
SENATE BILL No. 179

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-18.5-3; IC 13-18-15-2; IC 36-4-3; IC 36-9-22-2.

Synopsis: Annexation. Provides that a waiver or release of the right of remonstrance against annexation effective after June 30, 2009, expires ten years after the date the waiver or release is executed. Provides that in determining a municipality's levy limits for a particular ensuing calendar year, the cap on increased assessed value applies to all annexations of a municipality occurring in the particular ensuing calendar year. Reduces the number of signatures required on an annexation remonstrance petition from at least 65% of the owners of land in the annexed territory to at least 51% of the owners of land in the annexed territory. With certain exceptions: (1) requires a municipality to amend an annexation ordinance or fiscal plan before the public hearing on the annexation; and (2) prohibits a municipality from amending an annexation ordinance or fiscal plan after the public hearing on the annexation. Provides that if it is consistent with the municipality's policy of providing capital services to areas within the corporate boundaries, a municipality may provide less than all of the capital services to areas within the annexed territory.

Effective: Upon passage; July 1, 2009.

Buck

January 7, 2009, read first time and referred to Committee on Local Government.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 179



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

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

1 SECTION 1. IC 6-1.1-18.5-3, AS AMENDED BY P.L.146-2008,
2 SECTION 169, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A civil taxing unit that is
4 treated as not being located in an adopting county under section 4 of
5 this chapter may not impose an ad valorem property tax levy for an
6 ensuing calendar year that exceeds the amount determined in the last
7 STEP of the following STEPS:
8 STEP ONE: Add the civil taxing unit's maximum permissible ad
9 valorem property tax levy for the preceding calendar year to the
10 part of the civil taxing unit's certified share, if any, that was used
11 to reduce the civil taxing unit's ad valorem property tax levy under
12 STEP EIGHT of subsection (b) for that preceding calendar year.
13 STEP TWO: Multiply the amount determined in STEP ONE by
14 the amount determined in the last STEP of section 2(b) of this
15 chapter.
16 STEP THREE: Determine the lesser of:
17 (A) one and fifteen-hundredths (1.15); or



1 (B) the quotient (rounded to the nearest ten-thousandth
 2 (0.0001)), of the assessed value of all taxable property subject
 3 to the civil taxing unit's ad valorem property tax levy for the
 4 ensuing calendar year, divided by the assessed value of all
 5 taxable property that is subject to the civil taxing unit's ad
 6 valorem property tax levy for the ensuing calendar year and
 7 that is contained within the geographic area that was subject
 8 to the civil taxing unit's ad valorem property tax levy in the
 9 preceding calendar year.

10 **In the case of an increase in assessed value that results from**
 11 **annexation, the result of this STEP for purposes of**
 12 **determining the ad valorem property tax levy of a civil taxing**
 13 **unit for a particular ensuing calendar year may not exceed**
 14 **one and fifteen-hundredths (1.15), regardless of whether the**
 15 **increase in assessed value resulted from only one (1)**
 16 **annexation or from more than one (1) annexation.**

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

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

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

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

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

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

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

38 STEP THREE: Determine the lesser of:

39 (A) one and fifteen-hundredths (1.15); or

40 (B) the quotient of the assessed value of all taxable property
 41 subject to the civil taxing unit's ad valorem property tax levy
 42 for the ensuing calendar year divided by the assessed value of

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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.

In the case of an increase in assessed value that results from annexation, the result of this STEP for purposes of determining the ad valorem property tax levy of a civil taxing unit for a particular ensuing calendar year may not exceed one and fifteen-hundredths (1.15), regardless of whether the increase in assessed value resulted from only one (1) annexation or from more than one (1) annexation.

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.

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 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(a)(1)~~ **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

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

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

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

13 (A) the amount determined in STEP ONE; or

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

16 STEP THREE: Determine the greater of:

17 (A) zero (0); or

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

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

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

23 STEP FOUR: Determine the greater of:

24 (A) zero (0); or

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

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

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

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

37 STEP TWO: Determine the greater of:

38 (A) zero (0); or

39 (B) the remainder of:

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

42 (ii) the amount of federal revenue sharing money that will be

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1 received by the civil taxing unit in the year preceding the
 2 ensuing calendar year.
 3 STEP THREE: Determine the lesser of:
 4 (A) the amount determined in STEP TWO; or
 5 (B) the amount determined in subsection (f) for the civil taxing
 6 unit.
 7 STEP FOUR: Add the amount determined in subsection (d),
 8 STEP FOUR, to the amount determined in STEP THREE.
 9 STEP FIVE: Subtract the amount determined in STEP FOUR
 10 from the amount determined in STEP ONE.

