

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 343 be amended to read as follows:

- 1 Page 27, between lines 14 and 15, begin a new a paragraph and
2 insert:
3 "SECTION 32. IC 36-4-3-2.7 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2013]: **Sec. 2.7. Notwithstanding any other**
6 **law, a property owner that signs a waiver of remonstrance as part**
7 **of a sewer contract or agreement under IC 36-9-22 or IC 36-9-25**
8 **does not consent to an annexation for purposes of this chapter.**
9 SECTION 33. IC 36-4-3-5.1 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.1. (a) This section
11 applies to an annexation in which owners of land located outside but
12 contiguous to a municipality file a petition with the legislative body of
13 the municipality:
14 (1) requesting an ordinance annexing the area described in the
15 petition; and
16 (2) signed by one hundred percent (100%) of the landowners that
17 reside within the territory that is proposed to be annexed.
18 (b) Sections 2.1 and 2.2 of this chapter do not apply to an
19 annexation under this section.
20 (c) The petition circulated by the landowners must include on each
21 page where signatures are affixed a heading that is substantially similar
22 to the following:
23 "PETITION FOR ANNEXATION INTO THE (insert whether city
24 or town) OF (insert name of city or town).".

- 1 (d) The municipality may:
 2 (1) adopt an annexation ordinance annexing the territory; and
 3 (2) adopt a fiscal plan and establish a definite policy by resolution
 4 of the legislative body;
 5 after the legislative body has held a public hearing on the proposed
 6 annexation.
- 7 (e) The municipality may introduce and hold the public hearing on
 8 the annexation ordinance not later than thirty (30) days after the
 9 petition is filed with the legislative body. Notice of the public hearing
 10 may be published one (1) time in accordance with IC 5-3-1 at least
 11 twenty (20) days before the hearing. All interested parties must have
 12 the opportunity to testify at the hearing as to the proposed annexation.
- 13 (f) The municipality may adopt the annexation ordinance not earlier
 14 than fourteen (14) days after the public hearing under subsection (e).
- 15 (g) A landowner may withdraw the landowner's signature from the
 16 petition not more than thirteen (13) days after the municipality adopts
 17 the fiscal plan by providing written notice to the office of the clerk of
 18 the municipality. If a landowner withdraws the landowner's signature,
 19 the petition shall automatically be considered a voluntary petition that
 20 is filed with the legislative body under section 5 of this chapter,
 21 fourteen (14) days after the date the fiscal plan is adopted. All
 22 provisions applicable to a petition initiated under section 5 of this
 23 chapter apply to the petition.
- 24 (h) If the municipality does not adopt an annexation ordinance
 25 within sixty (60) days after the landowners file the petition with the
 26 legislative body, the landowners may file a duplicate petition with the
 27 circuit or superior court of a county in which the territory is located.
 28 The court shall determine whether the annexation shall take place as
 29 set forth in section 5 of this chapter.
- 30 (i) ~~A remonstrance under section 11 of this chapter may not be filed.~~
 31 ~~However,~~ An appeal under section 15.5 of this chapter may be filed.
- 32 (j) In the absence of an appeal under section 15.5 of this chapter, an
 33 annexation ordinance adopted under this section takes effect not less
 34 than thirty (30) days after the adoption of the ordinance and upon the
 35 filing and recording of the ordinance under section 22 of this chapter.
- 36 SECTION 34. IC 36-4-3-7, AS AMENDED BY P.L.113-2010,
 37 SECTION 116, IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) After an ordinance is adopted
 39 under section 3, 4, 5, or 5.1 of this chapter, it must be published in the
 40 manner prescribed by IC 5-3-1. Except as provided in subsection (b),
 41 (c), or (f), in the absence of ~~remonstrance and an~~ appeal under section
 42 ~~11 or~~ 15.5 of this chapter **or a public question under IC 36-4-3.2**, the
 43 ordinance takes effect at least ninety (90) days after its publication and
 44 upon the filing required by section 22(a) of this chapter.
- 45 (b) An ordinance described in subsection (d) or adopted under
 46 section 3, 4, 5, or 5.1 of this chapter may not take effect during the year

1 preceding a year in which a federal decennial census is conducted. An
 2 ordinance that would otherwise take effect during the year preceding
 3 a year in which a federal decennial census is conducted takes effect
 4 January 1 of the year in which a federal decennial census is conducted.

