



Reprinted
April 7, 2021

ENGROSSED SENATE BILL No. 392

DIGEST OF SB 392 (Updated April 6, 2021 2:42 pm - DI 87)

Citations Affected: IC 36-7.

Synopsis: Marion County zoning. Adds provisions that do the following: (1) Provide that the legislative body and the board of zoning appeals (BZA) of Lawrence, Speedway, Southport, and Beech Grove in Marion County (excluded city) have exclusive territorial jurisdiction within the excluded city's boundaries. (2) Require (rather than allow) the excluded city legislative body to conduct a hearing, acting as the plan commission, on a proposed zone map amendment affecting
(Continued next page)

Effective: July 1, 2021.

**Young M, Freeman, Walker K,
Sandlin, Crider, Taylor G**

(HOUSE SPONSORS — BEHNING, JETER, SPEEDY, MILLER D)

January 14, 2021, read first time and referred to Committee on Local Government.
February 8, 2021, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.
February 9, 2021, reassigned to Committee on Rules and Legislative Procedure pursuant to Rule 68(b). Committee Report: Without recommendation, adopted.
February 18, 2021, read second time, amended, ordered engrossed.
February 19, 2021, engrossed.
February 22, 2021, read third time, passed. Yeas 46, nays 3.
HOUSE ACTION
March 4, 2021, read first time and referred to Committee on Government and Regulatory Reform.
March 25, 2021, amended, reported — Do Pass.
April 6, 2021, read second time, amended, ordered engrossed.

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Digest Continued

property within the excluded city. Provides that the excluded city legislative body (instead of the consolidated city and county legislative body) makes the decision regarding the zone map amendment. (3) Allow a member of the excluded city legislative body to appeal a decision of the BZA to the excluded city legislative body. (4) Provide that the excluded city legislative body's decision on the appeal is subject to judicial review. Requires all townships to be represented across all the divisions of the board of zoning appeals. Provides that not more than two members appointed to each division of the board of zoning appeals may be residents of the same township. Requires the appointing authority to consult with the township executive regarding the appointments. Requires appeals and applications for variances, special exceptions, special uses, contingent uses, and conditional uses to be allocated to a division of the board of zoning appeals that has at least one member who is a resident of a township in which the property is located that is the subject of the appeal or application.



Reprinted
April 7, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 392

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 36-7-1-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 6.5. "Excluded city" means a city or town that is**
4 **located within a county having a consolidated city as described in**
5 **IC 36-3-1-7.**

6 SECTION 2. IC 36-7-4-201, AS AMENDED BY P.L.145-2015,
7 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2021]: Sec. 201. (a) For purposes of IC 36-1-3-6, a unit
9 wanting to exercise planning and zoning powers in Indiana, including
10 the issuance of permits under IC 8-1-32.3 (except as otherwise
11 provided in IC 8-1-32.3), must do so in the manner provided by this
12 chapter.

13 (b) The purpose of this chapter is to encourage units to improve the
14 health, safety, convenience, and welfare of their citizens and to plan for
15 the future development of their communities to the end:

- 16 (1) that highway systems be carefully planned;
17 (2) that new communities grow only with adequate public way,

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1 utility, health, educational, and recreational facilities;

2 (3) that the needs of agriculture, forestry, industry, and business
3 be recognized in future growth;

4 (4) that residential areas provide healthful surroundings for family
5 life; and

6 (5) that the growth of the community is commensurate with and
7 promotive of the efficient and economical use of public funds.

8 (c) Furthermore, municipalities and counties may cooperatively
9 establish single and unified planning and zoning entities to carry out
10 the purpose of this chapter on a countywide basis.

11 (d) METRO. Expanding urbanization in each county having a
12 consolidated city has created problems that have made the unification
13 of planning and zoning functions a necessity to insure the health,
14 safety, morals, economic development, and general welfare of the
15 county. To accomplish this unification, a single planning and zoning
16 authority is established for the county. **However, in an excluded city
17 (as described in IC 36-3-1-7):**

18 (1) the legislative body of the excluded city; and

19 (2) the board of zoning appeals of the excluded city, if the
20 excluded city has a board of zoning appeals;

21 **have exclusive territorial jurisdiction within the boundaries of the**
22 **excluded city. Unless expressly provided otherwise, any reference**
23 **in this chapter to the legislative body with regard to an excluded**
24 **city is a reference to the legislative body of the excluded city, and**
25 **any reference in this chapter to the board of zoning appeals with**
26 **regard to an excluded city is a reference to the board of zoning**
27 **appeals of the excluded city, if the excluded city has a board of**
28 **zoning appeals.**

29 SECTION 3. IC 36-7-4-604, AS AMENDED BY P.L.253-2017,
30 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2021]: Sec. 604. (a) Before the plan commission certifies a
32 proposal to the legislative body under section 605 of this chapter, the
33 plan commission must hold a public hearing under this section.

