

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.

HOUSE ENROLLED ACT No. 1099

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 36-4-3-4, AS AMENDED BY P.L.119-2012, SECTION 185, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The legislative body of a municipality may, by ordinance, annex any of the following:

- (1) Territory that is contiguous to the municipality.
- (2) Territory that is not contiguous to the municipality and is occupied by a municipally owned or operated **as either of the following:**
 - (A) An airport or landing field.
 - (B) A wastewater treatment facility or water treatment facility. After a municipality annexes territory under this clause, the municipality may annex additional territory to enlarge the territory for the use of the wastewater treatment facility or water treatment facility only if the county legislative body approves that use of the additional territory by ordinance.
- (3) Territory that is not contiguous to the municipality but is found by the legislative body to be occupied by:
 - (A) a municipally owned or regulated sanitary landfill, golf course, or hospital; **or**
 - (B) a police station of the municipality.

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However, if territory annexed under ~~this subsection~~ **subdivision (2) or (3)** ceases to be used as a ~~municipally owned or regulated sanitary landfill, golf course, or hospital~~ **for the purpose for which the territory was annexed** for at least one (1) year, the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation if the unit that had jurisdiction over the territory still exists. If the unit no longer exists, the territory reverts to the jurisdiction of the unit that would currently have jurisdiction over the territory if the annexation had not occurred. The clerk of the municipality shall notify the offices required to receive notice of a disannexation under section 19 of this chapter when the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation. **Territory that is annexed under subdivision (2) (including territory that is enlarged under subdivision (2)(B) for the use of the wastewater treatment facility or water treatment facility) or subdivision (3) may not be considered a part of the municipality for purposes of annexing additional territory.**

(b) This subsection applies to municipalities in a county having a population of:

- (1) more than seventy thousand fifty (70,050) but less than seventy-one thousand (71,000);
- (2) more than seventy-five thousand (75,000) but less than seventy-seven thousand (77,000);
- (3) more than seventy-one thousand (71,000) but less than seventy-five thousand (75,000);
- (4) more than forty-seven thousand (47,000) but less than forty-seven thousand five hundred (47,500);
- (5) more than thirty-eight thousand five hundred (38,500) but less than thirty-nine thousand (39,000);
- (6) more than thirty-seven thousand (37,000) but less than thirty-seven thousand one hundred twenty-five (37,125);
- (7) more than thirty-three thousand three hundred (33,300) but less than thirty-three thousand five hundred (33,500);
- (8) more than twenty-three thousand three hundred (23,300) but less than twenty-four thousand (24,000);
- (9) more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000);
- (10) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000); or
- (11) more than thirty-two thousand five hundred (32,500) but less than thirty-three thousand (33,000).

Except as provided in subsection (c), the legislative body of a



municipality to which this subsection applies may, by ordinance, annex territory that is not contiguous to the municipality, has its entire area not more than two (2) miles from the municipality's boundary, is to be used for an industrial park containing one (1) or more businesses, and is either owned by the municipality or by a property owner who consents to the annexation. However, if territory annexed under this subsection is not used as an industrial park within five (5) years after the date of passage of the annexation ordinance, or if the territory ceases to be used as an industrial park for at least one (1) year, the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation if the unit that had jurisdiction over the territory still exists. If the unit no longer exists, the territory reverts to the jurisdiction of the unit that would currently have jurisdiction over the territory if the annexation had not occurred. The clerk of the municipality shall notify the offices entitled to receive notice of a disannexation under section 19 of this chapter when the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation.

(c) A city in a county with a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000) may not annex territory as prescribed in subsection (b) until the territory is zoned by the county for industrial purposes.

(d) Notwithstanding any other law, territory that is annexed under subsection (b) or (h) is not considered a part of the municipality for the purposes of:

(1) annexing additional territory:

(A) in a county that is not described by clause (B); or

(B) in a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000), unless the boundaries of the noncontiguous territory become contiguous to the city, as allowed by Indiana law;

(2) expanding the municipality's extraterritorial jurisdictional area; or

(3) changing an assigned service area under IC 8-1-2.3-6(1).

(e) As used in this section, "airport" and "landing field" have the meanings prescribed by IC 8-22-1.

(f) As used in this section, "hospital" has the meaning prescribed by IC 16-18-2-179(b).