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

7 (d) Except as provided in subsection (b), whenever a municipality
 8 annexes territory, all or part of which lies within a fire protection
 9 district (IC 36-8-11), the annexation ordinance (in the absence of
 10 **remonstrance and an appeal under section 11 or 15.5 of this chapter,**
 11 **or a public question under IC 36-4-3.2**) takes effect the second
 12 January 1 that follows the date the ordinance is adopted and upon the
 13 filing required by section 22(a) of this chapter. The municipality shall:

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

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

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

33 (f) This subsection applies to an annexation initiated by property
 34 owners under section 5.1 of this chapter in which all property owners
 35 within the area to be annexed petition the municipality to be annexed.
 36 Subject to subsections (b) and (d), and in the absence of an appeal
 37 under section 15.5 of this chapter, **or a public question under**
 38 **IC 36-4-3.2**, an annexation ordinance takes effect at least thirty (30)
 39 days after its publication and upon the filing required by section 22(a)
 40 of this chapter.

41 SECTION 35. IC 36-4-3-11 IS REPEALED [EFFECTIVE JULY 1,
 42 2013]. Sec. 11. (a) Except as provided in section 5.1(i) of this chapter
 43 and subsections (d) and (e), whenever territory is annexed by a
 44 municipality under this chapter, the annexation may be appealed by
 45 filing with the circuit or superior court of a county in which the
 46 annexed territory is located a written remonstrance signed by:

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

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

5 The remonstrance must be filed within ninety (90) days after the
6 publication of the annexation ordinance under section 7 of this chapter;
7 must be accompanied by a copy of that ordinance; and must state the
8 reason why the annexation should not take place.

9 (b) On receipt of the remonstrance, the court shall determine
10 whether the remonstrance has the necessary signatures. In determining
11 the total number of landowners of the annexed territory and whether
12 signers of the remonstrance are landowners, the names appearing on
13 the tax duplicate for that territory constitute prima facie evidence of
14 ownership. Only one (1) person having an interest in each single
15 property, as evidenced by the tax duplicate, is considered a landowner
16 for purposes of this section.

17 (c) If the court determines that the remonstrance is sufficient, it shall
18 fix a time, within sixty (60) days of its determination, for a hearing on
19 the remonstrance. Notice of the proceedings, in the form of a summons,
20 shall be served on the annexing municipality. The municipality is the
21 defendant in the cause and shall appear and answer.

22 (d) If an annexation is initiated by property owners under section 5-1
23 of this chapter and all property owners within the area to be annexed
24 petition the municipality to be annexed; a remonstrance to the
25 annexation may not be filed under this section.

26 (e) This subsection applies if:

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

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

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

36 SECTION 36. IC 36-4-3-11.5 IS REPEALED [EFFECTIVE JULY
37 1, 2013]. Sec. 11-5: A landowner in an unincorporated area is not
38 required to grant a municipality a waiver against remonstrance as a
39 condition of connection to a sewer or water service if all of the
40 following conditions apply:

41 (1) The landowner is required to connect to the sewer or water
42 service because a person other than the landowner has polluted or
43 contaminated the area.

44 (2) A person other than the landowner or the municipality has
45 paid the cost of connection to the service.

46 SECTION 37. IC 36-4-3-12 IS REPEALED [EFFECTIVE JULY 1,

1 2013]. Sec. 12: (a) The circuit or superior court shall:

2 (1) on the date fixed under section 11 of this chapter; hear and
3 determine the remonstrance without a jury; and

4 (2) without delay; enter judgment on the question of the
5 annexation according to the evidence that either party may
6 introduce.

7 (b) If the court enters judgment in favor of the annexation; the
8 annexation may not take effect during the year preceding the year in
9 which a federal decennial census is conducted. An annexation that
10 would otherwise take effect during the year preceding a year in which
11 a federal decennial census is conducted takes effect January 1 of the
12 year in which a federal decennial census is conducted.

13 SECTION 38. IC 36-4-3-13, AS AMENDED BY P.L.119-2012,
14 SECTION 188, IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2013]: Sec. 13. (a) Except as provided in
16 subsections (e) and (g); at the hearing under section 12 of this chapter;
17 the court shall order a proposed annexation to take place if **This**
18 **subsection applies only to an annexation for which a public**
19 **question is placed on the ballot under IC 36-4-3.2. An annexation**
20 **must meet the following requirements: are met:**

21 (1) The requirements of either subsection (b) or (c).

22 (2) The requirements of subsection (d).

