

IC 20-23-5

Chapter 5. Community School Corporations: Territory Annexations

IC 20-23-5-1

"Acquiring school corporation"

Sec. 1. As used in this chapter, "acquiring school corporation" means the school corporation that acquires territory as a result of annexation.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-2

"Annex"

Sec. 2. As used in this chapter, "annex", "annexing", "annexation", and "school annexation" mean any action whereby the boundaries of a school corporation are changed so that additional territory, constituting all or a part of any one (1) or more other school corporations, is transferred to the school corporation.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-3

"Annexed territory"

Sec. 3. As used in this chapter, "annexed territory" means the territory acquired by an acquiring school corporation as a result of annexation from a losing school corporation.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-4

"Losing school corporation"

Sec. 4. As used in this chapter, "losing school corporation" means a school corporation that loses territory to an acquiring school corporation by annexation.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-5

"Resolution"

Sec. 5. As used in this chapter, "resolution" of a school corporation means a resolution adopted by the school corporation's governing body.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-6

"School corporation"

Sec. 6. As used in this chapter, "school corporation" means:

- (1) a school corporation created under IC 20-23-4; and
- (2) any other school corporation established under any other statute of the state of Indiana, which has common boundaries with any school corporation or corporations formed under IC 20-23-4.

The term does not include any public school corporation located in

whole or any part in a county containing a consolidated city.
As added by P.L.1-2005, SEC.7.

IC 20-23-5-7

Annexations authorized

Sec. 7. Subject to the limitations and procedures in this chapter, a school corporation may annex territory from any other school corporation by resolutions of the acquiring and losing school corporations under section 8 of this chapter.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-8

Annexation procedure

Sec. 8. An annexation may be effected by any school corporation as follows:

(1) The acquiring and the losing school corporations shall each adopt a substantially identical annexation resolution. The resolution must contain the following items:

(A) The name of the acquiring school corporation, which may differ from the name of the acquiring corporation at the time of the adoption of the resolution, after the effective date.

(B) A description of the annexed territory. The description shall as near as reasonably possible:

(i) be by streets and other boundaries known by common names; and

(ii) does not have to be by legal description unless the additional description is necessary to identify the annexed territory.

A notice is not defective if there is a good faith compliance with this section and if the area designated may be ascertained with reasonable certainty by persons skilled in the area of real estate description.

(C) The time the annexation takes place.

(D) Any terms and conditions facilitating education of students in the:

(i) annexed territory;

(ii) losing school corporation; or

(iii) acquiring school corporation.

The terms may provide for the continued attendance by students in the annexed territory at schools in the losing school corporation for specified periods after annexation on a transfer basis. If students will continue attendance in schools in the losing school corporation, transfer tuition for the students shall be paid by the acquiring school corporation to the losing school corporation:

(i) using the method; and

(ii) at the rates;

provided by the Indiana statutes governing the computation and payment of transfer tuition costs.

- (E) Disposition of assets and liabilities of the losing school corporation to the acquiring school corporation.
 - (F) Allocation between the acquiring and losing school corporations of subsequently collected school taxes levied on property in the annexed territory.
 - (G) The amount, if any, to be paid by the acquiring school corporation to the losing school corporation on account of property received from the losing school corporation.
 - (H) Dispositions, allocations, and amounts transferred under this subsection must be equitable.
- (2) After the adoption of the resolution, notice shall be given by publication in both the acquiring school corporation and the losing school corporation setting out:
- (A) the text of the resolution; and
 - (B) a statement that the resolution has been adopted and that a right of remonstrance exists as provided in this chapter.
- (3) It is not necessary to set out the remonstrance provisions of this chapter. A general reference to a right of remonstrance with a reference to this chapter is sufficient.
- (4) The annexation takes effect:
- (A) within thirty (30) days after publication; or
 - (B) at the time provided in the resolution;
- whichever is later, unless within the period during which a remonstrance may be filed a remonstrance is filed in the circuit or superior court of the county where the annexed territory or any part of the annexed territory is located, by registered voters residing in the losing school corporation at least equal in number to the greater of ten percent (10%) of the number of registered voters residing in the losing school corporation or fifty-one percent (51%) of the number of registered voters residing in the annexed territory.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-9

Notice requirements

Sec. 9. (a) The notice by publication required by section 8 of this chapter shall be made:

- (1) two (2) times;
 - (2) a week apart; and
 - (3) in two (2) daily newspapers of general circulation, published in the English language and of general circulation in the acquiring school corporation and in the losing school corporation.
- (b) If there is only one (1) or no daily newspaper in either school corporation, a weekly newspaper may be used.
- (c) If there is only one (1) daily or weekly newspaper, publication in the newspaper is sufficient.
- (d) If a newspaper is of general circulation in both the acquiring school corporation and the losing school corporation, publication in the newspaper qualifies as one (1) of the required publications in the

acquiring school corporation and the losing school corporation.

(e) Publication may be made jointly by the losing school corporation and acquiring school corporation.

