First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1311

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 14-28-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18. (a) A flood plain zoning ordinance must designate:

(1) the county auditor;

(2) the county surveyor; or

(3) the municipal clerk or clerk-treasurer;

as applicable, as the zoning administrator who issues improvement location permits within the jurisdiction of the commission and in conformance with the flood plain ordinance.

(b) A **final** decision of the zoning administrator may be **judicially** reviewed ~~by certiorari procedure. A petition for certiorari must specify the grounds upon which the petition alleges the illegality of the zoning administrator's action. The petition must be filed in the circuit court of the county in which the land is located within thirty (30) days after the date of the decision. A change of venue from the county in which the property is located may not be granted in any cause arising under this chapter.~~ **in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4.**

SECTION 2. IC 36-7-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Section 2 of this chapter applies only to areas subject to the jurisdiction of no plan commission under this article.

C o p y

(b) Sections 3 through 9 of this chapter apply only to:

(1) areas subject to the jurisdiction of an advisory plan commission under this article; and

(2) areas subject to the jurisdiction of no plan commission under this article.

(c) Sections 10, ~~11,~~ 14, and 16 of this chapter apply to all areas of the state. ~~except that section 11 of this chapter applies only to areas subject to the jurisdiction of a plan commission under this article.~~

(d) Sections 12, 13, and 15 of this chapter apply to all areas of the state, except in a county having a consolidated city.

SECTION 3. IC 36-7-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) The owners of land in a plat may vacate all or part of that plat **under:**

(1) this section; or

(2) IC 36-7-4-711.

(b) In a case in which all the owners of land in a plat are in agreement regarding a proposed vacation, the owners may file a written instrument to vacate all or part of that plat. All the owners of land in the plat must declare the plat or part of the plat to be vacated in ~~a~~ **the** written instrument. ~~and that~~ **The** instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

~~(b)~~ **(c)** Before offering the instrument for recording under this section, an owner must file a copy of the instrument in the county auditor's office and must submit the instrument vacating **all or part of** the plat for the approval of the plan commission that has jurisdiction over the platted area under IC 36-7-4 **or the plat committee acting on behalf of the plan commission.** If no plan commission has jurisdiction over the platted area under IC 36-7-4, the instrument must be submitted for the approval of:

(1) the county executive, in the case of land located in an unincorporated area; or

(2) the municipal works board, in the case of land located inside the corporate boundaries of a municipality.

The instrument may be approved under this section without notice or a hearing. The provisions of IC 36-7-4 concerning notice and hearing do not apply to the approval of an instrument under this section.

~~(c)~~ **(d)** The county recorder may record the instrument only if a certificate showing the approval of the vacation by the plan commission, county executive, or municipal works board is attached to it. If the instrument is not executed and approved as required by this section, it is void.

C o p y

~~(d)~~ **(e)** The owners of land in a plat that is located outside the corporate boundaries of any municipality may vacate all of the plat without the approval required by subsections ~~(b)~~ **(c)** and ~~(c)~~ **(d)** if no lots have been sold and no roads constructed in the plat, and all of the owners of land in the plat declare the plat to be vacated in a written instrument. The instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

~~(e)~~ **(f)** An instrument recorded under this section terminates the effect of the plat or part of the plat declared to be vacated, and it also terminates all public rights in the public ways and public places described in the plat or part of the plat. However, a public way that has been improved, or that is part of an improved plat, may be vacated only in accordance with section 12 of this chapter or with IC 36-7-4-712, whichever is applicable.

SECTION 4. IC 36-7-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. A remonstrance or objection permitted by section ~~11 or~~ 12 of this chapter may be filed or raised by any person aggrieved by the proposed vacation, but only on one (1) or more of the following grounds:

(1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.

(2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.

(3) The vacation would hinder the public's access to a church, school, or other public building or place.

(4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

SECTION 5. IC 36-7-4-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 203. (a) ADVISORY. After a metropolitan plan commission is established, it shall exercise exclusively the planning and zoning functions of the county and of the second class city, and the separate planning and zoning functions of the county plan commission and the city plan commission cease.

(b) AREA. After the planning department is established and the participating legislative bodies have adopted a zoning ordinance, the planning department shall exercise exclusively the planning and zoning functions of the county and of the participating municipalities, except as provided in section ~~918 of the area planning law.~~ **901(i) of this chapter.** Where other statutes confer planning and zoning authority on a participating municipality or a county, their plan commissions shall continue to exercise that authority until such time as the planning

C o p y

department is established and the participating legislative bodies adopt a zoning ordinance.

SECTION 6. IC 36-7-4-204 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 204. AREA. After the planning department is established, other municipalities within the county may adopt ordinances adopting the area planning law and provide for the appointment of their representatives to the area plan commission. In such a case, the membership of the commission shall be increased according to the formula provided in sections 207, 208, 209, and 211 ~~of the area planning law,~~ **of this chapter** and the authority of a municipal plan commission and municipal board of zoning appeals ceases, except as provided in section ~~918 of the area planning law,~~ **901(i) of this chapter,** as of the time specified in that ordinance. The composition of any such municipal board of zoning appeals, or of any such board later organized, under the advisory planning law, must conform with that law, except that those members of such a board to be appointed from the municipal plan commission shall instead be appointed from the area plan commission.

SECTION 7. IC 36-7-4-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 the county surveyor's designee.

(4) The county agricultural extension educator. However, if the county does not have a county agricultural extension educator, the county extension board shall select a resident of the county who is a property owner with agricultural interest to serve on the commission under this subdivision for a period not to exceed one (1) year.

(5) Five (5) members appointed in accordance with one (1) of the following:

(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. Each of the four (4) members must be:

(i) a resident of an unincorporated area of the county; or

(ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However, at least two (2)

C o p y

of the citizen members must be residents of the unincorporated area of the county. Also 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) Five (5) citizen members, of whom not more than three (3) may be of the same political party. Each of the five (5) members must be:

(i) a resident of an unincorporated area of the county; or

(ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However at least ~~two (2)~~ **three (3)** members must be residents of the unincorporated area of the county.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(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:

(A) reside in an unincorporated area of the county; or

(B) reside in the county and also own real property located in whole or in part in an unincorporated area 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

C o p y

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 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 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) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator.

(B) The county surveyor or the county surveyor's designee.

(5) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county executive.

(6) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or

(2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).

~~(e) 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~~

C o p y

~~commission.~~

SECTION 8. IC 36-7-4-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 209. (a) AREA. When the number of representatives for a municipality is two (2), one (1) is a member of the municipal legislative body appointed by the legislative body and the other is a citizen member appointed by the municipal executive.

(b) AREA. When the number of representatives for a municipality is three (3), one (1) is a member of the legislative body appointed by the legislative body and two (2) are citizen members appointed by the executive.

(c) AREA. When the number of representatives for a municipality is four (4), one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and two (2) are citizen members appointed by the executive.

(d) AREA. When the number of representatives for a municipality is five (5) or more, one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and the remainder are citizen members appointed by the executive.

~~(e) AREA. The appointing authority may appoint an alternate member to participate on the 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 9. IC 36-7-4-214 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 214. (a) ADVISORY. When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 of the advisory planning law, the executive of the county in which the unincorporated area is located shall appoint two (2) additional citizen members to the municipal plan commission. The citizen members must:

(1) ~~reside in~~ **be residents of:**

(A) the unincorporated area; **or**

(B) the county, and must also be owners of real property located in whole or in part within the unincorporated area; and

(2) not be of the same political party.

However, at least one (1) of the members must be a resident of the

C o p y

incorporated area.

(b) ADVISORY. Initially, one (1) member under subsection (a) shall be appointed for a term of one (1) year and the other for a term of four (4) years. Thereafter, each appointment is for a term of four (4) years. The additional citizen members are entitled to participate and vote in all deliberations of the municipal plan commission.

(c) ADVISORY. If the unincorporated area referred to in subsection (a) lies in two (2) counties, the executive of each of those counties shall appoint one (1) of the additional citizen members. The executive of the county having the larger proportion of the unincorporated area shall appoint its member first, and the executive of the other county shall then appoint its member, who must not be of the same political party.

SECTION 10. IC 36-7-4-216 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 216. **(a)** Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold: ~~other elective or appointive~~

(1) an elected office (as defined in IC 3-5-2-17); or

(2) any other appointed office in municipal, county, or state government;

except **for membership on the board of zoning appeals as required by section 902 of this chapter and,** in the case of an area plan commission, membership on the ~~school board, the park board, or the board of directors for public utilities or board of trustees for utilities created under IC 8-1-11.1.~~ **body from which the member must be appointed under this series.** ~~a citizen member must be a resident of the jurisdictional area of the plan commission.~~

(c) Subject to subsection (d), a citizen member must meet one (1) of the following requirements:

(1) The member must be a resident of the jurisdictional area of the plan commission. The member may also be required by statute to reside within an unincorporated area of the jurisdictional area of the plan commission.

(2) The member must be a resident of the county and also an owner of real property located in whole or in part in the jurisdictional area of the plan commission. The member may also be required by statute to own real property within an unincorporated area of the jurisdictional area of the plan commission.

(d) At least a majority of the total number of citizen members

C o p y

appointed to a plan commission must be residents of the jurisdictional area of the plan commission. The commission shall determine whether a citizen member meets all applicable residency requirements for appointment in accordance with uniform rules prescribed by the commission.

