

HOUSE BILL No. 1025

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7-4.

Synopsis: Alternate rezoning procedure. Creates an optional alternate procedure to apply to rezoning proposals that provides the following: (1) If the plan commission makes a favorable recommendation, the rezoning proposal becomes effective unless an aggrieved person or the legislative body notifies the plan commission by a specified date. (2) If the plan commission makes an unfavorable recommendation or no recommendation, the rezoning proposal is defeated unless an aggrieved person or the legislative body notifies the plan commission by a specified date. (3) If the plan commission is notified by an aggrieved person or the legislative body by a specified date, the legislative body shall consider and make the final determination on the rezoning proposal. Reconciles a conflict in a statute concerning rezonings within an excluded city.

Effective: July 1, 2016.

Miller D

January 5, 2016, read first time and referred to Committee on Local Government.



Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1025

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-7-4-602 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 602. (a) The following
- 3 procedure applies to a proposal to adopt an initial zoning ordinance (or
- 4 to adopt a replacement zoning ordinance after repealing the entire
- 5 zoning ordinance, including amendments and zone maps) for a
- 6 jurisdiction:
- 7 (1) The plan commission must initiate the proposal.
- 8 (2) The plan commission must prepare the proposal so that it is
- 9 consistent with section 601 of this chapter.
- 10 (3) The plan commission and the legislative body both must
- 11 comply with section 603 of this chapter.
- 12 (4) The plan commission must give notice and hold a public
- 13 hearing under section 604 of this chapter.
- 14 (5) The plan commission must certify the proposal to the
- 15 legislative body under section 605 of this chapter.
- 16 (6) The legislative body must consider the proposal under section
- 17 606 of this chapter, and section 606 **of this chapter** governs



- 1 whether the proposal is adopted or defeated.
- 2 (7) If the proposal is adopted under section 606 of this chapter,
- 3 the plan commission must print (and publish, if required) the
- 4 ordinance under section 610 of this chapter.
- 5 (8) The ordinance takes effect as described in section 610 of this
- 6 chapter.
- 7 (b) After the zoning ordinance for a jurisdiction has been adopted
- 8 as described in subsection (a), the following procedure applies to a
- 9 proposal to amend or partially repeal the text (not zone maps) of the
- 10 ordinance:
- 11 (1) The plan commission may initiate the proposal. (Under the
- 12 advisory planning law or the area planning law, any participating
- 13 legislative body also may initiate the proposal and require the
- 14 plan commission to prepare it.)
- 15 (2) The plan commission must prepare the proposal so that it is
- 16 consistent with section 601 of this chapter.
- 17 (3) The plan commission and the legislative body both must
- 18 comply with section 603 of this chapter.
- 19 (4) The plan commission must give notice and hold a public
- 20 hearing under section 604 of this chapter.
- 21 (5) The plan commission must certify the proposal to the
- 22 legislative body under section 605 of this chapter.
- 23 (6) The legislative body must consider the proposal under section
- 24 607 of this chapter, and section 607 **of this chapter** governs
- 25 whether the proposal is adopted or defeated.
- 26 (7) If the proposal is adopted under section 607 of this chapter,
- 27 the plan commission must print the amendments to the zoning
- 28 ordinance under section 610 of this chapter.
- 29 (8) The amendments take effect as described in section 610 of this
- 30 chapter.
- 31 (c) After the zoning ordinance for a jurisdiction has been adopted
- 32 as described in subsection (a), the following procedure applies to a
- 33 proposal to change the zone maps (whether by incorporating an
- 34 additional map or by amending or deleting a map) incorporated by
- 35 reference into the ordinance:
- 36 (1) The proposal may be initiated either:
- 37 (A) by the plan commission; or
- 38 (B) by a petition signed by property owners who own at least
- 39 fifty percent (50%) of the land involved.
- 40 (Under the advisory planning law or the area planning law, any
- 41 participating legislative body also may initiate the proposal and
- 42 require the plan commission to prepare it.)



