

# HOUSE BILL No. 1298

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-4-3.

**Synopsis:** Annexation. Makes contiguity requirements for annexation of a public highway or rights of way of a public highway apply only to annexations initiated by a municipality. Changes contiguity requirements so that property adjacent to only one side of the public highway (instead of both sides) must be: (1) within the annexing municipality's boundaries; or (2) annexed by the same ordinance that annexes the public highway. Reduces the number of required public information meetings from six meetings to two meetings if the annexation is initiated by the landowners. Specifies that a landowner whose property is subject to a valid waiver of remonstrance may not file a remonstrance to the annexation. Establishes deadlines for: (1) the county auditor to forward remonstrance petitions to the annexing municipality; and (2) the annexing municipality to forward documentation regarding valid waivers of the right of remonstrance to the county auditor.

**Effective:** July 1, 2016.

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January 12, 2016, read first time and referred to Committee on Government and Regulatory Reform.

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Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1298

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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 36-4-3-1.5, AS AMENDED BY P.L.228-2015,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 1.5. (a) For purposes of this chapter, territory  
4 sought to be annexed may be considered "contiguous" only if at least  
5 one-eighth (1/8) of the aggregate external boundaries of the territory  
6 coincides with the boundaries of the annexing municipality. In  
7 determining if a territory is contiguous, a strip of land less than one  
8 hundred fifty (150) feet wide that connects the annexing municipality  
9 to the territory is not considered a part of the boundaries of either the  
10 municipality or the territory.

11 (b) This subsection applies to an annexation for which an  
12 annexation ordinance is adopted after June 30, 2015. **This subsection  
13 and subsection (c) apply only to an annexation under section 3 or  
14 4 of this chapter.** A public highway or the rights-of-way of a public  
15 highway are contiguous to:

- 16 (1) the municipality; or  
17 (2) property in the unincorporated area adjacent to the public



1 highway or rights-of-way of a public highway;  
 2 if the public highway or the rights-of-way of a public highway are  
 3 contiguous under subsection (a) and one (1) of the requirements in  
 4 subsection (c) is satisfied.

5 (c) A public highway or the rights-of-way of a public highway are  
 6 not contiguous unless one (1) of the following requirements is met:

7 (1) The municipality obtains the written consent of the owners of  
 8 all property:

9 (A) adjacent to the entire length of the part of the public  
 10 highway and rights-of-way of the public highway that is being  
 11 annexed; and

12 (B) not already within the corporate boundaries of the  
 13 municipality.

14 A waiver of the right of remonstrance executed by a property  
 15 owner or a successor in title of the property owner for sewer  
 16 services or water services does not constitute written consent for  
 17 purposes of this subdivision.

18 (2) All property adjacent to **at least one (1) side of** the entire  
 19 length of the part of the public highway or rights-of-way of the  
 20 public highway being annexed is already within the corporate  
 21 boundaries of the municipality.

22 (3) All property adjacent to **at least one (1) side of** the entire  
 23 length of the part of the public highway or rights-of-way of the  
 24 public highway being annexed is part of the same annexation  
 25 ordinance in which the public highway or rights-of-way of a  
 26 public highway are being annexed.

27 A municipality may not annex a public highway or the rights-of-way of  
 28 a public highway or annex territory adjacent to the public highway or  
 29 rights-of-way of a public highway unless the requirements of this  
 30 section are met.

31 SECTION 2. IC 36-4-3-1.7, AS ADDED BY P.L.228-2015,  
 32 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 JULY 1, 2016]: Sec. 1.7. (a) This section applies only to an annexation  
 34 ordinance adopted after June 30, 2015. This section does not apply to  
 35 an annexation under section 5.1 of this chapter.

36 (b) Not earlier than six (6) months before a municipality introduces  
 37 an annexation ordinance, the municipality shall conduct an outreach  
 38 program to inform citizens regarding the proposed annexation. **For an**  
 39 **annexation under sections 3 or 4 of this chapter**, the outreach  
 40 program must conduct at least six (6) public information meetings  
 41 regarding the proposed annexation. **For an annexation under section**  
 42 **5 of this chapter, the outreach program must conduct at least two**



1       **(2) public information meetings regarding the proposed**  
 2       **annexation.** The public information meetings must provide citizens  
 3       with the following information:

4           (1) Maps showing the proposed boundaries of the annexation  
 5           territory.

6           (2) Proposed plans for extension of capital and noncapital  
 7           services in the annexation territory, including proposed dates of  
 8           extension.

9           (3) Expected fiscal impact on taxpayers in the annexation  
 10          territory, including any increase in taxes and fees.