34 (b) The plan commission shall give notice of the hearing by
35 publication under IC 5-3-1. The notice must state:

36 (1) the time and place of the hearing;

37 (2) either:

38 (A) in the case of a proposal under section 606 or 607 of this
39 chapter, the geographic areas (or zoning districts in a specified
40 geographic area) to which the proposal applies; or

41 (B) in the case of a proposal under section 608 of this chapter,
42 the geographic area that is the subject of the zone map change;



- 1 (This subdivision does not require the identification of any real
 2 property by metes and bounds.)
 3 (3) either:
 4 (A) in the case of a proposal under section 606 of this chapter,
 5 a summary (which the plan commission shall have prepared)
 6 of the subject matter contained in the proposal (not the entire
 7 text of the ordinance);
 8 (B) in the case of a proposal under section 607 of this chapter,
 9 a summary (which the plan commission shall have prepared)
 10 of the subject matter contained in the proposal (not the entire
 11 text) that describes any new or changed provisions; or
 12 (C) in the case of a proposal under section 608 of this chapter,
 13 a description of the proposed change in the zone maps;
 14 (4) if the proposal contains or would add or amend any penalty or
 15 forfeiture provisions, the entire text of those penalty or forfeiture
 16 provisions;
 17 (5) the place where a copy of the proposal is on file for
 18 examination before the hearing;
 19 (6) that written objections to the proposal that are filed with the
 20 secretary of the commission before the hearing will be
 21 considered;
 22 (7) that oral comments concerning the proposal will be heard; and
 23 (8) that the hearing may be continued from time to time as may be
 24 found necessary.
- 25 (c) The plan commission shall also provide for due notice to
 26 interested parties at least ten (10) days before the date set for the
 27 hearing. The commission shall by rule determine who are interested
 28 parties, how notice is to be given to interested parties, and who is
 29 required to give that notice. However, if the subject matter of the
 30 proposal:
 31 (1) references a specific parcel of real estate;
 32 (2) is unrelated to:
 33 (A) a zone map change to a county ordinance under section
 34 608 of this chapter;
 35 (B) the adoption of an initial county zoning ordinance (or
 36 adoption of a replacement county zoning ordinance after
 37 repealing the entire county zoning ordinance, including
 38 amendments and zone maps) under section 606 of this chapter;
 39 or
 40 (C) an amendment or partial repeal of the text (not zone maps)
 41 of a county zoning ordinance under section 607 of this chapter;
 42 and



- 1 (3) abuts or includes a county line (or a county line street or road
2 or county line body of water);
3 then all owners of real property to a depth of two (2) ownerships or
4 one-eighth (1/8) of a mile into the adjacent county, whichever is less,
5 are interested parties who must receive notice under this subsection.
6 (d) The hearing must be held by the plan commission at the place
7 stated in the notice. The commission may also give notice and hold
8 hearings at other places within the county where the distribution of
9 population or diversity of interests of the people indicate that the
10 hearings would be desirable. The commission shall adopt rules
11 governing the conduct of hearings under this section.
12 (e) A zoning ordinance may not be held invalid on the ground that
13 the plan commission failed to comply with the requirements of this
14 section, if the notice and hearing substantially complied with this
15 section.
16 (f) The files of the plan commission concerning proposals are public
17 records and shall be kept available at the commission's office for
18 inspection by any interested person.
19 (g) METRO. In the case of a proposal to amend a **zoning zone** map
20 under section 608 of this chapter or in the case of a proposed approval
21 of a development plan required by a zoning ordinance as a condition of
22 development, a person may not communicate before the hearing with
23 any hearing officer, member of the historic preservation commission,
24 or member of the plan commission with intent to influence the officer's
25 or member's action on the proposal. Before the hearing, the staff may
26 submit a statement of fact concerning the physical characteristics of the
27 area involved in the proposal, along with a recital of surrounding land
28 use and public facilities available to serve the area. The staff may
29 include with the statement an opinion of the proposal. The statement
30 must be made a part of the file concerning the proposal not less than six
31 (6) days before the proposal is scheduled to be heard. The staff shall
32 furnish copies of the statement to persons in accordance with rules
33 adopted by the commission.
34 (h) METRO. In the case of a proposal to amend a **zoning zone** map
35 under section 608 or 608.7 of this chapter, this subsection applies if the
36 proposal affects only real property within the corporate boundaries of
37 an excluded city **(as described in IC 36-3-1-7)**. Notwithstanding the
38 other provisions of this section, the legislative body ~~may decide that the~~
39 ~~legislative body rather than the plan commission should of the~~
40 **excluded city, rather than the plan commission, shall** hold the public
41 hearing prescribed by this section. Whenever the plan commission
42 receives a proposal subject to this section, the plan commission shall



