

CHAPTER 1

**GOVERNMENT - MUNICIPAL**

**HOUSE BILL 99-1099**

BY REPRESENTATIVES Sullivant, Spence, Clapp, Allen, Coleman, Fairbank, Grossman, Kaufman, Lawrence, Lee, McKay, McPherson, Nunez, Plant, Ragsdale, Stengel, Tochtrop, Vigil, Webster, and S. Williams; also SENATORS Blickensderfer, Andrews, Dyer, Hernandez, Lacy, and Rupert.

**AN ACT**

CONCERNING THE PRIORITY OF MUNICIPAL INCORPORATION PROCEEDINGS COMMENCED FOR AN AREA CONTAINING A SPECIFIED NUMBER OF INHABITANTS OVER MUNICIPAL ANNEXATION PROCEEDINGS AFFECTING ALL OR ANY PART OF THE SAME AREA.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 31-12-113 (1), Colorado Revised Statutes, is amended to read:

**31-12-113. Effective date of annexation - required filings.** (1) If the conditions of subsection (2) of this section are met, area annexed to a municipality, as provided in this part 1, shall be annexed upon the effective date of the annexing ordinance, except AS OTHERWISE PROVIDED IN SECTIONS 31-12-118 AND 31-12-118.5 AND for tax purposes as provided in subsection (3) of this section.

**SECTION 2.** 31-12-118 (1) and (2), Colorado Revised Statutes, are amended to read:

**31-12-118. Priority of annexation proceedings.** (1) The purpose of this section is to give a first priority to annexation proceedings UNLESS CERTAIN INCORPORATION PROCEEDINGS DESCRIBED IN THIS SECTION ARE COMMENCED FOR ALL OR PART OF THE AREA SUBJECT TO SUCH ANNEXATION PROCEEDINGS.

(2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), when a governing body receives a petition for annexation pursuant to section 31-12-107 (1) or a petition for an election on the question of annexation pursuant to section 31-12-107 (2), no other proceedings shall be commenced or prosecuted for the annexation or incorporation of the same area or any part thereof and no other proceedings shall be commenced or prosecuted for the creation of any quasi-municipal corporation in the same area or any part thereof until the question of annexing such area pursuant to any such petition has been finally determined.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

Nothing in this subsection (2) shall prevent a duly established special service district lawfully organized under part 5 or 6 of article 25 of this title, article 8 of title 29, part 2 of article 20 of title 30, or title 32 (except article 8), C.R.S., from receiving and prosecuting a petition for the inclusion of the same area or any part thereof within the boundaries of any such special service district during any pending annexation proceeding.

(b) A GOVERNING BODY SHALL HOLD ANNEXATION PROCEEDINGS IN ABEYANCE IF, ON OR AFTER THE DATE A PETITION FOR ANNEXATION PURSUANT TO SECTION 31-12-107 (1) OR A PETITION FOR AN ELECTION ON THE QUESTION OF ANNEXATION PURSUANT TO SECTION 31-12-107 (2) IS FILED, A PETITION FOR INCORPORATION OF THE SAME AREA OR ANY PART THEREOF IS FILED PURSUANT TO PART 1 OF ARTICLE 2 OF THIS TITLE AND SUCH AREA CONTAINS MORE THAN SEVENTY-FIVE THOUSAND INHABITANTS.

**SECTION 3.** Part 1 of article 12 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**31-12-118.5. Effect of incorporation proceedings in an area of more than seventy-five thousand inhabitants - annexation ordinance - legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) INCORPORATION OF AREAS CONTAINING MORE THAN SEVENTY-FIVE THOUSAND INHABITANTS INTO NEW MUNICIPALITIES FURTHERS THE GOAL OF ORDERLY GROWTH OF URBAN COMMUNITIES AND ACHIEVES THE PURPOSES STATED IN SECTION 31-12-102;

(b) MUNICIPAL INCORPORATIONS OF AREAS CONTAINING SUCH POPULATION PRESENT VIABLE MUNICIPAL COMMUNITIES AND ARE FAVORED OVER MUNICIPAL ANNEXATIONS THAT MAY FRAGMENT AFFECTED COMMUNITIES AND REDUCE OR ELIMINATE THE ABILITY TO PROVIDE MUNICIPAL GOVERNMENT, SERVICES, AND FACILITIES TO THOSE COMMUNITIES;

(c) THE CURRENT MUNICIPAL ANNEXATION AND INCORPORATION LAWS DO NOT ADEQUATELY EXPRESSLY ADDRESS THE PRIORITY TO BE GIVEN MUNICIPAL INCORPORATION OF AREAS CONTAINING SUCH POPULATION;