11 (f) As used in this section, a taxing unit's "determination year"
 12 means the latest of:
 13 (1) calendar year 1987, if the taxing unit is treated as being
 14 located in an adopting county for calendar year 1987 under
 15 section 4 of this chapter;
 16 (2) the taxing unit's base year, as defined in section 5 of this
 17 chapter, if the taxing unit is treated as not being located in an
 18 adopting county for calendar year 1987 under section 4 of this
 19 chapter; or
 20 (3) the ensuing calendar year following the first year that the
 21 taxing unit is located in a county that has a county adjusted gross
 22 income tax rate of more than one-half percent (0.5%) on July 1 of
 23 that year.

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

34 COUNTRIES WITH A TAX RATE OF 1/2%	
	35 Subsection (e)
36 Year	Factor
37 For the determination year and each ensuing	
38 calendar year following the determination year	0
39 COUNTRIES WITH A TAX RATE OF 3/4%	
	40 Subsection (e)
41 Year	Factor
42 For the determination year and each ensuing	

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1	calendar year following the determination year		1/2
2	COUNTIES WITH A TAX RATE OF 1.0%		
3		Subsection (d)	Subsection (e)
4	Year	Factor	Factor
5	For the determination year	1/6	1/3
6	For the ensuing calendar year		
7	following the determination year	1/4	1/3
8	For the ensuing calendar year		
9	following the determination year		
10	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 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

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1 additional property taxes imposed by the civil taxing unit under the
 2 adjustment shall be paid only by the taxpayers in the county or counties
 3 described in subdivision (2).

4 SECTION 2. IC 13-18-15-2 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The persons
 6 involved shall negotiate the terms for connection and service under this
 7 chapter.

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

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

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

15 (c) The waiver, if granted:

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

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

19 **(d) A waiver executed after June 30, 2009, by a receiver of the**
 20 **service expires ten (10) years after the date the waiver is executed.**

21 SECTION 3. IC 36-4-3-2.2 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.2. (a) This section
 23 does not apply to an annexation under section 4(a)(2), 4(a)(3), 4(b),
 24 4(h), or 4.1 of this chapter or an annexation described in section 5.1 of
 25 this chapter.

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

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

34 (1) A legal description of the real property proposed to be
 35 annexed.

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

37 (3) A map showing the current municipal boundaries and the
 38 proposed municipal boundaries.

39 (4) Current zoning classifications for the area proposed to be
 40 annexed and any proposed zoning changes for the area proposed
 41 to be annexed.

42 (5) A detailed summary of the fiscal plan described in section 13

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- 1 of this chapter.
- 2 (6) The location where the public may inspect and copy the fiscal
- 3 plan.
- 4 (7) A statement that the municipality will provide a copy of the
- 5 fiscal plan after the fiscal plan is adopted immediately to any
- 6 landowner in the annexed territory who requests a copy.
- 7 (8) The name and telephone number of a representative of the
- 8 municipality who may be contacted for further information.

9 **(d) If the municipality amends the annexation ordinance or**
 10 **fiscal plan before the hearing under section 2.1 of this chapter, the**
 11 **notice under subsection (c) must accurately reflect the amended**
 12 **annexation ordinance or fiscal plan.**

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

15 ~~(e)~~ (f) This subsection applies to an annexation under section 3 or
 16 4 of this chapter in which all property owners within the area to be
 17 annexed provide written consent to the annexation. The written notice
 18 described in this section must be sent by certified mail not later than
 19 twenty (20) days before the date of the hearing to each owner of real
 20 property, as shown on the county auditor's current tax list, whose real
 21 property is located within the territory proposed to be annexed.

22 SECTION 4. IC 36-4-3-2.3 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2009]: **Sec. 2.3. (a) This section does not apply to an annexation**
 25 **under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter or an**
 26 **annexation described in section 5 or 5.1 of this chapter.**

27 **(b) This subsection does not apply to an amendment of an**
 28 **annexation ordinance or fiscal plan under subsection (d). A**
 29 **municipality:**

- 30 **(1) may only amend an annexation ordinance or fiscal plan**
- 31 **before the public hearing under section 2.1 of this chapter;**
- 32 **(2) shall amend the fiscal plan before the public hearing under**
- 33 **section 2.1 of this chapter, if the changes to the annexation**
- 34 **ordinance necessitate an amendment to the fiscal plan;**
- 35 **(3) shall provide notice of the amended annexation ordinance**
- 36 **or plan in the notice of the public hearing under section 2.2 of**
- 37 **this chapter; and**
- 38 **(4) may not amend the ordinance or fiscal plan after the**
- 39 **public hearing under section 2.1 of this chapter.**

40 **(c) This section does not prohibit the following:**

- 41 **(1) Amendment of the annexation ordinance and fiscal plan as**
- 42 **the result of a settlement agreement entered into between the**

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parties.