SECTION 11. IC 36-7-4-220 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 220. (a) If a vacancy occurs among the plan commission members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member. **The appointing authority may also appoint an alternate member to participate with the commission in a hearing or decision if the regular member appointed by the appointing authority has a disqualification under section 223(c) of this chapter. An alternate member has all the powers and duties of a regular member while participating in the hearing or decision.**

(b) If a vacancy occurs in the office of the county surveyor **while the county surveyor is serving on the plan commission,** then the county engineer shall ~~be a member of~~ **participate with** the plan commission during the time the office of the county surveyor is vacant. **The county engineer has all the powers and duties of a regular member while participating under this subsection.**

(c) An appointed member who misses three (3) consecutive regular meetings of the ~~metropolitan development~~ **plan** commission ~~shall~~ **may** be treated as if the member had resigned, ~~unless~~ **at the discretion of** the appointing authority. ~~reaffirms the member's appointment.~~

SECTION 12. IC 36-7-4-223 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 223. (a) ~~As used in~~ This section ~~"zoning matter"~~ does not ~~include~~ **apply to** the preparation or adoption of a comprehensive plan **under the 500 series of this chapter.**

(b) A member of a plan commission or a legislative body **is disqualified and** may not participate as a member of the plan commission or legislative body in a hearing or ~~decision~~ **recommendation** of that commission or body concerning a ~~zoning matter~~ **legislative act as described in section 1016 of this chapter** in which the member has a direct or indirect financial interest. The commission or body shall enter in its records the fact that its member has such a disqualification.

(c) A member of a plan commission is disqualified and may not participate in a hearing of that commission concerning a zoning decision as described in section 1016 of this chapter if:

(1) the member is biased or prejudiced or otherwise unable to

C o p y

be impartial; or

(2) the member has a direct or indirect financial interest in the outcome of the zoning decision.

(d) The plan commission shall enter in the plan commission's records:

(1) the fact that a regular member has a disqualification under subsection (c); and

(2) the name of the alternate member, if any, who participates in the hearing in place of the regular member.

~~(c)~~ **(e)** A member of a plan commission or a legislative body may not directly or personally represent another person in a hearing before that commission or body concerning a zoning ~~matter.~~ **decision or a legislative act.**

~~(d)~~ **(f)** A member of a plan commission may not receive any mileage or compensation under section 222.5 of this chapter for attendance at a meeting if the member is disqualified under ~~subsection (b) during any part of~~ **this section from participating in** the **entire** meeting.

SECTION 13. IC 36-7-4-402 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 402. (a) ADVISORY. Each advisory plan commission shall prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the commission, which compensation must conform to salaries and compensations fixed before that time by the fiscal body of the county or municipality, as the case may be. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission ~~is necessary.~~ **or a board of zoning appeals is required by law.**

(b) AREA. Each area plan commission shall prescribe the qualifications of, and with the consent of the executive director, fix the compensation of the employees of the planning department, which compensation must conform to salaries and compensations fixed before that time by the county fiscal body. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission or ~~the~~ **a** board of zoning appeals is required by ~~the area planning~~ law.

(c) METRO. The metropolitan development commission shall delegate authority to employees of the department of metropolitan development to perform ~~all~~ ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by ~~the metropolitan development~~ law.

(d) The plan commission may ~~designate~~ **delegate to** a hearing examiner or a committee of the commission **the authority** to conduct

C o p y

any public hearing required to be held by the commission **or make any decision required to be made by the commission, or both. However, only a plat committee appointed under section 701(e) of this chapter may be delegated the authority to make decisions under the 700 series of this chapter.** Such a hearing must be held upon the same notice and under the same rules as a hearing before the entire commission, and the examiner or committee shall report findings of fact and recommendations for decision to the commission ~~The commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations, and if any exception is filed in accordance with those rules, the commission shall hold the prescribed hearing. If no exception is filed, the commission shall~~ **or make the decision on behalf of the commission. A decision made under the authority of this subsection may not be a basis for judicial review, but it may be appealed to the plan commission. An interested person who wishes to appeal a decision made under the authority of this subsection must file the appeal not later than five (5) days after the date the decision is made, and the plan commission shall then hold the prescribed hearing and** render its decision. ~~without further hearing.~~

(e) METRO. The metropolitan development commission may designate a historic preservation commission created under IC 36-7-11.1-3 to conduct the public hearing required to be held by the metropolitan development commission under the 600 series of this chapter relative to the territory included in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing must be held upon the same notice and under the same rules as a hearing before the metropolitan development commission. The historic preservation commission shall report to the metropolitan development commission the historic preservation commission's findings of fact and recommendations for decision. The metropolitan development commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations. If an exception is filed in accordance with the rules, the metropolitan development commission shall hold the prescribed hearing. If an exception is not filed, the metropolitan development commission shall render a decision without further hearing. However, this subsection does not eliminate the need for a historic preservation commission to issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the approval of a rezoning by the metropolitan development commission.

SECTION 14. IC 36-7-4-403.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 403.5. (a) ~~METRO.~~ If

C o p y

authorized by a zoning ordinance, the plan commission may designate a hearing examiner or committee of the commission to conduct a combined hearing procedure relative to developments that require more than one (1) hearing under this chapter. In conducting the combined hearing procedure under this section, the hearing examiner or committee of the commission may exercise the following:

(1) Powers of the hearing examiner **or committee** under section 402(d) **of this chapter** in relation to the 600 series of this chapter.

(2) Powers of the plat committee under the 700 series of this chapter.

(3) Powers of a board of zoning appeals under the 900 series of this chapter.

(4) Powers of the plan commission staff or a hearing examiner or committee of the plan commission under the 1400 series of this chapter.

(b) Decisions of the hearing examiner or committee of the plan commission under the combined hearing procedure may be excepted to or appealed as follows:

(1) Decisions under the authority of section 402(d) **of this chapter** in relation to powers granted under the 600 series of this chapter shall be ~~excepted to in the same manner as exceptions may be filed to~~ **appealed to the plan commission in the same manner as** decisions of the hearing examiner or committee under section 402(d) **of this chapter may be appealed.**

(2) Decisions under the authority of the 700 series of this chapter shall be appealed to the plan commission in the same manner as decisions of the plat committee may be appealed.

(3) Decisions under the authority of the 900 series of this chapter shall be appealed to the plan commission, within five (5) days after the decision is rendered, and the plan commission shall consider the petition in the same manner as the petition would be considered by a board of zoning appeals.

(c) The plan commission shall make rules governing the hearing of cases under the combined hearing procedure. The rules may not require a petitioner or an applicant to use the combined hearing procedure authorized under this section.

(d) The plan commission may adopt rules setting specific procedures to facilitate informal settlement of matters. The rules may grant procedural rights to persons in addition to those conferred by this chapter, so long as the rights conferred upon other persons are not substantially prejudiced. This subsection does not require any person to settle a matter under the plan

C o p y

commission's informal procedures.

SECTION 15. IC 36-7-4-410 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 410. (a) ADVISORY. The legislative body of any municipality located in a county having an advisory plan commission may, by ordinance, designate that county plan commission as the municipal plan commission. **Such an ordinance may also provide that the county board of zoning appeals has jurisdiction within the corporate boundaries of the municipality.** A county plan commission so designated has for that municipality all the powers and duties granted, under the advisory planning law, to a municipal plan commission. Any municipality designating a county plan commission as its municipal plan commission may contract annually to pay the county a proportionate part of the expenses that is properly chargeable to the planning service rendered that municipality. The county shall appropriate these payments to the county plan commission in addition to any sums budgeted for planning purposes.

(b) ADVISORY. Whenever a municipality designates a county plan commission as its municipal plan commission under subsection (a), residents of that municipality are eligible to be appointed citizen members of the commission under section 208(a)(5) of this chapter. **Whenever a county board of zoning appeals has jurisdiction within the corporate boundaries of a municipality, residents of that municipality are eligible to be appointed citizen members of the board of zoning appeals under section 902 of this chapter.**

SECTION 16. IC 36-7-4-610 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 610. (a) After adoption of a zoning ordinance under section 606 of this chapter, the plan commission shall publish a notice of adoption in accordance with IC 5-3-1. The notice of adoption (which the plan commission shall have prepared) must:

(1) summarize the subject matter of the ordinance;

(2) give the date of adoption;

(3) specify the places or areas that would be directly affected by the ordinance (this subdivision does not require the identification of any real property by metes and bounds);

(4) specify the penalty or forfeiture prescribed for a violation of the ordinance; and

(5) give two (2) locations open to the public where the entire text of the ordinance is available for inspection.

(b) After adoption of a zoning ordinance under section 606 or 607 of this chapter, the plan commission shall print the text of the

C o p y

ordinance in book or pamphlet form (or arrange for the inclusion of the zoning ordinance in the code of ordinances printed by the unit under IC 36-1-5), and no other printing or publication of any zoning ordinance is required. Printing of the text of a zoning ordinance in compliance with this subsection constitutes presumptive evidence:

(1) of the text of the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any);

(2) of the date of adoption of the ordinance, and of any amendment to the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any); and

(3) that the ordinance, along with any amendment to the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any), has been properly signed, attested, and recorded.

(c) Zone maps incorporated by reference into the zoning ordinance are not required to be printed in the code of ordinances, book, or pamphlet printed under this section, but the plan commission shall keep them available at its office for public inspection.

(d) Unless a zoning ordinance provides for a later effective date, the ordinance takes effect when it is adopted under section 606, 607, or 608 of this chapter, subject to subsection (e).

(e) When a provision prescribing a penalty or forfeiture for a violation is printed under this section, it may not take effect until fourteen (14) days after the later of the following:

(1) The final day on which notice of its adoption is published under subsection (a).

(2) The day on which it is filed in the clerk's office under subsection (f).

(f) ~~A~~ **If the** zoning ordinance is not ~~required to be~~ included in the code of ordinances printed by a unit under IC 36-1-5: ~~However, if the zoning ordinance is not included in that code, then:~~

(1) the book or pamphlet (and supplement, if any) that comprises the zoning ordinance shall be incorporated by reference into the code of ordinances;

(2) two (2) copies of the book or pamphlet (and supplement, if any) **as** printed under this section shall be filed in the office of the clerk of each participating legislative body, and these copies shall be kept on file in that office for public inspection **as required by IC 36-1-5-4; and**

~~(g) If the zoning ordinance is not included in the code of ordinances,~~

(3) the clerk shall keep additional copies of the book or pamphlet (and supplement, if any) in the **clerk's** office for the purpose of

C o p y

sale or distribution. ~~However,~~

(g) If **a unit includes** the zoning ordinance ~~is included~~ in the **unit's** code of ordinances **printed under IC 36-1-5, the plan commission shall also make** copies of the zoning ordinance ~~shall also be made~~ available to the public in accordance with IC 5-14-3.

