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HOUSE BILL No. 1099

DIGEST OF HB 1099 (Updated January 29, 2014 7:31 pm - DI 73)

Citations Affected: IC 36-4; IC 36-7.

Synopsis: Annexation of noncontiguous property. Allows a municipality to annex property that is not contiguous to the municipality and is occupied by a municipally owned or operated: (1) wastewater treatment facility; or (2) water treatment facility. Provides that if a municipality annexes such territory, the municipality may annex additional territory to enlarge the territory for the use of the wastewater treatment facility or water treatment facility only if the county legislative body approves that use of the additional territory by ordinance. Specifies that certain annexed territory may not be considered a part of the municipality for purposes of annexing additional territory and may not be considered a part of the corporate boundaries of the municipality for certain purposes under zoning laws.

Effective: July 1, 2014.

Niemeyer

January 9, 2014, read first time and referred to Committee on Local Government.
January 23, 2014, reported — Do Pass.
January 29, 2014, read second time, amended, ordered engrossed.

HB 1099—LS 6344/DI 87



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1099

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 36-4-3-4, AS AMENDED BY P.L.119-2012,
2 SECTION 185, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The legislative body of a
4 municipality may, by ordinance, annex any of the following:
5 (1) Territory that is contiguous to the municipality.
6 (2) Territory that is not contiguous to the municipality and is
7 occupied by a municipally owned or operated **as either of the**
8 **following:**
9 (A) An airport or landing field.
10 (B) **A wastewater treatment facility or water treatment**
11 **facility. After a municipality annexes territory under this**
12 **clause, the municipality may annex additional territory to**
13 **enlarge the territory for the use of the wastewater**
14 **treatment facility or water treatment facility only if the**
15 **county legislative body approves that use of the additional**
16 **territory by ordinance.**

HB 1099—LS 6344/DI 87



1 (3) Territory that is not contiguous to the municipality but is
 2 found by the legislative body to be occupied by a municipally
 3 owned or regulated sanitary landfill, golf course, or hospital.

4 However, if territory annexed under ~~this subsection~~ **subdivision (2) or**
 5 **(3)** ceases to be used as a ~~municipally owned or regulated sanitary~~
 6 ~~landfill, golf course, or hospital~~ **for the purpose for which the**
 7 **territory was annexed** for at least one (1) year, the territory reverts to
 8 the jurisdiction of the unit having jurisdiction before the annexation if
 9 the unit that had jurisdiction over the territory still exists. If the unit no
 10 longer exists, the territory reverts to the jurisdiction of the unit that
 11 would currently have jurisdiction over the territory if the annexation
 12 had not occurred. The clerk of the municipality shall notify the offices
 13 required to receive notice of a disannexation under section 19 of this
 14 chapter when the territory reverts to the jurisdiction of the unit having
 15 jurisdiction before the annexation. **Territory that is annexed under**
 16 **subdivision (2) (including territory that is enlarged under**
 17 **subdivision (2)(B) for the use of the wastewater treatment facility**
 18 **or water treatment facility) or subdivision (3) may not be**
 19 **considered a part of the municipality for purposes of annexing**
 20 **additional territory.**

21 (b) This subsection applies to municipalities in a county having a
 22 population of:

- 23 (1) more than seventy thousand fifty (70,050) but less than
 24 seventy-one thousand (71,000);
 25 (2) more than seventy-five thousand (75,000) but less than
 26 seventy-seven thousand (77,000);
 27 (3) more than seventy-one thousand (71,000) but less than
 28 seventy-five thousand (75,000);
 29 (4) more than forty-seven thousand (47,000) but less than
 30 forty-seven thousand five hundred (47,500);
 31 (5) more than thirty-eight thousand five hundred (38,500) but less
 32 than thirty-nine thousand (39,000);
 33 (6) more than thirty-seven thousand (37,000) but less than
 34 thirty-seven thousand one hundred twenty-five (37,125);
 35 (7) more than thirty-three thousand three hundred (33,300) but
 36 less than thirty-three thousand five hundred (33,500);
 37 (8) more than twenty-three thousand three hundred (23,300) but
 38 less than twenty-four thousand (24,000);
 39 (9) more than one hundred eighty-five thousand (185,000) but
 40 less than two hundred fifty thousand (250,000);
 41 (10) more than two hundred fifty thousand (250,000) but less than
 42 two hundred seventy thousand (270,000); or



