

# HOUSE BILL No. 1341

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Annexation. Provides the following with regard to an annexation for which an annexation ordinance is adopted after April 1, 2014: (1) With certain exceptions, prohibits a municipality from amending the annexation ordinance or fiscal plan after the date the annexation ordinance is introduced. (2) Provides that if a court finds that an annexation remonstrance petition is sufficient, the court shall order the annexation not to take place. (3) Provides that the only issue addressed in a remonstrance hearing is the sufficiency of the annexation remonstrance petition. (4) Requires the municipality in the fiscal plan to provide information about capital improvements and financing and the estimated effect of the annexation on taxpayers. (5) Requires a municipality to submit an annexation fiscal plan to the department of local government finance (DLGF) and to post the annexation fiscal plan on the municipality's web site before the public hearing on the annexation. (6) Requires the DLGF to review and comment on the annexation fiscal plan, and post the comments on the DLGF's web site before the date of the public hearing. (7) Requires the annexing municipality to pay the DLGF's expenses in conducting the review and preparing the comments.

**Effective:** Upon passage.

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January 15, 2014, read first time and referred to Committee on Local Government.

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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 BILL No. 1341

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 UPON PASSAGE]: Sec. 0.1. **(a)** The following  
4 amendments 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 2.2, 2.3, 11, 12, 13, 13.1,**  
12 **and 15 of this chapter by legislation enacted during the 2014**  
13 **regular session of the general assembly apply to an annexation for**  
14 **which an annexation ordinance is adopted after April 1, 2014.**

15 SECTION 2. IC 36-4-3-2.2, AS AMENDED BY P.L.69-2010,  
16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 UPON PASSAGE]: Sec. 2.2. (a) This section does not apply to an  
 2 annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this  
 3 chapter or an annexation described in section 5.1 of this chapter.

4 (b) Before a municipality may annex territory, the municipality shall  
 5 provide written notice of the hearing required under section 2.1 of this  
 6 chapter. Except as provided in subsection (f), the notice must be sent  
 7 by certified mail at least sixty (60) days before the date of the hearing  
 8 to each owner of real property, as shown on the county auditor's current  
 9 tax list, whose real property is located within the territory proposed to  
 10 be annexed.

11 (c) For purposes of an annexation of territory described in section  
 12 2.5 of this chapter, if the hearing required under section 2.1 of this  
 13 chapter is conducted after June 30, 2010, the notice required by this  
 14 section must also be sent to each owner of real property, as shown on  
 15 the county auditor's current tax list, whose real property is adjacent to  
 16 contiguous areas of rights-of-way of the public highway that are only  
 17 included in the annexation of territory by operation of ~~IC 36-4-3-2.5~~  
 18 **section 2.5 of this chapter** on the side of the public highway that is not  
 19 part of the annexed territory.

20 (d) The notice required by this section must include the following:

21 (1) A legal description of the real property proposed to be  
 22 annexed.

23 (2) The date, time, location, and subject of the hearing.

24 (3) A map showing the current municipal boundaries and the  
 25 proposed municipal boundaries.

26 (4) Current zoning classifications for the area proposed to be  
 27 annexed and any proposed zoning changes for the area proposed  
 28 to be annexed.

29 (5) A detailed summary of the fiscal plan described in section 13  
 30 of this chapter.

31 (6) The location where the public may **physically** inspect and  
 32 copy the fiscal plan **and the electronic address of the Internet**  
 33 **web site where the municipality's fiscal plan is posted under**  
 34 **section 13.1 of this chapter.**

35 (7) A statement that the municipality will provide a copy of the  
 36 fiscal plan after the fiscal plan is adopted immediately to any  
 37 landowner in the annexed territory who requests a copy.

38 (8) The name and telephone number of a representative of the  
 39 municipality who may be contacted for further information.

40 (e) If the municipality complies with this section, the notice is not  
 41 invalidated if the owner does not receive the notice.

42 (f) This subsection applies to an annexation under section 3 or 4 of



1 this chapter in which all property owners within the area to be annexed  
 2 provide written consent to the annexation. The written notice described  
 3 in this section must be sent by certified mail not later than twenty (20)  
 4 days before the date of the hearing to each owner of real property, as  
 5 shown on the county auditor's current tax list, whose real property is  
 6 located within the territory proposed to be annexed.