(h) This chapter does not prohibit a unit from adopting:

(1) a unified development ordinance that combines the unit's zoning and subdivision control ordinances into a single book, pamphlet, or code title, article, or chapter; or

(2) form based codes or ordinances that employ combinations of maps, plats, charts, diagrams, tables, text, and images.

SECTION 17. IC 36-7-4-702 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 702. (a) In determining whether to grant primary approval of a plat, the plan commission **(or plat committee acting on the commission's behalf)** shall determine if the plat or subdivision qualifies for primary approval under the standards prescribed by the subdivision control ordinance.

(b) The subdivision control ordinance must specify the standards ~~by which the commission determines~~ **for determining** whether a plat qualifies for primary approval. The ordinance must include standards for:

(1) minimum width, depth, and area of lots in the subdivision;

(2) public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and

(3) the extension of water, sewer, and other municipal services.

The ordinance may also include standards for the allocation of areas to be used as public ways, parks, schools, public and semipublic buildings, homes, businesses, and utilities, and any other standards related to the purposes of this chapter.

(c) The standards fixed in the subdivision control ordinance under subsection (b) may ~~not~~ be ~~lower than the minimum~~ **waived at the discretion of the plan commission (or plat committee acting on the commission's behalf); however, to be approved, the plat must still meet all applicable** standards prescribed in the zoning ordinance ~~for a similar use.~~ **(other than standards modified by variance in accordance with the 900 series of this chapter). As a condition of granting a waiver under this subsection, the commission or committee may allow or require a commitment to be made under section 1015 of this chapter.**

(d) As a condition of primary approval of a plat, the commission **or committee** may specify:

C o p y

(1) the manner in which public ways shall be laid out, graded, and improved;
(2) a provision for water, sewage, and other utility services;
(3) a provision for lot size, number, and location;
(4) a provision for drainage design; and
(5) a provision for other services as specified in the subdivision control ordinance.

(e) The subdivision control ordinance may not regulate condominiums regulated by IC 32-25.

SECTION 18. IC 36-7-4-707 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 707. (a) If, after the hearing, the plan commission or plat committee determines that the application and plat comply with the standards in the subdivision control ordinance, ~~it~~ **the commission or committee** shall make written findings and a decision granting primary approval to the plat. This decision, **which must also specify any condition imposed or waiver granted under section 702 of this chapter,** must be signed by an official designated in the subdivision control ordinance.

(b) If, after the hearing, the plan commission or plat committee disapproves the plat, ~~it~~ **the commission or committee** shall make written findings that set forth its reasons and a decision denying primary approval and shall provide the applicant with a copy. This decision must be signed by the official designated in the subdivision control ordinance.

~~(c) Primary approval or disapproval of a plat by the plat committee may be appealed only under section 708 of this chapter. However, it may not be taken directly to court for review under section 1016 of this chapter until administrative remedies are exhausted.~~

~~(d)~~ **(c)** This section applies to any subdivision of land, whether or not it is exempted from the notice and hearing requirements of this series under section 701(d) of this chapter.

SECTION 19. IC 36-7-4-708 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 708. (a) An applicant or other interested party may appeal to the plan commission the primary approval or disapproval of a plat, or the imposition of a condition on primary approval by the plat committee, **in accordance with section 402(d) of this chapter.** ~~A notice of appeal must be filed with the commission within ten (10) days after the action of the plat committee.~~ However, if the plat committee grants primary approval for the subdivision of land without public notice and hearing under section 701(d) of this chapter, an interested party may appeal the approval to the plan commission by filing a notice of appeal with the plan

C o p y

commission not more than ~~ten (10)~~ **five (5)** days after a copy of the plat committee's action is mailed to the interested party. Notice shall be given and a hearing held by the commission in the same manner as in the case of the plat committee.

(b) The commission has the same power as the **plat** committee to approve, disapprove, or impose conditions on the approval of plats.

(c) The primary approval by the commission of a plat must be certified on behalf of the commission by an official designated in the subdivision control ordinance.

~~(d) The primary approval or disapproval of a plat by the plan commission or the imposition of a condition on primary approval is a final decision of the plan commission that may be reviewed as provided by section 1016 of this chapter.~~

SECTION 20. IC 36-7-4-709 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 709. (a) Secondary approval under section 710 of this chapter may be granted to a plat for a subdivision in which the improvements and installments have not been completed as required by the subdivision control ordinance, if:

(1) the applicant provides a bond, or other proof of financial responsibility as prescribed by the legislative body in the subdivision control ordinance, that:

(A) is an amount determined by the plan commission or plat committee to be sufficient to complete the improvements and installations in compliance with the ordinance; and

(B) provides surety satisfactory to the plan commission or plat committee; or

(2) with respect to the installation or extension of water, sewer, or other utility service:

(A) the applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and

(B) the plan commission **or plat committee** determines based on written evidence that the contract provides satisfactory assurance that the service will be installed or extended in compliance with the subdivision control ordinance.

(b) Any money received from a bond or otherwise shall be used only for making the improvements and installments for which the bond or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality in which it is located, as well as the subdivision control ordinance.

C o p y

(c) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by the subdivision control ordinance. The rule must designate the person or persons responsible for making the determination.

SECTION 21. IC 36-7-4-710 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 710. (a) The plan commission may grant secondary approval of a plat under this section or may delegate to the plat committee or staff the authority to grant such secondary approvals.

(b) Secondary approval may be granted, after expiration of the time provided for appeal under section 708 of this chapter.

(c) No notice or hearing is required, and the provisions of this series concerning notice and hearing do not apply to secondary approvals.

(d) A plat of a subdivision may not be filed with the auditor, and the recorder may not record it, unless it has been granted secondary approval and signed and certified by the official designated in the subdivision control ordinance governing the area. The filing and recording of the plat is without legal effect unless approved by the commission, ~~or~~ committee, **or staff.**

SECTION 22. IC 36-7-4-711 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 711. ~~ADVISORY AREA.~~ **(a)** The plan commission (or plat committee acting on its behalf), proceeding in accordance with ~~IC 36-7-3,~~ **IC 36-7-3-10 or with this section,** has exclusive control over the vacation of plats or parts of plats.

(b) In a case in which not all the owners of land in a plat are in agreement regarding a proposed vacation, this section provides an alternate procedure under which one (1) or more owners of land in the plat may file with the plan commission a petition to vacate all the plat or only that part of the plat that pertains to land owned by the petitioner or petitioners. A petition under this section must:

(1) state the reasons for and the circumstances prompting the request;

(2) specifically describe the property in the plat proposed to be vacated; and

(3) give the name and address of every other owner of land in the plat.

(c) Subject to section 714 of this chapter, a petition under this section may also include a request to vacate any recorded covenants filed as a part of the plat.

(d) Not more than thirty (30) days after receipt of a petition

C o p y

under this section, the plan commission staff shall announce the date for the hearing before the plan commission (or plat committee acting on the plan commission's behalf). The plan commission shall adopt rules prescribing procedures for setting hearing dates and for providing other notice as may be required in accordance with this chapter. The petitioner shall pay all expenses of providing the notice required by this subsection.

(e) The plan commission shall adopt rules prescribing procedures for the conduct of the hearing, which must include a provision giving every other owner of land in the plat an opportunity to comment on the petition.

(f) After hearing the petition, the plan commission or plat committee shall approve or disapprove the request. The commission or committee may approve the vacation of all or part of a plat only upon a determination that:

(1) conditions in the platted area have changed so as to defeat the original purpose of the plat;

(2) it is in the public interest to vacate all or part of the plat; and

(3) the value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.

(g) The commission or committee may impose reasonable conditions as part of any approval. The commission or committee shall furnish a copy of the commission's or committee's decision to the county recorder for recording.

(h) An applicant or other interested party may appeal the approval or disapproval of a vacation by the plat committee in the manner prescribed by section 402(d) of this chapter.

SECTION 23. IC 36-7-4-712 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 712. (a) METRO. The plat committee has exclusive control over the vacation of:

(1) plats or parts of plats; and

(2) public ways, easements, or public places, or parts of any of them, whether or not they are included in an approved plat;

in the county. The plat committee may adopt rules governing the procedure for these vacations. The vacation of public ways, easements, or public places, or parts of any of them may be made only upon a finding by the plat committee that the vacation is in the public interest. The plat committee may accomplish the vacation of plats or parts of plats by proceeding in accordance with IC 36-7-3-10 or ~~IC 36-7-3-11. Vacation or replatting may include the vacation or amendment of any recorded covenant running in favor of any governmental agency, or~~

C o p y

~~restriction, that was contained in the original plat.~~ **section 711 of this chapter.**

(b) METRO. An applicant or other interested party may appeal the approval or disapproval of a vacation in the manner prescribed by section ~~708~~ **402(d)** of this chapter.

SECTION 24. IC 36-7-4-714 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 714. The vacation of all or part of a plat may include the vacation of any recorded covenants filed with the plat, but only upon a determination that:**

(1) the platted area is within an area needing redevelopment and the covenant vacation would promote a recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;

(2) the covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from fire, flood, or other danger; or

(3) the covenant vacation is needed to lessen or avoid congestion in the public ways.

SECTION 25. IC 36-7-4-715 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 715. (a) The following are final decisions of the plan commission that may be reviewed as provided by section 1016 of this chapter:**

(1) Primary approval or disapproval of a plat.

