

## SENATE BILL No. 174

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### DIGEST OF INTRODUCED BILL

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

**Synopsis:** Appeal of use variances by city-county councillor. Allows a member of the Indianapolis-Marion county city-county council to appeal any decision of a board of zoning appeals approving a variance of use from the terms of the zoning ordinance (other than a decision affecting real property within the boundaries of an excluded city). Requires the metropolitan development commission to give strong consideration to the first continuance of an appeals hearing that is filed by a member of the city-county council.

**Effective:** July 1, 2014.

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### Miller Patricia

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January 8, 2014, read first time and referred to Committee on Local Government.

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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.

## SENATE BILL No. 174

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 36-7-4-922 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 922. (a) METRO. ~~An~~  
 3 ~~official designated by the metropolitan development commission~~  
 4 **Either of the following** may appeal to the metropolitan development  
 5 commission any decision of a board of zoning appeals:  
 6 **(1) An official designated by the metropolitan development**  
 7 **commission. An official may appeal any decision** regarding:  
 8 **(A)** an administrative appeal; or  
 9 **(B)** approving:  
 10 **(i)** a special exception;  
 11 **(ii)** a special or conditional use; or  
 12 **(iii)** a variance from the terms of the zoning ordinance.  
 13 **(2) A member of the legislative body of the city and county. A**  
 14 **legislative body member may appeal any decision regarding**  
 15 **a variance of use from the terms of the zoning ordinance that**  
 16 **affects only real property located outside the corporate**



1           **boundaries of an excluded city.**  
 2           The official **or the legislative body member** must file in the office of  
 3           the department of metropolitan development a notice of appeal within  
 4           five (5) days after the board files a copy of the decision in the office of  
 5           the board. However, if a representative of the department of  
 6           metropolitan development **or the legislative body member** appears at  
 7           the hearing at which the administrative appeal is decided or the special  
 8           exception, special or conditional use, or variance is approved, then the  
 9           official must file the notice of appeal within five (5) days after the  
 10          board has rendered its decision. The notice must certify that the  
 11          decision raises a substantial question of zoning policy appropriate for  
 12          consideration by the commission. The commission shall hear the  
 13          appeal at its next regular meeting held not less than five (5) days after  
 14          the notice of appeal is filed.

15          (b) METRO. In hearing appeals under this section, the metropolitan  
 16          development commission sits as a board of zoning appeals and shall be  
 17          treated as if it is a board for purposes of this section. The commission  
 18          may accept into evidence the written record, if any, of the hearing  
 19          before the board of zoning appeals, along with other evidence  
 20          introduced by the staff or interested parties. The commission shall  
 21          consider the matter de novo, but the decision of the board is considered  
 22          affirmed unless two-thirds (2/3) of the commission members voting  
 23          vote to deny the administrative appeal, exception, use, or variance.

24          (c) METRO. Although persons other than the designated official  
 25          may not appeal a decision of a board of zoning appeals to the  
 26          metropolitan development commission, they may appear as interested  
 27          parties in appeals under this section. No public notice need be given of  
 28          the hearing of an appeal under this section, but the official shall  
 29          promptly mail notice of the subject of the appeal and date and place of  
 30          the hearing to each adverse party. However, if the record of the board  
 31          shows that more than three (3) proponents or more than three (3)  
 32          remonstrators appeared, then the official need mail notice only to the  
 33          first three (3) of each as disclosed by the record.

34          **(d) The metropolitan development commission shall give strong**  
 35          **consideration to the first continuance of an appeals hearing held**  
 36          **under this section that is filed by a member of the legislative body**  
 37          **of the city and county.**

38          SECTION 2. IC 36-7-4-1003, AS AMENDED BY P.L.126-2011,  
 39          SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40          JULY 1, 2014]: Sec. 1003. (a) Each decision of the legislative body  
 41          under section 918.6 of this chapter is subject to judicial review in the  
 42          same manner as that provided for the appeal of a final decision of the



1 board of zoning appeals under section 1016(a) of this chapter.  
2 (b) METRO. A petition for judicial review must be filed with the  
3 court after the expiration of the period within which an official  
4 designated by the metropolitan development commission **or a member**  
5 **of the legislative body of the city and county** may file an appeal  
6 under section 922 of this chapter but not later than the period provided  
7 for timely filing under section 1605 of this chapter. However, if the  
8 official **or the member of the legislative body of the city and county**  
9 files an appeal, then only the decision of the metropolitan development  
10 commission sitting as a board of zoning appeals is subject to judicial  
11 review. The official, **or the** department of metropolitan development,  
12 **or the member of the legislative body of the city and county** may  
13 not seek judicial review of a decision of a board of zoning appeals or  
14 the commission sitting as a board of zoning appeals.