1 refer the proposal to the legislative body of the excluded city. ~~At the~~
 2 ~~legislative body's first regular meeting after receiving a referred~~
 3 ~~proposal, the legislative body shall decide whether the legislative body~~
 4 ~~will hold the public hearing. Within thirty (30) days after making the~~
 5 ~~decision to hold the hearing, **Not later than thirty (30) days after**~~
 6 ~~**receiving the proposal,** the legislative body shall hold the hearing,~~
 7 acting for purposes of this section as if the legislative body is the plan
 8 commission. The legislative body shall then make a ~~recommendation~~
 9 ~~on the proposal to the plan commission. After receiving the excluded~~
 10 ~~city legislative body's recommendation (or at the end of the thirty (30)~~
 11 ~~day period for the public hearing if the proposal receives no~~
 12 ~~recommendation); the plan commission shall meet and decide whether~~
 13 ~~to make a favorable recommendation on the proposal. The favorable~~
 14 ~~recommendation, the unfavorable recommendation, or no~~
 15 ~~recommendation of the plan commission on the proposal shall be~~
 16 ~~certified to the county legislative body as provided in section 605 of~~
 17 ~~this chapter. **the final determination as to the proposal.**~~

18 (i) Before a proposal involving a structure regulated under
 19 IC 8-21-10 may become effective, the plan commission must have
 20 received:

21 (1) a copy of:

22 (A) the permit for the structure issued by the Indiana
 23 department of transportation; or

24 (B) the Determination of No Hazard to Air Navigation issued
 25 by the Federal Aviation Administration; and

26 (2) evidence that notice was delivered to a public use airport as
 27 required in IC 8-21-10-3 not less than sixty (60) days before the
 28 proposal is considered.

29 SECTION 4. IC 36-7-4-605, AS AMENDED BY P.L.88-2014,
 30 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2021]: Sec. 605. (a) ADVISORY—AREA. A proposed zoning
 32 ordinance shall be certified to each participating legislative body by the
 33 plan commission as follows:

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

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



- 1 commission.
- 2 (3) If the proposal is to change the zone maps incorporated by
3 reference into the ordinance under section 608 of this chapter, it
4 may be certified with a favorable recommendation, an
5 unfavorable recommendation, or no recommendation from the
6 commission.
- 7 (b) METRO. Except as provided in subsection (c), a proposal shall
8 be certified to the legislative body by the metropolitan development
9 commission only if it receives a favorable recommendation from the
10 commission.
- 11 (c) METRO. A proposal to change the zone maps incorporated by
12 reference into the ordinance under section 608 of this chapter shall be
13 certified to the legislative body **of the county or if the proposal**
14 **concerns real property located within the boundaries of an**
15 **excluded city (as described in IC 36-3-1-7), the legislative body of**
16 **the excluded city, by the metropolitan development commission**
17 regardless of whether the proposal receives a favorable
18 recommendation, an unfavorable recommendation, or no
19 recommendation from the commission.
- 20 (d) The legislative body shall consider the recommendation (if any)
21 of the commission before acting on the proposal under section 606,
22 607, or 608 of this chapter.
- 23 SECTION 5. IC 36-7-4-608.7, AS ADDED BY P.L.192-2016,
24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2021]: Sec. 608.7. (a) A unit, **including an excluded city**,
26 may adopt the alternate procedure set forth in this section to apply to
27 a proposal, as described in section 602(c) of this chapter, to change the
28 zone maps incorporated by reference into the zoning ordinance.
- 29 (b) The plan commission shall comply with section 608(b) of this
30 chapter and certify a favorable recommendation, unfavorable
31 recommendation, or no recommendation to the legislative body under
32 section 605 of this chapter. Except as provided in subsection (c), if the
33 plan commission makes:
- 34 (1) a favorable recommendation on the proposal, the proposal (as
35 certified) takes effect as other ordinances:
- 36 (A) thirty (30) days after the date of the certification under
37 section 605 of this chapter; or
38 (B) on a date less than thirty (30) days:
- 39 (i) after the date of the certification under section 605 of this
40 chapter; and
41 (ii) that is specified in the ordinance adopting the alternate
42 procedure; or



1 (2) an unfavorable recommendation or no recommendation on the
2 proposal, the proposal is defeated:

3 (A) thirty (30) days after the date of the certification under
4 section 605 of this chapter; or

5 (B) on a date less than thirty (30) days:

6 (i) after the date of the certification under section 605 of this
7 chapter; and

8 (ii) that is specified in the ordinance adopting the alternate
9 procedure.

10 The plan commission shall notify the legislative body not later than the
11 next business day after a proposal takes effect under subdivision (1) or
12 is defeated under subdivision (2).

