



Reprinted  
February 12, 2019

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## SENATE BILL No. 535

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DIGEST OF SB 535 (Updated February 11, 2019 3:20 pm - DI 87)

**Citations Affected:** IC 8-1.5; IC 36-1; IC 36-7; IC 36-8; IC 36-9; IC 36-10; noncode.

**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. (3) Operating recreational parks and exercising eminent domain to acquire property for park purposes. Provides that an ordinance adopted before January 1, 2019 that regulates the public health, safety, and welfare outside the municipality's boundaries is not void upon repeal of the statute and is not legalized or validated if the ordinance violates the law. Provides that ordinances adopted exercising the other extraterritorial powers under (1) and (3) are void. 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. Requires a municipality to obtain the approval of the county executive before exercising advisory planning and zoning jurisdiction in the two mile area outside its municipal boundaries. 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.

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

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## Boots

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January 14, 2019, read first time and referred to Committee on Local Government.  
February 7, 2019, amended, reported favorably — Do Pass.  
February 11, 2019, read second time, amended, ordered engrossed.

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SB 535—LS 7190/DI 87





Reprinted  
February 12, 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

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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 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**

SB 535—LS 7190/DI 87



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 36-7-4-205, AS AMENDED BY P.L.207-2014,  
13          SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14          JULY 1, 2019]: Sec. 205. (a) ADVISORY. A municipal plan  
15          commission shall adopt a comprehensive plan, as provided for under  
16          the 500 series of the advisory planning law, for the development of the  
17          municipality.

18           **(b)** For comprehensive plans adopted after July 1, 1999, **and before  
19          July 1, 2019**, if:

- 20           (1) the municipality provides municipal services to the contiguous  
21           unincorporated area; or
- 22           (2) the municipal plan commission obtains the approval of the  
23           county legislative body of each affected county;

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

33           **(c) ADVISORY. For comprehensive plans adopted after June  
34          30, 2019, if the municipal plan commission obtains the approval of  
35          the county legislative body of each affected county, the municipal  
36          plan commission may provide in the comprehensive plan for the  
37          development of the contiguous unincorporated area, designated by  
38          the commission, that is outside the corporate boundaries of the  
39          municipality, and that, in the judgment of the commission, bears  
40          reasonable relation to the development of the municipality.**

41           **(b) (d) ADVISORY.** Except as limited by the boundaries of  
42          unincorporated areas subject to the jurisdiction of other municipal plan



1       commissions, an area designated under this section may include any  
2       part of the contiguous unincorporated area within two (2) miles from  
3       the corporate boundaries of the municipality. However, the following  
4       applies to the designation of an area under this section:

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

9              (A) any part of those public waters and shoreline of the lake;  
10             and  
11              (B) any land area within two thousand five hundred (2,500)  
12             feet from that shoreline.

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

21           (e) ADVISORY. Before exercising their rights, powers, and  
22       duties of the advisory planning law with respect to an area designated  
23       under this section, a municipal plan commission must file, with the  
24       recorder of the county in which the municipality is located, a  
25       description or map defining the limits of that area. If the commission  
26       revises the limits, it shall file, with the recorder, a revised description  
27       or map defining those revised limits.

28           (f) ADVISORY. If any part of the contiguous unincorporated  
29       area within the potential jurisdiction of a municipal plan commission  
30       is also within the potential jurisdiction of another municipal plan  
31       commission, the first municipal plan commission may exercise  
32       territorial jurisdiction over that part of the area within the potential  
33       jurisdiction of both municipal plan commissions that equals the product  
34       obtained by multiplying a fraction, the numerator of which is the area  
35       within the corporate boundaries of that municipality and the  
36       denominator of which is the total area within the corporate boundaries  
37       of both municipalities times the area within the potential jurisdiction  
38       of both municipal plan commissions. Furthermore, this commission  
39       may exercise territorial jurisdiction within those boundaries, enclosing  
40       an area reasonably compact and regular in shape, that the municipal  
41       plan commission first acting designates.

