January 9, 2008

SENATE BILL No. 114

DIGEST OF SB 114 (Updated January 7, 2008 9:17 am - DI dh)

Citations Affected: IC 6-1.1; IC 13-18; IC 36-4; IC 36-5; IC 36-9; noncode.

Synopsis: Annexation. Allows a municipality to initiate an annexation only if: (1) the territory is noncontiguous and occupied by a municipally owned or operated airport or landing field, sanitary landfill, golf course, or hospital or is to be used for an industrial park and is owned by the municipality or by a property owner who consents to the annexation; (2) the land is contiguous agricultural land and owned by a property owner who consents to the annexation; or (3) all property owners in the territory provide written consent to the annexation. Prohibits a municipality from annexing a lake or pond of at least 20 acres unless the entire boundary of the municipality surrounds the lake or pond. Requires an annexation fiscal plan to be approved by the department of local government finance (department), after a hearing, before the municipality adopts an annexation ordinance. Allows the department to consider the written fiscal plan and information presented at the hearing. Prohibits a municipality from amending a fiscal plan after the plan is approved by the department. Allows a town to annex territory within three miles of a city without first obtaining the consent of the city. Provides that a waiver or release of the right of remonstrance against annexation: (1) is not a covenant that runs with the land or is binding on the successors in title to the real property; and (2) expires three years after the date the waiver or release is executed. With respect to an excessive levy appeal based on increased costs to a civil taxing unit resulting from annexation, consolidation, or other extensions of governmental services by the unit

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Effective: January 1, 2008 (retroactive); July 1, 2008.

Drozda, Gard

January 8, 2008, read first time and referred to Committee on Rules and Legislative Procedure.
January 8, 2008, amended; reassigned to Committee on Local Government and Elections.

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Digest Continued

to additional geographic areas or persons: (1) eliminates the restriction against an appeal after 2009; (2) allows an appeal in the first year increased costs are incurred and the immediately succeeding four years; and (3) makes the excessive levy for a year a permanent part of the unit's maximum permissible levy for succeeding years. Provides that an annexation ordinance that was adopted after December 31, 2006, and has not taken effect, is void if the most recent examination report of the municipality by the state board of accounts finds that the municipality failed to observe a uniform compliance guideline or a specific law. Provides that territory may incorporate as a town without obtaining the consent of a city within a certain distance of its proposed boundaries, if the proposed town has an assessed value of at least $750,000,000 as shown by the most recent assessment. Prohibits a municipality from adopting an annexation ordinance, other than an ordinance petitioned for by landowners, after January 1, 2008, and before July 1, 2008. Repeals a provision that requires a town to obtain the consent of a city before annexing territory within three miles of the city.

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January 9, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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SENATE BILL No. 114

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

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

SECTION 1. IC 6-1.1-18.5-3, AS AMENDED BY P.L.224-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) Except as otherwise provided in this chapter and IC 6-3.5-8-12, a civil taxing unit that is treated as not being located in an adopting county under section 4 of this chapter may not impose an ad valorem property tax levy for an ensuing calendar year that exceeds the amount determined in the last STEP of the following STEPS:

STEP ONE: Add the civil taxing unit's maximum permissible ad valorem property tax levy for the preceding calendar year to the part of the civil taxing unit's certified share, if any, that was used to reduce the civil taxing unit's ad valorem property tax levy under STEP EIGHT of subsection (b) for that preceding calendar year.

STEP TWO: Multiply the amount determined in STEP ONE by the amount determined in the last STEP of section 2(b) of this chapter.

STEP THREE: Determine the lesser of one and fifteen hundredths

(1.15) or the quotient (rounded to the nearest ten-thousandth (0.0001)), of the assessed value of all taxable property subject to the civil taxing unit's ad valorem property tax levy for the ensuing calendar year, divided by the assessed value of all taxable property that is subject to the civil taxing unit's ad valorem property tax levy for the ensuing calendar year and that is contained within the geographic area that was subject to the civil taxing unit's ad valorem property tax levy in the preceding calendar year.

STEP FOUR: Determine the greater of the amount determined in STEP THREE or one (1).

STEP FIVE: Multiply the amount determined in STEP TWO by the amount determined in STEP FOUR.

STEP SIX: Add the amount determined under STEP TWO to the amount determined under subsection (c).

STEP SEVEN: Determine the greater of the amount determined under STEP FIVE or the amount determined under STEP SIX.

(b) Except as otherwise provided in this chapter and IC 6-3.5-8-12, a civil taxing unit that is treated as being located in an adopting county under section 4 of this chapter may not impose an ad valorem property tax levy for an ensuing calendar year that exceeds the amount determined in the last STEP of the following STEPS:

STEP ONE: Add the civil taxing unit's maximum permissible ad valorem property tax levy for the preceding calendar year to the part of the civil taxing unit's certified share, if any, used to reduce the civil taxing unit's ad valorem property tax levy under STEP EIGHT of this subsection for that preceding calendar year.

STEP TWO: Multiply the amount determined in STEP ONE by the amount determined in the last STEP of section 2(b) of this chapter.

STEP THREE: Determine the lesser of one and fifteen hundredths (1.15) or the quotient of the assessed value of all taxable property subject to the civil taxing unit's ad valorem property tax levy for the ensuing calendar year divided by the assessed value of all taxable property that is subject to the civil taxing unit's ad valorem property tax levy for the ensuing calendar year and that is contained within the geographic area that was subject to the civil taxing unit's ad valorem property tax levy in the preceding calendar year.

