



Indiana Association *of*
Cities and Towns

Annexation Reform

SEA 330 – 2015; Public Law # 228

Revised January 2016

Introduction

During the 2015 Indiana legislative session, Senate Enrolled Act 330, Public Law #228 was passed – a sweeping annexation reform bill that will make the annexation process more time consuming and expensive for the taxpayers living in cities and towns where economic growth and proper planning is desired. Very few annexations are contested overall in Indiana (only 5.7% according to an Indiana Advisory Commission on Intergovernmental Relations 2014 survey), however, the concerns of this vocal minority drove the passage of the bill. Among other changes, SEA 330 will require greater educational outreach by municipal leaders. The outreach program is intended to help taxpayers in the territory sought to be annexed understand the annexation process and offer an opportunity for discussion and negotiation prior to the introduction of an annexation ordinance. SEA 330 also limits municipalities' ability to do future involuntary annexations as explained in section VII. This white paper outlines the general procedures to be followed for annexation found in IC 36-4-3 and notes new changes made under SEA 330. For questions or for further information, contact Rhonda Cook, IACT's Deputy Director – Chief Federal and State Policy Officer.

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I. Application of the Chapter

Section 1 states that the chapter in the Indiana Code dealing with annexation (IC 36-4-3) applies to all municipalities except for consolidated cities (the city of Indianapolis).

II. Prerequisites for Annexation

- 1) **Reorganization:** Section 1.4 states that the annexation territory cannot be in a township that is currently a participant in a reorganization. If this is the case, the municipality may not annex territory within the township for a period set forth in IC 36-1.5-4-45.
- 2) **Contiguity:** Under section 1.5, the territory sought to be annexed must be “contiguous” to the municipal borders. Contiguous means that at least one-eighth (1/8) of the aggregate external boundaries of the territory coincides with the boundaries of the annexing municipality. A strip of land which is less than 150 feet wide connecting the annexing municipality to the territory is not considered a part of the boundaries of either the municipality or the territory.
 - a. **NEW under SEA 330** – A municipality cannot annex a public highway or right-of-way of a public highway in order to reach the annexation territory. In addition to the 1/8 rule and the 150 feet wide rule, one of the following conditions must be met in order to annex a public highway or right-of-way:
 - i. All property owners located adjacent to the public highway or right-of-way who are not currently in the corporate limits must approve. Waivers do not count as approval;
 - ii. All property that is adjacent to the public highway or right-of-way is currently in the corporate limits; or
 - iii. All property that is adjacent to the public highway or right-of-way is also being annexed as part of the same annexation ordinance.
- 3) **Another Municipality:** Section 2 states that the territory cannot already be a part of another municipality.
- 4) **Town Annexing Within Proximity of a City:** In the case of a town annexing within the near proximity of a city, section 9 applies. Except for voluntary and super-voluntary annexations and when a town annexes into another county, towns are prohibited from annexing within the area that is one mile from the corporate boundary of a second or third class city. Territory that is within three miles from the corporate boundary of a second or third class city is also limited from town annexation. A town may only annex within this zone if the annexation by the town is not more than one mile outside of the boundary of the town.
- 5) **Annexing Across County Line:** In the case of a municipality that wants to annex across a county line, section 9.1 applies. It states that if part or all of the municipality was not in a county as of January 1, 1982, a municipality may not annex territory across a county line without obtaining permission from the county executive.

III. Annexation Outreach Program

NEW SECTION under SEA 330 – Section 1.7 has been added as a new section to the annexation statute. It calls for an extensive educational outreach program for all municipally-initiated annexations (often referred to as involuntary annexations) or taxpayer-initiated annexations that are not supported by 100% of the taxpayers in the annexation territory (often referred to as voluntary annexations). The outreach

program is not required for taxpayer-initiated annexations that are supported by 100% of the taxpayers in the annexation territory (often referred to as super-voluntary annexations).

Six months prior to the introduction of an annexation ordinance, the municipality shall conduct an outreach program to inform citizens regarding the proposed annexation. There must be six public informational meetings regarding the proposed annexation.

The following information must be provided to the citizens:

- 1) Maps showing the proposed boundaries of the annexation territory;
- 2) Proposed plans for extension of capital and noncapital services in the annexation territory, including proposed dates for the extension; and
- 3) The expected fiscal impact on taxpayers in the annexation territory, including any increase in taxes and fees.

Publication of Notice of the Outreach Meetings: Dates, times and locations of the outreach meetings shall be published in accordance with IC 5-3-1, with the exception that the notice must be published 30 days before the date of each meeting.