(2) Imposition of a condition on primary approval of a plat.

(3) Approval or disapproval of the vacation of all or part of a plat.

(4) Approval or disapproval of the vacation of any recorded covenants filed with the plat.

(5) Imposition of a condition on approval of the vacation of all or part of a plat (which may include the vacation of any recorded covenants filed with the plat).

(b) The plan commission may adopt a rule to limit further consideration for up to one (1) year after its disapproval, of a plat or vacation request that is disapproved under section 707, 708, 711, 712, or 714 of this chapter.

SECTION 26. IC 36-7-4-903 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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

C o p y

1208 of ~~the advisory planning law, either:~~ **this chapter, one (1) of the following must occur:**

(1) An additional division of the board of zoning appeals shall be established under section 901(b) of this chapter that will have territorial jurisdiction only in the unincorporated area. ~~and~~ **The division must** consist only of:

(A) residents of the unincorporated area; or

(B) individuals who reside in the county and also own real property within the unincorporated area.

However, at least a majority of the members appointed to the division must be residents of the unincorporated area.

(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)~~ **additional** citizen members who were appointed under section ~~214~~ **214(a), 1210(a), or 1210.5(c)(3)** of this chapter to the plan commission to represent the unincorporated area. ~~The citizen member must reside in the unincorporated area.~~ The citizen shall be appointed for a term of ~~four (4)~~ **two (2)** years. The citizen 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 27. IC 36-7-4-905 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 905. **(a)** None of the members of a board of zoning appeals may hold: ~~other elective or appointive~~

(1) an elected office (as defined in IC 3-5-2-17); or

(2) any other appointed office, except as permitted by section 902 of this chapter, in municipal, county, or state government.

~~a member must be a resident of the jurisdictional area of the board.~~

(b) A member of the board of zoning appeals must meet one (1) of the following requirements:

(1) The member must be a resident of the jurisdictional area of the board.

(2) The member must be a resident of the county and also an owner of real property located in whole or in part in the jurisdictional area of the board.

However, at least a majority of the total number of citizen

C o p y

members appointed to the board of zoning appeals must be residents of the jurisdictional area of the board of zoning appeals. The board shall determine whether a member meets all applicable residency requirements for appointment in accordance with uniform rules prescribed by the board.

SECTION 28. IC 36-7-4-907 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 907. (a) If a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under section 909 of this chapter or is **otherwise** unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

(b) ~~METRO.~~ A member of the ~~metropolitan~~ board of zoning appeals who misses three (3) consecutive regular meetings of the board ~~shall~~ **may** be treated as if ~~he~~ **the member** had resigned, **at the discretion of the appointing authority.**

(c) ~~METRO.~~ Members serving in any division of the ~~metropolitan~~ board of zoning appeals ~~shall~~ **may** also serve as alternate members for the other divisions of the ~~metropolitan~~ board of zoning appeals. Whenever regular **and alternate** members serving in a particular division are unavailable, the ~~chairman or vice chairman~~ **chairperson or vice chairperson** of the affected division may select members from other divisions in order to assemble up to five (5) members to participate in any hearing or decision.

SECTION 29. IC 36-7-4-909 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 909. **(a)** A member of a board of zoning appeals **is disqualified and** may not participate in a hearing or decision of that board concerning a zoning matter ~~in which he~~ **if the member:**

(1) is biased or prejudiced or otherwise unable to be impartial; or

(2) has a direct or indirect financial interest **in the outcome of the hearing or the decision.**

(b) The board shall enter in ~~its~~ **the board's** records:

(1) the fact that a regular member has such a disqualification; and

(2) the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member.

SECTION 30. IC 36-7-4-918.5 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 918.5. (a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. **The board may impose reasonable conditions as a part of the board's approval.** A variance may be approved under this section only upon a determination in writing that:

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

(b) Before approval of a proposal involving a structure regulated under IC 8-21-10 may become effective, the board of zoning appeals must have received:

(1) a copy of:

(A) the permit for the structure issued by the Indiana department of transportation; or

(B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and

(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

(c) Only the plan commission (or plat committee acting on the commission's behalf) may grant a waiver from standards that are fixed in the subdivision control ordinance, as provided in section 702(c) of this chapter.

SECTION 31. IC 36-7-4-923 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 923. (a) This section allows the establishment of an alternate procedure ~~by the plan commission~~ under which there can be a more expedient disposition of certain matters **that otherwise would be heard by a board of zoning appeals.** When authorized by **ordinance or by rules of** the plan commission, a hearing officer has the power of a board of zoning appeals to approve or deny, through the alternate procedure allowed by this section:

(1) a variance from the development standards of the zoning ordinance in accordance with section 918.5 of this chapter; or

(2) a special exception, special use, contingent use, or conditional

C o p y

use from the terms of the zoning ordinance in accordance with section 918.2 of this chapter; or

(3) a variance of use from the terms of the zoning ordinance in accordance with section 918.4 of this chapter. However, the authority of a hearing officer under this subdivision may be exercised only if:

(A) the area planning law is not applicable; and

(B) the variance of use would allow all of the following:

(i) The expansion of a use currently existing on the tract.

(ii) A use that is consistent with the comprehensive plan.

(b) All requirements for variances, exceptions, and uses imposed by the 900 series **of this chapter** apply to the alternate procedure, except to the extent that a provision of section 924 of this chapter imposes a different requirement.

(c) The alternate procedure does not apply in any excluded city as described in IC 36-3-1-7. Sections 919(f) and 922 of this chapter do not apply to the alternate procedure.

(d) The hearing officer (who may be a board member, a staff member, or any other person) shall be appointed by the plan commission. More than one (1) hearing officer may be appointed. A hearing officer may be removed from ~~his~~ **the officer's** responsibilities at any time by the plan commission.

(e) ~~METRO.~~ The plan commission may adopt other rules **or recommend ordinances** for the alternate procedure not inconsistent with the 900 series of ~~the metropolitan development law.~~ **this chapter.** These rules **or ordinances** may specify the period during which the staff may indicate whether the staff objects to the proposed variance, exception, or use. These rules **or ordinances** may also provide for public notice and due notice to interested parties in accordance with section 920(b), 920(c), and 920(d) of this chapter, but the rules **or ordinances** may, because of the nature of the petitions heard under the alternate procedure, provide for a less inclusive definition of "interested person" and provide for a quicker and less burdensome method of giving notice to interested persons than rules applicable to petitions not filed under the alternate procedure.

(f) METRO. For purposes of subsection (d), the director of the department of metropolitan development shall nominate, and the plan commission shall appoint, all hearing officers. Such a hearing officer may be removed from ~~his~~ **the officer's** responsibilities at any time by either the director or the plan commission.

~~(f)~~ **(g)** METRO. The plan commission may, if requested by a historic preservation commission created under IC 36-7-11.1-3,

C o p y

appoint:

(1) a member of the historic preservation commission;

(2) a member of the historic preservation staff; or

(3) a person who is an employee of the department of metropolitan development;

as a hearing officer to act in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing officer may be removed from the hearing officer's responsibilities at any time by either the historic preservation commission or the plan commission.

SECTION 32. IC 36-7-4-924 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 924. (a) In establishing the alternate procedure under section 923 of this chapter, the plan commission may adopt rules **or recommend ordinances:**

(1) limiting the kinds of variance, special exception, special use, contingent use, or conditional use petitions or applications that may be filed under the alternate procedure;

(2) permitting the hearing officer, in appropriate circumstances, to transfer a petition or an application filed under the alternate procedure to the board of zoning appeals;

(3) requiring the creation of minutes and records of the proceedings before the hearing officer and the filing of the minutes and records as public records; and

(4) regulating conflicts of interest and communication with the hearing officer, so as to require the same level of conduct as is required by the 900 series of this chapter.

(b) The staff (as defined by the zoning ordinance), if any, may file a written objection to a petition or an application for a variance, exception, or use if:

(1) it would be injurious to the public health, safety, morals, and general welfare of the community; or

(2) the use or value of the area adjacent to the property included would be affected in a substantially adverse manner.

(c) If a written objection is filed under subsection (b), the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(d) The staff (as defined by the zoning ordinance), if any, may indicate that it does not object to the approval of the variance, exception, or use if specified conditions are attached. If the petitioner or applicant does not accept these conditions, the petition or application shall:

C o p y

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(e) The hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, as provided in section ~~921~~ **1015** of this chapter. If the petitioner or applicant for the variance, exception, or use does not accept these conditions or make the commitment, the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(f) The hearing officer may not modify or terminate any commitment, whether made under this section or section ~~921~~ **1015** of this chapter. Commitments made under this section may be modified **or terminated only** by the board of zoning appeals.

(g) A decision of a hearing officer under the alternate procedure may not be a basis for judicial review, but it may be appealed to the board of zoning appeals. An interested person who wishes to appeal a decision of a hearing officer under the alternate procedure must file the appeal with:

(1) the board of zoning appeals if the board of zoning appeals consists of only one (1) division; or

(2) a division of the board of zoning appeals if the board of zoning appeals consists of more than one (1) division;

within ~~fourteen (14)~~ **five (5)** days after the decision is made.