STEP FOUR: Determine the greater of the amount determined in STEP THREE or one (1).

STEP FIVE: Multiply the amount determined in STEP TWO by

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the amount determined in STEP FOUR.

STEP SIX: Add the amount determined under STEP TWO to the amount determined under subsection (c).

STEP SEVEN: Determine the greater of the amount determined under STEP FIVE or the amount determined under STEP SIX.

STEP EIGHT: Subtract the amount determined under STEP FIVE of subsection (e) from the amount determined under STEP SEVEN of this subsection.

(c) **The amount to be entered under STEP SIX of subsection (a) or STEP SIX of subsection (b), as applicable, equals the sum of the following:**

(1) If a civil taxing unit in the immediately preceding calendar year provided an area outside its boundaries with services on a contractual basis and in the ensuing calendar year that area has been annexed by the civil taxing unit, ~~the amount to be entered under STEP SIX of subsection (a) or STEP SIX of subsection (b), as the case may be, equals~~ the amount paid by the annexed area during the immediately preceding calendar year for services that the civil taxing unit must provide to that area during the ensuing calendar year as a result of the annexation.

(2) If the civil taxing unit has had an excessive levy appeal approved under section 13(1) of this chapter for the ensuing calendar year, an amount determined by the civil taxing unit for the ensuing calendar year that does not exceed the amount of that excessive levy.

In all other cases, the amount to be entered under STEP SIX of subsection (a) or STEP SIX of subsection (b), as the case may be, equals zero (0).

(d) This subsection applies only to civil taxing units located in a county having a county adjusted gross income tax rate for resident county taxpayers (as defined in IC 6-3.5-1.1-1) of one percent (1%) as of January 1 of the ensuing calendar year. For each civil taxing unit, the amount to be added to the amount determined in subsection (e), STEP FOUR, is determined using the following formula:

STEP ONE: Multiply the civil taxing unit's maximum permissible ad valorem property tax levy for the preceding calendar year by two percent (2%).

STEP TWO: For the determination year, the amount to be used as the STEP TWO amount is the amount determined in subsection (f) for the civil taxing unit. For each year following the determination year the STEP TWO amount is the lesser of:

(A) the amount determined in STEP ONE; or

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(B) the amount determined in subsection (f) for the civil taxing unit.

STEP THREE: Determine the greater of:

(A) zero (0); or

(B) the civil taxing unit's certified share for the ensuing calendar year minus the greater of:

(i) the civil taxing unit's certified share for the calendar year that immediately precedes the ensuing calendar year; or

(ii) the civil taxing unit's base year certified share.

STEP FOUR: Determine the greater of:

(A) zero (0); or

(B) the amount determined in STEP TWO minus the amount determined in STEP THREE.

Add the amount determined in STEP FOUR to the amount determined in subsection (e), STEP THREE, as provided in subsection (e), STEP FOUR.

(e) For each civil taxing unit, the amount to be subtracted under subsection (b), STEP EIGHT, is determined using the following formula:

STEP ONE: Determine the lesser of the civil taxing unit's base year certified share for the ensuing calendar year, as determined under section 5 of this chapter, or the civil taxing unit's certified share for the ensuing calendar year.

STEP TWO: Determine the greater of:

(A) zero (0); or

(B) the remainder of:

(i) the amount of federal revenue sharing money that was received by the civil taxing unit in 1985; minus

(ii) the amount of federal revenue sharing money that will be received by the civil taxing unit in the year preceding the ensuing calendar year.

STEP THREE: Determine the lesser of:

(A) the amount determined in STEP TWO; or

(B) the amount determined in subsection (f) for the civil taxing unit.

STEP FOUR: Add the amount determined in subsection (d), STEP FOUR, to the amount determined in STEP THREE.

STEP FIVE: Subtract the amount determined in STEP FOUR from the amount determined in STEP ONE.

(f) As used in this section, a taxing unit's "determination year" means the latest of:

(1) calendar year 1987, if the taxing unit is treated as being

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located in an adopting county for calendar year 1987 under section 4 of this chapter;

(2) the taxing unit's base year, as defined in section 5 of this chapter, if the taxing unit is treated as not being located in an adopting county for calendar year 1987 under section 4 of this chapter; or

(3) the ensuing calendar year following the first year that the taxing unit is located in a county that has a county adjusted gross income tax rate of more than one-half percent (0.5%) on July 1 of that year.

The amount to be used in subsections (d) and (e) for a taxing unit depends upon the taxing unit's certified share for the ensuing calendar year, the taxing unit's determination year, and the county adjusted gross income tax rate for resident county taxpayers (as defined in IC 6-3.5-1.1-1) that is in effect in the taxing unit's county on July 1 of the year preceding the ensuing calendar year. For the determination year and the ensuing calendar years following the taxing unit's determination year, the amount is the taxing unit's certified share for the ensuing calendar year multiplied by the appropriate factor prescribed in the following table:

COUNTIES WITH A TAX RATE OF 1/2%

Year	Subsection (e) Factor
For the determination year and each ensuing calendar year following the determination year	0

COUNTIES WITH A TAX RATE OF 3/4%

Year	Subsection (e) Factor
For the determination year and each ensuing calendar year following the determination year	1/2

