

CHAPTER 211

GOVERNMENT - MUNICIPAL

HOUSE BILL 10-1259

BY REPRESENTATIVE(S) Nikkel;
also SENATOR(S) Lundberg.

AN ACT

CONCERNING AMENDMENTS TO THE "MUNICIPAL ANNEXATION ACT OF 1965" IN ORDER TO CONFORM THE ACT TO PROVISIONS OF THE STATE CONSTITUTION.

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

SECTION 1. 31-12-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

31-12-102. Legislative declaration. (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT:

(a) SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION WAS ADDED TO THE STATE CONSTITUTION AS A VOTER-APPROVED BALLOT MEASURE IN 1980;

(b) SINCE ITS ADOPTION, SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION HAS BEEN IN LAWFUL FORCE AND EFFECT. AS PART OF THE STATE CONSTITUTION, ALL ANNEXATIONS SINCE ITS ENACTMENT HAVE BEEN OR SHOULD HAVE BEEN UNDERTAKEN SUBJECT TO ITS TERMS.

(c) BY ENACTING HOUSE BILL 10-1259, ENACTED IN 2010, WHICH AMENDS VARIOUS PROVISIONS OF THIS PART 1, THE GENERAL ASSEMBLY DOES NOT INTEND TO CHANGE THE LAW GOVERNING ANNEXATIONS IN THE STATE BUT RATHER TO BETTER HARMONIZE THE PROVISIONS OF THIS PART 1 WITH THOSE OF SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION.

SECTION 2. 31-12-103 (7) and (9), Colorado Revised Statutes, are amended, and the said 31-12-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

31-12-103. Definitions. As used in this part 1, unless the context otherwise requires:

(7) ~~"Nonresident landowner" means any person owning property in the area proposed to be annexed who is not a qualified elector and who is at least eighteen years of age as attested to by sworn affidavit.~~

(9) ~~"Qualified elector" means a registered elector, as defined in part 1 of article 1 of this title, who is a resident landowner of the area proposed to be annexed.~~

(10.5) "REGISTERED ELECTOR" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 1-1-104 (35), C.R.S.

SECTION 3. The introductory portion to 31-12-104 (1), Colorado Revised Statutes, is amended to read:

31-12-104. Eligibility for annexation. (1) NO UNINCORPORATED AREA MAY BE ANNEXED TO A MUNICIPALITY UNLESS ONE OF THE CONDITIONS SET FORTH IN SECTION 30 (1) OF ARTICLE II OF THE STATE CONSTITUTION FIRST HAS BEEN MET. An area is eligible for annexation if THE PROVISIONS OF SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION HAVE BEEN COMPLIED WITH AND the governing body, at a hearing as provided in section 31-12-109, finds and determines:

SECTION 4. 31-12-106 (1) and (3), Colorado Revised Statutes, are amended to read:

31-12-106. Annexation of enclaves, partly surrounded land, and municipally owned land. (1) **Annexation of enclaves.** When any unincorporated area is entirely contained within the boundaries of a municipality, the governing body may by ordinance annex such territory to the municipality IN ACCORDANCE WITH SECTION 30 (1) (c) OF ARTICLE II OF THE STATE CONSTITUTION, BUT without complying with section 31-12-104, 31-12-105, 31-12-108, or 31-12-109, if said area has been so surrounded for a period of not less than three years; except that notice of the proposed annexation ordinance shall be given by publication as provided by section 31-12-108 (2) for notices of annexation petitions, and resolutions initiating annexation proceedings, but no public hearing on the proposed annexation ordinance shall be required, and the first publication of notice shall be at least thirty days prior to the adoption of the ordinance.

(3) **Annexation of unincorporated municipally owned land.** When the municipality is the sole owner of the area that it desires to annex, which area is eligible for annexation ~~as set out~~ IN ACCORDANCE WITH SECTION 30 (1) (c) OF ARTICLE II OF THE STATE CONSTITUTION AND sections 31-12-104 (1) (a) and 31-12-105, the governing body may by ordinance annex said area to the municipality without notice and hearing as provided in sections 31-12-108 and 31-12-109. The annexing ordinance shall state that the area proposed to be annexed is owned by the annexing municipality and is not solely a public street or right-of-way.

