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LEGISLATURE 2020

## Indiana Senate passes bill giving property owners power to block annexation

By Ernest Rollins The Herald-Times

Jan 30, 2020



Residents look at a map of Bloomington Mayor John Hamilton's annexation proposal following the announcement of the plan in February 2017 at City Hall. Hamilton originally proposed annexing nearly 10,000 acres, but the process was effectively killed by an unexpected amendment to the state budget. (Chris Howell / Herald-Times)

A bill that passed the Indiana Senate on Monday would void all annexation remonstrance waivers and require cities to get approval from majority of property owners before they can annex an area.

Senate bill 23 passed 37-12. State Sen. Mark Stoops, D-Bloomington, voted no. State Sen. Eric Koch, R-Bedford, voted yes. Both senators represent a portion of Monroe County. The bill now moves to the House for consideration.

According to the bill, authored by Sen. Phil Boots, R-Crawfordsville, a city seeking to annex an area must get approval from at least 51% of property owners or those owning more than 75% of taxable assessed value of the land. If city officials have enough signatures, the bill also states that a judge must hold a hearing to review the annexation.

Last session Boots had a bill with the same language. It also also passed the Senate. At that time senators voted 36-13 on the bill. Boots said once it reached a conference committee, the bill's language was replaced. Instead, the bill became about urging the creation of a committee during the summer to study the annexation issue. Boots said that study committee was never formed.

Boots said he just thinks it is unfair that cities and towns get to decide the fate of someone living outside of their area. He said this bill gives landowners a vote on whether they want to be annexed.

The bill would apply to annexations after March 31.

When Bloomington announced plans to annex thousands of acres of unincorporated land around and within the city in 2017, many non-city residents voiced concern about the proposal. Among those concerns was being annexed by officials the affected property owners did not help elect. In addition, as part of the proposed annexation attempt in 2017, officials sought to make it effective starting Jan. 1, 2020 — after a municipal election year.

However, the city was never able to complete the annexation process as the state Legislature that year passed a law that effectively stopped Bloomington's annexation attempt. The city sued the state, naming Gov. Eric Holcomb as the sole defendant in the case, and won in a lower trial court last year.

The state has since appealed the ruling to the Indiana Supreme Court, which heard oral arguments in the case on Jan. 9 and has yet to issue a ruling.

City of Bloomington spokeswoman Yael Ksander said city officials said Boots' proposed bill would clearly change a municipality's ability to annex property. She added it is not clear if the implementation of this bill would conflict with other state laws.

"I think people are still analyzing to see if it doesn't violate state statute," Ksander said. "This would have a real chilling effect on the abilities of cities to annex contiguous land."

Boots' bill will also void annexation remonstrance waivers for annexations after March 31. Remonstrance waivers are agreements that some non-city property owners sign in order to get access to city utilities.

They state that in the event of a future annexation attempt, the property owner cannot legally fight the attempt. Waivers stay with the property, so in some instances, the person who signed the waiver may not be the current homeowner.

The use of the waivers was a part of the state's argument to the court to uphold the annexation ban affecting Bloomington.

"Bloomington ignored pleas from residents for more time and intentionally structured its annexation so as to make remonstrance impossible," according court documents. "The Legislature rightly exercised its power to stymie Bloomington's efforts to thwart opposition by residents of the annexation area."

However, city attorneys have defended the use of remonstrance waivers. According to court documents, city attorneys stated the use of the waivers was legal and consistent with what other communities have done and were only one factor among many in determining which areas to consider for possible annexation.

Bloomington Director of Public Engagement Mary Catherine Carmichael said other Indiana cities are concerned about this bill. She added city officials are working with Accelerate Indiana Municipalities, an organization that advocates for Indiana municipalities, to oppose the bill.

"We believe the annexation law from a few years ago should be implemented and the impact of that understood before we keep making changes," Carmichael said.

On July 1, 2019, a new law went into effect that stated annexation remonstrance waivers would expire after 15 years if properly recorded. In addition, the law voided:

- Waivers signed prior to July 1, 2003;
- Waivers signed after June 30, 2003, and before July 1, 2019, if not recorded before Jan. 1, 2020; and
- Waivers signed after June 30, 2019, if they are not recorded within 30 days.

Carmichael said cities are the economic engine of communities and the Statehouse over the past few years has continued to put forth legislation that limits cities' ability to grow and whittles away the autonomy of municipalities.

"It's frustrating from our perspective," Carmichael said.

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