

Indiana Advisory Commission on Intergovernmental Relations

Thursday November 12, 1998, Meeting, 1:30 PM

ISTA Building

150 W. Market St., Second Floor

Indianapolis, Indiana

MINUTES

CALL TO ORDER

Chair William W. Bailey announced that there was a quorum present (attendance roster attached) and called the meeting to order at approximately 1:40 P.M.

AGENDA

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| - Call to Order | Chair Bailey |
| - Approval of Minutes of meeting on 10/1/98 | Commission Members |
| - Review of Project Report | John L. Krauss |
| - | Greg Lindsey |
| - Discussion of Recommendations | Commission Members
Commission Staff |
| - Next Meeting | |
| - Adjournment | |
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APPROVAL OF MINUTES

A motion was made and seconded for approval of the minutes from the meeting of 10/1/98. The minutes were approved unanimously.

Representative Bailey asked staff to distribute the draft of *Annexation in Indiana: Issues and Options* to members of the audience. He then stated that the purpose of the meeting was for commission members to discuss the letter to the Indiana Legislative Council (Attachment A) that would accompany the final report.

Senator Zakas asked about the timetable for completing the final report.

Representative Bailey and John Krauss indicated that it would be completed before Christmas.

STAFF PRESENTATION:

John Krauss gave a brief history of the annexation project. He indicated that Greg Lindsey and Jamie Palmer had worked to ensure that the report reflected a series of options and that it would serve as context for the legislature in the upcoming legislative session.

Greg Lindsey described the ten sections of the draft report.

DISCUSSION OF RECOMMENDATIONS:

Representative Bailey asked if there were any questions for the staff. He then suggested systematic review of the three-page summary letter, focusing in sequence on the issues reflected in bold headings. He stressed that there was no perfect solution to any of the concerns identified.

Notice

Rick Cockrum first complimented the staff on the report. He then indicated concern regarding certified mail as the vehicle for notification. He asked about the consequences should a municipality inadvertently fail to notify a property owner.

Representative Goeglein said it is legally defined that notification be sent to the person on the property title.

Representative Bailey asked if the commission needed to anticipate specific legislative questions or rely on the Legislative Services Agency to identify them.

Representative Schoeler suggested that the commission note issues that arose during the discussion.

Mayor Fernandez indicated that certified mail would be an additional expense for the municipality and first class mail should be sufficient. In some cases, people do not accept certified mail.

Representative Bailey asked Fernandez if Bloomington requires notification by certified mail for zoning cases.

Mayor Fernandez responded that they provide notification by first class mail.

Representative Bailey asserted that the cost of certified mail does not seem to be a crippling expense given the limited number of annexations.

Mayor Fernandez reasserted the concern expressed by Cockrum regarding failure to notify.

Linda Williams said that in her experience notification by certified mail had always warranted the expense. Certified mail receipts provide proof that the township tried to notify the property owner.

James Beery asserted that the effort is warranted because the issue dramatically affects the lives of property owners.

Representative Goeglein pointed out that it could complicate matters if a property owner does not receive notification.

Representative Bailey asked if there could be a voice agreement on the text. Representative Klinker made the motion to approve the **Notice** paragraph of the draft letter to the Indiana Legislative Council. Representative Scholer seconded the motion. The paragraph was approved unanimously.

Public Hearing

Representative Bailey suggested there be a time period between the public hearing and the final vote on the ordinance in order to give more structure to the calendar.

Senator Zakas responded that this was a good idea.

Dave Bohmer indicated that the time for remonstrance was not the principal problem but rather the lack of communication.

Linda Williams conveyed that the core issues are education and communication. A meeting in which municipal and township officials and the public could communicate honestly about issues would mitigate some of these problems.

Rick Cockrum voiced concern about adding time between meetings in addition to the augmented time necessary for certified mailings.

Senator Zakas responded that the time between the public meeting and the vote might be sufficient to allow property owners to begin the process of remonstrance.

John Krauss stated that forum participants complained that public hearings were simply a formality. There was the perception that the decision was already made prior to public testimony.

