

SENATE BILL No. 535

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-6-2; IC 36-1-4; IC 36-1.5-4-45; IC 36-7-4; IC 36-8-2; IC 36-9-2-19; IC 36-10-4-21; IC 36-10-5-2.

Synopsis: Extraterritorial powers of cities and towns. Repeals the general authority of a city or town (municipality) to exercise the following powers outside of its corporate boundaries: (1) Regulating conduct or property use endangering public health, safety, and welfare. (2) Capturing and destroying animals and maintaining and operating animal shelters. (3) Operating recreational parks and exercising eminent domain to acquire property for park purposes. Provides that a municipality may only exercise eminent domain within the municipality unless a statute expressly provides otherwise. Repeals a provision that allows a municipality to exercise powers regarding watercourses within 10 miles outside its corporate boundaries. Eliminates the ability of a municipal advisory plan commission to exercise planning and zoning jurisdiction, including approval or denial of applications for improvement permits and other permits for property located in the unincorporated area on July 1, 2019, except with regard to approving or denying: (1) pending petitions and applications; or (2) appeals of petitions or applications; filed before July 1, 2019. Provides that a pending petition or application that is not approved or denied by the municipality before July 1, 2020, is considered approved. Provides that a petition or application is considered approved if an appeal of the municipality's determination of the petition or application is pending on July 1, 2020. Allows a petitioner to withdraw a petition filed with the municipality before July 1, 2019, and file a new petition with the appropriate county department, if any, if the petition has not been approved or denied by the municipality. Allows a municipality to maintain and operate an animal shelter established outside its

(Continued next page)

Effective: January 1, 2019 (retroactive); July 1, 2019.

Boots

January 14, 2019, read first time and referred to Committee on Local Government.



Digest Continued

boundaries before July 1, 2019. Allows a municipality to continue to exercise eminent domain to acquire property outside its boundaries, if it has reached a specified point in the eminent domain proceedings on January 1, 2019.



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.

SENATE BILL No. 535

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 8-1.5-6-2, AS ADDED BY P.L.213-2014,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 2. As used in this chapter, "regulated territory"
4 means the area outside the corporate boundaries of a municipality
5 described in:
6 (1) IC 36-9-2-18;
7 (2) ~~IC 36-9-2-19~~; or
8 (3) **(2)** IC 36-9-23-36.
9 SECTION 2. IC 36-1-4-5 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2019]: Sec. 5. **(a) Except as provided in**
11 **subsection (b)**, a unit may acquire by eminent domain or other means,
12 and own interests in real and personal property.
13 **(b) A municipality may exercise the powers in subsection (a),**
14 **except for the power of eminent domain, within four (4) miles**
15 **outside of its corporate boundaries. A municipality may not**



1 **exercise the power of eminent domain outside of its corporate**
 2 **boundaries, unless a statute expressly provides otherwise.**

3 SECTION 3. IC 36-1-4-6 IS AMENDED TO READ AS FOLLOWS
 4 [EFFECTIVE JULY 1, 2019]: Sec. 6. A unit may use, improve,
 5 develop, insure, protect, maintain, lease, and dispose of its interests in
 6 property. **A municipality may exercise the powers granted in this**
 7 **section within four (4) miles outside of its corporate boundaries.**

8 SECTION 4. IC 36-1-4-18 IS REPEALED [EFFECTIVE JULY 1,
 9 2019]. ~~Sec. 18: A municipality may exercise powers granted by~~
 10 ~~sections 5 and 6 of this chapter in areas within four (4) miles outside~~
 11 ~~its corporate boundaries.~~

12 SECTION 5. IC 36-1.5-4-45, AS ADDED BY P.L.202-2013,
 13 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2019]: Sec. 45. (a) Except as provided in subsections (c)
 15 through (e), a political subdivision may not take an action described in
 16 subsection (b) within a reorganizing political subdivision after the date
 17 on which a plan of reorganization is finally adopted by all reorganizing
 18 political subdivisions.