- 1 (2) The plan commission or petitioners must prepare the proposal
 2 so that it is consistent with section 601 of this chapter.
- 3 (3) The plan commission and the legislative body both must
 4 comply with section 603 of this chapter.
- 5 (4) The plan commission must give notice and hold a public
 6 hearing under section 604 of this chapter.
- 7 (5) The plan commission must certify the proposal to the
 8 legislative body under section 605 of this chapter.
- 9 (6) **Except as provided in subdivision (7),** the legislative body
 10 must consider the proposal under section 608 of this chapter, and
 11 section 608 **of this chapter** governs whether the proposal is
 12 adopted or defeated.
- 13 **(7) If the alternate procedure in section 608.7 of this chapter**
 14 **is adopted, that section governs whether the proposal is**
 15 **adopted or defeated after consideration by:**
- 16 (A) **the plan commission under section 608.7 of this**
 17 **chapter; or**
- 18 (B) **the legislative body under section 608 of this chapter.**
- 19 ~~(7)~~ (8) If the proposal is adopted under section 608 **or 608.7** of
 20 this chapter, the plan commission must update the zone maps that
 21 it keeps available under section 610 of this chapter.
- 22 ~~(8)~~ (9) The zone map changes take effect as described in section
 23 610 of this chapter.
- 24 SECTION 2. IC 36-7-4-604 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 604. (a) Before the plan
 26 commission certifies a proposal to the legislative body under section
 27 605 of this chapter, the plan commission must hold a public hearing
 28 under this section.
- 29 (b) The plan commission shall give notice of the hearing by
 30 publication under IC 5-3-1. The notice must state:
- 31 (1) the time and place of the hearing;
- 32 (2) either:
- 33 (A) in the case of a proposal under section 606 or 607 of this
 34 chapter, the geographic areas (or zoning districts in a specified
 35 geographic area) to which the proposal applies; or
- 36 (B) in the case of a proposal under section 608 of this chapter,
 37 the geographic area that is the subject of the zone map change;
 38 **(This subdivision ~~(2)~~ does not require the identification of any**
 39 **real property by metes and bounds.)**
- 40 (3) either:
- 41 (A) in the case of a proposal under section 606 of this chapter,
 42 a summary (which the plan commission shall have prepared)



- 1 of the subject matter contained in the proposal (not the entire
2 text of the ordinance);
- 3 (B) in the case of a proposal under section 607 of this chapter,
4 a summary (which the plan commission shall have prepared)
5 of the subject matter contained in the proposal (not the entire
6 text) that describes any new or changed provisions; or
- 7 (C) in the case of a proposal under section 608 of this chapter,
8 a description of the proposed change in the zone maps;
- 9 (4) if the proposal contains or would add or amend any penalty or
10 forfeiture provisions, the entire text of those penalty or forfeiture
11 provisions;
- 12 (5) the place where a copy of the proposal is on file for
13 examination before the hearing;
- 14 (6) that written objections to the proposal that are filed with the
15 secretary of the commission before the hearing will be
16 considered;
- 17 (7) that oral comments concerning the proposal will be heard; and
18 (8) that the hearing may be continued from time to time as may be
19 found necessary.
- 20 (c) The plan commission shall also provide for due notice to
21 interested parties at least ten (10) days before the date set for the
22 hearing. The commission shall by rule determine who are interested
23 parties, how notice is to be given to interested parties, and who is
24 required to give that notice. However, if the subject matter of the
25 proposal abuts or includes a county line (or a county line street or road
26 or county line body of water), then all owners of real property to a
27 depth of two (2) ownerships or one-eighth (1/8) of a mile into the
28 adjacent county, whichever is less, are interested parties who must
29 receive notice under this subsection.
- 30 (d) The hearing must be held by the plan commission at the place
31 stated in the notice. The commission may also give notice and hold
32 hearings at other places within the county where the distribution of
33 population or diversity of interests of the people indicate that the
34 hearings would be desirable. The commission shall adopt rules
35 governing the conduct of hearings under this section.
- 36 (e) A zoning ordinance may not be held invalid on the ground that
37 the plan commission failed to comply with the requirements of this
38 section, if the notice and hearing substantially complied with this
39 section.
- 40 (f) The files of the plan commission concerning proposals are public
41 records and shall be kept available at the commission's office for
42 inspection by any interested person.



1 (g) METRO. In the case of a proposal to amend a zoning map under
 2 section 608 of this chapter or in the case of a proposed approval of a
 3 development plan required by a zoning ordinance as a condition of
 4 development, a person may not communicate before the hearing with
 5 any hearing officer, member of the historic preservation commission,
 6 or member of the plan commission with intent to influence the officer's
 7 or member's action on the proposal. Before the hearing, the staff may
 8 submit a statement of fact concerning the physical characteristics of the
 9 area involved in the proposal, along with a recital of surrounding land
 10 use and public facilities available to serve the area. The staff may
 11 include with the statement an opinion of the proposal. The statement
 12 must be made a part of the file concerning the proposal not less than six
 13 (6) days before the proposal is scheduled to be heard. The staff shall
 14 furnish copies of the statement to persons in accordance with rules
 15 adopted by the commission.

