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**SENATE BILL No. 309**

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**DIGEST OF INTRODUCED BILL**

**Citations Affected:** IC 3-10-9.5 ; IC 36-4.5.

**Synopsis:** Referenda on local ordinances. Provides that registered voters may petition a city or town legislative body to repeal an ordinance or resolution. Provides that if the city or town legislative body does not repeal the ordinance or resolution, the municipality must submit the question of whether the ordinance or resolution should be repealed to the registered voters of the municipality.

**Effective:** July 1, 2000.

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January 10, 2000, read first time and referred to Committee on Rules and Legislative Procedure.

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## Second Regular Session 111th General Assembly (2000)

**PRINTING CODE.** Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 1999 General Assembly.

### SENATE BILL No. 309

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A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 3-10-9.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

**Chapter 9.5. Local Public Question on Repealing a Municipal Ordinance or Resolution**

**Sec. 1. This chapter applies to a city or a town.**

**Sec. 2. The procedure for placing a local public question on the ballot to repeal an ordinance or resolution of a city or a town is set forth in IC 36-4.5.**

SECTION 2. IC 36-4.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

**ARTICLE 4.5. PROCEDURE FOR REPEALING MUNICIPAL ORDINANCE OR RESOLUTION**

**Chapter 1. Application of Article**

**Sec. 1. This article applies to a city or a town.**

**Sec. 2. This article applies to an ordinance or resolution adopted**

**after June 30, 2000.**

**Sec. 3. This article does not apply to the following proceedings:**

**(1) Annexation proceedings under IC 36-4-3 or IC 36-4-4.**

**(2) Establishing a fire protection district or dissolving a fire protection district under IC 36-8-11.**

**(3) Establishing a local airport authority under IC 8-22-3.**

**(4) An ordinance under IC 36-9-36-14.**

**(5) Establishing an economic improvement district under IC 36-7-22-7.**

**(6) Establishing a park district under IC 36-10-6.**

**(7) Any proceeding under state statute for adoption of an ordinance or resolution by a municipal legislative body that allows the public to remonstrate against adoption of the ordinance or resolution.**

#### **Chapter 2. Definitions**

**Sec. 1. As used in this article, "legislative body" has the meaning set forth in IC 36-1-2-9.**

**Sec. 2. As used in this article, "municipality" means a city or a town.**

**Sec. 3. As used in this article, "petition" refers to a petition to request a municipality to repeal an ordinance or resolution.**

#### **Chapter 3. Petition for Repeal of a Municipal Ordinance or Resolution**

**Sec. 1. The registered voters of a municipality may petition the municipal legislative body to repeal an ordinance or resolution adopted by the municipal legislative body.**

**Sec. 2. (a) Not less than five (5) registered voters of the municipality may commence petition proceedings under this chapter by filing with the circuit court clerk in the county where the municipality is primarily located an affidavit stating the following:**

**(1) That the voters filing the affidavit constitute the petitioners' committee and will be responsible for circulating the petition and filing the petition in proper form.**

**(2) The names and addresses of the members of the petitioners' committee.**

**(3) The address to which all notices to the committee are to be sent.**

**(4) The citation and text of the ordinance sought to be reconsidered.**

**(b) The affidavit described in subsection (a) must be filed not later than thirty (30) days after the ordinance or resolution is**

**adopted.**

**Sec. 3. (a) The petitioners' committee described in the affidavit must file a petition to repeal the ordinance or resolution with the circuit court clerk not later than sixty (60) days after the date the petitioners' committee files the affidavit described in section 2 of this chapter.**

**(b) The petition must be filed in the county where the municipality is primarily located.**

**(c) The petition must have attached to it, at the time of filing, the affidavit described in section 4 of this chapter.**

**(d) The petition must be signed by a number of registered voters of the municipality equivalent to at least twenty-five percent (25%) of the number of voters who voted at the last preceding municipal general election for the office of:**