19 (b) A political subdivision may not take any of the following actions
 20 partially or wholly within a reorganizing political subdivision after the
 21 date on which a plan of reorganization is finally adopted by all
 22 reorganizing political subdivisions unless all reorganizing political
 23 subdivisions agree by adopting identical resolutions:

- 24 (1) Initiate an annexation of territory.
- 25 (2) Establish a fire protection territory or fire protection district.
- 26 (3) Extend water, sewer, or any other infrastructure to the political
- 27 subdivision.
- 28 (4) Expand zoning jurisdiction under IC 36-7-4-205 **(before its**
- 29 **expiration).**

30 (c) This chapter does not prohibit:

- 31 (1) a political subdivision subject to the reorganization from
- 32 taking an action under subsection (b) within the political
- 33 subdivision's own boundaries; and
- 34 (2) any of the reorganizing political subdivisions from taking an
- 35 action under subsection (b) for the purpose of implementing the
- 36 plan of reorganization.

37 (d) A political subdivision may take an action described in
 38 subsection (b) after the date on which the reorganization is rejected by
 39 the voters under section 33 of this chapter.

40 (e) If a reorganization is approved by the voters under section 34 of
 41 this chapter, a political subdivision may not take an action under
 42 subsection (b) until the earlier of the following:



(1) The plan of reorganization has been implemented.

(2) One (1) year after the date on which the reorganization is approved under section 34 of this chapter.

SECTION 6. IC 36-7-4-0.1, AS ADDED BY P.L.220-2011, SECTION 658, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, and 701 of this chapter by P.L.335-1985 do not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.335-1985 had not been enacted.

(2) The addition of sections 613 and 614 of this chapter by P.L.335-1985 does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.335-1985 had not been enacted.

(3) The amendments made to sections 214 (**before its expiration**), 503, 504, 506, 509, 510, 511, 601, 602, 603, 604, 605, 606, 610, 612, 711, 712, 801, 802, 1014, and 1020 of this chapter by P.L.220-1986 do not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.220-1986 had not been enacted.

SECTION 7. IC 36-7-4-205, AS AMENDED BY P.L.207-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 205. (a) ADVISORY. A municipal plan commission shall adopt a comprehensive plan, as provided for under the 500 series of the advisory planning law, for the development of the municipality. For comprehensive plans adopted after July 1, 1999, if:

(1) the municipality provides municipal services to the contiguous unincorporated area; or

(2) the municipal plan commission obtains the approval of the county legislative body of each affected county;



the municipal plan commission may provide in the comprehensive plan for the development of the contiguous unincorporated area, designated by the commission, that is outside the corporate boundaries of the municipality, and that, in the judgment of the commission, bears reasonable relation to the development of the municipality. For purposes of this section, participation of a municipality in a fire protection territory established under IC 36-8-19 that includes unincorporated areas contiguous to the municipality may not be treated as providing municipal services to the contiguous unincorporated areas.

This subsection expires on July 1, 2020.

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

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

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

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

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

This subsection expires on July 1, 2020.

(c) ADVISORY. Before exercising their rights, powers, and duties of the advisory planning law with respect to an area designated under this section, a municipal plan commission must file, with the recorder of the county in which the municipality is located, a description or map defining the limits of that area. If the commission revises the limits, it shall file, with the recorder, a revised description or map defining those revised limits. **This subsection expires on July 1, 2020.**

(d) ADVISORY. If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also



1 within the potential jurisdiction of another municipal plan commission,
 2 the first municipal plan commission may exercise territorial jurisdiction
 3 over that part of the area within the potential jurisdiction of both
 4 municipal plan commissions that equals the product obtained by
 5 multiplying a fraction, the numerator of which is the area within the
 6 corporate boundaries of that municipality and the denominator of
 7 which is the total area within the corporate boundaries of both
 8 municipalities times the area within the potential jurisdiction of both
 9 municipal plan commissions. Furthermore, this commission may
 10 exercise territorial jurisdiction within those boundaries, enclosing an
 11 area reasonably compact and regular in shape, that the municipal plan
 12 commission first acting designates. **This subsection expires on July**
 13 **1, 2020.**