Notice of Outreach Meetings via Mail: Notice shall be mailed to each owner of land within the annexation territory not later than 30 days before the date of the first meeting of the outreach program. Notice may be sent by first class mail, certified mail with return receipt requested, or by another means of delivery that includes a return receipt. (Note: If using a mailing method that has a return receipt, it is not necessary that the landowner accept receipt of the notice.) The mailed notice must include the following information:

- 1) It must inform the landowner that the municipality is proposing to annex territory that includes the landowner's property.
- 2) The municipality is conducting an outreach program for the purpose of providing information to landowners and the public regarding the proposed annexation.
- 3) The date, time, and location of the meetings to be conducted under the outreach program.

Mailing Address: The address to be used for the landowner is that listed on the tax duplicate.

Proof of Mailing: If a remonstrance is filed, the municipality will be required to file with the court proof that the notices were mailed to the landowners and proof of publication.

IV. Annexation Proceedings

Section 2.1 of the statute states that a public hearing and proper notice is required prior to adopting an annexation ordinance. This section does not apply, however, for super-voluntary annexations.

Notice via Publication: Notice of the public hearing must be published in accordance with IC 5-3-1 except that it shall be published at least 60 days before the hearing.

Notice by Mailing (section 2.2): 60 days prior to the public hearing, the municipality must send notice by certified mail, (NEW under SEA 330 – requires return receipt requested or any other means of delivery that includes a return receipt) to each owner of real property, as shown on the county auditor's current tax list, whose real property is located within the territory proposed to

be annexed or whose property is not part of the annexation territory, but is adjacent to a public highway that is part of the annexation territory. (For annexations under section 3 (special legislation for a contiguous territory annexation with proceedings that started before May 1, 1981) or section 4 (contiguous annexation or non-contiguous annexation of certain facilities or businesses), this notice must be sent 20 days prior to the hearing).

The mailed notice must include the following information:

- 1) A legal description of the real property proposed to be annexed.
- 2) The date, time, location and subject of the hearing.
- 3) A map showing the current municipal boundaries and the proposed municipal boundaries.
- 4) Current zoning classifications for the area proposed to be annexed and any proposed zoning changes for the area proposed to be annexed.
- 5) A detailed summary of the fiscal plan described in section 13.
- 6) The location where the public may inspect and copy the fiscal plan.
- 7) A statement that the municipality will provide a copy of the fiscal plan after the fiscal plan is adopted immediately to any landowner in the annexed territory who requests a copy.
- 8) The name and telephone number of a representative of the municipality who may be contacted for further information.

Public Hearing: There must be 60 days between the time the annexation ordinance was introduced and the date of the public hearing. All interested parties must have the opportunity to testify.

Adoption of the Ordinance: A municipality must wait at least 30 days after the public hearing to adopt the ordinance, but no longer than 60 days.

V. Written Fiscal Plan

Section 3.1 requires a municipality to develop and adopt a written fiscal plan and establish a definite policy by resolution of the legislative body that meets the requirements in section 13 (discussed below). The fiscal plan and resolution is not required, however, for the following types of annexations: (1) non-contiguous annexations of a municipally owned airport, landing field, or wastewater treatment facility (section 4(a)); (2) annexations of territory that is non-contiguous but will be occupied by a sanitary landfill, golf course, hospital or a police station (section 4(a)(3)); (3) non-contiguous annexations in certain counties used for industrial parks (section 4(h)); or (4) annexations of agricultural land under section 4.1.

Requirements of the Fiscal Plan: Section 13 outlines the criteria a court would consider if an annexation remonstrance suit is filed. This same criteria is what must be adopted by resolution of the municipal legislative body and included in the written fiscal plan. **SEA 330 included additional criteria to section 13.** The provisions that are new in this section are highlighted in yellow below. In addition, SEA 330 contains a provision which prohibits a municipality from amending the fiscal plan unless the amendment is consented to by at least 65% of the persons who signed the remonstrance petition.

A) One of the following options must be shown to be met:

OPTION 1

- The territory must be contiguous to the municipality as required under section 1.5; and
- One of the following must be true: (1) the resident population density of the territory sought to be annexed must be three persons per acre; (2) Sixty percent (60%) of the territory is subdivided; (3) the territory is zoned for commercial, business or industrial uses.