(g) An ordinance adopted under this section must assign the territory annexed by the ordinance to at least one (1) municipal legislative body district.

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(h) This subsection applies to a city having a population of more than twenty-nine thousand nine hundred (29,900) but less than thirty-one thousand (31,000). The city legislative body may, by ordinance, annex territory that:

- (1) is not contiguous to the city;
- (2) has its entire area not more than eight (8) miles from the city's boundary;
- (3) does not extend more than:
 - (A) one and one-half (1 1/2) miles to the west;
 - (B) three-fourths (3/4) mile to the east;
 - (C) one-half (1/2) mile to the north; or
 - (D) one-half (1/2) mile to the south;

of an interchange of an interstate highway (as designated by the federal highway authorities) and a state highway (as designated by the state highway authorities); and

- (4) is owned by the city or by a property owner that consents to the annexation.

SECTION 2. IC 36-4-3-15.5, AS AMENDED BY P.L.113-2010, SECTION 118, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) Except as provided in subsection (b):

- (1) an owner of land within one-half (1/2) mile of territory proposed to be annexed under this chapter; **or**
- (2) **a municipality located in the same county as the territory proposed to be annexed;**

may, not later than sixty (60) days after the publication of the annexation ordinance, appeal that annexation to a circuit court or superior court of a county in which the annexed territory is located. The complaint must state that the reason the annexation should not take place is that the territory sought to be annexed is not contiguous to the annexing municipality.

(b) This subsection applies to an annexation initiated by property owners under section 5.1 of this chapter in which all property owners within the area to be annexed petition the municipality to be annexed. **Either of the following may appeal that annexation to a circuit court or superior court of a county in which the annexed territory is located:**

- (1) An owner of land within one-half (1/2) mile of the territory proposed to be annexed under this chapter. ~~may;~~
- (2) **A municipality located in the same county as the territory proposed to be annexed.**

An appeal under this subsection must be filed not later than thirty



(30) days after the publication of the annexation ordinance. ~~appeal that annexation to a circuit court or superior court of a county in which the annexed territory is located.~~ The complaint must state that the reason the annexation should not take place is that the territory sought to be annexed is not contiguous to the annexing municipality.

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

(d) If the court enters a judgment in favor of the municipality, the annexation may not take effect during the year preceding a year in which a federal decennial census is conducted. An annexation 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.

SECTION 3. IC 36-4-3-15.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.7. A municipality located in the same county as the territory to be annexed may appeal an annexation under section 15.5(a)(2) or 15.5(b)(2) of this chapter if:**

- (1) the annexation was pending on January 1, 2014; and**
- (2) the municipality files the appeal not later than sixty (60) days after publication of the annexation ordinance.**

SECTION 4. IC 36-7-4-205, AS AMENDED BY P.L.172-2011, SECTION 143, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 205. (a) ADVISORY. A municipal plan commission shall adopt a comprehensive plan, as provided for under the 500 series of the advisory planning law, for the development



of the municipality. For comprehensive plans adopted after July 1, 1999, if:

- (1) the municipality provides municipal services to the contiguous unincorporated area; or
- (2) the municipal plan commission obtains the approval of the county legislative body of each affected county;

the municipal plan commission may provide in the comprehensive plan for the development of the contiguous unincorporated area, designated by the commission, that is outside the corporate boundaries of the municipality, and that, in the judgment of the commission, bears reasonable relation to the development of the municipality. For purposes of this section, participation of a municipality in a fire protection territory established under IC 36-8-19 that includes unincorporated areas contiguous to the municipality may not be treated as providing municipal services to the contiguous unincorporated areas.

(b) **ADVISORY.** Except as limited by the boundaries of unincorporated areas subject to the jurisdiction of other municipal plan commissions, an area designated under this section may include any part of the contiguous unincorporated area within two (2) miles from the corporate boundaries of the municipality. ~~If~~ However, **the following applies to the designation of an area under this section:**

(1) If the corporate boundaries of the municipality or the boundaries of that contiguous unincorporated area include any part of the public waters or shoreline of a lake (which lies wholly within Indiana), the designated area may also include:

- ~~(1)~~ **(A)** any part of those public waters and shoreline of the lake; and
- ~~(2)~~ **(B)** any land area within two thousand five hundred (2,500) feet from that shoreline.