COUNTIES WITH A TAX RATE OF 1.0%

Year	Subsection (d) Factor	Subsection (e) Factor
For the determination year	1/6	1/3
For the ensuing calendar year following the determination year	1/4	1/3
For the ensuing calendar year following the determination year by two (2) years	1/3	1/3

(g) This subsection applies only to property taxes first due and payable after December 31, 2007. This subsection applies only to a civil taxing unit that is located in a county for which a county adjusted

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gross income tax rate is first imposed or is increased in a particular year under IC 6-3.5-1.1-24 or a county option income tax rate is first imposed or is increased in a particular year under IC 6-3.5-6-30. Notwithstanding any provision in this section or any other section of this chapter and except as provided in subsection (h), the maximum permissible ad valorem property tax levy calculated under this section for the ensuing calendar year for a civil taxing unit subject to this section is equal to the civil taxing unit's maximum permissible ad valorem property tax levy for the current calendar year.

(h) This subsection applies only to property taxes first due and payable after December 31, 2007. In the case of a civil taxing unit that:

(1) is partially located in a county for which a county adjusted gross income tax rate is first imposed or is increased in a particular year under IC 6-3.5-1.1-24 or a county option income tax rate is first imposed or is increased in a particular year under IC 6-3.5-6-30; and

(2) is partially located in a county that is not described in subdivision (1);

the department of local government finance shall, notwithstanding subsection (g), adjust the portion of the civil taxing unit's maximum permissible ad valorem property tax levy that is attributable (as determined by the department of local government finance) to the county or counties described in subdivision (2). The department of local government finance shall adjust this portion of the civil taxing unit's maximum permissible ad valorem property tax levy so that, notwithstanding subsection (g), this portion is allowed to increase as otherwise provided in this section. If the department of local government finance increases the civil taxing unit's maximum permissible ad valorem property tax levy under this subsection, any additional property taxes imposed by the civil taxing unit under the adjustment shall be paid only by the taxpayers in the county or counties described in subdivision (2).

SECTION 2. IC 6-1.1-18.5-13, AS AMENDED BY P.L.196-2007, SECTION 2, AND AS AMENDED BY P.L.224-2007, SECTION 25, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. With respect to an appeal filed under section 12 of this chapter, the local government tax control board *(before January 1, 2009) or the county board of tax and capital projects review (after December 31, 2008)* may recommend that a civil taxing unit receive any one (1) or more of the following types of relief:

(1) ~~*A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.*~~

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Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if in the judgment of the local government tax control board the increase is reasonably necessary due to increased costs of the civil taxing unit resulting from annexation, consolidation, or other extensions of governmental services by the civil taxing unit to additional geographic areas or persons. **With respect to annexation, consolidation, or other extensions of governmental services in a calendar year, if those increased costs are incurred by the civil taxing unit in that calendar year and more than one (1) immediately succeeding calendar year, the unit may appeal under section 12 of this chapter for permission to increase its levy under this subdivision based on those increased costs in any of the following:**

(A) The first calendar year in which those costs are incurred.

(B) One (1) or more of the immediately succeeding four (4) calendar years.

(2) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the civil taxing unit needs the increase to meet the civil taxing unit's share of the costs of operating a court established by statute enacted after December 31, 1973. Before recommending such an increase, the local government tax control board shall consider all other revenues available to the civil taxing unit that could be applied for that purpose. The maximum aggregate levy increases that the local government tax control board may recommend for a particular court equals the civil taxing unit's estimate of the unit's share of the costs of operating a court for the first full calendar year in which it is in existence. For purposes of this subdivision, costs of operating a court include:

(A) the cost of personal services (including fringe benefits);

(B) the cost of supplies; and

(C) any other cost directly related to the operation of the court.

(3) Permission to the civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the quotient determined under STEP SIX of the following formula is equal to or greater than one and two-hundredths (1.02):

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STEP ONE: Determine the three (3) calendar years that most immediately precede the ensuing calendar year and in which a statewide general reassessment of real property *or the initial annual adjustment of the assessed value of real property under IC 6-1.1-4-4.5* does not first become effective.

STEP TWO: Compute separately, for each of the calendar years determined in STEP ONE, the quotient (rounded to the nearest ten-thousandth (0.0001)) of the sum of the civil taxing unit's total assessed value of all taxable property and the total assessed value of property tax deductions in the unit under IC 6-1.1-12-41 or IC 6-1.1-12-42 in the particular calendar year, divided by the sum of the civil taxing unit's total assessed value of all taxable property and the total assessed value of property tax deductions in the unit under IC 6-1.1-12-41 or IC 6-1.1-12-42 in the calendar year immediately preceding the particular calendar year.

STEP THREE: Divide the sum of the three (3) quotients computed in STEP TWO by three (3).

STEP FOUR: Compute separately, for each of the calendar years determined in STEP ONE, the quotient (rounded to the nearest ten-thousandth (0.0001)) of the sum of the total assessed value of all taxable property in all counties and the total assessed value of property tax deductions in all counties under IC 6-1.1-12-41 or IC 6-1.1-12-42 in the particular calendar year, divided by the sum of the total assessed value of all taxable property in all counties and the total assessed value of property tax deductions in all counties under IC 6-1.1-12-41 or IC 6-1.1-12-42 in the calendar year immediately preceding the particular calendar year.

STEP FIVE: Divide the sum of the three (3) quotients computed in STEP FOUR by three (3).

