



January 31, 2014

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## SENATE BILL No. 174

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DIGEST OF SB 174 (Updated January 29, 2014 4:26 pm - DI 87)

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

**Synopsis:** Marion County zoning. Provides that a proposal to rezone property (by changing the zoning maps) shall be certified to the Marion County city-county council by the metropolitan development commission regardless of whether the proposal receives a favorable recommendation, an unfavorable recommendation, or no recommendation from the metropolitan development commission. Specifies that the provisions concerning approval of rezoning by the city-county council apply regardless of whether there is a favorable recommendation, an unfavorable recommendation, or no recommendation from the metropolitan development commission. (Under current law, the provisions concerning approval by the city-county council of rezoning proposals apply only if the proposal receives a favorable recommendation.) Specifies that the legislative body member in whose district the parcel of real property under consideration is located may submit a request to the president of the legislative body that the proposal be considered. Allows a member of the Indianapolis-Marion County city-county council in whose district the parcel of real property under consideration is located to appeal any decision of a board of zoning appeals approving, denying, or otherwise concerning a use variance (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, Waltz, Breaux,  
Young R Michael, Merritt**

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January 8, 2014, read first time and referred to Committee on Local Government.  
January 30, 2014, amended, reported favorably — Do Pass.

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SB 174—LS 6913/DI 87





January 31, 2014

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

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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 36-7-4-605 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 605. (a)  
3 ADVISORY—AREA. A proposed zoning ordinance shall be certified  
4 to each participating legislative body by the plan commission as  
5 follows:  
6 (1) If the proposal is to adopt an initial zoning ordinance (or to  
7 adopt a replacement zoning ordinance after repealing the entire  
8 zoning ordinance, including amendments and zone maps) under  
9 section 606 of this chapter, it may be certified only if it receives  
10 a favorable recommendation from the commission.  
11 (2) If the proposal is to amend or partially repeal the text (not  
12 zone maps) of the ordinance under section 607 of this chapter, it  
13 may be certified with a favorable recommendation, an  
14 unfavorable recommendation, or no recommendation from the  
15 commission.  
16 (3) If the proposal is to change the zone maps incorporated by

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1 reference into the ordinance under section 608 of this chapter, it  
 2 may be certified with a favorable recommendation, an  
 3 unfavorable recommendation, or no recommendation from the  
 4 commission.

5 (b) METRO. **Except as provided in subsection (c)**, a proposal shall  
 6 be certified to the legislative body by the metropolitan development  
 7 commission only if it receives a favorable recommendation from the  
 8 commission.

9 (c) METRO. **A proposal to change the zone maps incorporated**  
 10 **by reference into the ordinance under section 608 of this chapter**  
 11 **shall be certified to the legislative body by the metropolitan**  
 12 **development commission regardless of whether the proposal**  
 13 **receives a favorable recommendation, an unfavorable**  
 14 **recommendation, or no recommendation from the commission.**

15 (e) (d) The legislative body shall consider the recommendation (if  
 16 any) of the commission before acting on the proposal under section  
 17 606, 607, or 608 of this chapter.

18 SECTION 2. IC 36-7-4-608 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 608. (a) This section  
 20 applies to a proposal, as described in section 602(c) of this chapter, to  
 21 change the zone maps incorporated by reference into the zoning  
 22 ordinance.

23 (b) If the proposal is not initiated by the plan commission, it must  
 24 be referred to the commission for consideration and recommendation  
 25 before any final action is taken by the legislative body. On receiving or  
 26 initiating the proposal, the commission shall, within sixty (60) days,  
 27 hold a public hearing in accordance with section 604 of this chapter.  
 28 Within ten (10) business days after the commission determines its  
 29 recommendation (if any), the commission shall certify the proposal  
 30 under section 605 of this chapter.

31 (c) METRO. This subsection applies if the proposal receives a  
 32 favorable recommendation, **an unfavorable recommendation, or no**  
 33 **recommendation** from the plan commission:

34 (1) At the first regular meeting of the legislative body after the  
 35 proposal is certified under section 605 of this chapter, the  
 36 legislative body may, by a majority of those voting, schedule the  
 37 proposal for a hearing on a date not later than its next regular  
 38 meeting. **The legislative body member in whose district the**  
 39 **parcel of real property under consideration is located may**  
 40 **submit a request to the president of the legislative body that**  
 41 **the proposal be considered under this subsection.**