OPTION 2

- One of the following of these must be true: (1) the annexation territory is contiguous to the municipality as required by section 1.5, except that at least 1/4, instead of 1/8, of the aggregate external boundaries of the territory sought to be annexed must coincide with the boundaries of the municipality and the territory is needed and can be used by the municipality for its development in the reasonably near future; (2) (this provision applies only to an annexation ordinance adopted after December 31, 2016) the territory sought to be annexed involves an economic development project and the requirements of section 11.4 have been met.
- B) The municipality has developed a written fiscal plan and has established a definite policy, by resolution of the legislative body as set forth in section 3.1. The fiscal plan must show:
- 1) The cost estimates of planned services to be furnished to the territory to be annexed and itemized estimated costs for each municipal department or agency.
 - 2) The method of financing the planned services showing how specific and detailed expenses will be funded with the inclusion of taxes, grants and other funding to be used.
 - 3) The plan for the organization and extension of services including detail of the specific services and the dates the services will begin.
 - 4) That planned services of a noncapital nature, including police and fire protection, street and road maintenance and other services normally provided within the corporate boundaries, will be provided to the annexed territory within one year after the effective date of annexation.
 - 5) That services of a capital improvement nature, including street construction, street lighting, sewer, water and stormwater drainage services will be provided to the annexed territory within three years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries.
 - 6) The estimated effect of the proposed annexation on taxpayers in each of the political subdivisions to which the proposed annexation applies, including expected tax rates, tax levies, expenditure levels, service levels and annual debt service payments in those subdivisions for four years after the effective date of the annexation.
 - 7) The estimated effect the proposed annexation will have on municipal finances, specifically how municipal tax revenues will be affected by the annexation for four years after the effective date of the annexation.
 - 8) Any estimated effects on political subdivisions in the county that are not part of the annexation and on taxpayers located in those political subdivisions for four years after the effective date of the annexation.
 - 9) A list of all parcels of property in the annexation territory and the following information about each parcel: the name of the owner; the parcel ID number; the most recent assessed value of the parcel.

C) At the hearing, the court is to consider the following:

- 1) REMOVED: Under previous law, a municipality was required to show that police and fire protection and street and road maintenance were adequately furnished, but the furnisher of services could be by a provider other than the municipality. This allowance for another provider of police/fire and road/street services is removed under SEA 330.
- 2) The annexation will have a significant impact on the residents or owners of land. Under SEA 330, a municipality may not use personal or business finances to prove this. State, federal and local income tax returns of the residents or owners of land may not be subject to subpoena or discovery.
- 3) The annexation is not in the best interest of the owners of land in the annexed territory.
- 4) One of the following opposes the annexation: 51% of the owners of land in the annexation territory or the owners of more than 60% in assessed valuation of the land in the annexed territory. (Previous law required 65% and 75%). The remonstrance petitions are used as evidence in these calculations.
- 5) REMOVED: Under previous law, there was a provision that applied when 80% of the boundary of the territory proposed to be annexed was contiguous to the municipality and the territory consisted of not more than 100 acres. In this case the threshold to remonstrate was 75% of the owners of land. This provision is removed under SEA 330.
- 6) The municipality must prove that it is in the best interest of the owners of land in the annexation territory to be annexed. The court may consider whether the municipality has extended sewer or water services to the entire annexation territory within three years preceding the date of the introduction of the annexation ordinance; or under a contract in lieu of annexation entered into under IC 36-4-3-21. The court may not consider the provision of water services as a result of an order by the Indiana Utility Regulatory Commission.
- 7) REMOVED: Under previous law, there was a provision aimed specifically at one municipality. This provision was outdated and no longer needed, so it was removed under SEA 330.
- 8) The most recent federal decennial census; federal special census; special tabulation; or corrected population count shall be used as evidence to determine density of population, but this evidence can be rebutted by other evidence.
- 9) A municipality may not amend the fiscal plan after the date that a remonstrance is filed with the court unless amendment of the fiscal plan is consented to by at least 65% of the persons who signed the remonstrance petition.
- 10) The municipality must submit proof that it has complied with the outreach program under section 1.7 and the notice and hearing requirement under section 11.1.

VI. Terms & Conditions Required in the Annexation Ordinance

Section 3.5 outlines the general contents that must be adopted in the annexation ordinance. The ordinance must contain (1) a description of the boundaries of the territory to be annexed, including any public highway or right-of-way; (2) the approximate number of acres in the territory to be annexed; (3) a description of any special terms and conditions adopted under section 8. An ordinance adopted under section 3 (special legislation for a contiguous territory annexation with proceedings that started before

May 1, 1981) or section 4 (contiguous annexation or non-contiguous annexation of certain facilities or businesses) must also contain a description of any property tax abatements adopted under section 8.5

Section 8 outlines the terms and conditions that must be present in the annexation ordinance in order to make the annexation fair and equitable to the property owners and residents of the municipality. This section does not apply to voluntary annexations under section 5 or super-voluntary annexations under section 5.1.

The section explains that an annexation ordinance may include provisions to postpone the annexation effective date for up to three years. It may establish equitable provisions for the future management and improvement of the annexed territory and for rendering services.

