

HOUSE BILL No. 1260

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-1-3; IC 36-7-5.3.

Synopsis: Local referenda for wind power devices. Provides that after June 30, 2019, a unit may not authorize, or establish requirements for, the installation or siting of wind power devices in the unit unless the voters of the unit have approved the installation or siting of wind power devices in the unit through a local public question. Provides that a regulation that: (1) is adopted or amended by a unit after June 30, 2019; and (2) authorizes, or establishes requirements for, the installation or siting of wind power devices in the unit; does not take effect unless this condition is met. Sets forth procedures for conducting a local public question concerning the installation or siting of wind power devices in a unit.

Effective: July 1, 2019.

Saunders

January 10, 2019, read first time and referred to Committee on Utilities, Energy and Telecommunications.



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. 1260

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 36-1-3-8, AS AMENDED BY P.L.189-2016,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 8. (a) Subject to subsection (b), a unit does not
4 have the following:

- 5 (1) The power to condition or limit its civil liability, except as
6 expressly granted by statute.
- 7 (2) The power to prescribe the law governing civil actions
8 between private persons.
- 9 (3) The power to impose duties on another political subdivision,
10 except as expressly granted by statute.
- 11 (4) The power to impose a tax, except as expressly granted by
12 statute.
- 13 (5) The power to impose a license fee greater than that reasonably
14 related to the administrative cost of exercising a regulatory power.
- 15 (6) The power to impose a service charge or user fee greater than
16 that reasonably related to reasonable and just rates and charges
17 for services.



- 1 (7) The power to regulate conduct that is regulated by a state
 2 agency, except as expressly granted by statute.
 3 (8) The power to prescribe a penalty for conduct constituting a
 4 crime or infraction under statute.
 5 (9) The power to prescribe a penalty of imprisonment for an
 6 ordinance violation.
 7 (10) The power to prescribe a penalty of a fine as follows:
 8 (A) More than ten thousand dollars (\$10,000) for the violation
 9 of an ordinance or a regulation concerning air emissions
 10 adopted by a county that has received approval to establish an
 11 air permit program under IC 13-17-12-6.
 12 (B) For a violation of any other ordinance:
 13 (i) more than two thousand five hundred dollars (\$2,500) for
 14 a first violation of the ordinance; and
 15 (ii) except as provided in subsection (c), more than seven
 16 thousand five hundred dollars (\$7,500) for a second or
 17 subsequent violation of the ordinance.
 18 (11) The power to invest money, except as expressly granted by
 19 statute.
 20 (12) The power to order or conduct an election, except as
 21 expressly granted by statute.
 22 (13) The power to adopt or enforce an ordinance described in
 23 section 8.5 of this chapter.
 24 (14) The power to take any action prohibited by section 8.6 of this
 25 chapter.
 26 **(15) The power to take any action prohibited by section 8.7 of**
 27 **this chapter.**
 28 ~~(15)~~ **(16)** The power to dissolve a political subdivision, except:
 29 (A) as expressly granted by statute; or
 30 (B) if IC 36-1-8-17.7 applies to the political subdivision, in
 31 accordance with the procedure set forth in IC 36-1-8-17.7.
 32 (b) A township does not have the following, except as expressly
 33 granted by statute:
 34 (1) The power to require a license or impose a license fee.
 35 (2) The power to impose a service charge or user fee.
 36 (3) The power to prescribe a penalty.
 37 (c) Subsection (a)(10)(B)(ii) does not apply to the violation of an
 38 ordinance that regulates traffic or parking.
 39 SECTION 2. IC 36-1-3-8.7 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2019]: **Sec. 8.7. (a) As used in this section, "regulation" refers to**
 42 **any ordinance or regulation, including any:**



1 (1) zoning or land use ordinance or regulation; or
 2 (2) general or specific planning ordinance or regulation;
 3 adopted by a unit.

4 (b) As used in this section, "wind power device" means a device,
 5 including a windmill or a wind turbine, that is designed to use the
 6 kinetic energy of moving air to provide mechanical energy or to
 7 produce electricity.

8 (c) Except as provided in subsection (e), after June 30, 2019, a
 9 unit may not authorize, or establish requirements for, the
 10 installation or siting of one (1) or more wind power devices in the
 11 unit unless the voters of the unit have approved the installation or
 12 siting of wind power devices in the unit through a local public
 13 question as set forth in IC 36-7-5.3.