(2) Amendment and supplementation of the fiscal plan by the municipality according to evidence introduced at the evidentiary hearing under section 12 of this chapter to the extent that the interests of the other party are not unduly prejudiced.

(3) Amendment of the annexation ordinance to correct a clerical or typographical error according to evidence introduced at the evidentiary hearing under section 12 of this chapter.

SECTION 5. IC 36-4-3-11, AS AMENDED BY P.L.111-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) Except as provided in ~~section 5.1(i) of this chapter and~~ subsections (d) and (e), 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 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.

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- 1 (e) This subsection applies if:
- 2 (1) the territory to be annexed consists of not more than one
- 3 hundred (100) parcels; and
- 4 (2) eighty percent (80%) of the boundary of the territory proposed
- 5 to be annexed is contiguous to the municipality.

6 An annexation may be appealed by filing with the circuit or superior
 7 court of a county in which the annexed territory is located a written
 8 remonstrance signed by at least seventy-five percent (75%) of the
 9 owners of land in the annexed territory as determined under subsection
 10 (b).

11 SECTION 6. IC 36-4-3-11.4 IS ADDED TO THE INDIANA CODE
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 2009]: **Sec. 11.4. A waiver of the right of remonstrance against**
 14 **annexation executed after June 30, 2009, expires ten (10) years**
 15 **after the date the waiver is executed.**

16 SECTION 7. IC 36-4-3-13, AS AMENDED BY P.L.111-2005,
 17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2009]: Sec. 13. (a) Except as provided in subsections (e) and
 19 (g), at the hearing under section 12 of this chapter, the court shall order
 20 a proposed annexation to take place if the following requirements are
 21 met:

- 22 (1) The requirements of either subsection (b) or (c).
- 23 (2) The requirements of subsection (d).
- 24 (b) The requirements of this subsection are met if the evidence
- 25 establishes the following:
 - 26 (1) That the territory sought to be annexed is contiguous to the
 - 27 municipality.
 - 28 (2) One (1) of the following:
 - 29 (A) The resident population density of the territory sought to
 - 30 be annexed is at least three (3) persons per acre.
 - 31 (B) Sixty percent (60%) of the territory is subdivided.
 - 32 (C) The territory is zoned for commercial, business, or
 - 33 industrial uses.
- 34 (c) The requirements of this subsection are met if the evidence
- 35 establishes the following:
 - 36 (1) That the territory sought to be annexed is contiguous to the
 - 37 municipality as required by section 1.5 of this chapter, except that
 - 38 at least one-fourth (1/4), instead of one-eighth (1/8), of the
 - 39 aggregate external boundaries of the territory sought to be
 - 40 annexed must coincide with the boundaries of the municipality.
 - 41 (2) That the territory sought to be annexed is needed and can be
 - 42 used by the municipality for its development in the reasonably

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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 show the following:

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

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

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

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one

(1) year after the effective date of annexation. ~~and~~ **The plan must show that they the services** will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, 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. **The plan must show that the services will be provided in the same a manner consistent with both of the following:**

(A) as those services are provided The municipality's policy of providing those services to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density. ~~and~~ **A municipality may provide less than all of the municipality's capital services to areas of the annexed territory, if consistent with the municipality's policy of providing capital services to areas within the corporate boundaries.**

(B) in a manner consistent with Federal, state, and local laws, procedures, and planning criteria.