In the case where the proposed annexed territory meets the following conditions: (1) the resident population density is at least three persons per acre; and (2) at least 60% of the territory is subdivided into separate lots smaller than one acre, the annexation ordinance must contain a provision establishing a special fund for impounding the municipal property taxes imposed on the annexation territory that are not used to provide basic services for a period of three years. The impounded property taxes must be used to provide additional services that were not specified in the annexation plan. The fund is to be expended within five years of the annexation effective date.

Section 8.1 requires the establishment of an advisory board to govern the impounded funds.

Section 8.5 allows an annexation ordinance to contain a property tax abatement provision for up to three years (75% in year one; 50% in year two; 25% in year three) for taxpayers in the annexation territory.

VII. Treatment of Agricultural Land & Limitations on Future Annexations

NEW under SEA 330 are amendments to section 4.1. Before SEA 330, it was optional to use section 4.1 in order to annex property zoned agricultural and offer the property owners of agricultural land an exemption from the municipal tax rate. Now, section 4.1 calls for a mandatory tax exemption from the municipal tax rate for agricultural property that is annexed under any section in the chapter. The new mandatory tax exemption for agricultural land applies when the property is assessed as agricultural (not zoned agricultural) and it remains exempt from all municipal tax liability as long as it is assessed as agricultural land.

Before SEA 330, subsection (e) stated that agricultural land annexed under section 4.1 (which was previously an optional section to use) may not be considered part of the municipality for purposes of annexing additional territory under section 3 (special legislation for a contiguous territory annexation with proceedings that started before May 1, 1981) or section 4 (contiguous annexation or non-contiguous annexation of certain facilities or businesses), but may be considered part of the municipality for purposes of annexing additional territory under sections 5 (voluntary) or section 5.1 (super-voluntary). Now, subsection (e) applies to the entire chapter. Therefore, for **any** annexation done after June 30, 2015, the new territory may not be considered part of the municipality for purposes of annexing additional territory unless the future annexation is a voluntary or super-voluntary annexation.

VIII. County Debt Provision

New SECTION under SEA 330 - This new section 4.2 addresses a few scenarios when an annexation occurs within a county and the county has outstanding debt on infrastructure. The scenarios are as follows:

- 1) When county-owned infrastructure is within the annexation territory; the county debt on the infrastructure is property tax based or revenue based; the county will continue ownership of the infrastructure. Here, the municipality owes the county nothing. (This is because for property tax based county debt, municipal taxpayers are already contributing. For revenue based debt, municipal taxpayers are already contributing if they are users of the service).
- 2) When county-owned infrastructure is within the annexation territory; it is payable by property taxes or revenues; and the municipality will assume ownership or partial ownership of the infrastructure. Here, the county and municipality would negotiate consideration and enter into an interlocal agreement.
- 3) When the county-owned infrastructure is located anywhere in the county (not just in the annexation territory); there is outstanding county debt on the infrastructure on the date the annexation ordinance is adopted that is payable by a local option income tax. Here, the municipality is required to continue to contribute to the debt payment until the debt is expired. The municipality would be liable to the county for reimbursements in the amount that represents part of the outstanding debt on the infrastructure until the debt is fully paid. The amount the municipality is required to reimburse the county is the percentage of the total county income tax distribution that is indebted, multiplied by the amount of local income tax revenue for the distribution year that is shifted from the county to the municipality as a result of the annexation.

Infrastructure is defined as the capital improvements that comprise:

- 1) A sanitary sewer system or wastewater treatment facility;
- 2) A building and appurtenances;
- 3) A park or recreational facility;
- 4) A road, street, highway, or bridge; or
- 5) A water treatment, water storage, or water distribution facility.

IX. Real Property Owned by a County Redevelopment Commission

New SECTION under SEA 330 – New section 4.3 states that if a county redevelopment commission owns property that the municipality wants to annex, the municipality may not do so without obtaining the consent of the county executive.

X. Municipally Initiated (Involuntary) Annexation/Non-contiguous Annexations of Certain Facilities or Businesses

Section 4 provides municipalities with the authority to annex contiguous territory. It also allows municipalities to annex certain non-contiguous territories such as municipally owned airports, landing fields, wastewater treatment facilities, territories that will be occupied by a sanitary landfill, golf course, hospital or a police station and territories in certain counties used for industrial parks.

XI. Taxpayer Initiated (Voluntary) Annexation

No changes were made to the percentage thresholds needed for a voluntary annexation in [section 5](#), however, SEA 330 made changes to exclude tax exempt properties from being counted in the calculation of percentages.

