

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 2012 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1186

AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 36-5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) Proceedings to incorporate a town may be instituted by filing a **written** petition in quadruplicate with the executive of ~~each the~~ county in which a **part that contains all or a majority** of the territory sought to be incorporated. ~~is located~~. The petition must be signed by at least ~~fifty (50)~~ **ten percent (10%)** of the owners of land in the territory and must state ~~that~~: **the following:**

- (1) The territory is used or will, in the reasonably foreseeable future, be used generally for commercial, industrial, residential, or similar purposes.
- (2) The territory is reasonably compact and contiguous.
- (3) There is enough undeveloped land in the territory to permit reasonable growth of the town. ~~and~~
- (4) Incorporation is in the best interests of the citizens of the territory.
- (5) The name, telephone number, and electronic mail address (if available) of the contact person for the petitioners.**
- (6) If the petitioners want the incorporation to be approved by a public question at a special election, that the petitioners agree to pay the costs of the special election.**

(b) The signatures of the petitioners must be verified, and the verification must include a statement that the petitioners are owners of

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land in the territory sought to be incorporated.

(c) In determining the number of petitioners, not more than one (1) person having an interest in a single parcel of land may be counted, and a person owning more than one (1) parcel of land in the area may be counted only once.

(d) The petition filed under subsection (a) must be accompanied by the ordinance of any city required to consent to the incorporation under section 7 of this chapter.

SECTION 2. IC 36-5-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) On receipt of a petition for incorporation, the county executive shall examine ~~it~~ **the petition** to see that ~~it~~ **the petition** meets the requirements of sections 2 and 3 of this chapter. **If the county executive rejects the petition, the county executive shall set forth in writing and with specificity the manner in which the petition fails to meet the requirements of sections 2 and 3 of this chapter.** If the petition is in order, the executive shall mark it with the date of filing and immediately forward one (1) copy to the plan commission, if any, having jurisdiction.

(b) The commission shall investigate the proposed incorporation and report their recommendations of approval or disapproval to the county executive at least ten (10) days before the hearing required by section 5 of this chapter. In making their investigations, they may use the services of any state or local government agency, and in making their report and recommendations, they shall be guided by the requirements for incorporation set out in section 8 of this chapter.

SECTION 3. IC 36-5-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The ~~county executive~~ **petitioners** must obtain the consent by ordinance of the legislative body of a consolidated city before incorporating a town if any part of the proposed town is within four (4) miles of the corporate boundaries of the city. **The legislative body of the consolidated city shall:**

(1) consent to the incorporation; or

(2) deny consent to the incorporation;

not later than ninety (90) days after the legislative body receives the petitioners' written request. If the legislative body fails to act not later than ninety (90) days after the legislative body receives the petitioners' written request, the legislative body is considered to have consented to the petitioners' request for incorporation.

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

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the city shall:

- (1) consent to the incorporation; or**
- (2) deny consent to the incorporation;**

not later than ninety (90) days after the legislative body receives the petitioners' written request. If the legislative body fails to act not later than ninety (90) days after the legislative body receives the petitioners' written request, the legislative body is considered to have consented to the petitioners' request for incorporation.

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

SECTION 4. IC 36-5-1-7.1, AS AMENDED BY P.L.119-2012, SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7.1. The ~~executive~~ **petitioners** of a county having a population of more than seventy thousand (70,000) but less than seventy thousand fifty (70,050) ~~is~~ **are** exempt from:

- (1) the requirements of section 7(a) of this chapter; and
- (2) the requirements of section 7(b) of this chapter if the second or third class city is within a county containing a consolidated city.

SECTION 5. IC 36-5-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a)** The county executive may approve a petition for incorporation only if it finds all of the following:

- (1) That the proposed town is used or will, in the reasonably foreseeable future, be used generally for commercial, industrial, residential, or similar purposes.
- (2) That the proposed town is reasonably compact and contiguous.
- (3) That the proposed town includes enough territory to allow for reasonable growth in the foreseeable future.
- (4) That a substantial majority of the property owners in the proposed town have agreed that at least six (6) of the following municipal services should be provided on an adequate basis:
 - (A) Police protection.
 - (B) Fire protection.
 - (C) Street construction, maintenance, and lighting.
 - (D) Sanitary sewers.
 - (E) Storm sewers.
 - (F) Health protection.
 - (G) Parks and recreation.
 - (H) Schools and education.
 - (I) Planning, zoning, and subdivision control.
 - (J) One (1) or more utility services.

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- (K) Stream pollution control or water conservation.
- (5) That the proposed town could finance the proposed municipal services with a reasonable tax rate, using the current assessed valuation of properties as a basis for calculation.
- (6) That incorporation is in the best interest of the territory involved. This finding must include a consideration of:
 - (A) the expected growth and governmental needs of the area surrounding the proposed town;
 - (B) the extent to which another unit can more adequately and economically provide essential services and functions; and
 - (C) the extent to which the incorporators are willing to enter into agreements under IC 36-1-7 with the largest neighboring municipality, if that municipality has proposed such agreements.

