

IC 20-25-5

Chapter 5. Real Property Annexations and Transfers; Remonstrances

IC 20-25-5-1

"Acquiring school corporation"

Sec. 1. As used in this chapter, "acquiring school corporation" means the school corporation that acquires territory as a result of annexation.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-2

"Annex"

Sec. 2. As used in this chapter, "annex", "annexing", "annexation", and "school annexation" mean an action in which the boundaries of a school corporation are changed so that additional territory, constituting all or a part of one (1) or more other school corporations, is transferred to the acquiring school corporation.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-3

"Annexed territory"

Sec. 3. As used in this chapter, "annexed territory" means the territory acquired by an acquiring school corporation as a result of annexation from a losing school corporation.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-4

"Civil annexation"

Sec. 4. As used in this chapter, "civil annexation" means an action in which the civil boundaries of a civil city are extended.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-5

"Civil city"

Sec. 5. As used in this chapter, "civil city" means a civil city or a civil town, the area of which, or the major part of the area of which, is under the jurisdiction of a school city.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-6

"Losing school corporation"

Sec. 6. As used in this chapter, "losing school corporation" means a school corporation that loses territory to an acquiring school corporation by annexation.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-7

"Resolution"

Sec. 7. As used in this chapter, "resolution" of any other school corporation means a resolution duly adopted by the school corporation's governing body.

As added by P.L.1-2005, SEC.9. Amended by P.L.233-2015, SEC.87.

IC 20-25-5-8

"School city"

Sec. 8. As used in this chapter, "school city" means a school corporation that at any time:

- (1) is a school city;
- (2) is a school town;
- (3) has succeeded to the jurisdiction of all a school city or a school town; or
- (4) has succeeded to the jurisdiction of a major part in area of a school city or school town.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-9

"School corporation"

Sec. 9. As used in this chapter, "school corporation" means a public school corporation of the state located in whole or in part in a county containing a consolidated city.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-10

Annexation authorized

Sec. 10. Subject to the limitations and procedure set out in this chapter, any:

- (1) school corporation may annex territory from any other school corporation by resolutions of the acquiring and losing school corporations as provided in section 11 of this chapter; and
- (2) school city may annex territory from any other school corporation by a single resolution of the school city as provided in section 12 of this chapter.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-11

Annexation by school corporations; procedure

Sec. 11. (a) An annexation may be effected if an acquiring school corporation and a losing school corporation each adopts a substantially identical annexation resolution that contains the following items:

- (1) A description of the annexed territory. The description must, as near as reasonably possible, be by streets and other boundaries known by common names. The description does not need to include a legal description unless a legal description is necessary to identify the annexed territory. A notice is not

defective if there is a good faith compliance with this section and if the area designated may be ascertained with reasonable certainty by a person skilled in the area of real estate description.

(2) The time the annexation takes place. The time the annexation takes place may vary with respect to the different parts of the annexed territory. If the entire annexed territory is contiguous to the acquiring school corporation, the annexed territory may be annexed so that some parts may not be contiguous to the annexed territory for temporary periods.

(3) The terms and conditions facilitating education of students in the annexed territory, losing school corporation, or acquiring school corporation. The terms may include, but are not limited to, the continued attendance by students in the annexed territory at schools in the losing school corporation for specified periods after annexation on a transfer basis. If a student in an annexed territory attends a school in a losing school corporation under this subdivision, transfer tuition for the student must be paid by the acquiring school corporation to the losing school corporation in the manner and at the rates provided by the statutes governing the computation and payment of transfer tuition costs.

(4) The:

(A) disposition of assets and liabilities of the losing school corporation to the acquiring school corporation;

(B) allocation between the acquiring school corporation and losing school corporation of subsequently collected school taxes levied on property in the annexed territory; and

(C) amount, if any, to be paid by the acquiring school corporation to the losing school corporation on account of property received from the losing school corporation.

The disposition, allocation, and amount must be equitable.

