



Reprinted  
April 6, 1999

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## ENGROSSED HOUSE BILL No. 1606

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DIGEST OF HB 1606 (Updated April 5, 1999 4:38 pm - DI 94)

**Citations Affected:** IC 36-7; noncode.

**Synopsis:** Planning and zoning. Requires a municipality to: (1) provide municipal services to a contiguous unincorporated area; or (2) obtain the consent of the county legislative body; before exercising planning jurisdiction in the contiguous unincorporated area. Allows the complete use and alienation of mineral resources or forests by the owner or alienee of the mineral resources or forest in an area under the jurisdiction of an area plan commission. Makes certain changes to the county plan commission membership. Allows a change to a previously adopted zoning ordinance if the adoption of the ordinance was based upon a material misrepresentation of facts or an omission of facts.

**Effective:** Upon passage; July 1, 1999.

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### Cherry, Mellinger, Cook

(SENATE SPONSORS — FORD, LEWIS, GARD, WOLF)

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January 21, 1999, read first time and referred to Committee on Local Government.  
February 24, 1999, amended, reported — Do Pass.  
March 1, 1999, read second time, ordered engrossed. Engrossed.  
March 3, 1999, read third time, passed. Yeas 85, nays 11.

SENATE ACTION

March 8, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.  
March 29, 1999, amended, reported favorably — Do Pass.  
April 5, 1999, read second time, amended, ordered engrossed.

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EH 1606—LS 7598/DI 47+



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April 6, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## ENGROSSED HOUSE BILL No. 1606

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:*

- 1 SECTION 1. IC 36-7-4-205 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 205. (a) ADVISORY.  
3 A municipal plan commission shall adopt a comprehensive plan, as  
4 provided for under the 500 series of the advisory planning law, for the  
5 development of the municipality and, **for comprehensive plans**  
6 **adopted after July 1, 1999, if the municipality:**  
7 (1) **provides municipal services to the contiguous**  
8 **unincorporated area; or**  
9 (2) **obtains the approval of the county legislative body of the**  
10 **county;**  
11 **the municipality may provide in the comprehensive plan for the**  
12 **development** of the contiguous unincorporated area, designated by the  
13 commission, that is outside the corporate boundaries of the  
14 municipality, and that, in the judgment of the commission, bears  
15 reasonable relation to the development of the municipality.  
16 (b) ADVISORY. Except as limited by the boundaries of

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1 unincorporated areas subject to the jurisdiction of other municipal plan  
2 commissions, an area designated under this section may include any  
3 part of the contiguous unincorporated area within two (2) miles from  
4 the corporate boundaries of the municipality. If, however, the corporate  
5 boundaries of the municipality or the boundaries of that contiguous  
6 unincorporated area include any part of the public waters or shoreline  
7 of a lake (which lies wholly within Indiana), the designated area may  
8 also include:

- 9 (1) any part of those public waters and shoreline of the lake; and  
10 (2) any land area within two thousand five hundred (2,500) feet  
11 from that shoreline.

12 (c) **ADVISORY.** Before exercising their rights, powers, and duties  
13 of the advisory planning law with respect to an area designated under  
14 this section, a municipal plan commission must file, with the recorder  
15 of the county in which the municipality is located, a description or map  
16 defining the limits of that area. If the commission revises the limits, it  
17 shall file, with the recorder, a revised description or map defining those  
18 revised limits.

19 (d) **ADVISORY.** If any part of the contiguous unincorporated area  
20 within the potential jurisdiction of a municipal plan commission is also  
21 within the potential jurisdiction of another municipal plan commission,  
22 the first municipal plan commission may exercise territorial jurisdiction  
23 over that part of the area within the potential jurisdiction of both  
24 municipal plan commissions that equals the product obtained by  
25 multiplying a fraction, the numerator of which is the area within the  
26 corporate boundaries of that municipality and the denominator of  
27 which is the total area within the corporate boundaries of both  
28 municipalities times the area within the potential jurisdiction of both  
29 municipal plan commissions. Furthermore, this commission may  
30 exercise territorial jurisdiction within those boundaries, enclosing an  
31 area reasonably compact and regular in shape, that the municipal plan  
32 commission first acting designates.

