adopted under this section, absentee ballots for a general or municipal election have been delivered under IC 3-11-4-15 for voters within a precinct in the town, the election must be conducted on the date of the next general or municipal election held in any precincts in the county after the election for which absentee balloting is being conducted. However, a primary election may not be conducted before an election conducted under this section, regardless of the population of the town.

(b) Districts established by an ordinance adopted under this section must comply with IC 3-11-1.5.

(c) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the district that:

(1) is contiguous to that territory; and

(2) contains the least population of all districts contiguous to that territory.

(d) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

(1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;

(2) is contiguous to that territory; and

(3) contains the least population of all districts contiguous to that territory.

(e) Except as provided in subsection (f), an ordinance adopted under this section becomes effective when filed with:

(1) the **office of the secretary of** state; ~~certifying official designated under IC 3-6-4.2-11;~~ and

(2) the circuit court clerk of each county in which the town is located.

(f) An ordinance incorporating a town under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. An ordinance under this section 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.

(g) Proceedings to incorporate a town across county boundaries must have the approval of the county executive of each county that contains a part of the proposed town. Each county that contains a part of the proposed town must adopt identical ordinances providing for the incorporation of the town.

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SECTION 6. IC 36-5-1-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) An election under section 16 of this chapter shall be held in the town. The voters shall, by ballot, vote on the question submitted to them. The question shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the town of _____ dissolve?" or "Shall the town of _____ change its name to _____?".

(b) Within four (4) days after the canvass of the vote by the county election board, the town clerk shall prepare and attest a statement of all the votes cast at the election, to be signed by the members of the county election board and filed with:

(1) the clerk of the county in which the greatest percentage of the population of the town is located; and

(2) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

SECTION 7. IC 36-5-1.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A person aggrieved by a decision made by the county executive under section 6 of this chapter may, within thirty (30) days, appeal that decision or result to the circuit court for the county containing more than fifty percent (50%) in assessed valuation of the land in the town. The appeal is instituted by giving written notice to the clerk of the circuit court and filing with the county executive a bond for five hundred dollars ($500), with surety approved by the county executive. The bond must provide:

(1) that the appeal will be duly prosecuted; and

(2) that the appellants will pay all costs if the appeal is decided against them.

(b) When an appeal is instituted, the county executive shall file with the clerk of the circuit court a transcript of all proceedings in the case, together with all papers filed in the case. The county executive may not take further action in the case until the appeal is heard and determined.

(c) An appeal under this section shall be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be granted. If the court orders the dissolution to take place, the circuit court clerk shall, immediately after the judgment of the court, certify the judgment of the circuit court to:

(1) the clerk of the municipality;

(2) the circuit court clerk of any other county in which the town is located; and

(3) the **office of the secretary of** state. ~~certifying official~~

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~~designated under IC 3-6-4.2-11.~~

(d) Except as provided in subsection (e), the dissolution takes effect sixty (60) days after the order is certified.

(e) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding the year in which the federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

SECTION 8. IC 36-5-1.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) If the county executive approves dissolution under section 6 of this chapter, the county executive shall adopt:

(1) an ordinance; or

(2) an order in a county having a consolidated city;

dissolving the town.

(b) Except as provided in subsection (e), a dissolution takes effect:

(1) at least sixty (60) days after the ordinance or order under subsection (a) is adopted; and

(2) when the county auditor files a copy of the ordinance or order with:

(A) the circuit court clerk of each county in which the town is located; and

(B) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

(c) The property owned by the town after payment of debts and liabilities shall be disposed of by the county executive. Any proceeds remaining shall be deposited in the county general fund. Dissolution of a town does not affect the validity of a contract to which the town is a party.

(d) After dissolution, the books and records of the town become the property of the county executive for safekeeping.

(e) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section 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 9. IC 36-5-1.1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) This section applies to the dissolution of an included town.

(b) The town legislative body may adopt a resolution to consider

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dissolution of the town under this section. The resolution must state the following:

(1) That the town legislative body conduct a public hearing at a stated date, place, and time concerning the dissolution of the town.

(2) That the town legislative body will hear all statements presented in favor of or in opposition to dissolution.

(3) That the town legislative body may adopt an ordinance to dissolve the town at the conclusion of the public hearing.

(c) The town clerk shall publish a notice of the public hearing in accordance with IC 5-3-1.

(d) The town legislative body may continue a public hearing under this section. If a hearing is continued, the clerk is not required to publish an additional notice under subsection (c).

(e) The town legislative body may adopt an ordinance following the conclusion of the public hearing under subsection (b). The town clerk shall file a copy of the ordinance with:

(1) the circuit court clerk of the county; and

(2) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

(f) Except as provided in subsection (g), the ordinance dissolving the town takes effect:

(1) at least sixty (60) days after adoption; and

(2) when the ordinance is filed under subsection (e).

(g) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which the federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

(h) When an ordinance dissolving a town becomes effective:

(1) the territory included within the town when the ordinance was adopted becomes a part of the consolidated city;

(2) the books and records of the town become the property of the county executive;

(3) the property owned by the town after payment of debts and liabilities shall be disposed of by the county executive; and

(4) the county executive shall deposit any proceeds remaining after payment of debts and liabilities into the county general fund.

(i) The dissolution of a town under this section does not affect the validity of a contract to which the town is a party.

