



February 1, 2019

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## HOUSE BILL No. 1128

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DIGEST OF HB 1128 (Updated January 31, 2019 10:52 am - DI 129)

**Citations Affected:** IC 36-7.

**Synopsis:** Construction permits. Provides that a local unit may not require, as a condition precedent to granting, issuing, or approving certain permits for any Class 1 or Class 2 structures, completion of work upon which the performance bond or other surety was obtained prior to recording the secondary plat. Provides that a local unit may not require, as a condition precedent to granting, issuing, or approving a certificate of occupancy for any Class 1 or Class 2 structure, the completion of work upon which the performance bond or other surety was obtained prior to recording the secondary plat, unless required under certain state building laws or another law to meet a local unit's basic needs for public health and safety. Requires a local governmental agency to issue certain permits to a person not later than 12 business days after the person has filed a completed application and meets all required conditions, in certain instances.

**Effective:** July 1, 2019.

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**Miller D, Moed**

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January 7, 2019, read first time and referred to Committee on Local Government.  
January 31, 2019, amended, reported — Do Pass.

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HB 1128—LS 6943/DI 132





February 1, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1128

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 36-7-4-709, AS AMENDED BY P.L.135-2017,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 709. (a) Secondary approval under section 710 of  
4 this chapter may be granted to a plat for a subdivision in which the  
5 improvements and installations have not been completed as required  
6 by the subdivision control ordinance, if:  
7 (1) the applicant provides a bond, or other proof of financial  
8 responsibility as prescribed by the legislative body in the  
9 subdivision control ordinance, that:  
10 (A) is an amount determined by the plan commission or plat  
11 committee to be sufficient to complete the improvements and  
12 installations in compliance with the ordinance; and  
13 (B) provides surety satisfactory to the plan commission or plat  
14 committee; or  
15 (2) with respect to the installation or extension of water, sewer, or  
16 other utility service:  
17 (A) the applicant shows by written evidence that it has entered

HB 1128—LS 6943/DI 132



1 into a contract with the political subdivision or utility  
2 providing the service; and

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

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

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

19 (d) As used in this section, "land developer" has the meaning set  
20 forth in IC 6-1.1-4-12(a).

21 (e) As used in this section, "under development" means a situation  
22 with respect to land in which a primary plat has been filed and  
23 approved and work has commenced to make substantive physical  
24 improvements to the land, excluding any work performed for the  
25 purpose of preparing the land.

26 (f) Notwithstanding subsection (a), a local unit may not adopt or  
27 enforce an ordinance, rule, or other policy requiring a land developer  
28 of Class 1 or Class 2 structures to do any of the following:

29 (1) Obtain a performance bond or other surety before the date on  
30 which the land developer records an approved secondary plat.  
31 However, a local unit may require the land developer to obtain a  
32 performance bond or other surety before an approved secondary  
33 plat is recorded if the area under development is:

34 (A) within the existing public right-of-way; or  
35 (B) related to erosion control.

36 (2) Obtain a maintenance bond that has an effective period greater  
37 than three (3) years.

38 (g) After a secondary plat is approved, a local unit may require, as  
39 a condition precedent to recording the secondary plat, that the land  
40 developer obtain a performance bond or other surety for any  
41 incomplete or unfinished streets, sanitary piping, storm water piping  
42 systems, water mains, sidewalks and ornamental landscaping in