14 (e) ADVISORY. If the legislative body of a county adopts a
 15 comprehensive plan and ordinance covering the unincorporated areas
 16 of the county, a municipal plan commission may not exercise
 17 jurisdiction, as provided in this section, over any part of that
 18 unincorporated area unless it is authorized by ordinance of the
 19 legislative body of the county. This ordinance may be initiated by the
 20 county legislative body or by petition duly signed and presented to the
 21 county auditor by:

- 22 (1) not less than fifty (50) property owners residing in the area
- 23 involved in the petition;
- 24 (2) the county plan commission; or
- 25 (3) the municipal plan commission.

26 Before final action on the ordinance by the county legislative body, the
 27 county plan commission must hold an advertised public hearing as
 28 required for other actions of the county plan commission under the
 29 advisory planning law. Upon the passage of the ordinance by the
 30 county legislative body and the subsequent acceptance of jurisdiction
 31 by the municipal plan commission, the municipal plan commission
 32 shall exercise the same rights, powers, and duties conferred in this
 33 section exclusively with respect to the contiguous unincorporated area.
 34 The jurisdiction of a municipal plan commission, as authorized under
 35 this subsection, may be terminated by ordinance at the discretion of the
 36 legislative body of the county, but only if the county has adopted a
 37 comprehensive plan for that area that is as comprehensive in scope and
 38 subject matter as that in effect by municipal ordinance. **This**
 39 **subsection expires on July 1, 2020.**

40 (f) ADVISORY. Each municipal plan commission in a municipality
 41 located in a county having:

- 42 (1) a population of less than ninety-five thousand (95,000); and



(2) a county plan commission that has adopted, in accord with the advisory planning law, a comprehensive plan and ordinance covering the unincorporated areas of the county; may, at any time, after filing notice with the county recorder and the county plan commission, exercise or reject territorial jurisdiction over any part of the area within two (2) miles of the corporate boundaries of that municipality and within that county, whether or not that commission has previously exercised that jurisdiction, if the municipality is providing municipal services to the area. Within sixty (60) days after receipt of that notice, the county plan commission and the county legislative body shall have the county comprehensive plan and ordinance revised to reflect the decision of the municipal plan commission exercising the option provided for in this subsection. If the municipality is not providing municipal services to the area, the municipal plan commission must obtain the approval of the county legislative body of each affected county before exercising jurisdiction. **This subsection expires on July 1, 2020.**

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

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

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

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

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

SECTION 8. IC 36-7-4-205.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 205.1. (a) As used in this section, "county body" means a planning commission, board of zoning appeals, county legislative body, building department or any other department, board, or commission of the county that issues or approves the issuance of a building permit, improvement permit, certificate of occupancy or performs any other review or approval**



1 action under the authority exercised by the county under this
2 series.

3 (b) As used in this section, "municipal body" means a planning
4 commission, board of zoning appeals, municipal legislative body,
5 building department or any other department, board, or
6 commission of the municipality that issues or approves the issuance
7 of a building permit, improvement permit, certificate of occupancy
8 or performs any other review or approval action under the
9 authority exercised by the municipality in an unincorporated area
10 under section 205 of this chapter.

11 (c) As used in this section "municipality" means a municipality
12 that exercises planning and zoning in the unincorporated area of
13 a county under the authority of section 205 of this chapter.

14 (d) A municipal body may not accept after June 30, 2019, any
15 new applications or petitions for approval or permitting for
16 property located within the unincorporated area of the county for
17 which the municipality asserted jurisdiction under section 205 of
18 this chapter. However, the board of zoning appeals for the
19 municipality may accept any appeal filed after June 30, 2019, with
20 regard to an application or petition filed with the municipal body
21 before July 1, 2019.