For a voluntary annexation, a petition requesting that an annexation ordinance be adopted must be signed by 51% of the owners of land in the territory sought to be annexed or by the owners of 75% of the total assessed value of the land. **New under SEA 330** – the owner of land may not be counted in calculating the total number of owners of land in the annexation territory or have the owner’s signature counted if the property was exempt from property taxes for the immediately preceding year; the land may not be included in calculating the total assessed valuation if it was exempt from property taxes for the immediately preceding year.

As before the passage of SEA 330, if the annexation ordinance is not adopted within 150 days after the petition is filed, the petitioners may file a duplicate petition with the circuit or superior court. The court shall make a determination after considering whether four factors have been met: (1) essential municipal services and facilities are not available to the residents of the territory sought to be annexed; (2) the municipality is physically and financially able to provide municipal services to the territory sought to be annexed; (3) the population density of the territory sought to be annexed is at least three persons per acre; and (4) the territory sought to be annexed is contiguous to the municipality.

XII. Taxpayer Initiated Annexation Supported by 100% (Super-Voluntary)

As before the passage of SEA 330, a super-voluntary annexation under [section 5.1](#) requires a petition signed by 100% of the landowners. Previous law stated that the landowners must *reside* in the territory. **New under SEA 330** – the statute does not require the petitioning landowners to reside in the territory.

The notice and public hearing provisions under sections 2.1 and 2.2 do not apply to super-voluntary annexations, rather, section 5.1 details its own notice and public hearing requirements specific to super-voluntary annexations. The municipality may adopt an annexation ordinance, a fiscal plan and establish a definite policy by resolution of the legislative body after it has held a public hearing on the proposed annexation. The municipality may introduce and hold the public hearing on the annexation ordinance not later than 30 days after the petition is filed with the legislative body. Notice of the public hearing must be published one time in accordance with IC 5-3-1 at least 20 days before the hearing. The municipality may adopt the ordinance not early than 14 days after the public hearing.

An individual is permitted to withdraw his/her signature from the petition not more than 13 days after the municipality adopts the fiscal plan. Thereafter, the petition would be treated as a voluntary annexation rather than a super-voluntary.

If the municipality does not adopt an annexation ordinance within 60 days after the petition is filed, the landowners may file a duplicate petition with the circuit or superior court, however, a remonstrance may not be filed. A super-voluntary annexation ordinance that is adopted takes effect not less than 30 days after it is filed and recorded.

XIII. Notice of Adopted Ordinance/Effectiveness

No changes were made to section 7 of the statute which deals with notice of the adopted ordinance, effectiveness and territory annexed that is in a fire protection district. After an annexation ordinance is adopted under section 3 (special legislation for a contiguous territory annexation with proceedings that started before May 1, 1981), section 4 (contiguous annexation or non-contiguous annexation of certain facilities or businesses), section 5 (voluntary annexations) or section 5.1 (super-voluntary annexations), it must be published in accordance with IC 5-3-1. In the absence of a remonstrance appeal and with some exceptions (i.e. an annexation during the year preceding a federal decennial census; an annexation that involves all or part of territory in a fire protection district; or, a super-voluntary annexation under section 5.1) the ordinance takes effect at least 90 days after its publication and upon the required filing under section 22(a).

The notice under section 7 is to be done in conjunction with the new notice provisions in section 11.1 (discussed immediately below).

XIV. Notice of Remonstrance Applicability & Petition Signing Locations

New SECTION under SEA 330 – New section 11.1 addresses additional notices required after an annexation ordinance has been adopted to explain to remonstrators their right to remonstrate, how to remonstrate and where they may sign the remonstrance petition. The municipality must give notice of the applicability of the remonstrance process by providing notice by (1) publication in accordance with IC 5-3-1; and (2) first class mail or certified mail with return receipt requested, or any other means of delivery that includes a return receipt. The notice must go to the circuit court clerk and to each owner of real property, as shown on the county auditor's current tax list, whose real property is located within the territory to be annexed. This notice must be published and mailed or delivered on the same date that the notice of the adoption of the annexation ordinance is published under section 7.

The notice of applicability of the remonstrance process must state: (1) any owners of real property within the area proposed to be annexed who want to remonstrate must complete and file remonstrance petitions. The remonstrance petitions must be filed not later than 90 days after the date that notice of the adoption of the annexation ordinance was published under section 7 and the last date that remonstrance petition must be filed with the county auditor to be valid; (2) remonstrance petition may be signed at the locations provided by the municipality (include address of locations and date and hours when petition may be signed).