7 SECTION 3. IC 36-4-3-2.3 IS ADDED TO THE INDIANA CODE  
 8 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE  
 9 UPON PASSAGE]: **Sec. 2.3. (a) This section does not apply to an**  
 10 **annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this**  
 11 **chapter or an annexation described in section 5 or 5.1 of this**  
 12 **chapter.**

13 **(b) Except as provided in subsection (c), a municipality may not**  
 14 **amend the annexation ordinance or fiscal plan after the date that**  
 15 **the annexation ordinance is introduced.**

16 **(c) This section does not prohibit the following:**

17 **(1) Amendment of the annexation ordinance and fiscal plan as**  
 18 **the result of a settlement agreement entered into between the**  
 19 **parties.**

20 **(2) Amendment of the annexation ordinance or fiscal plan to**  
 21 **correct a clerical or typographical error.**

22 SECTION 4. IC 36-4-3-11, AS AMENDED BY P.L.111-2005,  
 23 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 UPON PASSAGE]: Sec. 11. (a) Except as provided in section 5.1(i) of  
 25 this chapter and subsections ~~(d) and (e)~~, **(c) and (d)**, whenever territory  
 26 is annexed by a municipality under this chapter, the annexation may be  
 27 appealed by filing with the circuit or superior court of a county in  
 28 which the annexed territory is located a written remonstrance signed  
 29 by:

30 (1) at least ~~sixty-five~~ **fifty-one** percent ~~(65%)~~ **(51%)** of the  
 31 owners of land in the annexed territory; or

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

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

38 ~~(b) On receipt of the remonstrance, the court shall determine~~  
 39 ~~whether the remonstrance has the necessary signatures. In determining~~  
 40 ~~the total number of landowners of the annexed territory and whether~~  
 41 ~~signers of the remonstrance are landowners, the names appearing on~~  
 42 ~~the tax duplicate for that territory constitute prima facie evidence of~~



1 ownership. Only one (1) person having an interest in each single  
 2 property, as evidenced by the tax duplicate, is considered a landowner  
 3 for purposes of this section.

4 (c) (b) If the court determines that the remonstrance is sufficient, it  
 5 **The court** shall fix a time, within sixty (60) days of its determination,  
 6 for a hearing on the remonstrance. Notice of the proceedings, in the  
 7 form of a summons, shall be served on the annexing municipality. The  
 8 municipality is the defendant in the cause and shall appear and answer.  
 9 **The only issue before the court at the hearing is the sufficiency of**  
 10 **the remonstrance, including whether the remonstrance has the**  
 11 **necessary signatures. In determining the total number of**  
 12 **landowners of the annexed territory and whether signers of the**  
 13 **remonstrance are landowners, the names appearing on the tax**  
 14 **duplicate for that territory constitute prima facie evidence of**  
 15 **ownership. Only one (1) person having an interest in each single**  
 16 **property, as evidenced by the tax duplicate, is considered a**  
 17 **landowner for purposes of this section. If after the hearing the**  
 18 **court is satisfied that the remonstrance is sufficient, the court shall**  
 19 **order the annexation not to take place.**

20 (d) (c) If an annexation is initiated by property owners under section  
 21 5.1 of this chapter and all property owners within the area to be  
 22 annexed petition the municipality to be annexed, a remonstrance to the  
 23 annexation may not be filed under this section.

24 (e) (d) This subsection applies if:

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

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

34 SECTION 5. IC 36-4-3-12, AS AMENDED BY P.L.113-2010,  
 35 SECTION 117, IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The circuit or superior  
 37 court shall:

- 38 (1) on the date fixed under section 11 of this chapter, hear and
- 39 determine the remonstrance without a jury; and
- 40 (2) without delay, enter judgment on the question of the
- 41 annexation according to the evidence that either party may
- 42 introduce.



1 (b) If the court **finds the remonstrance to be sufficient, the court**  
 2 **shall enter** ~~enters a judgment in favor of the annexation, against~~  
 3 **annexation.**

4 (c) **If the court finds the remonstrance to be insufficient, the**  
 5 **court shall enter a judgment in favor of annexation.** ~~the An~~  
 6 annexation may not take effect during the year preceding the year in  
 7 which a federal decennial census is conducted. An annexation that  
 8 would otherwise take effect during the year preceding a year in which  
 9 a federal decennial census is conducted takes effect January 1 of the  
 10 year in which a federal decennial census is conducted.

11 SECTION 6. IC 36-4-3-13, AS AMENDED BY P.L.119-2012,  
 12 SECTION 188, IS AMENDED TO READ AS FOLLOWS  
 13 [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) ~~Except as provided in~~  
 14 ~~subsections (e) and (g); at the hearing under section 12 of this chapter;~~  
 15 ~~the court shall order a proposed annexation to take place if An~~  
 16 **annexation must meet** the following requirements: ~~are met:~~

- 17 (1) The requirements of either subsection (b) or (c).  
 18 (2) The requirements of subsection (d).