22 (e) Any new applications or petitions filed after June 30, 2019,
23 with regard to property within the unincorporated area of the
24 county for which the county asserts jurisdiction under this chapter
25 must be filed with the appropriate county body of the county in
26 which the property is located.

27 (f) An application or petition filed with the municipal body
28 before July 1, 2019, seeking approval regarding property located
29 within the unincorporated area shall be finally approved or denied
30 in accordance with the ordinances, resolutions, rules, and policies
31 of the municipality not later than June 30, 2020, or the petitioner's
32 application or petition is considered approved. If the application or
33 petition is pending appeal with the board of zoning appeals or
34 pending review by a court on July 1, 2020, the petitioner's
35 application or petition is considered granted and the pending
36 appeal with the board of zoning appeals or court is moot. An
37 applicant or petitioner may withdraw the application or petition
38 and file a new application with the appropriate county body, if any
39 municipal body has not yet approved or denied the petition or
40 application.

41 (g) The county, including a county body, may not require an
42 applicant or petitioner to obtain any further approval or



1 authorization with regard to the action requested in an application
 2 or petition that is approved by the municipal body before July 1,
 3 2020, or considered approved by the municipal body after June 30,
 4 2020.

5 (h) On July 1, 2020, the following occurs:

6 (1) Any additional division of the board of zoning appeals
 7 established under section 903(a)(1) of this chapter is abolished
 8 and the terms of the members expire. The abolishment of the
 9 division of a board of zoning appeals does not invalidate any
 10 actions adopted or taken by the board of zoning appeals
 11 before the board is abolished.

12 (2) The term of a member of a municipal plan commission
 13 appointed under section 214 or 215 of this chapter to
 14 represent the unincorporated jurisdictional area of the plan
 15 commission expires.

16 (i) The abolishment of a division of a board of zoning appeals
 17 under this section does not invalidate any actions adopted or taken
 18 by the board of zoning appeals before the board is abolished. The
 19 transfer of powers from the municipality to a county does not
 20 invalidate any actions taken by a municipal body before July 1,
 21 2020.

22 (j) This section expires on July 1, 2021.

23 SECTION 9. IC 36-7-4-214, AS AMENDED BY P.L.6-2012,
 24 SECTION 242, IS AMENDED TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2019]: Sec. 214. (a) ADVISORY. When a
 26 municipal plan commission exercises jurisdiction outside the
 27 incorporated area of the municipality as provided for in section 205 of
 28 the advisory planning law **(before its expiration)**, the executive of the
 29 county in which the unincorporated area is located shall appoint two
 30 (2) additional citizen members to the municipal plan commission. The
 31 citizen members must:

32 (1) be residents of:

33 (A) the unincorporated area; or

34 (B) the county, and must also be owners of real property
 35 located in whole or in part within the unincorporated area; and

36 (2) not be of the same political party.

37 However, at least one (1) of the members must be a resident of the
 38 unincorporated area.

39 (b) ADVISORY. Initially, one (1) member under subsection (a)
 40 shall be appointed for a term of one (1) year and the other for a term of
 41 four (4) years. Thereafter, each appointment is for a term of four (4)
 42 years. The additional citizen members are entitled to participate and



1 vote in all deliberations of the municipal plan commission.

2 (c) ADVISORY. If the unincorporated area referred to in subsection
3 (a) lies in two (2) counties, the executive of each of those counties shall
4 appoint one (1) of the additional citizen members. The executive of the
5 county having the larger proportion of the unincorporated area shall
6 appoint its member first, and the executive of the other county shall
7 then appoint its member, who must not be of the same political party.

8 **(d) This section expires on July 1, 2020.**

9 SECTION 10. IC 36-7-4-215 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 215. ADVISORY. (a)
11 In addition to the requirements of section 214 of this chapter, the
12 executive of the county may also appoint as members of a town plan
13 commission additional representatives from the unincorporated
14 jurisdictional area, if the executive believes the additional
15 representation is justifiable. The number of appointments shall be
16 determined as follows:

17 (1) Two (2) citizen members, if the population of the
18 jurisdictional area appears to be at least fifty percent (50%) but
19 not more than one hundred percent (100%) of the population of
20 the town itself.

