

HOUSE BILL No. 1561

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation. Provides the following for annexations for which an annexation ordinance is adopted after June 30, 2015: (1) Provides that if an annexation territory receives any services from the annexing municipality, the landowners do not have a right to remonstrate against the annexation. (2) Provides that if the annexation territory does not receive any services from the annexing municipality, at least 60% of landowners (instead of 65%) or the owners of 75% of the assessed value of the property in the territory are required to sign a sufficient remonstrance petition. (3) Allows a municipality to obtain a waiver of a landowner's right to remonstrate and any right of a successor in title to remonstrate, as a condition of providing any service to the landowner. (4) Requires a landowner to have the landowner's property rezoned as agricultural before an annexation ordinance is adopted, in order to obtain the agricultural property tax exemption. Requires the landowner to pay any rezoning costs, except that the annexing municipality pays the cost of resurveying the property, if resurveying is necessary. (5) Provides that the annexation fiscal plan is similar to plans required for local government mergers and reorganizations. (6) Prohibits the fiscal plan from being amended after a remonstrance petition is filed, unless the amendment is consented to by remonstrators. (7) Requires the department of local government finance to issue comments on the fiscal plan. (8) Requires a municipality to conduct an outreach program to inform citizens about a proposed annexation. (9) Allows remonstrators who prevail at a remonstrance hearing to recover expenses incurred in filing the remonstrance, including reasonable attorney's fees, in an amount not to
(Continued next page)

Effective: July 1, 2015.

Mahan, Truitt

January 20, 2015, read first time and referred to Committee on Government and Regulatory Reform.



Digest Continued

exceed \$20,000. Provides common names for the different annexation procedures. Removes an annexation procedure applicable only to a municipality in St. Joseph County.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1561



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 36-4-3-1.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]: **Sec. 1.2. The annexation procedures may be referred to as**
4 **follows:**

- 5 (1) **An annexation under section 5 of this chapter may be**
- 6 **referred to as a landowner initiated annexation.**
- 7 (2) **An annexation under section 5.1 of this chapter may be**
- 8 **referred to as a unanimous landowner initiated annexation.**
- 9 (3) **An annexation to which section 5 or 5.1 of this chapter**
- 10 **does not apply may be referred to as a municipality initiated**
- 11 **annexation.**

12 SECTION 2. IC 36-4-3-1.7 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2015]: **Sec. 1.7. (a) This section applies only to an annexation**



1 ordinance adopted after June 30, 2015. This section does not apply
2 to an annexation under section 5.1 of this chapter.

3 (b) Not earlier than six (6) months before a municipality
4 introduces an annexation ordinance, the municipality shall conduct
5 an outreach program to inform citizens regarding the proposed
6 annexation. The outreach program must conduct at least six (6)
7 public information meetings regarding the proposed annexation.
8 The public information meetings must provide citizens with the
9 following information:

10 (1) Maps showing the proposed boundaries of the annexation
11 territory.

12 (2) Proposed plans for extension of capital and noncapital
13 services in the annexation territory, including proposed dates
14 of extension.

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

17 (4) Information regarding rezoning of landowners' property
18 as agricultural for purposes of receiving the tax exemption as
19 set forth in section 4.1 of this chapter.

20 SECTION 3. IC 36-4-3-4.1, AS AMENDED BY P.L.243-2013,
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2015]: Sec. 4.1. (a) A municipality may annex territory under
23 this section only if the territory is contiguous to the municipality.