13 (c) If:

14 (1) any aggrieved person files with the plan commission a written
15 request to have the final determination on the proposal made by
16 the appropriate legislative body; or

17 (2) the legislative body files a notice with the plan commission
18 that the legislative body shall make the final determination on the
19 proposal;

20 the legislative body shall make the final determination on the proposal
21 to change the zone map as set forth in section 608 of this chapter. The
22 plan commission shall notify the legislative body in writing of a request
23 under subdivision (1) not later than the next business day after
24 receiving the request.

25 (d) A request or notice under subsection (c)(1) or (c)(2) must be
26 filed not later than:

27 (1) twenty-nine (29) days after the date the favorable
28 recommendation, the unfavorable recommendation, or no
29 recommendation of the plan commission is certified under section
30 605 of this chapter; or

31 (2) on a date that is less than twenty-nine (29) days:

32 (A) after the date the favorable recommendation, the
33 unfavorable recommendation, or no recommendation of the
34 plan commission is certified under section 605 of this chapter;
35 and

36 (B) that is specified in the ordinance adopting the alternate
37 procedure.

38 SECTION 6. IC 36-7-4-902 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 902. (a) ADVISORY.
40 Each division of the advisory board of zoning appeals consists of five
41 (5) members as follows:

42 (1) Three (3) citizen members appointed by the executive of the



- 1 municipality or county, of whom one (1) must be a member of the
 2 plan commission and two (2) must not be members of the plan
 3 commission.
- 4 (2) One (1) citizen member appointed by the fiscal body of the
 5 municipality or county, who must not be a member of the plan
 6 commission.
- 7 (3) One (1) member appointed by the plan commission from the
 8 plan commission's membership, who must be a county
 9 agricultural agent or a citizen member of the plan commission
 10 other than the member appointed under subdivision (1).
- 11 (b) ADVISORY. In each county having a metropolitan plan
 12 commission, subsection (a) does not apply. In such a county, each
 13 division of the advisory board of zoning appeals consists of five (5)
 14 members as follows:
- 15 (1) Two (2) members, of whom no more than one (1) may be of
 16 the same political party, appointed by the county legislative body.
- 17 (2) Three (3) members, of whom no more than two (2) may be of
 18 the same political party, appointed by the second class city
 19 executive. One (1) only of these members must be a member of
 20 the plan commission.
- 21 (c) AREA. When the area board of zoning appeals was established
 22 before January 1, 1984, as a seven (7) member board, the board
 23 consists of seven (7) members as follows:
- 24 (1) Two (2) citizen members appointed by the area plan
 25 commission from its membership, one (1) of whom must be a
 26 municipal representative and the other must be a county
 27 representative.
- 28 (2) Three (3) citizen members, who may not be members of any
 29 plan commission, appointed by the executive of the largest
 30 municipality in the county. However, if there are two (2) or more
 31 municipalities having a population of at least twenty thousand
 32 (20,000) in the county, the executive of the largest municipality
 33 shall appoint two (2) citizen members and the executive of the
 34 second largest municipality shall appoint one (1) citizen member.
 35 Furthermore, if there are no cities in the county participating in
 36 the commission, then the three (3) members appointed under this
 37 subdivision shall be appointed as follows:
- 38 (A) One (1) member appointed by the county executive.
- 39 (B) One (1) member appointed by the county fiscal body.
- 40 (C) One (1) member appointed by the legislative bodies of
 41 those towns participating in the commission.
- 42 (3) Two (2) citizen members, who may not be members of any



- 1 plan commission, appointed by the county legislative body.
- 2 (d) AREA. Except as provided in subsection (c), each division of
- 3 the area board of zoning appeals consists of five (5) members as
- 4 follows:
- 5 (1) One (1) citizen member appointed by the area plan
- 6 commission from its membership.
- 7 (2) One (1) citizen member, who may not be a member of any
- 8 plan commission, appointed by the executive of the largest
- 9 municipality in the county participating in the commission.
- 10 (3) Two (2) citizen members, of whom one (1) must be a member
- 11 of the area plan commission and one (1) must not be a member of
- 12 any plan commission, appointed by the county legislative body.
- 13 (4) One (1) citizen member, who may not be a member of any
- 14 plan commission, appointed by the executive of the second largest
- 15 municipality in the county participating in the commission.
- 16 However, if there is only one (1) municipality in the county
- 17 participating in the commission, then the county legislative body
- 18 shall make this appointment.
- 19 (e) METRO. Each division of the metropolitan board of zoning
- 20 appeals consists of five (5) members as follows:
- 21 (1) Two (2) citizen members appointed by the executive of the
- 22 consolidated city.
- 23 (2) Two (2) citizen members appointed by the legislative body of
- 24 the consolidated city.
- 25 (3) One (1) citizen member, who may also be a member of the
- 26 metropolitan development commission, appointed by the
- 27 commission.
- 28 **Not more than two (2) members appointed to each division of the**
- 29 **board of zoning appeals may be residents of the same township. All**
- 30 **townships must be represented across all the divisions of the board**
- 31 **of zoning appeals. The appointing authority shall consult with the**
- 32 **township executive before appointing a member to represent that**
- 33 **township on the board.**
- 34 (f) METRO. The municipal board of zoning appeals for an excluded
- 35 city consists of five (5) members as follows:
- 36 **(1) The following members for an excluded city that has a**
- 37 **mayor:**
- 38 **(1) (A) Three (3) citizen members appointed by the legislative**
- 39 **body of the excluded city.**
- 40 **(2) (B) Two (2) citizen members who may also be members of**
- 41 **the metropolitan development commission, appointed by the**
- 42 **commission; mayor of the excluded city.**