21 (2) Four (4) citizen members, if the population of the
22 jurisdictional area appears to be greater than that of the town
23 itself.

24 These additional members must have the same qualifications and are
25 entitled to the same terms and privileges as prescribed for the
26 additional members appointed under section 214 of this chapter.

27 **(b) This section expires on July 1, 2020.**

28 SECTION 11. IC 36-7-4-903, AS AMENDED BY P.L.126-2011,
29 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2019]: Sec. 903. ADVISORY. (a) When a municipal plan
31 commission exercises jurisdiction outside the incorporated area of the
32 municipality as provided for in section 205 **(before its expiration)** or
33 1208 of this chapter, one (1) of the following must occur:

34 (1) An additional division of the board of zoning appeals shall be
35 established under section 901(b) of this chapter that will have
36 territorial jurisdiction only in the unincorporated area. The
37 division must consist only of:

38 (A) residents of the unincorporated area; or

39 (B) individuals who reside in the county and also own real
40 property within the unincorporated area.

41 However, at least a majority of the members appointed to the
42 division must be residents of the unincorporated area.



(2) The municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter one (1) of the additional citizen members who were appointed under section ~~214(a)~~, 1210(a) or 1210.5(c)(3) of this chapter to the plan commission to represent the unincorporated area. The citizen shall be appointed for a term of two (2) years. The citizen is entitled to participate and vote in all deliberations of the municipal board of zoning appeals.

(b) Notwithstanding section 902(g) of this chapter, if the zoning ordinance provides for an additional division of the board of zoning appeals under subsection (a)(1), the ordinance may also provide for the appointment of one (1) or more members of that division by elected officials of the county or township.

SECTION 12. IC 36-7-4-1206 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1206. (a) ADVISORY. If a township is partially within:

(1) the corporate boundaries of a municipality; or

(2) ~~is partially within~~ the jurisdictional limits of a municipality, as specified in section 205 of the advisory planning law **(before its expiration);**

it may seek joinder only with that municipality.

(b) ADVISORY. If a township is within the jurisdictional limits of two (2) municipalities and one (1) of those municipalities is exercising control within the jurisdictional limit, the township must first seek joinder with that municipality. If both municipalities are exercising jurisdiction, then the township may choose the municipality with which it wants to join.

SECTION 13. IC 36-8-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. **(a) A unit may do the following:**

(1) Provide medical care or other health and community services to persons. ~~and may~~

(2) Impose restrictions upon persons or animals that might cause other persons or animals to be injured or contract diseases.

(3) ~~A unit may also~~ Establish, aid, maintain, and operate hospitals.

(b) A municipality may exercise powers granted by subsection (a)(1) and (a)(3) of this chapter in areas within four (4) miles outside its corporate boundaries.

SECTION 14. IC 36-8-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. **(a) Except as provided in subsection (b), a unit may:**



1 (1) capture and destroy animals if necessary; ~~and may~~
 2 (2) establish, maintain, and operate animal shelters;
 3 **within its corporate boundaries.**

4 **(b) A municipality may maintain and operate an animal shelter**
 5 **that the municipality established outside its corporate boundaries**
 6 **before July 1, 2019, but may only exercise the powers in subsection**
 7 **(a)(1) within its corporate boundaries.**

8 SECTION 15. IC 36-8-2-13 IS REPEALED [EFFECTIVE JULY 1,
 9 2019]. ~~Sec. 13: A municipality may exercise powers granted by~~
 10 ~~sections 4, 5 and 6 of this chapter in areas within four (4) miles outside~~
 11 ~~its corporate boundaries.~~