- 1 common areas, and erosion control that:  
 2 (1) are:  
 3 (A) in the approved development; or  
 4 (B) required to service the approved development; and  
 5 (2) are included within:  
 6 (A) the legal description of the recorded plat; or  
 7 (B) a section in the legal description of the recorded plat;  
 8 identified in the land developer's secondary plat filing.  
 9 (h) Any ordinance, rule, or policy requiring a land developer to  
 10 obtain a performance bond or other surety under subsection (g) must  
 11 include a provision for:  
 12 (1) the release of a performance bond or other surety upon  
 13 completion to the satisfaction of the local unit of the subject  
 14 matter upon which the performance bond or other surety was  
 15 obtained; and  
 16 (2) the partial release of the performance bond or other surety on  
 17 an annual or on a more frequent basis in accordance with a partial  
 18 release schedule agreed to in a signed writing by:  
 19 (A) the local unit, or the local unit's designated official or  
 20 body; and  
 21 (B) the land developer or the land developer's designated  
 22 agent;  
 23 before or during development.  
 24 (i) A performance bond or other surety requirement under  
 25 subsection (f)(1) or subsection (g):  
 26 (1) must be based on a value provided for in an engineer's  
 27 estimate or an actual contract amount, if available, to complete:  
 28 (A) the portion of the area or improvement of the project; or  
 29 (B) the designated section in the project;  
 30 being bonded;  
 31 (2) may be based on an amount in excess of the full value of the  
 32 engineer's estimate or actual contract amount, as appropriate,  
 33 provided that any excess amount is based upon a reasonable  
 34 adjustment for the estimated cost of inflation of materials and  
 35 labor encompassed within the subject matter of the performance  
 36 bond or other surety; and  
 37 (3) may not include any land that is not under development at the  
 38 time the bond or other surety is required, such as sections of  
 39 adjacent or contiguous land that remain undeveloped, except to  
 40 the extent that the land not then under development is used to  
 41 access the site or provide utilities or other necessary services to  
 42 the land that is under development.



1           **(j) A local unit may not require, as a condition precedent to**  
 2 **granting, issuing, or approving for any Class 1 or Class 2**  
 3 **structures:**

- 4           **(1) a building permit;**  
 5           **(2) an improvement location permit; or**  
 6           **(3) a structural building permit;**

7 **the completion of the subject matter upon which the performance**  
 8 **bond or other surety was obtained under subsection (g).**

9           **(k) This subsection applies to a local unit's grant, issuance, or**  
 10 **approval of a certificate of occupancy. A local unit may not**  
 11 **require, as a condition precedent to granting, issuing, or approving**  
 12 **a certificate of occupancy for any Class 1 or Class 2 structure, the**  
 13 **completion of the subject matter upon which the performance**  
 14 **bond or other surety was obtained under subsection (g), unless**  
 15 **required under:**

- 16           **(1) IC 22-12;**  
 17           **(2) IC 22-13;**  
 18           **(3) IC 22-15; or**  
 19           **(4) another law;**

20 **to meet a local unit's basic needs for public health and safety.**

21           SECTION 2. IC 36-7-4-1109, AS AMENDED BY P.L.211-2017,  
 22 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2019]: Sec. 1109. (a) As used in this section, "local  
 24 governmental agency" includes any agency, officer, board, or  
 25 commission of a local unit of government that may issue:

- 26           (1) a permit; or  
 27           (2) an approval of a land use or an approval for the construction  
 28           of a development, a building, or another structure.  
 29           (b) As used in this section, "permit" means any of the following:  
 30           (1) An improvement location permit.  
 31           (2) A building permit.  
 32           (3) A certificate of occupancy.  
 33           (4) Approval of a site-specific development plan.  
 34           (5) Approval of a primary or secondary plat.  
 35           (6) Approval of a contingent use, conditional use, special  
 36           exception or special use.  
 37           (7) Approval of a planned unit development.

38           (c) If a person files a complete application as required by the  
 39           effective ordinances or rules of a local unit of government or a local  
 40           governmental agency for a permit with the appropriate local  
 41           governmental agency, the granting of the permit, and the granting of  
 42           any secondary, additional, or related permits or approvals required



1 from the same local governmental agency with respect to the general  
2 subject matter of the application for the first permit, are governed for  
3 at least three (3) years after the person applies for the permit by the  
4 statutes, ordinances, rules, development standards, and regulations in  
5 effect and applicable to the property when the application is filed, even  
6 if before the issuance of the permit or while the permit approval  
7 process is pending, or before the issuance of any secondary, additional,  
8 or related permits or approvals or while the secondary, additional, or  
9 related permit or approval process is pending, the statutes, ordinances,  
10 rules, development standards, or regulations governing the granting of  
11 the permit or approval are changed by the general assembly or the  
12 applicable local legislative body or regulatory body, regardless of  
13 whether such changes in the statutes, ordinances, rules, development  
14 standards, or regulations are part of a zoning ordinance, a subdivision  
15 control ordinance, or a statute, ordinance, or regulation that is based on  
16 the general police powers of the local unit of government. However,  
17 this subsection does not apply if the development or other activity to  
18 which the permit relates is not completed within ten (10) years after the  
19 development or activity is commenced.

