

## CHAPTER 195

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**GOVERNMENT - MUNICIPAL**

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**HOUSE BILL 97-1099**

BY REPRESENTATIVES Smith, Anderson, G. Berry, Entz, Schwarz, Sullivant, Taylor, and Tupa;  
also SENATOR Bishop.

**AN ACT**

CONCERNING MUNICIPAL ANNEXATION.

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

**SECTION 1.** 31-12-105 (1) (c) and (1) (d), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

**31-12-105. Limitations.** (1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations shall apply to all annexations:

(c) No annexation ~~resolution~~ pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

(d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation ~~resolution~~ pursuant to section 31-12-106 or annexation petition or petition

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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.*

for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

**SECTION 2.** 31-12-106 (1.1) and (2), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

**31-12-106. Annexation of enclaves, partly surrounded land, and municipally owned land.** (1.1) Exception to annexation of enclaves. No enclave may be annexed pursuant to subsection (1) of this section if:

(a) Any part of the municipal boundary or territory surrounding such enclave consists at the time of the annexation of the enclave ~~society~~ of public rights-of-way, including streets and alleys, ~~which~~ THAT are not immediately adjacent to the municipality on the side of the right-of-way opposite to the enclave; OR

(b) ANY PART OF THE TERRITORY SURROUNDING THE ENCLAVE WAS ANNEXED TO THE MUNICIPALITY SINCE DECEMBER 19, 1980, WITHOUT COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION.

~~(2) Annexation of unincorporated areas which have had more than two-thirds boundary contiguity with the annexing municipality for a period of not less than three years. The eligibility requirements of section 31-12-104 shall not apply to annexations pursuant to this subsection (2). The governing body of any municipality may annex such area by the following procedure: Adopt a resolution setting forth the intent of the governing body to annex the area described in said resolution if, after notice and hearing as provided in sections 31-12-108 and 31-12-109, the governing body finds and determines that the proposed annexation complies with the provisions of section 31-12-105. Such findings and determinations shall be in writing and shall be included in the minutes of the governing body's meeting. The governing body, by ordinance, may approve such annexation.~~

**SECTION 3.** 31-12-107 (5), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 31-12-107 as amended, is further amended BY THE ADDITION A NEW SUBSECTION, to read:

**31-12-107. Petitions for annexation and for annexation elections.** (5) If a petition is filed pursuant to subsection (1) or (2) of this section and the territory sought to be annexed meets the specifications of section 31-12-106 (1), ~~or (2)~~; the governing body of the municipality with which the petition is filed shall thereupon initiate annexation proceedings pursuant to the appropriate provisions of section 31-12-106 (1). ~~or (2)~~. In the event that any governing body fails to initiate such annexation proceedings within a period of one year from the time that such petition is filed, annexation may be effected by an action in the nature of mandamus to the district court of the county where the land to be annexed is located, and the petitioner's court costs and attorney's fees incident to such action shall be borne by the municipality.

(8) NO POWER OF ATTORNEY PROVIDING THE CONSENT OF A LANDOWNER TO BE ANNEXED BY A MUNICIPALITY PURSUANT TO THIS SECTION SHALL BE VALID FOR A TERM OF MORE THAN FIVE YEARS, AND NO SUCH POWER OF ATTORNEY EXECUTED

BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (8) SHALL BE VALID FOR A TERM OF MORE THAN FIVE YEARS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (8).

**SECTION 4.** 31-12-114 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**31-12-114. Conflicting annexation claims of two or more municipalities.**

(1) At any time during a period of notice given by a municipality pursuant to section 31-12-108, any other municipality may ~~adopt a resolution of intent pursuant to section 31-12-106~~ or receive a petition for annexation or a petition for an annexation election pursuant to section 31-12-107 with the area partly or wholly overlapping the area

proposed for annexation by the first municipality. If this occurs, the respective rights of the several municipalities shall be determined in accordance with an election as provided in this section.

**SECTION 5.** 31-12-115 (1) and (5), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

**31-12-115. Zoning of land while annexation is under way - zoning of newly annexed land - subdivision of land while annexation is under way.**

(1) An annexing municipality may institute the procedure outlined in state statutes or municipal charter to make land subject to zoning at any time ~~after a resolution of intent has been passed in accordance with section 31-12-106~~ or after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of section 31-12-107. The proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is passed on final reading. If the zoning process is commenced prior to the effective date of the annexation ordinance, the legal protest area for zoning shall be determined solely on geographic location, irrespective of whether the land in such legal protest area is within or without or partly within and partly without the annexing municipality.

(5) Any annexing municipality may institute the procedure outlined in its subdivision regulations to subdivide land in the area proposed to be annexed at any time ~~after a resolution of intent has been passed in accordance with section 31-12-106~~ or after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of section 31-12-107. The ordinance accepting the proposed subdivision shall not be passed on final reading prior to the date when the annexation is passed on final reading.

**SECTION 6.** 31-12-116 (2) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**31-12-116. Review.** (2) (b) In any action brought within the sixty-day limitation of paragraph (a) of this subsection (2) to review the annexation of an enclave pursuant to section 31-12-106 (1), the court may review the findings and determinations of the governing body in annexing any territory which, in whole or in part, resulted in the creation of the enclave. If the court finds that any such prior annexation resulted in the creation of a municipal boundary which consists ~~solely~~ of public rights-of-way as set forth in section 31-12-106 (1.1) OR OCCURRED WITHOUT

COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AS SET FORTH IN SECTION 31-12-106 (1.1) (b), it shall declare the annexation of the enclave to be void, but no such finding or decision shall affect the validity of the prior annexation.

**SECTION 7. 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: May 27, 1997