

SENATE BILL No. 250

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation. Provides that if a court finds that an annexation remonstrance petition is sufficient, the court shall order the annexation not to take place. Provides that the only issue addressed in a remonstrance hearing is the sufficiency of the annexation remonstrance petition.

Effective: July 1, 2014.

Buck

January 9, 2014, read first time and referred to Committee on Local Government.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 250

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

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

1 SECTION 1. IC 36-4-3-0.1, AS ADDED BY P.L.220-2011,
2 SECTION 649, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: Sec. 0.1. **(a)** The following amendments
4 to this chapter apply as follows:

5 (1) The addition of sections 8.5 and 8.6 (before its repeal) of this
6 chapter by P.L.379-1987(ss) applies to taxable years that begin
7 after January 1, 1987.

8 (2) The amendments made to section 4 of this chapter by
9 P.L.379-1987(ss) apply to taxable years that begin after January
10 1, 1987.

11 **(b) The amendments made to sections 11, 12, and 13 of this**
12 **chapter by legislation enacted during the 2014 regular session of**
13 **the general assembly apply to an annexation for which an**
14 **annexation ordinance is adopted after June 30, 2014.**

15 SECTION 2. IC 36-4-3-11, AS AMENDED BY P.L.111-2005,
16 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2014]; Sec. 11. (a) Except as provided in section 5.1(i) of this
 2 chapter and subsections ~~(d)~~ and ~~(e)~~; **(c) and (d)**, whenever territory is
 3 annexed by a municipality under this chapter, the annexation may be
 4 appealed by filing with the circuit or superior court of a county in
 5 which the annexed territory is located a written remonstrance signed
 6 by:

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

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

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

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

23 ~~(c) (b) If the court determines that the remonstrance is sufficient; it~~
 24 **The court** shall fix a time, within sixty (60) days of its determination,
 25 for a hearing on the remonstrance. Notice of the proceedings, in the
 26 form of a summons, shall be served on the annexing municipality. The
 27 municipality is the defendant in the cause and shall appear and answer.
 28 **The only issue before the court at the hearing is the sufficiency of**
 29 **the remonstrance, including whether the remonstrance has the**
 30 **necessary signatures. In determining the total number of**
 31 **landowners of the annexed territory and whether signers of the**
 32 **remonstrance are landowners, the names appearing on the tax**
 33 **duplicate for that territory constitute prima facie evidence of**
 34 **ownership. Only one (1) person having an interest in each single**
 35 **property, as evidenced by the tax duplicate, is considered a**
 36 **landowner for purposes of this section. If after the hearing the**
 37 **court is satisfied that the remonstrance is sufficient, the court shall**
 38 **order the annexation not to take place.**

39 ~~(d) (c) If an annexation is initiated by property owners under section~~
 40 ~~5.1 of this chapter and all property owners within the area to be~~
 41 ~~annexed petition the municipality to be annexed, a remonstrance to the~~
 42 ~~annexation may not be filed under this section.~~



1 ~~(e)~~ (d) This subsection applies if:

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

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

11 SECTION 3. IC 36-4-3-12, AS AMENDED BY P.L.113-2010,
12 SECTION 117, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) The circuit or superior court
14 shall:

- 15 (1) on the date fixed under section 11 of this chapter, hear and
16 determine the remonstrance without a jury; and
17 (2) without delay, enter judgment on the question of the
18 annexation according to the evidence that either party may
19 introduce.

20 (b) If the court **finds the remonstrance to be sufficient, the court**
21 ~~shall enter~~ **enters** a judgment in favor of the annexation; ~~against~~
22 **annexation.**

23 (c) **If the court finds the remonstrance to be insufficient, the**
24 **court shall enter a judgment in favor of annexation.** ~~the An~~
25 annexation may not take effect during the year preceding the year in
26 which a federal decennial census is conducted. An annexation that
27 would otherwise take effect during the year preceding a year in which
28 a federal decennial census is conducted takes effect January 1 of the
29 year in which a federal decennial census is conducted.

30 SECTION 4. IC 36-4-3-13, AS AMENDED BY P.L.119-2012,
31 SECTION 188, IS AMENDED TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) ~~Except as provided in~~
33 ~~subsections (e) and (g); at the hearing under section 12 of this chapter;~~
34 ~~the court shall order a proposed annexation to take place if An~~
35 **annexation must meet** the following requirements: ~~are met:~~

- 36 (1) The requirements of either subsection (b) or (c).
37 (2) The requirements of subsection (d).