42 (2) If the legislative body fails to schedule the proposal for a



- 1 hearing under subdivision (1), the ordinance takes effect as if it  
 2 had been adopted at the first regular meeting of the legislative  
 3 body after the proposal is certified under section 605 of this  
 4 chapter.
- 5 (3) For purposes of this subdivision, the final action date for a  
 6 proposal is the date thirty (30) days after the date that the proposal  
 7 is certified under section 605 of this chapter, or the date of the  
 8 second regular meeting after the proposal is certified under  
 9 section 605 of this chapter, whichever is later. If the legislative  
 10 body schedules the proposal for a hearing under subdivision (1)  
 11 but fails to act on it by the final action date, the ordinance takes  
 12 effect as if it had been adopted (as certified) on the final action  
 13 date. However, the period of time from certification under section  
 14 605 of this chapter to the final action date may be extended by the  
 15 legislative body, with the consent of the initiating plan  
 16 commission or the petitioning property owners. If the legislative  
 17 body fails to act on the proposal by the final action date (as  
 18 extended), the ordinance takes effect as if it had been adopted (as  
 19 certified) on that extended final action date.
- 20 (4) If the legislative body schedules the proposal for a hearing  
 21 under subdivision (1), it shall announce the hearing during a  
 22 meeting and enter the announcement in its memoranda and  
 23 minutes. The announcement must state:
- 24 (A) the date, time, and place of the hearing;
  - 25 (B) a description of the proposed changes in the zone maps;
  - 26 (C) that written objections to the proposal filed with the clerk  
 27 of the legislative body or with the county auditor will be heard;
  - 28 and
  - 29 (D) that the hearing may be continued from time to time as  
 30 may be found necessary.
- 31 (5) If the legislative body rejects the proposal at a hearing  
 32 scheduled under subdivision (1), it is defeated.
- 33 (d) METRO. The plan commission may adopt a rule to limit further  
 34 consideration, for up to one (1) year after its defeat, of a proposal that  
 35 is defeated under subsection (c)(5).
- 36 (e) ADVISORY–AREA. The legislative body shall vote on the  
 37 proposal within ninety (90) days after the plan commission certifies the  
 38 proposal under section 605 of this chapter.
- 39 (f) ADVISORY–AREA. This subsection applies if the proposal  
 40 receives a favorable recommendation from the plan commission:
- 41 (1) At the first regular meeting of the legislative body after the  
 42 proposal is certified under section 605 of this chapter (or at any



1 subsequent meeting within the ninety (90) day period), the  
 2 legislative body may adopt or reject the proposal. The legislative  
 3 body shall give notice under IC 5-14-1.5-5 of its intention to  
 4 consider the proposal at that meeting.

5 (2) If the legislative body adopts (as certified) the proposal, it  
 6 takes effect as other ordinances of the legislative body.

7 (3) If the legislative body rejects the proposal, it is defeated.

8 (4) If the legislative body fails to act on the proposal within ninety  
 9 (90) days after certification, the ordinance takes effect as if it had  
 10 been adopted (as certified) ninety (90) days after certification.

11 (g) ADVISORY—AREA. This subsection applies if the proposal  
 12 receives either an unfavorable recommendation or no recommendation  
 13 from the plan commission:

14 (1) At the first regular meeting of the legislative body after the  
 15 proposal is certified under section 605 of this chapter (or at any  
 16 subsequent meeting within the ninety (90) day period), the  
 17 legislative body may adopt or reject the proposal. The legislative  
 18 body shall give notice under IC 5-14-1.5-5 of its intention to  
 19 consider the proposal at that meeting.

20 (2) If the legislative body adopts (as certified) the proposal, it  
 21 takes effect as other ordinances of the legislative body.

22 (3) If the legislative body rejects the proposal, it is defeated.

23 (4) If the legislative body fails to act on the proposal within ninety  
 24 (90) days after certification, it is defeated.

25 (h) ADVISORY—AREA. The plan commission may adopt a rule to  
 26 limit further consideration, for up to one (1) year after its defeat, of a  
 27 proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4).

28 SECTION 3. IC 36-7-4-922 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 922. (a) METRO. ~~An~~  
 30 ~~official designated by the metropolitan development commission~~  
 31 **Either of the following** may appeal to the metropolitan development  
 32 commission ~~any decision~~ **the following decisions** of a board of zoning  
 33 appeals:

34 **(1) An official designated by the metropolitan development**  
 35 **commission. An official may appeal any decision** regarding:

36 **(A)** an administrative appeal; or

37 **(B)** approving:

38 **(i)** a special exception;

39 **(ii)** a special or conditional use; or

40 **(iii)** a variance from the terms of the zoning ordinance.

41 **(2) A member of the legislative body of the city and county in**  
 42 **whose district the parcel of real property under consideration**



1           **is located. A legislative body member in whose district the**  
 2           **parcel of real property under consideration is located may**  
 3           **appeal any decision approving, denying, or otherwise**  
 4           **concerning a variance of use from the terms of the zoning**  
 5           **ordinance that affects only real property located outside the**  
 6           **corporate boundaries of an excluded city.**

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

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

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

41          **(d) The metropolitan development commission shall give strong**  
 42          **consideration to the first continuance of an appeals hearing held**



1       **under this section that is filed by a member of the legislative body**  
2       **of the city and county.**  
3       SECTION 4. IC 36-7-4-1003, AS AMENDED BY P.L.126-2011,  
4       SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5       JULY 1, 2014]: Sec. 1003. (a) Each decision of the legislative body  
6       under section 918.6 of this chapter is subject to judicial review in the  
7       same manner as that provided for the appeal of a final decision of the  
8       board of zoning appeals under section 1016(a) of this chapter.  
9       (b) METRO. A petition for judicial review must be filed with the  
10      court after the expiration of the period within which an official  
11      designated by the metropolitan development commission **or a member**  
12      **of the legislative body of the city and county** may file an appeal  
13      under section 922 of this chapter but not later than the period provided  
14      for timely filing under section 1605 of this chapter. However, if the  
15      official **or the member of the legislative body of the city and county**  
16      files an appeal, then only the decision of the metropolitan development  
17      commission sitting as a board of zoning appeals is subject to judicial  
18      review. The official, **or the** department of metropolitan development,  
19      **or the member of the legislative body of the city and county** may  
20      not seek judicial review of a decision of a board of zoning appeals or  
21      the commission sitting as a board of zoning appeals.





## COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 174, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-7-4-605 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 605. (a) ADVISORY–AREA. A proposed zoning ordinance shall be certified to each participating legislative body by the plan commission as follows:

(1) If the proposal is to adopt an initial zoning ordinance (or to adopt a replacement zoning ordinance after repealing the entire zoning ordinance, including amendments and zone maps) under section 606 of this chapter, it may be certified only if it receives a favorable recommendation from the commission.

(2) If the proposal is to amend or partially repeal the text (not zone maps) of the ordinance under section 607 of this chapter, it may be certified with a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

(3) If the proposal is to change the zone maps incorporated by reference into the ordinance under section 608 of this chapter, it may be certified with a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

(b) METRO. **Except as provided in subsection (c)**, a proposal shall be certified to the legislative body by the metropolitan development commission only if it receives a favorable recommendation from the commission.

**(c) METRO. A proposal to change the zone maps incorporated by reference into the ordinance under section 608 of this chapter shall be certified to the legislative body by the metropolitan development commission regardless of whether the proposal receives a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.**

(e) (d) The legislative body shall consider the recommendation (if any) of the commission before acting on the proposal under section 606, 607, or 608 of this chapter.

SECTION 2. IC 36-7-4-608 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 608. (a) This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) If the proposal is not initiated by the plan commission, it must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body. On receiving or initiating the proposal, the commission shall, within sixty (60) days, hold a public hearing in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(c) METRO. This subsection applies if the proposal receives a favorable recommendation, **an unfavorable recommendation, or no recommendation** from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter, the legislative body may, by a majority of those voting, schedule the proposal for a hearing on a date not later than its next regular meeting. **The legislative body member in whose district the parcel of real property under consideration is located may submit a request to the president of the legislative body that the proposal be considered under this subsection.**

(2) If the legislative body fails to schedule the proposal for a hearing under subdivision (1), the ordinance takes effect as if it had been adopted at the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter.

(3) For purposes of this subdivision, the final action date for a proposal is the date thirty (30) days after the date that the proposal is certified under section 605 of this chapter, or the date of the second regular meeting after the proposal is certified under section 605 of this chapter, whichever is later. If the legislative body schedules the proposal for a hearing under subdivision (1) but fails to act on it by the final action date, the ordinance takes effect as if it had been adopted (as certified) on the final action date. However, the period of time from certification under section 605 of this chapter to the final action date may be extended by the legislative body, with the consent of the initiating plan commission or the petitioning property owners. If the legislative body fails to act on the proposal by the final action date (as extended), the ordinance takes effect as if it had been adopted (as



certified) on that extended final action date.

(4) If the legislative body schedules the proposal for a hearing under subdivision (1), it shall announce the hearing during a meeting and enter the announcement in its memoranda and minutes. The announcement must state:

- (A) the date, time, and place of the hearing;
- (B) a description of the proposed changes in the zone maps;
- (C) that written objections to the proposal filed with the clerk of the legislative body or with the county auditor will be heard; and
- (D) that the hearing may be continued from time to time as may be found necessary.

(5) If the legislative body rejects the proposal at a hearing scheduled under subdivision (1), it is defeated.

(d) METRO. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (c)(5).

(e) ADVISORY–AREA. The legislative body shall vote on the proposal within ninety (90) days after the plan commission certifies the proposal under section 605 of this chapter.

(f) ADVISORY–AREA. This subsection applies if the proposal receives a favorable recommendation from the plan commission:

- (1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.
- (2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.
- (3) If the legislative body rejects the proposal, it is defeated.
- (4) If the legislative body fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(g) ADVISORY–AREA. This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

- (1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to



consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, it is defeated.

(h) ADVISORY—AREA. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4)."

Page 1, line 5, strike "any decision" and insert "**the following decisions**".

Page 1, line 13, after "county" delete "." and insert "**in whose district the parcel of real property under consideration is located.**".

Page 1, line 14, after "member" insert "**in whose district the parcel of real property under consideration is located**".

Page 1, line 14, delete "regarding" and insert "**approving, denying, or otherwise concerning**".

Page 2, line 8, after "approved" delete "," and insert "**or denied,**".

Page 2, line 9, after "official" insert "**or legislative body member**".

Page 2, line 24, after "official" insert "**or legislative body member**".

Page 2, line 28, after "official" insert "**or legislative body member**".

Page 2, line 32, after "official" insert "**or legislative body member**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 174 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 0.