23 **The municipality must submit documentation as to the satisfaction**
24 **of these requirements to the department of local government**
25 **finance under IC 36-4-3.2-3.**

26 (b) **This subsection applies only to an annexation for which a**
27 **public question is placed on the ballot under IC 36-4-3.2.** The
28 requirements of this subsection are met if: ~~the evidence establishes the~~
29 ~~following:~~

30 (1) ~~That~~ the territory sought to be annexed is contiguous to the
31 municipality; **and**

32 (2) one (1) of the following:

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

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

36 (C) The territory is zoned for commercial, business, or
37 industrial uses.

38 (c) The requirements of this subsection are met if: ~~the evidence~~
39 ~~establishes the following:~~

40 (1) ~~That~~ the territory sought to be annexed is contiguous to the
41 municipality as required by section 1.5 of this chapter, except that
42 at least one-fourth (1/4), instead of one-eighth (1/8), of the
43 aggregate external boundaries of the territory sought to be
44 annexed must coincide with the boundaries of the municipality;

45 **and**

46 (2) ~~That~~ the territory sought to be annexed is needed and can be

1 used by the municipality for its development in the reasonably
2 near future.

3 (d) ~~The requirements of this subsection are met if the evidence~~
4 ~~establishes that the~~ **This subsection applies to any annexation for**
5 **which a fiscal plan must be adopted under section 3.1 of this**
6 **chapter. A municipality has developed and adopted must develop and**
7 **adopt** a written fiscal plan and ~~has established~~ **establish** a definite
8 policy, by resolution of the legislative body. ~~as set forth in section 3.1~~
9 ~~of this chapter.~~ The fiscal plan must show the following:

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

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

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

20 (4) That planned services of a noncapital nature, including police
21 protection, fire protection, street and road maintenance, and other
22 noncapital services normally provided within the corporate
23 boundaries, will be provided to the annexed territory within one
24 (1) year after the effective date of annexation and that they will be
25 provided in a manner equivalent in standard and scope to those
26 noncapital services provided to areas within the corporate
27 boundaries regardless of similar topography, patterns of land use,
28 and population density.

29 (5) That services of a capital improvement nature, including street
30 construction, street lighting, sewer facilities, water facilities, and
31 stormwater drainage facilities, will be provided to the annexed
32 territory within three (3) years after the effective date of the
33 annexation in the same manner as those services are provided to
34 areas within the corporate boundaries, regardless of similar
35 topography, patterns of land use, and population density, and in
36 a manner consistent with federal, state, and local laws,
37 procedures, and planning criteria.

38 (e) **This subsection applies only to an annexation for which a**
39 **public question is placed on the ballot under IC 36-4-3.2. The**
40 **municipality must include in the fiscal plan a fiscal impact analysis**
41 **of the proposed annexation. The fiscal impact analysis must include**
42 **at least the following:**

43 (1) **The estimated effect of the annexation on taxpayers in the**
44 **municipality, the annexed territory, and each county in which**
45 **the annexation territory is located, including any expected tax**
46 **rates, tax levies, expenditure levels, service levels, and annual**

1 debt service payments affected by the annexation.

2 (2) A description of the planned services to be provided in the
3 reorganized political subdivision and the method or methods
4 of financing the planned services. The fiscal impact analysis
5 must:

6 (A) present itemized estimated costs; and

7 (B) explain how specific and detailed expenses will be
8 funded from taxes, fees, grants, and other funding.

9 (3) A description of the capital improvements to be provided
10 in the annexation territory and the method or methods of
11 financing those capital improvements.

12 (4) Any estimated effects on the county and taxpayers in the
13 county where the annexation territory is located.

14 The fiscal plan, including the fiscal impact analysis, shall be
15 submitted to the department of local government finance as
16 provided under IC 36-4-3.2-3.

17 (e) At the hearing under section 12 of this chapter, the court shall do
18 the following:

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

20 (2) Order a proposed annexation not to take place if the court
21 finds that all of the conditions set forth in clauses (A) through (D)
22 and, if applicable, clause (E) exist in the territory proposed to be
23 annexed:

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

26 (i) Police and fire protection.

27 (ii) Street and road maintenance.

