

SENATE BILL No. 237

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation remonstrance. Reduces the number of landowners necessary to remonstrate against an annexation.

Effective: January 1, 2004 (retroactive).

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January 4, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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SENATE BILL No. 237



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 36-4-3-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:
3 Sec. 11. (a) Except as provided in section 5.1(i) of this chapter and
4 subsection (d), whenever territory is annexed by a municipality under
5 this chapter, the annexation may be appealed by filing with the circuit
6 or superior court of a county in which the annexed territory is located
7 a written remonstrance signed by:

- 8 (1) at least ~~sixty-five~~ **fifty-one** percent (~~65%~~) (**51%**) of the
- 9 owners of land in the annexed territory; or
- 10 (2) the owners of more than seventy-five percent (75%) in
- 11 assessed valuation of the land in the annexed territory.

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

16 (b) On receipt of the remonstrance, the court shall determine
17 whether the remonstrance has the necessary signatures. In determining



1 the total number of landowners of the annexed territory and whether
2 signers of the remonstrance are landowners, the names appearing on
3 the tax duplicate for that territory constitute prima facie evidence of
4 ownership. Only one (1) person having an interest in each single
5 property, as evidenced by the tax duplicate, is considered a landowner
6 for purposes of this section.

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

12 (d) If an annexation is initiated by property owners under section 5.1
13 of this chapter and all property owners within the area to be annexed
14 petition the municipality to be annexed, a remonstrance to the
15 annexation may not be filed under this section.

16 SECTION 2. IC 36-4-3-13 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:
18 Sec. 13. (a) Except as provided in subsections (e) and (g), at the
19 hearing under section 12 of this chapter, the court shall order a
20 proposed annexation to take place if the following requirements are
21 met:

- 22 (1) The requirements of either subsection (b) or (c).
- 23 (2) The requirements of subsection (d).
- 24 (b) The requirements of this subsection are met if the evidence
25 establishes the following:
 - 26 (1) That the territory sought to be annexed is contiguous to the
27 municipality.
 - 28 (2) One (1) of the following:
 - 29 (A) The resident population density of the territory sought to
30 be annexed is at least three (3) persons per acre.
 - 31 (B) Sixty percent (60%) of the territory is subdivided.
 - 32 (C) The territory is zoned for commercial, business, or
33 industrial uses.
- 34 (c) The requirements of this subsection are met if the evidence
35 establishes the following:
 - 36 (1) That the territory sought to be annexed is contiguous to the
37 municipality as required by section 1.5 of this chapter, except that
38 at least one-fourth (1/4), instead of one-eighth (1/8), of the
39 aggregate external boundaries of the territory sought to be
40 annexed must coincide with the boundaries of the municipality.
 - 41 (2) That the territory sought to be annexed is needed and can be
42 used by the municipality for its development in the reasonably

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1 near future.

2 (d) The requirements of this subsection are met if the evidence
3 establishes that the municipality has developed and adopted a written
4 fiscal plan and has established a definite policy, by resolution of the
5 legislative body as set forth in section 3.1 of this chapter. The fiscal
6 plan must show the following:

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

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

14 (3) The plan for the organization and extension of services. The
15 plan must detail the specific services that will be provided and the
16 dates the services will begin.

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

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

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

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

38 (2) Order a proposed annexation not to take place if the court
39 finds that all of the following conditions exist in the territory
40 proposed to be annexed:

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

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- 1 (i) Police and fire protection.
- 2 (ii) Street and road maintenance.
- 3 (B) The annexation will have a significant financial impact on
- 4 the residents or owners of land.
- 5 (C) The annexation is not in the best interests of the owners of
- 6 land in the territory proposed to be annexed as set forth in
- 7 subsection (f).
- 8 (D) One (1) of the following opposes the annexation:
- 9 (i) At least ~~sixty-five~~ **fifty-one** percent (~~65%~~) (**51%**) of the
- 10 owners of land in the territory proposed to be annexed.
- 11 (ii) The owners of more than seventy-five percent (75%) in
- 12 assessed valuation of the land in the territory proposed to be
- 13 annexed.
- 14 Evidence of opposition may be expressed by any owner of land
- 15 in the territory proposed to be annexed.
- 16 (f) The municipality under subsection (e)(2)(C) bears the burden of
- 17 proving that the annexation is in the best interests of the owners of land
- 18 in the territory proposed to be annexed. In determining this issue, the
- 19 court may consider whether the municipality has extended sewer or
- 20 water services to the entire territory to be annexed:
- 21 (1) within the three (3) years preceding the date of the
- 22 introduction of the annexation ordinance; or
- 23 (2) under a contract in lieu of annexation entered into under
- 24 IC 36-4-3-21.
- 25 The court may not consider the provision of water services as a result
- 26 of an order by the Indiana utility regulatory commission to constitute
- 27 the provision of water services to the territory to be annexed.
- 28 (g) This subsection applies only to cities located in a county having
- 29 a population of more than two hundred thousand (200,000) but less
- 30 than three hundred thousand (300,000). However, this subsection does
- 31 not apply if on April 1, 1993, the entire boundary of the territory that
- 32 is proposed to be annexed was contiguous to territory that was within
- 33 the boundaries of one (1) or more municipalities. At the hearing under
- 34 section 12 of this chapter, the court shall do the following:
- 35 (1) Consider evidence on the conditions listed in subdivision (2).
- 36 (2) Order a proposed annexation not to take place if the court
- 37 finds that all of the following conditions exist in the territory
- 38 proposed to be annexed:
- 39 (A) The following services are adequately furnished by a
- 40 provider other than the municipality seeking the annexation:
- 41 (i) Police and fire protection.
- 42 (ii) Street and road maintenance.

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1 (B) The annexation will have a significant financial impact on
 2 the residents or owners of land.
 3 (C) One (1) of the following opposes the annexation:
 4 (i) A majority of the owners of land in the territory proposed
 5 to be annexed.
 6 (ii) The owners of more than seventy-five percent (75%) in
 7 assessed valuation of the land in the territory proposed to be
 8 annexed.
 9 Evidence of opposition may be expressed by any owner of land
 10 in the territory proposed to be annexed.
 11 (h) The most recent:
 12 (1) federal decennial census;
 13 (2) federal special census;
 14 (3) special tabulation; or
 15 (4) corrected population count;
 16 shall be used as evidence of resident population density for purposes
 17 of subsection (b)(2)(A), but this evidence may be rebutted by other
 18 evidence of population density.
 19 **SECTION 3. An emergency is declared for this act.**

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