

SENATE BILL No. 628

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-17-1; IC 36-4-3-23; IC 36-7-4-602; IC 36-7-4-901; IC 36-7-32.

Synopsis: Township overlay district. Creates the Clay Township overlay district in Hamilton County. Establishes the boundaries for the district. Provides that the district must approve changes to zoning, roads, and other matters within the district before the matter is heard by the board of zoning appeals or the plan commission. Provides for the administration of the board. Provides that a part of the district incorporated as the result of a formation of a new town ceases to be a part of the district. Provides that a part of the district annexed by a city or town remains a part of the district. Provides for an appeal from decisions of the board. Makes conforming amendments.

Effective: Upon passage; July 1, 1999.

Clark

January 22, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.

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Introduced

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.

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SENATE BILL No. 628

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 8-17-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) **Except as provided in**
3 **subsection (b)**, a county executive may construct, reconstruct,
4 improve, and maintain all public highways, bridges, and culverts in the
5 county, including highways, bridges, and culverts under the supervision
6 of the department, if approved by the department, or located in
7 municipalities, as provided in this chapter. In addition, the department
8 may, after petitioning the affected county executive or municipal
9 legislative body and obtaining approval, construct, reconstruct,
10 improve, and maintain county or municipal highways. The department
11 and a county or a municipality in the county through which a toll road
12 project under IC 8-15-2 passes may jointly undertake transportation
13 projects (as defined in IC 36-1-10-2). The duties and responsibilities of
14 a joint undertaking shall be assigned to the department, the county, or
15 the municipality in the county as the parties may agree.

16 (b) **A county executive in a county having a population of more**
17 **than one hundred eight thousand (108,000) but less than one**

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1 **hundred eight thousand nine hundred fifty (108,950) must comply**
 2 **with the requirements of IC 36-7-32 before the county executive**
 3 **may construct, reconstruct, improve, and maintain the public**
 4 **highways, bridges, and culverts in the county under subsection (a).**

5 SECTION 2. IC 8-17-1-2 IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) **Except as provided in**
 7 **subsection (b), a county executive may construct new public highways**
 8 **or may reconstruct and improve any existing public highways or parts**
 9 **of those highways with road paving materials. The executive may**
 10 **establish, lay out, alter, widen, vacate, straighten, or change a public**
 11 **highway in connection with the improvement and may build all**
 12 **necessary bridges, culverts, or approaches in the improvement of**
 13 **highways. In addition, the executive shall provide easements necessary**
 14 **for drainage and utilities.**

15 (b) **A county executive in a county having a population of more**
 16 **than one hundred eight thousand (108,000) but less than one**
 17 **hundred eight thousand nine hundred fifty (108,950) must comply**
 18 **with the requirements of IC 36-7-32 before the county executive**
 19 **may construct new public highways or extend an existing public**
 20 **highway.**

21 SECTION 3. IC 36-4-3-23 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 1999]: Sec. 23. (a) **This section applies to a township having a**
 24 **population of more than forty-two thousand five hundred (42,500)**
 25 **but less than forty-four thousand (44,000) located in a county**
 26 **having a population of more than one hundred eight thousand**
 27 **(108,000) but less than one hundred eight thousand nine hundred**
 28 **fifty (108,950).**

29 (b) **A part of the Clay Township overlay district (under**
 30 **IC 36-7-32) that is incorporated after June 30, 1999, as a result of**
 31 **the formation of a new town or city ceases to be a part of the Clay**
 32 **Township overlay district.**

33 (c) **A part of the Clay Township overlay district (under**
 34 **IC 36-7-32) that is annexed by a city or town remains a part of the**
 35 **Clay Township overlay district.**

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

- 42 (1) The plan commission must initiate the proposal.



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

(3) If property in the proposal is located in a township having a population of more than forty-two thousand five hundred (42,500) but less than forty-four thousand (44,000) located in a county having a population of more than one hundred eight thousand (108,000) but less than one hundred eight thousand nine hundred fifty (108,950), the plan commission must have the proposal approved by the Clay Township overlay district under IC 36-7-32.

~~(3)~~ (4) The plan commission and the legislative body both must comply with section 603 of this chapter.