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

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

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

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

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

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

41 (E) This clause applies only to an annexation in which eighty
42 percent (80%) of the boundary of the territory proposed to be
43 annexed is contiguous to the municipality and the territory
44 consists of not more than one hundred (100) parcels. At least
45 seventy-five percent (75%) of the owners of land in the
46 territory proposed to be annexed oppose the annexation as

- 1 determined under section 11(b) of this chapter:
 2 (f) The municipality under subsection (e)(2)(C) bears the burden of
 3 proving that the annexation is in the best interests of the owners of land
 4 in the territory proposed to be annexed. In determining this issue, the
 5 court may consider whether the municipality has extended sewer or
 6 water services to the entire territory to be annexed:
 7 (1) within the three (3) years preceding the date of the
 8 introduction of the annexation ordinance; or
 9 (2) under a contract in lieu of annexation entered into under
 10 IC 36-4-3-21.
 11 The court may not consider the provision of water services as a result
 12 of an order by the Indiana utility regulatory commission to constitute
 13 the provision of water services to the territory to be annexed.
 14 (g) This subsection applies only to cities located in a county having
 15 a population of more than two hundred fifty thousand (250,000) but
 16 less than two hundred seventy thousand (270,000). However, this
 17 subsection does not apply if on April 1, 1993, the entire boundary of
 18 the territory that is proposed to be annexed was contiguous to territory
 19 that was within the boundaries of one (1) or more municipalities. At the
 20 hearing under section 12 of this chapter, the court shall do the
 21 following:
 22 (1) Consider evidence on the conditions listed in subdivision (2).
 23 (2) Order a proposed annexation not to take place if the court
 24 finds that all of the following conditions exist in the territory
 25 proposed to be annexed:
 26 (A) The following services are adequately furnished by a
 27 provider other than the municipality seeking the annexation:
 28 (i) Police and fire protection;
 29 (ii) Street and road maintenance.
 30 (B) The annexation will have a significant financial impact on
 31 the residents or owners of land.
 32 (C) One (1) of the following opposes the annexation:
 33 (i) A majority of the owners of land in the territory proposed
 34 to be annexed.
 35 (ii) The owners of more than seventy-five percent (75%) in
 36 assessed valuation of the land in the territory proposed to be
 37 annexed.
 38 Evidence of opposition may be expressed by any owner of land
 39 in the territory proposed to be annexed.
 40 (h) (f) The most recent:
 41 (1) federal decennial census;
 42 (2) federal special census;
 43 (3) special tabulation; or
 44 (4) corrected population count;
 45 shall be used as evidence of resident population density for purposes
 46 of subsection (b)(2)(A), but this evidence may be rebutted by other

1 evidence of population density.

2 SECTION 39. IC 36-4-3-14 IS REPEALED [EFFECTIVE JULY 1,
3 2013]. ~~Sec. 14. In a hearing under section 12 of this chapter, the laws~~
4 ~~providing for change of venue from the county do not apply, but~~
5 ~~changes of venue from the judge may be had as in other cases. Costs~~
6 ~~follow judgment. Pending the remonstrance, and during the time within~~
7 ~~which the remonstrance may be taken, the territory sought to be~~
8 ~~annexed is not considered a part of the municipality.~~

9 SECTION 40. IC 36-4-3-15 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 15. (a) The court's
11 judgment under section ~~12~~ **or** 15.5 of this chapter must specify the
12 annexation ordinance on which the **remonstrance appeal** is based. The
13 clerk of the court shall deliver a certified copy of the judgment to the
14 clerk of the municipality. The clerk of the municipality shall:

- 15 (1) record the judgment in the clerk's ordinance record; and
16 (2) make a cross-reference to the record of the judgment on the
17 margin of the record of the annexation ordinance.

18 (b) If a judgment under section ~~12~~ **or** 15.5 of this chapter **or the**
19 **vote on a public question under section of this chapter** is adverse to
20 annexation, the municipality may not make further attempts to annex
21 the territory or any part of the territory during the four (4) years after:

- 22 (1) the later of:
23 (1) (A) the judgment of the circuit or superior court; **or**
24 (2) (B) the date of the final disposition of all appeals to a
25 higher court; **or**

26 (2) **the date of the election under IC 36-4-3.2;**

27 unless the annexation is petitioned for under section 5 or 5.1 of this
28 chapter.

29 (c) This subsection applies if a municipality repeals the annexation
30 ordinance:

- 31 (1) less than sixty-one (61) days after the publication of the
32 ordinance under section 7(a) of this chapter; and
33 (2) before the hearing commences on the remonstrance under
34 section 11(c) of this chapter.

35 A municipality may not make further attempts to annex the territory or
36 any part of the territory during the twelve (12) months after the date the
37 municipality repeals the annexation ordinance. This subsection does
38 not prohibit an annexation of the territory or part of the territory that is
39 petitioned for under section 5 or 5.1 of this chapter.