12 SECTION 16. IC 36-9-2-19 IS REPEALED [EFFECTIVE JULY 1,
 13 2019]. ~~Sec. 19: A municipality may exercise powers granted by~~
 14 ~~sections 9, 10, 11, 12, and 13 of this chapter in areas within ten (10)~~
 15 ~~miles outside its corporate boundaries.~~

16 SECTION 17. IC 36-10-4-21 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 21. (a) The board may
 18 exercise the power of eminent domain **for the purposes of this**
 19 **chapter:**

20 (1) within the corporate boundaries of the city; and

21 (2) **before July 1, 2019**, outside of the city within:

22 (A) ten (10) miles; or

23 (B) five (5) miles if the city adopted this chapter by ordinance
 24 under IC 19-7-9 (before its repeal on September 1, 1981);

25 of the corporate boundaries of the city and within the county in which
 26 the city is located. ~~for the purposes of this chapter.~~ The board may
 27 award damages to landowners for real property and property rights
 28 appropriated or injuriously affected and assess benefits to property
 29 beneficially affected. If the board cannot agree with the owners,
 30 lessees, or occupants of any real property selected by the board for the
 31 purposes of this chapter, the board may condemn the property as
 32 provided in this chapter, and, when not inconsistent with this chapter,
 33 may proceed under statutes governing the condemnation of land and
 34 rights-of-way for other public purposes.

35 (b) If the land or surface of the ground on, over, or across which it
 36 is necessary or advisable to establish, construct, or improve a
 37 boulevard, parkway, or pleasure driveway is already in use for another
 38 public purpose or has been condemned or appropriated for a use
 39 authorized by statute and is being used for that purpose by the entity
 40 appropriating it, the public use or prior condemnation does not bar the
 41 board from condemning the use of the ground for park purposes.
 42 However, the use by the board does not permanently prevent the use of



the land or the surface of the ground for the prior public use or by the entity condemning or appropriating it. In a proceeding prosecuted by the board to condemn the use of land or the surface of the ground for purposes permitted by this chapter, the board must show that its proposed use will not permanently or seriously interfere with the continued use of the land or the surface of the ground.

SECTION 18. IC 36-10-5-2, AS AMENDED BY P.L.119-2012, SECTION 238, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) This section applies to:

(1) third class cities and towns, unless otherwise provided by law;

and

(2) each second class city that:

(A) adopted second class city status by ordinance under IC 36-4-1-1.1, as a result of the 2010 federal decennial census; and

(B) has adopted all or part of this section by ordinance or resolution.

(b) As used in this section, "park authority" means:

(1) the municipal legislative body; or

(2) any of the following designated by the legislative body as the park authority:

(A) The governing body of the school corporation.

(B) A recreation board.

(C) The municipal works board.

(D) Any other appropriate board or commission.

(c) If a recreation board is established under subsection (b)(2)(B), it must consist of five (5) resident freeholders appointed by the city executive or the town legislative body. At least one (1) member must be a member of the governing body of the school corporation and no members may serve on the municipal legislative body. All members must be qualified by an interest in and knowledge of the social and educational value of recreation. The members serve without compensation. The members shall be appointed for four (4) year terms from January 1 of the year of their appointment or until their successors are appointed. The initial terms of board members, however, are as follows:

(1) One (1) for a term of one (1) year.

(2) One (1) for a term of two (2) years.

(3) One (1) for a term of three (3) years.

(4) Two (2) for terms of four (4) years.

A vacancy shall be filled by the appointing authority for the remainder of the unexpired term.



1 (d) The park authority shall manage all public parks, including
2 approaches, that belong to the municipality.

3 (e) If a municipality decides, by ordinance, to establish, lay out, or
4 improve a public park or grounds, or to make an extension of a park or
5 grounds, it may locate the park or grounds, including appurtenances,
6 and it may lay out and open the public ways necessary for the
7 improvement. If it is necessary to acquire land, water rights, or
8 easements, or a pool, lake, or natural stream of water, the park authority
9 may condemn that property and take possession of it if it is located
10 within ~~five (5) miles~~ **the corporate boundaries** of the municipality.
11 Before the park authority condemns the property, it shall assess the
12 damages to the owners of the property at a meeting of the authority.
13 Additional condemnation proceedings are the same as those provided
14 for the taking of property to open streets.

