



March 29, 2019

ENGROSSED SENATE BILL No. 94

DIGEST OF SB 94 (Updated March 27, 2019 4:08 pm - DI 87)

Citations Affected: Noncode.

Synopsis: Interim study committee. Urges the legislative council to assign the topic of municipal annexation to the appropriate interim study committee during the 2019 interim.

Effective: July 1, 2019.

Boots, Head, Doriot

(HOUSE SPONSORS — MAHAN, ELLINGTON, CHERRY, NEGELE)

January 3, 2019, read first time and referred to Committee on Local Government.
January 28, 2019, reported favorably — Do Pass.
January 31, 2019, read second time, amended, ordered engrossed.
February 1, 2019, engrossed.
February 4, 2019, read third time, passed. Yeas 36, nays 13.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Government and Regulatory Reform.
March 28, 2019, amended, reported — Do Pass.

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March 29, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 94

A BILL FOR AN ACT concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. [EFFECTIVE JULY 1, 2019] (a) **As used in this**
2 **SECTION, "legislative council" refers to the legislative council**
3 **established by IC 2-5-1.1-1.**
4 (b) **The legislative council is urged to assign to the appropriate**
5 **interim study committee during the 2019 legislative interim the**
6 **topic of municipal annexation under IC 36-4-3, including the**
7 **following issues:**
8 (1) **Examining the value of receiving additional municipal**
9 **services (compared to existing service levels) relative to the**
10 **additional tax burden.**
11 (2) **Studying issues regarding sewer waivers of remonstrance,**
12 **including an examination of the following:**
13 (A) **A history and an examination of the purpose**
14 **underlying waivers against remonstrance.**
15 (B) **The effects of voiding a remonstrance waiver.**
16 (C) **Whether the existence of a remonstrance waiver should**
17 **be a required disclosure on a real estate sales disclosure**

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- 1 form.
- 2 (D) Best practices for municipal extension of services to
- 3 unincorporated areas, if waivers are phased out or
- 4 eliminated.
- 5 (3) Whether a streamlined process is needed to bring
- 6 properties that receive multiple municipal services into the
- 7 municipal boundaries.
- 8 (4) An examination of annexation contiguity requirements
- 9 and their interaction with IC 36-4-3-4.1.
- 10 (5) Any other issue assigned by the legislative council.
- 11 (c) If the topic described in subsection (b) is assigned to an
- 12 interim study committee, the interim study committee shall issue
- 13 a final report to the legislative council containing the interim study
- 14 committee's findings and recommendations, including any
- 15 recommended legislation, in an electronic format under IC 5-14-6
- 16 not later than November 1, 2019.
- 17 (d) This SECTION expires December 31, 2019.



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 94, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 94 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 3

 SENATE MOTION

Madam President: I move that Senate Bill 94 be amended to read as follows:

Page 10, delete lines 25 through 42.

Delete pages 11 through 12.

Page 13, delete lines 1 through 10, begin a new paragraph and insert:

"SECTION 9. IC 36-4-3-7, AS AMENDED BY P.L.86-2018, SECTION 342, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) After an **annexation** ordinance is adopted, ~~under section 3; 4; 5; or 5.1 of this chapter;~~ **it the ordinance** must be published in the manner prescribed by IC 5-3-1.

(b) This subsection applies only to an annexation for which an annexation ordinance is adopted before May 1, 2019. Except as provided in subsection ~~(b); (d); or (f);~~ **(c) or (d)**, in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter, the ordinance takes effect at least ninety (90) days after its publication and upon the filing required by section 22(a) of this chapter.

(c) An annexation ordinance takes effect as follows:

(1) This subdivision applies to an annexation under section 5 of this chapter. Except as provided in subsection (d), in the absence of an appeal under section 15.5 of this chapter, the annexation ordinance takes effect at least ninety (90) days after its publication and upon filing under section 22(a) of this chapter.

(2) This subdivision applies to an annexation under section 5.1 of this chapter. Except as provided in subsection (d), in the absence of an appeal under section 15.5 of this chapter, the



ordinance takes effect at least thirty (30) days after the adoption of the ordinance and upon the filing under section 22(a) of this chapter.

(3) This subdivision applies to an annexation under section 5.5 of this chapter. Except as provided in subsection (d), if a final and unappealable judgment under section 12 or 15.5 of this chapter is entered in favor of the annexation, the annexation is effective upon the filing under section 22(a) of this chapter.

(4) This subdivision applies to an annexation under section 7.1 of this chapter for which an annexation ordinance is adopted after April 30, 2019. If a final and unappealable judgment under section 12 or 15.5 of this chapter is entered in favor of the annexation, the annexation is effective upon the filing under section 22(a) of this chapter.

(b) An ordinance described in subsection (d) or adopted under section 3, 4, 5, or 5.1 of this chapter may not take effect during the year preceding a year in which a federal decennial census is conducted. An ordinance 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.

(c) Subsections (d) and (e) apply to fire protection districts that are established after June 14, 1987.

(d) This subsection applies only to a fire protection district established after June 14, 1987. Except as provided in subsection (b), Whenever a municipality annexes territory, all or part of which lies within a fire protection district (IC 36-8-11), the annexation ordinance, in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter **(in the case of an annexation for which an annexation ordinance is adopted before May 1, 2019) or in the absence of a hearing or an appeal under section 12 or 15.5 of this chapter (in the case of an annexation for which an annexation ordinance is adopted after April 30, 2019),** takes effect the second January 1 that follows the date the ordinance is adopted and upon the filing required by section 22(a) of this chapter. The municipality shall:

(1) provide fire protection to that territory beginning **on** the date the ordinance is effective; and

(2) send written notice to the fire protection district of the date the municipality will begin to provide fire protection to the annexed territory within ten (10) days of the date the ordinance is adopted.