(b) If the county executive determines that the petition satisfies the requirements set forth in subsection (a), the county executive may do any of the following:

- (1) Adopt an ordinance under section 10.1 of this chapter incorporating the town.**
- (2) Deny the petition.**
- (3) Adopt a resolution to place a public question concerning the incorporation on the ballot at an election. The county executive shall request a date for the election as follows:**
 - (A) If the county executive requests the public question be on the same date as a general election or primary election:**
 - (i) the resolution must state that the election is to be on the same date as a general or primary election, and must be certified in accordance with IC 3-10-9-3; and**
 - (ii) the election must be held on the date of the next general election or primary election, whichever is earlier, at which the question can be placed on the ballot under IC 3-10-9-3.**
 - (B) If a petition contains a request for a special election, the county executive may request that the public question concerning the incorporation will be on the ballot of a special election. An election may be considered a special election only if it is conducted on a date other than the date of a general election or primary election. The date of the special election must be:**
 - (i) at least thirty (30) and not more than sixty (60) days after the notice of the election is filed under IC 3-10-8-4; and**

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(ii) not later than the next general election or primary election, whichever is earlier, at which the question can be placed on the ballot under IC 3-10-9-3.

If the public question is on the ballot of a special election, the petitioners shall pay the costs of holding the special election.

If the county executive adopts a resolution under this subdivision, the county executive shall file the resolution and the petition with the circuit court clerk of each county that contains any part of the territory sought to be incorporated.

(c) After a resolution is filed with a circuit court clerk under subsection (b)(3), the circuit court clerk shall certify the resolution to the county election board. The county election board shall place the following public question on the ballot:

"Shall (insert a description of the territorial boundaries) be incorporated as a town?".

Only the registered voters residing within the territory of the proposed town may vote on the public question.

(d) Not earlier than sixty (60) days and not later than thirty (30) days before the election, the petitioners shall publish a notice in accordance with IC 5-3-1 in each county where the proposed town is located. The notice must include the following:

- (1) A description of the boundaries of the proposed town and the quantity of land contained in the territory of the proposed town.
- (2) The information provided under section 3(3) through 3(6) of this chapter.
- (3) The name, telephone number, and electronic mail address (if available) of the contact person for the petitioners.
- (4) A statement that the petition is available for inspection and copying in the office of the circuit court clerk of each county where the proposed town is located.

The petitioners shall submit proof of publication of the notice to the circuit court clerk of each county in which the proposed town is located. A defect in the form of the notice does not invalidate the petition.

(e) If a majority of the voters residing within the territory of the proposed town:

- (1) vote "no" on the public question, the territory is not incorporated as a town, and a new petition for incorporation may not be filed within the period set forth in section 9 of this chapter; or

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(2) vote "yes" on the public question, the county executive of each county in which the proposed town is located shall adopt an ordinance under section 10.1 of this chapter.

(f) The circuit court clerk shall certify the results of a public question under this section to the following:

- (1) The county executive of each county in which the proposed incorporated territory is located.
- (2) The county auditor of each county in which the proposed incorporated territory is located.
- (3) The department of local government finance.
- (4) The department of state revenue.
- (5) The state board of accounts.

SECTION 6. IC 36-5-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) **This subsection applies only to a petition filed before July 1, 2013. If a petition for incorporation that is denied, a petition for incorporation may not be resubmitted within refiled under section 8 of this chapter not earlier than one (1) year after the date of final denial. This subsection expires July 1, 2014.**

(b) **This subsection applies only to a petition filed after June 30, 2013. A petition for incorporation may not be refiled within two (2) years after the date:**

- (1) the petition was denied under section 8(b)(2) of this chapter; or
- (2) of the election at which a majority of voters voting on the public question vote "no" under section 8 of this chapter.

SECTION 7. IC 36-5-1-10.1, AS AMENDED BY P.L.113-2010, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10.1. (a) **Except as provided in subsection (g); If the county executive makes the findings required by section 8 of this chapter; it may a majority of the voters voting on the public question under section 8 of this chapter vote "yes", the county executive shall adopt an ordinance incorporating the town. The**

(b) An ordinance adopted under subsection (a) must:

- (1) provide that:
 - (A) all members of the town legislative body are to be elected at large (if the town would have a population of less than three thousand five hundred (3,500)); or
 - (B) divide the town into not less than three (3) nor more than seven (7) districts; and
- (2) direct the county election board to conduct an election in the town on the date of the next general or municipal election to be

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held in any precincts in the county.

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

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

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

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

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

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

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

- (1) the office of the secretary of state; and
- (2) the circuit court clerk of each county in which the town is located.

~~(f)~~ **(g)** An ordinance incorporating a town under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. An ordinance under this section that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

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



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~~(f)~~ (i) Notwithstanding subsection ~~(f)~~ (g) as that subsection existed on December 31, 2009, an ordinance that took effect January 2, 2010, because of the application of subsection ~~(f)~~; (g), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without the adoption of an ordinance or an amended ordinance or any other additional action being required.

SECTION 8. [EFFECTIVE JULY 1, 2013] (a) **The amendment of IC 36-5-1-2, IC 36-5-1-7, IC 36-5-1-7.1, IC 36-5-1-8, and IC 36-5-1-10.1 by this act does not affect a petition to incorporate a town under IC 36-5-1 that is filed before July 1, 2013, and considered, adopted, approved, or disapproved before July 1, 2014, by the county commissioners of each county in which the proposed town is located. Such a petition may be considered, adopted, approved, or disapproved by the county commissioners of each county in which the proposed town is located under the statutes in effect before July 1, 2013, as if this act had not been enacted.**

(b) **This SECTION expires July 1, 2014.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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