SECTION 33. IC 36-7-4-1003 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1003. (a) Each decision of the legislative body under section 918.6 of this chapter ~~or the board of zoning appeals~~ is subject to **judicial** review ~~by certiorari. Each person aggrieved by a decision of the board of zoning appeals or the legislative body may file with the circuit or superior court of the county in which the premises affected are located, a verified petition setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. No change of venue from the county in which the premises affected are located may be had in any cause arising under this section.~~ **in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under section 1016(a) of this chapter.**

~~(b) ADVISORY. The person shall file the petition with the court within thirty (30) days after the date of that decision of the board of zoning appeals.~~

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~~(c) AREA. The person shall file the petition with the court within thirty (30) days after the date of that decision of the board of zoning appeals.~~

~~(d)~~ **(b)** METRO. ~~The person shall file the~~ **A** petition **for judicial review must be filed** with the court after the expiration of the period within which an official designated by the metropolitan development commission may file an appeal under section 922 of this chapter but ~~within thirty (30) days after the date of that decision of the board of zoning appeals.~~ **not later than the period provided for timely filing under section 1605 of this chapter.** However, if the official files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to **judicial** review. ~~by certiorari, in accordance with this section.~~ The official or department of metropolitan development may not seek **judicial** review ~~by certiorari~~ of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

SECTION 34. IC 36-7-4-1013 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1013. (a) ~~ADVISORY.~~ When the legislative body provides penalties for failure to comply with any ordinance **adopted under this chapter,** the municipal attorney or an attorney representing the county, as the case may be, shall, on receipt of information of the violation of any ordinance, make an investigation of the alleged violation. If acts elicited by the investigation are sufficient to establish a reasonable belief that a violation has occurred on the part of the party investigated, the municipal attorney or an attorney representing the county may file a complaint against the person and prosecute the alleged violation **under IC 36-1-6.**

(b) ~~AREA–METRO.~~ The plan commission or a board of zoning appeals may request the prosecuting attorney of the county ~~(or of the city under the metropolitan development law)~~ to take appropriate action in any case involving the violation of ~~this chapter or of~~ any ordinance or regulation adopted under ~~it. The prosecuting attorney shall act promptly when requested.~~ **this chapter.**

(c) ~~AREA.~~ The plan commission may appoint one (1) or more attorneys to advise the planning ~~department~~ **staff** and to assist in the enforcement of ~~the area planning law, and~~ **any** ordinances and regulations adopted under ~~it. The~~ **this chapter. Subject to the 400 series of this chapter, an area plan** commission may employ one (1) attorney on a full-time basis so that the attorney can become fully informed on the specialized law of planning, zoning, and subdivision control.

C o p y

(d) The services of ~~an attorney,~~ **attorneys** appointed by the **plan** commission **under subsection (c)** shall be made available without extra compensation to the prosecuting attorney in all cases involving ~~the planning department.~~ **ordinances or regulations adopted under this chapter.** The attorneys may be deputized to act for and under the direction of the prosecuting attorney.

(e) In civil actions for the enforcement of ~~the area planning law or~~ ordinances or regulations adopted under ~~it,~~ **this chapter,** an attorney appointed by the **plan** commission may bring an action in the name of the **plan** commission.

SECTION 35. IC 36-7-4-1014 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1014. (a) The plan commission, **board of zoning appeals,** or any enforcement official designated in the zoning ordinance may bring an action ~~in the circuit or superior court of the county~~ **under IC 36-1-6** to ~~invoke any legal, equitable, or special remedy for the enforcement of this chapter or~~ **enforce** any ordinance adopted or action taken under this chapter.

(b) The plan commission, **board of zoning appeals,** or any enforcement official designated in the zoning ordinance may also bring an action ~~in the circuit or superior court of the county~~ to enforce:

(1) conditions imposed **by the commission or board of zoning appeals** under this chapter; **or**

(2) covenants made in connection with a subdivision plat, a development plan, or a PUD district ordinance (as defined in section 1503 of this chapter). ~~or~~

~~(3) commitments made in accordance with this chapter.~~

(c) ADVISORY. In addition, in each county having a metropolitan plan commission, if the county or second class city adopts a zoning ordinance under this chapter, then that unit may also invoke any remedy under this section. However, the county may do so only outside the corporate boundaries of the city, and the city may do so only within its corporate boundaries.

(d) ~~METRO. The metropolitan development commission may also bring an action in the circuit or superior court of the county to enforce:~~

~~(1) conditions imposed under this chapter;~~

~~(2) covenants made in connection with a subdivision plat, a development plan, or a PUD district ordinance (as defined in section 1503 of this chapter); or~~

~~(3) commitments made in accordance with this chapter.~~

The ~~metropolitan development~~ **plan** commission, **board of zoning appeals, or designated enforcement official** may invoke any legal, equitable, or special remedy in ~~such~~ an action **described in subsection**

C o p y

(a) or (b).

(e) An action for the levy of a fine or penalty for enforcement of a zoning ordinance may be brought in any court located within the jurisdiction of the plan commission **or board of zoning appeals.**

(f) If the plan commission, **board of zoning appeals,** or designated enforcement official is successful in ~~the~~ **an** action **brought under this section,** the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.

SECTION 36. IC 36-7-4-1015 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1015. ~~(a) ADVISORY AREA. The board of zoning appeals or any enforcement official designated in the zoning ordinance may bring an action for injunction in the circuit or superior court of the county to restrain a person from violating this chapter or an ordinance adopted under this chapter.~~

(a) As a condition to the:

(1) adoption of a rezoning proposal;

(2) primary approval of a proposed subdivision plat or development plan;

(3) approval of a vacation of all or part of the plat; or

(4) approval of an application for a:

(A) special exception;

(B) special use;

(C) contingent use;

(D) conditional use; or

(E) variance;

the owner of a parcel of real property may be required or allowed to make a commitment to the plan commission or board of zoning appeals, as applicable, concerning the use or development of that parcel.

~~(b) ADVISORY AREA. The board of zoning appeals may also bring an action in the circuit or superior court of the county for a mandatory injunction, directing a person to remove a structure erected in violation of this chapter or of an ordinance adopted under this chapter.~~

(b) Commitments are subject to the following provisions:

(1) A commitment must be in writing.

(2) Unless the written commitment is modified or terminated in accordance with this subsection, a written commitment is binding on the owner of the parcel.

(3) A commitment shall be recorded in the office of the county recorder. After a commitment is recorded, it is binding on a

C o p y

subsequent owner or any other person who acquires an interest in the parcel. However, a commitment is binding on the owner who makes the commitment even if the commitment is unrecorded. An unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment.

(4) A commitment may contain terms providing for its own expiration. A commitment may also contain terms providing that the commitment automatically terminates:

(A) if the zoning district or classification applicable to the parcel is changed;

(B) if the land use to which the commitment relates is changed; or

(C) otherwise in accordance with the rules of the plan commission or board of zoning appeals to which the commitment is made.

(5) Except for a commitment that expires or automatically terminates under subdivision (4), a commitment may be modified or terminated only by a decision of the plan commission or board of zoning appeals to which the commitment was made. The decision must be made at a public hearing after notice of the hearing has been provided under the rules of the plan commission or board of zoning appeals, as the case may be.

(6) During the time a rezoning proposal is being considered by the legislative body under the 600 or 1500 series of this chapter, the owner may make a new commitment to the plan commission or modify the terms of a commitment that was made when the proposal was being considered by the plan commission.

(7) No further action of the plan commission is required for a new commitment made under subdivision (6) to be effective.

(8) If a commitment is modified under subdivision (6):

(A) no further action is required by the plan commission for the commitment to be effective if the effect of the modification is to make the commitment more stringent; or

(B) the modified commitment must be ratified by the plan commission if the effect of the modification is to make the commitment less stringent.

(9) Requiring or allowing a commitment to be made does not obligate the plan commission, board of zoning appeals, or

C o p y

legislative body, as applicable, to adopt, approve, or favorably recommend the proposal or application to which the commitment relates.

~~(c) ADVISORY AREA. If the board of zoning appeals is successful in its action, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.~~

(c) The plan commission or board of zoning appeals may adopt rules:

(1) governing the creation, form, recording, effectiveness, modification, and termination of commitments; and

(2) designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

(d) An action to enforce a commitment ~~made in accordance with this chapter~~ may be brought in the circuit or superior court of the county by:

(1) the plan commission or board of zoning appeals to which the commitment was made;

~~(1)~~ **(2)** any person who was entitled to enforce a commitment under the rules of the plan commission or board of zoning appeals in force at the time the commitment was made; or

~~(2)~~ **(3)** any other specially affected person who was designated in the commitment.

(e) A person bringing an action to enforce a commitment ~~made under this chapter~~ may request mandatory or prohibitory injunctive relief through the granting of a temporary restraining order, preliminary injunction, or permanent injunction. **If an action to enforce a commitment is successful, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.**

(f) In an action to enforce a commitment, it is not a defense that:

(1) no consideration was given for the commitment;

(2) ~~that~~ the commitment does not benefit any designated parcel of property;

(3) ~~that~~ the document setting forth the commitment lacks a seal;

(4) ~~that~~ there is no privity of estate;

(5) ~~that~~ there is not privity of contract; or

(6) ~~that~~ there is no proof of damages.

(g) The following types of conditions, as authorized by this chapter, are not considered commitments and are not subject to subsection (b):

(1) A condition imposed upon primary approval of a plat that

C o p y

must be met before secondary approval of the plat may be granted under the 700 series of this chapter.

(2) A condition imposed upon the approval of an exception, a use, a variance, or a development plan that must be met before an improvement location permit may be issued under the 800 series of this chapter.

(3) A condition imposed upon an approval relative to any other development requirement that must be met before any other secondary approval may be granted or building permit may be issued under this chapter.

(4) A condition that was imposed before July 1, 2011, on an approval relative to any development requirement. However, this subdivision applies only if a copy of the condition has been filed and permanently maintained as a public record in the office of the plan commission or board of zoning appeals that imposed the condition.

(h) Covenants, easements, equitable servitudes, and other land use restrictions created in accordance with law are not considered commitments and are not subject to subsection (b).

SECTION 37. IC 36-7-4-1016 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1016. **(a) Final decisions of the board of zoning appeals under:**

(1) the 900 series of this chapter (administrative appeals, exceptions, uses, and variances); or

(2) section 1015 of this chapter (appeals of commitment modifications or terminations);

are considered zoning decisions for purposes of this chapter and are subject to judicial review in accordance with the 1600 series of this chapter.

