

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Local Government, to which was referred Senate Bill No. 69, 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:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 8-1-2.3-6 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. The boundaries of
5 the assigned service areas of electricity suppliers may not be changed
6 except under any one (1) of the following circumstances:
7 (1) If a municipality which owns and operates an electric utility
8 system furnishing retail electric service to the public annexes an
9 area beyond the assigned service area of its municipally owned
10 electric utility, the municipally owned electric utility may petition
11 the commission to change the assigned service area of the
12 municipally owned electric utility to include the annexed area,
13 according to the following procedures:
14 (A) The municipally owned electric utility shall file its petition
15 with the commission not later than sixty (60) days after the
16 annexation becomes effective. The petition must include a
17 certified copy of the annexation ordinance, which serves as
18 conclusive evidence that the area has been lawfully annexed
19 and is part of the municipality. After the filing of a petition
20 under this subdivision, the commission shall promptly enter an

1 order changing the assigned service area facet maps of the
2 municipally owned electric utility and incumbent electricity
3 suppliers to include the annexed area within the assigned
4 service area of the municipally owned electric utility and
5 giving the right to serve and immediate possession to the
6 municipally owned electric utility. The commission order is
7 enforceable in court pending an appeal of that order. An
8 appellant from a court order enforcing a commission order
9 under this subdivision is not entitled to a stay of the court
10 order pending appeal. However, this subdivision does not
11 apply to incorporations, consolidations, mergers, or
12 annexations that are under **IC 36-4-3-4(a)(2)**,
13 IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or
14 IC 36-4-3-4.1. ~~or that are not contiguous under~~
15 ~~IC 36-4-3-13(b) or IC 36-4-3-13(c).~~

16 (B) Not later than thirty (30) days after filing a petition under
17 this subdivision, the municipally owned electric utility shall
18 determine for each affected incumbent electricity supplier and
19 pay to that supplier an amount not less than the value of all the
20 electric utility property of the incumbent electricity supplier
21 that is devoted to furnishing retail electric service within the
22 additional assigned service area at its then reproduction cost
23 new depreciated value. In addition, the municipally owned
24 electric utility shall pay the incumbent electricity supplier
25 severance damages in an amount equal to:

26 (i) the value of the incumbent electricity supplier's
27 distribution and substation facilities dedicated to and located
28 within the annexed area or relocated by reason of the
29 annexation or an amount equal to two and one-half (2 1/2)
30 times the incumbent electricity supplier's gross revenues
31 from electricity sales in the annexed area during the twelve
32 (12) month period immediately preceding the date the
33 annexation ordinance became effective, whichever is
34 greater; plus

35 (ii) if additional permanent service locations or service
36 accounts are established in the annexed area during the five
37 (5) year period beginning on the effective date of the
38 annexation ordinance, one-tenth of one cent (\$0.001) for
39 each kilowatt hour of electricity sold to each of those
40 permanent service locations or service accounts for sales
41 that occur during a five (5) year period beginning on the
42 date each service location or service account is established,

1 up to a maximum of one hundred seventy thousand
2 (170,000) kilowatt hours per service account or service
3 location for each monthly billing period.

4 However, the municipally owned electric utility is not required
5 to pay severance damages under item (ii) if, at the time each
6 annual payment otherwise would accrue, it is purchasing all of
7 its requirements for electric power and energy, except for
8 generation directly provided by the municipally owned electric
9 utility or by a customer, from the incumbent electricity
10 supplier. Severance damages must be paid not later than thirty
11 (30) days after the end of each calendar year in which
12 severance damages have accrued. The municipally owned
13 electric utility and incumbent electricity suppliers shall
14 cooperate to calculate the amount of any severance damages
15 and shall furnish to each other all information and records
16 reasonably necessary for the determination and verification of
17 severance damages. If the municipally owned electric utility
18 and incumbent electricity suppliers cannot agree on the
19 amount of severance damages the municipally owned electric
20 utility is to pay, the commission shall determine the amount
21 and order payment in accordance with this clause. Not later
22 than twenty (20) days after making a payment, the municipally
23 owned electric utility shall certify to the commission and to
24 any affected incumbent electricity supplier that it has paid the
25 amounts required under this clause.