42           (g) ADVISORY. If the legislative body of a county adopts a



1 comprehensive plan and ordinance covering the unincorporated areas  
2 of the county, a municipal plan commission may not exercise  
3 jurisdiction, as provided in this section, over any part of that  
4 unincorporated area unless it is authorized by ordinance of the  
5 legislative body of the county. This ordinance may be initiated by the  
6 county legislative body or by petition duly signed and presented to the  
7 county auditor by:

- 8 (1) not less than fifty (50) property owners residing in the area  
9 involved in the petition;  
10 (2) the county plan commission; or  
11 (3) the municipal plan commission.

12 Before final action on the ordinance by the county legislative body, the  
13 county plan commission must hold an advertised public hearing as  
14 required for other actions of the county plan commission under the  
15 advisory planning law. Upon the passage of the ordinance by the  
16 county legislative body and the subsequent acceptance of jurisdiction  
17 by the municipal plan commission, the municipal plan commission  
18 shall exercise the same rights, powers, and duties conferred in this  
19 section exclusively with respect to the contiguous unincorporated area.  
20 The jurisdiction of a municipal plan commission, as authorized under  
21 this subsection, may be terminated by ordinance at the discretion of the  
22 legislative body of the county, but only if the county has adopted a  
23 comprehensive plan for that area that is as comprehensive in scope and  
24 subject matter as that in effect by municipal ordinance.

25 **(f) (h) ADVISORY. This subsection applies only to the exercise**  
26 **or rejection of territorial jurisdiction by a municipal plan**  
27 **commission before July 1, 2019.** Each municipal plan commission in  
28 a municipality located in a county having:

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

33 may, at any time, after filing notice with the county recorder and the  
34 county plan commission, exercise or reject territorial jurisdiction over  
35 any part of the area within two (2) miles of the corporate boundaries of  
36 that municipality and within that county, whether or not that  
37 commission has previously exercised that jurisdiction, if the  
38 municipality is providing municipal services to the area. Within sixty  
39 (60) days after receipt of that notice, the county plan commission and  
40 the county legislative body shall have the county comprehensive plan  
41 and ordinance revised to reflect the decision of the municipal plan  
42 commission exercising the option provided for in this subsection. If the



1 municipality is not providing municipal services to the area, the  
 2 municipal plan commission must obtain the approval of the county  
 3 legislative body of each affected county before exercising jurisdiction.

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

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

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

- 14               (1) establishing an advisory plan commission under section  
 15 202(a) of this chapter; or  
 16               (2) adopting the area planning law under section 202(b) or 204 of  
 17 this chapter.

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

21       SECTION 6. IC 36-8-2-5 IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2019]: Sec. 5. **(a) A unit may do the following:**

- 23               **(1) Provide medical care or other health and community services  
 24 to persons. ~~and may~~**  
 25               **(2) Impose restrictions upon persons or animals that might cause  
 26 other persons or animals to be injured or contract diseases.**  
 27               **(3) A unit may also Establish, aid, maintain, and operate  
 28 hospitals.**

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

32       SECTION 7. IC 36-8-2-6 IS AMENDED TO READ AS FOLLOWS  
 33 [EFFECTIVE JULY 1, 2019]: Sec. 6. **(a) A unit may:**

- 34               **(1) capture and destroy animals if necessary; and ~~may~~**  
 35               **(2) establish, maintain, and operate animal shelters.**

36       **(b) A municipality may exercise the powers in subsection (a)(2)  
 37 within four (4) miles outside its corporate boundaries.**

38       SECTION 8. IC 36-8-2-13 IS REPEALED [EFFECTIVE JULY 1,  
 39 2019]. See: ~~13. A municipality may exercise powers granted by  
 40 sections 4, 5 and 6 of this chapter in areas within four (4) miles outside  
 41 its corporate boundaries.~~

42       SECTION 9. IC 36-8-2-14 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2019]: Sec. 14. (a) The repeal of section 13 of this chapter does  
3 not operate to void an ordinance or resolution adopted by a  
4 municipality before January 1, 2019, that exercises a power:

5 (1) under the sole authority of:

- 6 (A) section 4 of this chapter;  
7 (B) section 8 of this chapter; or  
8 (C) sections 4 and 8 of this chapter; and

9 (2) within the four (4) mile area outside the municipality's  
10 boundaries under the authority of section 13 of this chapter  
11 (before its repeal).

