

**FINAL REPORT  
OF THE  
ANNEXATION STUDY COMMITTEE**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**October, 2007**

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2007

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**Staff**

Anne Haley  
Attorney for the Committee  
Chris Baker  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted P.L. 227-2007 which established the annexation study committee and directed the committee to study the following:

- (1) Revising the statutes concerning municipal annexation of territory. The committee's study may not include the annexation statutes in IC 36-3-2; and
- (2) Whether "one and fifteen hundredths (1.15)" in STEP THREE of IC 6-1.1-18.5-3(a) and STEP THREE of IC 6-1.1-18.5-3(b) is sufficient to raise adequate property taxes for a municipality annexing territory.

Legislative Council Resolution 07-01 assigned the following topics to the Committee:

Various annexation issues, including impact of allowing municipal annexation of whole or partial parcels of land, certain agreements between landowners and heirs concerning authority to remonstrate, establishment of boundaries for annexation, county court jurisdiction to decide whether territory is needed, extension of services to annexed territories, and process for approval of annexation.  
(Unnumbered HR)

## **II. INTRODUCTION AND REASONS FOR STUDY**

The activities of the Committee were conducted to discharge the Committee's responsibilities under P.L. 227-2007 and the Legislative Council Resolution 07-01 assigning topics to the Committee.

## **III. SUMMARY OF WORK PROGRAM**

The Committee met five times during the 2007 interim on August 22, September 12, September 26, October 10, and October 24.

## **IV. SUMMARY OF TESTIMONY**

The following is a summary of the testimony that was received by the Committee. For further details, see the Committee minutes at <http://www.in.gov/legislative/interim/committee/axsc.html>

*First meeting, August 22, 2007*

Carmel-Southwest Clay Annexation

Rob Schein and Andy Buroker, Krieg Devault, L.L.C., discussed *City of Carmel v. Southwest Clay Township Annexation Territory Landowners*, 868 N.E. 2d 793 (Ind. 2007) in which the court allowed the city to amend its fiscal plan after a remonstrance was filed. The court clarified that at least 65% of landowners must maintain opposition to the annexation in order to defeat it under IC 36-4-3-13(e)(D)(i), a percentage that the remonstrators lost when some of the remonstrators entered into a settlement agreement with Carmel.

Mike Shaver, Wabash Valley Scientific, Inc., is a resident of Southwest Clay Township who testified that Carmel's annexation had positive results. He suggested that the Committee address: (1) tax distribution after annexation; (2) duplication of county and municipal services after annexation; (3) allocating money for planning services for the annexed territory; (4) eliminating the requirement that cities consent to town annexations; and (5) annexing noncontiguous subdivisions before lots are sold.

Jack Holton, Southwest Clay Community Association, discussed his experiences as a remonstrator in the Carmel annexation, describing how time-consuming and frustrating the annexation process was.

### Counties

Dave Bottorff, Association of Indiana Counties, and Lisa Blosser, Allen County Auditor, discussed how annexation causes counties to lose tax revenue disproportionate to the loss of services. Mr. Bottorff discussed the use of an arbitration panel in annexations and the use of sewer waivers by municipalities.

### Municipalities

Mayor Jonathan Weinzapfel, Evansville, discussed the benefits of annexation, including economic development, extension of programs and services to annexed areas, lower property taxes, and changing municipal boundaries consistent with demographics.

Tanya Galbraith, Town Manager of McCordsville, urged the Committee to look at voluntary annexations, which are the most common and primarily developer-driven. She recommended reducing the time required to conduct a voluntary annexation.

### Fire protection territories

The Committee received written testimony from Zionsville Fire Department Chief James Vangorder which described how annexation of a portion of a fire protection territory results in: (1) the territory's fire stations and other capital investments being "stranded" within the municipality; and (2) the loss of tax revenue within the annexed area to retire the debt incurred for the capital investment. He recommended that the law be changed to allow fire protection territories to maintain their boundaries after annexation.

## ***Second meeting, September 12, 2007***

### Unincorporated areas

Bob Kraft, Indiana Farm Bureau, Inc., testified on the concerns of unincorporated areas. He made recommendations concerning: (1) reducing remonstrance thresholds; (2) municipalities paying successful remonstrators' attorney's fees; (3) use of an arbitration panel in annexations; (4) annexing after platting but before lots are sold; (5) maintaining the contiguity requirement; and (6) keeping annexed agricultural land exempt from taxation.

### Agency review of annexations

Diane Balogh, discussed the errors committed by Whitestown in its annexation of Eagle Township. She recommended having an oversight body review annexations and incorporating sewer waivers into property deeds.

### Road maintenance

Richard Cockrum, representing the Lake County Commissioners and Council, discussed how inconsistent annexation of roads has required municipalities and counties to share road maintenance.