(b) The following decisions of the plan commission ~~may be reviewed by certiorari procedure~~ **are considered zoning decisions for purposes of this chapter and are subject to judicial review** in the same manner as that provided for the appeal of a **final** decision of the board of zoning appeals **under subsection (a):**

(1) A final decision under the 700 series of this chapter (subdivision control).

(2) A final decision under ~~IC 36-7-3-11(h)~~ **section 1015 of this chapter** (appeal of a ~~vacation decision).~~ **commitment modification or termination).**

(3) A final decision under the 1400 series of this chapter (development plans).

(4) A final decision under the 1500 series of this chapter (planned

C o p y

unit development), when authority to make a final decision is delegated to the plan commission by the legislative body under section 1511 of this chapter.

(c) Final decisions of preservation commissions under IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, or IC 36-7-11.3 (certificates of appropriateness) are considered zoning decisions for purposes of this chapter and are subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under subsection (a).

(d) Final decisions of zoning administrators under IC 14-28-4-18 (improvement location permits within flood plain areas) are considered zoning decisions for purposes of this chapter and are subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under subsection (a).

(e) The following actions are legislative acts and are not considered zoning decisions for purposes of this chapter:

(1) Adopting or approving a comprehensive plan under the 500 series of this chapter.

(2) Certifying with or without a recommendation a proposal under the 600 series of this chapter.

(3) Adopting, rejecting, or amending a zoning ordinance under the 600 series of this chapter.

(4) Adopting, rejecting, or amending an impact fee ordinance under the 1300 series of this chapter.

(5) Designating a zoning district where a development plan is required under the 1400 series of this chapter.

(6) Adopting, rejecting, or amending a PUD district ordinance under the 1500 series of this chapter.

(7) Adopting, rejecting, or amending a flood plain zoning ordinance under IC 14-28-4.

SECTION 38. IC 36-7-4-1020 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1020. (a) All ordinances adopted under this chapter are presumed to have been validly adopted.

(b) A ~~court~~ **plan commission** or a board of zoning appeals shall take ~~judicial~~ **official** notice of all ordinances adopted under this chapter.

SECTION 39. IC 36-7-4-1102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1102. ~~ADVISORY. The advisory planning law~~ **This chapter** is supplemental to and does not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions, or officials of state government by other

C o p y

statutes and these powers remain in effect. Powers of supervision and regulation by these entities of state government over political subdivisions or persons also are not abrogated and continue in effect.

SECTION 40. IC 36-7-4-1109, AS ADDED BY P.L.49-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1109. (a) As used in this section, "local governmental agency" includes any agency, officer, board, or commission of a local unit of government that may issue:

(1) a permit; or

(2) an approval of a land use or an approval for the construction of a development, a building, or another structure.

(b) As used in this section, "permit" means any of the following:

(1) An improvement location permit.

(2) A building permit.

(3) A certificate of occupancy.

(4) Approval of a site-specific development plan.

(5) Approval of a primary or secondary plat.

(6) Approval of a **contingent use,** conditional use, special exception or special use.

(7) Approval of a planned unit development.

(c) **Subject to section 1110 of this chapter,** if a person files a complete application as required by the effective ordinances or rules of a local governmental agency for a permit with the appropriate local governmental agency, the granting of the permit, and the granting of any secondary, additional, or related permits or approvals required from the same local governmental agency with respect to the general subject matter of the application for the first permit, are governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the property when the application is filed, even if before the issuance of the permit or while the permit approval process is pending, or before the issuance of any secondary, additional, or related permits or approvals or while the secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the permit or approval are changed by the general assembly or the applicable local legislative body or regulatory body. However, this subsection does not apply if the development or other activity to which the permit relates is not completed within ~~seven (7)~~ **ten (10)** years after the development or activity is commenced.

(d) Subsection (e) applies if:

(1) either:

C o p y

(A) a local governmental agency issues to a person a permit or grants a person approval for the construction of a development, a building, or another structure; or

(B) a permit or approval is not required from the local governmental agency for the construction of the development, building, or structure;

(2) before beginning the construction of the development, building, or structure, the person must obtain a permit or approval for the construction of the development, building, or structure from a state governmental agency; and

(3) the person has applied for the permit or requested the approval for the construction of the development, building, or structure from the state governmental agency within ninety (90) days of issuance of the permit by the local governmental agency.

(e) Subject to subsection (f) **and section 1110 of this chapter,** if the conditions of subsection (d) are satisfied:

(1) a permit or approval issued or granted to a person by the local governmental agency for the construction of the development, building, or structure; or

(2) the person's right to construct the development, building, or structure without a permit or approval from the local governmental agency;

is governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, regulations, and approvals in effect and applicable to the property when the person applies for the permit or requests approval from the state governmental agency for the construction of the development, building, or structure, even if before the commencement of the construction or while the permit application or approval request is pending with the state governmental agency the statutes governing the granting of the permit or approval from the local governmental agency are changed by the general assembly or the ordinances, rules, development standards, or regulations of the local governmental agency are changed by the applicable local legislative body or regulatory body. However, this subsection does not apply if the development or other activity to which the permit or approval request relates is not completed within ~~seven (7)~~ **ten (10)** years after the development or activity is commenced.

(f) Subsection (d) does not apply to property when it is demonstrated by the local or state governmental agency that the construction of the development, building, or structure would cause imminent peril to life or property.

(g) This section does not apply to building codes under IC 22-13.

C o p y

SECTION 41. IC 36-7-4-1110 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1110. (a) As used in this section, "permit or right" refers to:**

(1) the granting of a permit, and the granting of any secondary, additional, or related permits or approvals, in response to an application filed:

(A) before July 1, 2011; and

(B) as described in section 1109(c) of this chapter;

(2) a permit issued or approval granted:

(A) before July 1, 2011; and

(B) as described in section 1109(e)(1) of this chapter; and

(3) the right to construct a development, building, or structure:

(A) that inures before July 1, 2011; and

(B) is described in section 1109(e)(2) of this chapter.

(b) Before July 1, 2014, the changes made to IC 14-28-4-18 and IC 36-7 by the enrolled act enacted during the 2011 regular session of the general assembly do not apply to a permit or right.

(c) After June 30, 2014, and notwithstanding section 1109 of this chapter, the changes made to IC 14-28-4-18 and IC 36-7 by the enrolled act enacted during the 2011 regular session of the general assembly apply to a permit or right.

(d) This section expires December 31, 2014.

SECTION 42. IC 36-7-4-1111 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1111. In computing any period of time under this chapter, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:**

(1) a Saturday;

(2) a Sunday;

(3) a legal holiday under an Indiana statute; or

(4) a day that the office in which the act is to be done is closed during regular business hours.

A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

SECTION 43. IC 36-7-4-1335 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1335. (a) As used in

C o p y

this section, "improvement" means an improvement under section 1313(2) of this chapter or a site improvement, land, or real property interest as follows:

(1) That is to be used for at least one (1) of the infrastructure purposes specified in section 1309 of this chapter.

(2) That is included in or intended to be used relative to an infrastructure type for which the unit has imposed an impact fee in the impact zone.

(3) That is not a type of improvement that is uniformly required by law or rule for the type of development on which the impact fee has been imposed.

(4) That is or will be:

(A) public property; or

(B) furnished or constructed under requirements of the unit and is or will be available for use by other development in the area.

(5) That is beneficial to existing development and future development in the impact zone and is not beneficial to only one (1) development.

(6) That either:

(A) allows the removal of a component of infrastructure planned for the impact zone;

(B) is a useful addition to the zone improvement plan; or

(C) is reasonably likely to be included in a future zone improvement plan for the impact zone.

(7) That is:

(A) constructed, furnished, or guaranteed by a bond or letter of credit under a request by an authorized official of the:

(i) applicable infrastructure agency; or

(ii) unit that imposed the impact fee; or

(B) required to be constructed or furnished under a written commitment that:

(i) is requested by an authorized official of the applicable infrastructure agency or the unit that imposed the impact fee;

(ii) concerns the use or developing of the development against which the impact fee is imposed; and

(iii) is made under section ~~613, 614, or 921~~ **1015** of this chapter.

(b) A fee payer is entitled to a credit against an impact fee if the owner or developer of the development constructs or provides:

(1) infrastructure that is an infrastructure type for which the unit

C o p y

imposed an impact fee in the impact zone; or

(2) an improvement.

(c) A fee payer is entitled to a credit under this section for infrastructure or an improvement that:

(1) is constructed or furnished relative to a development after January 1, 1989; and

(2) meets the requirements of this section.

(d) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. However, if an assessment is not requested, the amount of the credit shall be determined at the time the structural building permit is issued. The amount of the credit shall be:

(1) determined by the:

(A) person constructing or providing the infrastructure or improvement; and

(B) applicable infrastructure agency; and

(2) equal to the sum of the following:

(A) The cost of constructing or providing the infrastructure or improvement.

(B) The fair market value of land, real property interests, and site improvements provided.

(e) The amount of a credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (d). However, at the time the amount of a credit is determined under subsection (d), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

SECTION 44. IC 36-7-4-1401.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1401.5. (a) A legislative body may, in a zoning ordinance, designate zoning districts in which a development plan is required. If a zoning district is designated under this section, the plan commission must approve or disapprove a development plan under this series for real property within the zoning district.

(b) The plan commission has exclusive authority to approve or disapprove a development plan for real property located within the plan commission's jurisdiction.

C o p y

~~(c) Designation by the legislative body of a zoning district where a development plan is required is a legislative act, and is not subject to review by certiorari under section 1016 of this chapter.~~

SECTION 45. IC 36-7-4-1405 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1405. (a) The plan commission shall review a development plan to determine if the development plan:

(1) is consistent with the comprehensive plan; and

(2) satisfies the development requirements specified in the zoning ordinance under sections 1402 and 1403 of this chapter.