19 (b) The requirements of this subsection are met if the evidence  
 20 establishes the following:

- 21 (1) That the territory sought to be annexed is contiguous to the  
 22 municipality.  
 23 (2) One (1) of the following:

- 24 (A) The resident population density of the territory sought to  
 25 be annexed is at least three (3) persons per acre.  
 26 (B) Sixty percent (60%) of the territory is subdivided.  
 27 (C) The territory is zoned for commercial, business, or  
 28 industrial uses.

29 (c) The requirements of this subsection are met if the evidence  
 30 establishes the following:

- 31 (1) That the territory sought to be annexed is contiguous to the  
 32 municipality as required by section 1.5 of this chapter, except that  
 33 at least one-fourth (1/4), instead of one-eighth (1/8), of the  
 34 aggregate external boundaries of the territory sought to be  
 35 annexed must coincide with the boundaries of the municipality.  
 36 (2) That the territory sought to be annexed is needed and can be  
 37 used by the municipality for its development in the reasonably  
 38 near future.

39 (d) The requirements of this subsection are met if the evidence  
 40 establishes that the municipality has developed and adopted a written  
 41 fiscal plan and has established a definite policy, by resolution of the  
 42 legislative body as set forth in section 3.1 of this chapter. The fiscal



1 plan must show the following:

2 (1) **A description of the planned services to be provided in the**  
 3 **annexed territory and the service areas in which the services**  
 4 **will be offered.** The cost estimates of planned services to be  
 5 furnished to the territory to be annexed. The plan must present  
 6 itemized estimated costs for each municipal department or  
 7 agency.

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

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

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

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

35 (6) **The estimated effect of the proposed annexation on**  
 36 **taxpayers in the municipality and the annexation territory,**  
 37 **including the expected tax rates, tax levies, expenditure levels,**  
 38 **service levels, and annual debt service payments in those**  
 39 **areas. A description of the taxing areas in which taxes to**  
 40 **retire obligations of the annexation territory will be imposed.**

41 (e) ~~At the hearing under section 12 of this chapter, the court shall do~~  
 42 ~~the following:~~



1 (1) Consider evidence on the conditions listed in subdivision (2):  
 2 (2) Order a proposed annexation not to take place if the court  
 3 finds that all of the conditions set forth in clauses (A) through (D)  
 4 and, if applicable, clause (E) exist in the territory proposed to be  
 5 annexed:

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

8 (i) Police and fire protection:

9 (ii) Street and road maintenance:

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

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

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

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

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

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

23 (E) This clause applies only to an annexation in which eighty  
 24 percent (80%) of the boundary of the territory proposed to be  
 25 annexed is contiguous to the municipality and the territory  
 26 consists of not more than one hundred (100) parcels. At least  
 27 seventy-five percent (75%) of the owners of land in the  
 28 territory proposed to be annexed oppose the annexation as  
 29 determined under section 11(b) of this chapter:

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

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

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

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

42 (g) This subsection applies only to cities located in a county having





1 a population of more than two hundred fifty thousand (250,000) but  
 2 less than two hundred seventy thousand (270,000). However, this  
 3 subsection does not apply if on April 1, 1993, the entire boundary of  
 4 the territory that is proposed to be annexed was contiguous to territory  
 5 that was within the boundaries of one (1) or more municipalities. At the  
 6 hearing under section 12 of this chapter, the court shall do the  
 7 following:

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

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

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

14 (i) Police and fire protection:

15 (ii) Street and road maintenance:

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

18 (C) One (1) of the following opposes the annexation:

19 (i) A majority of the owners of land in the territory proposed  
 20 to be annexed:

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

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

26 (h) (e) The most recent:

27 (1) federal decennial census;

28 (2) federal special census;

29 (3) special tabulation; or

30 (4) corrected population count;

31 shall be used as evidence of resident population density for purposes  
 32 of subsection (b)(2)(A), but this evidence may be rebutted by other  
 33 evidence of population density.

34 SECTION 7. IC 36-4-3-13.1 IS ADDED TO THE INDIANA CODE  
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 36 UPON PASSAGE]: **Sec. 13.1. (a) The municipality shall post a copy  
 37 of the fiscal plan on an Internet web site maintained or authorized  
 38 by the municipality not less than sixty (60) days before the date of  
 39 the hearing under section 2.1 of this chapter. If the fiscal plan is  
 40 amended under section 2.3 of this chapter, the municipality shall  
 41 post the amended fiscal plan on the Internet web site maintained  
 42 or authorized by the municipality within two (2) days after the plan**



1 is amended.

