



Indiana Association of
Cities and Towns

Annexation Overview

Annexation is important for cities and towns to manage smart growth and proper planning.

- Indiana’s statute on annexation provides for two different types of annexation:
 - Resident-Initiated Annexation (Often called Voluntary), where contiguous property owners petition the city/town to pass an annexation ordinance to include them.
 - Municipal Annexation (Often called Involuntary), where a city/town council determines it is appropriate to pass an annexation ordinance.
 - Sometimes the property owners being annexed are already receiving city/town service(s), such as: fire, police, water or sewer.
 - Many municipal annexations are peaceful, without remonstrations.
 - Sometimes, however, those in the proposed annexed territory oppose the annexation. In this situation, they may file a “remonstrance” in the courts to stop the annexation.
 - Statute requires that remonstrators must get signatures of at least 65% of the owners of land in the annexed territory or the owners of more than 75% of the assessed value of the land in order to file a remonstrance. The court examines evidence from both parties (municipality and remonstrators) and then determines whether the municipality has met its burden of proving that the annexation is in the best interest of the owners of land in the proposed annexed territory.
- Annexation is sometimes necessary in order to provide services (water/sewer) to a new company that locates outside of the city or town. Since annexations must be contiguous, all property in between must be annexed as well in order to reach the company.
- Annexation frequently occurs when a new interstate exchange is built in order to institute proper planning and zoning.

IACT is reaching out to legislators, property owners and farmers in an effort to work through these concerns. One of our goals is also to improve understanding of the annexation process and to encourage effective communication at the local level.

Continue reading to learn about some of the misconceptions heard at the Statehouse, along with the facts.

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Annexation: The Misconceptions & Facts

**MISCONCEPTION 1:
Indiana is One of Only
States to Allow
Involuntary Annexation**

FACT: 20 out of 20 of the states IACT has researched allow for some form of annexation that would require property owners to be annexed without their consent when it is found to be in the best interest of the community. (See attached memo for details)

It is important to note the words “Involuntary Annexation” cannot be found in Indiana’s statute. To understand municipal annexation in other states, one must analyze the statute, relevant case law and communicate with the people who govern there.

**MISCONCEPTION 2:
Big Land Grab**

FACT: Recent IACIR Report shows of the 289 annexations since 2009, only 10% of those involved 200 or more acres.

FACT: Annexation is about planning for future or in some cases, correcting past practices of over-extension of utility services to outside city or town limits.

**MISCONCEPTION 3:
Ag Property Under New
Regulations & Taxes**

FACT: Cities and Towns can create rural districts so agricultural land falls under different ordinances.

FACT: Statute provides a process so that if farmland is zoned agricultural by county, the zoning applies when it is annexed. In such a case, no new tax rate is applied to annexed farmland, until the farmer requests to be re-zoned.

**MISCONCEPTION 4:
Involuntary Annexation
is Bad**

FACT: Involuntary is a misnomer and may be better named municipal annexation. While some municipal annexations are contested, many are peaceful with no remonstrations.

FACT: Annexation is not a taking (like eminent domain). The property owners do not lose their homes or land.

FACT: Municipal annexation is especially critical for serving the greater good when it comes to jobs (i.e. Elanco in Greenfield) and public health (i.e. failing septic to sewer).

**MISCONCEPTION 5:
It’s All About the \$\$\$**

FACT: In cases of agricultural-zoned land, cities and towns lose money.

FACT: In cases of bringing outside users in, it’s about righting the balance.

FACT: In all cases, it’s about planning for smart governance and a sustainable future under a new policy environment. Planning and zoning take place 25-30 years before development as part of comprehensive planning.

MEMO

To: Interested Parties
From: Indiana Association of Cities and Towns (IACT)
Date: January 6, 2015
Subj: Data Collected from Other States re: Annexation

In 2014, the Indiana General Assembly's Interim Study Committee on Government discussed the issue of annexation procedures in Indiana. It was raised at the committee and in other venues that, "Indiana is one of only two states that allows involuntary annexations." When this statement is made, the reference is to annexations that are municipally initiated and where the property owner does not consent to be annexed. In researching the annexation procedures in other states, we found this statement to be in error.

First, we have found that there is a great deal of confusion about the use of the terms "voluntary" and "involuntary" annexations in Indiana. Indiana statute does not use either term by name. However, the terms have been used informally to describe certain sections of the statute. A *voluntary* annexation refers to IC 36-4-3-5 and is annexation that is initiated by property owners with the consent of 51% of the property owners in the annexation territory or 75% of the owners of the total assessed value in the annexation territory. A *super-voluntary* annexation refers IC 36-4-3-5.1 and is one that is initiated by the property owners with 100% consent of the property owners. An *involuntary* annexation refers to IC 36-4-3-3 and is one that is municipally initiated; however, the annexation may or may not be contested by the property owners. An involuntary annexation may very well go through without any objections from property owners or on the other hand, if the property owners are opposed to the annexation, they may remonstrate against it.