~~(4)~~ (5) The plan commission must give notice and hold a public hearing under section 604 of this chapter.

~~(5)~~ (6) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.

~~(6)~~ (7) The legislative body must consider the proposal under section 606 of this chapter, and section 606 governs whether the proposal is adopted or defeated.

~~(7)~~ (8) If the proposal is adopted under section 606 of this chapter, the plan commission must print (and publish, if required) the ordinance under section 610 of this chapter.

~~(8)~~ (9) The ordinance takes effect as described in section 610 of this chapter.

(b) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to amend or partially repeal the text (not zone maps) of the ordinance:

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

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

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

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

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

(6) The legislative body must consider the proposal under section 607 of this chapter, and section 607 governs whether the proposal

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1 is adopted or defeated.

2 (7) If the proposal is adopted under section 607 of this chapter,
3 the plan commission must print the amendments to the zoning
4 ordinance under section 610 of this chapter.

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

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

12 (1) The proposal may be initiated either:

13 (A) by the plan commission; or

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

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

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

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

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

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

27 (6) The legislative body must consider the proposal under section
28 608 of this chapter, and section 608 governs whether the proposal
29 is adopted or defeated.

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

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

35 SECTION 5. IC 36-7-4-901 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 901. (a) As a part of the
37 zoning ordinance, the legislative body shall establish a board of zoning
38 appeals.

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

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1 board of zoning appeals.

2 (c) After January 1, 1984, whenever any divisions of the board of
3 zoning appeals are established or reestablished by the zoning
4 ordinance, the ordinance must provide for each division to consist of
5 five (5) members appointed in accordance with section 902 of this
6 chapter.

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

8 (1) the advisory board of zoning appeals (under the advisory
9 planning law);

10 (2) the area board of zoning appeals (under the area planning
11 law); or

12 (3) the metropolitan board of zoning appeals (under the
13 metropolitan development law).

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

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

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

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

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

41 (j) **AREA.** Any board of zoning appeals that was established under
42 the area planning law as a seven (7) member board continues as the



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1 area board of zoning appeals, until otherwise provided by the zoning
2 ordinance.

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

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

13 **(l) A board of zoning appeals in a county having a population of
14 more than one hundred eight thousand (108,000) but less than one
15 hundred eight thousand nine hundred fifty (108,950) must comply
16 with the requirements of IC 36-7-32.**

17 SECTION 6. IC 36-7-32 IS ADDED TO THE INDIANA CODE AS
18 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 1999]:

20 **Chapter 32. Clay Township Overlay District**

21 **Sec. 1. This chapter applies to a township having a population
22 of more than forty-two thousand five hundred (42,500) but less
23 than forty-four thousand (44,000) located in a county having a
24 population of more than one hundred eight thousand (108,000) but
25 less than one hundred eight thousand nine hundred fifty (108,950).**

26 **Sec. 2. As used in this chapter, "board" refers to the district
27 board established by this chapter.**

28 **Sec. 3. As used in this chapter, "district" means the Clay
29 Township overlay district that covers an area with the following
30 boundaries:**

- 31 (1) A south boundary of 96th street.
32 (2) A north boundary of 146th street.
33 (3) A west boundary that is the county line of a county having
34 a population of more than thirty-eight thousand (38,000) but
35 less than thirty-eight thousand three hundred (38,300).
36 (4) An east boundary that is the municipal limit of a city
37 having a population of more than thirty thousand (30,000) but
38 less than thirty-two thousand (32,000).

39 **Sec. 4. As used in this chapter, "person" means an individual, a
40 corporation, a partnership, an association, a trust, a governmental
41 body or agency, or other entity, public or private, capable of
42 entering into an enforceable contract.**



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1 **Sec. 5. The Clay Township overlay district is established.**

2 **Sec. 6. (a) The board is established to administer the district.**
 3 **The board consists of nine (9) members as follows:**

4 **(1) Five (5) members elected in a general election in an at**
 5 **large vote by voters in the district.**

6 **(2) Two (2) members appointed by the township trustee and**
 7 **ratified by the township board.**

8 **(3) Two (2) members appointed by the county executive.**

9 **(b) A member of the board must be a resident of the district.**

10 **(c) A member of the board serves a term of four (4) years**
 11 **beginning January 1 after:**