### Recommended statutory changes

Steve Buschmann, Thrasher, Buschmann, Griffith & Voelkel, P.C., explained his experience as legal counsel for the group that organized the Southwest Clay Township remonstrance and for the Home Place remonstrators. Mr. Buschmann recommended the following changes to the law: (1) reduce the remonstrance threshold; (2) fix the sufficiency of a remonstrance petition at filing; (3) provide that signing a remonstrance creates a rebuttable presumption at trial that the person opposes the annexation; (4) allow joint stipulation to the continuance of a hearing by the parties; (5) allow a declaratory judgment to challenge "illegal annexations"; (6) allow successful remonstrators to recover attorney's fees and costs from a municipality; and (7) clarify the meaning of fire protection under IC 36-4-3-13(e)(2)(A).

## ***Third meeting, September 26, 2007***

### Remonstrance process

Matt Milam, Concerned Citizens for Home Place, discussed the significant amount of work and fundraising required of remonstrators. He said that forced annexations should be eliminated and that municipalities should be prohibited from conducting annexation hearings after holidays when landowners are absent.

Eugene Thompson discussed Zionsville's attempt to annex his neighborhood and how burdensome the remonstrance process is. Mr. Thompson discussed: (1) reducing the remonstrance threshold; (2) conducting a referendum in lieu of remonstrance; and (3) how the remonstrance threshold increases or becomes unattainable if waivers are used or parcels are otherwise unavailable for a remonstrance.

Rachel Quade, Geist United Opposition, discussed the divisive effect annexation has on a community and how difficult the remonstrance process is, requiring ordinary citizens to become experts in municipal law and fund raising. She said that annexations should be determined by referendum rather than by remonstrance.

#### Agency review of annexations

Dan Jones, Acting Budget Director, Indiana Department of Local Government Finance (DLGF), discussed the DLGF's experience in reviewing fiscal plans for excess levy appeals and testified that it has the expertise to review fiscal plans as a part of the annexation process.

Larry Brenner discussed Whitestown's errors in its annexation of Fayette. He recommended that a developer be required to notify buyers of sewer waivers and that an oversight agency be used to review annexations.

#### Municipalities

Rick Carlucci, Town Manager of Plainfield, said that annexation allows municipalities to pursue economic development, and described Plainfield's growth in size, industry, and services as a result of annexation. Mr. Carlucci said that none of Plainfield's annexations have been remonstrated against. He attributed their success to a well drafted fiscal plan and open communication with landowners about the quality services they will receive if annexed.

Nicholas K. Kile, Barnes and Thornburg, L.L.C., submitted a draft of legislation to clarify the law and make changes consistent with what he describes as his "Four Basic Truths" of annexation which support annexation of an area by a municipality that provides utility or other services to that area and annexation of noncontiguous property if landowners want to receive municipal services.

#### Annexation purpose/result

E.M. Cavalier said that a positive way to conduct annexations needs to be found. He discussed who should determine that an annexation is beneficial.

Jack Holton, Southwest Clay Community Association, testified that the law needs to enable an annexation to be evaluated as to whether the purpose is to correct the overspending of the municipality or to develop the annexed territory.

## ***Fourth meeting, October 10, 2007***

### Remonstrance waivers

Joe Weingarten, Geist United Opposition, discussed how developers waive the remonstrance rights of future lot buyers in exchange for extension of municipal sewer and water service to a development. Mr. Weingarten discussed how first and subsequent purchasers of property are unaware of these waivers, which will determine their form of government. He discussed prohibiting waivers, annexing before lots are sold, and requiring approval of annexations by a majority of landowners in the territory.

### Annexation study and legislation

Jamie Palmer, Associate Director, Indiana Advisory Commission on Intergovernmental Relations, discussed the background of the Council's 1998 study and report on annexation law, *Annexation in Indiana: Issues and Options*, and the General Assembly's 1999 legislation that made numerous amendments to address the concerns identified in the report.

Tanya Galbraith, Town Manager of McCordsville, was a lobbyist for the Indiana Association of Indiana Cities and Towns in 1999 and discussed her experience in the drafting and adoption of the 1999 legislation.

Ms. Palmer and Ms. Galbraith explained that the 1999 legislation increased the remonstrance threshold from 51% to 65% in exchange for additional judicial review of an annexation that gave remonstrators the ability to defeat an annexation in certain circumstances.

### Annexation of developments

Rick Wajda, Indiana Builder's Association, discussed the predominance of voluntary annexations which promote development and orderly growth. Mr. Wajda discussed how waivers allow a municipality to provide sewer and water service to developments at the outset and prevent landowners from making a costly switch to sewer in the future. He said that waivers are included in the documents at closing and that buyers should ask about annexation if it is a matter of concern.

