



Reprinted
February 16, 1999

HOUSE BILL No. 1955

DIGEST OF HB 1955 (Updated February 15, 1999 9:01 pm - DI 87)

Citations Affected: IC 20-5; IC 36-7.

Synopsis: School district rezoning. Provides that a municipal plan commission may adopt a comprehensive plan under the advisory planning law that includes the unincorporated area: (1) two miles from the boundaries of a municipality with a population of more than 100,000; (2) one mile from the boundaries of a municipality with a population of more than 15,000 but less than 100,000; and (3) one-half mile from the boundaries of a municipality with a population of less than 15,000. Provides that a member of the governing body of a school corporation located in an area zoned by a county and annexed or incorporated by a municipality and a member of the governing body of the county must participate in a decision to change the zoning within the school corporation district if the change in zoning is attempted by a municipality or through a municipal board of zoning appeals.

Effective: July 1, 1999.

Bodiker

January 26, 1999, read first time and referred to Committee on Education.
February 8, 1999, reported — Do Pass.
February 15, 1999, read second time, amended, ordered engrossed.

HB 1955—LS 7337/DI 94+



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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.

HOUSE BILL No. 1955

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 20-5-2-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 9. (a) This section applies only to an area that is**
4 **located in a school corporation district that was initially zoned by**
5 **a county as part of an unincorporated area, and that has**
6 **subsequently been:**

7 (1) **incorporated or annexed into a municipality; or**

8 (2) **brought within the zoning jurisdiction of a municipality.**

9 (b) **A change in zoning in an area described in subsection (a)**
10 **attempted by the municipality or through a zoning board of**
11 **appeals may not take effect until a member of the governing body**
12 **of:**

13 (1) **the school corporation; and**

14 (2) **the county;**

15 **participates in the zoning decision in the manner required by**
16 **IC 36-7-4-602.**

17 SECTION 2. IC 36-7-4-205 IS AMENDED TO READ AS

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1 FOLLOWS: Sec. 205. (a) ADVISORY. A municipal plan commission
2 shall adopt a comprehensive plan, as provided for under the 500 series
3 of the advisory planning law, for the development of the municipality
4 and of the contiguous unincorporated area, designated by the
5 commission, that is outside the corporate boundaries of the
6 municipality, and that, in the judgment of the commission, bears
7 reasonable relation to the development of the municipality.

8 (b) ADVISORY. Except as limited by the boundaries of
9 unincorporated areas subject to the jurisdiction of other municipal plan
10 commissions, an area designated under this section may include any
11 part of the contiguous unincorporated area within two (2) miles from
12 the corporate boundaries of ~~the~~ a municipality **with a population of**
13 **more than 100,000, one (1) mile from the corporate boundaries of**
14 **a municipality with a population of more than 15,000 but less than**
15 **100,000, and one-half (1/2) mile from the corporate boundaries of**
16 **a municipality with a population of less than 15,000.** If, however, the
17 corporate boundaries of the municipality or the boundaries of that
18 contiguous unincorporated area include any part of the public waters
19 or shoreline of a lake (which lies wholly within Indiana), the designated
20 area may also include:

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

24 (c) ADVISORY. Before exercising their rights, powers, and duties
25 of the advisory planning law with respect to an area designated under
26 this section, a municipal plan commission must file, with the recorder
27 of the county in which the municipality is located, a description or map
28 defining the limits of that area. If the commission revises the limits, it
29 shall file, with the recorder, a revised description or map defining those
30 revised limits.

31 (d) ADVISORY. If any part of the contiguous unincorporated area
32 within the potential jurisdiction of a municipal plan commission is also
33 within the potential jurisdiction of another municipal plan commission,
34 the first municipal plan commission may exercise territorial jurisdiction
35 over that part of the area within the potential jurisdiction of both
36 municipal plan commissions that equals the product obtained by
37 multiplying a fraction, the numerator of which is the area within the
38 corporate boundaries of that municipality and the denominator of
39 which is the total area within the corporate boundaries of both
40 municipalities times the area within the potential jurisdiction of both
41 municipal plan commissions. Furthermore, this commission may
42 exercise territorial jurisdiction within those boundaries, enclosing an

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1 area reasonably compact and regular in shape, that the municipal plan
2 commission first acting designates.