33 (e) **ADVISORY.** If the legislative body of a county adopts a  
34 comprehensive plan and ordinance covering the unincorporated areas  
35 of the county, a municipal plan commission may not exercise  
36 jurisdiction, as provided in this section, over any part of that  
37 unincorporated area unless it is authorized by ordinance of the  
38 legislative body of the county. This ordinance may be initiated by the  
39 county legislative body or by petition duly signed and presented to the  
40 county auditor by:

- 41 (1) not less than fifty (50) property owners residing in the area  
42 involved in the petition;

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- 1 (2) the county plan commission; or  
 2 (3) the municipal plan commission.

3 Before final action on the ordinance by the county legislative body, the  
 4 county plan commission must hold an advertised public hearing as  
 5 required for other actions of the county plan commission under the  
 6 advisory planning law. Upon the passage of the ordinance by the  
 7 county legislative body and the subsequent acceptance of jurisdiction  
 8 by the municipal plan commission, the municipal plan commission  
 9 shall exercise the same rights, powers, and duties conferred in this  
 10 section exclusively with respect to the contiguous unincorporated area.  
 11 The jurisdiction of a municipal plan commission, as authorized under  
 12 this subsection, may be terminated by ordinance at the discretion of the  
 13 legislative body of the county, but only if the county has adopted a  
 14 comprehensive plan for that area that is as comprehensive in scope and  
 15 subject matter as that in effect by municipal ordinance.

16 (f) ADVISORY. Each municipal plan commission in a municipality  
 17 located in a county having:

- 18 (1) a population of less than ninety-five thousand (95,000); and  
 19 (2) a county plan commission that has adopted, in accord with the  
 20 advisory planning law, a comprehensive plan and ordinance  
 21 covering the unincorporated areas of the county;

22 may, at any time, after filing notice with the county recorder and the  
 23 county plan commission, exercise or reject territorial jurisdiction over  
 24 any part of the area within two (2) miles of the corporate boundaries of  
 25 that municipality and within that county, whether or not that  
 26 commission has previously exercised that jurisdiction, **if the**  
 27 **municipality is providing municipal services to the area.** Within  
 28 sixty (60) days after receipt of that notice, the county plan commission  
 29 and the county legislative body shall have the county comprehensive  
 30 plan and ordinance revised to reflect the decision of the municipal plan  
 31 commission exercising the option provided for in this subsection. **If the**  
 32 **municipality is not providing municipal services to the area, the**  
 33 **municipality must obtain the approval of the county legislative**  
 34 **body before exercising jurisdiction.**

35 (g) AREA. Wherever in the area planning law authority is conferred  
 36 to establish a comprehensive plan or an ordinance for its enforcement,  
 37 the authority applies everywhere:

- 38 (1) within the county that is outside the municipalities; and  
 39 (2) within each participating municipality.

40 (h) ADVISORY—AREA. Whenever a new town is incorporated in  
 41 a county having a county plan commission or an area plan commission,  
 42 that plan commission and its board of zoning appeals shall continue to

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1 exercise territorial jurisdiction within the town until the effective date  
2 of a town ordinance:

- 3 (1) establishing an advisory plan commission under section  
4 202(a) of this chapter; or  
5 (2) adopting the area planning law under section 202(b) or 204 of  
6 this chapter.

7 Beginning on that effective date, the planning and zoning functions of  
8 the town shall be exercised under the advisory planning law or area  
9 planning law, as the case may be.

10 SECTION 2. IC 36-7-4-208 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 208. (a) ADVISORY.  
12 The county plan commission consists of nine (9) members, as follows:

- 13 (1) One (1) member appointed by the county executive from its  
14 membership.  
15 (2) One (1) member appointed by the county fiscal body from its  
16 membership.  
17 (3) The county surveyor or a qualified deputy surveyor appointed  
18 by the surveyor.  
19 (4) The county agricultural extension educator.  
20 (5) ~~Five (5)~~ **Four (4)** citizen members, of whom no more than  
21 ~~three (3)~~ **two (2)** may be of the same political party and all ~~five~~  
22 ~~(5)~~ **four (4)** of whom must be residents of unincorporated areas  
23 of the county, appointed by the county executive.  
24 **(6) One (1) township trustee, who must be a resident of the**  
25 **unincorporated areas of the county, appointed by the county**  
26 **executive upon the recommendation of the township trustees**  
27 **whose townships are within the jurisdiction of the area plan**  
28 **commission.**