It is difficult to compare directly Indiana's annexation procedures with other states because of the many differences that exist such as use of terminology and general government structure, however, we sent an informal request to the other state municipal league directors seeking feedback as to whether or not a property owner could be annexed in his or her state without the property owner's consent. For states in the northeast, we found that because of population density, annexation is not an issue because all land is incorporated. As for the other states from which we received a response, all indicated that it is possible for property owners to be annexed even when they are in opposition to being annexed and have not consented to the annexation. Whether it be, for instance, that a property owners loses in a referendum vote, loses a court appeal or is in the minority of those wanting the annexation, overwhelmingly, we found that in others states, property can be brought into the municipal jurisdiction without the consent of the property owner when it is found to be in the best interest of the community. Below is a summary of the comments we received from the twenty states that responded.

STATE	CAN A PROPERTY OWNER BE ANNEXED WITHOUT GIVING CONSENT?	OTHER
Alabama	YES - Property owners can petition to be annexed, but property owners who have not consented can also be included	Annexations can be contiguous or can be reached via a road if deemed reasonable
Arizona	YES - Consent is required by only 1/2 of the owners of the value of property in the proposed annexation territory plus more than 1/2 of the number of property owners in the territory	Courts handle disputes; Annexation ordinances are subject to petitions for referendum
Arkansas	YES - Three methods of annexation - petition method (a majority of property owners owning a majority of the acreage); election method - (requires a single majority vote of the owners of the city and the area being annexed); ordinance method - (for lands totally surrounded by the annexation)	Courts provide oversight
Florida	YES - with a contested annexation, a majority of voters casting a ballot determines the outcome; losers of the referendum can appeal to court	Annexations can be non-contiguous if done by special legislation or Part II of the annexation statute
Illinois	YES - Annexation can be forced for donut holes when area is less than 60 acres; Petition for annexation must come from a triple majority (Majority of landowners, owners of a majority of acreage, majority of voters living in the area); If petition is not 100%, there is a court process - those in disagreement can be forced to be annexed if court finds annexation is contiguous and not a strip annexation	A municipality can require annexation when utilities or services have been extended beyond boundaries
Iowa	YES - Involuntary annexations allowed - notice provided by certified mail, publication and hearing; data submitted to the city development board; referendum vote held allowing people to vote both inside the city and in the territory	
Kansas	YES - For annexations less than 40 acres, the board of county commissioners render a judgment on a petition to annex; Those in opposition can appeal to district court; For annexations more than 40 acres, there is a mail-in election	
Kentucky	YES - Nonconsensual annexation - Notice of intent to annex followed by public hearing; 50% of resident voters or 50% of landowners must petition to have the question placed on the ballot; Referendum requires 55% approval; Petitioners can request for annexation issue to be placed on the ballot	Contiguity requirements are more relaxed than Indiana law; courts shall not disturb a city's annexation as long as there is a rational connection between the action taken and

		supporting evidence; Two types of annexation -- consensual and nonconsensual; Pre-annexation waivers of remonstrance are allowed for service extensions
Louisiana	YES - Two types of annexations - Ordinance and Election; Petition and Ordinance - both require a referendum; Requests for annexation can occur by a petition of the registered voters and a majority in number of resident property owners as well as 25% in value of the property of the resident property owners located within the proposed area	
Maryland	YES - Legislatively initiated annexations - Consent is obtained by 25% of qualified voters in the area along with 25% of the owners of total AV; Plan is provided to Maryland Department of Planning; Following publication and hearing, annexations becomes final in 45 days unless there is a petition for referendum	Annexation Petition (Voluntary) requires 25% of the qualified voters in the area along with 25% of the owners of total AV
Michigan	YES - Referendum is required	Governor appoints a boundary commission
Minnesota	YES - involuntary / contested annexations are allowed	
Missouri	YES - two types of annexation - landowner initiated (Petitioners submit request to municipality and if objections are not filed by 2% of the registered voters of the city or two residents of the annexed territory then the annexation proceeds) and Municipally initiated (requires a dual election)	
Nevada	YES - annexations only need approval of 51% of the property owners or 51% of owners of AV; Opponents may file a written protest and appear before the governing body	
North Carolina	YES - Cities are permitted to initiate annexations; when there is opposition, a referendum is held for people inside the territory to vote	Satellite (non-contiguous) annexations are permitted
North Dakota	YES - Municipalities can initiate annexation; if 1/4 of the territory proposed to be annexed is opposed, the city may stop the proceeding or submit the matter to a mediation committee	Appeals made to district court

Oklahoma	YES - Municipality can initiate by obtaining consent of a majority of the owners of the acres to be annexed	Petition to be annexed can come from property owners as well; petition must be signed by 3/4 in value of property to be annexed; annexation can be appealed to the courts; Because annexation is a legislative act, the court has no authority to order the governing body to change its decision. The function of the hearing is for the court to insure that the municipality has acted within its authority and that its action is reasonable; Attorney fees - the prevailing property owner in an annexation dispute shall be entitled to court costs and reasonable attorney fees
South Carolina	YES - Contested annexations are permitted	
West Virginia	YES - Cities can initiate a boundary change; City goes through approval process with the county commissioners, but commissioners have no veto power; final decision may be appealed to circuit court	Voluntary annexations without 100% approval are placed on the ballot; petitioners must issue a bond to pay for the election
Wisconsin	YES – Two types of annexation exist (Direct Annexation and Annexation by Referendum). Both are initiated by petitioners, however, a property owner can be annexed unwillingly if he/she loses in the referendum vote	