12 **(1) the general election for elected members; or**

13 **(2) the municipal election for appointed members.**

14 **(d) If an appointed member of the board dies or resigns during**
 15 **a term, the appointing authority shall appoint a successor to**
 16 **complete the term not later than thirty (30) days after the death or**
 17 **resignation of the appointed member of the board.**

18 **(e) If an elected member of the board dies or resigns during a**
 19 **term, the county executive shall appoint a successor to complete the**
 20 **term not later than thirty (30) days after the death or resignation**
 21 **of the elected member of the board.**

22 **(f) The members of the board serve without compensation.**

23 **(g) The board shall elect from its members a chair and vice**
 24 **chair. The vice chair may act as chair during the absence or**
 25 **disability of the chair.**

26 **Sec. 7. (a) The board shall:**

27 **(1) approve or reject:**

28 **(A) a variance;**

29 **(B) a special exception;**

30 **(C) a special use; and**

31 **(D) any other matter subject to the board of zoning appeals**
 32 **jurisdiction;**

33 **relating to property wholly or partially in the district before**
 34 **the matter may be heard by the board of zoning appeals;**

35 **(2) approve or reject:**

36 **(A) a rezoning petition;**

37 **(B) an amendment or other change to a zoning ordinance**
 38 **affecting property in the township; and**

39 **(C) any other matter subject to the jurisdiction of the plan**
 40 **commission;**

41 **relating to property wholly or partially in the district before**
 42 **the matter may be heard by the plan commission;**

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1 (3) approve or reject plans for new roads or the extension of
 2 existing roads within the district before the construction or
 3 extension may be approved by the county or municipality.
 4 This approval does not include the repair or upgrade of
 5 existing roads;

6 (4) adopt a schedule of fees for all documents filed with the
 7 board; and

8 (5) prescribe the form and manner in which all matters are
 9 heard before the board.

10 (b) The board may employ a secretary and any employees
 11 necessary for the discharge of its duties.

12 (c) The township shall provide suitable facilities for holding
 13 board hearings and for preserving records, documents, and
 14 accounts. If the township has a government center, the facilities for
 15 the board shall be located in the township government center.

16 Sec. 8. (a) The board shall hold a public hearing on a petition
 17 before approving or rejecting the petition. Notice of the public
 18 hearing shall be given by publication in accordance with IC 5-3-1.

19 (b) The board may, before a public hearing on a petition filed
 20 with the board is held, require the person filing the petition, or a
 21 person whose interests appear adverse to those of the petitioner, to
 22 file with the board before the hearing the following:

23 (1) Maps, plot plans, structural drawings and specifications,
 24 landscaping plans, floor plans, elevations, cross-sectional
 25 plans, architectural renderings, diagrams, or any other
 26 technical or graphic materials.

27 (2) Additional information concerning the petitioner's or the
 28 adverse person's intentions or interest with respect to the
 29 property subject to the petition or bordering property.

30 (3) Any other additional information that the board considers
 31 relevant to the matters concerning the petition.

32 Sec. 9. (a) A quorum of the board consists of six (6) members. A
 33 quorum must be present for a public hearing on and the
 34 determination of a matter before the board for which a public
 35 hearing is required under this chapter.

36 (b) A majority vote of the members of the board present and
 37 voting is required for the board to take action.

38 Sec. 10. (a) Not later than thirty (30) days after a vote by the
 39 board finally determining a matter, the board shall enter a written
 40 final order stating the following:

41 (1) The names of the members present and voting.

42 (2) Whether the vote cast by each member was negative or

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1 affirmative.

2 (3) The basic facts found by the members whose vote for or
3 against the petitioner determined the matter.

4 (b) If a tie vote occurs, the petition fails, with the members
5 casting a vote adverse to the petitioner considered to be the
6 majority.

7 (c) A board shall provide a copy of the order to the petition.

8 Sec. 11. (a) The board shall keep complete minutes of meetings.
9 The minutes must reflect the following:

10 (1) Action taken by the board.

11 (2) The reasons for the action.

12 (3) The factors considered by the board in taking the action.

13 (b) Copies of the minutes of a meeting shall be provided to a
14 person requesting a copy.

