

HOUSE BILL No. 1531

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7.

Synopsis: Local regulation of natural resource development. Provides that a municipal plan commission's inclusion in a comprehensive development plan of an unincorporated area within two miles of the corporate boundaries of the municipality does not authorize the municipal plan commission or a board of zoning appeals to regulate: (1) the sale or removal of merchantable timber; or (2) the extraction of mineral resources; on private property located in the unincorporated area. Provides, for purposes of a local planning and zoning law stating that a plan commission is not authorized to prevent the use and alienation of mineral resources or forests outside of urban areas, that an area in which there are at least 20 residences within a quarter mile square (instead of eight residences within a quarter mile square) is an "urban area." Prohibits a county, city, town, or township from regulating the sale or removal of merchantable timber on private property. Provides that a county, city, town, or township may charge a fee to a person who removes merchantable timber from private property, but provides that the fee may not exceed the fee that the unit charges in connection with a road cut or other access to a highway for purposes of new commercial construction. Provides that a county, city, town, or township may require a person who removes merchantable timber from private property to post a bond, but provides that the amount of the bond may not exceed the amount of the bond that the unit requires in connection with a road cut or other access to a highway for purposes of new commercial construction. Prohibits a county or municipality from regulating the extraction of mineral resources on private property located outside the corporate boundaries of a municipality.

Effective: Upon passage.

Ellington

January 17, 2019, read first time and referred to Committee on Local Government.



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. 1531

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 36-7-2-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 6. **Except as provided in**
3 **IC 36-7-4-205(b)(3) and IC 36-7-40-2**, a unit may regulate
4 excavation, mining, drilling, and other movement or removal of earth
5 below ground level.

6 SECTION 2. IC 36-7-4-205, AS AMENDED BY P.L.207-2014,
7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 UPON PASSAGE]: Sec. 205. (a) ADVISORY. A municipal plan
9 commission shall adopt a comprehensive plan, as provided for under
10 the 500 series of the advisory planning law, for the development of the
11 municipality. For comprehensive plans adopted after July 1, 1999, if:
12 (1) the municipality provides municipal services to the contiguous
13 unincorporated area; or
14 (2) the municipal plan commission obtains the approval of the
15 county legislative body of each affected county;
16 the municipal plan commission may provide in the comprehensive plan
17 for the development of the contiguous unincorporated area, designated



1 by the commission, that is outside the corporate boundaries of the
 2 municipality, and that, in the judgment of the commission, bears
 3 reasonable relation to the development of the municipality. For
 4 purposes of this section, participation of a municipality in a fire
 5 protection territory established under IC 36-8-19 that includes
 6 unincorporated areas contiguous to the municipality may not be treated
 7 as providing municipal services to the contiguous unincorporated areas.

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

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

18 (A) any part of those public waters and shoreline of the lake;
 19 and

20 (B) any land area within two thousand five hundred (2,500)
 21 feet from that shoreline.

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

30 **(3) The designation of a contiguous unincorporated area**
 31 **outside the corporate boundaries of a municipality under this**
 32 **section does not authorize the municipal plan commission or**
 33 **a board of zoning appeals to regulate:**

34 **(A) the sale or removal of merchantable timber; or**

35 **(B) the extraction of mineral resources;**

36 **on private property located in the unincorporated area.**

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



- 1 revised limits.
- 2 (d) ADVISORY. If any part of the contiguous unincorporated area
3 within the potential jurisdiction of a municipal plan commission is also
4 within the potential jurisdiction of another municipal plan commission,
5 the first municipal plan commission may exercise territorial jurisdiction
6 over that part of the area within the potential jurisdiction of both
7 municipal plan commissions that equals the product obtained by
8 multiplying a fraction, the numerator of which is the area within the
9 corporate boundaries of that municipality and the denominator of
10 which is the total area within the corporate boundaries of both
11 municipalities times the area within the potential jurisdiction of both
12 municipal plan commissions. Furthermore, this commission may
13 exercise territorial jurisdiction within those boundaries, enclosing an
14 area reasonably compact and regular in shape, that the municipal plan
15 commission first acting designates.
- 16 (e) ADVISORY. If the legislative body of a county adopts a
17 comprehensive plan and ordinance covering the unincorporated areas
18 of the county, a municipal plan commission may not exercise
19 jurisdiction, as provided in this section, over any part of that
20 unincorporated area unless it is authorized by ordinance of the
21 legislative body of the county. This ordinance may be initiated by the
22 county legislative body or by petition duly signed and presented to the
23 county auditor by:
- 24 (1) not less than fifty (50) property owners residing in the area
25 involved in the petition;
 - 26 (2) the county plan commission; or
 - 27 (3) the municipal plan commission.
- 28 Before final action on the ordinance by the county legislative body, the
29 county plan commission must hold an advertised public hearing as
30 required for other actions of the county plan commission under the
31 advisory planning law. Upon the passage of the ordinance by the
32 county legislative body and the subsequent acceptance of jurisdiction
33 by the municipal plan commission, the municipal plan commission
34 shall exercise the same rights, powers, and duties conferred in this
35 section exclusively with respect to the contiguous unincorporated area.
36 The jurisdiction of a municipal plan commission, as authorized under
37 this subsection, may be terminated by ordinance at the discretion of the
38 legislative body of the county, but only if the county has adopted a
39 comprehensive plan for that area that is as comprehensive in scope and
40 subject matter as that in effect by municipal ordinance.
- 41 (f) ADVISORY. Each municipal plan commission in a municipality
42 located in a county having:



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

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

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

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

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

- 28 (1) establishing an advisory plan commission under section
 29 202(a) of this chapter; or
 30 (2) adopting the area planning law under section 202(b) or 204 of
 31 this chapter.

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

35 SECTION 3. IC 36-7-4-1103, AS AMENDED BY P.L.119-2012,
 36 SECTION 195, IS AMENDED TO READ AS FOLLOWS
 37 [EFFECTIVE UPON PASSAGE]: Sec. 1103. (a) This section does not
 38 apply to a plan commission exercising jurisdiction in a county having
 39 a population of more than twenty thousand nine hundred (20,900) but
 40 less than twenty-one thousand (21,000).

41 (b) ADVISORY—AREA. For purposes of this section, urban areas
 42 include all lands and lots within the corporate boundaries of a



1 municipality, any other lands or lots used for residential purposes
 2 where there are at least ~~eight (8)~~ **twenty (20)** residences within any
 3 quarter mile square area, and other lands or lots that have been or are
 4 planned for residential areas contiguous to the municipality.

5 (c) ADVISORY—AREA. This chapter does not authorize an
 6 ordinance or action of a:

- 7 (1) plan commission; or
- 8 (2) **board of zoning appeals;**

9 that would prevent, outside of urban areas, **including flood plains**, the
 10 complete use and alienation of any mineral resources or forests by the
 11 owner or alienee of them.

12 SECTION 4. IC 36-7-39 IS ADDED TO THE INDIANA CODE AS
 13 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 14 PASSAGE]:

15 **Chapter 39. Regulating the Removal of Timber on Private**
 16 **Property**

17 **Sec. 1. As used in this chapter, "merchantable timber" has the**
 18 **meaning set forth in IC 14-23-4-2.**

19 **Sec. 2. Except as provided in section 3 of this chapter, a unit**
 20 **may not regulate the sale or removal of merchantable timber on**
 21 **private property.**

22 **Sec. 3. (a) Section 2 of this chapter does not prohibit a unit from**
 23 **enforcing an ordinance or resolution concerning:**

- 24 (1) the use of a road, including vehicle weight limits; or
- 25 (2) damage to a road;

26 **located in the unit.**

27 **(b) If an ordinance or resolution of a unit requires a person**
 28 **who:**

- 29 (1) sells merchantable timber growing on; or
- 30 (2) removes merchantable timber from;

31 **private property to obtain a permit for a road cut or other access**
 32 **to a road located in the unit, the unit shall issue a permit to the**
 33 **person upon receipt of the person's completed application and the**
 34 **person's payment of any permit fee.**

35 **Sec. 4. (a) This section applies to a person who:**

- 36 (1) sells merchantable timber growing on; or
- 37 (2) removes merchantable timber from;

38 **private property.**

39 **(b) A unit may, in connection with a road cut or other access to**
 40 **a highway, charge a fee to a person described in subsection (a).**
 41 **However, the fee charged to a person described in subsection (a)**
 42 **may not exceed the fee that the unit charges a person in connection**



1 with a road cut or other access to a highway for purposes of new
2 commercial construction.

3 (c) A unit may, in connection with a road cut or other access to
4 a highway, require a person described in subsection (a) to post a
5 bond. However, the amount of the bond that a person described in
6 subsection (a) is required to post may not exceed the amount of the
7 bond that the unit requires a person to post in connection with a
8 road cut or other access to a highway for purposes of new
9 commercial construction.

10 SECTION 5. IC 36-7-40 IS ADDED TO THE INDIANA CODE AS
11 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
12 PASSAGE]:

13 **Chapter 40. Regulating the Extraction of Mineral Resources**

14 **Sec. 1. Nothing in this chapter may be construed to affect an**
15 **ordinance of a municipality that pertains to designating an area as**
16 **a flood plain for purposes of a flood plain zoning ordinance.**

17 **Sec. 2. Notwithstanding any other law, a unit may not regulate**
18 **the extraction of mineral resources on private property that is**
19 **located outside the corporate boundaries of a municipality.**

20 **Sec. 3. This chapter does not prohibit a municipality from**
21 **regulating the extraction of mineral resources on private property**
22 **located inside the corporate boundaries of the municipality.**

23 SECTION 6. An emergency is declared for this act.