20 (d) Subsection (e) applies if:

21 (1) either:

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

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

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

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

36 (e) Subject to subsection (f), if the conditions of subsection (d) are  
37 satisfied:

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

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



1 governmental agency;  
 2 is governed for at least three (3) years after the person applies for the  
 3 permit by the statutes, ordinances, rules, development standards,  
 4 regulations, and approvals in effect and applicable to the property when  
 5 the person applies for the permit or requests approval from the state  
 6 governmental agency for the construction of the development, building,  
 7 or structure, even if before the commencement of the construction or  
 8 while the permit application or approval request is pending with the  
 9 state governmental agency the statutes governing the granting of the  
 10 permit or approval from the local governmental agency are changed by  
 11 the general assembly or the ordinances, rules, development standards,  
 12 or regulations of the local unit of government or the local governmental  
 13 agency are changed by the applicable local legislative body or  
 14 regulatory body, regardless of whether such changes in the statutes,  
 15 ordinances, rules, development standards, or regulations are part of a  
 16 zoning ordinance, a subdivision control ordinance, or a statute,  
 17 ordinance, or regulation that is based on the general police powers of  
 18 the local unit of government. However, this subsection does not apply  
 19 if the development or other activity to which the permit or approval  
 20 request relates is not completed within ten (10) years after the  
 21 development or activity is commenced.

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

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

27 (h) The following provision is considered to be included in any  
 28 regulation adopted under section 601(d)(2)(B) of this chapter that sets  
 29 forth requirements for signs:

30 "The owner of any sign that is otherwise allowed by this  
 31 regulation may substitute noncommercial copy in place of any  
 32 other commercial or noncommercial copy. This substitution of  
 33 copy may be made without the issuance of any additional permit  
 34 by a local government agency. The purpose of this provision is to  
 35 prevent any inadvertent favoring of commercial speech over  
 36 noncommercial speech, or the favoring of any particular  
 37 noncommercial message over any other noncommercial message.

38 This provision prevails over any more specific provision in this  
 39 regulation to the contrary."

40 **(i) Notwithstanding any other law, a local governmental agency**  
 41 **must, not later than twelve (12) business days after a person has**  
 42 **filed a complete application for a permit for which approval is**





1 ministerial under IC 36-7-4-402 or an improvement location  
2 permit issued under the 800 series of this chapter and meets all  
3 conditions required under this chapter and any other statute, issue  
4 the permit to the person.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1128, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 5, after "permit;" insert "**or**".

Page 4, delete line 6.

Page 4, line 7, delete "(4)" and insert "**(3)**".

Page 4, between lines 9 and 10, begin a new paragraph and insert:

**"(k) This subsection applies to a local unit's grant, issuance, or approval of a certificate of occupancy. A local unit may not require, as a condition precedent to granting, issuing, or approving a certificate of occupancy for any Class 1 or Class 2 structure, the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g), unless required under:**

**(1) IC 22-12;**

**(2) IC 22-13;**

**(3) IC 22-15; or**

**(4) another law;**

**to meet a local unit's basic needs for public health and safety."**

Page 6, line 30, delete "ten (10)" and insert "**twelve (12)**".

Page 6, line 31, delete "as required under subsection (c)" and insert "**for a permit for which approval is ministerial under IC 36-7-4-402 or an improvement location permit issued under the 800 series of this chapter**".

and when so amended that said bill do pass.

(Reference is to HB 1128 as introduced.)

ZENT

Committee Vote: yeas 11, nays 0.