(b) The plan commission may do the following:

(1) Impose conditions on the approval of a development plan if the conditions are reasonably necessary to satisfy the development requirements specified in the zoning ordinance for approval of the development plan.

(2) Provide that approval of a development plan is conditioned on the furnishing to the plan commission of a bond or written assurance that:

(A) guarantees the timely completion of a proposed public improvement in the proposed development; and

(B) is satisfactory to the plan commission.

(3) Permit or require the owner of real property to make a written commitment under section ~~613~~ **1015** of this chapter.

SECTION 46. IC 36-7-4-1512 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1512. (a) When adopting or amending a PUD district ordinance, the legislative body of a unit may do the following:

(1) Impose reasonable conditions on a proposed planned unit development.

(2) Condition issuance of an improvement location permit on the furnishing of a bond or a satisfactorily written assurance guaranteeing the timely completion of a proposed public improvement in a planned unit development or serving a planned unit development.

(3) Allow or require an owner of real property to make a written commitment in the manner authorized under section ~~614 or 615~~ **1015** of this chapter.

(b) When recommending adoption of a PUD district ordinance to the legislative body, granting an approval under section 1511 of this chapter, or making a modification under section 1511(b) of this chapter, the bodies or persons authorized under section 1511(c) of this chapter may:

C o p y

(1) impose the conditions described in subsection (a)(1) and (a)(2); and

(2) allow or require a written commitment as authorized under section ~~614 or 615~~ **1015** of this chapter.

SECTION 47. IC 36-7-4-1600 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1600. This series (sections 1600 through 1699 of this chapter) may be cited as follows: 1600 SERIES–JUDICIAL REVIEW.**

SECTION 48. IC 36-7-4-1601 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1601. (a) This series establishes the exclusive means for judicial review of zoning decisions as described in section 1003 or 1016 of this chapter, made by a board of zoning appeals, legislative body, plan commission, preservation commission, or zoning administrator (referred to as the "board" in this series).**

(b) A legislative act is not subject to judicial review under this series.

SECTION 49. IC 36-7-4-1602 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1602. (a) Judicial review of a zoning decision is initiated by filing a petition for review in the appropriate court.**

(b) Only a person who qualifies under:

(1) section 1603 of this chapter concerning standing;

(2) section 1604 of this chapter concerning exhaustion of administrative remedies;

(3) section 1605 of this chapter concerning the time for filing a petition for review; and

(4) section 1613 of this chapter concerning the time for filing the board record for review;

is entitled to judicial review of a final zoning decision.

(c) A person is entitled to judicial review of a nonfinal zoning decision only if the person establishes both of the following:

(1) Immediate and irreparable harm.

(2) No adequate remedy exists at law. The failure of a person to comply with the procedural requirements of this chapter may not be the basis for a finding of an inadequate remedy at law.

SECTION 50. IC 36-7-4-1603 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

C o p y

[EFFECTIVE JULY 1, 2011]: **Sec. 1603. (a) The following have standing to obtain judicial review of a zoning decision:**

(1) A person to whom the zoning decision is specifically directed.

(2) A person aggrieved by the zoning decision who participated in the board hearing that led to the decision, either:

(A) by appearing at the hearing in person, by agent, or by attorney and presenting relevant evidence; or

(B) by filing with the board a written statement setting forth any facts or opinions relating to the decision.

(3) A person otherwise aggrieved or adversely affected by the zoning decision.

(b) A person has standing under subsection (a)(3) only if:

(1) the zoning decision has prejudiced or is likely to prejudice the interests of the person;

(2) the person was eligible for an initial notice of a hearing under this chapter, was not notified of the hearing in substantial compliance with this chapter, and did not have actual notice of the hearing before the last date in the hearing that the person could object or otherwise intervene to contest the zoning decision;

(3) the person's asserted interests are among those that the board was required to consider when it made the challenged zoning decision; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the zoning decision.

SECTION 51. IC 36-7-4-1604 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1604. (a) A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the board whose zoning decision is being challenged.**

(b) A person who fails to timely object to a zoning decision or timely petition for review of a zoning decision within the period prescribed by this chapter waives the person's right to judicial review under this chapter.

SECTION 52. IC 36-7-4-1605 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1605. A petition for review is timely only if the petition for review is filed not later than thirty**

C o p y

(30) days after the date of the zoning decision that is the subject of the petition for judicial review.

SECTION 53. IC 36-7-4-1606 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1606. (a) Venue is in the judicial district where the land affected by the zoning decision is located.**

(b) If more than one (1) person may be aggrieved by the zoning decision, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who:

(1) was a petitioner or applicant at the hearing before the board; or

(2) is aggrieved by the zoning decision and entered a written appearance as an adverse party to the petitioner or applicant before the board hearing that led to the zoning decision, as described in section 920(h) of this chapter;

is a party to the petition for review.

(e) Any other person who participated, in the manner described in section 1603(a)(2) of this chapter, in the board hearing that led to the zoning decision may, not later than five (5) days after the decision is made, file with the board a written request that the person receive notice of any petition for review that may be filed. The written request must include the person's full name and correct mailing address and a reference to the board's docket number relative to the zoning decision.

(f) Any person who has standing under section 1603(a)(2) or 1603(a)(3) of this chapter has an unconditional right to intervene in a proceeding for review. A motion to intervene in a proceeding for review shall be filed in the manner provided by the rules of procedure governing civil actions in courts.

SECTION 54. IC 36-7-4-1607 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1607. (a) A petition for review must be filed with the clerk of the court.**

(b) A petition for review must be verified and set forth the following:

(1) The name and mailing address of the petitioner.

C o p y

(2) The name and mailing address of the board whose zoning decision is at issue.

(3) Identification of the decision at issue, together with a copy, summary, or brief description of the decision.

(4) Identification of persons who participated in any hearing, as described in section 1603(a)(2) of this chapter, that led to the decision.

(5) Specific facts to demonstrate that the petitioner is entitled to obtain judicial review under section 1602 of this chapter.

(6) Specific facts to demonstrate that the petitioner has been prejudiced by one (1) or more of the grounds described in section 1614 of this chapter.

(7) A request for relief, specifying the type and extent of relief requested.

SECTION 55. IC 36-7-4-1608 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1608. (a) A petitioner for judicial review shall serve a copy of the petition upon the board making the zoning decision in the manner provided by the rules of procedure governing civil actions in the courts. Service on the board must be made to the secretary, president, or chairperson of the board.**

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review:

(1) to all parties to the petition for review, as described in section 1606(d) of this chapter; and

(2) to persons who, in the manner described in section 1606(e) of this chapter, filed with the board making the zoning decision written requests that they receive notice of any petition for review, according to the public records of the board. However, if the public records of the board show that the board received written requests for notice from more than three (3) persons, the petitioner shall give notice only to the first three (3) persons who requested notice according to those records. Notice to any additional persons who requested notice is not required.

(c) This section does not require the petitioner to name as parties to the petition for review the persons who must be given notice under subsection (b)(2).

SECTION 56. IC 36-7-4-1609 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1609. (a) A person seeking**

C o p y

judicial review may seek, by filing a verified petition, an order of the court staying the zoning decision pending review by the court. The court may enter an order staying the zoning decision pending a final determination if:

(1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the zoning decision appealed from is invalid or illegal; and

(2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the zoning decision if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars ($500).

(b) If a petition for review concerns a revocation or suspension of a previously approved variance, exception, or use, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the zoning decision is approved on final determination, the revocation or suspension of the variance, exception, or use immediately becomes effective.

SECTION 57. IC 36-7-4-1610 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1610. A person may obtain judicial review of an issue that was not raised before the board, only to the extent that:**

(1) the issue concerns whether a person who was required to be notified by this chapter or other law of a board hearing was notified in substantial compliance with this chapter or other law; or

(2) the interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the zoning decision.

SECTION 58. IC 36-7-4-1611 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1611. Judicial review of disputed issues of fact must be confined to the board record for the zoning decision supplemented by additional evidence taken under section 1612 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the board.**

SECTION 59. IC 36-7-4-1612 IS ADDED TO THE INDIANA

C o p y

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1612. (a) The court may receive evidence, in addition to that contained in the board record for judicial review, only if the evidence relates to the validity of the zoning decision at the time the decision was made and is needed to decide disputed issues regarding one (1) or both of the following:**

(1) Improper constitution as a decisionmaking body or grounds for disqualification of those making the zoning decision.

(2) Unlawfulness of procedure or of decisionmaking process. This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the board proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the board before final disposition of a petition for review with directions that the board conduct further factfinding or that the board prepare an adequate record, if:

(1) the board failed to prepare or preserve an adequate record;

(2) the board improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the zoning decision and the court determines that the new provision of law may control the outcome.

SECTION 60. IC 36-7-4-1613 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1613. (a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court, the petitioner shall transmit to the court the original or a certified copy of the board record for judicial review of the zoning decision, consisting of:**

(1) any board documents expressing the decision;

(2) other documents identified by the board as having been considered by the board before its decision and used as a basis for its decision; and

(3) any other material described in this chapter or other law as the board record for the type of zoning decision at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible board within the time permitted by this section is good cause. Failure to file the record within the time

C o p y

permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(c) Upon a written request by the petitioner, the board making the zoning decision being reviewed shall prepare the board record for the petitioner. If part of the record has been preserved without a transcript, the board shall, if practicable, prepare a transcript for inclusion in the record transmitted to the court, except for parts that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).

(d) Notwithstanding IC 5-14-3-8, the board shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court, unless a person files with the court, under oath and in writing, the statement described by IC 33-37-3-2.

(e) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(f) The court may tax the cost of preparing transcripts and copies for the record:

(1) against a party to the judicial review proceeding who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(2) in accordance with the rules governing civil actions in the courts or other law.

(g) Additions to the record concerning evidence received under section 1612 of this chapter must be made as ordered by the court. The court may require or permit subsequent corrections or additions to the record.