SECTION 5. The introductory portion to 31-12-107 (1), 31-12-107 (1) (a), (1) (c) (III), and (1) (g), the introductory portion to 31-12-107 (2), and 31-12-107 (2)

(a), (2) (c) (II), and (2) (e), Colorado Revised Statutes, are amended to read:

31-12-107. Petitions for annexation and for annexation elections. (1) Petition for annexation IN ACCORDANCE WITH SECTION 30 (1) (b) OF ARTICLE II OF THE STATE CONSTITUTION:

(a) PERSONS COMPRISING MORE THAN FIFTY PERCENT OF the landowners ~~of~~ IN THE AREA AND OWNING more than fifty percent of the area, excluding public streets and alleys AND ANY LAND OWNED BY THE ANNEXING MUNICIPALITY, meeting the requirements of sections 31-12-104 and 31-12-105 may petition the governing body of any municipality for the annexation of such territory.

(c) The petition shall contain the following:

(III) An allegation that the signers of the petition comprise MORE THAN FIFTY PERCENT OF the landowners ~~of~~ IN THE AREA AND OWN more than fifty percent of the ~~territory included in the~~ area proposed to be annexed, ~~exclusive of~~ EXCLUDING PUBLIC streets and alleys AND ANY LAND OWNED BY THE ANNEXING MUNICIPALITY;

(g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken. ~~except that the governing body shall make such determination by a resolution and except that when the petition is signed by the owners of one hundred percent of the area proposed to be annexed, exclusive of streets and alleys, the governing body may by ordinance annex such area to the municipality without election, as provided in section 31-12-111, unless additional terms and conditions are to be imposed. The ordinance annexing such area shall include a statement that the owners of one hundred percent of the area have petitioned for such annexation.~~

(2) Petition for annexation election IN ACCORDANCE WITH SECTION 30 (1) (a) OF ARTICLE II OF THE STATE CONSTITUTION:

(a) The ~~qualified~~ REGISTERED electors may petition the governing body of any municipality to commence proceedings for the holding of an annexation election in the area proposed to be annexed. This petition shall meet the standards described in paragraphs (c) and (d) of this subsection (2) and either:

(I) Shall be signed by at least seventy-five ~~qualified~~ REGISTERED electors or ten percent of said electors, whichever is less, if such area is located in a county of more than twenty-five thousand inhabitants; or

(II) Shall be signed by at least forty ~~qualified~~ REGISTERED electors or ten percent of said electors, whichever is less, if such area is located in a county of twenty-five thousand inhabitants or less.

(c) The petition for annexation election shall comply with the provisions of paragraph (c) of subsection (1) of this section; except that:

(II) The petition shall request the annexing municipality to commence proceedings for the holding of an annexation election IN ACCORDANCE WITH

SECTION 30 (1) (a) OF ARTICLE II OF THE STATE CONSTITUTION.

(e) If the petition is found to be in substantial compliance with this subsection (2), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed, SUBJECT THEREAFTER TO AN ANNEXATION ELECTION TO BE HELD IN ACCORDANCE WITH SECTION 31-12-112. If the petition for an annexation election is not found to be in substantial compliance, no further action shall be taken; except that the governing body shall make such determination by resolution. ~~If the petition for an annexation election is found to be in substantial compliance with this section, the governing body may pass a resolution of intent to annex the land proposed for annexation, subject to the procedure outlined in sections 31-12-108 to 31-12-110 and subject thereafter to an annexation election to be held in accordance with section 31-12-112.~~

SECTION 6. 31-12-108 (1) and (2), Colorado Revised Statutes, are amended to read:

31-12-108. Setting hearing date - notice given. (1) As a part of the resolution initiating annexation proceedings by the municipality or of a resolution finding substantial compliance of an annexation petition or of a petition for an annexation election, the governing body of the annexing municipality shall establish a date, time, and place that the governing body will hold a hearing to determine if the proposed annexation complies with SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AND sections 31-12-104 and 31-12-105 or such ~~parts~~ PROVISIONS thereof as may be required to establish eligibility under the terms of this part 1. The hearing shall be held not less than thirty days nor more than sixty days after the effective date of the resolution setting the hearing. This hearing need not be held if the municipality has determined conclusively that the requirements of SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AND sections 31-12-104 and 31-12-105 have not been met.