STEP SIX: Divide the STEP THREE amount by the STEP FIVE amount.

The civil taxing unit may increase its levy by a percentage not greater than the percentage by which the STEP THREE amount exceeds the percentage by which the civil taxing unit may increase its levy under section 3 of this chapter based on the assessed value growth quotient determined under section 2 of this chapter.

(4) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission to the civil taxing unit to increase its levy in excess of

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the limitations established under section 3 of this chapter, if the local government tax control board finds that the civil taxing unit needs the increase to pay the costs of furnishing fire protection for the civil taxing unit through a volunteer fire department. For purposes of determining a township's need for an increased levy, the local government tax control board shall not consider the amount of money borrowed under IC 36-6-6-14 during the immediately preceding calendar year. However, any increase in the amount of the civil taxing unit's levy recommended by the local government tax control board under this subdivision for the ensuing calendar year may not exceed the lesser of:

(A) ten thousand dollars ($10,000); or

(B) twenty percent (20%) of:

(i) the amount authorized for operating expenses of a volunteer fire department in the budget of the civil taxing unit for the immediately preceding calendar year; plus

(ii) the amount of any additional appropriations authorized during that calendar year for the civil taxing unit's use in paying operating expenses of a volunteer fire department under this chapter; minus

(iii) the amount of money borrowed under IC 36-6-6-14 during that calendar year for the civil taxing unit's use in paying operating expenses of a volunteer fire department.

(5) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission to a civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter in order to raise revenues for pension payments and contributions the civil taxing unit is required to make under IC 36-8. The maximum increase in a civil taxing unit's levy that may be recommended under this subdivision for an ensuing calendar year equals the amount, if any, by which the pension payments and contributions the civil taxing unit is required to make under IC 36-8 during the ensuing calendar year exceeds the product of one and one-tenth (1.1) multiplied by the pension payments and contributions made by the civil taxing unit under IC 36-8 during the calendar year that immediately precedes the ensuing calendar year. For purposes of this subdivision, "pension payments and contributions made by a civil taxing unit" does not include that part of the payments or contributions that are funded by distributions made to a civil taxing unit by the state.

(6) *A levy increase may not be granted under this subdivision for*

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property taxes first due and payable after December 31, 2009. Permission to increase its levy in excess of the limitations established under section 3 of this chapter if the local government tax control board finds that:

(A) the township's township assistance ad valorem property tax rate is less than one and sixty-seven hundredths cents ($0.0167) per one hundred dollars ($100) of assessed valuation; and

(B) the township needs the increase to meet the costs of providing township assistance under IC 12-20 and IC 12-30-4.

The maximum increase that the board may recommend for a township is the levy that would result from an increase in the township's township assistance ad valorem property tax rate of one and sixty-seven hundredths cents ($0.0167) per one hundred dollars ($100) of assessed valuation minus the township's ad valorem property tax rate per one hundred dollars ($100) of assessed valuation before the increase.

(7) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission to a civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter if:

(A) the increase has been approved by the legislative body of the municipality with the largest population where the civil taxing unit provides public transportation services; and

(B) the local government tax control board finds that the civil taxing unit needs the increase to provide adequate public transportation services.

The local government tax control board shall consider tax rates and levies in civil taxing units of comparable population, and the effect (if any) of a loss of federal or other funds to the civil taxing unit that might have been used for public transportation purposes. However, the increase that the board may recommend under this subdivision for a civil taxing unit may not exceed the revenue that would be raised by the civil taxing unit based on a property tax rate of one cent ($0.01) per one hundred dollars ($100) of assessed valuation.

(8) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission to a civil taxing unit to increase the unit's levy in excess of the limitations established under section 3 of this chapter if the local government tax control board finds that:

(A) the civil taxing unit is:

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(i) a county having a population of more than one hundred forty-eight thousand (148,000) but less than one hundred seventy thousand (170,000);

(ii) a city having a population of more than fifty-five thousand (55,000) but less than fifty-nine thousand (59,000);

(iii) a city having a population of more than twenty-eight thousand seven hundred (28,700) but less than twenty-nine thousand (29,000);

(iv) a city having a population of more than fifteen thousand four hundred (15,400) but less than sixteen thousand six hundred (16,600); or

(v) a city having a population of more than seven thousand (7,000) but less than seven thousand three hundred (7,300); and

(B) the increase is necessary to provide funding to undertake removal (as defined in IC 13-11-2-187) and remedial action (as defined in IC 13-11-2-185) relating to hazardous substances (as defined in IC 13-11-2-98) in solid waste disposal facilities or industrial sites in the civil taxing unit that have become a menace to the public health and welfare.

The maximum increase that the local government tax control board may recommend for such a civil taxing unit is the levy that would result from a property tax rate of six and sixty-seven hundredths cents ($0.0667) for each one hundred dollars ($100) of assessed valuation. For purposes of computing the ad valorem property tax levy limit imposed on a civil taxing unit under section 3 of this chapter, the civil taxing unit's ad valorem property tax levy for a particular year does not include that part of the levy imposed under this subdivision. In addition, a property tax increase permitted under this subdivision may be imposed for only two (2) calendar years.