26 (C) If the municipally owned electric utility fails to make a
27 payment under clause (B), an affected incumbent electricity
28 supplier may, not later than sixty (60) days after the payment
29 is due and after giving the municipally owned electric utility
30 reasonable notice of and an opportunity to cure the defect, file
31 with the commission a petition alleging that a payment due
32 under clause (B) has not been made. If the commission finds
33 after notice and hearing that any payments owed to the
34 incumbent electricity supplier have not been timely and fully
35 paid, the commission shall order the municipally owned
36 electric utility to pay:

- 37 (i) the delinquent payments by a date determined by the
38 commission;
39 (ii) accrued interest at the rate set forth in IC 24-4.6-1-102;
40 and
41 (iii) the incumbent electricity supplier's costs of filing and
42 prosecuting a petition under this clause.

1 If the commission finds against the incumbent electricity
2 supplier, it shall order the incumbent electricity supplier to pay
3 the costs incurred by the municipally owned electric utility in
4 defending against the incumbent electricity supplier's petition.
5 (D) A certified copy of a final commission order that:
6 (i) determines and orders the payment of severance damages
7 under clause (B); or
8 (ii) orders the payment of delinquent payments, interest, and
9 costs under clause (C);
10 may be filed with the clerk of the circuit or superior court of
11 any county in which part or all of the annexed area is located.
12 A commission order that is filed in a court under this clause
13 may be enforced and executed in the same manner as if it were
14 a final judgment of that court.
15 (2) Upon mutual agreement of the affected electricity suppliers
16 and approval of the commission. If notice of a verified request for
17 a change of boundary lines by mutual agreement under this
18 subdivision is published in a newspaper of general circulation in
19 every county in which the boundary lines are located and an
20 affected electricity customer does not request a hearing within
21 twenty (20) days of the last date of publication, the commission
22 may approve the change without a hearing. The commission shall
23 approve a boundary line change under this subdivision unless the
24 commission finds, after a public hearing, that the change would
25 cause:
26 (A) duplication of electric utility facilities;
27 (B) waste of materials or resources; or
28 (C) uneconomic, inefficient, or inadequate electric service to
29 the public.
30 (3) In the case where a landowner owns a single tract of land that
31 is intersected by the boundary lines of two (2) or more assigned
32 service areas, and retail electric service can best be supplied by
33 only one (1) electricity supplier, or in the case where a customer
34 or customers are housed in a single structure or constitute a single
35 governmental, industrial, or institutional operation, and the
36 electricity suppliers involved are unable to agree which shall
37 furnish the electric service, any of the electricity suppliers may
38 submit the matter to the commission for its determination based
39 upon public convenience and necessity. If, after notice and
40 hearing, the commission determines that one (1) or more
41 electricity suppliers are to supply the required retail electric
42 service and the boundaries of an assigned service area are to be

1 changed, the assigned service area maps of the electricity
2 suppliers shall be changed to reflect the new boundaries."

3 Page 1, line 4, after "3.1," insert "4, 5,".

4 Page 1, line 4, after "7.1," insert "8,".

5 Page 1, line 4, after "15" insert ", 16,".

6 Page 2, between lines 5 and 6, begin a new paragraph and insert:

7 "SECTION 4. IC 36-4-3-4, AS AMENDED BY P.L.182-2009(ss),
8 SECTION 402, IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The legislative body of a
10 municipality may, by ordinance, annex any of the following:

11 (1) Territory that is contiguous to the municipality.

12 (2) Territory that is not contiguous to the municipality and is
13 occupied by a municipally owned or operated airport or landing
14 field.

15 (3) Territory that is not contiguous to the municipality but is
16 found by the legislative body to be occupied by a municipally
17 owned or regulated sanitary landfill, golf course, or hospital.
18 However, if territory annexed under this subsection ceases to be
19 used as a municipally owned or regulated sanitary landfill, golf
20 course, or hospital for at least one (1) year, the territory reverts to
21 the jurisdiction of the unit having jurisdiction before the
22 annexation if the unit that had jurisdiction over the territory still
23 exists. If the unit no longer exists, the territory reverts to the
24 jurisdiction of the unit that would currently have jurisdiction over
25 the territory if the annexation had not occurred. The clerk of the
26 municipality shall notify the offices required to receive notice of
27 a disannexation under section 19 of this chapter when the territory
28 reverts to the jurisdiction of the unit having jurisdiction before the
29 annexation.

