

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 ENROLLED ACT No. 1155

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 36-5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Proceedings to incorporate a town may be instituted by filing a petition in quadruplicate with the executive of ~~the~~ **each** county in which ~~all~~ **or a major** part of the territory sought to be incorporated is located. The petition must be signed by at least fifty (50) owners of land in the territory and must state that:

- (1) the territory is used or will, in the reasonably foreseeable future, be used generally for commercial, industrial, residential, or similar purposes;
- (2) the territory is reasonably compact and contiguous;
- (3) there is enough undeveloped land in the territory to permit reasonable growth of the town; and
- (4) incorporation is in the best interests of the citizens of the territory.

(b) The signatures of the petitioners must be verified, and the verification must include a statement that the petitioners are owners of land in the territory sought to be incorporated.

(c) In determining the number of petitioners, not more than one (1) person having an interest in a single parcel of land may be counted, and a person owning more than one (1) parcel of land in the area may be

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counted only once.

SECTION 2. IC 36-5-1-10.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10.1. (a) **Except as provided in subsection (g)**, if the county executive makes the findings required by section 8 of this chapter, it may adopt an ordinance incorporating the town. The ordinance must:

(1) provide that:

(A) all members of the town legislative body are to be elected at large (if the town would have a population of less than three thousand five hundred (3,500)); or

(B) divide the town into not less than three (3) nor more than seven (7) districts; and

(2) direct the county election board to conduct an election in the town on the date of the next general or municipal election to be held in any precincts in the county.

An election conducted under this section must comply with IC 3 concerning town elections. If, on the date that an ordinance was adopted under this section, absentee ballots for a general or municipal election have been delivered under IC 3-11-4-15 for voters within a precinct in the town, the election must be conducted on the date of the next general or municipal election held in any precincts in the county after the election for which absentee balloting is being conducted. However, a primary election may not be conducted before an election conducted under this section, regardless of the population of the town.

(b) Districts established by an ordinance adopted under this section must comply with IC 3-11-1.5.

(c) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the district that:

(1) is contiguous to that territory; and

(2) contains the least population of all districts contiguous to that territory.

(d) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

(1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;

(2) is contiguous to that territory; and

(3) contains the least population of all districts contiguous to that territory.

(e) Except as provided in subsection (f), an ordinance adopted under this section becomes effective when filed with:

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- (1) the state certifying official designated under IC 3-6-4.2-11; and
- (2) the circuit court clerk of each county in which the town is located.

(f) An ordinance incorporating a town under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. An ordinance under this section that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

(g) Proceedings to incorporate a town across county boundaries must have the approval of the county executive of each county that contains a part of the proposed town. Each county that contains a part of the proposed town must adopt identical ordinances providing for the incorporation of the town.

SECTION 3. IC 36-7-15.1-15.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 30, 1999]: Sec. 15.1. (a) As used in this section, "qualifying corporation" refers to a nonprofit corporation or neighborhood development corporation that meets the requirements of subsection (b)(1) and the criteria established by the county fiscal body under subsection (i).

(b) The commission may sell or grant at no cost title to real property to a nonprofit corporation or neighborhood development corporation for the purpose of providing low or moderate income housing or other development that will benefit or serve low or moderate income families if the following requirements are met:

- (1) The nonprofit corporation or neighborhood development corporation has, as a major corporate purpose and function, the provision of housing for low and moderate income families within the geographic area in which the parcel of property is located.
- (2) The qualifying corporation agrees to cause development that will serve or benefit low or moderate income families on the parcel of property within a specified period, which may not exceed five (5) years from the date of the sale or grant.
- (3) The qualifying corporation, if the qualifying corporation is a neighborhood development corporation, agrees that the qualifying corporation and each applicant, recipient, contractor, or subcontractor undertaking work in connection with the real property will:
 - (A) use lower income project area residents as trainees and as employees; and
 - (B) contract for work with business concerns located in the

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project area or owned in substantial part by persons residing in the project area;

to the greatest extent feasible, as determined under the standards specified in 24 CFR 135.

(4) The county fiscal body has determined that the corporation meets the criteria established under subsection (i).

(5) The qualifying corporation agrees to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the qualifying corporation.