(9) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission for a county:

(A) having a population of more than eighty thousand (80,000) but less than ninety thousand (90,000) to increase the county's levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the county needs the increase to meet the county's share of the costs of operating a jail or juvenile detention center, including expansion of the facility, if the jail or juvenile detention center is opened after December 31, 1991;

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(B) that operates a county jail or juvenile detention center that is subject to an order that:

(i) was issued by a federal district court; and

(ii) has not been terminated;

(C) that operates a county jail that fails to meet:

(i) American Correctional Association Jail Construction Standards; and

(ii) Indiana jail operation standards adopted by the department of correction; or

(D) that operates a juvenile detention center that fails to meet standards equivalent to the standards described in clause (C) for the operation of juvenile detention centers.

Before recommending an increase, the local government tax control board shall consider all other revenues available to the county that could be applied for that purpose. An appeal for operating funds for a jail or a juvenile detention center shall be considered individually, if a jail and juvenile detention center are both opened in one (1) county. The maximum aggregate levy increases that the local government tax control board may recommend for a county equals the county's share of the costs of operating the jail or a juvenile detention center for the first full calendar year in which the jail or juvenile detention center is in operation.

(10) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission for a township to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the township needs the increase so that the property tax rate to pay the costs of furnishing fire protection for a township, or a portion of a township, enables the township to pay a fair and reasonable amount under a contract with the municipality that is furnishing the fire protection. However, for the first time an appeal is granted the resulting rate increase may not exceed fifty percent (50%) of the difference between the rate imposed for fire protection within the municipality that is providing the fire protection to the township and the township's rate. A township is required to appeal a second time for an increase under this subdivision if the township wants to further increase its rate. However, a township's rate may be increased to equal but may not exceed the rate that is used by the municipality. More than one (1) township served by the same municipality may use this appeal.

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(11) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission for a township to increase its levy in excess of the limitations established under section 3 of this chapter, if the local government tax control board finds that the township has been required, for the three (3) consecutive years preceding the year for which the appeal under this subdivision is to become effective, to borrow funds under IC 36-6-6-14 to furnish fire protection for the township or a part of the township. However, the maximum increase in a township's levy that may be allowed under this subdivision is the least of the amounts borrowed under IC 36-6-6-14 during the preceding three (3) calendar years. A township may elect to phase in an approved increase in its levy under this subdivision over a period not to exceed three (3) years. A particular township may appeal to increase its levy under this section not more frequently than every fourth calendar year.

(12) *A levy increase may not be granted under this subdivision for property taxes first due and payable after December 31, 2009.* Permission to a city having a population of more than twenty-nine thousand (29,000) but less than thirty-one thousand (31,000) to increase its levy in excess of the limitations established under section 3 of this chapter if:

(A) an appeal was granted to the city under this section to reallocate property tax replacement credits under IC 6-3.5-1.1 in 1998, 1999, and 2000; and

(B) the increase has been approved by the legislative body of the city, and the legislative body of the city has by resolution determined that the increase is necessary to pay normal operating expenses.

The maximum amount of the increase is equal to the amount of property tax replacement credits under IC 6-3.5-1.1 that the city petitioned under this section to have reallocated in 2001 for a purpose other than property tax relief.

(13) A levy increase may be granted under this subdivision only for property taxes first due and payable after December 31, 2009. Permission to a civil taxing unit to increase its levy in excess of the limitations established under section 3 of this chapter if the civil taxing unit cannot carry out its governmental functions for an ensuing calendar year under the levy limitations imposed by section 3 of this chapter.

SECTION 3. IC 13-18-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The persons

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involved shall negotiate the terms for connection and service under this chapter.

(b) If service is ordered under this chapter, a receiver of that service that is located in an unincorporated area may grant a waiver to a municipality providing the service. A waiver under this section:

(1) must waive the receiver's right of remonstrance against annexation of the areas in which the service is to be provided; and

(2) may be one (1) of the terms for connection and service described in subsection (a).

~~(c) The waiver, if granted:~~

~~(1) shall be noted on the deed of each property affected and recorded as provided by law; and~~

~~(2) is considered a covenant running with the land.~~

(c) Notwithstanding any other law, a waiver executed after June 30, 2008, by a receiver of the service is not:

(1) a covenant that runs with the land; or

(2) binding on the receiver's successors in title to the real property.

(d) A waiver expires three (3) years after the date the waiver is executed.

SECTION 4. IC 36-4-3-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.2. As used in this chapter, "department" refers to the department of local government finance.**

SECTION 5. IC 36-4-3-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.7. (a) A municipality may initiate an annexation of territory as follows:**

(1) If the municipality is annexing territory described in section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter, by adopting an annexation ordinance after notice and a public hearing under section 2.1 of this chapter.

(2) If all property owners in the territory provide written consent to the annexation, by adopting an annexation ordinance after:

(A) receiving approval of the fiscal plan under section 6.5 of this chapter; and

(B) notice under section 2.2 of this chapter and a public hearing under section 2.1 of this chapter.

(b) Landowners may initiate an annexation of territory by filing a petition under section 5 or 5.1 of this chapter.

SECTION 6. IC 36-4-3-1.8 IS ADDED TO THE INDIANA CODE

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AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.8. A municipality may not annex a lake or pond of at least twenty (20) acres unless the entire boundary of the municipality surrounds the lake or pond.**

SECTION 7. IC 36-4-3-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.1. (a) This section does not apply to an annexation under section 5.1 of this chapter.

(b) 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. Except as provided in subsection (d), 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.

(c) 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 (b).