40 (d) This subsection applies if a municipality repeals the annexation
41 ordinance:

- 42 (1) at least sixty-one (61) days but not more than one hundred
43 twenty (120) days after the publication of the ordinance under
44 section 7(a) of this chapter; and
45 (2) before the hearing commences on the remonstrance under
46 section 11(c) of this chapter.

1 A municipality may not make further attempts to annex the territory or
2 any part of the territory during the twenty-four (24) months after the
3 date the municipality repeals the annexation ordinance. This subsection
4 does not prohibit an annexation of the territory or part of the territory
5 that is petitioned for under section 5 or 5.1 of this chapter.

6 (e) This subsection applies if a municipality repeals the annexation
7 ordinance:

- 8 (1) either:
 - 9 (A) at least one hundred twenty-one (121) days after
 - 10 publication of the ordinance under section 7(a) of this chapter
 - 11 but before the hearing commences on the remonstrance under
 - 12 section 11(c) of this chapter; or
 - 13 (B) after the hearing commences on the remonstrance as set
 - 14 forth in section 11(c) of this chapter; and
 - 15 (2) before the date of the judgment of the circuit or superior court
 - 16 as set forth in subsection (b).

17 A municipality may not make further attempts to annex the territory or
18 any part of the territory during the forty-two (42) months after the date
19 the municipality repeals the annexation ordinance. This subsection
20 does not prohibit an annexation of the territory or part of the territory
21 that is petitioned for under section 5 or 5.1 of this chapter.

22 (f) If a judgment under section 12 or 15.5 of this chapter orders the
23 annexation to take place, the annexation is effective when the clerk of
24 the municipality complies with the filing requirement of section 22(a)
25 of this chapter.

26 SECTION 41. IC 36-4-3-15.3 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 15.3. (a) As used in this
28 section, "prohibition against annexation" means that a municipality
29 may not make further attempts to annex certain territory or any part of
30 that territory.

31 (b) As used in this section, "settlement agreement" means a written
32 court approved settlement of a dispute involving annexation under this
33 chapter between a municipality and ~~remonstrators~~. **the owners of land**
34 **in the annexation territory.**

35 (c) Under a settlement agreement between the annexing
36 municipality and either:

- 37 (1) seventy-five percent (75%) or more of all ~~landowners~~
38 ~~participating in the remonstrance~~; **owners of land in the**
39 **annexation territory**; or
 - 40 (2) the owners of more than seventy-five percent (75%) in
41 assessed valuation of the land owned by all ~~landowners~~
42 ~~participating in the remonstrance~~; **in the annexation territory**;
- 43 the parties may mutually agree to a prohibition against annexation of
44 all or part of the territory by the municipality for a period not to exceed
45 twenty (20) years. The settlement agreement may address issues and
46 bind the parties to matters relating to the provision by a municipality

1 of planned services of a noncapital nature and services of a capital
 2 improvement nature (as described in section 13(d) of this chapter), in
 3 addition to a prohibition against annexation. The settlement agreement
 4 is binding upon the successors, heirs, and assigns of the parties to the
 5 agreement. However, the settlement agreement may be amended or
 6 revised periodically on further agreement between the annexing
 7 municipality and landowners who meet the qualifications of subsection
 8 (c)(1) or (c)(2).

9 SECTION 42. IC 36-4-3-15.5, AS AMENDED BY P.L.113-2010,
 10 SECTION 118, IS AMENDED TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2013]: Sec. 15.5. (a) Except as provided in
 12 subsection (b), an owner of land within one-half (1/2) mile of territory
 13 proposed to be annexed under this chapter may, not later than sixty (60)
 14 days after the publication of the annexation ordinance, appeal that
 15 annexation to a circuit court or superior court of a county in which the
 16 annexed territory is located. The complaint must state that the reason
 17 the annexation should not take place is that the territory sought to be
 18 annexed is not contiguous to the annexing municipality.

19 (b) This subsection applies to an annexation initiated by property
 20 owners under section 5.1 of this chapter in which all property owners
 21 within the area to be annexed petition the municipality to be annexed.
 22 An owner of land within one-half (1/2) mile of the territory proposed
 23 to be annexed under this chapter may, not later than thirty (30) days
 24 after the publication of the annexation ordinance, appeal that
 25 annexation to a circuit court or superior court of a county in which the
 26 annexed territory is located. The complaint must state that the reason
 27 the annexation should not take place is that the territory sought to be
 28 annexed is not contiguous to the annexing municipality.