12 (b) An ordinance or resolution described in subsection (a) that  
13 exercised a power that:

- 14 (1) is expressly granted to another unit of government;  
15 (2) is expressly denied by the Indiana Constitution or by  
16 statute;  
17 (3) did not comply with the specific manner required by law  
18 for exercising the power, including planning and zoning  
19 powers that must be exercised by complying with IC 36-7-4 as  
20 set forth in IC 36-7-4-201; or  
21 (4) violates any other law;

22 is not legalized or validated by the repeal of section 13 of this  
23 chapter or by subsection (a).

24 SECTION 10. IC 36-8-2-15 IS ADDED TO THE INDIANA CODE  
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
26 1, 2019]: The repeal of section 13 of this chapter operates to void  
27 an ordinance or resolution adopted by a municipality after  
28 December 31, 2018, and before July 1, 2019, that exercises a  
29 power:

30 (1) under the sole authority of:

- 31 (A) section 4 of this chapter;  
32 (B) section 5(a)(2) of this chapter;  
33 (C) section 6(a)(1) of this chapter;  
34 (D) section 8 of this chapter; or  
35 (E) any combination of the statutes listed in clauses (A)  
36 through (D); and

37 (2) within the four (4) mile area outside the municipality's  
38 boundaries under the authority of section 13 of this chapter  
39 (before its repeal).

40 SECTION 11. IC 36-9-2-19 IS REPEALED [EFFECTIVE JULY 1,  
41 2019]. Sec. 19. A municipality may exercise powers granted by  
42 sections 9, 10, 11, 12, and 13 of this chapter in areas within ten (10)



1           miles outside its corporate boundaries.

2           SECTION 12. IC 36-9-2-20 IS ADDED TO THE INDIANA CODE  
3           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4           1, 2019]: Sec. 20. **The repeal of section 19 of this chapter operates**  
5           **to void an ordinance or resolution adopted by a municipality**  
6           **before July 1, 2019, that exercises a power:**

7           (1) **under the sole authority of:**

- 8           (A) **section 9 of this chapter;**
- 9           (B) **section 10 of this chapter;**
- 10           (C) **section 11 of this chapter;**
- 11           (D) **section 12 of this chapter;**
- 12           (E) **section 13 of this chapter; or**
- 13           (F) **any combination of the statutes listed in clauses (A)**  
14           **through (E); and**

15           (2) **within the ten (10) mile area outside the municipality's**  
16           **boundaries under the authority of section 19 of this chapter**  
17           **(before its repeal).**

18           SECTION 13. IC 36-10-4-21 IS AMENDED TO READ AS  
19           FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 21. (a) The board may  
20           exercise the power of eminent domain **for the purposes of this**  
21           **chapter:**

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

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

- 24           (A) ten (10) miles; or
- 25           (B) five (5) miles if the city adopted this chapter by ordinance  
26           under IC 19-7-9 (before its repeal on September 1, 1981);

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

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



1 board from condemning the use of the ground for park purposes.  
2 However, the use by the board does not permanently prevent the use of  
3 the land or the surface of the ground for the prior public use or by the  
4 entity condemning or appropriating it. In a proceeding prosecuted by  
5 the board to condemn the use of land or the surface of the ground for  
6 purposes permitted by this chapter, the board must show that its  
7 proposed use will not permanently or seriously interfere with the  
8 continued use of the land or the surface of the ground.

9 SECTION 14. IC 36-10-5-2, AS AMENDED BY P.L.119-2012,  
10 SECTION 238, IS AMENDED TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) This section applies to:

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

14 (2) each second class city that:

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

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

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

21 (1) the municipal legislative body; or

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

24 (A) The governing body of the school corporation.

25 (B) A recreation board.

26 (C) The municipal works board.

27 (D) Any other appropriate board or commission.