- 1 (11) more than thirty-two thousand five hundred (32,500) but less
 2 than thirty-three thousand (33,000).
- 3 Except as provided in subsection (c), the legislative body of a
 4 municipality to which this subsection applies may, by ordinance, annex
 5 territory that is not contiguous to the municipality, has its entire area
 6 not more than two (2) miles from the municipality's boundary, is to be
 7 used for an industrial park containing one (1) or more businesses, and
 8 is either owned by the municipality or by a property owner who
 9 consents to the annexation. However, if territory annexed under this
 10 subsection is not used as an industrial park within five (5) years after
 11 the date of passage of the annexation ordinance, or if the territory
 12 ceases to be used as an industrial park for at least one (1) year, the
 13 territory reverts to the jurisdiction of the unit having jurisdiction before
 14 the annexation if the unit that had jurisdiction over the territory still
 15 exists. If the unit no longer exists, the territory reverts to the
 16 jurisdiction of the unit that would currently have jurisdiction over the
 17 territory if the annexation had not occurred. The clerk of the
 18 municipality shall notify the offices entitled to receive notice of a
 19 disannexation under section 19 of this chapter when the territory
 20 reverts to the jurisdiction of the unit having jurisdiction before the
 21 annexation.
- 22 (c) A city in a county with a population of more than two hundred
 23 fifty thousand (250,000) but less than two hundred seventy thousand
 24 (270,000) may not annex territory as prescribed in subsection (b) until
 25 the territory is zoned by the county for industrial purposes.
- 26 (d) Notwithstanding any other law, territory that is annexed under
 27 subsection (b) or (h) is not considered a part of the municipality for the
 28 purposes of:
- 29 (1) annexing additional territory:
- 30 (A) in a county that is not described by clause (B); or
 31 (B) in a county having a population of more than two hundred
 32 fifty thousand (250,000) but less than two hundred seventy
 33 thousand (270,000), unless the boundaries of the
 34 noncontiguous territory become contiguous to the city, as
 35 allowed by Indiana law;
- 36 (2) expanding the municipality's extraterritorial jurisdictional
 37 area; or
- 38 (3) changing an assigned service area under IC 8-1-2.3-6(1).
- 39 (e) As used in this section, "airport" and "landing field" have the
 40 meanings prescribed by IC 8-22-1.
- 41 (f) As used in this section, "hospital" has the meaning prescribed by
 42 IC 16-18-2-179(b).



1 (g) An ordinance adopted under this section must assign the
 2 territory annexed by the ordinance to at least one (1) municipal
 3 legislative body district.

4 (h) This subsection applies to a city having a population of more
 5 than twenty-nine thousand nine hundred (29,900) but less than
 6 thirty-one thousand (31,000). The city legislative body may, by
 7 ordinance, annex territory that:

8 (1) is not contiguous to the city;

9 (2) has its entire area not more than eight (8) miles from the city's
 10 boundary;

11 (3) does not extend more than:

12 (A) one and one-half (1 1/2) miles to the west;

13 (B) three-fourths (3/4) mile to the east;

14 (C) one-half (1/2) mile to the north; or

15 (D) one-half (1/2) mile to the south;

16 of an interchange of an interstate highway (as designated by the
 17 federal highway authorities) and a state highway (as designated
 18 by the state highway authorities); and

19 (4) is owned by the city or by a property owner that consents to
 20 the annexation.

21 SECTION 2. IC 36-7-4-205, AS AMENDED BY P.L.172-2011,
 22 SECTION 143, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2014]: Sec. 205. (a) ADVISORY. A municipal
 24 plan commission shall adopt a comprehensive plan, as provided for
 25 under the 500 series of the advisory planning law, for the development
 26 of the municipality. For comprehensive plans adopted after July 1,
 27 1999, if:

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

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

32 the municipal plan commission may provide in the comprehensive plan
 33 for the development of the contiguous unincorporated area, designated
 34 by the commission, that is outside the corporate boundaries of the
 35 municipality, and that, in the judgment of the commission, bears
 36 reasonable relation to the development of the municipality. For
 37 purposes of this section, participation of a municipality in a fire
 38 protection territory established under IC 36-8-19 that includes
 39 unincorporated areas contiguous to the municipality may not be treated
 40 as providing municipal services to the contiguous unincorporated areas.

