

SENATE BILL No. 298

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation involving an economic development project. Repeals a provision that allows an annexation involving an economic development project to proceed to a court hearing, even if a remonstrance is filed that would otherwise result in voiding the annexation.

Effective: July 1, 2016.

Boots

January 7, 2016, read first time and referred to Committee on Local Government.



Second Regular Session 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.

SENATE BILL No. 298

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 36-4-3-11, AS AMENDED BY P.L.228-2015,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 11. (a) This subsection applies only to an
4 annexation for which an annexation ordinance was adopted before July
5 1, 2015. Except as provided in section 5.1(i) of this chapter and
6 subsections (e) and (f), whenever territory is annexed by a municipality
7 under this chapter, the annexation may be appealed by filing with the
8 circuit or superior court of a county in which the annexed territory is
9 located a written remonstrance signed by:
10 (1) at least sixty-five percent (65%) of the owners of land in the
11 annexed territory; or
12 (2) the owners of more than seventy-five percent (75%) in
13 assessed valuation of the land in the annexed territory.
14 The remonstrance must be filed within ninety (90) days after the
15 publication of the annexation ordinance under section 7 of this chapter,
16 must be accompanied by a copy of that ordinance, and must state the
17 reason why the annexation should not take place.



1 (b) This subsection applies only to an annexation for which an
2 annexation ordinance was adopted before July 1, 2015. On receipt of
3 the remonstrance, the court shall determine whether the remonstrance
4 has the necessary signatures. In determining the total number of
5 landowners of the annexed territory and whether signers of the
6 remonstrance are landowners, the names appearing on the tax duplicate
7 for that territory constitute prima facie evidence of ownership. Only
8 one (1) person having an interest in each single property, as evidenced
9 by the tax duplicate, is considered a landowner for purposes of this
10 section.

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

18 (d) This subsection applies only to an annexation for which an
19 annexation ordinance was adopted after June 30, 2015. If the
20 requirements of section 11.3(c) or (after December 31, 2016) section
21 11.4 of this chapter are met, the annexation may be appealed by filing
22 with the circuit or superior court of a county in which the annexed
23 territory is located:

- 24 (1) the signed remonstrances filed with the county auditor;
- 25 (2) the county auditor's certification under section 11.2(g) of this
26 chapter;
- 27 (3) the annexation ordinance; and
- 28 (4) a statement of the reason why the annexation should not take
29 place.

30 The remonstrance must be filed with the court not later than fifteen
31 (15) business days after the date the county auditor files the certificate
32 with the legislative body under section 11.2(g) of this chapter. After a
33 remonstrance petition is filed with the court, any person who signed a
34 remonstrance may file with the court a verified, written revocation of
35 the person's opposition to the annexation.

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

40 (f) This subsection applies only to an annexation for which an
41 annexation ordinance is adopted before July 1, 2015. This subsection
42 applies if:



1 (1) the territory to be annexed consists of not more than one
2 hundred (100) parcels; and

3 (2) eighty percent (80%) of the boundary of the territory proposed
4 to be annexed is contiguous to the municipality.

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

10 SECTION 2. IC 36-4-3-11.4 IS REPEALED [EFFECTIVE JULY
11 1, 2016]. Sec. 11.4: (a) This section applies only to an annexation that
12 the meets all of the following requirements:

13 (1) The annexation ordinance is adopted after December 31,
14 2016.

15 (2) Notwithstanding the contiguity requirements of section 1.5 of
16 this chapter, at least one-tenth (1/10) of the aggregate external
17 boundaries of the territory sought to be annexed coincides with
18 the boundaries of:

19 (A) the municipality; and

20 (B) the site of an economic development project.

21 (b) As used in this section, "economic development project" means
22 any project developed by the municipality that meets all of the
23 following requirements:

24 (1) The annexing municipality determines that the project will:

25 (A) promote significant opportunities for the gainful
26 employment of its citizens;

27 (B) attract a major new business enterprise to the municipality;
28 or

29 (C) retain or expand a significant business enterprise within
30 the municipality.

31 (2) The project involves expenditures by the annexing
32 municipality for any of the following:

33 (A) Land acquisition; interests in land; site improvements;
34 infrastructure improvements; buildings; or structures.

35 (B) Rehabilitation; renovation; and enlargement of buildings
36 and structures.

37 (C) Machinery; equipment; furnishings; or facilities.

38 (D) Substance removal or remedial action.