Corby Thompson, K.E. Thompson, Inc., said that the vast majority of annexations within his 25 years of experience as a developer have been voluntary annexations of contiguous property and remonstrance waivers have been used without incident. He said that most people are not even aware that their development is in an unincorporated area because they see municipal fire trucks and school buses in their neighborhoods. Disclosure of waivers would be more effective before closing.



## Fishers annexation of Geist/ recommendations

Stuart Easley, Town Councillor of Fishers, discussed Fishers' growth and development and its efforts to inform Geist residents of the annexation proposal. He made recommendations regarding: (1) streamlining consensual annexations; (2) affirmative disclosure of waivers; (3) increasing remonstrance thresholds with level of contiguity; (4) providing flexibility in annexation effective dates and abatements; (5) reducing county government after annexation; and (6) making changes to the procedure for incorporation of a municipality that are similar to the changes made to annexation.

### ***Fifth meeting, October 24, 2007***

## Municipal subsidies/ rebuttal

Mike Shaver, Wabash Valley Scientific, Inc., addressed comments made at other meetings regarding the annexations of Southwest Clay Township, Home Place, Whitestown, and Geist. Mr. Shaver said that opposition to annexation could be alleviated by: (1) eliminating subsidies that municipal residents pay to unincorporated areas through property taxes and local option income taxes; and (2) allowing noncontiguous voluntary annexations.

## Public safety and annexation

Sheriff Doug Carter, Hamilton County, discussed how annexations have confused public safety jurisdictional boundaries and had a negative effect on the provision of mutual aid. Sheriff Carter said that the Hamilton County Sheriff's Department will continue to provide the same level of service to areas after they are annexed by a municipality.

## Committee considerations

Bob Thomas, Southwest Clay Community Association, made several comments concerning: (1) eliminating involuntary annexations; (2) unincorporated areas not being subsidized by municipalities for county services; (3) a statutory deadline for amending a fiscal plan; (4) fiscal plan review outside of the remonstrance process; (5) sewer waivers; and (6) eliminating the requirement that municipalities within a certain proximity to territory must consent to the territory's incorporation.

Matt Milam, President, Concerned Citizens for Home Place, urged the Committee to consider the rights of property owners.

Jack Holton, Southwest Clay Community Association, submitted a written document containing a list of policy considerations for the Committee.

## Fishers/Geist Annexation

Ted Moran, Geist United Opposition, discussed actions taken by Fishers, including debts incurred by the town, the town's fire service arrangements with Fall Creek Township, and the annexation of several parcels at one meeting without public input.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following findings of fact:

- Involuntary annexations are very costly to fight and can divide a community.
- Some annexation fiscal plans can be misleading and factually incorrect.
- The Department of Local Government Finance has the experience to be able to review annexation fiscal plans.
- An overwhelming majority of municipalities do not use involuntary annexations.
- Indiana is one of six states that allow involuntary annexation.
- Persons purchasing real estate may not be aware that the real estate is subject to a remonstrance waiver.
- A well drafted fiscal plan and good communication between the municipality and residents of the annexation territory help the success of an annexation.

The Committee did not make recommendations.

Under P.L. 227-2007, the legislation that established the Committee, only the eight legislator members of the Committee are voting members. The Committee voted to approve the final report 6-0.

WITNESS LIST

Diane Balogh

Lisa Blosser, Allen County Auditor

Dave Bottorff, Association of Indiana Counties

Larry Brenner

Andy Buroker, Krieg Devault, L.L.C

Steve Buschmann, Thrasher, Buschmann, Griffith, & Voelkel, P.C.

Rick Carlucci, Town Manager of Plainfield

Sheriff Doug Carter, Hamilton County

E.M. Cavalier

Richard Cockrum, representing Lake County Commissioners and Council

Stuart Easley, Town Councillor of Fishers

Tanya Galbraith, Town Manager of McCordsville

Jack Holton, Southwest Clay Community Association

Dan Jones, Acting Budget Director, Indiana Department of Local Government Finance

Nicholas K. Kile, Barnes and Thornburg, L.L.C.

Bob Kraft, Indiana Farm Bureau, Inc.

Matt Milam, Concerned Citizens for Home Place

Ted Moran, Geist United Opposition

Jamie Palmer, Associate Director, Indiana Advisory Commission on Intergovernmental Relations

Rachel Quade, Geist United Opposition

Rob Schein, Krieg Devault, L.L.C.

Mike Shaver, Wabash Valley Scientific, Inc.

Bob Thomas, Southwest Clay Community Association

Corby Thompson, K.E. Thompson, Inc.

Eugene Thompson

Fire Chief James Vangorder, Zionsville Fire Department

Rick Wajda, Indiana Builder's Association

Joe Weingarten, Geist United Opposition

Mayor Jonathan Weinzapfel, Evansville