41 (b) ADVISORY. Except as limited by the boundaries of
 42 unincorporated areas subject to the jurisdiction of other municipal plan



1 commissions, an area designated under this section may include any
 2 part of the contiguous unincorporated area within two (2) miles from
 3 the corporate boundaries of the municipality. ~~If~~ However, **the**
 4 **following applies to the designation of an area under this section:**

5 **(1) If** the corporate boundaries of the municipality or the
 6 boundaries of that contiguous unincorporated area include any
 7 part of the public waters or shoreline of a lake (which lies wholly
 8 within Indiana), the designated area may also include:

9 ~~(1)~~ **(A)** any part of those public waters and shoreline of the
 10 lake; and

11 ~~(2)~~ **(B)** any land area within two thousand five hundred (2,500)
 12 feet from that shoreline.

13 **(2) This subdivision applies to a municipality that annexes**
 14 **noncontiguous territory under IC 36-4-3-4(a)(2) or**
 15 **IC 36-4-3-4(a)(3). The boundaries of the noncontiguous**
 16 **territory (including territory that is enlarged under**
 17 **subdivision IC 36-4-3-4(a)(2)(B) for the use of the wastewater**
 18 **treatment facility or water treatment facility) may not be**
 19 **considered a part of the corporate boundaries of the**
 20 **municipality for purposes of designating an area under this**
 21 **section.**

22 (c) ADVISORY. Before exercising their rights, powers, and duties
 23 of the advisory planning law with respect to an area designated under
 24 this section, a municipal plan commission must file, with the recorder
 25 of the county in which the municipality is located, a description or map
 26 defining the limits of that area. If the commission revises the limits, it
 27 shall file, with the recorder, a revised description or map defining those
 28 revised limits.

29 (d) ADVISORY. If any part of the contiguous unincorporated area
 30 within the potential jurisdiction of a municipal plan commission is also
 31 within the potential jurisdiction of another municipal plan commission,
 32 the first municipal plan commission may exercise territorial jurisdiction
 33 over that part of the area within the potential jurisdiction of both
 34 municipal plan commissions that equals the product obtained by
 35 multiplying a fraction, the numerator of which is the area within the
 36 corporate boundaries of that municipality and the denominator of
 37 which is the total area within the corporate boundaries of both
 38 municipalities times the area within the potential jurisdiction of both
 39 municipal plan commissions. Furthermore, this commission may
 40 exercise territorial jurisdiction within those boundaries, enclosing an
 41 area reasonably compact and regular in shape, that the municipal plan
 42 commission first acting designates.



1 (e) ADVISORY. If the legislative body of a county adopts a
 2 comprehensive plan and ordinance covering the unincorporated areas
 3 of the county, a municipal plan commission may not exercise
 4 jurisdiction, as provided in this section, over any part of that
 5 unincorporated area unless it is authorized by ordinance of the
 6 legislative body of the county. This ordinance may be initiated by the
 7 county legislative body or by petition duly signed and presented to the
 8 county auditor by:

- 9 (1) not less than fifty (50) property owners residing in the area
 10 involved in the petition;
 11 (2) the county plan commission; or
 12 (3) the municipal plan commission.

13 Before final action on the ordinance by the county legislative body, the
 14 county plan commission must hold an advertised public hearing as
 15 required for other actions of the county plan commission under the
 16 advisory planning law. Upon the passage of the ordinance by the
 17 county legislative body and the subsequent acceptance of jurisdiction
 18 by the municipal plan commission, the municipal plan commission
 19 shall exercise the same rights, powers, and duties conferred in this
 20 section exclusively with respect to the contiguous unincorporated area.
 21 The jurisdiction of a municipal plan commission, as authorized under
 22 this subsection, may be terminated by ordinance at the discretion of the
 23 legislative body of the county, but only if the county has adopted a
 24 comprehensive plan for that area that is as comprehensive in scope and
 25 subject matter as that in effect by municipal ordinance.