1 **(2) This subdivision applies to an excluded city that does not**
 2 **have a mayor. Five (5) citizen members appointed by the**
 3 **legislative body of the excluded city.**

4 (g) Whenever the zoning ordinance provides for a certain division
 5 of the board of zoning appeals to have limited territorial jurisdiction,
 6 it must also provide for that division to consist of members who are all
 7 residents of that limited territory. Those members shall be appointed in
 8 the same manner that is prescribed by subsection (a) for divisions of an
 9 advisory board of zoning appeals, but if the plan commission is unable
 10 to make its appointment in that manner, the appointment shall be made
 11 instead by the legislative body.

12 SECTION 7. IC 36-7-4-907, AS AMENDED BY P.L.126-2011,
 13 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2021]: Sec. 907. (a) If a vacancy occurs among the members
 15 of the board of zoning appeals, the appointing authority shall appoint
 16 a member for the unexpired term of the vacating member. In addition,
 17 the appointing authority may appoint an alternate member to
 18 participate with the board in any hearing or decision if the regular
 19 member it has appointed has a disqualification under section 909 of
 20 this chapter, or is otherwise unavailable to participate in the hearing or
 21 decision. An alternate member shall have all of the powers and duties
 22 of a regular member while participating in the hearing or decision.

23 (b) A member of the board of zoning appeals who misses three (3)
 24 consecutive regular meetings of the board may be treated as if the
 25 member had resigned, at the discretion of the appointing authority.

26 (c) Members serving in any division of the board of zoning appeals
 27 may also serve as alternate members for the other divisions of the board
 28 of zoning appeals. Whenever regular and alternate members serving in
 29 a particular division are unavailable, the chairperson or vice
 30 chairperson of the affected division may select members from other
 31 divisions in order to assemble up to five (5) members to participate in
 32 any hearing or decision.

33 **(d) METRO. If there is an absence, the board of zoning appeals**
 34 **must satisfy to the extent possible the township standard specified**
 35 **by law.**

36 SECTION 8. IC 36-7-4-916 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 916. (a) The board of
 38 zoning appeals shall adopt rules, which may not conflict with the
 39 zoning ordinance, concerning:

- 40 (1) the filing of appeals;
 41 (2) the application for variances, special exceptions, special uses,
 42 contingent uses, and conditional uses;



1 (3) the giving of notice;
 2 (4) the conduct of hearings; and
 3 (5) the determination of whether a variance application is for a
 4 variance of use or for a variance from the development standards
 5 (such as height, bulk, or area).
 6 (b) The board of zoning appeals may also adopt rules providing for:
 7 (1) **subject to section 916.5 of this chapter (in the case of a**
 8 **metropolitan board of zoning appeals)**, the allocation of cases
 9 filed among the divisions of the board of zoning appeals; and
 10 (2) the fixing of dates for hearings by the divisions.
 11 (c) Rules adopted by the board of zoning appeals shall be printed
 12 and be made available to all applicants and other interested persons.
 13 SECTION 9. IC 36-7-4-916.5 IS ADDED TO THE INDIANA
 14 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 15 **[EFFECTIVE JULY 1, 2021]: Sec. 916.5. METRO. The board of**
 16 **zoning appeals shall allocate:**
 17 (1) **appeals; and**
 18 (2) **applications for variances, special exceptions, special uses,**
 19 **contingent uses, and conditional uses;**
 20 **to a division of the board of zoning appeals that has at least one (1)**
 21 **member of the board who is a resident of a township in which the**
 22 **property that is the subject of the appeal or application is located.**
 23 SECTION 10. IC 36-7-4-918.8 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 918.8. (a) **This section**
 25 **does not apply to a proposed ordinance for the amendment of a**
 26 **zoning ordinance that only affects real property located within the**
 27 **corporate boundaries of an excluded city.**
 28 ~~(a)~~ (b) METRO. In connection with its consideration of a proposed
 29 ordinance for the amendment of the zoning ordinance proposed under
 30 section 607(c)(2) of this chapter, the metropolitan development
 31 commission may exercise the powers of the metropolitan board of
 32 zoning appeals for the purpose of approving or denying:
 33 (1) a variance from the development standards of the zoning
 34 ordinance; or
 35 (2) a special exception, special use, contingent use, or conditional
 36 use from the terms of the zoning ordinance.
 37 ~~(b)~~ (c) METRO. The commission may, by rule, establish procedures
 38 so that the power of the commission to recommend amendment of
 39 zoning ordinances and the power of the commission to approve and
 40 deny these variances, exceptions, and uses may be exercised
 41 concurrently. These rules may be inconsistent with the 900 series to the
 42 extent reasonably necessary to allow the commission to exercise the