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

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

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

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

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



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

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

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

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

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

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

38           (i) Any nonreverting fund that was created under IC 19-7-6 (before  
39       its repeal on September 1, 1981) continues until abolished by ordinance  
40       of the municipal legislative body. The legislative body may include in  
41       the park authority's annual budget an item and an appropriation for the  
42       specific purposes of a nonreverting capital fund. Money put in the fund



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

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

- 21 (1) IC 36-1-4-18 (before its repeal July 1, 2019);  
22 (2) IC 36-10-4-21 (before its amendment July 1, 2019); or  
23 (3) IC 36-10-5-2 (before its amendment July 1, 2019).

24 (b) The repeal or amendment by this act of the statutes listed in  
25 subsection (a) do not affect a municipality's exercise of the power  
26 of eminent domain to acquire property outside its corporate  
27 boundaries if:

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

33 not later than January 1, 2019.

34 (c) This SECTION expires January 1, 2021.

35 SECTION 16. An emergency is declared for this act.



### COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 535, 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 2, delete lines 12 through 42.

Delete pages 3 through 9.

Page 10, delete lines 1 through 27, begin a new paragraph and insert:

**"SECTION 5. 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, **June 30, 2019**, 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.

(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.

(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.

(d) ADVISORY. If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also within the potential jurisdiction of another municipal plan commission, the first municipal plan commission may exercise territorial jurisdiction over that part of the area within the potential jurisdiction of both municipal plan commissions that equals the product obtained by multiplying a fraction, the numerator of which is the area within the corporate boundaries of that municipality and the denominator of which is the total area within the corporate boundaries of both municipalities times the area within the potential jurisdiction of both municipal plan commissions. Furthermore, this commission may exercise territorial jurisdiction within those boundaries, enclosing an area reasonably compact and regular in shape, that the municipal plan commission first acting designates.

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

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



Before final action on the ordinance by the county legislative body, the county plan commission must hold an advertised public hearing as required for other actions of the county plan commission under the advisory planning law. Upon the passage of the ordinance by the county legislative body and the subsequent acceptance of jurisdiction by the municipal plan commission, the municipal plan commission shall exercise the same rights, powers, and duties conferred in this section exclusively with respect to the contiguous unincorporated area. The jurisdiction of a municipal plan commission, as authorized under this subsection, may be terminated by ordinance at the discretion of the legislative body of the county, but only if the county has adopted a comprehensive plan for that area that is as comprehensive in scope and subject matter as that in effect by municipal ordinance.

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

- (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.

(g) (f) 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) (g) 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.".

Page 10, delete lines 40 through 42.

Page 11, delete lines 1 through 7, begin a new paragraph and insert:  
**"SECTION 7. IC 36-8-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a)** A unit may:

- (1) capture and destroy animals if necessary; and **may**
  - (2) establish, maintain, and operate animal shelters.
- (b) A municipality may exercise the powers in subsection (a)(2) within four (4) miles outside its corporate boundaries.**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 535 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 1.

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#### SENATE MOTION

Madam President: I move that Senate Bill 535 be amended to read as follows:

Page 2, delete lines 12 through 42, begin a new paragraph and insert:

**"SECTION 5. IC 36-7-4-205, AS AMENDED BY P.L.2014-2014, 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.

**(b) For comprehensive plans adopted after July 1, 1999, and before July 1, 2019, 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.

**(c) ADVISORY. For comprehensive plans adopted after June 30, 2019, if 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.**

~~(b)~~ **(d) 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.

~~(e)~~ **(e) 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.

**(f)** ADVISORY. If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also within the potential jurisdiction of another municipal plan commission, the first municipal plan commission may exercise territorial jurisdiction over that part of the area within the potential jurisdiction of both municipal plan commissions that equals the product obtained by multiplying a fraction, the numerator of which is the area within the corporate boundaries of that municipality and the denominator of which is the total area within the corporate boundaries of both municipalities times the area within the potential jurisdiction of both municipal plan commissions. Furthermore, this commission may exercise territorial jurisdiction within those boundaries, enclosing an area reasonably compact and regular in shape, that the municipal plan commission first acting designates.