11       (c) The municipality shall provide notice of the dates, times, and  
 12       locations of the outreach program meetings. The municipality shall  
 13       publish the notice of the meetings under IC 5-3-1, including the date,  
 14       time, and location of the meetings, except that notice must be published  
 15       not later than thirty (30) days before the date of each meeting. The  
 16       municipality shall also send notice to each owner of land within the  
 17       annexation territory not later than thirty (30) days before the date of the  
 18       first meeting of the outreach program. The notice to landowners shall  
 19       be sent by first class mail, certified mail with return receipt requested,  
 20       or any other means of delivery that includes a return receipt and must  
 21       include the following information:

22           (1) The notice must inform the landowner that the municipality is  
 23           proposing to annex territory that includes the landowner's  
 24           property.

25           (2) The municipality is conducting an outreach program for the  
 26           purpose of providing information to landowners and the public  
 27           regarding the proposed annexation.

28           (3) The date, time, and location of the meetings to be conducted  
 29           under the outreach program.

30       (d) The notice shall be sent to the address of the landowner as listed  
 31       on the tax duplicate. If the municipality provides evidence that the  
 32       notice was sent: **by:**

33           (1) **by** certified mail, with return receipt requested or any other  
 34           means of delivery that includes a return receipt; and

35           (2) in accordance with this section;

36       it is not necessary that the landowner accept receipt of the notice. If a  
 37       remonstrance is filed under section 11 of this chapter, the municipality  
 38       shall file with the court proof that notices were sent to landowners  
 39       under this section and proof of publication.

40       (e) The notice required under this section is in addition to any notice  
 41       required under sections 2.1 and 2.2 of this chapter.

42       SECTION 3. IC 36-4-3-11, AS AMENDED BY P.L.228-2015,



1 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2016]: Sec. 11. (a) This subsection applies only to an  
 3 annexation for which an annexation ordinance was adopted before July  
 4 1, 2015. Except as provided in section 5.1(i) of this chapter and  
 5 subsections (e) and (f), whenever territory is annexed by a municipality  
 6 under this chapter, the annexation may be appealed by filing with the  
 7 circuit or superior court of a county in which the annexed territory is  
 8 located a written remonstrance signed by:

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

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

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

17 (b) This subsection applies only to an annexation for which an  
 18 annexation ordinance was adopted before July 1, 2015. On receipt of  
 19 the remonstrance, the court shall determine whether the remonstrance  
 20 has the necessary signatures. In determining the total number of  
 21 landowners of the annexed territory and whether signers of the  
 22 remonstrance are landowners, the names appearing on the tax duplicate  
 23 for that territory constitute prima facie evidence of ownership. Only  
 24 one (1) person having an interest in each single property, as evidenced  
 25 by the tax duplicate, is considered a landowner for purposes of this  
 26 section.

27 (c) This subsection applies only to an annexation for which an  
 28 annexation ordinance was adopted before July 1, 2015. If the court  
 29 determines that the remonstrance is sufficient, the court shall fix a time,  
 30 within sixty (60) days after the court's determination, for a hearing on  
 31 the remonstrance. Notice of the proceedings, in the form of a summons,  
 32 shall be served on the annexing municipality. The municipality is the  
 33 defendant in the cause and shall appear and answer.

34 (d) This subsection applies only to an annexation for which an  
 35 annexation ordinance was adopted after June 30, 2015. If the  
 36 requirements of section 11.3(c) or (after December 31, 2016) section  
 37 11.4 of this chapter are met, the annexation may be appealed by filing  
 38 with the circuit or superior court of a county in which the annexed  
 39 territory is located:

40 (1) the signed remonstrances filed with the county auditor;

41 (2) the county auditor's certification under section ~~11.2(g)~~ **11.2(i)**  
 42 of this chapter;



- 1 (3) the annexation ordinance; and  
 2 (4) a statement of the reason why the annexation should not take  
 3 place.

4 The remonstrance must be filed with the court not later than fifteen  
 5 (15) business days after the date the county auditor files the certificate  
 6 with the legislative body under section ~~11.2(g)~~ **11.2(i)** of this chapter.  
 7 After a remonstrance petition is filed with the court, any person who  
 8 signed a remonstrance may file with the court a verified, written  
 9 revocation of the person's opposition to the annexation.

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

14 (f) This subsection applies only to an annexation for which an  
 15 annexation ordinance is adopted before July 1, 2015. This subsection  
 16 applies if:

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

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

26 SECTION 4. IC 36-4-3-11.2, AS ADDED BY P.L.228-2015,  
 27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2016]: Sec. 11.2. (a) This section applies only to an  
 29 annexation ordinance adopted after June 30, 2015.