(f) The remonstrance period runs from the second publication.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-10

Remonstrances; form; filing; contents

Sec. 10. (a) A remonstrance under section 8 of this chapter must be in the following or a substantially similar form:

"The undersigned hereby remonstrate against the annexation of the following described territory situated in _____ County, Indiana, whereby it would be transferred from _____ (the losing corporation) to _____ (the acquiring corporation):

(Description of the annexed territory sufficient to identify it.)".

The remonstrance may be filed in any number of counterparts. Each counterpart shall have attached to it the affidavit of the person circulating it that each signature appearing on the remonstrance was affixed in the presence of the person circulating the petition and is the true and lawful signature of the person who made the signature. The person who makes the affidavit does not have to be one (1) of the persons who signs the counterpart to which the affidavit is attached. The remonstrance must be accompanied by a complaint filed by one (1) or more of the remonstrators (who shall be treated as a representative of the entire class of remonstrators) and signed by the remonstrator or the remonstrator's attorney, stating the reasons for the remonstrance. The reasons for the remonstrance are limited to the following:

(1) There is a procedural defect in the manner in which the annexation is carried out that is jurisdictional.

(2) The annexed territory does not form a compact area abutting the acquiring corporation.

(3) The benefits to be derived from the annexation are outweighed by the detriments, taking into consideration the respective benefits and detriments to the schools and of the students residing in the acquiring school corporation, the losing school corporation, and the annexed territory.

(4) The:

(A) disposition of assets and liabilities of the losing school corporation;

(B) allocation of school tax receipts between the acquiring school corporation and the losing school corporation; and

(C) amount to be paid by the acquiring school corporation as set out in the annexation resolution;

are inequitable. Except with respect to subdivision (1), the allegations may be made in the statutory language.

(b) The plaintiff in a remonstrance under section 8 of this chapter must be the person whose name appears on the complaint. The defendants in a remonstrance under section 8 of this chapter shall be both the acquiring school corporation and the losing school

corporation. Service of process shall be made on the defendants as in other civil actions.

(c) To determine if a petition was timely filed, the time of filing is the time of filing with the clerk without regard to the time of issuance of the summons. If the thirtieth day falls on Sunday, a holiday, or any other day when the clerk's office is not open, the time shall be extended to the next day when the office is open.

(d) The issues in a remonstrance under section 8 of this chapter are made up by the complaint. The allegations in the complaint shall be treated as denied by each defendant. A responsive pleading may not be filed except that any defendant may, if appropriate, file a motion to dismiss the remonstrance on the ground that:

- (1) the requisite number of qualified remonstrators have not signed the petition;
- (2) the remonstrance was not timely filed; or
- (3) the complaint does not state a cause of action.

A responsive pleading to this motion may not be filed. With respect to a motion under subdivisions (1) and (2), the allegations of the pleading shall be treated as denied by the remonstrators. To determine whether there are the requisite number of qualified remonstrators, a person may not withdraw the person's name after a remonstrance has been filed or add the person's name to the remonstrance. Any person may, however, at the trial of the cause and in support or derogation of the substantive matters in the complaint, introduce into evidence a verified statement that the person wishes the person's name added to or withdrawn from the remonstrance. The court may either hear all or a part of the matters raised by the motion to dismiss separately or may consolidate for trial all or a part of the matters with the matters relating to the substance of the case. A complaint may not be dismissed for failure to state a cause of action if a fair reading of the complaint supports one (1) of the grounds for remonstrance provided in subsection (a). The court may permit an amendment of the complaint if the amendment does not state a new ground of remonstrance.

(e) The trial of a remonstrance shall be conducted as other civil cases by the court without the intervention of a jury on the issues raised by the complaint or a motion to dismiss, or both. A change of venue from a judge may be permitted. A change of venue from the county may not be permitted. The court shall expedite the hearing of the case. The court's judgment, except with respect to any matter raised under subsection (a)(4), shall be either that:

- (1) the annexation shall take place;
- (2) the annexation shall not take place; or
- (3) the remonstrance shall be dismissed.

If the court finds that the remonstrators have proved any of the reasons for the remonstrance described in subsection (a)(1) through (a)(4), the court's judgment shall be that the annexation may not take place. Unless the remonstrators have proved at least one (1) of the reasons for a remonstrance described in subsection (a)(1) through (a)(4), the court's judgment shall be that the annexation shall take

place. With respect to any matter raised under subsection (a)(4), the court's judgment may be either that the disposition, allocation, and amount set out in the annexing resolution is equitable or that it is inequitable. In the latter event, the court in the court's judgment shall provide for an equitable disposition, allocation, and amount. Costs shall follow judgment. Appeals may be taken from any judgment of the court in the same manner as appeals are taken in other civil cases. *As added by P.L.1-2005, SEC. 7.*

IC 20-23-5-11

Adoption of plans for governing bodies of school corporations

Sec. 11. (a) Within sixty (60) days after the annexation takes place, the governing body of the acquiring school corporation and losing school corporation shall adopt a plan determining the manner in which the governing body shall be constituted. The plan shall be adopted in accordance with the requirements and procedures of IC 20-23-8, except as set out in subsection (b).