24 (b) Territory annexed under this section is exempt from all property
25 tax liability under IC 6-1.1 for municipal purposes for all portions of
26 the annexed territory that are classified for zoning purposes as
27 agricultural and remain exempt from the property tax liability while the
28 property's zoning classification remains agricultural. **After June 30,**
29 **2015, if a landowner's property is not zoned as agricultural, the**
30 **landowner must have the property rezoned as agricultural before**
31 **an annexation ordinance is adopted in order to receive an**
32 **exemption from property tax liability under IC 6-1.1. The**
33 **landowner is responsible for any costs incurred in rezoning the**
34 **property, except that the annexing municipality shall pay the cost**
35 **of resurveying the landowner's property, if resurveying is**
36 **necessary. The annexing municipality shall inform the public of the**
37 **necessity of having the property rezoned agricultural in order to**
38 **obtain the exemption at the public information meetings conducted**
39 **by the municipality as part of the outreach program under section**
40 **1.7 of this chapter. The annexing municipality shall provide the**
41 **public with information on how to begin the rezoning process,**
42 **including the contact information for the appropriate plan**



1 **commission.**

2 (c) There may not be a change in the zoning classification of
3 territory annexed under this section without the consent of the owner
4 of the annexed territory.

5 (d) Territory annexed under this section may not be considered a
6 part of the municipality for purposes of annexing additional territory
7 under section 3 or 4 of this chapter. However, territory annexed under
8 this section shall be considered a part of the municipality for purposes
9 of annexing additional territory under section 5 or 5.1 of this chapter.

10 SECTION 4. IC 36-4-3-11, AS AMENDED BY P.L.111-2005,
11 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2015]: Sec. 11. (a) Except as provided in section 5.1(i) of this
13 chapter and subsections (d) ~~and (e)~~, **through (f), with regard to an**
14 **annexation for which an annexation ordinance is adopted after**
15 **June 30, 2015**, whenever territory **that does not receive any capital**
16 **or noncapital services from the municipality** is annexed by a
17 municipality under this chapter, the annexation may be appealed by
18 filing with the circuit or superior court of a county in which the
19 annexed territory is located a written remonstrance signed by:

- 20 (1) at least ~~sixty-five~~ **sixty** percent (~~65%~~) (**60%**) of the owners of
21 land in the annexed territory; or
22 (2) the owners of more than seventy-five percent (75%) in
23 assessed valuation of the land in the annexed territory.

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

28 (b) On receipt of the remonstrance, the court shall determine
29 whether the remonstrance has the necessary signatures. In determining
30 the total number of landowners of the annexed territory and whether
31 signers of the remonstrance are landowners, the names appearing on
32 the tax duplicate for that territory constitute prima facie evidence of
33 ownership. Only one (1) person having an interest in each single
34 property, as evidenced by the tax duplicate, is considered a landowner
35 for purposes of this section.

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

41 **(d) This subsection applies to an annexation for which an**
42 **annexation ordinance is adopted after June 30, 2015. Whenever**



1 territory that receives capital or noncapital services from the
 2 municipality is annexed, the landowners in the annexation territory
 3 may not appeal the annexation under subsection (a) or (f).
 4 However, a landowner has the right to appeal the annexation
 5 under section 15.5 of this chapter.

6 ~~(d)~~ (e) If an annexation is initiated by property owners under section
 7 5.1 of this chapter and all property owners within the area to be
 8 annexed petition the municipality to be annexed, a remonstrance to the
 9 annexation may not be filed under this section.

10 ~~(e)~~ (f) This subsection applies if **the following requirements are**
 11 **met:**

12 (1) The territory to be annexed consists of not more than one
 13 hundred (100) parcels. ~~and~~

14 (2) Eighty percent (80%) of the boundary of the territory proposed
 15 to be annexed is contiguous to the municipality.

16 **(3) This subsection applies to an annexation for which an**
 17 **annexation ordinance is adopted after June 30, 2015. The**
 18 **territory to be annexed does not receive any capital or**
 19 **noncapital services from the municipality.**

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

25 SECTION 5. IC 36-4-3-11.1 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2015]: **Sec. 11.1. (a) This section applies to a remonstrance filed**
 28 **after June 30, 2015.**

29 **(b) If a court orders an annexation not to take place after a**
 30 **hearing under section 11 of this chapter, the court shall allow the**
 31 **persons who signed a remonstrance in accordance with section**
 32 **11(a) of this chapter the expenses incurred in filing the**
 33 **remonstrance, including reasonable attorney's fees, in an amount**
 34 **not to exceed twenty thousand dollars (\$20,000).**