30 (b) A remonstrance petition may be filed by an owner of real  
 31 property that:

- 32 (1) is within the area to be annexed; ~~and~~  
 33 (2) was not exempt from property taxes under IC 6-1.1-10 or any  
 34 other state law for the immediately preceding year; **and**  
 35 **(3) is not subject to a valid waiver of remonstrance.**

36 (c) A remonstrance petition must comply with the following in order  
 37 to be effective:

- 38 (1) Each signature on a remonstrance petition must be dated, and  
 39 the date of the signature may not be earlier than the date on which  
 40 the remonstrance forms may be issued by the county auditor  
 41 under subsection (e)(7).  
 42 (2) Each person who signs a remonstrance petition must indicate



- 1 the address of the real property owned by the person in the area  
 2 to be annexed.
- 3 (3) A remonstrance petition must be verified in compliance with  
 4 subsection (e).
- 5 (d) The state board of accounts shall design the remonstrance forms  
 6 to be used solely in the remonstrance process described in this section.  
 7 The state board of accounts shall provide the forms to the county  
 8 auditor in an electronic format that permits the county auditor to copy  
 9 or reproduce the forms using:
- 10 (1) the county auditor's own equipment; or  
 11 (2) a commercial copying service.
- 12 The annexing municipality shall reimburse the county auditor for the  
 13 cost of reproducing the remonstrance forms.
- 14 (e) The county auditor's office shall issue remonstrance forms  
 15 accompanied by instructions detailing all of the following  
 16 requirements:
- 17 (1) The closing date for the remonstrance period.  
 18 (2) Only one (1) person having an interest in each single property  
 19 as evidenced by the tax duplicate is considered an owner of  
 20 property and may sign a remonstrance petition. A person is  
 21 entitled to sign a petition only one (1) time in a remonstrance  
 22 process, regardless of whether the person owns more than one (1)  
 23 parcel of real property.  
 24 (3) An individual may not be:  
 25 (A) compensated for; or  
 26 (B) reimbursed for expenses incurred in;  
 27 circulating a remonstrance petition and obtaining signatures.  
 28 (4) The remonstrance petition may be executed in several  
 29 counterparts, the total of which constitutes the remonstrance  
 30 petition. An affidavit of the person circulating a counterpart must  
 31 be attached to the counterpart. The affidavit must state that each  
 32 signature appearing on the counterpart was affixed in the person's  
 33 presence and is the true and lawful signature of the signer. The  
 34 affidavit must be notarized.  
 35 (5) A remonstrance petition that is not executed in counterparts  
 36 must be verified by the person signing the petition in the manner  
 37 prescribed by the state board of accounts and notarized.  
 38 (6) A remonstrance petition may be delivered to the county  
 39 auditor's office in person or by:  
 40 (A) certified mail, return receipt requested; or  
 41 (B) any other means of delivery that includes a return receipt.  
 42 The remonstrance petition must be postmarked not later than the



1 closing date for the remonstrance period.

2 (7) The county auditor's office may not issue a remonstrance  
3 petition earlier than the day that notice is published under section  
4 11.1 of this chapter. The county auditor's office shall certify the  
5 date of issuance on each remonstrance petition. Any person may  
6 pick up additional copies of the remonstrance petition to  
7 distribute to other persons.

8 (8) A person who signs a remonstrance petition may withdraw the  
9 person's signature from a remonstrance petition before a  
10 remonstrance petition is filed with the county auditor by filing a  
11 verified request to remove the person's name from the  
12 remonstrance petition. Names may not be added to a  
13 remonstrance petition after the remonstrance petition is filed with  
14 the county auditor.

15 (f) The county auditor shall prepare and update weekly a list of the  
16 persons who have signed a remonstrance petition. The list must include  
17 a statement that the list includes all persons who have signed a  
18 remonstrance petition as of a particular date, and does not represent a  
19 list of persons certified by the county auditor as actual landowners in  
20 the annexation territory using the auditor's current tax records under  
21 subsection ~~(g)~~: (i). The county auditor shall post the list in the office of  
22 the county auditor. The list is a public record under IC 5-14-3.

23 **(g) Not later than three (3) business days after receiving the**  
24 **remonstrance petition, the county auditor shall submit a copy of**  
25 **the remonstrance petition to the legislative body of the annexing**  
26 **municipality.**

27 **(h) Not later than fifteen (15) business days after the legislative**  
28 **body of the annexing municipality receives a copy of the**  
29 **remonstrance petition from the county auditor, the annexing**  
30 **municipality shall provide documentation to the county auditor**  
31 **regarding any valid waiver of the right of remonstrance that exists**  
32 **on the property within the annexation territory.**

33 ~~(g)~~ (i) Not later than fifteen (15) business days after receiving a  
34 remonstrance petition, **the documentation regarding any valid**  
35 **waiver of the right of remonstrance from the annexing**  
36 **municipality under subsection (h), if any,** the county auditor's office  
37 shall make a final determination of the number of owners of real  
38 property within the territory to be annexed:

39 (1) who signed the remonstrance; **and**

40 (2) **whose property is not subject to a valid waiver of the right**  
41 **of remonstrance;**

42 using the auditor's current tax records as provided in section 2.2 of this





1 chapter. The county auditor shall file a certificate with the legislative  
2 body of the annexing municipality certifying the number of property  
3 owners not later than five (5) business days after making the  
4 determination.