3 (e) ADVISORY. If the legislative body of a county adopts a
4 comprehensive plan and ordinance covering the unincorporated areas
5 of the county, a municipal plan commission may not exercise
6 jurisdiction, as provided in this section, over any part of that
7 unincorporated area unless it is authorized by ordinance of the
8 legislative body of the county. This ordinance may be initiated by the
9 county legislative body or by petition duly signed and presented to the
10 county auditor by:

- 11 (1) not less than fifty (50) property owners residing in the area
- 12 involved in the petition;
- 13 (2) the county plan commission; or
- 14 (3) the municipal plan commission.

15 Before final action on the ordinance by the county legislative body, the
16 county plan commission must hold an advertised public hearing as
17 required for other actions of the county plan commission under the
18 advisory planning law. Upon the passage of the ordinance by the
19 county legislative body and the subsequent acceptance of jurisdiction
20 by the municipal plan commission, the municipal plan commission
21 shall exercise the same rights, powers, and duties conferred in this
22 section exclusively with respect to the contiguous unincorporated area.
23 The jurisdiction of a municipal plan commission, as authorized under
24 this subsection, may be terminated by ordinance at the discretion of the
25 legislative body of the county, but only if the county has adopted a
26 comprehensive plan for that area that is as comprehensive in scope and
27 subject matter as that in effect by municipal ordinance.

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

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

34 may, at any time, after filing notice with the county recorder and the
35 county plan commission, exercise or reject territorial jurisdiction over
36 any part of the **designated contiguous unincorporated area adjacent**
37 **to the area within two (2) miles of the** corporate boundaries of that
38 municipality and within that county, whether or not that commission
39 has previously exercised that jurisdiction. Within sixty (60) days after
40 receipt of that notice, the county plan commission and the county
41 legislative body shall have the county comprehensive plan and
42 ordinance revised to reflect the decision of the municipal plan



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1 commission exercising the option provided for in this subsection.

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

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

7 (h) ADVISORYAREA. Whenever a new town is incorporated in a
8 county having a county plan commission or an area plan commission,
9 that plan commission and its board of zoning appeals shall continue to
10 exercise territorial jurisdiction within the town until the effective date
11 of a town ordinance:

- 12 (1) establishing an advisory plan commission under section
13 202(a) of this chapter; or
14 (2) adopting the area planning law under section 202(b) or 204 of
15 this chapter.

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

19 SECTION 3. IC 36-7-4-602 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 602. (a) The following
21 procedure applies to a proposal to adopt an initial zoning ordinance (or
22 to adopt a replacement zoning ordinance after repealing the entire
23 zoning ordinance, including amendments and zone maps) for a
24 jurisdiction:

- 25 (1) The plan commission must initiate the proposal.
26 (2) The plan commission must prepare the proposal so that it is
27 consistent with section 601 of this chapter.
28 (3) The plan commission and the legislative body both must
29 comply with section 603 of this chapter.
30 (4) The plan commission must give notice and hold a public
31 hearing under section 604 of this chapter.
32 (5) **This subdivision applies when a proposal involves
33 property within a school corporation district described in
34 IC 20-5-2-9. The plan commission must give notice of the
35 proposal to the governing body of:**

- 36 (i) the school corporation; and
37 (ii) the county;

38 **at least thirty (30) days before the plan commission holds a public
39 hearing under section 604 of this chapter.**

- 40 (6) **This subdivision applies when a proposal involves
41 property within a school corporation district described in IC
42 20-5-2-9. The governing body of:**