(b) After the adoption of the resolutions under subsection (a), notice shall be given by publication in both the acquiring school corporation and the losing school corporation. The notice must include the text of the resolution, a statement that the resolution has been adopted, and a statement that a right of remonstrance exists as provided in this chapter. It is not necessary to set out the remonstrance provisions of this chapter in the notice. A general reference to a right of remonstrance with a reference to this chapter is sufficient to satisfy the requirements of this subsection. The annexation must take effect not later than thirty (30) days after the publication of the notice or at the time provided in the resolution, whichever is later. However, the annexation is not required to take effect within the period required by this subsection if a remonstrance, based on a ground other than that set out in section 14(a)(5) of this chapter, is filed in the circuit or superior court of the county in which the annexed territory or any part of the annexed territory is located. The remonstrance must be filed by registered voters residing in the

- losing school corporation at least equal in number to the greater of:
- (1) ten percent (10%) of the number of registered voters residing in the losing school corporation; or
 - (2) fifty-one percent (51%) of the number of registered voters residing in the annexed territory.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-12

Annexation by school city; procedure

Sec. 12. (a) Notwithstanding section 11 of this chapter, a school city may effect an annexation as follows:

(1) The acquiring school corporation must adopt an annexation resolution of the type provided in section 11 of this chapter. Unless the losing corporation consents, the resolution may not provide a time for annexation before July 1 following the May 1 next succeeding the last publication of the notice of annexation.

(2) The acquiring school corporation, after adopting a resolution under subdivision (1), shall give notice of the type provided in section 11 of this chapter by publication in the acquiring school corporation and in the losing school corporation. The acquiring school corporation shall also give notice to the losing school corporation before the last publication of notice of the type provided in section 11 of this chapter. The annexation must take effect thirty (30) days after the last publication in the losing school corporation or at the time provided in the resolution, whichever is later. However, the annexation is not required to take effect within the period required by this subdivision if a remonstrance, based on a ground other than that set out in section 14(a)(5) of this chapter, is filed in the circuit or superior court of the county in which the annexed territory or a part of the annexed territory is located. The remonstrance must be filed by:

- (A) the losing school corporation;
- (B) not less than a majority of the owners of land in the annexed territory; or
- (C) the owners of seventy-five percent (75%) or more in assessed valuation of the real estate in the annexed territory.

(b) For purposes of determining ownership under subsection (a)(2)(B) and (a)(2)(C), the following rules apply:

- (1) Only the record title holder or holders of a single piece of property are considered an owner.
- (2) If record title of a single piece of property is in more than one (1) individual, all the individuals constitute only one (1) owner, and the remonstrance of any one (1) of the individuals constitutes the remonstrance of all the individuals, whether or not the other individuals authorized the filing of the remonstrance.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-13**Notice of annexation; publication; notice to losing school corporation**

Sec. 13. (a) The notice by publication required by sections 11 and 12 of this chapter shall be made two (2) times a week apart in two (2) daily newspapers of general circulation in the acquiring school corporation and the losing school corporation. The two (2) daily newspapers must be published in the English language. If there is only one (1) daily newspaper or if there are not any daily newspapers in either school corporation, a weekly newspaper may be used to provide notice. If there is only one (1) daily or weekly newspaper, publication in that newspaper is sufficient. If a newspaper is of general circulation in both school corporations, the publication of notice in the newspaper qualifies as one (1) of the required publications in each of the school corporations. Publication may be made jointly by the losing school corporation and the acquiring school corporation. The remonstrance period runs from the second publication.

(b) If notice is required to be given by an acquiring school corporation to a losing school corporation, it may be made by registered or certified United States mail, return receipt requested, addressed to the:

- (1) governing body of the losing school corporation at the governing body's established business office; or
- (2) superintendent of schools or any officer of the governing body of any other school corporation.

As added by P.L.1-2005, SEC.9. Amended by P.L.233-2015, SEC.88.

IC 20-25-5-14**Remonstrance; procedure; grounds**

Sec. 14. (a) A remonstrance under section 11 or 12 of this chapter must be in substantially the following form:

The undersigned hereby remonstrate against the annexation of the following described territory situated in _____ County, Indiana, whereby it would be transferred from _____ (the losing corporation) to _____ (the acquiring corporation):

(Description of the annexed territory sufficient to identify it.)

The remonstrance may be filed in any number of counterparts. Each counterpart must have attached to it the affidavit of the individual circulating the counterpart that affirms that each signature appearing on the counterpart was affixed in the presence of the individual circulating the counterpart and that each signature is the true and lawful signature of the individual who made it. The individual who makes the affidavit is not required to be one (1) of the individuals who signs the counterpart to which the affidavit is attached. The remonstrance must be accompanied by a complaint filed by one (1) or more of the remonstrators. The individual or individuals who file the complaint must be treated as a representative of the entire class of remonstrators and must sign the complaint individually or have their

respective attorneys sign it. The complaint must state the reasons for the remonstrance. The reasons for the remonstrance are limited to the following:

- (1) There is a procedural defect in the manner in which the annexation is carried out that is jurisdictional.
- (2) The annexed territory does not form a compact area abutting the acquiring school corporation.
- (3) The losing school corporation is left with no high school facilities, or its enrollment after annexation will be less than one thousand (1,000) students. This subdivision does not provide a basis for a remonstrance if the annexation includes all of the territory of the losing school corporation.
- (4) The benefits to be derived from the annexation are outweighed by the detriments after consideration of the respective benefits and detriments to the schools, the students residing in the acquiring school corporation, the students residing in the losing school corporation, and the students residing in the annexed territory.
- (5) The disposition of assets and liabilities of the losing corporation, the allocation of school tax receipts between the two (2) school corporations, and the amount to be paid by the acquiring school corporation as set out in the annexation resolution are inequitable.