14 (d) Except as provided in subsection (e), a regulation that is
 15 adopted by a unit after June 30, 2019, and that authorizes, or
 16 establishes requirements for, the installation or siting of one (1) or
 17 more wind power devices in the unit does not take effect unless the
 18 voters of the unit have approved the installation or siting of wind
 19 power devices in the unit through a local public question as set
 20 forth in IC 36-7-5.3. This subsection applies to a regulation that is
 21 adopted by a unit before July 1, 2019, and amended by the unit
 22 after June 30, 2019, to authorize, or establish requirements for, the
 23 installation or siting of one (1) or more wind power devices in the
 24 unit.

25 (e) Subsections (c) and (d) do not apply with respect to the
 26 installation or siting of a wind power device by an individual on the
 27 individual's premises for the purpose of generating electricity to
 28 meet or offset all or part of the need for electricity on the premises,
 29 whether through participation in a net metering program or
 30 otherwise.

31 SECTION 3. IC 36-7-5.3 IS ADDED TO THE INDIANA CODE
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2019]:

34 **Chapter 5.3. Siting of Wind Power Devices**

35 **Sec. 1. (a) This chapter applies to the following:**

36 (1) The exercising by any unit of zoning, land use, planning, or
 37 permitting authority as authorized by this article, or by any
 38 other law, with respect to the installation or siting of wind
 39 power devices within the unit after June 30, 2019.

40 (2) A proposal for the installation or siting of one (1) or more
 41 wind power devices in a unit that is considered by the unit,
 42 whether under a regulation of the unit or otherwise, after



1 **June 30, 2019.**

2 **(b) This chapter does not apply to the installation or siting of a**
 3 **wind power device by an individual on the individual's premises**
 4 **for the purpose of generating electricity to meet or offset all or part**
 5 **of the need for electricity on the premises, whether through**
 6 **participation in a net metering program or otherwise.**

7 **Sec. 2. As used in this chapter, "regulation" refers to any**
 8 **ordinance or regulation, including any:**

9 **(1) zoning or land use ordinance or regulation; or**

10 **(2) general or specific planning ordinance or regulation;**
 11 **adopted by a unit.**

12 **Sec. 3. As used in this chapter, "wind power device" means a**
 13 **device, including a windmill or a wind turbine, that is designed to**
 14 **use the kinetic energy of moving air to provide mechanical energy**
 15 **or to produce electricity.**

16 **Sec. 4. A regulation that is adopted by a unit after June 30, 2019,**
 17 **and that authorizes, or establishes requirements for, the**
 18 **installation or siting of one (1) or more wind power devices in the**
 19 **unit does not take effect unless the installation or siting of wind**
 20 **power devices in the unit is approved by voters of the unit in a local**
 21 **public question on the ballot of the next primary or general**
 22 **election. This section applies to a regulation that is adopted by a**
 23 **unit before July 1, 2019, and amended by the unit after June 30,**
 24 **2019, to authorize, or establish requirements for, the installation or**
 25 **siting of one (1) or more wind power devices in the unit.**

26 **Sec. 5. A local public question under this chapter shall be placed**
 27 **on the ballot in substantially the following form:**

28 **"Shall wind power devices be permitted in _____ (insert**
 29 **description of the proposed location of wind power devices**
 30 **within the unit) in _____ (insert name of unit)?"**

31 **Sec. 6. IC 3, except where inconsistent with this chapter, applies**
 32 **to a local public question placed on the ballot under this chapter.**
 33 **A local public question under this chapter must be certified in**
 34 **accordance with IC 3-10-9-3 and shall be placed on the ballot in**
 35 **accordance with IC 3-10-9.**

36 **Sec. 7. The circuit court clerk of a county holding an election**
 37 **under this chapter shall certify the results determined under**
 38 **IC 3-12-4-9.**

39 **Sec. 8. (a) If a majority of the voters of a unit who vote on a**
 40 **local public question under this chapter vote in favor of the local**
 41 **public question, the regulation or amended regulation is effective**
 42 **on the later of the following:**



- 1 **(1) The date the vote is determined to be final.**
2 **(2) The effective date specified in the regulation.**
3 **(b) If a majority of the voters of the unit who vote on the local**
4 **public question do not vote in favor of installing or siting wind**
5 **power devices under this chapter, a second local public question**
6 **under this chapter may not be held in the unit for at least two (2)**
7 **years. If the voters of the unit vote to reject the installation or**
8 **siting of wind power devices a second time, a third or subsequent**
9 **local public question under this chapter may not be held in the unit**
10 **until the general election held during the fifth year following the**
11 **year that the previous local public question was placed on the**
12 **ballot.**