1 power to approve or deny these variance, exception, and use petitions.
 2 ~~(e)~~ (d) METRO. When acting under this section, the commission
 3 may:
 4 (1) vote on the amendment to the zoning ordinance and the
 5 variance, exception, or use petition at the same time; and
 6 (2) condition the approval of variance, exception, or use in such
 7 a manner that it takes effect when the recommended ordinance
 8 amendment is approved by the legislative body.
 9 ~~(d)~~ (e) METRO. Section 922 of this chapter does not apply to
 10 variances, exceptions, and uses approved under this section.
 11 SECTION 11. IC 36-7-4-922, AS AMENDED BY P.L.88-2014,
 12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2021]: Sec. 922. (a) **Subsections (b), (c), (d), and (e) do not**
 14 **apply to a board of zoning appeals of an excluded city.**
 15 ~~(a)~~ (b) METRO. Either of the following may appeal to the
 16 metropolitan development commission the following decisions of a
 17 board of zoning appeals:
 18 (1) An official designated by the metropolitan development
 19 commission. An official may appeal any decision regarding:
 20 (A) an administrative appeal; or
 21 (B) approving:
 22 (i) a special exception;
 23 (ii) a special or conditional use; or
 24 (iii) a variance from the terms of the zoning ordinance.
 25 (2) A member of the legislative body of the city and county in
 26 whose district the parcel of real property under consideration is
 27 located. A legislative body member in whose district the parcel of
 28 real property under consideration is located may appeal any
 29 decision approving, denying, or otherwise concerning a variance
 30 of use from the terms of the zoning ordinance that affects only
 31 real property located outside the corporate boundaries of an
 32 excluded city.
 33 The official or the legislative body member must file in the office of the
 34 department of metropolitan development a notice of appeal within five
 35 (5) days after the board files a copy of the decision in the office of the
 36 board. However, if a representative of the department of metropolitan
 37 development or the legislative body member appears at the hearing at
 38 which the administrative appeal is decided or the special exception,
 39 special or conditional use, or variance is approved or denied, then the
 40 official or legislative body member must file the notice of appeal within
 41 five (5) days after the board has rendered its decision. The notice must
 42 certify that the decision raises a substantial question of zoning policy



1 appropriate for consideration by the commission. The commission shall
 2 hear the appeal at its next regular meeting held not less than five (5)
 3 days after the notice of appeal is filed.

4 ~~(b)~~ (c) METRO. In hearing appeals under this section, the
 5 metropolitan development commission sits as a board of zoning
 6 appeals and shall be treated as if it is a board for purposes of this
 7 section. The commission may accept into evidence the written record,
 8 if any, of the hearing before the board of zoning appeals, along with
 9 other evidence introduced by the staff or interested parties. The
 10 commission shall consider the matter de novo, but the decision of the
 11 board is considered affirmed unless two-thirds (2/3) of the commission
 12 members voting vote to deny the administrative appeal, exception, use,
 13 or variance.

14 ~~(c)~~ (d) METRO. Although persons other than the designated official
 15 or legislative body member may not appeal a decision of a board of
 16 zoning appeals to the metropolitan development commission, they may
 17 appear as interested parties in appeals under this section. No public
 18 notice need be given of the hearing of an appeal under this section, but
 19 the official or legislative body member shall promptly mail notice of
 20 the subject of the appeal and date and place of the hearing to each
 21 adverse party. However, if the record of the board shows that more than
 22 three (3) proponents or more than three (3) remonstrators appeared,
 23 then the official or legislative body member need mail notice only to
 24 the first three (3) of each as disclosed by the record.

25 ~~(d)~~ (e) The metropolitan development commission shall give strong
 26 consideration to the first continuance of an appeals hearing held under
 27 this section that is filed by a member of the legislative body of the city
 28 and county.