Except for subdivision (1), each allegation enumerated under this subsection may be made in the statutory language.

(b) The plaintiff in a remonstrance suit is the individual whose name appears on the complaint and may be the losing school corporation in a remonstrance under section 12 of this chapter. The defendants in a remonstrance under section 11 of this chapter are the acquiring school corporation and the losing school corporation. The defendant in a remonstrance under section 12 of this chapter is the acquiring school corporation. Service of process shall be made on each defendant in the manner required in other civil actions.

(c) To determine if a petition is timely filed, the time of filing is the time of filing with the clerk of the circuit court without regard to the time of issuance of the summons. If the thirtieth day falls on Sunday, a holiday, or any other day when the clerk's office is not open, the time for filing must be extended to the next day when the clerk's office is open.

(d) The issues in a remonstrance suit are made up by the allegations in the complaint that are denied by each defendant. A responsive pleading does not need to be filed. A defendant may file a motion to dismiss the suit on the ground that the:

- (1) requisite number of qualified remonstrators have not signed the petition;
- (2) remonstrance was not timely filed; or
- (3) complaint does not state a cause of action.

A responsive pleading to a motion to dismiss does not need to be filed. With respect to a motion under subdivisions (1) and (2), the

allegations are considered denied by the remonstrators. In order to determine whether there are the requisite number of qualified remonstrators, an individual is not entitled to withdraw the individual's name after a remonstrance is filed, and an individual is not entitled to add the individual's name to the remonstrance after the remonstrance is filed. An individual may, however, at a remonstrance trial, in support or derogation of the substantive matters in the complaint, introduce into evidence a verified statement that the individual wishes to add or withdraw the individual's name from the remonstrance. The court may hear all or part of the matters raised by the motion to dismiss separately, or the court may consolidate all or part of the matters in the motion to dismiss with matters relating to the substance of the case for trial. A complaint may not be dismissed for failure to state a cause of action if a fair reading of the complaint makes out one (1) of the grounds for remonstrance and suit provided in subsection (a). An amendment of the complaint may be permitted in the discretion of the court if the amendment does not state a new ground of remonstrance.

(e) A remonstrance trial must be conducted in the same manner as other civil cases by the court without the intervention of a jury on the issues raised by a complaint or a motion to dismiss, or both. A change of venue from a judge is permitted, but a change of venue from the county is not permitted. The court shall expedite the hearing of the case. A court's judgment, except with respect to a matter raised under subsection (a)(5), must be that the:

- (1) annexation will take place;
- (2) annexation will not take place; or
- (3) remonstrance is dismissed.

(f) If the court finds that the remonstrators have proved a reason for the remonstrance described in subsection (a)(1) through (a)(4), the court's judgment shall be that the annexation will not take place. If the remonstrators fail to prove a reason for the remonstrance described in subsection (a)(1) through (a)(4), the court's judgment shall be that the annexation will take place. If the remonstrators raise an issue under subsection (a)(5) in support of a remonstrance, the court's judgment may be either that the disposition, allocation, and amount set out in the annexing resolution are equitable or inequitable. If the court finds that the disposition, allocation, and amount set out in the annexing resolution are inequitable, the court shall provide for an equitable disposition, allocation, and amount. Costs will follow judgment. Appeals may be taken from any judgment of the court in the same manner as appeals are taken in other civil cases.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-15

Equitable disposition of assets and liabilities, allocation of taxes, and payment by acquiring school corporation

Sec. 15. With respect to whether the disposition of the assets and liabilities of the losing school corporation is equitable, the allocation

of school tax receipts is equitable, and the amount to be paid by the acquiring school corporation is equitable, a court must be satisfied that the annexing resolution conforms substantially to the following standards:

(1) Except for current obligations or temporary borrowing, the acquiring school corporation shall assume a part of all installments of principal and interest on the indebtedness of the losing school corporation that is due after the end of the last calendar year in which the losing school corporation is entitled to receive current tax receipts from property tax levies on the property in the annexed territory. The part assumed by the acquiring school corporation consists of the following:

(A) All installments relating to any indebtedness incurred in connection with the acquisition or construction of a building located in the annexed territory.