15 (c) A person, other than a petitioner, who desires a transcript of
16 a matter heard by the board may, at the person's expense, have a
17 transcript prepared.

18 Sec. 12. (a) The board shall set the fees to be paid by a person
19 filing a petition with the board. If the board has not set a fee by
20 rule for a type of petition, the fee is twenty-five dollars (\$25).

21 (b) A person filing a petition with the board shall pay the fee
22 required for the filing.

23 Sec. 13. The board may accept money from any source for use
24 in administering this chapter.

25 Sec. 14. An administrative, a legislative, or other governmental
26 body may not grant, adopt, approve, or permit:

27 (1) a zoning variance;

28 (2) a special exception;

29 (3) a special use;

30 (4) a petition to rezone;

31 (5) an amendment or change to a zoning ordinance;

32 (6) the construction of a new road or extension of an existing
33 road; or

34 (7) the commencement of any matter subject to the
35 jurisdiction of the board of zoning appeals or the plan
36 commission;

37 relating to property wholly or partially within the district without
38 the prior approval of the district board.

39 Sec. 15. (a) A petition that is filed by a person seeking approval
40 of the board must:

41 (1) be under oath; and

42 (2) state the following:

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- (A) The full name and address of the petitioner and of each attorney acting for and on behalf of the petitioner.**
- (B) The street address of the property.**
- (C) The name of the owner of the property.**
- (D) The full name and address of and the type of business, if any, conducted by:**
 - (i) a person who at the time of the filing is a party to; and**
 - (ii) a person who is a disclosed or an undisclosed principal for whom the party was acting as agent in entering into;**
- a contract of sale, a lease, an option to purchase or lease, an agreement to build or develop, or other written agreement of any kind or nature concerning the subject property or the present or future ownership, use, occupancy, possession, or development of the subject property.**
- (E) A description of the contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement sufficient to disclose the full nature of the interest of the party or of the party's principal in the subject property or in the present or future ownership, use, occupancy, possession, or development of the subject property.**
- (F) The date of the regular meeting of the board at which the petitioner requests the petition be considered and determined.**
- (G) A detailed description of the proposed use for which the zoning variance is sought.**
- (H) Other information that the board requires by rule or regulation.**

- (b) A petition must be accompanied by the following:**
 - (1) A true copy of each contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement described in the petition.**
 - (2) The maps, plot plans, structural drawings and specifications, landscaping plans, floor plans, elevations, cross-sectional plans, architectural renderings, diagrams, or other technical or graphic materials that the board requires by rule or regulation.**

Sec. 16. The board shall adopt rules for the orderly administration of board affairs and for the implementation of this chapter. The rules shall be made available in writing to any person

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1 requesting a copy.
 2 **Sec. 17. (a) A part of the district incorporated after June 30,**
 3 **1999, as a result of the formation of a new town or city ceases to be**
 4 **a part of the district.**
 5 **(b) A part of the district annexed by a city or town remains a**
 6 **part of the district.**
 7 **Sec. 18. A decision of the board to reject a petition may be**
 8 **appealed to the circuit or superior court of the county.**
 9 **Sec. 19. If there is a conflict between the laws described in this**
 10 **chapter and any other law, this chapter governs.**
 11 **SECTION 7. [EFFECTIVE UPON PASSAGE] (a)**
 12 **Notwithstanding IC 36-7-32, as added by this chapter, the initial**
 13 **district overlay board consists of:**
 14 **(1) three (3) members appointed by the township trustee and**
 15 **ratified by the township board, who serve until December 31,**
 16 **2000;**
 17 **(2) two (2) members appointed by the county executive, who**
 18 **serve until December 31, 2000;**
 19 **(3) two (2) members appointed by the township trustee and**
 20 **ratified by the township board, who serve until December 31,**
 21 **2002; and**
 22 **(4) two (2) members appointed by the county executive, who**
 23 **serve until December 31, 2002.**
 24 **(b) Members of the initial board appointed under subsection**
 25 **(a)(1) and (a)(2) are replaced by members elected in the 2000**
 26 **general election.**
 27 **(c) This section expires December 31, 2003.**
 28 **SECTION 8. An emergency is declared for this act.**

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