29 **(f) METRO. This subsection applies only to decisions of a board**
 30 **of zoning appeals of an excluded city. A member of the legislative**
 31 **body of the excluded city in whose district the parcel of real**
 32 **property under consideration is located may appeal decisions of a**
 33 **board of zoning appeals. The legislative body member must file in**
 34 **the office of the excluded city legislative body a notice of appeal not**
 35 **later than five (5) days after the board files a copy of the decision**
 36 **in the office of the board. However, if the legislative body member**
 37 **appears at the hearing at which the administrative appeal is**
 38 **decided, or the special exception, special or conditional use, or**
 39 **variance is approved or denied, then the legislative body member**
 40 **must file the notice of appeal not later than five (5) days after the**
 41 **board has rendered its decision. The notice must certify that the**
 42 **decision raises a substantial question of zoning policy appropriate**



1 for consideration by the legislative body of the excluded city. The
 2 legislative body shall hear the appeal at its next regular meeting. In
 3 hearing appeals for decisions of the board of zoning appeals of an
 4 excluded city, the legislative body of the excluded city sits as the
 5 final board of appeals and shall be treated as if it is a board for
 6 purposes of this section. The legislative body may accept into
 7 evidence the written record, if any, of the hearing before the board
 8 of zoning appeals, along with other evidence introduced by the staff
 9 or interested parties. The decision of the board is considered
 10 affirmed unless two-thirds (2/3) of the legislative body voting vote
 11 to deny the administrative appeal, exception, use, or variance.

12 SECTION 12. IC 36-7-4-1003, AS AMENDED BY P.L.88-2014,
 13 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2021]: Sec. 1003. (a) Each decision of the legislative body
 15 under section 918.6 of this chapter is subject to judicial review in the
 16 same manner as that provided for the appeal of a final decision of the
 17 board of zoning appeals under section 1016(a) of this chapter.

18 (b) METRO. **This subsection does not apply to an excluded city.**
 19 A petition for judicial review must be filed with the court after the
 20 expiration of the period within which an official designated by the
 21 metropolitan development commission or a member of the legislative
 22 body of the city and county may file an appeal under section 922 of this
 23 chapter but not later than the period provided for timely filing under
 24 section 1605 of this chapter. However, if the official, or the member of
 25 the legislative body of the city and county files an appeal, then only the
 26 decision of the metropolitan development commission sitting as a
 27 board of zoning appeals is subject to judicial review. The official, the
 28 department of metropolitan development, or the member of the
 29 legislative body of the city and county may not seek judicial review of
 30 a decision of a board of zoning appeals or the commission sitting as a
 31 board of zoning appeals.

32 (c) METRO. **This subsection applies only to an excluded city. A**
 33 **petition for judicial review must be filed with the court:**

34 (1) after the expiration of the period within which a member
 35 of the excluded city legislative body may file an appeal under
 36 section 922 of this chapter; and

37 (2) not later than the period provided for timely filing under
 38 section 1605 of this chapter.

39 However, if the member of the legislative body of the excluded city
 40 files an appeal, then only the decision of the legislative body of the
 41 excluded city sitting as a board of zoning appeals is subject to
 42 judicial review. The member of the excluded city legislative body



1 **or the excluded city legislative body may not seek judicial review**
2 **of a decision of the board of zoning appeals of the excluded city or**
3 **the legislative body of the excluded city sitting as a board of zoning**
4 **appeals.**



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 392, 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, delete lines 1 through 17.

Page 2, delete lines 1 through 10.

Page 3, delete lines 25 through 42.

Delete pages 4 through 6.

Page 7, delete lines 1 through 16.

Page 14, line 31, delete "outside" and insert "**inside**".

Re-number all sections consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 392 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 3.

REPORT OF THE PRESIDENT
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 392, currently assigned to the Committee on Appropriations, be reassigned to the Committee on Rules and Legislative Procedure.

BRAY

COMMITTEE REPORT

Madam President: The Senate committee on Rules and Legislative Procedure, to which was referred Senate Bill 392, has had the same under consideration and begs leave to report back to the Senate without recommendation.

BRAY

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SENATE MOTION

Madam President: I move that Senate Bill 392 be amended to read as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 34.

Page 6, between lines 24 and 25, begin a new line blocked left and insert:

"Not more than two (2) members appointed to each division of the board of zoning appeals may be residents of the same township. All townships must be represented across all the divisions of the board of zoning appeals. The appointing authority shall consult with the township executive before appointing a member to represent that township on the board."

Page 6, delete lines 27 through 28.

Page 6, line 29, begin a new line block indented beginning with "(1)".

Page 6, line 29, reset in roman "(1)".

Page 6, line 29, delete "(A)".

Page 6, line 31, begin a new line block indented beginning with "(2)".

Page 6, line 31, reset in roman "(2)".

Page 6, line 31, delete "(B)".