(B) A proportion of all installments relating to any other indebtedness that is in the same proportion as the valuation of the real property in the annexed territory bears to the valuation of all the real property in the losing school corporation. Valuation under this clause is based upon the assessment for general taxation immediately before annexation.

(2) The acquiring school corporation shall make the payments and assume the obligations provided for a school corporation acquiring:

(A) territory;

(B) a building or buildings; or

(C) both territory and a building or buildings;

under IC 20-47-5.

(3) If the annexed territory includes an entire losing school corporation, the acquiring school corporation shall:

(A) acquire all the property and assets of the losing school corporation without making any payments for the losing school corporation; and

(B) assume all of the liabilities and obligations of the losing school corporation.

As added by P.L.1-2005, SEC.9. Amended by P.L.231-2005, SEC.27; P.L.2-2006, SEC.115.

IC 20-25-5-16

Effective date of annexation

Sec. 16. (a) If a remonstrance is filed on any ground other than a ground set forth in section 14(a)(5) of this chapter, annexation does not become effective until final judgment in the remonstrance suit. A judgment is not considered final until the time for taking an appeal has expired or, if an appeal is taken within the permitted time, until a final judgment is issued in the appeal.

(b) A judgment of a trial court dismissing a remonstrance is a final judgment, subject to subsection (a).

(c) If a judgment is against annexation, no further annexation of the annexed territory may occur for two (2) years after the date of the filing of the remonstrance. However, a judgment against annexation does not prevent either the:

- (1) acquiring school corporation; or
- (2) acquiring school corporation and the losing school corporation;

from rescinding the annexation resolution. If an annexation resolution is rescinded under this subsection, the suit must be dismissed without prejudice. If an annexation suit is dismissed without prejudice under this subsection, the two (2) year prohibition does not apply unless a subsequent annexation resolution is adopted primarily for the purpose of harassment and not for another purpose, such as the correction of procedural irregularities or a substantial change in the annexed territory or the annexation resolution.

(d) If a remonstrance relates solely to a matter raised under section 14(a)(5) of this chapter, the annexation takes effect at the time provided under section 11 or 12 of this chapter.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-17

Boundaries of school city or school town; application of chapter

Sec. 17. Notwithstanding any other statute that provides that the boundaries of a school city or school town are coterminous or coextensive with the boundaries of a civil city or civil town, the boundaries of a school city may be changed after March 8, 1961, solely by annexation under this chapter if this chapter was in effect at the time the annexation became effective or finally effective.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-18

Conflicting laws void; continued effect of consolidation laws; approval not required for annexation

Sec. 18. (a) Except as provided in subsection (b), a law or a part of a law in conflict with this chapter is void.

(b) This chapter may not be construed to invalidate IC 20-23-4, IC 20-23-16, or any other statute concerning the consolidation of two (2) or more school corporations to which this chapter is supplementary. However, IC 20-23-4 and IC 20-23-16 are void to the extent that IC 20-23-4 and IC 20-23-16 conflict with the subsequent provisions of this section.

(c) An annexation sought under this chapter does not require the approval of a:

- (1) county committee;
- (2) state commission; or
- (3) committee created under or referred to in IC 20-23-4.

(d) Acts 1961, c.186, s.9, with respect to an annexation that is finally effective before February 25, 1969, operates after March 8, 1961, before and after a final plan is put into effect by:

- (1) election;
- (2) petition;
- (3) another proceeding under IC 20-23-4 or IC 20-23-16; or
- (4) another statute concerning the consolidation of two (2) or more school corporations.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-19

Annexations not effective before February 25, 1969; repeal of statute

Sec. 19. Acts 1961, c.186, s.9 is repealed regarding an annexation that is not effective or finally effective before February 25, 1969.

As added by P.L.1-2005, SEC.9.

IC 20-25-5-20

Transfer of unused property to board of park commissioners

Sec. 20. (a) This section applies to a school city described in IC 20-25-2-12.

(b) All real estate belonging to a school city that:

- (1) consists of lots and buildings on the real property of the school city; and
- (2) has not been used for school purposes for at least five (5) years;

may be transferred to and placed under the jurisdiction of the board of park commissioners of the city in which the school city is located and must be operated, managed, controlled, and maintained as a recreation center for the use and benefit of the city.

As added by P.L.1-2005, SEC.9.