39 (c) Notwithstanding section 11.3(b) of this chapter, even if a
40 remonstrance has enough signatures to satisfy the requirements of
41 section 11.3(b) of this chapter, the annexation ordinance is not void and
42 may be appealed to the court under section 11 of this chapter, if all of



- 1 the following requirements are met:
- 2 (1) The economic development project site needs the following
- 3 capital services that the municipality is lawfully able to provide:
- 4 (A) water;
- 5 (B) sewer;
- 6 (C) gas; or
- 7 (D) any combination of the capital services described in
- 8 clauses (A) through (C).
- 9 (2) The municipality finds that it is in the municipality's best
- 10 interest to annex the annexation territory in order to extend;
- 11 construct, or operate the capital services that are provided to the
- 12 economic development project site.
- 13 (3) Before the date the annexation ordinance is adopted, a
- 14 taxpayer whose business will occupy the economic development
- 15 project site has done at least one (1) of the following:
- 16 (A) Filed a statement of benefits under IC 6-1.1-12.1 with the
- 17 designating body for the annexing municipality for a deduction
- 18 or abatement.
- 19 (B) Entered into an agreement with the Indiana economic
- 20 development corporation for a credit under IC 6-3.1-13.
- 21 (d) If the economic development project:
- 22 (1) has not commenced within twelve (12) months after the date
- 23 the annexation ordinance is adopted; or
- 24 (2) is not completed within thirty-six (36) months after the date
- 25 the annexation ordinance is adopted;
- 26 the annexation territory is disannexed from the municipality and reverts
- 27 to the jurisdiction of the unit having jurisdiction before the annexation.
- 28 For purposes of this subsection, a economic development project is
- 29 considered to have commenced on the day that the physical erection;
- 30 installation; alteration; repair; or remodeling of a building or structure
- 31 commences on the site of the economic development project.
- 32 SECTION 3. IC 36-4-3-13, AS AMENDED BY P.L.228-2015,
- 33 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 JULY 1, 2016]: Sec. 13. (a) Except as provided in subsection (e), at the
- 35 hearing under section 12 of this chapter, the court shall order a
- 36 proposed annexation to take place if the following requirements are
- 37 met:
- 38 (1) The requirements of either subsection (b) or (c).
- 39 (2) The requirements of subsection (d).
- 40 (3) The requirements of subsection (i).
- 41 (b) The requirements of this subsection are met if the evidence
- 42 establishes the following:



- 1 (1) That the territory sought to be annexed is contiguous to the
 2 municipality.
 3 (2) One (1) of the following:
 4 (A) The resident population density of the territory sought to
 5 be annexed is at least three (3) persons per acre.
 6 (B) Sixty percent (60%) of the territory is subdivided.
 7 (C) The territory is zoned for commercial, business, or
 8 industrial uses.
 9 (c) The requirements of this subsection are met if the evidence
 10 establishes ~~one (1) of the following:~~
 11 ~~(1)~~ that the territory sought to be annexed is:
 12 ~~(A)~~ **(1)** contiguous to the municipality as required by section 1.5
 13 of this chapter, except that at least one-fourth (1/4), instead of
 14 one-eighth (1/8), of the aggregate external boundaries of the
 15 territory sought to be annexed must coincide with the boundaries
 16 of the municipality; and
 17 ~~(B)~~ **(2)** needed and can be used by the municipality for its
 18 development in the reasonably near future.
 19 ~~(2) This subdivision applies only to an annexation for which an~~
 20 ~~annexation ordinance is adopted after December 31, 2016. That~~
 21 ~~the territory sought to be annexed involves an economic~~
 22 ~~development project and the requirements of section 11.4 of this~~
 23 ~~chapter are met.~~
 24 (d) The requirements of this subsection are met if the evidence
 25 establishes that the municipality has developed and adopted a written
 26 fiscal plan and has established a definite policy, by resolution of the
 27 legislative body as set forth in section 3.1 of this chapter. The fiscal
 28 plan must show the following:
 29 (1) The cost estimates of planned services to be furnished to the
 30 territory to be annexed. The plan must present itemized estimated
 31 costs for each municipal department or agency.
 32 (2) The method or methods of financing the planned services. The
 33 plan must explain how specific and detailed expenses will be
 34 funded and must indicate the taxes, grants, and other funding to
 35 be used.
 36 (3) The plan for the organization and extension of services. The
 37 plan must detail the specific services that will be provided and the
 38 dates the services will begin.
 39 (4) That planned services of a noncapital nature, including police
 40 protection, fire protection, street and road maintenance, and other
 41 noncapital services normally provided within the corporate
 42 boundaries, will be provided to the annexed territory within one



1 (1) year after the effective date of annexation and that they will be
2 provided in a manner equivalent in standard and scope to those
3 noncapital services provided to areas within the corporate
4 boundaries regardless of similar topography, patterns of land use,
5 and population density.

6 (5) That services of a capital improvement nature, including street
7 construction, street lighting, sewer facilities, water facilities, and
8 stormwater drainage facilities, will be provided to the annexed
9 territory within three (3) years after the effective date of the
10 annexation in the same manner as those services are provided to
11 areas within the corporate boundaries, regardless of similar
12 topography, patterns of land use, and population density, and in
13 a manner consistent with federal, state, and local laws,
14 procedures, and planning criteria.