(2) The clerk shall give notice as follows: A copy of the resolution or the petition as filed (exclusive of the signatures) together with a notice that, on the given date and at the given time and place set by the governing body, the governing body shall hold a hearing upon said resolution of the annexing municipality or upon the petition for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AND sections 31-12-104 and 31-12-105 and is considered eligible for annexation. Said notice shall be published once a week for four successive weeks in some newspaper of general circulation in the area proposed to be annexed. The first publication of such notice shall be at least thirty days prior to the date of the hearing. The proof of publication of the notice and resolution or petition, or the summary thereof, shall be returned when the publication is completed, ~~and~~ the certificate of the owner, editor, or manager of the newspaper in which said notice is published shall be proof thereof, and a hearing shall then be held as provided in said notice. A copy of the published notice, together with a copy of the resolution and petition as filed, shall also be sent by registered mail by the clerk to the board of county commissioners and to the county attorney of the county wherein the territory is located and to any special district or school district having territory within the area to be annexed at least twenty-five days prior to the date fixed for such hearing. The notice required to be sent to the special district or

school district by this subsection (2) shall not confer any right of review in addition to those rights provided for in section 31-12-116.

SECTION 7. 31-12-110 (1) and (3), Colorado Revised Statutes, are amended to read:

31-12-110. Findings. (1) Upon the completion of the hearing, the governing body of the annexing municipality, by resolution, shall set forth its findings of fact and its conclusion based thereon with reference to the following matters:

(a) Whether or not the requirements of the applicable ~~parts~~ PROVISIONS of SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AND sections 31-12-104 and 31-12-105 have been met;

(b) Whether or not an election is required under SECTION 30 (1) (a) OF ARTICLE II OF THE STATE CONSTITUTION AND section 31-12-107 (2).

(3) A finding that the area proposed for annexation does not comply with the applicable provisions of SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION OR sections 31-12-104 and 31-12-105 shall terminate the annexation proceeding.

SECTION 8. 31-12-111, Colorado Revised Statutes, is amended to read:

31-12-111. Annexation without election. If the resolution of the governing body adopted pursuant to section 31-12-110 determines that the applicable ~~parts~~ PROVISIONS of SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AND sections 31-12-104 and 31-12-105 have been met, and further determines that an election is not required under section 31-12-107 (2), and does not determine that additional terms and conditions are to be imposed, the governing body may thereupon annex the area proposed to be annexed by ordinance.

SECTION 9. 31-12-112 (1), (2), (5), and (9), Colorado Revised Statutes, are amended to read:

31-12-112. Election - annexation pursuant to election. (1) If the governing body determines that an annexation election is required under the provisions of SECTION 30 (1) (a) OF THE STATE CONSTITUTION AND section 31-12-107 (2) or that additional terms and conditions should be imposed upon the area proposed to be annexed, an election shall be called, as provided in this section, to determine whether a majority of the ~~qualified~~ LANDOWNERS AND THE REGISTERED electors IN THE AREA PROPOSED TO BE ANNEXED approve such annexation, with such terms and conditions, if any, as may attach thereto.

(2) Any landowner owning land in the area proposed to be annexed may vote, irrespective of whether he OR SHE is a ~~qualified~~ REGISTERED elector. Any corporate landowner may by resolution designate one of its officers to cast its vote; except that nothing in this part 1 shall invalidate any memorandum of agreement or escrow arrangement voluntarily made by and between the annexing municipality and one or more landowners within the area proposed to be annexed nor require an election for the approval of any terms and conditions to be accomplished or assured in this manner.

(5) Such commissioners shall forthwith call an election of all the ~~qualified electors or qualified electors and~~ landowners AND THE REGISTERED ELECTORS IN THE AREA PROPOSED TO BE ANNEXED, to be held at some convenient place within the area proposed to be annexed. The commissioners shall establish such polling places within the area proposed to be annexed, or immediately adjacent thereto if such area is vacant and unoccupied, as in their judgment are necessary to afford all ~~qualified electors, or qualified electors and~~ OF THE landowners AND THE REGISTERED ELECTORS the opportunity to cast their votes. If more than one polling place is found to be necessary, the court may appoint three additional persons to act as judges or clerks for each additional polling place. Such additional judges and clerks shall meet the same requirements as the original appointees.

(9) If a majority of the votes cast at such election are against annexation or the vote is tied, the court shall order that all annexation proceedings to date are void and of no effect and that the governing body shall proceed no further with the instant annexation proceedings. If a majority of the votes cast at the election are for annexation, the court shall order, adjudge, and decree that such area may be annexed to the municipality upon the terms and conditions, if any, set forth by the governing body, and the municipality, by ordinance, may thereafter annex said area and impose the terms and conditions, if any, as approved by the ~~qualified electors or~~ landowners AND THE REGISTERED ELECTORS.

SECTION 10. 31-12-114 (1), (2), (4), (5) (b), (7), (8), and (10), Colorado Revised Statutes, are 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, SUBJECT TO COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION, 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.