29 (c) Upon the determination of the court that the complaint is
 30 sufficient, the judge shall fix a time for a hearing to be held not later
 31 than sixty (60) days after the determination. Notice of the proceedings
 32 shall be served by summons upon the proper officers of the annexing
 33 municipality. The municipality shall become a defendant in the cause
 34 and be required to appear and answer. The judge of the circuit or
 35 superior court shall, upon the date fixed, proceed to hear and determine
 36 the appeal without a jury, and shall, without delay, give judgment upon
 37 the question of the annexation according to the evidence introduced by
 38 the parties. If the evidence establishes that the territory sought to be
 39 annexed is contiguous to the annexing municipality, the court shall
 40 deny the appeal and dismiss the proceeding. If the evidence does not
 41 establish the foregoing factor, the court shall issue an order to prevent
 42 the proposed annexation from taking effect. The laws providing for
 43 change of venue from the county do not apply, but changes of venue
 44 from the judge may be had. Costs follow judgment. Pending the appeal,
 45 and during the time within which the appeal may be taken, the territory
 46 sought to be annexed is not a part of the annexing municipality.

1 (d) If the court enters a judgment in favor of the municipality, the
2 annexation may not take effect during the year preceding a year in
3 which a federal decennial census is conducted. An annexation that
4 would otherwise take effect during the year preceding a year in which
5 a federal decennial census is conducted takes effect January 1 of the
6 year in which a federal decennial census is conducted.

7 SECTION 43. IC 36-4-3-22 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 22. (a) The clerk of the
9 municipality shall do the following:

10 (1) File each annexation ordinance against which a **remonstrance**
11 **or** an appeal has not been filed during the period permitted under
12 this chapter, **or for which at least fifty-one percent (51%) of**
13 **voters have voted in favor of the public question under**
14 **IC 36-4-3.2**, or the certified copy of a judgment **on an appeal**
15 **under section 15.5** ordering an annexation to take place with
16 each of the following:

- 17 (A) The county auditor of each county in which the annexed
18 territory is located.
- 19 (B) The circuit court clerk of each county in which the
20 annexed territory is located.
- 21 (C) If a board of registration exists, the registration board of
22 each county in which the annexed territory is located.
- 23 (D) The office of the secretary of state.
- 24 (E) The office of census data established by IC 2-5-1.1-12.2.

25 (2) Record each annexation ordinance adopted under this chapter
26 in the office of the county recorder of each county in which the
27 annexed territory is located.

28 (b) The copy must be filed and recorded no later than ninety (90)
29 days after:

- 30 (1) the expiration of the period permitted for a **remonstrance or an**
31 **appeal; or**
- 32 (2) the delivery of a certified order under section 15 of this
33 chapter; **or**
- 34 **(3) the date of the election under IC 36-4-3.2.**

35 (c) Failure to record the annexation ordinance as provided in
36 subsection (a)(2) does not invalidate the ordinance.

37 (d) The county auditor shall forward a copy of any annexation
38 ordinance filed under this section to the following:

- 39 (1) The county highway department of each county in which the
40 lots or lands affected are located.
- 41 (2) The county surveyor of each county in which the lots or lands
42 affected are located.
- 43 (3) Each plan commission, if any, that lost or gained jurisdiction
44 over the annexed territory.
- 45 (4) The sheriff of each county in which the lots or lands affected
46 are located.

1 (5) The township trustee of each township that lost or gained
2 jurisdiction over the annexed territory.

3 (6) The office of the secretary of state.

4 (7) The office of census data established by IC 2-5-1.1-12.2.

5 (e) The county auditor may require the clerk of the municipality to
6 furnish an adequate number of copies of the annexation ordinance or
7 may charge the clerk a fee for photoreproduction of the ordinance. The
8 county auditor shall notify the office of the secretary of state and the
9 office of census data established by IC 2-5-1.1-12.2 of the date that the
10 annexation ordinance is effective under this chapter.

11 (f) The county auditor or county surveyor shall, upon determining
12 that an annexation ordinance has become effective under this chapter,
13 indicate the annexation upon the property taxation records maintained
14 in the office of the auditor or the office of the county surveyor.

15 SECTION 44. IC 36-4-3.2 IS ADDED TO THE INDIANA CODE
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2013]:

18 **Chapter 3.2 Public Question on Involuntary Annexation**

19 **Sec. 1. This chapter applies only to an annexation in which a**
20 **municipality adopts the annexation ordinance after June 30, 2013.**

21 **Sec. 2. This chapter does not apply to an annexation under:**

22 (1) IC 36-4-3-4(a)(2);

23 (2) IC 36-4-3-4(a)(3);

24 (3) IC 36-4-3-4(b);

25 (4) IC 36-4-3-4(h);

26 (5) IC 36-4-3-4.1; or

27 (6) IC 36-4-3-5.1.