29 (b) ADVISORY. The metropolitan plan commission consists of nine  
30 (9) members, as follows:

- 31 (1) One (1) member appointed by the county legislative body  
32 from its membership.  
33 (2) One (1) member appointed by the second class city legislative  
34 body from its membership.  
35 (3) Three (3) citizen members who are residents of  
36 unincorporated areas of the county, of whom no more than two (2)  
37 may be of the same political party, appointed by the county  
38 legislative body. One (1) of these members must be actively  
39 engaged in farming.  
40 (4) Four (4) citizen members, of whom no more than two (2) may  
41 be of the same political party, appointed by the second class city  
42 executive. One (1) of these members must be from the



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- 1 metropolitan school authority or community school corporation  
 2 and a resident of that school district, and the other three (3)  
 3 members must be residents of the second class city.
- 4 (c) AREA. When there are six (6) county representatives, they are:  
 5 (1) one (1) member appointed by the county executive from its  
 6 membership;  
 7 (2) one (1) member appointed by the county fiscal body from its  
 8 membership;  
 9 (3) the county superintendent of schools, or if that office does not  
 10 exist, a representative appointed by the school corporation  
 11 superintendents within the jurisdiction of the area plan  
 12 commission;  
 13 (4) the county agricultural extension educator;  
 14 (5) one (1) citizen member who is a resident of the  
 15 unincorporated area of the county, appointed by the county  
 16 executive; and  
 17 (6) one (1) citizen member who is a resident of the  
 18 unincorporated area of the county, appointed by the county fiscal  
 19 body.

20 When there are five (5) county representatives, they are the  
 21 representatives listed in subdivisions (3), (4), (5), and (6) of this  
 22 subsection and the county surveyor.

23 (d) AREA. The appointing authority may appoint an alternate  
 24 member to participate on a commission established under section 204  
 25 of this chapter in a hearing or decision if the regular member it has  
 26 appointed is unavailable. An alternate member shall have all of the  
 27 powers and duties of a regular member while participating on the  
 28 commission.

29 SECTION 3. IC 36-7-4-610.5 IS ADDED TO THE INDIANA  
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 31 [EFFECTIVE JULY 1, 1999]: **Sec. 610.5. If a county legislative body  
 32 or plan commission adopts a zoning ordinance to change the land  
 33 use in a district based on a person's material misrepresentation or  
 34 omission of facts, the plan commission may adopt a zoning  
 35 ordinance to change the land use in the district to the land use in  
 36 effect before the plan commission adopted the ordinance based on  
 37 the person's material misrepresentation or omission of facts.**

38 SECTION 4. IC 36-7-4-1103 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1103. (a) This  
 40 section does not apply to a plan commission exercising jurisdiction in  
 41 a county having a population of more than nineteen thousand three  
 42 hundred (19,300) but less than nineteen thousand five hundred

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(19,500).

(b) ~~ADVISORY~~. **ADVISORY—AREA** For purposes of this section, urban areas include all lands and lots within the corporate boundaries of a municipality, any other lands or lots used for residential purposes where there are at least eight (8) residences within any quarter mile square area, and other lands or lots that have been or are planned for residential areas contiguous to the municipality.

(c) ~~ADVISORY~~. **ADVISORY—AREA** The advisory planning law **and area planning law** does not authorize an ordinance **or action of an area planning department or commission** that would prevent, outside of urban areas, the complete use and alienation of any mineral resources or forests by the owner or alienee of them.