(c) To carry out the purposes of this section, the commission may secure from the county under IC 6-1.1-25-9(e) parcels of property acquired by the county under IC 6-1.1-24 and IC 6-1.1-25.

(d) Before offering any parcel of property for sale or grant, the fair market value of the parcel of property must be determined by an appraiser, who may be an employee of the department. However, if the commission has obtained the parcel in the manner described in subsection (c), an appraisal is not required. An appraisal under this subsection is solely for the information of the commission and is not available for public inspection.

(e) The commission must decide whether the commission will sell or grant the parcel of real property at a public meeting. In making this decision, the commission shall give substantial weight to the extent to which and the terms under which the qualifying corporation will cause development to serve or benefit families of low or moderate income. If more than one (1) qualifying corporation is interested in acquiring a parcel of real property, the commission shall conduct a hearing at which a representative of each corporation may state the reasons why the commission should sell or grant the parcel to that corporation.

(f) Before conducting a hearing under subsection (e), the commission shall publish a notice in accordance with IC 5-3-1 indicating that at a designated time the commission will consider selling or granting the parcel of real property under this section. The notice must state the general location of the property, including the street address if any, or a common description of the property other than the legal description.

(g) If the county agrees to transfer a parcel of real property to the commission to be sold or granted under this section, the commission may conduct a hearing to sell or grant the parcel to a qualifying corporation even though the parcel has not yet been transferred to the commission. After the hearing, the commission may adopt a resolution directing the department to take appropriate steps necessary to acquire

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the parcel from the county and to transfer the parcel to the qualifying corporation.

(h) A conveyance of property to a qualifying corporation under this section shall be made in accordance with section 15(i) of this chapter.

(i) The county fiscal body shall establish criteria for determining the eligibility of nonprofit corporations and neighborhood development corporations for sales or grants of real property under this section. A nonprofit corporation or neighborhood development corporation may apply to the county fiscal body for a determination concerning the corporation's compliance with the criteria established under this subsection.

(j) ~~This section expires July 1, 1999.~~

SECTION 4. IC 36-7-15.1-22.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 30, 1999]: Sec. 22.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the following conditions exist:

(1) The real property is an unsafe premises (as defined in IC 36-7-9) and is subject to an order issued under IC 36-7-9 or a notice of violation issued by the county's health and hospital corporation under its powers under IC 16-22-8.

(2) The real property is not being used as a residence or for a business enterprise.

(3) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

(4) The blighted condition of the real property has a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or its designated hearing examiner shall conduct a public meeting to determine whether the conditions set forth in subsection (a) exist relative to a parcel of real property. Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing, and is entitled to present evidence and make arguments at the hearing.

(c) Whenever the commission considers it necessary to acquire real property under this section, it shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court in the county.

(d) Eminent domain proceedings under this section are governed by

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IC 32-11.

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

- (1) Sale in an urban homestead program under IC 36-7-17.
- (2) Sale to a family whose income is at or below the county's median income for families.
- (3) Sale or grant to a neighborhood development corporation or other nonprofit corporation, with a condition in the granting clause of the deed requiring the nonprofit organization to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the county's median income for families. However, a nonprofit organization is eligible for a sale or grant under this subdivision only if the county fiscal body has determined that the nonprofit organization meets the criteria established under subsection (f).
- (4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the county's median income for families.

(f) The county fiscal body shall establish criteria for determining the eligibility of neighborhood development corporations and other nonprofit corporations for sales and grants of real property under subsection (e)(3). A neighborhood development corporation or other nonprofit corporation may apply to the county fiscal body for a determination concerning the corporation's compliance with the criteria established under this subsection.

(g) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

~~(h) This section expires July 1, 1999.~~

SECTION 5. IC 36-7-23-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter, "authority" refers to a multiple **county jurisdiction infrastructure** authority established **by under** this chapter.

SECTION 6. IC 36-7-23-3.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.7. This chapter applies to all units except townships.**

SECTION 7. IC 36-7-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A multiple **county jurisdiction infrastructure** authority may be established under

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this chapter by:

(1) ordinance of the fiscal body of each ~~county~~ **unit** participating in the authority; and

(2) **if a county is one (1) of the units participating in the authority**, the order of the executive of ~~each that~~ county; ~~participating in the authority~~; and

(3) **an agreement among the participating units, executed by the executive of each participating unit following the approval of the legislative body of each of the participating units.**

(b) The authority is a public body corporate and politic. The authority is separate from the state, but the exercise by the authority of its powers is an essential governmental function.