(d) This subsection applies to an annexation ~~under section 3 or 4~~ **described in section 1.7(a)(2)** of this chapter in which all property owners within the area to be annexed provide written consent to the annexation. Notice of the hearing shall be:

(1) published one (1) time at least twenty (20) days before the hearing in accordance with IC 5-3-1; and

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

SECTION 8. IC 36-4-3-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.2. **(a) This section applies to an annexation described in section 1.7(a)(2) of this chapter or under section 5 of this chapter.**

~~(a)~~ **(b)** 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 or an annexation described in section 5.1 of this chapter.

~~(b)~~ **(c)** Before a municipality may annex territory, the municipality shall provide written notice of the hearing required under section 2.1 of this chapter. Except as provided in subsection ~~(c),~~ **(f),** 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.

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~~(c)~~ **(d)** 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 showing the current municipal boundaries and 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 ~~after the fiscal plan is adopted~~ immediately to any landowner in the annexed territory who requests a copy **at no charge.**

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

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

~~(e)~~ **(f)** This subsection applies to an annexation ~~under section 3 or 4~~ **described in section 1.7(a)(2)** of this chapter in which all property owners within the area to be annexed provide written consent to the annexation. The written notice described in this section must be sent by certified mail not later than twenty (20) 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.

SECTION 9. IC 36-4-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) **Subject to subsection (b),** the legislative body of a municipality may, by an ordinance defining the corporate boundaries of the municipality, annex territory that is contiguous to the municipality. ~~subject to subsection (b).~~

(b) If territory that was not contiguous (under section 1.5 of this chapter) was annexed in proceedings begun before May 1, 1981, an ordinance adopted after April 30, 1981, may not annex additional territory that is contiguous when the contiguity is based on the additional territory's boundaries with the previously annexed territory.

(c) Subsection (b) does not apply when the previously annexed territory has been used as a part of the contiguous boundary of separate

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parcels of land successfully annexed to the municipality before May 1, 1981.

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

SECTION 10. IC 36-4-3-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.1. **(a) This section applies only to an annexation described in section 1.7(a)(2) of this chapter or under section 5 or 5.1 of this chapter.**

~~(a)~~ **(b)** 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)~~ **(c)** A municipality shall develop and adopt 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. **The department must approve the fiscal plan under section 6.5 of this chapter before the municipality may adopt an annexation ordinance.**

~~(c) Except as provided in subsection (d), the municipality shall establish and adopt 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 or 5.1 of this chapter, the municipality shall establish and adopt the written fiscal plan before adopting the annexation ordinance.~~

(d) A municipality may not amend the fiscal plan after the department approves the fiscal plan under section 6.5 of this chapter.

SECTION 11. IC 36-4-3-4.1, AS AMENDED BY P.L.71-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.1. (a) The legislative body of a municipality may, by ordinance annex territory that:

(1) is contiguous to the municipality;

(2) in the case of a town having a population of more than:

(A) fifteen thousand (15,000); or

(B) five thousand (5,000) but less than six thousand three hundred (6,300);

located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000), has its entire area within the township within which the town is primarily located; and

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

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(b) Territory annexed under this section is exempt from all property tax liability under IC 6-1.1 for municipal purposes for all portions of the annexed territory that are classified for zoning purposes as agricultural and remain exempt from the property tax liability while the property's zoning classification remains agricultural. However, if the annexation ordinance annexing the territory is adopted after June 30, 2006, the property tax liability under IC 6-1.1 for municipal purposes may be exempted for a period of not more than ten (10) years.

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

(d) Territory annexed under this section may not be considered a part of the municipality for purposes of annexing additional territory under section ~~3 or 4~~ **1.7(a)** of this chapter. However, territory annexed under this section shall be considered a part of the municipality for purposes of annexing additional territory under section 5 or 5.1 of this chapter.

SECTION 12. IC 36-4-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) If the owners of land located outside of but contiguous to a municipality want to have territory containing that land annexed to the municipality, they may file with the legislative body of the municipality a petition:

(1) signed by at least:

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

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

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

(b) The petition circulated by the landowners must include on each page where signatures are affixed a heading that is substantially similar to the following:

"PETITION FOR ANNEXATION INTO THE (insert whether city or town) OF (insert name of city or town).".

(c) ~~Except as provided in section 5.1 of this chapter,~~ If the legislative body fails to pass the ordinance within **the later of** one hundred fifty (150) days after the date of filing of a petition under subsection (a) **or the disposition of a petition for approval of the annexation fiscal plan under section 6.5 of this chapter,** the petitioners may file a duplicate copy of the petition in the circuit or superior court of a county in which the territory is located, and shall include a written statement of why the annexation should take place.

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Notice of the proceedings, in the form of a summons, shall be served on the municipality named in the petition. The municipality is the defendant in the cause and shall appear and answer.

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

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

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

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

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

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

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

SECTION 13. IC 36-4-3-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 6.5. (a) Before a municipality adopts an annexation ordinance, the municipality must file a certified petition with the department for approval of the municipality's annexation fiscal plan. The municipality shall submit the following with the certified petition:**

(1) The proposed annexation ordinance.

(2) The written fiscal plan.

(3) If the petitioning municipality is a city, the name and mailing address of the mayor.

(4) If the petitioning municipality is a town, the name and mailing address of the president of the town council.

(5) The name and address of 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.

(6) Any other information considered necessary by the department.