(d) THIS SECTION AND SECTION 31-12-118 (2) (b) ARE NECESSARY TO PROVIDE REMEDIAL DIRECTION REGARDING THE JURISDICTION OF MUNICIPALITIES TO SUBJECT AREAS CONTAINING SUCH POPULATION TO MUNICIPAL ANNEXATION AND, THEREFORE, THAT EACH SECTION SHALL APPLY ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION TO ALL ANNEXATION PROCEEDINGS THAT ARE PENDING OR SUBJECT TO JUDICIAL REVIEW OR APPEAL COMMENCED PURSUANT TO SECTIONS 31-12-116 AND 31-12-117 WHETHER OR NOT SUCH REVIEW OR APPEAL IS SOUGHT;

(e) THE ENACTMENT OF THIS SECTION AND SECTION 31-12-118 (2) (b) IS NOT VIOLATIVE OF SECTION 11 OF ARTICLE II OF THE COLORADO CONSTITUTION WITH RESPECT TO ANNEXATION PROCEEDINGS THAT ARE PENDING OR SUBJECT TO JUDICIAL REVIEW OR APPEAL ON THE EFFECTIVE DATE OF THIS SECTION SINCE:

(I) SECTION 11 OF ARTICLE II OF THE COLORADO CONSTITUTION APPLIES SOLELY

TO STATUTES THAT TAKE AWAY OR IMPAIR A VESTED RIGHT ACQUIRED UNDER EXISTING LAWS OR THAT IMPOSE A NEW DUTY OR CREATE A NEW OBLIGATION WITH RESPECT TO COMPLETED TRANSACTIONS OR CONSIDERATIONS;

(II) NO PERSON HAS A VESTED RIGHT IN ANY ANNEXATION PROCEEDINGS THAT ARE PENDING OR SUBJECT TO JUDICIAL REVIEW OR APPEAL ON THE EFFECTIVE DATE OF THIS SECTION THAT WILL BE IMPAIRED BY THIS SECTION OR SECTION 31-12-118 (2) (b); AND

(III) THIS SECTION AND SECTION 31-12-118 (2) (b) DO NOT IMPOSE A NEW DUTY OR CREATE A NEW OBLIGATION WITH RESPECT TO ANY MUNICIPAL ANNEXATION THAT IS COMPLETED AND THAT IS FINAL AND NO LONGER SUBJECT TO JUDICIAL REVIEW OR APPEAL.

(2) (a) IF A PETITION FOR AN INCORPORATION ELECTION IS FILED PURSUANT TO PART 1 OF ARTICLE 2 OF THIS TITLE, THEN NO ANNEXATION ORDINANCE THAT ANNEXES ALL OR ANY PART OF THE AREA INCLUDED IN SUCH PETITION SHALL BE DEEMED FINAL. THIS SUBSECTION (2) SHALL APPLY ONLY IF SUCH AREA PROPOSED FOR INCORPORATION CONTAINS MORE THAN SEVENTY-FIVE THOUSAND INHABITANTS AND SUCH PETITION IS FILED:

(I) PRIOR TO THE EXPIRATION OF THE SIXTY-DAY LIMITATION ON REVIEW PROCEEDINGS CONTAINED IN SECTION 31-12-116 (2) (a); OR

(II) AFTER A REVIEW PROCEEDING ON SUCH ANNEXATION ORDINANCE HAS BEEN COMMENCED PURSUANT TO SECTION 31-12-116 AND PRIOR TO THE DATE OF A JUDICIAL DECLARATION OR FINAL JUDGMENT, INCLUDING AN APPELLATE JUDGMENT, ON SUCH REVIEW PROCEEDING.

(b) IF SUCH INCORPORATION ELECTION IS APPROVED BY A COURT ORDER ENTERED PURSUANT TO SECTION 31-2-103, THEN SUCH ANNEXATION ORDINANCE SHALL BE DEEMED VOID WITH RESPECT TO ANY AREA THAT IS INCORPORATED PURSUANT TO SUCH ELECTION.

**SECTION 4. Applicability.** This act shall apply to any annexation petition or petition for incorporation under part 1 of article 2 of title 31, Colorado Revised Statutes, that is pending on or after said date, and to any annexation ordinance under part 1 of article 12 of title 31, Colorado Revised Statutes, that is subject to judicial review under sections 31-12-116 and 31-12-117, Colorado Revised Statutes, including appellate review, whether or not such review is sought on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: February 1, 1999