SECTION 61. IC 36-7-4-1614 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1614. (a) The burden of demonstrating the invalidity of a zoning decision is on the party to the judicial review proceeding asserting invalidity.**

(b) The validity of a zoning decision shall be determined in accordance with the standards of review provided in this section, as applied to the decision at the time it was made.

(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 1615 of this chapter only if the court determines that a person seeking judicial relief has been prejudiced by a zoning decision that is:

C o p y

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unsupported by substantial evidence.

SECTION 62. IC 36-7-4-1615 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1615. If the court finds that a person has been prejudiced under section 1614 of this chapter, the court may set aside a zoning decision and:**

(1) remand the case to the board for further proceedings; or

(2) compel a decision that has been unreasonably delayed or unlawfully withheld.

SECTION 63. IC 36-7-4-1616 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1616. The court's decision on a petition for review of a zoning decision is appealable in accordance with the rules governing civil appeals from the courts.**

SECTION 64. IC 36-7-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) A unit may establish, by ordinance, a historic preservation commission with an official name designated in the ordinance. The commission must have not less than three (3) nor more than nine (9) voting members, as designated by the ordinance. The voting members shall be appointed by the executive of the unit, subject to the approval of the legislative body. Voting members shall each serve for a term of three (3) years. However, the terms of the original voting members may be for one (1) year, two (2) years, or three (3) years in order for the terms to be staggered, as provided by the ordinance. A vacancy shall be filled for the duration of the term. In the case of a commission with jurisdiction in a city having a population of more than one hundred five thousand (105,000) but less than one hundred twenty thousand (120,000), the commission must after June 30, 2001, include as a voting member the superintendent of the largest school corporation in the city.

(b) The ordinance may provide qualifications for members of the commission, but members must be residents of the unit who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the disciplines of architectural history, planning, and other disciplines

C o p y

related to historic preservation, to the extent that those professionals are available in the community. The ordinance may also provide for the appointment of advisory members that the legislative body considers appropriate.

(c) The ordinance may:

(1) designate an officer or employee of the unit to act as administrator;

(2) permit the commission to appoint an administrator who shall serve without compensation except reasonable expenses incurred in the performance of the administrator's duties; or

(3) provide that the commission act without the services of an administrator.

(d) Members of the commission shall serve without compensation except for reasonable expenses incurred in the performance of their duties.

(e) The commission shall elect from its membership a chairman and vice chairman, who shall serve for one (1) year and may be reelected.

(f) The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings. All meetings of the commission must be open to the public, and a public record of the commission's resolutions, proceedings, and actions must be kept. If the commission has an administrator, the administrator shall act as the commission's secretary, otherwise, the commission shall elect a secretary from its membership.

(g) The commission shall hold regular meetings, at least monthly, except when it has no business pending.

(h) A **final** decision of the commission is subject to judicial review under ~~IC 4-21.5-5~~ **IC 36-7-4** as if it ~~was~~ **were** a **final** decision of a ~~state agency.~~ **board of zoning appeals.**

SECTION 65. IC 36-7-11.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) If the commission determines that the proposed construction, reconstruction, alteration, or demolition will be appropriate, the secretary of the commission shall forthwith issue to the applicant a certificate of appropriateness.

(b) The commission may impose any reasonable conditions, consistent with the historic preservation plan, upon the issuance of a certificate of appropriateness, including the requirement of executing and recording covenants or filing a maintenance or performance bond. If the commission determines that a certificate of appropriateness should not be issued, the commission shall forthwith place upon its

C o p y

records the reasons for the determination and may include recommendations respecting the proposed construction, reconstruction, alteration, or demolition. The secretary of the commission shall forthwith notify the applicant of the determination transmitting to ~~him~~ **the applicant** an attested copy of the reasons and recommendations, if any, of the commission.

(c) ~~Every~~ **A final** determination of the commission upon an application for certificate of appropriateness is subject to **judicial** review ~~by certiorari upon petition to the circuit or superior court of the county by any aggrieved person,~~ in the same manner and subject to the same limitations as a **final** decision of a board of zoning appeals under IC 36-7-4. However, **notwithstanding IC 36-7-4-1609,** upon notice of the filing of the petition for ~~writ of certiorari,~~ **judicial review,** all proceedings and work on the subject premises are automatically stayed.

~~(d) An appeal may be taken to the court of appeals of Indiana from the final judgment of the court reversing, affirming, or modifying the determination of the commission in the same manner and upon the same terms, conditions, and limitations as appeals in other civil actions.~~

SECTION 66. IC 36-7-11.2-64 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 64. ~~(a)~~ A final determination by the commission is subject to judicial review ~~An interested party aggrieved by a determination may file with the circuit or superior court of Marion County a verified petition for writ of certiorari stating that the determination is illegal in whole or part. The petition must be filed not later than sixty (60) days after the date of the final determination. A change of venue is not permitted in a cause of action arising under this section.~~ **in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4. However, notwithstanding IC 36-7-4-1609, upon notice of the filing of the petition for judicial review, all proceedings and work on the subject premises are automatically stayed.**

~~(b) Upon the filing of a petition for writ of certiorari the petitioner shall have a copy of the petition served upon each interested party in the manner provided in this chapter for service of notice. Upon adequate showing by the petitioner that a copy of the petition has been served, the circuit or superior court shall enter an order directing the commission to show cause not later than thirty (30) days from the entry of the order why a writ of certiorari should not issue. If the commission or an interested party appearing in support of the commission's determination fails to show to the satisfaction of the court that a writ should not issue, the court may allow a writ directed to the commission.~~

C o p y

~~The writ must prescribe the time in which a return shall be made to the court. The time:~~

~~(1) may not be less than twenty (20) days from the date of the issuance of the writ; and~~

~~(2) may be extended by the court on application and on notice to all parties.~~

~~(c) The return to the writ of certiorari by the commission must contain copies of all filings, exhibits, and other matters presented to or considered by the commission in connection with the matter and the determination from which the appeal is taken, including a verbatim transcript of the proceedings at each public hearing that was held. The commission shall prepare the return at the expense of the party that filed the petition for certiorari. The return to the writ of certiorari must also show the grounds of the decision that was appealed.~~

~~(d) The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make a determination and enter judgment with reference to the legality of the decision of the commission on the facts set out in the return to the writ of certiorari. If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence to supplement the evidence and facts disclosed by the return to the writ of certiorari. However, a review may not be by a trial de novo, and the court may not consider evidence that should properly or could have been presented to the commission. In passing on the legality of the determination by the commission, the court may:~~

~~(1) reverse;~~

~~(2) affirm, wholly or in part; or~~

~~(3) modify;~~

~~the determination of the commission brought up for review. Costs may not be allowed against the commission.~~

~~(e) Upon the filing of a petition under this section, the final determination of the commission with respect to which the petition is filed is considered without force and effect pending a final judgment by the court. If the final determination was made with respect to a petition for approval of a proposed rezoning or zoning variance, the approval by the commission is considered nonexistent pending final judgment.~~

SECTION 67. IC 36-7-11.3-59 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 59. ~~(a)~~ A final determination by the commission is subject to judicial review ~~An interested party aggrieved by a determination may file with the circuit or superior court of the county a verified petition for writ of certiorari~~

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~~stating that the determination is illegal in whole or part. The petition must be filed not later than sixty (60) days after the date of the final determination. A change of venue is not permitted in a cause of action arising under this section.~~ **in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4. However, notwithstanding IC 36-7-4-1609, upon notice of the filing of the petition for judicial review, all proceedings and work on the subject premises are automatically stayed.**

~~(b) Upon the filing of a petition for writ of certiorari the petitioner shall have a copy of the petition served upon each interested party in the manner provided in this chapter for service of notice. Upon adequate showing by the petitioner that a copy of the petition has been served, the circuit or superior court shall enter an order directing the commission to show cause not later than thirty (30) days from the entry of the order why a writ of certiorari should not issue. If the commission or an interested party appearing in support of the commission's determination fails to show to the satisfaction of the court that a writ should not issue, the court may allow a writ directed to the commission. The writ must prescribe the time in which a return shall be made to the court. The time:~~

~~(1) may not be less than twenty (20) days from the date of the issuance of the writ; and~~

~~(2) may be extended by the court on application and on notice to all parties.~~

~~(c) The return to the writ of certiorari by the commission must contain copies of all filings, exhibits, and other matters presented to or considered by the commission in connection with the matter and the determination from which the appeal is taken, including a verbatim transcript of the proceedings at each public hearing that was held. The commission shall prepare the return at the expense of the party that filed the petition for certiorari. The return to the writ of certiorari must also show the grounds of the decision that was appealed.~~

~~(d) The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make a determination and enter judgment with reference to the legality of the decision of the commission on the facts set out in the return to the writ of certiorari. If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence to supplement the evidence and facts disclosed by the return to the writ of certiorari. However, a review may not be by a trial de novo, and the court may not consider evidence that should~~

C o p y

~~properly or could have been presented to the commission. In passing on the legality of the determination by the commission, the court may:~~

~~(1) reverse;~~

~~(2) affirm, wholly or in part; or~~

~~(3) modify;~~

~~the determination of the commission brought up for review. Costs may not be allowed against the commission.~~

~~(e) Upon the filing of a petition under this section, the final determination of the commission with respect to which petition is filed is considered without force and effect pending a final judgment by the court. If the final determination was made with respect to a petition for approval of a proposed rezoning or zoning variance, the approval by the commission is considered nonexistent pending final judgment.~~

SECTION 68. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 36-7-3-11; IC 36-7-4-613; IC 36-7-4-614; IC 36-7-4-615; IC 36-7-4-921; IC 36-7-4-1005; IC 36-7-4-1006; IC 36-7-4-1007; IC 36-7-4-1008; IC 36-7-4-1009; IC 36-7-4-1010; IC 36-7-4-1011.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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