35 SECTION 6. IC 36-4-3-11.6 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2015]: **Sec. 11.6. (a) After June 30, 2015, a municipality may**
 38 **obtain from a landowner and the landowner's successors in title a**
 39 **waiver or release of the right to remonstrate against pending or**
 40 **future annexations by the municipality as a condition of receiving**
 41 **any capital or noncapital services from the municipality.**

42 **(b) A waiver or release of the right to remonstrate is binding on**



1 **a successor in title to a party to the landowner only if the successor**
 2 **in title:**

- 3 (1) **has actual notice of the release; or**
 4 (2) **has constructive notice of the release because the contract,**
 5 **or a signed memorandum of the contract stating the release,**
 6 **has been recorded in the chain of title of the property.**

7 (c) **This section does not apply to any person to which the**
 8 **following apply:**

- 9 (1) **IC 13-18-15-5.**
 10 (2) **IC 36-3-2-7.5.**
 11 (3) **IC 36-4-3-11.5.**
 12 (4) **IC 36-9-22-2(e) and IC 36-9-22-2(f).**

13 SECTION 7. IC 36-4-3-13, AS AMENDED BY P.L.119-2012,
 14 SECTION 188, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2015]: Sec. 13. (a) Except as provided in
 16 subsections (e) and (g), at the hearing under section 12 of this chapter,
 17 the court shall order a proposed annexation to take place if the
 18 following requirements are met:

- 19 (1) The requirements of either subsection (b) or (c).
 20 (2) The requirements of subsection (d).

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

- 23 (1) That the territory sought to be annexed is contiguous to the
 24 municipality.
 25 (2) One (1) of the following:
 26 (A) The resident population density of the territory sought to
 27 be annexed is at least three (3) persons per acre.
 28 (B) Sixty percent (60%) of the territory is subdivided.
 29 (C) The territory is zoned for commercial, business, or
 30 industrial uses.

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

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

41 (d) The requirements of this subsection are met if the evidence
 42 establishes that the municipality has developed and adopted a written



1 fiscal plan and has established a definite policy, by resolution of the
2 legislative body as set forth in section 3.1 of this chapter. The fiscal
3 plan must show the following:

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

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

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

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

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

32 **(6) This subdivision applies to a fiscal plan prepared after**
33 **June 30, 2015. The estimated effect of the proposed**
34 **annexation on taxpayers in each of the political subdivisions**
35 **to which the proposed annexation applies, including the**
36 **expected tax rates, tax levies, expenditure levels, service levels,**
37 **and annual debt service payments in those political**
38 **subdivisions for four (4) years after the effective date of the**
39 **annexation.**

40 **(7) This subdivision applies to a fiscal plan prepared after**
41 **June 30, 2015. The estimated effect the proposed annexation**
42 **will have on municipal finances, specifically how municipal**



1 tax revenues will be affected by the annexation for four (4)
2 years after the effective date of the annexation.

3 **(8) This subdivision applies to a fiscal plan prepared after**
4 **June 30, 2015. Any estimated effects on political subdivisions**
5 **in the county that are not part of the annexation and on**
6 **taxpayers located in those political subdivisions for four (4)**
7 **years after the effective date of the annexation.**

8 **(9) This subdivision applies to a fiscal plan prepared after**
9 **June 30, 2015. A list of all parcels of property in the**
10 **annexation territory and the following information regarding**
11 **each parcel:**

12 **(A) The name of the owner of the parcel.**

13 **(B) The parcel identification number.**

14 **(C) The most recent assessed value of the parcel.**

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

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

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

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

24 (i) Police and fire protection.

25 (ii) Street and road maintenance.

26 (B) The annexation will have a significant financial impact on
27 the residents or owners of land.

28 (C) The annexation is not in the best interests of the owners of
29 land in the territory proposed to be annexed as set forth in
30 subsection (f).