26 (f) ADVISORY. Each municipal plan commission in a municipality
 27 located in a county having:

- 28 (1) a population of less than ninety-five thousand (95,000); and
 29 (2) a county plan commission that has adopted, in accord with the
 30 advisory planning law, a comprehensive plan and ordinance
 31 covering the unincorporated areas of the county;

32 may, at any time, after filing notice with the county recorder and the
 33 county plan commission, exercise or reject territorial jurisdiction over
 34 any part of the area within two (2) miles of the corporate boundaries of
 35 that municipality and within that county, whether or not that
 36 commission has previously exercised that jurisdiction, if the
 37 municipality is providing municipal services to the area. Within sixty
 38 (60) days after receipt of that notice, the county plan commission and
 39 the county legislative body shall have the county comprehensive plan
 40 and ordinance revised to reflect the decision of the municipal plan
 41 commission exercising the option provided for in this subsection. If the
 42 municipality is not providing municipal services to the area, the



- 1 municipal plan commission must obtain the approval of the county
2 legislative body of each affected county before exercising jurisdiction.
- 3 (g) AREA. Wherever in the area planning law authority is conferred
4 to establish a comprehensive plan or an ordinance for its enforcement,
5 the authority applies everywhere:
- 6 (1) within the county that is outside the municipalities; and
7 (2) within each participating municipality.
- 8 (h) ADVISORY—AREA. Whenever a new town is incorporated in
9 a county having a county plan commission or an area plan commission,
10 that plan commission and its board of zoning appeals shall continue to
11 exercise territorial jurisdiction within the town until the effective date
12 of a town ordinance:
- 13 (1) establishing an advisory plan commission under section
14 202(a) of this chapter; or
15 (2) adopting the area planning law under section 202(b) or 204 of
16 this chapter.
- 17 Beginning on that effective date, the planning and zoning functions of
18 the town shall be exercised under the advisory planning law or area
19 planning law, as the case may be.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1099, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1099 as introduced.)

Committee Vote: Yeas 11, Nays 0

Representative Neese

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1099 be amended to read as follows:

Page 1, line 7, delete ":" and insert "**as either of the following:**".

Page 1, line 8, after "(A)" insert "**An**".

Page 1, line 8, delete "; or" and insert ".".

Page 1, line 9, after "(B)" insert "**A**".

Page 1, line 10, after "facility." insert "**After a municipality annexes territory under this clause, the municipality may annex additional territory to enlarge the territory for the use of the wastewater treatment facility or water treatment facility only if the county legislative body approves that use of the additional territory by ordinance.**".

Page 1, line 14, beginning with "However," begin a new line blocked left.

Page 1, line 14, strike "this subsection" and insert "**subdivision (2) or (3)**".

Page 1, line 15, strike "as a municipally owned or regulated sanitary landfill, golf".

Page 1, line 16, strike "course, or hospital" and insert "**for the purpose for which the territory was annexed**".

Page 2, line 9, after "annexation." insert "**Territory that is annexed under subdivision (2) (including territory that is enlarged under subdivision (2)(B) for the use of the wastewater treatment facility or water treatment facility) or subdivision (3) may not be considered a part of the municipality for purposes of annexing additional territory.**".

Page 4, after line 9, begin a new paragraph and insert:



"SECTION 2. IC 36-7-4-205, AS AMENDED BY P.L.172-2011, SECTION 143, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 205. (a) ADVISORY. A municipal plan commission shall adopt a comprehensive plan, as provided for under the 500 series of the advisory planning law, for the development of the municipality. For comprehensive plans adopted after July 1, 1999, if:

- (1) the municipality provides municipal services to the contiguous unincorporated area; or
- (2) the municipal plan commission obtains the approval of the county legislative body of each affected county;

the municipal plan commission may provide in the comprehensive plan for the development of the contiguous unincorporated area, designated by the commission, that is outside the corporate boundaries of the municipality, and that, in the judgment of the commission, bears reasonable relation to the development of the municipality. For purposes of this section, participation of a municipality in a fire protection territory established under IC 36-8-19 that includes unincorporated areas contiguous to the municipality may not be treated as providing municipal services to the contiguous unincorporated areas.

(b) ADVISORY. Except as limited by the boundaries of unincorporated areas subject to the jurisdiction of other municipal plan commissions, an area designated under this section may include any part of the contiguous unincorporated area within two (2) miles from the corporate boundaries of the municipality. ~~It~~ However, **the following applies to the designation of an area under this section:**

(1) If the corporate boundaries of the municipality or the boundaries of that contiguous unincorporated area include any part of the public waters or shoreline of a lake (which lies wholly within Indiana), the designated area may also include:

- ~~(1)~~ **(A)** any part of those public waters and shoreline of the lake; and
- ~~(2)~~ **(B)** any land area within two thousand five hundred (2,500) feet from that shoreline.