Beginning the day after publication of notice required in section 11.1 and ending not later than 90 days after that publication, the municipality is required to provide both of the following: (1) at least one location in the offices of the municipality where a person may sign a remonstrance petition during regular business hours; (2) at least one additional location that is available for at least 5 days where a person may sign a remonstrance petition. The locations must be in a public building owned or leased by the state or a political subdivision, including a public library, community center or parks and recreation building and located within the boundaries of the municipality or the annexation territory. The location must be open on a weekday at a minimum from 5 p.m. to 9 p.m. On a Saturday or Sunday, the location must be open a minimum of 4 hours during a period from 9 a.m. to 5 p.m. Legal holidays are excluded. The municipality must have a person present at these locations to witness the signing of the remonstrance petition as sworn and affirmed by a notary public.

XV. Immediate Effective Date for Certain Annexations

Section 7.1 is a section which allows annexations under section 4 (contiguous annexation or non-contiguous annexation of certain facilities or businesses) to be effective sooner when all of the following are present: (1) the annexed territory has no population; (2) 90% of the total assessed value of the land has one 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. Prior to SEA 330, these annexations were effective immediately after the expiration of the 60 day remonstrance and appeal period after publication, filing and recording. **New under SEA 330**, these annexations are effective upon the expiration of the remonstrance and appeal periods under sections 11, 11.1, or 15.5 after publication, filing and recording.

XVI. Remonstrance Process & Appeals by Owners Inside the Territory

Previously, section 11 provided that an annexation can be appealed to the circuit or superior court in a county if a written remonstrance is filed within 90 days after publication of the annexation ordinance. The remonstrance needed to be signed by at least 65% of the owners of land in the annexed territory or the owners of more than 75% in assessed valuation of the land in the annexed territory. The court determined the validity of the signatures and only one person having an interest in each single property could be counted. If found that the remonstrance was valid, the court would set a date for a hearing within 60 days. These requirements and thresholds have been revised under SEA 330.

New under SEA 330, an annexation may be appealed to the court under section 11 if a written remonstrance is signed by one of the following: (1) At least 51% but less than 65% of the owners of land; (2) The owners of at least 60% but less than 80% in assessed value of the land in the annexed territory. (Note: In either case, property that is exempt from taxation for the immediately preceding year or the property owner of such tax exempt property may not be included in the calculation). Also, an annexation may be appealed to the court after December 31, 2016 if the requirements for the economic development exception are met under section 11. 4.

New SECTION under SEA 330 – New section 11.2 now governs the remonstrance petition process. It states that a remonstrance petition may be filed by an owner of real property that is within the area to be annexed and was not exempt from property taxes for the immediately preceding year. A remonstrance petition must comply with the following: (1) each signature must be dated (not earlier than the date on which the forms may be issued by the county auditor); (2) each person who signs the remonstrance petition must indicate the address of the real property owned by the person in the area to be annexed; (3) a remonstrance petition must be verified. The State Board of Accounts has authority to design the forms used for an annexation remonstrance and the county auditor's office will issue the forms to the remonstrators along with instructions.

The remonstrance instructions shall include:

- (1) The closing date of the remonstrance period;
- (2) That only one person having an interest in each single property as evidenced by the tax duplicate is considered an owner of property and may sign the remonstrance petition and that a person is entitled to sign a petition only one time, regardless of whether the person owns more than one parcel of property;

- (3) An individual may not be compensated or reimbursed for expenses incurred in circulating a remonstrance petition and obtaining signatures;
- (4) The petition may be executed in counterparts with a notarized affidavit of the person circulating the petition that signatures were affixed in his/her presence and are true and lawful;
- (5) For petitions not executed in counterparts, the petition must be verified by the person signing the petition in a manner prescribed by the state board of accounts and notarized;
- (6) The petition may be delivered to the county auditor's office in person, by certified mail return receipt requested, or by any means that includes a return receipt; it must be postmarked not later than the remonstrance closing date;
- (7) The auditor may not issue a remonstrance petition earlier than the day that notice is published under 11.1; the county auditor shall certify the date of issuance; any person may pick up additional copies of the petition to distribute.
- (8) A person who signs a remonstrance petition may withdraw his/her signature before the petition is filed with the auditor by filing a verified request to remove the person's name. Names may not be added to the petition after it is filed with the county auditor.

The county auditor is required to prepare and update a weekly a list of persons who have signed the petition. The list must include a statement saying that the names are of people who have signed the petition as of a particular date and does not represent a list of person certified by the county auditor as actual landowners in the annexation territory using the auditor's current tax records. The list is a public record under IC 5-14-3. The county auditor has 15 days after receiving the petition to make a final determination of the number of owners of real property within the territory to be annexed who signed the remonstrance using the auditor's current tax records. The county auditor shall file a certificate with the legislative body of the annexing municipality certifying the number of property owners not later than 5 business days after making the determination. NOTE: While not specifically discussed in this section, by way of inference, one could conclude that in order for the auditor to certify the remonstrators' signatures, the auditor would also need to verify on the property record that a waiver to the right to remonstrate does not exist.