16 (h) METRO. In the case of a proposal to amend a zoning map under
 17 section 608 **or 608.7** of this chapter, this subsection applies if the
 18 proposal affects only real property within the corporate boundaries of
 19 an excluded city. Notwithstanding the other provisions of this section,
 20 the legislative body of the excluded city may decide that the legislative
 21 body rather than the plan commission should hold the public hearing
 22 prescribed by this section. Whenever the plan commission receives a
 23 proposal subject to this section, the plan commission shall refer the
 24 proposal to the legislative body of the excluded city. At the legislative
 25 body's first regular meeting after receiving a referred proposal, the
 26 legislative body shall decide whether the legislative body will hold the
 27 public hearing. Within thirty (30) days after making the decision to
 28 hold the hearing, the legislative body shall hold the hearing, acting for
 29 purposes of this section as if the legislative body is the plan
 30 commission. The legislative body shall then make a recommendation
 31 on the proposal to the plan commission. After receiving the excluded
 32 city legislative body's recommendation (or at the end of the thirty (30)
 33 day period for the public hearing if the proposal receives no
 34 recommendation), the plan commission shall meet and decide whether
 35 to make a favorable recommendation on the proposal. **If the proposal**
 36 **receives a The favorable recommendation, from the unfavorable**
 37 **recommendation, or no recommendation of the plan commission on**
 38 **the proposal shall be certified to the county legislative body as**
 39 **provided in section 605 of this chapter.**

40 (i) Before a proposal involving a structure regulated under
 41 IC 8-21-10 may become effective, the plan commission must have
 42 received:



- 1 (1) a copy of:
 2 (A) the permit for the structure issued by the Indiana
 3 department of transportation; or
 4 (B) the Determination of No Hazard to Air Navigation issued
 5 by the Federal Aviation Administration; and
 6 (2) evidence that notice was delivered to a public use airport as
 7 required in IC 8-21-10-3 not less than sixty (60) days before the
 8 proposal is considered.
- 9 SECTION 3. IC 36-7-4-608, AS AMENDED BY P.L.88-2014,
 10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2016]: Sec. 608. (a) This section applies to a proposal, as
 12 described in section 602(c) of this chapter, to change the zone maps
 13 incorporated by reference into the zoning ordinance.
- 14 (b) If the proposal is not initiated by the plan commission, it must
 15 be referred to the commission for consideration and recommendation
 16 before any final action is taken by the legislative body. On receiving or
 17 initiating the proposal, the commission shall, within sixty (60) days,
 18 hold a public hearing in accordance with section 604 of this chapter.
 19 Within ten (10) business days after the commission determines its
 20 recommendation (if any), the commission shall certify the proposal
 21 under section 605 of this chapter.
- 22 (c) METRO. This subsection applies if the proposal receives a
 23 favorable recommendation, an unfavorable recommendation, or no
 24 recommendation from the plan commission:
- 25 (1) At the first regular meeting of the legislative body:
 26 (A) after the proposal is certified under section 605 of this
 27 chapter; or
 28 (B) after the date of the notice under section 608.7(b)(1) or
 29 608.7(b)(2) of this chapter, if:
 30 (i) the alternate procedure in section 608.7 of this
 31 chapter is adopted; and
 32 (ii) the legislative body makes the final determination on
 33 the proposal upon the request of an aggrieved person or
 34 the legislative body's own initiative under section
 35 608.7(c) of this chapter;
- 36 the legislative body may, by a majority of those voting, schedule
 37 the proposal for a hearing on a date not later than its next regular
 38 meeting. The legislative body member in whose district the parcel
 39 of real property under consideration is located may submit a
 40 request to the president of the legislative body that the proposal
 41 be considered under this subsection.
- 42 (2) If the legislative body fails to schedule the proposal for a



1 hearing under subdivision (1), the ordinance takes effect as if it
 2 had been adopted at the first regular meeting of the legislative
 3 body:

4 (A) after the proposal is certified under section 605 of this
 5 chapter; or

6 (B) after the date of the notice under section 608.7(b)(1) or
 7 608.7(b)(2) of this chapter, if:

8 (i) the alternate procedure in section 608.7 of this
 9 chapter is adopted; and

10 (ii) the legislative body makes the final determination on
 11 the proposal upon the request of an aggrieved person or
 12 the legislative body's own initiative under section
 13 608.7(c) of this chapter.