28 **Sec. 3. (a) The municipality shall post:**

29 (1) a copy of the fiscal plan adopted under IC 36-4-3-13,
30 which includes a fiscal impact analysis; and

31 (2) the municipality's documentation of the requirements
32 under IC 36-4-3-13(b) or IC 36-4-3-13(c);

33 on an Internet web site maintained or authorized by the
34 municipality. If the fiscal plan is amended, the municipality shall
35 post the amended fiscal plan on the Internet web site maintained
36 or authorized by the municipality within seven (7) days after the
37 amended plan is adopted.

38 (b) The municipality must submit the fiscal plan, including the
39 fiscal impact analysis, and the documentation under subsection
40 (a)(2) to the department of local government finance at least six (6)
41 months before the election in which the public question will be on
42 the ballot. The department of local government finance must do the
43 following within a reasonable time, but not later than thirty (30)
44 days before the date of the election in which the public question
45 will be on the ballot:

46 (1) Review the fiscal plan and fiscal impact analysis.

- 1 **(2) Make any comments concerning the fiscal plan and fiscal**
- 2 **impact analysis that the department considers appropriate.**
- 3 **(3) Review documentation submitted to the department by the**
- 4 **municipality to determine that the requirements in**
- 5 **IC 36-4-3-13(b) and IC 36-4-3-13(c) are satisfied and make**
- 6 **any comments concerning the municipality's satisfaction of**
- 7 **the requirements.**
- 8 **(4) Provide the department's comments under subdivisions (2)**
- 9 **and (3) to the municipality.**
- 10 **(5) Post the department's comments under subdivisions (2)**
- 11 **and (3) on the department's Internet web site.**

12 **The department of local government finance shall certify to the**
 13 **municipality the total amount of expense incurred by the**
 14 **department in carrying out the department's review and preparing**
 15 **the department's comments. Upon receipt of the department's**
 16 **certification of the expenses, the municipality shall immediately**
 17 **pay to the treasurer of state the amount charged. Money paid by**
 18 **a municipality under this subsection shall be deposited in the state**
 19 **general fund.**

20 **Sec. 4. Before the public question on an annexation is placed on**
 21 **the ballot, the municipality may repeal the annexation ordinance**
 22 **previously adopted. The municipality must send certified notice of**
 23 **the repeal of the ordinance to the:**

- 24 **(1) circuit court clerk;**
- 25 **(2) county fiscal officer of each county in which the**
- 26 **municipality and annexation territory is located; and**
- 27 **(3) county recorder of each county in which the municipality**
- 28 **and the annexation territory is located;**

29 **not later than July 15.**

30 **Sec. 5. (a) Each county recorder receiving certified notice under**
 31 **section 4 of this chapter shall do the following:**

- 32 **(1) Record the certification in the records of the county**
- 33 **recorder without charge.**
- 34 **(2) Notify the county election board of each county in which**
- 35 **the municipality and the annexation territory is located that**
- 36 **the public question on the annexation is not eligible to be**
- 37 **placed on the ballot for consideration by the voters of the**
- 38 **municipality and the voters of the annexation territory.**

39 **(b) After the county recorder of each county in which the**
 40 **municipality and the annexation territory are located has notified**
 41 **the county election board that a public question on the annexation**
 42 **is not eligible to be placed on the ballot, the county election board**
 43 **shall not place the public question on the ballot.**

44 **Sec. 6. (a) A public question under this chapter shall be placed**
 45 **on the ballot in all of the precincts that are located in the**
 46 **municipality and annexation territory in substantially the following**
 47 **form:**

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"Shall _____ (insert name of municipality) annex _____ (insert name of annexation territory)?".

(b) The public question must appear on the ballot in the form prescribed by IC 3-10-9-4 and approved by the county election board.

Sec. 7. At the same time that election results are certified under IC 3, the circuit court clerk of each of the counties in which a public question under this chapter is on the ballot shall jointly issue, in the form prescribed by the state election board, a certificate declaring whether the public question is approved or rejected by a majority of the voters as set forth in section 8 of this chapter. In addition to any other requirements in IC 3 concerning filing of the certification, the certification shall be sent to each of the following:

- (1) The circuit court clerk.
- (2) The county auditor of each county in which the municipality and annexation territory is located.
- (3) The county recorder of each county in which the municipality and annexation territory is located.
- (4) The state board of accounts.
- (5) The department of local government finance.

