



Reprinted
February 12, 2019

SENATE BILL No. 535

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.

Boots

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.

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

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) (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) (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) (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 **(†) (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]. ~~Sec. 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.

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.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.

(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

SB 535—LS 7190/DI 87



(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.

~~(d)~~ **(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.

~~(e)~~ **(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.

SB 535—LS 7190/DI 87



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

