

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. 1606

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 36-7-4-205 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: 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;~~ **For comprehensive plans adopted after July 1, 1999, if:**

(1) the municipality provides municipal services to the contiguous unincorporated area; or

(2) the municipal plan commission obtains the approval of the county legislative body of each affected county;

the municipal plan commission may provide in the comprehensive plan for the development 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 part of the contiguous unincorporated area within two (2) miles from the corporate boundaries of the municipality. If, however, the corporate boundaries of the municipality or the boundaries of that contiguous

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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:

- (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

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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 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, **if the municipality is providing municipal services to the area.** 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. **If the municipality is not providing municipal services to the area, the municipal plan commission must obtain the approval of the county legislative body of each affected county before exercising jurisdiction.**

(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 of a town ordinance:

- (1) establishing an advisory plan commission under section 202(a) of this chapter; or

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(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.

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 an unincorporated area of the county, appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county 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:

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- (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 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.

SECTION 3. 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. This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance. If, after adoption of the proposal, the legislative body finds that the proposal was adopted as a result of a person's material misrepresentation or omission of facts, the legislative body may adopt an ordinance to nullify any change in the zone maps that resulted from the misrepresentation or omission. Such an ordinance may be adopted by the legislative body without being referred to the plan commission for consideration and recommendation under sections 604, 605, and 608 of this chapter.**

SECTION 4. IC 36-7-4-903 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 903. ADVISORY. (a) When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 or 1208 of the advisory planning law, either:

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- (1) an additional division of the board of zoning appeals shall be established under section ~~901(a)~~ **901(b)** of this chapter that will have territorial jurisdiction only in the unincorporated area and consist only of residents of the unincorporated area; or
- (2) the municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter, one (1) of the two (2) citizen members who were appointed under section 214 of this chapter to the plan commission to represent the unincorporated area. The citizen member must reside in the unincorporated area. He shall be appointed for a term of four (4) years. He is entitled to participate and vote in all deliberations of the municipal board of zoning appeals.

(b) Notwithstanding section 902(g) of this chapter, if the zoning ordinance provides for an additional division of the board of zoning appeals under subsection (a)(1), the ordinance may also provide for the appointment of one (1) or more members of that division by elected officials of the county or township.

SECTION 5. 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~~ **This chapter** does not authorize an ordinance **or action of a plan 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 6. [EFFECTIVE JULY 1, 1999] (a) **The county executive shall appoint the member added to the county 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 county plan commission until the county**

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executive appoints the member added to the county plan commission under IC 36-7-4-208(a)(6), as added by this act.

(c) This SECTION expires October 2, 1999.

SECTION 7. An emergency is declared for this act.

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