(e) This subsection applies only to a fire protection district established after June 14, 1987. If the fire protection district from which a municipality annexes territory under subsection (d) is indebted



or has outstanding unpaid bonds or other obligations at the time the annexation is effective, the municipality is liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the annexed territory (that is part of the fire protection district) bears to the assessed valuation of all property in the fire protection district, as shown by the most recent assessment for taxation before the annexation, unless the assessed property within the municipality is already liable for the indebtedness. The annexing municipality shall pay its indebtedness under this section to the board of fire trustees. If the indebtedness consists of outstanding unpaid bonds or notes of the fire protection district, the payments to the board of fire trustees shall be made as the principal or interest on the bonds or notes becomes due.

~~(f) 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. Subject to subsections (b) and (d); and in the absence of an appeal under section 15.5 of this chapter, an annexation ordinance takes effect at least thirty (30) days after its publication and upon the filing required by section 22(a) of this chapter.~~

SECTION 10. IC 36-4-3-7.1, AS AMENDED BY P.L.228-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.1. **(a) Notwithstanding section 7(b) of this chapter, An ordinance adopted under section 4 of this chapter that meets the conditions set forth in subsection (b) takes effect as follows:**

(1) In the case of an annexation for which an annexation ordinance was adopted before May 1, 2019, the ordinance takes effect immediately:

(A) upon the expiration of the remonstrance and appeal period under section 11, 11.1, or 15.5 of this chapter; and

(B) after the publication, filing, and recording required by section 22(a) of this chapter. ~~if all of the following conditions are met:~~

(2) In the case of an annexation for which an annexation ordinance was adopted after April 30, 2019, the ordinance takes effect as set forth in section 7(c)(4) of this chapter.

(b) This section applies to an annexation that meets all of the following conditions:

(1) The annexed territory has no population.

(2) Ninety percent (90%) of the total assessed value of the land for property tax purposes has one (1) owner.

(3) The annexation is required to fulfill an economic development



incentive package and to retain an industry through various local incentives, including urban enterprise zone benefits."

Page 22 line 29, strike "(a)".

Page 23, line 1, strike "(b)".

Page 23, line 1, delete "This subsection does not apply to an annexation under".

Page 23, line 2, delete "section 7.1 of this chapter."

Page 23, line 2, strike "If the court enters judgment in favor of the".

Page 23, strike lines 3 through 8.

Page 30, between lines 14 and 15, begin a new paragraph and insert:
"SECTION 23. IC 36-4-3-15.5, AS AMENDED BY P.L.207-2014, SECTION 2, 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.
- (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. 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 24. IC 36-4-3-19, AS AMENDED BY P.L.113-2010, SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) If disannexation is ordered under this chapter by the works board of a municipality and no appeal is taken, the clerk of the municipality shall, without compensation and not later than ten (10) days after the order is made, make and certify a complete transcript of the disannexation proceedings to the auditor of each county in which the disannexed lots or lands lie and to the office of the secretary of state. The county auditor shall list those lots or lands appropriately for taxation. The proceedings of the works board shall not be certified to the county auditor or to the office of the secretary of state if an appeal to the circuit court has been taken.

(b) In all proceedings begun in or appealed to the circuit court, if vacation or disannexation is ordered, the clerk of the court shall immediately after the judgment of the court, or after a decision on appeal to the supreme court or court of appeals if the judgment on appeal is not reversed, certify the judgment of the circuit court, as affirmed or modified, to each of the following:

- (1) The auditor of each county in which the lands or lots affected lie, on receipt of one dollar (\$1) for the making and certifying of the transcript from the petitioners for the disannexation.
- (2) The office of the secretary of state.



- (3) The circuit court clerk of each county in which the lands or lots affected are located.
- (4) The county election board of each county in which the lands or lots affected are located.
- (5) If a board of registration exists, the board of each county in which the lands or lots affected are located.
- (6) The office of census data established by IC 2-5-1.1-12.2.
- (c) The county auditor shall forward a list of lots or lands disannexed under this section to the following:
 - (1) The county highway department of each county in which the lands or lots affected are located.
 - (2) The county surveyor of each county in which the lands or lots affected are located.
 - (3) Each plan commission, if any, that lost or gained jurisdiction over the disannexed territory.
 - (4) The township trustee of each township that lost or gained jurisdiction over the disannexed territory.
 - (5) The sheriff of each county in which the lands or lots affected are located.
 - (6) The office of the secretary of state.
 - (7) The office of census data established by IC 2-5-1.1-12.2.

The county auditor may require the clerk of the municipality to furnish an adequate number of copies of the list of disannexed lots or lands or may charge the clerk a fee for photoreproduction of the list.

(d) A disannexation described by this section takes effect upon the clerk of the municipality filing the order with:

- (1) the county auditor of each county in which the annexed territory is located; and
- (2) the circuit court clerk, or if a board of registration exists, the board of each county in which the annexed territory is located.

(e) The clerk of the municipality shall notify the office of the secretary of state and the office of census data established by IC 2-5-1.1-12.2 of the date a disannexation is effective under this chapter.

(f) A disannexation order under this chapter may not take effect during the year preceding a year in which a federal decennial census is conducted. A disannexation order 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."



Page 31, delete lines 39 through 42.

Page 32, delete lines 1 through 12.

Renumber all SECTIONS consecutively.

(Reference is to SB 94 as printed January 29, 2019.)

BOOTS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 94, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning local government.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 94 as reprinted February 1, 2019.)

MAHAN

Committee Vote: yeas 10, nays 0.