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1 (e) At the hearing under section 12 of this chapter, the court shall do
 2 the following:
 3 (1) Consider evidence on the conditions listed in subdivision (2).
 4 (2) Order a proposed annexation not to take place if the court
 5 finds that all of the conditions set forth in clauses (A) through (D)
 6 and, if applicable, clause (E) exist in the territory proposed to be
 7 annexed:
 8 (A) The following services are adequately furnished by a
 9 provider other than the municipality seeking the annexation:
 10 (i) Police and fire protection.
 11 (ii) Street and road maintenance.
 12 (B) The annexation will have a significant financial impact on
 13 the residents or owners of land.
 14 (C) The annexation is not in the best interests of the owners of
 15 land in the territory proposed to be annexed as set forth in
 16 subsection (f).
 17 (D) One (1) of the following opposes the annexation:
 18 (i) At least ~~sixty-five percent (65%)~~ **fifty-one percent**
 19 **(51%)** of the owners of land in the territory proposed to be
 20 annexed.
 21 (ii) The owners of more than seventy-five percent (75%) in
 22 assessed valuation of the land in the territory proposed to be
 23 annexed.
 24 Evidence of opposition may be expressed by any owner of land
 25 in the territory proposed to be annexed.
 26 (E) This clause applies only to an annexation in which eighty
 27 percent (80%) of the boundary of the territory proposed to be
 28 annexed is contiguous to the municipality and the territory
 29 consists of not more than one hundred (100) parcels. At least
 30 seventy-five percent (75%) of the owners of land in the
 31 territory proposed to be annexed oppose the annexation as
 32 determined under section 11(b) of this chapter.
 33 (f) The municipality under subsection (e)(2)(C) bears the burden of
 34 proving that the annexation is in the best interests of the owners of land
 35 in the territory proposed to be annexed. In determining this issue, the
 36 court may consider whether the municipality has extended sewer or
 37 water services to the entire territory to be annexed:
 38 (1) within the three (3) years preceding the date of the
 39 introduction of the annexation ordinance; or
 40 (2) under a contract in lieu of annexation entered into under
 41 IC 36-4-3-21.
 42 The court may not consider the provision of water services as a result

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1 of an order by the Indiana utility regulatory commission to constitute
2 the provision of water services to the territory to be annexed.

3 (g) This subsection applies only to cities located in a county having
4 a population of more than two hundred thousand (200,000) but less
5 than three hundred thousand (300,000). However, this subsection does
6 not apply if on April 1, 1993, the entire boundary of the territory that
7 is proposed to be annexed was contiguous to territory that was within
8 the boundaries of one (1) or more municipalities. At the hearing under
9 section 12 of this chapter, the court shall do the following:

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

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

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

16 (i) Police and fire protection.

17 (ii) Street and road maintenance.

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

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

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

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

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

28 (h) The most recent:

29 (1) federal decennial census;

30 (2) federal special census;

31 (3) special tabulation; or

32 (4) corrected population count;

33 shall be used as evidence of resident population density for purposes
34 of subsection (b)(2)(A), but this evidence may be rebutted by other
35 evidence of population density.

36 SECTION 8. IC 36-9-22-2 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The power of the
38 municipal works board to fix the terms of a contract under this section
39 applies to contracts for the installation of sewage works that have not
40 been finally approved or accepted for full maintenance and operation
41 by the municipality on July 1, 1979.

42 (b) The works board of a municipality may contract with owners of

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

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

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

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

23 (c) The contract must include, as part of the consideration running
 24 to the municipality, the release of the right of the parties to the contract
 25 and their successors in title to remonstrate against pending or future
 26 annexations by the municipality of the area served by the sewage
 27 works. **A release executed by the parties after June 30, 2009,
 28 expires not more than ten (10) years after the date the contract is
 29 executed.** Any person tapping into or connecting to the sewage works
 30 contracted for is considered to waive ~~his~~ **the person's** rights to
 31 remonstrate against the annexation of the area served by the sewage
 32 works. **A person who taps into or connects to the sewage works
 33 contracted for after June 30, 2009, is considered to waive the
 34 person's rights to remonstrate against the annexation of the area
 35 served by the sewage works for not more than ten (10) years after
 36 the date of the connection.**

37 (d) Subsection (c) does not apply to a landowner if all of the
 38 following conditions apply:

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

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

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1 are paid by a person other than the landowner or the municipality.
2 SECTION 9. [EFFECTIVE JULY 1, 2009] (a) IC 13-18-15-2 and
3 IC 36-9-22-2, both as amended by this act, and IC 36-4-3-11.4, as
4 added by this act, apply only to a waiver executed after June 30,
5 2009.
6 (b) IC 36-4-3-2.2, IC 36-4-3-11, and IC 36-4-3-13, all as
7 amended by this act, and IC 36-4-3-2.3, as added by this act, apply
8 only to an annexation in which the annexation ordinance is adopted
9 after June 30, 2009.
10 SECTION 10. An emergency is declared for this act.

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