SECTION 10. IC 36-5-1.1-10.6 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.6. (a) This section applies to included towns.

(b) The dissolution of a town under this section may be instituted by filing a petition with the county board of registration. The petition must be signed by at least the number of the registered voters of the town required to place a candidate on the ballot under IC 3-8-6-3. The petition must be filed not later than June 1 of a year in which a general or municipal election will be held.

(c) If a petition meets the criteria set forth in subsection (b), the county board of registration shall certify the public question to the county election board under IC 3-10-9-3. The county election board shall place the question of dissolution on the ballot provided for voters in the included town at the first general or municipal election following certification. The question shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the town of _____ dissolve?".

(d) If the public question is approved by a majority of the voters voting on the question, the county election board shall file a copy of the certification prepared under IC 3-12-4-9 concerning the public question described by this section with the following:

(1) The circuit court clerk of the county.

(2) The **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

(e) Except as provided in subsection (f), dissolution occurs:

(1) at least sixty (60) days after certification under IC 3-12-4-9; and

(2) when the certification is filed under subsection (d).

(f) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which the federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

(g) When a town is dissolved under this section:

(1) the territory included within the town when the ordinance was adopted becomes a part of the consolidated city;

(2) the books and records of the town become the property of the county executive;

(3) the property owned by the town after payment of debts and liabilities shall be disposed of by the county executive; and

(4) the county executive shall deposit any proceeds remaining after payment of debts and liabilities into the county general fund.

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(h) The dissolution of a town under this section does not affect the validity of a contract to which the town is a party.

SECTION 11. IC 36-5-1.2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. If an appeal has not been filed, not later than thirty (30) days after adoption of the resolution by the town legislative body, the town clerk-treasurer shall send a certified copy of the resolution to each of the following:

(1) The clerk of the circuit court of each county in which the town is located.

(2) The plan commission having jurisdiction, if any.

(3) The **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

SECTION 12. IC 36-6-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Each township is known as _____ Township of _____ County, according to the name of the township and the county in which it is located.

(b) The county executive may adopt an order to change the name of the townships in the county. A change of name under this section becomes effective when the county executive files a copy of the order with:

(1) the circuit court clerk; and

(2) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

SECTION 13. IC 36-6-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) When part of a township is owned by the state or the United States, devoted to a public use, and withdrawn from taxation for local purposes, and:

(1) less than eighteen (18) square miles of the township remains subject to taxation; or

(2) the township is divided into two (2) or more separate sections by the government owned part;

the county executive may issue an order to alter the boundaries of the township and adjoining townships on receipt of a petition signed by at least thirty-five percent (35%) of the resident freeholders of a part of the township adjoining another township.

(b) Except as provided in subsection (c), a boundary alteration under this section is effective when a copy of the order is filed with:

(1) the circuit court clerk; and

(2) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

(c) A boundary alteration under this section may not take effect

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during the year preceding a year in which a federal decennial census is conducted. A boundary alteration 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 14. IC 36-6-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Townships other than those described in section 3 of this chapter may be altered or abolished by the issuance of an order by the county executive on receipt of a petition signed by a majority of the freeholders of the affected township or townships. The alteration or abolition must conform to the terms of the petition.

(b) Except as provided in subsection (c), the alteration or abolition becomes effective when the county executive files a copy of the order with:

(1) the circuit court clerk; and

(2) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

(c) The alteration or abolition of a township may not take effect during the year preceding a year in which a federal decennial census is conducted. An alteration or abolition 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 15. IC 36-6-1-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) This section applies to an area that meets the following conditions:

(1) Contains not more than seven hundred (700) acres.

(2) Has a river along at least twenty-five percent (25%) of the perimeter of the area.

(3) Abuts a different township from the township in which the area is situated.

(b) An area is transferred from the township in which the area is situated to the township that the area abuts if the following conditions are met:

(1) The transfer results in a rectangular shape for the boundaries of both of the affected townships.

(2) A petition:

(A) containing a legal description of the area; and

(B) signed by at least fifty-one percent (51%) of the freeholders in the area;

is filed with the circuit court clerk and the **office of the secretary**

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of state. ~~certifying official designated under IC 3-6-4.2-11.~~

(c) Section 5(c) of this chapter applies to the alteration of township boundaries under this section.

(d) Except as provided in subsection (e), if the conditions specified in this section are met, the transfer occurs when the filing requirements of subsection (b) are met.

(e) The transfer may not take effect during the year preceding a year in which a federal decennial census is conducted. A transfer 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 16. IC 36-6-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) An action taken by a county executive under this chapter may be appealed to the circuit court of the county. The appeal shall be heard de novo on all questions presented.

(b) If the court orders the name change, alteration, or abolition of a township to take place, the circuit court clerk shall, immediately after the judgment of the court, certify the judgment of the circuit court to:

(1) the township executive; and

(2) the **office of the secretary of** state. ~~certifying official designated under IC 3-6-4.2-11.~~

Except as provided in subsection (c), the order takes effect sixty (60) days after certification.

(c) The name change, alteration, or abolition of a township may not take effect during the year preceding a year in which a federal decennial census is conducted. An alteration or abolition 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. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Elections, to which was referred Senate Bill No. 118, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 118 as introduced.)

LANDSKE, Chairperson

Committee Vote: Yeas 6, Nays 0.

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