38 (b) 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.
42 (2) One (1) of the following:



- 1 (A) The resident population density of the territory sought to
2 be annexed is at least three (3) persons per acre.
3 (B) Sixty percent (60%) of the territory is subdivided.
4 (C) The territory is zoned for commercial, business, or
5 industrial uses.
6 (c) The requirements of this subsection are met if the evidence
7 establishes the following:
8 (1) That the territory sought to be annexed is contiguous to the
9 municipality as required by section 1.5 of this chapter, except that
10 at least one-fourth (1/4), instead of one-eighth (1/8), of the
11 aggregate external boundaries of the territory sought to be
12 annexed must coincide with the boundaries of the municipality.
13 (2) That the territory sought to be annexed is needed and can be
14 used by the municipality for its development in the reasonably
15 near future.
16 (d) The requirements of this subsection are met if the evidence
17 establishes that the municipality has developed and adopted a written
18 fiscal plan and has established a definite policy, by resolution of the
19 legislative body as set forth in section 3.1 of this chapter. The fiscal
20 plan must show the following:
21 (1) The cost estimates of planned services to be furnished to the
22 territory to be annexed. The plan must present itemized estimated
23 costs for each municipal department or agency.
24 (2) The method or methods of financing the planned services. The
25 plan must explain how specific and detailed expenses will be
26 funded and must indicate the taxes, grants, and other funding to
27 be used.
28 (3) The plan for the organization and extension of services. The
29 plan must detail the specific services that will be provided and the
30 dates the services will begin.
31 (4) That planned services of a noncapital nature, including police
32 protection, fire protection, street and road maintenance, and other
33 noncapital services normally provided within the corporate
34 boundaries, will be provided to the annexed territory within one
35 (1) year after the effective date of annexation and that they will be
36 provided in a manner equivalent in standard and scope to those
37 noncapital services provided to areas within the corporate
38 boundaries regardless of similar topography, patterns of land use,
39 and population density.
40 (5) That services of a capital improvement nature, including street
41 construction, street lighting, sewer facilities, water facilities, and
42 stormwater drainage facilities, will be provided to the annexed



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

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

9 (1) Consider evidence on the conditions listed in subdivision (2):

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

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

16 (i) Police and fire protection:

17 (ii) Street and road maintenance:

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

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

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

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

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

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

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

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



1 (1) within the three (3) years preceding the date of the
2 introduction of the annexation ordinance; or

3 (2) under a contract in lieu of annexation entered into under
4 IC 36-4-3-21.

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

8 (g) This subsection applies only to cities located in a county having
9 a population of more than two hundred fifty thousand (250,000) but
10 less than two hundred seventy thousand (270,000). However, this
11 subsection does not apply if on April 1, 1993, the entire boundary of
12 the territory that is proposed to be annexed was contiguous to territory
13 that was within the boundaries of one (1) or more municipalities. At the
14 hearing under section 12 of this chapter, the court shall do the
15 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) (e) 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), but this evidence may be rebutted by other
41 evidence of population density.

42 SECTION 5. IC 36-4-3-15 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) The court's
 2 judgment under section 12 or 15.5 of this chapter must specify the
 3 annexation ordinance on which the remonstrance is based. The clerk of
 4 the court shall deliver a certified copy of the judgment to the clerk of
 5 the municipality. The clerk of the municipality shall:

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

9 (b) If a judgment under section 12 or 15.5 of this chapter is adverse
 10 to annexation, the municipality may not make further attempts to annex
 11 the territory or any part of the territory during the four (4) years after
 12 the later of:

- 13 (1) the judgment of the circuit or superior court; or
 - 14 (2) the date of the final disposition of all appeals to a higher court;
- 15 unless the annexation is petitioned for under section 5 or 5.1 of this
 16 chapter.

17 (c) This subsection applies if a municipality repeals the annexation
 18 ordinance:

- 19 (1) less than sixty-one (61) days after the publication of the
- 20 ordinance under section 7(a) of this chapter; and
- 21 (2) before the hearing commences on the remonstrance under
- 22 section ~~H(e)~~ **11** of this chapter.

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

28 (d) This subsection applies if a municipality repeals the annexation
 29 ordinance:

- 30 (1) at least sixty-one (61) days but not more than one hundred
- 31 twenty (120) days after the publication of the ordinance under
- 32 section 7(a) of this chapter; and
- 33 (2) before the hearing commences on the remonstrance under
- 34 section ~~H(e)~~ **11** of this chapter.

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

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

- 42 (1) either:



- 1 (A) at least one hundred twenty-one (121) days after
2 publication of the ordinance under section 7(a) of this chapter
3 but before the hearing commences on the remonstrance under
4 section ~~11(c)~~ **11** of this chapter; or
5 (B) after the hearing commences on the remonstrance as set
6 forth in section ~~11(c)~~ **11** of this chapter; and
7 (2) before the date of the judgment of the circuit or superior court
8 as set forth in subsection (b).
- 9 A municipality may not make further attempts to annex the territory or
10 any part of the territory during the forty-two (42) months after the date
11 the municipality repeals the annexation ordinance. This subsection
12 does not prohibit an annexation of the territory or part of the territory
13 that is petitioned for under section 5 or 5.1 of this chapter.
- 14 (f) If a judgment under section 12 or 15.5 of this chapter orders the
15 annexation to take place, the annexation is effective when the clerk of
16 the municipality complies with the filing requirement of section 22(a)
17 of this chapter.