14 (3) For purposes of this subdivision, the final action date for a
 15 proposal is the date thirty (30) days after the date that the proposal
 16 is certified under section 605 of this chapter, or the date of the
 17 second regular meeting after the proposal is certified under
 18 section 605 of this chapter, whichever is later. **However if:**

19 (A) the alternate procedure in section 608.7 of this chapter
 20 is adopted; and

21 (B) the legislative body makes the final determination on
 22 the proposal upon:

23 (i) the request of an aggrieved person; or

24 (ii) the legislative body's own initiative;

25 under section 608.7(c) of this chapter;

26 **the final action date for a proposal is the date of the second**
 27 **regular meeting after the date of the notice under section**
 28 **608.7(b)(1) or 608.7(b)(2) of this chapter.** If the legislative body
 29 schedules the proposal for a hearing under subdivision (1) but
 30 fails to act on it by the final action date, the ordinance takes effect
 31 as if it had been adopted (as certified) on the final action date.
 32 However, the period of time ~~from~~ **after** certification under section
 33 605 of this chapter, **or after the notice under section 608.7(b)(1)**
 34 **or 608.7(b)(2) of this chapter,** to the final action date may be
 35 extended by the legislative body, with the consent of the initiating
 36 plan commission or the petitioning property owners. If the
 37 legislative body fails to act on the proposal by the final action date
 38 (as extended), the ordinance takes effect as if it had been adopted
 39 (as certified) on that extended final action date.

40 (4) If the legislative body schedules the proposal for a hearing
 41 under subdivision (1), it shall announce the hearing during a
 42 meeting and enter the announcement in its memoranda and



- 1 minutes. The announcement must state:
- 2 (A) the date, time, and place of the hearing;
- 3 (B) a description of the proposed changes in the zone maps;
- 4 (C) that written objections to the proposal filed with the clerk
- 5 of the legislative body or with the county auditor will be heard;
- 6 and
- 7 (D) that the hearing may be continued from time to time as
- 8 may be found necessary.
- 9 (5) If the legislative body rejects the proposal at a hearing
- 10 scheduled under subdivision (1), it is defeated.
- 11 (d) METRO. The plan commission may adopt a rule to limit further
- 12 consideration, for up to one (1) year after its defeat, of a proposal that
- 13 is defeated under subsection (c)(5).
- 14 (e) ADVISORY–AREA. The legislative body shall vote on the
- 15 proposal within ninety (90) days after:
- 16 (1) the plan commission certifies the proposal under section 605
- 17 of this chapter; or
- 18 **(2) the date of the notice under section 608.7(b)(1) or**
- 19 **608.7(b)(2) of this chapter, if:**
- 20 **(A) the alternate procedure in section 608.7 of this chapter**
- 21 **is adopted; and**
- 22 **(B) the legislative body makes the final determination on**
- 23 **the proposal upon:**
- 24 **(i) the request of an aggrieved person; or**
- 25 **(ii) the legislative body's own initiative;**
- 26 **under section 608.7(c) of this chapter.**
- 27 (f) ADVISORY–AREA. This subsection applies if the proposal
- 28 receives a favorable recommendation from the plan commission:
- 29 (1) At the first regular meeting of the legislative body after:
- 30 (A) the proposal is certified under section 605 of this chapter;
- 31 or
- 32 **(B) the date of the notice under section 608.7(b)(1) or**
- 33 **608.7(b)(2) of this chapter, if:**
- 34 **(i) the alternate procedure in section 608.7 of this**
- 35 **chapter is adopted; and**
- 36 **(ii) the legislative body makes the final determination on**
- 37 **the proposal upon the request of an aggrieved person or**
- 38 **the legislative body's own initiative under section**
- 39 **608.7(c) of this chapter;**
- 40 (or at any subsequent meeting within the ninety (90) day period),
- 41 the legislative body may adopt or reject the proposal. The
- 42 legislative body shall give notice under IC 5-14-1.5-5 of its



1 intention to consider the proposal at that meeting.