30 (b) This subsection applies to municipalities in a county having a
31 population of:

32 (1) more than seventy-three thousand (73,000) but less than
33 seventy-four thousand (74,000);

34 (2) more than seventy-one thousand four hundred (71,400) but
35 less than seventy-three thousand (73,000);

36 (3) more than seventy thousand (70,000) but less than
37 seventy-one thousand (71,000);

38 (4) more than forty-five thousand (45,000) but less than forty-five
39 thousand nine hundred (45,900);

40 (5) more than forty thousand nine hundred (40,900) but less than
41 forty-one thousand (41,000);

42 (6) more than thirty-eight thousand (38,000) but less than

- 1 thirty-nine thousand (39,000);
 2 (7) more than thirty thousand (30,000) but less than thirty
 3 thousand seven hundred (30,700);
 4 (8) more than twenty-three thousand five hundred (23,500) but
 5 less than twenty-four thousand (24,000);
 6 (9) more than one hundred eighty-two thousand seven hundred
 7 ninety (182,790) but less than three hundred thousand (300,000);
 8 or
 9 (10) more than thirty-four thousand nine hundred fifty (34,950)
 10 but less than thirty-six thousand (36,000);

11 **(b)** Except as provided in subsection (c), the legislative body of a
 12 municipality to which this subsection applies may, by ordinance, annex
 13 territory that:

- 14 **(1)** is not contiguous to the municipality;
 15 **(2)** has its entire area not more than two (2) miles from the
 16 municipality's boundary;
 17 **(3)** is to be used for:
 18 **(A)** an industrial park containing one (1) or more businesses;
 19 **(B) a shopping center or mall; or**
 20 **(C) an economic development area under IC 36-7-14; and**
 21 **(4)** is either owned by the municipality or by a property owner
 22 who consents to the annexation.

23 However, if territory annexed under this subsection is not used ~~as an~~
 24 ~~industrial park for the purpose under subdivision (3) for which the~~
 25 **territory was annexed** within five (5) years after the date of passage
 26 of the annexation ordinance, or if the territory ceases to be used ~~as an~~
 27 ~~industrial park for the purpose under subdivision (3) for which the~~
 28 **territory was annexed** for at least one (1) year, the territory reverts to
 29 the jurisdiction of the unit having jurisdiction before the annexation if
 30 the unit that had jurisdiction over the territory still exists. If the unit no
 31 longer exists, the territory reverts to the jurisdiction of the unit that
 32 would currently have jurisdiction over the territory if the annexation
 33 had not occurred. The clerk of the municipality shall notify the offices
 34 entitled to receive notice of a disannexation under section 19 of this
 35 chapter when the territory reverts to the jurisdiction of the unit having
 36 jurisdiction before the annexation.

37 (c) A city in a county with a population of more than two hundred
 38 thousand (200,000) but less than three hundred thousand (300,000)
 39 may not annex territory as prescribed in subsection (b) until the
 40 territory is zoned by the county for industrial purposes.

41 (d) Notwithstanding any other law, territory that is annexed under
 42 subsection (b) or (h) is not considered a part of the municipality for the

1 purposes of:

- 2 (1) annexing additional territory:
- 3 (A) in a county that is not described by clause (B); or
- 4 (B) in a county having a population of more than two hundred
- 5 thousand (200,000) but less than three hundred thousand
- 6 (300,000), unless the boundaries of the noncontiguous territory
- 7 become contiguous to the city, as allowed by Indiana law;
- 8 (2) expanding the municipality's extraterritorial jurisdictional
- 9 area; or
- 10 (3) changing an assigned service area under IC 8-1-2.3-6(1).

11 (e) As used in this section, "airport" and "landing field" have the

12 meanings prescribed by IC 8-22-1.

13 (f) As used in this section, "hospital" has the meaning prescribed by

14 IC 16-18-2-179(b).

15 (g) An ordinance adopted under this section must assign the

16 territory annexed by the ordinance to at least one (1) municipal

17 legislative body district.

18 (h) This subsection applies to a city having a population of more

19 than thirty-one thousand (31,000) but less than thirty-two thousand

20 (32,000). The legislative body of a city may, by ordinance, annex

21 territory that:

- 22 (1) is not contiguous to the city;
- 23 (2) has its entire area not more than eight (8) miles from the city's
- 24 boundary;
- 25 (3) does not extend more than:
- 26 (A) one and one-half (1 1/2) miles to the west;
- 27 (B) three-fourths (3/4) mile to the east;
- 28 (C) one-half (1/2) mile to the north; or
- 29 (D) one-half (1/2) mile to the south;
- 30 of an interchange of an interstate highway (as designated by the
- 31 federal highway authorities) and a state highway (as designated
- 32 by the state highway authorities); and
- 33 (4) is owned by the city or by a property owner that consents to
- 34 the annexation.