(b) Upon receipt of a certified petition, the department shall fix a date, time, and place for a hearing on the matter. The department shall hold the hearing:

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(1) not less than five (5) and not more than thirty (30) days after the department receives the petition; and

(2) in the municipality that filed the petition.

(c) At least ten (10) days before the date fixed for the hearing, the department shall give notice of the hearing, by first class mail, to the following:

(1) If the petitioning municipality is a city, notice shall be given to the mayor at the address provided under subsection (a)(3).

(2) If the petitioning municipality is a town, notice shall be given to the president of the town council at the address provided under subsection (a)(4).

(3) Notice shall be given to each owner of real property at the addresses provided under subsection (a)(5).

(d) At the hearing, the department shall consider the written plan and the information presented. The department shall determine if:

(1) the written fiscal plan and the information presented at the hearing establish the requirements set out in section 13(a) of this chapter;

(2) the written fiscal plan permits the landowners in the annexation territory to make an informed decision about accepting annexation;

(3) the written fiscal plan and the information presented at the hearing provides sufficient information to enable the department to determine the municipality's ability to provide the required services to the annexed territory; and

(4) the written fiscal plan protects the rights of the landowners to institute proceedings to force an annexing municipality to provide the services promised under the fiscal plan.

(e) After the hearing, the department may approve or disapprove the fiscal plan. The department must render a decision not later than three (3) months after the hearing, and if no decision is rendered within that time, the fiscal plan is considered approved unless the department takes the extension provided in this section. A three (3) month extension of the period during which the decision must be rendered may be taken by the department if the department gives notice by mail of the extension to the persons under subsection (a), at least ten (10) days before the end of the original three (3) month period. If no decision is rendered within the extension period, the fiscal plan is considered approved.

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(f) A:

(1) person referred to in subsection (a)(5); or

(2) petitioning city or town;

may petition for judicial review of the final determination of the department under subsection (e). The petition must be filed in the circuit or superior court of the county where the municipality is located not more than forty-five (45) days after the department renders its decision under subsection (e).

(g) The department shall publish notice under IC 5-3-1 in each county where the annexed territory is located of the:

(1) approval or denial of the fiscal plan; and

(2) approval or denial of the fiscal plan after the final disposition of all appeals;

in accordance with IC 5-3-1 in each county where the annexed territory is located. If the petition is denied, the annexation may not proceed, but the municipality may make further attempts to annex the territory or any part of the territory.

SECTION 14. IC 36-4-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) After an **annexation** ordinance is adopted, ~~under section 3, 4, 5 or 5.1 of this chapter,~~ it must be published in the manner prescribed by IC 5-3-1. Except as provided in subsection (b), (c), or (f), in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter, the ordinance takes effect at least ninety (90) days after its publication and upon the filing required by section 22(a) of this chapter.

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

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

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

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

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

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

(f) This subsection applies to an annexation initiated by property owners under section 5.1 of this chapter in which all property owners within the area to be annexed petition the municipality to be annexed. Subject to subsections (b) and (d), and in the absence of an appeal under section 15.5 of this chapter, an annexation ordinance takes effect at least thirty (30) days after its publication and upon the filing required by section 22(a) of this chapter.

SECTION 15. IC 36-4-3-7.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7.2. (a) This section applies to an annexation ordinance adopted after December 31, 2006.**

(b) If the most recent examination report of a municipality under IC 5-11-1-25 is critical of the municipality based upon the municipality's failure to observe a uniform compliance guideline or a specific law as set forth in IC 5-11-5-1, any annexation ordinance that has:

(1) been adopted by the municipality; and

(2) not taken effect;

is void.

(c) If an annexation ordinance is void under this section, a municipality is not prohibited under section 15 of this chapter from further annexation attempts. However, a municipality may not make any further annexation attempts until the municipality is issued an examination report under IC 5-11-1-25 that is not critical of the municipality as described in subsection (b).

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SECTION 16. IC 36-4-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) This section does not apply to an ordinance adopted under section 5 or 5.1 of this chapter.

(b) An ordinance ~~adopted under section 3 or 4 of this chapter~~ **described in section 1.7(a) of this chapter** 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 for not more than three (3) years; and

(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 17. IC 36-4-3-11, AS AMENDED BY P.L.111-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) Except as provided in ~~section 5.1(i) of this chapter and subsections (d) and (e),~~ **subsection (d),** 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) at least ~~sixty-five percent (65%)~~ **fifty-one percent (51%)** of

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the owners of land in the annexed territory; or

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

The remonstrance must be filed within 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.

(d) If an annexation is initiated by property owners under section 5.1 of this chapter and all property owners within the area to be annexed petition the municipality to be annexed, a remonstrance to the annexation may not be filed under this section.

~~(e) This subsection applies if:~~

~~(1) the territory to be annexed consists of not more than one hundred (100) parcels; and~~

~~(2) eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality.~~

~~An 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 at least seventy-five percent (75%) of the owners of land in the annexed territory as determined under subsection (b).~~

SECTION 18. IC 36-4-3-11.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 11.4. (a) This section applies to a waiver of the right of remonstrance against annexation executed after June 30, 2008.**

(b) As used in this section, "waiver" refers to a waiver of the right of remonstrance against annexation.

(c) Notwithstanding any other law, a waiver executed by a

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purchaser or owner of real property is not:

(1) a covenant that runs with the land; or

(2) binding on the purchaser's or owner's successors in title to the real property.