Page 6, line 31, reset in roman "who may also be members".

Page 6, line 32, reset in roman "of the metropolitan development commission,".

Page 6, line 33, reset in roman "commission.".

Page 6, line 33, delete "mayor of the excluded city.".

Page 6, delete lines 34 through 42.

Page 7, line 1, reset in roman "(g)".

Page 7, line 1, delete "(h)".

Page 7, delete lines 9 through 42, begin a new paragraph and insert:
 "SECTION 2. IC 36-7-4-907, AS AMENDED BY P.L.126-2011, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 907. (a) If a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under section 909 of this chapter, or is otherwise UNAVAILABLE to participate in the

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hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

(b) A member of the board of zoning appeals who misses three (3) consecutive regular meetings of the board may be treated as if the member had resigned, at the discretion of the appointing authority.

(c) Members serving in any division of the board of zoning appeals may also serve as alternate members for the other divisions of the board of zoning appeals. Whenever regular and alternate members serving in a particular division are unavailable, the chairperson or vice chairperson of the affected division may select members from other divisions in order to assemble up to five (5) members to participate in any hearing or decision.

(d) METRO. If there is an absence, the board of zoning appeals must satisfy to the extent possible the township standard specified by law.

SECTION 3. IC 36-7-4-916 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 916. (a) The board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance, concerning:

- (1) the filing of appeals;
- (2) the application for variances, special exceptions, special uses, contingent uses, and conditional uses;
- (3) the giving of notice;
- (4) the conduct of hearings; and
- (5) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).

(b) The board of zoning appeals may also adopt rules providing for:

- (1) **subject to section 916.5 of this chapter (in the case of a metropolitan board of zoning appeals)** the allocation of cases filed among the divisions of the board of zoning appeals; and
- (2) the fixing of dates for hearings by the divisions.

(c) Rules adopted by the board of zoning appeals shall be printed and be made available to all applicants and other interested persons.

SECTION 4. IC 36-7-4-916.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 916.5. METRO. The board of zoning appeals shall allocate:**

- (1) **appeals; and**
- (2) **applications for variances, special exceptions, special uses, contingent uses, and conditional uses;**



to a division of the board of zoning appeals that has at least one (1) member of the board who is a resident of a township in which the property that is the subject of the appeal or application is located."

Delete pages 8 through 11.

Renumber all SECTIONS consecutively.

(Reference is to SB 392 as printed February 10, 2021.)

YOUNG M

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 392, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 392 as reprinted February 19, 2021.)

MILLER D

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 392 be amended to read as follows:

Page 6, line 16, strike "by the metropolitan development commission".

Page 9, between lines 27 and 28, begin a new line blocked left and insert:

"Not more than two (2) members appointed to each division of the board of zoning appeals may be residents of the same township. All townships must be represented across all the divisions of the board of zoning appeals. The appointing authority shall consult with the township executive before appointing a member to represent that

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township on the board."

Page 10, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 7. IC 36-7-4-907, AS AMENDED BY P.L.126-2011, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 907. (a) If a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under section 909 of this chapter, or is otherwise unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

(b) A member of the board of zoning appeals who misses three (3) consecutive regular meetings of the board may be treated as if the member had resigned, at the discretion of the appointing authority.

(c) Members serving in any division of the board of zoning appeals may also serve as alternate members for the other divisions of the board of zoning appeals. Whenever regular and alternate members serving in a particular division are unavailable, the chairperson or vice chairperson of the affected division may select members from other divisions in order to assemble up to five (5) members to participate in any hearing or decision.

(d) METRO. If there is an absence, the board of zoning appeals must satisfy to the extent possible the township standard specified by law.

SECTION 8. IC 36-7-4-916 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 916. (a) The board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance, concerning:

- (1) the filing of appeals;
- (2) the application for variances, special exceptions, special uses, contingent uses, and conditional uses;
- (3) the giving of notice;
- (4) the conduct of hearings; and
- (5) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).

(b) The board of zoning appeals may also adopt rules providing for:

- (1) **subject to section 916.5 of this chapter (in the case of a metropolitan board of zoning appeals),** the allocation of cases filed among the divisions of the board of zoning appeals; and



(2) the fixing of dates for hearings by the divisions.

(c) Rules adopted by the board of zoning appeals shall be printed and be made available to all applicants and other interested persons.

SECTION 9. IC 36-7-4-916.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 916.5. METRO. The board of zoning appeals shall allocate:**

(1) appeals; and

(2) applications for variances, special exceptions, special uses, contingent uses, and conditional uses;

to a division of the board of zoning appeals that has at least one (1) member of the board who is a resident of a township in which the property that is the subject of the appeal or application is located."

Renumber all SECTIONS consecutively.

(Reference is to ESB 392 as printed March 25, 2021.)

BEHNING