**(1) mayor, if the municipality is a city; or**

**(2) town clerk, if the municipality is a town.**

**(e) The petition may consist of more than one (1) document, but all documents of the petition must be uniform in size and style and numbered and assembled as one (1) instrument for filing. Each document must contain or have attached to the document throughout the document's circulation the full text of the ordinance or resolution sought to be reconsidered.**

**(f) Except as provided in this chapter, the petition must meet, in addition to the requirements of this article, the requirements of IC 3-10-9.**

**Sec. 4. Each person who circulates a petition must execute an affidavit stating:**

- (1) that the affiant personally circulated the document;**
- (2) the number of signatures on the document;**
- (3) that all the signatures were affixed in the affiant's presence; and**
- (4) that the affiant believes the signatures to be genuine signatures of the persons whose names they purport to be.**

**The affidavit must be attached to each document of a petition at the time the petition is filed with the circuit court clerk.**

**Sec. 5. (a) Not later than thirty (30) days after a petition is filed with the circuit court clerk under this chapter, the circuit court clerk shall:**

- (1) examine the signatures on the petition;**
- (2) issue a certificate declaring that the petition is sufficient or insufficient;**
- (3) send a copy of the certificate to the petitioners' committee**

**and the municipal legislative body by registered or certified mail; and**

**(4) publish, in at least one (1) newspaper of general circulation in the municipality, a notice of the filing of the petition and the certificate issued by the circuit court clerk as to the sufficiency or insufficiency of the petition.**

**(b) A petition certified by the circuit court clerk as insufficient for lack of the required number of valid signatures may be amended one (1) time if the petitioners' committee files with the circuit court clerk:**

**(1) not later than two (2) days after receiving a copy of the clerk's certificate, a notice of intention to amend the petition; and**

**(2) not later than ten (10) days after receiving a copy of the clerk's certificate, a supplementary petition that complies with the requirements of sections 3 and 4 of this chapter.**

**(c) Not later than thirty (30) days after an amended petition is filed under this section, the circuit court clerk shall:**

- (1) examine the signatures on the petition;**
- (2) issue a second certificate declaring that the petition is sufficient or insufficient;**
- (3) send a copy of the second certificate to the petitioners' committee and the municipal**

**legislative body by registered or certified mail; and**

**(4) publish, in at least one (1) newspaper of general circulation in the municipality, a notice of the filing of the amended petition and the second certificate issued by the circuit court clerk as to the sufficiency or insufficiency of the amended petition.**

**Sec. 6. (a) If the circuit court clerk determines under this chapter that a petition or an amended petition is insufficient, the clerk shall specify in the original or subsequent certificate the reasons why the petition is defective.**

**(b) If the circuit court clerk determines under this chapter that a petition or an amended petition is sufficient, the circuit court clerk shall notify the municipal legislative body, which shall then reconsider the municipal ordinance or resolution under IC 36-4.5-4.**

**Chapter 4. Reconsideration of a Municipal Ordinance or Resolution by the Municipal Legislative Body**

**Sec. 1. If the municipal legislative body is notified that a petition is finally determined to be**

sufficient by:

- (1) the circuit court clerk under IC 36-4.5-3 ; or
- (2) the circuit court under IC 36-4.5-5 ;

the municipal legislative body shall, not later than twenty (20) days after receiving notification that the petition is sufficient, vote on whether to repeal the ordinance or resolution.

**Sec. 2. (a)** If upon reconsideration the municipal legislative body votes to repeal the ordinance or resolution, the repeal is effective immediately upon repeal.

**(b)** If upon reconsideration the municipal legislative body does not repeal the ordinance or resolution, the municipal legislative body shall, not later than twenty (20) days after the date:

- (1) the circuit court clerk certifies the petition as sufficient under IC 36-4.5-3 ; or
- (2) the circuit court determines the petition to be sufficient under IC 36-4.5-5 ;

submit the ordinance or resolution to the registered voters of the municipality in the form of a local public question under IC 36-4.5-6 at the next primary election, general election, municipal primary election, or municipal election.