Senator Zakas commended the staff on the quality of the report. He pointed out that within the letter there was no differentiation between voluntary and involuntary annexation.

Jamie Palmer responded by saying that the letter addressed involuntary annexation primarily. Very little was heard at the forums regarding reworking the process for voluntary annexations.

Representative Bailey clarified by saying that the letter does not preclude addressing voluntary annexation in proposed legislation.

Representative Goeglein asked if the waiver process takes care of the problem.

Representative Bailey responded that it does.

Gerald Gilles stated that an open public hearing might lessen the need for a remonstrance.

Senator Craycraft asked about flexibility during the process.

Representative Bailey stated that at the public hearing it would be determined whether it was voluntary or involuntary. A public hearing is the first step.

Linda Williams asked who decides if an annexation is voluntary or involuntary.

Representative Bailey responded that it would be the governing body that would vote.

Representative Scholer asked whether municipalities have a waiver of remonstrance for most voluntary annexations.

Representative Bailey responded that the information was not currently available.

Jamie Palmer stated that because there was no clear relationship between voluntary or involuntary and owner-initiated or municipality-initiated annexations, commission staff avoided the terms voluntary and involuntary.

Representative Bailey stated that the commission was in general agreement with the language in the **Public Hearing** paragraph. The motion to approve was made by Dave Bohmer and seconded by Representative Klinker. The paragraph was approved unanimously.

Time for Remonstrance

Representative Bailey indicated that remonstrators currently had 60 days to file an appeal. There was concern that this was not enough time. He asserted that with the extended notice requirements approved previously in the meeting 60 days might be sufficient.

James Beery conveyed that it was a lengthy process for those who need to prepare a remonstrance.

Senator Zakas stated that the language of the letter captured those concerns. He suggested the addition of language to indicate that the augmented time between the public hearing and vote may be sufficient to address the need for more time.

Representative Scholer stated that the commission should add the sentence suggested by Senator Zakas.

Dave Bohmer suggested that the period for remonstrance could begin once the public was notified before the public hearing.

Sue Paris stated that the letter indicated that time for remonstrance should be extended.

Representative Bailey asserted that 60 days is appropriate.

Senator Zakas said he did not agree. He suggested that the commission retain the general language about increasing the period for remonstrance because it captures a concern of the commission.

Dave Bohmer stated that with the previous two items (notice and public hearing), the period for remonstrance is sufficient.

Representative Goeglein agreed that Senator Zakas' language should be included.

Representative Bailey asked for a motion, which was made by Representative Goeglein and seconded by Representative Klinker. The **Time for Remonstrance** paragraph with the additional language proposed by Senator Zakas was unanimously approved.

Grounds for Remonstrance

Rick Cockrum asked about the definition of urban land use.

Jamie Palmer responded that it was defined generally by zoning classification.

Senator Zakas suggested striking the last two sentences of the paragraph.

Rick Cockrum asked whether urban character is hard to define.

Jamie Palmer responded that the current statute defines it by population density, percentage subdivided, and business or industrial zoning.

Greg Lindsey responded that there were two set of criteria in the law that define property eligible for municipally initiated annexation.

Mayor Fernandez asserted that the current statute is adequate. He suggested the need to consider all of the recommendations as a whole. The provisions will place differing burdens on different size municipalities. Some provisions may be onerous for smaller towns.

Representative Goeglein stated that under current law remonstrance generally was futile.

John Krauss stated that the statute only allowed for procedural remonstrance.

Mayor Fernandez stated that the commission should not make specific recommendations on matters that are qualitative not procedural.

James Beery conveyed that if the commission ignored this section of the letter, it had missed the heart of the conflict surrounding annexation in Indiana.

Representative Scholer asked if these issues are addressed in **Delivery of Services and Fiscal Issues**.

Linda Williams indicated that the language addresses the concerns that have been heard around the state.

Senator Zakas pointed out that this section addressed procedure.

Dave Bohmer asserted that if the grounds for remonstrance are broader, then municipalities would be more careful about choosing the area to be annexed.