15 (6) This subdivision applies to a fiscal plan prepared after June
16 30, 2015. The estimated effect of the proposed annexation on
17 taxpayers in each of the political subdivisions to which the
18 proposed annexation applies, including the expected tax rates, tax
19 levies, expenditure levels, service levels, and annual debt service
20 payments in those political subdivisions for four (4) years after
21 the effective date of the annexation.

22 (7) This subdivision applies to a fiscal plan prepared after June
23 30, 2015. The estimated effect the proposed annexation will have
24 on municipal finances, specifically how municipal tax revenues
25 will be affected by the annexation for four (4) years after the
26 effective date of the annexation.

27 (8) This subdivision applies to a fiscal plan prepared after June
28 30, 2015. Any estimated effects on political subdivisions in the
29 county that are not part of the annexation and on taxpayers
30 located in those political subdivisions for four (4) years after the
31 effective date of the annexation.

32 (9) This subdivision applies to a fiscal plan prepared after June
33 30, 2015. A list of all parcels of property in the annexation
34 territory and the following information regarding each parcel:

35 (A) The name of the owner of the parcel.

36 (B) The parcel identification number.

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

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

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

41 (2) Order a proposed annexation not to take place if the court
42 finds that all of the following conditions that are applicable to the



- 1 annexation exist in the territory proposed to be annexed:
 2 (A) This clause applies only to an annexation for which an
 3 annexation ordinance was adopted before July 1, 2015. The
 4 following services are adequately furnished by a provider
 5 other than the municipality seeking the annexation:
 6 (i) Police and fire protection.
 7 (ii) Street and road maintenance.
 8 (B) The annexation will have a significant financial impact on
 9 the residents or owners of land. The court may not consider:
 10 (i) the personal finances; or
 11 (ii) the business finances;
 12 of a resident or owner of land. The personal and business
 13 financial records of the residents or owners of land, including
 14 state, federal, and local income tax returns, may not be subject
 15 to a subpoena or discovery proceedings.
 16 (C) The annexation is not in the best interests of the owners of
 17 land in the territory proposed to be annexed as set forth in
 18 subsection (f).
 19 (D) This clause applies only to an annexation for which an
 20 annexation ordinance is adopted before July 1, 2015. One (1)
 21 of the following opposes the annexation:
 22 (i) At least sixty-five percent (65%) of the owners of land in
 23 the territory proposed to be annexed.
 24 (ii) The owners of more than seventy-five percent (75%) in
 25 assessed valuation of the land in the territory proposed to be
 26 annexed.
 27 Evidence of opposition may be expressed by any owner of land
 28 in the territory proposed to be annexed.
 29 (E) This clause applies only to an annexation for which an
 30 annexation ordinance is adopted after June 30, 2015. One (1)
 31 of the following opposes the annexation:
 32 (i) At least fifty-one percent (51%) of the owners of land in
 33 the territory proposed to be annexed.
 34 (ii) The owners of more than sixty percent (60%) in assessed
 35 valuation of the land in the territory proposed to be annexed.
 36 The remonstrance petitions filed with the court under section
 37 11 of this chapter are evidence of the number of owners of
 38 land that oppose the annexation, minus any written revocations
 39 of remonstrances that are filed with the court under section 11
 40 of this chapter.
 41 (F) This clause applies only to an annexation for which an
 42 annexation ordinance is adopted before July 1, 2015. This



1 clause applies only to an annexation in which eighty percent
 2 (80%) of the boundary of the territory proposed to be annexed
 3 is contiguous to the municipality and the territory consists of
 4 not more than one hundred (100) parcels. At least seventy-five
 5 percent (75%) of the owners of land in the territory proposed
 6 to be annexed oppose the annexation as determined under
 7 section 11(b) of this chapter.

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

- 13 (1) within the three (3) years preceding the date of the
 14 introduction of the annexation ordinance; or
 15 (2) under a contract in lieu of annexation entered into under
 16 IC 36-4-3-21.

17 The court may not consider the provision of water services as a result
 18 of an order by the Indiana utility regulatory commission to constitute
 19 the provision of water services to the territory to be annexed.

20 (g) The most recent:

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

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

28 (h) A municipality that prepares a fiscal plan after June 30, 2015,
 29 must comply with this subsection. A municipality may not amend the
 30 fiscal plan after the date that a remonstrance is filed with the court
 31 under section 11 of this chapter, unless amendment of the fiscal plan
 32 is consented to by at least sixty-five percent (65%) of the persons who
 33 signed the remonstrance petition.

34 (i) The municipality must submit proof that the municipality has
 35 complied with:

- 36 (A) the outreach program requirements and notice requirements
 37 of section 1.7 of this chapter; and
 38 (B) the requirements of section 11.1 of this chapter.