35 SECTION 5. IC 36-4-3-5 IS AMENDED TO READ AS FOLLOWS

36 [EFFECTIVE JULY 1, 2011]: Sec. 5. **(a) A municipality may not:**

- 37 **(1) initiate or promote an annexation petition; or**
- 38 **(2) collect signatures on an annexation petition;**
- 39 **under this section.**

40 ~~(a)~~ **(b)** If the owners of land located outside of but contiguous to a

41 municipality want to have territory containing that land annexed to the

42 municipality, they may file with the legislative body of the municipality

1 a petition:

2 (1) signed by at least:

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

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

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

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

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

14 ~~(c)~~ (d) Except as provided in section 5.1 of this chapter, if the
15 legislative body fails to pass the ordinance within one hundred fifty
16 (150) days after the date of filing of a petition under subsection ~~(a)~~, (b),
17 the petitioners may file a duplicate copy of the petition in the circuit or
18 superior court of a county in which the territory is located, and shall
19 include a written statement of why the annexation should take place.
20 Notice of the proceedings, in the form of a summons, shall be served
21 on the municipality named in the petition. The municipality is the
22 defendant in the cause and shall appear and answer.

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

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

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

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

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

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

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

40 Page 3, line 20, delete ", 5.1, or 7.1" and insert "**or 5.1**".

41 Page 3, line 28, delete "seventy-five percent (75%)" and insert
42 "**sixty percent (60%)**".

1 Page 5, line 13, delete "or 15.5".

2 Page 5, delete lines 16 through 20, begin a new line block indented
3 and insert:

4 **"(4) Notwithstanding subsection (b), and except as provided**
5 **in subsection (d), if the ordinance is adopted under section 7.1**
6 **of this chapter and the court's judgment under section 12 of**
7 **this chapter orders the annexation to take place, the**
8 **annexation is effective immediately upon the filing under**
9 **section 22(a) of this chapter."**

10 Page 6, delete lines 21 through 33, begin a new paragraph and
11 insert:

12 "SECTION 9. IC 36-4-3-7.1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7.1. Notwithstanding
14 section 7(b) of this chapter, **if an ordinance is adopted under section 4**
15 **of this chapter and the court's judgment under section 12 of this**
16 **chapter orders the annexation to take place, the annexation** takes
17 effect immediately upon the expiration of the sixty (60) day
18 ~~remonstrance and appeal period under section 11 or 15.5 of this chapter~~
19 ~~and after the publication, filing and recording required by section 22(a)~~
20 of this chapter if all of the following conditions are met:

- 21 (1) The annexed territory has no population.
22 (2) Ninety percent (90%) of the total assessed value of the land
23 for property tax purposes has one (1) owner.
24 (3) The annexation is required to fulfill an economic development
25 incentive package and to retain an industry through various local
26 incentives, including urban enterprise zone benefits.

27 SECTION 10. IC 36-4-3-8 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) This section does
29 not apply to an ordinance adopted under section 5 or 5.1 of this
30 chapter.

31 (b) An ordinance adopted under section 3 or 4 of this chapter must
32 include terms and conditions fairly calculated to make the annexation
33 equitable to the property owners and residents of the municipality and
34 the annexed territory. The terms and conditions may include:

- 35 (1) postponing the effective date of the annexation for not more
36 than three (3) years; and
37 (2) establishing equitable provisions for the future management
38 and improvement of the annexed territory and for the rendering of
39 needed services.

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

- 42 (1) The resident population density of the territory is at least three

1 (3) persons per acre.

2 (2) The territory is subdivided or is parceled through separate
3 ownerships into lots or parcels such that at least sixty percent
4 (60%) of the total number of lots and parcels are not more than
5 one (1) acre.