15 (f) The park authority may adopt rules concerning the laying out,
16 improvement, preservation, ornamentation, and management of parks.
17 The park authority shall allow monuments or buildings for libraries,
18 works of art, or historical collections to be erected in a park, as long as
19 they are under the control of the persons in charge of the park and no
20 inclosure separates them from the rest of the park.

21 (g) The legislative body of the municipality may also levy a tax on
22 all taxable property in the municipality to pay for park property and for
23 its improvement. The legislative body may also borrow money and
24 issue the bonds of the municipality at any rate of interest payable
25 annually or semiannually and may sell them for at least par value. The
26 money derived from the sale of bonds may be used only for the
27 purchase or improvement of parks. The legislative body shall annually
28 levy a tax sufficient to pay the interest on the debt on all taxable
29 property in the municipality to create a sinking fund for the liquidation
30 of the principal of the debt.

31 (h) If the park authority of a city decides to lease any buildings or
32 grounds belonging to the city and located in a public park when they
33 are not required for public use, the proceeds shall be deposited with the
34 city fiscal officer to the credit of park funds and devoted to the
35 improvement of public parks.

36 (i) Any nonreverting fund that was created under IC 19-7-6 (before
37 its repeal on September 1, 1981) continues until abolished by ordinance
38 of the municipal legislative body. The legislative body may include in
39 the park authority's annual budget an item and an appropriation for the
40 specific purposes of a nonreverting capital fund. Money put in the fund
41 may not be withdrawn except for the purposes for which the fund was
42 created, unless the legislative body repeals the ordinance creating the



1 fund. The repeal may not be made under suspension of the rules.
 2 Money procured from fees shall be deposited at least once each month
 3 with the municipal fiscal officer. The fiscal officer shall deposit the
 4 money either in a special nonreverting operating fund or in the
 5 nonreverting capital fund as directed by the park authority. The
 6 legislative body may provide by ordinance that expenditures may be
 7 made from the special nonreverting operating fund without
 8 appropriation. Money from fees procured from golf courses, swimming
 9 pools, skating rinks, or other similar facilities requiring major
 10 expenditures for management and maintenance may not be deposited
 11 in this fund. Money from either fund shall be disbursed only on
 12 approved claims that are allowed and signed in the same manner as
 13 other claims of the municipality are allowed and signed.

14 SECTION 19. [EFFECTIVE JANUARY 1, 2019
 15 (RETROACTIVE)] **(a) This SECTION applies only to a**
 16 **municipality that exercises the power of eminent domain in the**
 17 **area outside of its corporate boundaries:**

- 18 **(1) under the sole authority of IC 36-1-4-18 (before its repeal**
 19 **July 1, 2019) or IC 36-10-4-21 (before its amendment July 1,**
 20 **2019) to exercise the power of eminent domain outside of its**
 21 **corporate boundaries; and**
 22 **(2) not under the authority of any other statute that expressly**
 23 **provides that the municipality may exercise the power of**
 24 **eminent domain outside of its corporate boundaries.**

25 **(b) The repeal of IC 36-1-4-18 by this act, and IC 36-10-4-21, as**
 26 **amended by this act, do not affect a municipality's exercise of the**
 27 **power of eminent domain to acquire property outside its corporate**
 28 **boundaries if:**

- 29 **(1) the works board of the municipality has adopted a**
 30 **resolution under IC 32-24-2-6; or**
 31 **(2) the municipality filed a complaint under IC 32-24-1 after**
 32 **the property owner rejected the municipality's acquisition**
 33 **offer;**

34 **not later than January 1, 2019.**

35 **(c) This SECTION expires January 1, 2021.**

36 SECTION 20. An emergency is declared for this act.