(2) This subdivision applies to a municipality that annexes noncontiguous territory under IC 36-4-3-4(a)(2) or IC 36-4-3-4(a)(3). The boundaries of the noncontiguous territory (including territory that is enlarged under subdivision IC 36-4-3-4(a)(2)(B) for the use of the wastewater treatment facility or water treatment facility) may not be considered a part of the corporate boundaries of the municipality for purposes of designating an area under this



section.

(c) **ADVISORY.** Before exercising their rights, powers, and duties of the advisory planning law with respect to an area designated under this section, a municipal plan commission must file, with the recorder of the county in which the municipality is located, a description or map defining the limits of that area. If the commission revises the limits, it shall file, with the recorder, a revised description or map defining those revised limits.

(d) **ADVISORY.** If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also within the potential jurisdiction of another municipal plan commission, the first municipal plan commission may exercise territorial jurisdiction over that part of the area within the potential jurisdiction of both municipal plan commissions that equals the product obtained by multiplying a fraction, the numerator of which is the area within the corporate boundaries of that municipality and the denominator of which is the total area within the corporate boundaries of both municipalities times the area within the potential jurisdiction of both municipal plan commissions. Furthermore, this commission may exercise territorial jurisdiction within those boundaries, enclosing an area reasonably compact and regular in shape, that the municipal plan commission first acting designates.

(e) **ADVISORY.** If the legislative body of a county adopts a comprehensive plan and ordinance covering the unincorporated areas of the county, a municipal plan commission may not exercise jurisdiction, as provided in this section, over any part of that unincorporated area unless it is authorized by ordinance of the legislative body of the county. This ordinance may be initiated by the county legislative body or by petition duly signed and presented to the county auditor by:

- (1) not less than fifty (50) property owners residing in the area involved in the petition;
- (2) the county plan commission; or
- (3) the municipal plan commission.

Before final action on the ordinance by the county legislative body, the county plan commission must hold an advertised public hearing as required for other actions of the county plan commission under the advisory planning law. Upon the passage of the ordinance by the county legislative body and the subsequent acceptance of jurisdiction by the municipal plan commission, the municipal plan commission shall exercise the same rights, powers, and duties conferred in this section exclusively with respect to the contiguous unincorporated area.



The jurisdiction of a municipal plan commission, as authorized under this subsection, may be terminated by ordinance at the discretion of the legislative body of the county, but only if the county has adopted a comprehensive plan for that area that is as comprehensive in scope and subject matter as that in effect by municipal ordinance.

(f) **ADVISORY.** Each municipal plan commission in a municipality located in a county having:

- (1) a population of less than ninety-five thousand (95,000); and
- (2) a county plan commission that has adopted, in accord with the advisory planning law, a comprehensive plan and ordinance covering the unincorporated areas of the county;

may, at any time, after filing notice with the county recorder and the county plan commission, exercise or reject territorial jurisdiction over any part of the area within two (2) miles of the corporate boundaries of that municipality and within that county, whether or not that commission has previously exercised that jurisdiction, if the municipality is providing municipal services to the area. Within sixty (60) days after receipt of that notice, the county plan commission and the county legislative body shall have the county comprehensive plan and ordinance revised to reflect the decision of the municipal plan commission exercising the option provided for in this subsection. If the municipality is not providing municipal services to the area, the municipal plan commission must obtain the approval of the county legislative body of each affected county before exercising jurisdiction.

(g) **AREA.** Wherever in the area planning law authority is conferred to establish a comprehensive plan or an ordinance for its enforcement, the authority applies everywhere:

- (1) within the county that is outside the municipalities; and
- (2) within each participating municipality.

(h) **ADVISORY—AREA.** Whenever a new town is incorporated in a county having a county plan commission or an area plan commission, that plan commission and its board of zoning appeals shall continue to exercise territorial jurisdiction within the town until the effective date of a town ordinance:

- (1) establishing an advisory plan commission under section 202(a) of this chapter; or
- (2) adopting the area planning law under section 202(b) or 204 of this chapter.



Beginning on that effective date, the planning and zoning functions of the town shall be exercised under the advisory planning law or area planning law, as the case may be."

Renumber all SECTIONS consecutively.

(Reference is to HB 1099 as printed January 24, 2014.)

NIEMEYER