2 (2) If the legislative body adopts (as certified) the proposal, it
3 takes effect as other ordinances of the legislative body.

4 (3) If the legislative body rejects the proposal, it is defeated.

5 (4) **Except as provided in subdivision (5)**, if the legislative body
6 fails to act on the proposal within ninety (90) days after
7 certification, the ordinance takes effect as if it had been adopted
8 (as certified) ninety (90) days after certification.

9 **(5) This subdivision applies if:**

10 **(A) the alternate procedure in section 608.7 of this chapter**
11 **is adopted; and**

12 **(B) the legislative body makes the final determination on**
13 **the proposal upon:**

14 **(i) the request of an aggrieved person; or**

15 **(ii) the legislative body's own initiative;**

16 **under section 608.7(c) of this chapter.**

17 **If the legislative body fails to act on the proposal within ninety**
18 **(90) days after the date of the notice under section 608.7(b)(1)**
19 **or 608.7(b)(2) of this chapter, the ordinance takes effect as if**
20 **it had been adopted (as certified) ninety (90) days after the**
21 **date of the notice.**

22 (g) ADVISORY—AREA. This subsection applies if the proposal
23 receives either an unfavorable recommendation or no recommendation
24 from the plan commission:

25 (1) At the first regular meeting of the legislative body after the
26 proposal is certified under section 605 of this chapter (or at any
27 subsequent meeting within the ninety (90) day period), the
28 legislative body may adopt or reject the proposal. The legislative
29 body shall give notice under IC 5-14-1.5-5 of its intention to
30 consider the proposal at that meeting.

31 (2) If the legislative body adopts (as certified) the proposal, it
32 takes effect as other ordinances of the legislative body.

33 (3) If the legislative body rejects the proposal, it is defeated.

34 (4) If the legislative body fails to act on the proposal within ninety
35 (90) days after certification, it is defeated.

36 (h) ADVISORY—AREA. The plan commission may adopt a rule to
37 limit further consideration, for up to one (1) year after its defeat, of a
38 proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4).

39 SECTION 4. IC 36-7-4-608.7 IS ADDED TO THE INDIANA
40 CODE AS A NEW SECTION TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2016]: **Sec. 608.7. (a) A unit may adopt the**
42 **alternate procedure set forth in this section to apply to a proposal,**



1 as described in section 602(c) of this chapter, to change the zone
2 maps incorporated by reference into the zoning ordinance.

3 (b) The plan commission shall comply with section 608(b) of this
4 chapter and certify a favorable recommendation, unfavorable
5 recommendation, or no recommendation to the legislative body
6 under section 605 of this chapter. Except as provided in subsection
7 (c), if the plan commission makes:

8 (1) a favorable recommendation on the proposal, the proposal
9 (as certified) takes effect as other ordinances, twenty-two (22)
10 days after the date of the certification under section 605 of
11 this chapter; or

12 (2) an unfavorable recommendation or no recommendation
13 on the proposal, the proposal is defeated twenty-two (22) days
14 after the date of the certification under section 605 of this
15 chapter.

16 The plan commission shall notify the legislative body not later than
17 the next business day after a proposal takes effect under
18 subdivision (1) or is defeated under subdivision (2).

19 (c) If, not later than twenty-one (21) days after the date, the
20 favorable recommendation, the unfavorable recommendation, or
21 no recommendation of the plan commission is certified under
22 section 605 of this chapter:

23 (1) any aggrieved person files with the plan commission a
24 written request to have the final determination on the
25 proposal made by the appropriate legislative body; or

26 (2) the legislative body files a notice with the plan commission
27 that the legislative body shall make the final determination on
28 the proposal;

29 the legislative body shall make the final determination on the
30 proposal to change the zone map as set forth in section 608 of this
31 chapter. The plan commission shall notify the legislative body in
32 writing of a request under subdivision (1) not later than the next
33 business day after receiving the request.

34 SECTION 5. [EFFECTIVE JULY 1, 2016] (a) IC 36-7-4-602,
35 IC 36-7-4-604, and IC 36-7-4-608, all as amended by this act, and
36 IC 36-7-4-608.7, as added by this act, apply only to a proposal to
37 amend a zone map incorporated by reference into the zoning
38 ordinance that is received or initiated by the plan commission
39 under IC 36-7-4-608(b) after June 30, 2016.

40 (b) This SECTION expires July 1, 2018.