(c) An agreement to establish an authority must include:

(1) more than one (1) ~~county~~ **unit** as a participant; and

(2) a formula for distributing funds ~~from local taxes~~ contributed by a ~~county or a municipality wholly or partially located in a county included in the agreement~~; **the units participating in the authority.**

(d) **An authority may add additional participating units at any time by following the procedures set forth in subsection (a).**

(e) **A unit may participate in more than one (1) authority.**

SECTION 8. IC 36-7-23-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. The purpose of the authority is to **promote cooperation among the units participating in the authority in order to** assist the development of the ~~incorporated and unincorporated areas of each county~~ **units** included in the agreement by doing the following:

(1) Utilizing private and public sector resources to address development problems and opportunities.

(2) **Planning**, developing, rehabilitating, and otherwise managing ~~regional infrastructures and other regional services~~; **infrastructure located in the authority's jurisdiction.**

(3) Supplementing, but not supplanting, traditional local or state responsibilities.

(4) Providing financial resources to local communities to address their infrastructure needs.

(5) Providing revenue bonding capacity and resources for bond retirement, or lease rental capacity and resources, that can be directed to development or recapitalization of ~~the regional~~ **infrastructure located in the authority's jurisdiction.**

(6) Providing the means to develop revenue producing infrastructure ventures, where revenue can be rechanneled back

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into the overall infrastructure development effort.

(7) Providing an overall balanced infrastructure investment strategy that addresses important ~~regional~~ needs **of the participating units for capital projects.**

(8) Providing operating involvement appropriate to each infrastructure component.

(9) Providing for a continuing and stable source of public funding for ~~regional~~ infrastructure development **for participating units.**

(10) Providing the mechanism to address other regional services as determined to be appropriate by the board.

SECTION 9. IC 36-7-23-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. The powers of the authority are vested in a board of directors. The board is comprised of the following members:

(1) One (1) member appointed by the ~~county~~ executive of each ~~county~~: **unit participating in the authority.**

(2) One (1) member appointed by the ~~county~~ fiscal body of each ~~county~~: **unit participating in the authority.**

~~(3) The executive director of the authority.~~

SECTION 10. IC 36-7-23-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A member appointed under section 9 of this chapter ~~by a county executive or county fiscal body~~ must be a resident of the ~~county~~ **unit** whose officials or representatives make the appointment.

(b) A member appointed under section 9(1) or 9(2) of this chapter by a ~~county~~ **unit** executive or ~~county~~ **unit** fiscal body must be an elected official of the ~~county~~ **unit** whose officials or representatives make the appointment.

SECTION 11. IC 36-7-23-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) A member of the board appointed under ~~section 9(1) through 9(2)~~ **section 9** of this chapter serves a term of four (4) years.

(b) The agreement establishing the authority under this chapter must provide:

(1) that the terms of the initial members appointed under ~~section 9(1) through 9(2)~~ **section 9** of this chapter expire after one (1), two (2), three (3), or four (4) years; and

(2) for approximately twenty-five percent (25%) of the terms of the initial members appointed under ~~section 9(1) through 9(2)~~ **section 9** of this chapter to expire in each of the first four (4) years that the agreement is in effect.

SECTION 12. IC 36-7-23-12 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. The **officials responsible for appointing authority members of the board** shall fill a vacancy on the board among the members appointed under ~~section 9(1) through 9(3)~~ **section 9** of this chapter by appointment for the unexpired term.

SECTION 13. IC 36-7-23-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) A member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(b) A member of the board is not entitled to either a salary or a per diem for services rendered in connection with the member's duties.

SECTION 14. IC 36-7-23-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. The members shall elect:

- (1) a ~~vice~~ chairman;
- (2) a ~~secretary~~; **vice chairman**;
- (3) a secretary**; and
- ~~(3)~~ **(4)** other officers determined to be necessary for the board to function;

at the first meeting of the board in January of each year.

SECTION 15. IC 36-7-23-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) A majority of the members of the board constitutes a quorum for the transaction of business. The affirmative vote of a majority of the board is necessary for an action to be taken by the board.