Representative Bailey asked for a motion to accept the language for this paragraph. A motion was made by Dave Bohmer and seconded by Representative Goeglein. The **Grounds for Remonstrance** paragraph was approved by all except Senator Zakas.

Waiver of Right to Remonstrate

Representative Klinker stated that it is important that property owners be aware that developers wave their rights to remonstrate.

Representative Bailey asked for a motion to approve the language of this paragraph. A motion was made by Representative Klinker and was seconded by Representative Goeglein. The motion was unanimously approved.

Delivery of Services

James Beery indicated that there currently was no requirement that money be budgeted to provide promised services.

Representative Bailey stated that often annexations were undertaken with good intentions. Unforeseeable circumstances might prevent a municipality from keeping its promise.

Senator Zakas asked about the consequences if municipalities failed to provide services as promised.

Representative Scholer asked if this suggestion would change the burden of proof.

Senator Zakas responded that it would not.

Representative Bailey stated that municipalities needed a better way to indicate the services they would be providing.

Senator Zakas stated that the burden should be on the municipality.

Senator Craycraft asked if municipalities had to complete all work promised in three years.

Senator Zakas replied that this was correct.

Gerald Gilles stated that if services cannot be provided due to problems then property owners should not have to pay taxes.

Representative Bailey asked for a motion to accept the **Delivery of Services** paragraph. Linda Williams motioned to accept language. The motion was seconded by Representative Klinker and approved by all.

Fiscal Issues and Plans

Representative Klinker asked why fiscal plans would not be required in all cases.

John Krauss specified that current law was vague.

Representative Klinker asked why statute does not require fiscal plans for owner-initiated annexations.

Senator Zakas stated that they might not know what they want to do.

Representative Klinker stated that it seemed that they would need a plan for sewer and water.

A motion to approve the **Fiscal Issues and Plans** language was made by Sue Paris and seconded by Representative Scholer. The paragraph was approved by all.

Filing Requirements

Representative Goeglein stated that filing requirements should be clarified and that the state certifying official should be renamed.

Representative Klinker asked if the commission should suggest where it is to be filed.

Representative Goeglein stated that the ordinance was filed with the auditor's office.

Representative Bailey said that it is the State Board of Tax Commissioners at the state level.

Bob Lain stated that the commission should not change where the ordinance is filed.

Representative Bailey indicated that it would be left to the State Board of Tax Commissioners.

Linda Williams asked if these filing requirements would offer checks and balances in the process.

Representative Bailey stated that he sees this as a recording function.

John Krauss stated that when there was a certifying official, there was no consistency on the quality of the plans.

A motion to approve the language was made by Gerald Gilles and seconded by Linda Williams. The **Filing Requirements** paragraph was approved unanimously.

Representative Bailey asked if there were any other questions.

Senator Zakas asked for a brief discussion regarding the introduction.

Introduction

Senator Zakas suggested that in 4th line in the 4th paragraph on the first page of the letter the word "many" be changed to "forced."

Representative Klinker asked about the language addressing referenda.

Greg Lindsey stated that the language was intended to reflect the uncertainty by members at the previous meeting about referenda.

Senator Zakas asked if referenda were an option that should be explored.

Representative Bailey then asked if there were any points that were omitted from the letter.

Representative Bailey asked for approval of the cover letter. It was approved unanimously.

John Krauss stated that the revised letter and report would be sent to all commission members as well as all members of the legislature.

Dave Bohmer conveyed that the draft report was a good one.

NEXT MEETING

Representative Bailey indicated that another meeting would not be needed on this issue unless commission members identified serious issues within the report that would warrant another meeting. He gave commission members two weeks to review the report.

Senator Zakas clarified that commission members could request an additional meeting.

Representative Bailey asked for approval of the report to send to Legislative Council. It was motioned by James Beery, seconded by Representative Klinker, and approved unanimously.

Senator Zakas proposed that Y2K be considered next by the commission.

Representative Bailey praised the commission for doing a good job on this issue.

ADJOURNMENT

The meeting was adjourned at approximately 3:35 P.M.