SECTION 5. [EFFECTIVE JULY 1, 1999] (a) **The county executive shall appoint the member added to the area plan commission under IC 36-7-4-208(a)(6), as added by this act, no later than October 1, 1999.**

(b) **Notwithstanding IC 36-7-4-208, as amended by this act, all members described in IC 36-7-4-208(a)(5), before amendment by this act, shall serve on the area plan commission until the county executive appoints the member added to the area plan commission under IC 36-7-4-208(a)(6), as added by this act.**

(c) **This SECTION expires October 2, 1999.**

SECTION 6. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1606, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1606 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 12, nays 0.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred House Bill No. 1606, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, after line 8, begin a new paragraph and insert:

"SECTION 2. IC 36-7-4-1103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1103. (a) This section does not apply to a plan commission exercising jurisdiction in a county having a population of more than nineteen thousand three hundred (19,300) but less than nineteen thousand five hundred (19,500).

(b) ~~ADVISORY.~~ **ADVISORY—AREA** For purposes of this section, urban areas include all lands and lots within the corporate boundaries of a municipality, any other lands or lots used for residential purposes where there are at least eight (8) residences within any quarter mile square area, and other lands or lots that have been or are planned for residential areas contiguous to the municipality.

(c) ~~ADVISORY.~~ **ADVISORY—AREA** The advisory planning law **and area planning law** does not authorize an ordinance **or action of an area planning department or commission** that would prevent, outside of urban areas, the complete use and alienation of any mineral resources or forests by the owner or alienee of them.

SECTION 3. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to HB 1606 as printed February 25, 1999.)

MERRITT, Chairperson

Committee Vote: Yeas 9, Nays 0.

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## SENATE MOTION

Mr. President: I move that Engrossed House Bill 1606 be amended to read as follows:

Page 4, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 2. IC 36-7-4-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 208. (a) ADVISORY.

The county plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the county executive from its membership.
- (2) One (1) member appointed by the county fiscal body from its membership.
- (3) The county surveyor or a qualified deputy surveyor appointed by the surveyor.
- (4) The county agricultural extension educator.
- (5) ~~Five (5)~~ **Four (4)** citizen members, of whom no more than ~~three (3)~~ **two (2)** may be of the same political party and all ~~five (5)~~ **four (4)** of whom must be residents of unincorporated areas of the county, appointed by the county executive.
- (6) One (1) township trustee, who must be a resident of the unincorporated areas of the county, appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the area plan commission.**

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the county legislative body from its membership.
- (2) One (1) member appointed by the second class city legislative body from its membership.
- (3) Three (3) citizen members who are residents of unincorporated areas of the county, of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.
- (4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are:

- (1) one (1) member appointed by the county executive from its

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membership;

(2) one (1) member appointed by the county fiscal body from its membership;

(3) the county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission;

(4) the county agricultural extension educator;

(5) one (1) citizen member who is a resident of the unincorporated area of the county, appointed by the county executive; and

(6) one (1) citizen member who is a resident of the unincorporated area of the county, appointed by the county fiscal body.

When there are five (5) county representatives, they are the representatives listed in subdivisions (3), (4), (5), and (6) of this subsection and the county surveyor.

(d) AREA. The appointing authority may appoint an alternate member to participate on a commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission."

Page 4, between lines 26 and 27, begin a new paragraph and insert:

**"SECTION 4. [EFFECTIVE JULY 1, 1999] (a) The county executive shall appoint the member added to the area plan commission under IC 36-7-4-208(a)(6), as added by this act, no later than October 1, 1999.**

**(b) Notwithstanding IC 36-7-4-208, as amended by this act, all members described in IC 36-7-4-208(a)(5), before amendment by this act, shall serve on the area plan commission until the county executive appoints the member added to the area plan commission under IC 36-7-4-208(a)(6), as added by this act.**

**(c) This SECTION expires October 2, 1999."**

Re-number all SECTIONS consecutively.

(Reference is to EHB 1606 as printed March 30, 1999.)

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1606 be amended to read as follows:

Page 4, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 2. IC 36-7-4-610.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 610.5. If a county legislative body or plan commission adopts a zoning ordinance to change the land use in a district based on a person's material misrepresentation or omission of facts, the plan commission may adopt a zoning ordinance to change the land use in the district to the land use in effect before the plan commission adopted the ordinance based on the person's material misrepresentation or omission of facts.**"

Renumber all SECTIONS consecutively.

(Reference is to EHB 1606 as printed March 30, 1999.)

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