(b) A member may vote by written proxy delivered in advance to ~~another member~~ **the chairman or secretary** of the board.

(c) A vacancy in the membership of the board does not impair the right of a quorum to exercise all rights and perform all duties of the board.

SECTION 16. IC 36-7-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 32. (a) The board ~~shall~~ **may** appoint an executive director of the authority.

(b) ~~Whenever a vacancy exists in the office of~~ **If the board determines to appoint an** executive director, the board shall appoint a nominating committee composed of members of the board. The committee must submit a recommendation to the board concerning the individuals qualified to serve as executive director.

SECTION 17. IC 36-7-23-33 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 33. The executive director shall:

- (1) administer, manage, and direct the affairs and activities of the authority in accordance with the policies of the board and under the control and direction of the board;
- ~~(2) preside as chairman at the meetings of the board;~~
- ~~(3)~~ (2) maintain and be custodian of all books, documents, and papers filed with the authority and the official seal of the authority; and
- ~~(4)~~ (3) perform other duties directed by the members to carry out the purposes of this chapter.

SECTION 18. IC 36-7-23-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 52. (a) A resolution establishing just and reasonable fees, rates, and charges for the use of infrastructures under this chapter may be ~~adopted~~ **adopted** by the board after a public hearing. Notice of the hearing must be published ~~and posted; in each county that is a member of the authority; one (1) time, at least ten (10) days before the hearing, in one (1) newspaper published in each county in which a participating unit is located~~ in accordance with IC 5-3-1. The notice must provide a summary of the resolution.

(b) Fees, rates, and charges adopted by the authority for a particular infrastructure shall comply with statutes authorizing units to adopt fees, rates, and charges for that particular type of infrastructure or, if there is no statute authorizing units to adopt fees, rates, and charges for that particular type of infrastructure, the fees, rates, and charges must comply with IC 36-1-3.

SECTION 19. IC 36-7-23-53 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 53. (a) An authority may enter into a lease of any infrastructure that could be financed with the proceeds of bonds issued under this chapter with a lessor for a term not to exceed fifty (50) years, and the lease may provide for payments to be made by the authority from any revenues of the authority.

(b) A lease may provide that payments by the authority to the lessor are required only to the extent and only for the period that the lessor is able to provide the leased infrastructure in accordance with the lease. The terms of each lease must be based upon the value of the infrastructure leased and may not create a debt of the authority or a ~~county~~ member for purposes of the Constitution of the State of Indiana.

(c) A lease may be entered into by the authority only after a public hearing by the board at which all interested parties are provided the opportunity to be heard. After the public hearing, the board may adopt

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a resolution authorizing the execution of the lease on behalf of the authority if the board finds that the service to be provided throughout the term of the lease will serve the public purpose of the authority and is in the best interests of its residents.

(d) The authority may:

- (1) pledge revenues to make payments under the lease; and
- (2) establish a special fund to make the payments.

(e) Lease rentals may be limited to money in the special fund so that the obligations of the authority to make the lease rental payments are not considered debt of the authority or a ~~county~~ member for purposes of the Constitution of the State of Indiana.

(f) Except as provided in this section, no approvals of any governmental body or agency are required before the authority enters into a lease under this section.

SECTION 20. IC 36-7-23-58 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 58. The infrastructure, or any part of ~~them~~; **the infrastructure**, to be financed under this chapter, may be financed by any one (1) or more or any combination of one (1) or more of the methods provided for in this chapter. The authority may pledge any money or mortgage or pledge property available to it under this chapter as set forth in IC 5-1-14-4 and any ~~county~~ member may pledge any money or mortgage or pledge property available to it to the authority as set forth in the agreement creating the authority. Any such pledge or mortgage by a ~~county~~ member to the authority shall be governed by and binding under IC 5-1-14-4.

SECTION 21. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1999]: IC 36-7-23-3; IC 36-7-23-14.

SECTION 22. [EFFECTIVE JULY 1, 1999] **Notwithstanding IC 36-5-1-2 and IC 36-5-1-10.1, both as amended by this act, proceedings commenced before July 1, 1999, to incorporate a town across county boundaries is only required to have the approval of the county executive of the county that contains all or a major part of the territory sought to be incorporated.**

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