(d) A waiver expires three (3) years after the date the waiver is executed.

SECTION 19. IC 36-4-3-13, AS AMENDED BY P.L.111-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) Except as provided in subsections (e) and ~~(g),~~ **(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 and adopted 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. **The fiscal plan must be approved by the department under section 6.5 of this chapter before the municipality may adopt an annexation ordinance.** The fiscal plan must show the following:

(1) The cost estimates of planned services to be furnished to the

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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 noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater 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, 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.

(e) 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 conditions set forth in clauses (A) through ~~(D) and, if applicable, clause (E)~~ **(C)** 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) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in~~

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~~subsection (f).~~

~~(D)~~ **(C)** One (1) of the following opposes the annexation:

(i) At least ~~sixty-five percent (65%)~~ **fifty-one percent (51%)** 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) This clause applies only to an annexation in which eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality and the territory consists of not more than one hundred (100) parcels. At least seventy-five percent (75%) of the owners of land in the territory proposed to be annexed oppose the annexation as determined under section 11(b) of this chapter.~~

~~(f) The municipality under subsection (e)(2)(C) bears the burden of proving that the annexation is in the best interests of the owners of land in the territory proposed to be annexed. In determining this issue, the court may consider whether the municipality has extended sewer or water services to the entire territory to be annexed:~~

~~(1) within the three (3) years preceding the date of the introduction of the annexation ordinance; or~~

~~(2) under a contract in lieu of annexation entered into under IC 36-4-3-21.~~

~~The court may not consider the provision of water services as a result of an order by the Indiana utility regulatory commission to constitute the provision of water services to the territory to be annexed.~~

~~(g)~~ **(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:

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(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.

~~(h)~~ **(g)** The most recent:
(1) federal decennial census;
(2) federal special census;
(3) special tabulation; or
(4) corrected population count;

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 20. IC 36-5-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The county executive must obtain the consent by ordinance of the legislative body of a consolidated city before incorporating a town if any part of the proposed town is within four (4) miles of the corporate boundaries of the city.

(b) The county executive must obtain the consent by ordinance of the legislative body of a second or third class city before incorporating a town if any part of the proposed town is within three (3) miles of the corporate boundaries of the city.

(c) Subsection (b) does not apply to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(d) Subsections (a) and (b) do not apply if the proposed town has an assessed value of at least seven hundred fifty million dollars ($750,000,000) as shown by the most recent assessment.

SECTION 21. IC 36-9-22-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

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(b) The works board of a municipality may contract with owners of real property for the construction of sewage works within the municipality or within four (4) miles outside its corporate boundaries in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a period ~~of~~ not to exceed fifteen (15) years, for the payment to the owners and their assigns by any owner of real property who:

(1) did not contribute to the original cost of the sewage works; and

(2) subsequently taps into, uses, or deposits sewage or storm waters in the sewage works or any lateral sewers connected to them;

of a fair pro rata share of the cost of the construction of the sewage works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to it unless it has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

(c) The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract ~~and their successors in title~~ to remonstrate against pending or future annexations by the municipality of the area served by the sewage works ~~Any person tapping into or connecting to the sewage works contracted for is considered to waive his rights to remonstrate against the annexation of the area served by the sewage works.~~ **for a period not more than three (3) years after the date the contract is executed.**

(d) Notwithstanding any other law, a release executed by the parties after June 30, 2008, under subsection (c) is not:

(1) a covenant that runs with the land; or

(2) binding on the parties' successors in title to the real property.

~~(d)~~ **(e)** Subsection (c) does not apply to a landowner if all of the following conditions apply:

(1) The landowner is required to connect to the sewage works because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of or connection to the sewage works

C o p y

are paid by a person other than the landowner or the municipality.

SECTION 22. IC 36-4-3-9 IS REPEALED [EFFECTIVE JULY 1, 2008].

SECTION 23. [EFFECTIVE JULY 1, 2008] **SECTIONS 6 through 15 and SECTIONS 17, 18, and 20 of this act apply to annexation ordinances adopted after June 30, 2008.**

SECTION 24. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)] **(a) A municipality may not adopt an annexation ordinance, other than an ordinance under IC 36-4-3-5 or IC 36-4-3-5.1, after January 1, 2008, and before July 1, 2008.**

(b) Any annexation ordinance adopted within the period specified in subsection (a) is void.

SECTION 25. [EFFECTIVE JULY 1, 2008] **(a) IC 6-1.1-18.5-3 and IC 6-1.1-18.5-13, both as amended by this act, apply only to property taxes first due and payable after 2008.**

(b) A civil taxing unit may appeal under IC 6-1.1-18.5-12 and IC 6-1.1-18.5-13(1), as amended by this act, regardless of whether the:

(1) annexation;

(2) consolidation; or

(3) other extensions of governmental services by the civil taxing unit to additional geographic areas or persons;

that resulted in increased costs that are the bases of the appeal occurred before 2009.

SECTION 26. **An emergency is declared for this act.**

C o p y

SENATE MOTION

Madam President: I move that Senator Long be removed as author of Senate Bill 114 and that Senator Drozda be substituted therefor.

LONG

SENATE MOTION

Madam President: I move that Senator Gard be added as second author of Senate Bill 114.

DROZDA

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 114, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Local Government and Elections.

(Reference is to SB 114 as introduced.)

LONG, Chairperson

C o p y