#### **Chapter 5. Action to Protest a Petition for Repeal of a Municipal Ordinance or Resolution**

**Sec. 1. (a)** A registered voter of the municipality may file an action in the circuit court of the county where the municipality is located protesting:

(1) the form of a petition filed under this article to repeal a municipal ordinance or resolution; or

(2) the number of signatures, as determined by the circuit court clerk, on the petition to repeal a municipal ordinance or resolution;

not later than ten (10) days after the publication of the notice under IC 36-4.5-3-5.

**(b)** A person who files an action under this chapter protesting a petition to repeal a municipal ordinance or resolution shall serve notice upon the circuit court clerk and the petitioners' committee at the time of filing the action.

**(c)** The circuit court shall schedule a hearing to be held not less than ten (10) days after the filing of an action under this chapter. The purpose of the hearing is to hear testimony and arguments for and against the sufficiency of the petition to repeal a municipal ordinance or resolution. After the hearing, the court shall determine whether the petition is in the form required by law.

**(d)** If the court determines, in an action filed under this chapter,

that a petition is sufficient, the court shall notify the municipal legislative body. The municipal legislative body shall then reconsider the ordinance under IC 36-4.5-4.

#### **Chapter 6. Local Public Question Concerning the Proposed Repeal of a Municipal Ordinance or Resolution; Results of Election**

**Sec. 1.** If upon reconsideration under IC 36-4.5-4 the municipal legislative body fails to repeal an ordinance or resolution, the circuit court clerk shall certify as a local public question to the voters under IC 3-10-9-3 the question of whether the municipal ordinance or resolution that is the subject of the petition under this article should be repealed.

**Sec. 2. (a)** The county election board shall place the local public question on the ballot at the

next general election, primary election, municipal election, or municipal primary election for which the question can be certified in accordance with IC 3-10-9-3.

(b) The county election board shall place the local public question on the ballot in the form prescribed by IC 3-10-9-4.

**Sec. 3. (a) The local public question must state the following:**

"Shall (insert the name of the municipality) repeal the following (insert whether the measure is an ordinance or resolution):

(Insert a brief description of the ordinance or resolution proposed to be repealed.)".

(b) The county election board must make copies of the full text of the ordinance or resolution available for voters at the polling place.

**Sec. 4. If a majority of the registered voters voting on a municipal ordinance or resolution vote against the municipal ordinance or resolution, the municipal ordinance or resolution shall be considered repealed when the county election board certifies the results to the municipal legislative body.**

#### **Chapter 7. Withdrawal of a Petition to Repeal a Municipal Ordinance or Resolution**

**Sec. 1. (a) A petition to repeal a municipal ordinance or resolution may be withdrawn not later than thirty (30) days before the election at which the municipality will vote on the local public question.**

(b) A petition may be withdrawn by filing with the circuit court clerk a request for withdrawal signed by at least four (4) members of the petitioners' committee.

(c) Upon filing a request for withdrawal of the petition, the petition has no further effect and all proceedings on the petition

must be terminated.

#### **Chapter 8. Suspension of Ordinance and Resolution**

**Sec. 1. An ordinance or resolution that is the subject of a petition filed under this article is suspended and has no effect from the date:**

(1) the circuit court clerk certifies the petition has a sufficient number of signatures; or

(2) the circuit court determines that the petition is sufficient at a hearing under IC 36-4.5-5 ;  
whichever is later.

**Sec. 2. An ordinance or resolution that is suspended under this article becomes effective again if:**

(1) the petition to repeal the municipal ordinance or resolution is withdrawn under IC 36-4.5-7 ; or

(2) a majority of the voters vote against repealing the ordinance or resolution. In that case, the ordinance or resolution becomes effective again when the election results are certified under IC 36-4.5-6-4.