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

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

Before final action on the ordinance by the county legislative body, the county plan commission must hold an advertised public hearing as required for other actions of the county plan commission under the advisory planning law. Upon the passage of the ordinance by the county legislative body and the subsequent acceptance of jurisdiction by the municipal plan commission, the municipal plan commission shall exercise the same rights, powers, and duties conferred in this section exclusively with respect to the contiguous unincorporated area. The jurisdiction of a municipal plan commission, as authorized under this subsection, may be terminated by ordinance at the discretion of the



legislative body of the county, but only if the county has adopted a comprehensive plan for that area that is as comprehensive in scope and subject matter as that in effect by municipal ordinance.

**(f) (h) ADVISORY. This subsection applies only to the exercise or rejection of territorial jurisdiction by a municipal plan commission before July 1, 2019.** Each municipal plan commission in a municipality located in a county having:

- (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.

**(g) (i) 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) (j) 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.".

Delete pages 3 through 4.



Page 5, delete lines 1 through 8.

Page 5, between lines 29 and 30, begin a new paragraph and insert:

**"SECTION 9. IC 36-8-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. (a) The repeal of section 13 of this chapter does not operate to void an ordinance or resolution adopted by a municipality before January 1, 2019, that exercises a power:**

**(1) under the sole authority of:**

- (A) section 4 of this chapter;**
- (B) section 8 of this chapter; or**
- (C) sections 4 and 8 of this chapter; and**

**(2) within the four (4) mile area outside the municipality's boundaries under the authority of section 13 of this chapter (before its repeal).**

**(b) An ordinance or resolution described in subsection (a) that exercised a power that:**

- (1) is expressly granted to another unit of government;**
- (2) is expressly denied by the Indiana Constitution or by statute;**
- (3) did not comply with the specific manner required by law for exercising the power, including planning and zoning powers that must be exercised by complying with IC 36-7-4 as set forth in IC 36-7-4-201; or**
- (4) violates any other law;**

**is not legalized or validated by the repeal of section 13 of this chapter or by subsection (a).**

**SECTION 10. IC 36-8-2-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: The repeal of section 13 of this chapter operates to void an ordinance or resolution adopted by a municipality after December 31, 2018, and before July 1, 2019, that exercises a power:**

**(1) under the sole authority of:**

- (A) section 4 of this chapter;**
- (B) section 5(a)(2) of this chapter;**
- (C) section 6(a)(1) of this chapter;**
- (D) section 8 of this chapter; or**
- (E) any combination of the statutes listed in clauses (A) through (D); and**

**(2) within the four (4) mile area outside the municipality's boundaries under the authority of section 13 of this chapter (before its repeal).".**



Page 5, between lines 33 and 34, begin a new paragraph and insert:

**"SECTION 12. IC 36-9-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 20. The repeal of section 19 of this chapter operates to void an ordinance or resolution adopted by a municipality before July 1, 2019, that exercises a power:**

- (1) under the sole authority of:**
  - (A) section 9 of this chapter;**
  - (B) section 10 of this chapter;**
  - (C) section 11 of this chapter;**
  - (D) section 12 of this chapter;**
  - (E) section 13 of this chapter; or**
  - (F) any combination of the statutes listed in clauses (A) through (E); and**
- (2) within the ten (10) mile area outside the municipality's boundaries under the authority of section 19 of this chapter (before its repeal).".**

Page 8, delete lines 32 through 42, begin a new paragraph and insert:

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

- (1) IC 36-1-4-18 (before its repeal July 1, 2019);**
- (2) IC 36-10-4-21 (before its amendment July 1, 2019); or**
- (3) IC 36-10-5-2 (before its amendment July 1, 2019).**

**(b) The repeal or amendment by this act of the statutes listed in subsection (a) do not affect a municipality's exercise of the power of eminent domain to acquire property outside its corporate boundaries if:**

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

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



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

Page 9, delete lines 1 through 11.

Renumber all SECTIONS consecutively.

(Reference is to SB 535 as printed February 8, 2019.)

BOOTS

**SB 535—LS 7190/DI 87**