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

32 (i) At least ~~sixty-five~~ **sixty** percent (~~65%~~) (**60%**) of the
33 owners of land in the territory proposed to be annexed.

34 (ii) The owners of more than seventy-five percent (75%) in
35 assessed valuation of the land in the territory proposed to be
36 annexed.

37 Evidence of opposition may be expressed by any owner of land
38 in the territory proposed to be annexed.

39 (E) This clause applies only to an annexation in which eighty
40 percent (80%) of the boundary of the territory proposed to be
41 annexed is contiguous to the municipality and the territory
42 consists of not more than one hundred (100) parcels. At least



1 seventy-five percent (75%) of the owners of land in the
2 territory proposed to be annexed oppose the annexation as
3 determined under section 11(b) of this chapter.

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

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

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

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

16 (g) This subsection applies only to cities located in a county having
17 a population of more than two hundred fifty thousand (250,000) but
18 less than two hundred seventy thousand (270,000). However, this
19 subsection does not apply if on April 1, 1993, the entire boundary of
20 the territory that is proposed to be annexed was contiguous to territory
21 that was within the boundaries of one (1) or more municipalities. At the
22 hearing under section 12 of this chapter, the court shall do the
23 following:

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

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

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

30 (i) Police and fire protection;

31 (ii) Street and road maintenance.

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

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

35 (i) A majority of the owners of land in the territory proposed
36 to be annexed.

37 (ii) The owners of more than seventy-five percent (75%) in
38 assessed valuation of the land in the territory proposed to be
39 annexed.

40 Evidence of opposition may be expressed by any owner of land
41 in the territory proposed to be annexed.

42 (h) (g) The most recent:



- 1 (1) federal decennial census;
- 2 (2) federal special census;
- 3 (3) special tabulation; or
- 4 (4) corrected population count;

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

8 **(h) A municipality that prepares a fiscal plan after June 30,**
9 **2015, must comply with this subsection. The municipality must**
10 **submit the fiscal plan to the department of local government**
11 **finance. A municipality may not adopt an annexation ordinance**
12 **until the department of local government finance has done the**
13 **following:**

- 14 (1) Reviewed and approved the fiscal plan for accuracy and
15 completeness of the information.
- 16 (2) Made any comments concerning the fiscal plan that the
17 department considers appropriate.
- 18 (3) Provided the department's comments under subdivision
19 (2) to the annexing municipality.
- 20 (4) Posted the department's comments under subdivision (2)
21 on the department's Internet web site.

22 The department of local government finance may request
23 additional information that the department considers necessary to
24 aid in the department's review. The department of local
25 government finance shall issue comments concerning the
26 municipality's fiscal plan not later than thirty (30) days after the
27 fiscal plan is submitted to the department. If the municipality
28 amends the fiscal plan and submits the amended fiscal plan to the
29 department of local government finance, the department shall issue
30 comments on the amended plan not later than thirty (30) days after
31 the amended fiscal plan is submitted to the department. The
32 department of local government finance shall certify to the
33 legislative body of the annexing municipality the total amount of
34 expense incurred by the department in carrying out the
35 department's review and preparing the department's comments.
36 Upon receipt of the department of local government finance's
37 certification of the expenses, the annexing municipality shall pay
38 immediately to the treasurer of state the amount charged. Money
39 paid by an annexing municipality under this subsection shall be
40 deposited in the state general fund.

41 **(i) A municipality that prepares a fiscal plan after June 30,**
42 **2015, must comply with this subsection. A municipality may not**



1 amend the fiscal plan after the date that a remonstrance is filed
2 under section 11 of this chapter, unless amendment of the fiscal
3 plan is consented to by the affected individuals signing the
4 remonstrance petition. A municipality that amends the fiscal plan
5 under this subsection may submit the amended plan to the
6 department of local government finance for review and comment.
7 The department of local government finance shall certify the
8 expense incurred by the department in carrying out the review and
9 preparing the comments as set forth in subsection (h).