The remonstrators may file an appeal with the circuit or superior court of a county in which the annexed territory is located which includes: (1) the signed remonstrances filed with the county auditor; (2) the county auditor's certifications under section 11.2(g); the annexation ordinance; and (4) a statement of the reasons why the annexation should not take place. The remonstrance must be filed with the court not later than 15 days after the date the county auditor files the certificate with the legislative body under section 11.2(g). After a remonstrance is filed with the court, any person who signed the remonstrance may file with the court a verified, written revocation of the person's opposition to the annexation.

XVII. Appeals by Those Not in the Territory

Section 15.5 addresses appeals by those not in the annexation territory. An owner of land within one-half mile of the territory proposed to be annexed or a municipality located in the same county as the territory proposed to be annexed may, not later than 60 days after the annexation ordinance is published (after 30 days for super-voluntary annexations under section 5.1), appeal the annexation to a circuit or superior

court of the county in which the annexation territory is located. If the complaint is determined to be sufficient, a hearing shall be held not later than 60 days after the determination. Pending the appeal, the territory sought to be annexed is not part of the annexing municipality.

XVIII. Automatic Annexation Stop

New SECTION under SEA 330 – Section 11.3 states that an annexation ordinance is void if a remonstrance petition is signed by 65% of the owners of land in the annexed territory or the owners of at least 80% in assessed valuation of the land in the annexed territory. Owners of property that was exempt from property taxation for the immediately preceding year may not be counted.

However, if remonstrators have at least 51% of the signatures of owners of land in the annexed territory (but less than 65%) or owners of at least 60% in assessed value of the land in the annexed territory (but less than 80%), the annexation may still be appealed to the court.

XIX. Automatic Stop Override for Economic Development Projects

New SECTION under SEA 330 – Section 11.4 is not effective until July 1, 2017 and applies to an annexation ordinance adopted after December 31, 2016. Even if a remonstrance has enough signatures to void the annexation ordinance in accordance with section 11.3, the annexation may still be appealed to court for to accommodate an economic development project if certain requirements are met.

The term “economic development project” is defined as the following:

- 1) The annexing municipality determines that the project will: (A) promote significant opportunities for the gainful employment of its citizens; (B) attract a major new business enterprise to the municipality; or (C) retain or expand a significant business enterprise within the municipality.
- 2) The project must involve expenditures by the annexing municipality for any of the following: (A) land acquisition, interests in land, site improvements, infrastructure improvements, buildings, or structures; (B) rehabilitation, renovation, and enlargement of buildings and structures; (C) machinery, equipment, furnishings, or facilities; (D) substance removal or remedial action.

The following requirements must be met in regard to the economic development project:

- 1) The project site needs water, sewer, gas, or any combination of these services that the municipality can provide.
- 2) The municipality finds that it is in its best interest to annex the annexation territory in order to extend, construct, or operate the capital services that are provided to the project site.
- 3) Before the date the annexation ordinance is adopted, a taxpayer whose business will occupy the project site has either: (1) filed a statement of benefits with the municipality to receive a property tax abatement or deduction; or (2) entered into an agreement with the Indiana Economic Development Corporation for a credit under IC 6-3.1-13.

The economic development project has a window of 12 months to commence and 36 months to be completed. If these deadlines are not met, the annexation territory is disannexed from the municipality and it reverts to the previous jurisdiction.

XX. Remonstrator Attorney Fees

New **SECTION** under SEA 330 is section 11.6. It states that if remonstrators are successful in a court action and the court orders the annexation not to take place, the remonstrators shall be reimbursed up to \$37,500 by the annexing municipality for any reasonable attorney's fees, including litigation expenses and appeal costs that occurred after the date the annexation ordinance is adopted and in remonstrating the annexation.

XXI. Remonstrance Waivers

No changes were made to section 11.5 which states that a landowner in an unincorporated area is not required to grant a municipality a waiver against remonstrance as a condition of connection to a sewer or water service if the landowner is required to connect because another person has polluted or contaminated the area and a person other than the landowner or the municipality has paid the cost of connection.

New under SEA 330, however, is the provision under section 11.7 that states that a waiver of the right to remonstrate that is executed after June 30, 2015 expires not later than 15 years after the date the waiver was executed. Also for waivers recorded after June 30, 2015, there is a new requirement that within a reasonable time after recording, the municipality shall provide written notice to the property owner that the waiver exists. This language limiting waivers has also been inserted into IC 36-9-25-14 which addresses sanitation in certain cities.