(2) All further proceedings for the annexation of the area claimed by both municipalities shall be held in abeyance pending the holding of an election of the ~~qualified~~ LANDOWNERS AND THE REGISTERED electors ~~resident~~ within such area ~~or~~ as described in subsection (4) of this section for the purpose of determining to which municipality such electors prefer to annex. This election shall be held pursuant to the provisions of section 31-12-112, except as provided in this section.

(4) All ~~qualified electors and qualified nonresident~~ OF THE landowners AND THE REGISTERED ELECTORS in the area claimed by both municipalities shall be entitled to vote at said election. Any corporate landowner may by resolution designate one of its officers to cast its vote.

(5) (b) If more than two municipalities dispute the same area, the ballot shall list each municipality in order of the date when it started proceedings under this part 1 and in the same form as specified in this section. If the disputed area does have more than two-thirds boundary contiguity with one of the municipalities, only the

question in subparagraph (II) of paragraph (a) of this subsection (5) shall appear on the ballot. If both questions are to appear on the ballot, the notice of the election shall contain a statement that all OF THE LANDOWNERS AND THE REGISTERED electors may vote on the second question irrespective of their votes on the first question.

(7) If the vote is in favor of annexation, the municipality to which the ~~qualified electors or qualified electors and~~ landowners AND THE REGISTERED ELECTORS indicate their intention to annex may proceed to hold a hearing as provided in this part 1 and to comply with the other provisions of this part 1 with respect to the area claimed by both municipalities; if such area is found to comply with the applicable ~~parts~~ PROVISIONS of sections 31-12-104 and 31-12-105 and if the entire area proposed to be annexed has been in dispute, the subject election shall be deemed to comply with the provisions of sections 31-12-107 and 31-12-112 relative to an election of ~~qualified electors or qualified electors and~~ THE landowners AND THE REGISTERED ELECTORS for areas having less than two-thirds boundary contiguity with the annexing municipality.

(8) If more than two municipalities claim a disputed area and a majority of the votes are cast in favor of one municipality, that municipality may proceed to hold a hearing as provided in this part 1 and to comply with the other provisions of this part 1 with respect to the area claimed by the several municipalities; but the subject election shall be deemed to comply with the provisions of sections 31-12-107 and 31-12-112 relative to an election of ~~qualified electors or qualified electors and~~ THE landowners AND THE REGISTERED ELECTORS for areas having less than two-thirds boundary contiguity with the annexing municipality. If no municipality receives a majority, a runoff election between the two municipalities receiving the largest pluralities shall be held no sooner than four weeks and no longer than seven weeks after the date of the initial election to determine to which municipality the landowners AND THE REGISTERED ELECTORS desire to annex. Notice of such second election shall be given in the manner directed by the court. This election shall have the same effect as if it were the original election between the two municipalities involved.

(10) Unless the area claimed by more than one municipality constitutes more than one-third of the area proposed for annexation, inclusive of streets, to the first annexing municipality, nothing in this part 1 shall prevent a municipality from proceeding with the annexation of that part of the area described in its resolution which is not claimed by another municipality without waiting for the holding of the election described in this section. In the hearing required by ~~section 31-12-109~~ SECTIONS 31-12-108 AND 31-12-109 and the findings required by section 31-12-110, the issue shall be the compliance of the undisputed portion of the area proposed for annexation with the requirements and limitations of sections 31-12-104 and 31-12-105. If the annexation was initiated by petition under section 31-12-107 and if the requirements of said sections 31-12-104 and 31-12-105 are met, the annexing municipality shall submit the issue of annexation with the changed boundaries to an election of ~~qualified electors or of qualified electors and~~ THE landowners AND THE REGISTERED ELECTORS to be held in accordance with section 31-12-112.

SECTION 11. 31-12-116 (1) (a), Colorado Revised Statutes, is amended to read:

31-12-116. Review. (1) (a) If any landowner or any ~~qualified~~ REGISTERED

elector in the area proposed to be annexed, the board of county commissioners of any county governing the area proposed to be annexed, or any municipality within one mile of the area proposed to be annexed believes itself to be aggrieved by the acts of the governing body of the annexing municipality in annexing said area to said municipality, such acts or findings of the governing body may be reviewed by certiorari in accordance with the Colorado rules of civil procedure. Such review proceedings shall be instituted in any district court having jurisdiction of the county in which the annexed area is located. In no event shall such a proceeding be instituted prior to the effective date of the annexing ordinance by the annexing municipality.

SECTION 12. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 6, 2010