(2) This subdivision applies to a municipality that annexes noncontiguous territory under IC 36-4-3-4(a)(2) or IC 36-4-3-4(a)(3). The boundaries of the noncontiguous territory (including territory that is enlarged under subdivision IC 36-4-3-4(a)(2)(B) for the use of the wastewater treatment facility or water treatment facility) may not be considered a part of the corporate boundaries of the municipality for purposes of designating an area under this section.

(c) **ADVISORY.** Before exercising their rights, powers, and duties of the advisory planning law with respect to an area designated under this section, a municipal plan commission must file, with the recorder of the county in which the municipality is located, a description or map



defining the limits of that area. If the commission revises the limits, it shall file, with the recorder, a revised description or map defining those revised limits.

(d) **ADVISORY.** If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also within the potential jurisdiction of another municipal plan commission, the first municipal plan commission may exercise territorial jurisdiction over that part of the area within the potential jurisdiction of both municipal plan commissions that equals the product obtained by multiplying a fraction, the numerator of which is the area within the corporate boundaries of that municipality and the denominator of which is the total area within the corporate boundaries of both municipalities times the area within the potential jurisdiction of both municipal plan commissions. Furthermore, this commission may exercise territorial jurisdiction within those boundaries, enclosing an area reasonably compact and regular in shape, that the municipal plan commission first acting designates.

(e) **ADVISORY.** If the legislative body of a county adopts a comprehensive plan and ordinance covering the unincorporated areas of the county, a municipal plan commission may not exercise jurisdiction, as provided in this section, over any part of that unincorporated area unless it is authorized by ordinance of the legislative body of the county. This ordinance may be initiated by the county legislative body or by petition duly signed and presented to the county auditor by:

- (1) not less than fifty (50) property owners residing in the area involved in the petition;
- (2) the county plan commission; or
- (3) the municipal plan commission.

Before final action on the ordinance by the county legislative body, the county plan commission must hold an advertised public hearing as required for other actions of the county plan commission under the advisory planning law. Upon the passage of the ordinance by the county legislative body and the subsequent acceptance of jurisdiction by the municipal plan commission, the municipal plan commission shall exercise the same rights, powers, and duties conferred in this section exclusively with respect to the contiguous unincorporated area. The jurisdiction of a municipal plan commission, as authorized under this subsection, may be terminated by ordinance at the discretion of the legislative body of the county, but only if the county has adopted a comprehensive plan for that area that is as comprehensive in scope and subject matter as that in effect by municipal ordinance.



(f) **ADVISORY.** Each municipal plan commission in a municipality located in a county having:

- (1) a population of less than ninety-five thousand (95,000); and
- (2) a county plan commission that has adopted, in accord with the advisory planning law, a comprehensive plan and ordinance covering the unincorporated areas of the county;

may, at any time, after filing notice with the county recorder and the county plan commission, exercise or reject territorial jurisdiction over any part of the area within two (2) miles of the corporate boundaries of that municipality and within that county, whether or not that commission has previously exercised that jurisdiction, if the municipality is providing municipal services to the area. Within sixty (60) days after receipt of that notice, the county plan commission and the county legislative body shall have the county comprehensive plan and ordinance revised to reflect the decision of the municipal plan commission exercising the option provided for in this subsection. If the municipality is not providing municipal services to the area, the municipal plan commission must obtain the approval of the county legislative body of each affected county before exercising jurisdiction.

(g) **AREA.** Wherever in the area planning law authority is conferred to establish a comprehensive plan or an ordinance for its enforcement, the authority applies everywhere:

- (1) within the county that is outside the municipalities; and
- (2) within each participating municipality.

(h) **ADVISORY—AREA.** Whenever a new town is incorporated in a county having a county plan commission or an area plan commission, that plan commission and its board of zoning appeals shall continue to exercise territorial jurisdiction within the town until the effective date of a town ordinance:

- (1) establishing an advisory plan commission under section 202(a) of this chapter; or
- (2) adopting the area planning law under section 202(b) or 204 of this chapter.

Beginning on that effective date, the planning and zoning functions of the town shall be exercised under the advisory planning law or area planning law, as the case may be.

SECTION 5. An emergency is declared for this act.



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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