XXII. Court Hearing and Judgment

No changes were made to section 12 of the statute. This section provides that a court shall hear and determine the remonstrance without a jury and enter judgment on the question according to evidence that either party introduces. It also states that if the court enters judgment in favor of the annexation, the annexation may not take effect during the year *preceding* the year in which a federal decennial census is conducted, rather, it would take place on January 1 of the year the decennial census is conducted.

XXIII. Court Review

Section 13 lists the criteria that a court would consider in the annexation hearing. **New under SEA 330** are additional criteria that the court must take into consideration. This criteria, necessary for the annexation to take place, must be shown by the municipality via resolution that is adopted in conjunction with the written fiscal plan. See the discussion of the section 13 criteria on page 6 of this document under "V. Written Fiscal Plan." During the court's review, if it finds that all the criteria have been met by the municipality, the court is required to order the proposed annexation to take place.

Also contained in this section is a provision which prohibits the municipality from amending the fiscal plan unless the amendment is consented to by at least 6% of the persons who signed the remonstrance petition.

XXIV. Annexation Effective Date

Section 14 previously said that while the remonstrance is pending, the annexation is not considered part of the municipality. **NEW under SEA 330**, the annexation territory may not be considered part of the municipality until entry of a final *unappealable* judgment.

XXV. Judgment/Future Attempts to Annex/Effective Date

Section 15 was amended slightly under SEA 330 to add the words “*final and unappealable*” in two places. When the court issues its judgment, the clerk of the court is to deliver a certified copy of the “*final and unappealable*” judgment to the clerk of the municipality. The clerk of the municipality is to record the judgment and make a cross-reference to it on the annexation ordinance.

4 Years

If the “*final and unappealable*” judgment is adverse to the municipality, then the municipality may not make further attempts to annex any part of the territory during the next four year after the later of: (1) the judgment of the circuit or superior court or (2) the disposition of all appeals to a higher court unless annexation is petitioned for under section 5 (voluntary) or section 5.1 (super-voluntary).

12 Months

If the municipality repeals the annexation ordinance less than 61 days after publication under section 7(a) and before the hearing on the remonstrance under section 11(c), the municipality may not make further attempts to annex any part of the territory for 12 months after the date the municipality repeals the annexation ordinance (excludes annexations under section 5 (voluntary) or section 5.1 (super-voluntary)).

24 Months

If the municipality repeals the annexation ordinance at least 61 days, but not more than 120 days after publication under section 7(a) and before the hearing on the remonstrance under section 11(c), the municipality may not make further attempts to annex any part of the territory for 24 months after the date the municipality repeals the annexation ordinance (excludes annexations under section 5 (voluntary) or section 5.1 (super-voluntary)).

42 Months

If the municipality repeals the annexation ordinance at least 121 days after publication under section 7(a) and before or after the hearing on the remonstrance under section 11(c) AND before the date of the judgment of the circuit or superior court, then the municipality may not make further attempts to annex any part of the territory for 42 months after the date the municipality repeals the annexation ordinance (excludes annexations under section 5 (voluntary) or 5.1 (super-voluntary)).

New under SEA 330, it states that an annexation is effective when the clerk of the municipality complies with the filing requirement of section 22(a).

XXVI. Filing Requirements

Under section 22, the clerk of the municipality is required to file (1) each annexation ordinance (those with no remonstrance or where the remonstrance signatures were not sufficient; or (2) the certified copy of a final and unappealable judgment ordering the annexation to take place with the following: the county auditor, circuit court clerk, board of registration (if one exists), the secretary of state, the office of census data, the recorder’s office of each county in which the annexation territory is located.

Timing: The ordinance or judgment must be filed and recorded no later than 90 days after the expiration of the period permitted for remonstrance, the delivery of the certified order, or the date the county auditor files the written certification with the legislative body under section 11.2 in the case where there were an insufficient number of remonstrators.

The county auditor is required to forward a copy of the annexation ordinance to the applicable county highway department, county surveyor, plan commission, sheriff, township trustee, the office of the secretary of state and the office of census data.

XXVII. Settlement Agreements

Section 15.3 addresses settlement agreements that can be reached between a municipality and remonstrators. Such an agreement is a written court-approved settlement of an annexation dispute which is entered into by the municipality and either 75% or more of all landowners participating in the remonstrance or the owners of more than 75% in assessed valuation of land owned by all landowners participating in the remonstrance. The parties may agree to a prohibition against annexation of all or part of the territory by the municipality for a period not to exceed 20 years and may address issues regarding the provision of noncapital and capital services.