(b) The adoption of a plan by the governing body in accordance with IC 20-23-8-10 and its submission to the state board under IC 20-23-8-15 are the only procedures required when an existing plan is changed as follows:

- (1) All governing body members are elected at large, and there are no governing body member residency districts.
- (2) Governing body members are elected from governing body member residency districts, and the annexed territory is added to or deleted from one (1) or more districts.
- (3) A governing body member is appointed from a given area or district, and the annexed territory is added to or deleted from one (1) or more districts or areas.
- (4) A governing body member is elected solely by the voters in a school governing body member district, but the addition or deletion of the annexed territory to or from an existing district does not constitute a denial of equal protection of the laws.

If a school corporation elects or appoints members of its governing body both from a school governing body member district encompassing the entire school corporation and from smaller districts, the governing body of the acquiring school corporation shall add the annexed territory both to the district consisting of the entire school corporation and to one (1) or more smaller districts. In a comparable situation, the losing school corporation shall delete the annexed territory both from the district consisting of the entire school corporation and from any smaller district or districts. The change in the plan becomes effective upon its approval by the state board. The application of this subsection does not limit the initiation of, or further changes in, any plan under IC 20-23-8.

As added by P.L.1-2005, SEC. 7.

IC 20-23-5-12

Disposition of assets and liabilities of losing school corporation; allocation of school tax receipts and amount to be paid by

acquiring school corporation; standards

Sec. 12. (a) With respect to whether the disposition of the assets and liabilities of the losing school corporation, allocation of school tax receipts, and the amount to be paid by the acquiring school corporation is equitable, the court, subject to subsection (b), shall be satisfied that the annexing resolution conforms substantially to the following standards:

(1) The acquiring school corporation shall assume a part of all installments of principal and interest on any indebtedness of the losing school corporation (other than current obligations or temporary borrowing) that fall due after the end of the last calendar year in which the losing school corporation is entitled to receive current tax receipts from property tax levies on the property of the annexed territory. The part consists of the following:

(A) All installments relating to any indebtedness incurred in connection with the acquisition or construction of any building located in the annexed territory.

(B) A proportion of all installments relating to any other indebtedness that is the same proportion as the valuation of the real property in the annexed territory bears to the valuation of all the real property in the losing school corporation, as the indebtedness is assessed for general taxation immediately before annexation.

(2) The acquiring school corporation shall make the payments and assume the obligations provided for a school corporation acquiring territory or a building or buildings under IC 20-47-5.

(b) Standards under subsection (a) may not be applicable to the extent the losing school corporation and acquiring school corporation otherwise agree in a situation where all or a majority of the students in the annexed territory have been transferred from the losing school corporation to the acquiring school corporation for the five (5) school years immediately preceding the transfer. The agreement between school corporations may not prejudice the rights of bondholders or lessors whose rights against the losing school corporation and acquiring school corporation shall, upon enforcement, be allocated between the losing school corporation and acquiring school corporation in accordance with subsection (a)(1) and (a)(2).

As added by P.L.1-2005, SEC.7. Amended by P.L.231-2005, SEC.21; P.L.2-2006, SEC.94.

IC 20-23-5-13

Effective date of annexation in case of remonstrance; limitations on new annexation proceeding following adverse judgment

Sec. 13. (a) If a remonstrance is filed on grounds other than the grounds in section 10(a)(4) of this chapter, annexation does not become effective until final judgment in the remonstrance suit. Judgment may not be considered to be final until:

(1) the time for taking an appeal has expired; or

(2) final judgment in the appeal is entered.

A judgment of the trial court dismissing a remonstrance is a final judgment. If judgment is against the annexation, a further annexation of the annexed territory may not take place for two (2) years after the date the remonstrance was filed. A final judgment may not prevent either the acquiring school corporation or acquiring school corporation and losing school corporation from rescinding the annexation resolution. If the suit is dismissed without prejudice, the two (2) year prohibition does not apply unless a subsequent annexation resolution is adopted primarily for the purpose of harassment and not for some other purpose, including the correction of procedural irregularities or a substantial change in the annexed territory or the annexation resolution.

(b) If the remonstrance relates solely to any matter raised under section 10(a)(4) of this chapter, the annexation takes effect at the time provided under section 8 of this chapter.

As added by P.L.1-2005, SEC.7.

IC 20-23-5-14

Repeal of conflicting laws; supplemental effect of chapter

Sec. 14. (a) Laws or parts of laws in conflict with this chapter are repealed. This chapter may not be construed to repeal any part of IC 20-23-4 or any statute concerning the consolidation of two (2) or more school corporations, to which this chapter is supplementary, except to the extent that IC 20-23-4 conflicts with this section.

(b) An annexation that is undertaken under or that results by operation of any section of this chapter may require, for its effectiveness, any approval of any county committee or state commission or committee created under, or referred to in, IC 20-23-4.

As added by P.L.1-2005, SEC.7.