2 (b) A municipality preparing a fiscal plan after December 31,  
3 2013, must submit the fiscal plan to the department of local  
4 government finance at least six (6) months before the date of the  
5 public hearing under section 2.1 of this chapter. A municipality  
6 may not adopt a fiscal plan unless the municipality has submitted  
7 the fiscal plan to the department of local government finance as  
8 required by this section. The department of local government  
9 finance must do the following within a reasonable time, but not  
10 later than sixty (60) days before the date of the public hearing  
11 under section 2.1 of this chapter:

12 (1) Review the fiscal plan.

13 (2) Make any comments concerning the fiscal plan that the  
14 department considers appropriate.

15 (3) Provide the department's comments under subdivision (2)  
16 to the municipality.

17 (4) Post the department's comments under subdivision (2) on  
18 the department's Internet web site.

19 The department of local government finance shall certify to the  
20 municipality the total amount of expense incurred by the  
21 department in carrying out the department's review and preparing  
22 the department's comments. Upon receipt of the department's  
23 certification of the expenses, the municipality shall immediately  
24 pay to the treasurer of state the amount charged. Money paid by  
25 a reorganizing political subdivision under this subsection shall be  
26 deposited in the state general fund.

27 SECTION 8. IC 36-4-3-15 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) The court's  
29 judgment under section 12 or 15.5 of this chapter must specify the  
30 annexation ordinance on which the remonstrance is based. The clerk of  
31 the court shall deliver a certified copy of the judgment to the clerk of  
32 the municipality. The clerk of the municipality shall:

33 (1) record the judgment in the clerk's ordinance record; and

34 (2) make a cross-reference to the record of the judgment on the  
35 margin of the record of the annexation ordinance.

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

40 (1) the judgment of the circuit or superior court; or

41 (2) the date of the final disposition of all appeals to a higher court;

42 unless the annexation is petitioned for under section 5 or 5.1 of this



- 1 chapter.
- 2 (c) This subsection applies if a municipality repeals the annexation  
3 ordinance:
- 4 (1) less than sixty-one (61) days after the publication of the  
5 ordinance under section 7(a) of this chapter; and  
6 (2) before the hearing commences on the remonstrance under  
7 section ~~H(e)~~ **11** of this chapter.
- 8 A municipality may not make further attempts to annex the territory or  
9 any part of the territory during the twelve (12) months after the date the  
10 municipality repeals the annexation ordinance. This subsection does  
11 not prohibit an annexation of the territory or part of the territory that is  
12 petitioned for under section 5 or 5.1 of this chapter.
- 13 (d) This subsection applies if a municipality repeals the annexation  
14 ordinance:
- 15 (1) at least sixty-one (61) days but not more than one hundred  
16 twenty (120) days after the publication of the ordinance under  
17 section 7(a) of this chapter; and  
18 (2) before the hearing commences on the remonstrance under  
19 section ~~H(e)~~ **11** of this chapter.
- 20 A municipality may not make further attempts to annex the territory or  
21 any part of the territory during the twenty-four (24) months after the  
22 date the municipality repeals the annexation ordinance. This subsection  
23 does not prohibit an annexation of the territory or part of the territory  
24 that is petitioned for under section 5 or 5.1 of this chapter.
- 25 (e) This subsection applies if a municipality repeals the annexation  
26 ordinance:
- 27 (1) either:
- 28 (A) at least one hundred twenty-one (121) days after  
29 publication of the ordinance under section 7(a) of this chapter  
30 but before the hearing commences on the remonstrance under  
31 section ~~H(e)~~ **11** of this chapter; or  
32 (B) after the hearing commences on the remonstrance as set  
33 forth in section ~~H(e)~~ **11** of this chapter; and  
34 (2) before the date of the judgment of the circuit or superior court  
35 as set forth in subsection (b).
- 36 A municipality may not make further attempts to annex the territory or  
37 any part of the territory during the forty-two (42) months after the date  
38 the municipality repeals the annexation ordinance. This subsection  
39 does not prohibit an annexation of the territory or part of the territory  
40 that is petitioned for under section 5 or 5.1 of this chapter.
- 41 (f) If a judgment under section 12 or 15.5 of this chapter orders the  
42 annexation to take place, the annexation is effective when the clerk of



1 the municipality complies with the filing requirement of section 22(a)  
2 of this chapter.

3 SECTION 9. **An emergency is declared for this act.**