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- 1 **(i) the school corporation; and**
 2 **(ii) the county;**
 3 **may appoint one (1) of its members to serve as a non-voting**
 4 **member of the plan commission during the time when the**
 5 **plan commission holds the public hearing on the proposal.**
 6 ~~(5)~~ (7) The plan commission must certify the proposal to the
 7 legislative body under section 605 of this chapter.
 8 ~~(6)~~ (8) The legislative body must consider the proposal under
 9 section 606 of this chapter, and section 606 governs whether the
 10 proposal is adopted or defeated. **However, when a proposal**
 11 **involves property within a school corporation district**
 12 **described in IC 20-5-2-9, the governing body of:**
 13 **(i) the school corporation; and**
 14 **(ii) the county;**
 15 **may appoint one (1) of its members to serve as a non-voting**
 16 **member of the legislative body during the time when the**
 17 **legislative body considers the proposal.**
 18 ~~(7)~~ (9) If the proposal is adopted under section 606 of this
 19 chapter, the plan commission must print (and publish, if required)
 20 the ordinance under section 610 of this chapter.
 21 ~~(8)~~ **(10)** The ordinance takes effect as described in section 610 of
 22 this chapter.
 23 (b) After the zoning ordinance for a jurisdiction has been adopted
 24 as described in subsection (a), the following procedure applies to a
 25 proposal to amend or partially repeal the text (not zone maps) of the
 26 ordinance:
 27 (1) The plan commission may initiate the proposal. (Under the
 28 advisory planning law or the area planning law, any participating
 29 legislative body also may initiate the proposal and require the
 30 plan commission to prepare it.)
 31 (2) The plan commission must prepare the proposal so that it is
 32 consistent with section 601 of this chapter.
 33 (3) The plan commission and the legislative body both must
 34 comply with section 603 of this chapter.
 35 (4) The plan commission must give notice and hold a public
 36 hearing under section 604 of this chapter.
 37 (5) The plan commission must certify the proposal to the
 38 legislative body under section 605 of this chapter.
 39 (6) The legislative body must consider the proposal under section
 40 607 of this chapter, and section 607 governs whether the proposal
 41 is adopted or defeated.
 42 (7) If the proposal is adopted under section 607 of this chapter,



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1 the plan commission must print the amendments to the zoning
2 ordinance under section 610 of this chapter.

3 (8) The amendments take effect as described in section 610 of this
4 chapter.

5 (c) After the zoning ordinance for a jurisdiction has been adopted
6 as described in subsection (a), the following procedure applies to a
7 proposal to change the zone maps (whether by incorporating an
8 additional map or by amending or deleting a map) incorporated by
9 reference into the ordinance:

10 (1) The proposal may be initiated either:

11 (A) by the plan commission; or

12 (B) by a petition signed by property owners who own at least
13 fifty percent (50%) of the land involved.

14 (Under the advisory planning law or the area planning law, any
15 participating legislative body also may initiate the proposal and
16 require the plan commission to prepare it.)

17 (2) The plan commission or petitioners must prepare the proposal
18 so that it is consistent with section 601 of this chapter.

19 (3) The plan commission and the legislative body both must
20 comply with section 603 of this chapter.

21 (4) The plan commission must give notice and hold a public
22 hearing under section 604 of this chapter.

23 (5) The plan commission must certify the proposal to the
24 legislative body under section 605 of this chapter.

25 (6) The legislative body must consider the proposal under section
26 608 of this chapter, and section 608 governs whether the proposal
27 is adopted or defeated.

28 (7) If the proposal is adopted under section 608 of this chapter,
29 the plan commission must update the zone maps that it keeps
30 available under section 610 of this chapter.

31 (8) The zone map changes take effect as described in section 610
32 of this chapter.

33 SECTION 4. IC 36-7-4-901 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 901. (a) As a part of the
35 zoning ordinance, the legislative body shall establish a board of zoning
36 appeals.

37 (b) The board of zoning appeals is composed of one (1) division,
38 unless the zoning ordinance is amended under this subsection.
39 Whenever considered desirable, the zoning ordinance may be amended
40 to establish an additional one (1), two (2), or three (3) divisions of the
41 board of zoning appeals.

42 (c) After January 1, 1984, whenever any divisions of the board of

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1 zoning appeals are established or reestablished by the zoning
 2 ordinance, the ordinance must provide for each division to consist of
 3 five (5) members appointed in accordance with section 902 of this
 4 chapter.