6 This subsection does not apply to an ordinance annexing territory
7 described in section 4(a)(2), 4(a)(3), 4(b), or 4(h) of this chapter. The
8 ordinance must include terms and conditions impounding in a special
9 fund all of the municipal property taxes imposed on the annexed
10 territory after the annexation takes effect that are not used to meet the
11 basic services described in section ~~13(d)(4) and 13(d)(5)~~ **13(e)(4) and**
12 **13(e)(5)** of this chapter for a period of at least three (3) years. The
13 impounded property taxes must be used to provide additional services
14 that were not specified in the plan of annexation. The impounded
15 property taxes in the fund shall be expended as set forth in this section,
16 not later than five (5) years after the annexation becomes effective."

17 Page 7, delete lines 7 through 42, begin a new paragraph and insert:

18 "SECTION 12. IC 36-4-3-13, AS AMENDED BY P.L.111-2005,
19 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2011]: Sec. 13. (a) ~~Except as provided in subsections (e) and~~
21 ~~(g)~~, **Except as provided in subsection (b)**, at the hearing under section
22 12 of this chapter, the court shall order a proposed annexation to take
23 place if the following requirements are met:

24 (1) The requirements of either subsection ~~(b)~~ **(c)** or ~~(c)~~ **(d)**.

25 (2) The requirements of subsection ~~(d)~~ **(e)**.

26 **(b) This subsection applies only to an annexation under section**
27 **4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter. At the hearing**
28 **under section 12 of this chapter, the court shall order a proposed**
29 **annexation to take place if the requirements of subsection (c) are**
30 **met.**

31 ~~(b)~~ **(c)** The requirements of this subsection are met if the evidence
32 establishes the following:

33 (1) That the territory sought to be annexed is:

34 **(A)** contiguous to the municipality; **or**

35 **(B) not contiguous to the municipality in the case of an**
36 **annexation under section 4(a)(2), 4(a)(3), 4(b), or 4(h) of**
37 **this chapter.**

38 (2) One (1) of the following:

39 **(A)** The resident population density of the territory sought to
40 be annexed is at least three (3) persons per acre.

41 **(B)** Sixty percent (60%) of the territory is subdivided.

42 **(C)** The territory is zoned for commercial, business, or

1 industrial uses;

2 **(D) In the case of an annexation:**

3 **(i) under section 4(a)(2) or 4(a)(3) of this chapter, the**
4 **territory is zoned for special uses; or**

5 **(ii) under section 4.1 of this chapter, the territory is**
6 **zoned for agricultural use.**

7 ~~(c)~~ **(d)** The requirements of this subsection are met if the evidence
8 establishes the following:

9 (1) That the territory sought to be annexed is contiguous to the
10 municipality as required by section 1.5 of this chapter, except that
11 at least one-fourth (1/4), instead of one-eighth (1/8), of the
12 aggregate external boundaries of the territory sought to be
13 annexed must coincide with the boundaries of the municipality.

14 (2) That the territory sought to be annexed is needed and can be
15 used by the municipality for its development in the reasonably
16 near future.

17 ~~(d)~~ **(e)** The requirements of this subsection are met if the evidence
18 establishes that the municipality has developed and adopted a written
19 fiscal plan and has established a definite policy, by resolution of the
20 legislative body as set forth in section 3.1 of this chapter. The fiscal
21 plan must show the following:

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

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

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

32 (4) That planned services of a noncapital nature, including police
33 protection, fire protection, street and road maintenance, and other
34 noncapital services normally provided within the corporate
35 boundaries, will be provided to the annexed territory within one
36 (1) year after the effective date of annexation and that they will be
37 provided in a manner equivalent in standard and scope to those
38 noncapital services provided to areas within the corporate
39 boundaries regardless of similar topography, patterns of land use,
40 and population density.

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

1 stormwater drainage facilities, will be provided to the annexed
 2 territory within three (3) years after the effective date of the
 3 annexation in the same manner as those services are provided to
 4 areas within the corporate boundaries, regardless of similar
 5 topography, patterns of land use, and population density, and in
 6 a manner consistent with federal, state, and local laws,
 7 procedures, and planning criteria.