Sec. 8. All of the following apply to a public question on an annexation:

- (1) The public question on an annexation shall be placed on the ballot for consideration by the voters of the municipality and annexation territory.
- (2) The vote on the public question by the voters of a municipality and the annexation territory shall be tabulated by determining the sum of the votes of voters who reside in:
 - (A) the municipality;
 - (B) the annexation territory; and
 - (C) the municipality and the annexation territory.
- (3) The vote on the public question by the voters of:
 - (A) the municipality; and
 - (B) the annexation territory;
 shall be tabulated separately.
- (4) The circuit court clerk shall issue, in a form prescribed by the state election board, separate certificates regarding whether the public question is approved or rejected by the voters of:
 - (A) the municipality and the annexation territory as set forth in subdivision (2)(C);
 - (B) the municipality; and
 - (C) the annexation territory;
 voting on the public question.

Sec. 9. An annexation is approved only if:

- (1) the percentage of all voters voting on the public question

- 1 **who:**
- 2 **(A) reside in:**
- 3 **(i) the municipality;**
- 4 **(ii) the annexation territory; and**
- 5 **(iii) both the reorganizing municipality and the**
- 6 **annexation territory; and**
- 7 **(B) vote in favor of the proposed reorganization;**
- 8 **is at least fifty-one percent (51%);**
- 9 **(2) the percentage of voters of the municipality voting on the**
- 10 **public question in favor of the annexation is at least fifty-one**
- 11 **percent (51%); and**
- 12 **(3) the percentage of voters who reside within the annexation**
- 13 **territory and who vote on the public question in favor of the**
- 14 **annexation is at least fifty-one percent (51%).**

15 **If the annexation is not approved, the annexation is terminated.**

16 **Sec. 10. (a) Except as otherwise provided in this section, during**
17 **the period beginning with the date the annexation ordinance is**
18 **adopted by the legislative body and continuing through the day on**
19 **which the public question is submitted to the voters, a municipality**
20 **may not promote a position on the public question by doing any of**
21 **the following:**

- 22 **(1) Using facilities or equipment, including mail and**
- 23 **messaging systems, owned by the municipality to promote a**
- 24 **position on the public question, unless equal access to the**
- 25 **facilities or equipment is given to persons with a position**
- 26 **opposite to that of the municipality.**
- 27 **(2) Making an expenditure of money from a fund controlled**
- 28 **by the municipality to promote a position on the public**
- 29 **question.**
- 30 **(3) Using an employee to promote a position on the public**
- 31 **question during the employee's normal working hours or paid**
- 32 **overtime, or otherwise compelling an employee to promote a**
- 33 **position on the public question at any time. However, if a**
- 34 **person described in subsection (c) is advocating for or against**
- 35 **a position on the public question or discussing the public**
- 36 **question as authorized under subsection (c), an employee of**
- 37 **the municipality may assist the person in presenting**
- 38 **information on the public question if requested to do so by the**
- 39 **person described in subsection (c).**

40 **However, this section does not prohibit an official or employee of**
41 **the municipality from carrying out duties with respect to a public**
42 **question that are part of the normal and regular conduct of the**
43 **official's or employee's office or agency, including the furnishing**
44 **of factual information regarding the public question in response to**
45 **inquiries from any person.**

- 46 **(b) This subsection does not apply to:**
- 47 **(1) a personal expenditure to promote a position on a local**

1 public question by an employee of the municipality whose
2 employment is governed by a collective bargaining contract
3 or an employment contract; or
4 (2) an expenditure to promote a position on a local public
5 question by a person or an organization that has a contract or
6 an arrangement (whether formal or informal) with the
7 municipality solely for the use of the municipality's facilities.
8 A person or an organization that has a contract or arrangement
9 (whether formal or informal) with a municipality to provide goods
10 or services to the municipality may not spend any money to
11 promote a position on the public question. A person or an
12 organization that violates this subsection commits a Class A
13 infraction.
14 (c) Notwithstanding any other law, an elected or appointed
15 official of a municipality may:
16 (1) personally advocate for or against a position on a public
17 question; or
18 (2) discuss the public question with any individual, group, or
19 organization or personally advocate for or against a position
20 on a public question before any individual, group, or
21 organization;
22 so long as it is not done by using public funds. Advocacy or
23 discussion allowed under this subsection is not considered a use of
24 public funds."

25 Renumber all SECTIONS consecutively.
 (Reference is to ESB 343 as printed March 29, 2013.)

Representative Thompson