5 (d) The board of zoning appeals shall be known as:

6 (1) the advisory board of zoning appeals (under the advisory
 7 planning law);

8 (2) the area board of zoning appeals (under the area planning
 9 law); or

10 (3) the metropolitan board of zoning appeals (under the
 11 metropolitan development law).

12 (e) Except as provided in this section, a board of zoning appeals has
 13 territorial jurisdiction over all the land subject to the zoning ordinance,
 14 and if the board has more than one (1) division, all divisions have
 15 concurrent jurisdiction within that territory.

16 (f) ADVISORY AREA. The zoning ordinance may provide that any
 17 additional division of the board of zoning appeals, having been
 18 established under subsection (b), is to have only limited territorial
 19 jurisdiction. The zoning ordinance must describe the limits of that
 20 division's territorial jurisdiction and specify whether that division has
 21 exclusive or concurrent jurisdiction within that territory.

22 (g) METRO. Any municipal board of zoning appeals that was
 23 established by an excluded city under IC 18-7-2-61 (before its repeal
 24 on September 1, 1981) continues as the board of zoning appeals for
 25 that municipality. A board of zoning appeals for an excluded city has
 26 exclusive territorial jurisdiction within the corporate boundaries of that
 27 municipality. All divisions of the metropolitan board of zoning appeals
 28 have concurrent territorial jurisdiction throughout the remainder of the
 29 county. The legislative body of the consolidated city may adopt
 30 ordinances to regulate the time of the meetings and the voting
 31 procedures of the metropolitan board of zoning appeals.

32 (h) ADVISORY. Any board of zoning appeals that was established
 33 under IC 18-7-3-11 continues as the board of zoning appeals for that
 34 jurisdiction, until otherwise provided by the zoning ordinance.

35 (i) AREA. Any board of zoning appeals that was established under
 36 the advisory planning law and continued in existence under the area
 37 planning law continues as the board of zoning appeals for that
 38 jurisdiction, until otherwise provided by the zoning ordinance.

39 (j) AREA. Any board of zoning appeals that was established under
 40 the area planning law as a seven (7) member board continues as the
 41 area board of zoning appeals, until otherwise provided by the zoning
 42 ordinance.



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1 (k) METRO. The zoning ordinance may provide that a historic
 2 preservation commission created under IC 36-7-11.1-3 may exercise
 3 the powers of a board of zoning appeals within a historic area or
 4 historic zoning district established under IC 36-7-11.1-6. However, this
 5 subsection does not eliminate the need for a historic preservation
 6 commission to issue a certificate of appropriateness under
 7 IC 36-7-11.1-8(e) before the approval of a variance by either:

- 8 (1) a board of zoning appeals; or
 9 (2) a historic preservation commission exercising the powers of
 10 a board of zoning appeals.

11 **(l) This subsection applies when a proposal involves property**
 12 **within a school corporation district described in IC 20-5-2-9. The**
 13 **governing body of:**

- 14 **(1) the school corporation; and**
 15 **(2) the county;**

16 **must receive notice of the proposal at least forty-five (45) days**
 17 **before the board of zoning appeals considers the proposal.**

18 **(m) This subsection applies when a proposal involves property**
 19 **within a school corporation district described in IC 20-5-2-9. The**
 20 **governing body of:**

- 21 **(1) the school corporation; and**
 22 **(2) the county;**

23 **may appoint one (1) of its members to serve as a non-voting**
 24 **member of the board of zoning appeals during the time when the**
 25 **board of zoning appeals considers the proposal.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1955, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

PORTER, Chair

Committee Vote: yeas 8, nays 5.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1955 be amended to read as follows:

Page 1, line 11, delete "the change is approved by the" and insert "**a member of the governing body of:**

(1) the school corporation; and

(2) the county;

participates in the zoning decision in the manner required by IC 36-7-4-602."

Page 1, delete lines 12 through 17.

Page 2, delete line 1.

Page 2, delete lines 11 through 13.

Page 2, line 14, reset in roman "(3)".

Page 2, line 14, delete "(4)".

Page 2, line 16, reset in roman "(4)".

Page 2, line 16, delete "(5)".