8 (e) At the hearing under section 12 of this chapter, the court shall do
 9 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 conditions set forth in clauses (A) through (D)
 13 and, if applicable, clause (E) exist in the territory proposed to be
 14 annexed:

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

17 (i) Police and fire protection:

18 (ii) Street and road maintenance:

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

21 (C) The annexation is not in the best interests of the owners of
 22 land in the territory proposed to be annexed as set forth in
 23 subsection (f):

24 (D) One (1) of the following opposes the annexation:

25 (i) At least sixty-five percent (65%) of the owners of land in
 26 the territory proposed to be annexed:

27 (ii) The owners of more than seventy-five percent (75%) in
 28 assessed valuation of the land in the territory proposed to be
 29 annexed:

30 Evidence of opposition may be expressed by any owner of land
 31 in the territory proposed to be annexed:

32 (E) This clause applies only to an annexation in which eighty
 33 percent (80%) of the boundary of the territory proposed to be
 34 annexed is contiguous to the municipality and the territory
 35 consists of not more than one hundred (100) parcels. At least
 36 seventy-five percent (75%) of the owners of land in the
 37 territory proposed to be annexed oppose the annexation as
 38 determined under section 11(b) of this chapter:

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

1 water services to the entire territory to be annexed:

- 2 (1) within the three (3) years preceding the date of the
 3 introduction of the annexation ordinance; or
 4 (2) under a contract in lieu of annexation entered into under
 5 IC 36-4-3-21.

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

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

- 16 (1) Consider evidence on the conditions listed in subdivision (2):
 17 (2) Order a proposed annexation not to take place if the court
 18 finds that all of the following conditions exist in the territory
 19 proposed to be annexed:

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

- 22 (i) Police and fire protection.
 23 (ii) Street and road maintenance.

24 (B) The annexation will have a significant financial impact on
 25 the residents or owners of land:

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

- 27 (i) A majority of the owners of land in the territory proposed
 28 to be annexed.
 29 (ii) The owners of more than seventy-five percent (75%) in
 30 assessed valuation of the land in the territory proposed to be
 31 annexed.

32 Evidence of opposition may be expressed by any owner of land
 33 in the territory proposed to be annexed:

34 (h) (f) The most recent:

- 35 (1) federal decennial census;
 36 (2) federal special census;
 37 (3) special tabulation; or
 38 (4) corrected population count;

39 shall be used as evidence of resident population density for purposes
 40 of subsection (b)(2)(A), (c)(2)(A), but this evidence may be rebutted
 41 by other evidence of population density."

42 Delete pages 8 through 9.

1 Page 10, delete lines 1 through 17.

2 Page 12, between lines 2 and 3, begin a new paragraph and insert:
 3 "SECTION 15. IC 36-4-3-16 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 16. (a) Within one (1)
 5 year after the expiration of:

6 (1) the one (1) year period for implementation of planned services
 7 of a noncapital nature under section ~~13(d)(4)~~ **13(e)(4)** of this
 8 chapter; or

9 (2) the three (3) year period for the implementation of planned
 10 services of a capital improvement nature under section ~~13(d)(5)~~
 11 **13(e)(5)** of this chapter;

12 any person who pays taxes on property located within the annexed
 13 territory may file a complaint alleging injury resulting from the failure
 14 of the municipality to implement the plan. The complaint must name
 15 the municipality as defendant and shall be filed with the circuit or
 16 superior court of the county in which the annexed territory is located.

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

20 (1) That the municipality has without justification failed to
 21 implement the plan required by section 13 of this chapter within
 22 the specific time limit for implementation after annexation.

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

28 (3) That the annexed territory is not receiving governmental and
 29 proprietary services substantially equivalent in standard and scope
 30 to the services provided by the municipality to other areas of the
 31 municipality, regardless of topography, patterns of land use, and
 32 population density similar to the annexed territory.

33 (c) The court may:

34 (1) grant an injunction prohibiting the collection of taxes levied
 35 by the municipality on the plaintiff's property located in the
 36 annexed territory;

37 (2) award damages to the plaintiff not to exceed one and
 38 one-fourth (1 1/4) times the taxes collected by the municipality
 39 for the plaintiff's property located in the annexed territory;

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

42 (4) order the municipality to submit a revised fiscal plan for

- 1 providing the services to the annexed territory within time limits
- 2 set up by the court; or
- 3 (5) grant any other appropriate relief.
- 4 (d) A change of venue from the county is not permitted for an action
- 5 brought under this section.
- 6 (e) If the court finds for the plaintiff, the defendant shall pay all
- 7 court costs and reasonable attorney's fees as approved by the court.
- 8 (f) The provisions of this chapter that apply to territory disannexed
- 9 by other procedures apply to territory disannexed under this section."
- 10 Renumber all SECTIONS consecutively.
(Reference is to SB 69 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 9, Nays 0.

Senator Lawson C, Chairperson