Page 2, between lines 17 and 18, begin a new line block indented and insert:

"(5) This subdivision applies when a proposal involves property within a school corporation district described in IC 20-5-2-9. The plan commission must give notice of the proposal to the governing body of:

(i) the school corporation; and

(ii) the county;

at least thirty (30) days before the plan commission holds a public hearing under section 604 of this chapter.

(6) This subdivision applies when a proposal involves property within a school corporation district described in IC 20-5-2-9. The governing body of:

(i) the school corporation; and

(ii) the county;

may appoint one (1) of its members to serve as a non-voting member of the plan commission during the time when the plan commission holds the public hearing on the proposal."

Page 2, line 18, delete "(6)" and insert "(7)".

Page 2, line 20, delete "(7)" and insert "(8)".

Page 2, line 22, after "." insert "**However, when a proposal involves property within a school corporation district described in IC 20-5-2-9, the governing body of:**

(i) the school corporation; and

(ii) the county;

may appoint one (1) of its members to serve as a non-voting

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member of the legislative body during the time when the legislative body considers the proposal."

Page 2, line 23, delete "(8)" and insert "(9)".

Page 2, line 26, delete "(9)" and insert "(10)".

Page 5, delete lines 16 through 19, begin a new paragraph and insert:

"(l) This subsection applies when a proposal involves property within a school corporation district described in IC 20-5-2-9. The governing body of:

(1) the school corporation; and

(2) the county;

must receive notice of the proposal at least forty-five (45) days before the board of zoning appeals considers the proposal.

(m) This subsection applies when a proposal involves property within a school corporation district described in IC 20-5-2-9. The governing body of:

(1) the school corporation; and

(2) the county;

may appoint one (1) of its members to serve as a non-voting member of the board of zoning appeals during the time when the board of zoning appeals considers the proposal."

(Reference is to HB 1955 as printed February 9, 1999.)

DILLON

HOUSE MOTION

Mr. Speaker: I move that House Bill 1955 be amended to read as follows:

Page 2, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 2. IC 36-7-4-205 IS AMENDED TO READ AS FOLLOWS: Sec. 205. (a) ADVISORY. A municipal plan commission shall adopt a comprehensive plan, as provided for under the 500 series of the advisory planning law, for the development of the municipality and of the contiguous unincorporated area, designated by the commission, that is outside the corporate boundaries of the municipality, and that, in the judgment of the commission, bears reasonable relation to the development of the municipality.

(b) ADVISORY. Except as limited by the boundaries of unincorporated areas subject to the jurisdiction of other municipal plan commissions, an area designated under this section may include any

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part of the contiguous unincorporated area within two (2) miles from the corporate boundaries of ~~the~~ a municipality **with a population of more than 100,000, one (1) mile from the corporate boundaries of a municipality with a population of more than 15,000 but less than 100,000, and one-half (1/2) mile from the corporate boundaries of a municipality with a population of less than 15,000.** If, however, the corporate boundaries of the municipality or the boundaries of that contiguous unincorporated area include any part of the public waters or shoreline of a lake (which lies wholly within Indiana), the designated area may also include:

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

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

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

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



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- (1) not less than fifty (50) property owners residing in the area involved in the petition;
- (2) the county plan commission; or
- (3) the municipal plan commission.

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

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

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

may, at any time, after filing notice with the county recorder and the county plan commission, exercise or reject territorial jurisdiction over any part of the **designated contiguous unincorporated area adjacent to the area within two (2) miles of the corporate boundaries of that municipality and within that county, whether or not that commission has previously exercised that jurisdiction.** Within sixty (60) days after receipt of that notice, the county plan commission and the county legislative body shall have the county comprehensive plan and ordinance revised to reflect the decision of the municipal plan commission exercising the option provided for in this subsection.

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

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

(h) **ADVISORY) AREA.** Whenever a new town is incorporated in a county having a county plan commission or an area plan commission, that plan commission and its board of zoning appeals shall continue to exercise territorial jurisdiction within the town until the effective date



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of a town ordinance:

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

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

Renumber all SECTIONS consecutively.

(Reference is to HB1955 as printed February 9, 1999.)

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