



April 2, 2019

**ENGROSSED
SENATE BILL No. 535**

DIGEST OF SB 535 (Updated April 2, 2019 11:18 am - DI 75)

Citations Affected: IC 5-3; IC 8-1.5; IC 36-1; IC 36-7; IC 36-8; IC 36-9; IC 36-10; noncode.

Synopsis: Public notice advertising; extraterritorial powers of cities and towns. Provides that a political subdivision may not pay more than \$250 for each insertion of a public notice. Provides that if a public notice that is required to be published: (1) exceeds \$250; or (2) contains an error or mistake; publication of the public notice on the political subdivision's Internet web site satisfies the requirements applicable to the publication of such notices. 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 the repeal of the general statute relating to exercise of corporate powers outside the boundaries of a municipality: (1) does not void an ordinance or resolution regulating dangerous conduct or property if the ordinance or resolution was adopted before January 1, (Continued next page)

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

Boots, Buck, Niemeyer

(HOUSE SPONSORS — DAVISSON, GUTWEIN, MILLER D, STUTZMAN)

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.
February 12, 2019, engrossed.
February 14, 2019, read third time, passed. Yeas 39, nays 8.

HOUSE ACTION

March 7, 2019, read first time and referred to Select Committee on Government Reduction.
April 2, 2019, amended, reported — Do Pass.

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Digest Continued

2019; and (2) voids such an ordinance or resolution adopted after December 31, 2018. Provides that the validity of such an ordinance or resolution may be challenged in a legal proceeding. Provides that the repeal of the general statute relating to exercise of corporate powers outside the boundaries of a municipality voids an ordinance or resolution adopted before July 1, 2019, that: (1) restricts persons or animals that might cause injury or disease; or (2) establishes, maintains, or operates animal shelters. Provides that a municipality may only exercise eminent domain within the municipality unless a statute expressly provides otherwise. Provides that a municipal airport board may exercise the power of eminent domain within four miles outside the corporate boundaries of the municipality. Provides that with regard to an airport in existence on January 1, 2019, the board may exercise eminent domain to acquire land contiguous to the airport that is located more than four miles outside the boundaries of the municipality. Repeals a provision that allows a municipality to exercise powers regarding watercourses within 10 miles outside its corporate 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. Provides that for comprehensive plans that were initially adopted before July 1, 2019, if the municipal plan commission provided in its comprehensive plan for the development of a contiguous unincorporated area that is outside the corporate boundaries of the municipality, the municipal plan commission may continue to exercise territorial jurisdiction over that area unless the jurisdiction of the municipal plan commission is terminated as provided by law. Provides that for comprehensive plans that are initially adopted after June 30, 2019: (1) If the municipality is located in a county that has not adopted a comprehensive plan covering the contiguous unincorporated area and the municipality is providing municipal services to the contiguous unincorporated area, the municipal plan commission may exercise territorial jurisdiction over that area by filing certain notices. (2) If the municipality is located in a county that has adopted a comprehensive plan and ordinance covering the contiguous unincorporated area, the municipal plan commission may exercise territorial jurisdiction over that area only if it obtains the approval of the county legislative body of each affected county.



April 2, 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.

ENGROSSED 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 5-3-1-1, AS AMENDED BY P.L.147-2016,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 1. (a) The cost of all public notice advertising
4 which any elected or appointed public official or governmental agency
5 is required by law to have published, or orders published, for which the
6 compensation to the newspapers, locality newspapers, or qualified
7 publications publishing such advertising is drawn from and is the
8 ultimate obligation of the public treasury of the governmental unit
9 concerned with the advertising shall be charged to and collected from
10 the proper fund of the public treasury and paid over to the newspapers,
11 locality newspapers, or qualified publications publishing such
12 advertising, after proof of publication and claim for payment has been
13 filed.
14 (b) The basic charges for publishing public notice advertising shall
15 be by the line and shall be computed based on a square of two hundred

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1 and fifty (250) ems at the following rates:

2 (1) Before January 1, 1996, three dollars and thirty cents (\$3.30)
3 per square for the first insertion in newspapers or qualified
4 publications plus one dollar and sixty-five cents (\$1.65) per
5 square for each additional insertion in newspapers, or qualified
6 publications.

7 (2) After December 31, 1995, and before December 31, 2005, a
8 newspaper or qualified publication may, effective January 1 of
9 any year, increase the basic charges by five percent (5%) more
10 than the basic charges that were in effect during the previous year.
11 However, the basic charges for the first insertion of a public
12 notice in a newspaper, or qualified publication may not exceed the
13 lowest classified advertising rate charged to advertisers by the
14 newspaper, or qualified publication for comparable use of the
15 same amount of space for other purposes.

16 (3) After December 31, 2009, and before January 1, 2017, a
17 newspaper or qualified publication may, effective January 1 of
18 any year, increase the basic charges by not more than two and
19 three-quarters percent (2.75%) more than the basic charges that
20 were in effect during the previous year. However, the basic
21 charges for the first insertion of a public notice in a newspaper or
22 qualified publication may not exceed the lowest classified
23 advertising rate charged to advertisers by the newspaper or
24 qualified publication for comparable use of the same amount of
25 space for other purposes and must include all multiple insertion
26 discounts extended to the newspaper's other advertisers.

27 (4) After December 31, 2016, a newspaper, locality newspaper,
28 or qualified publication may, effective January 1 of any year,
29 increase the basic charges by not more than two and
30 three-quarters percent (2.75%) more than the basic charges that
31 were in effect during the previous year. However, the basic
32 charges for the first insertion of a public notice in a newspaper,
33 locality newspaper, or qualified publication may not exceed the
34 lowest classified advertising rate charged to advertisers by the
35 newspaper, locality newspaper, or qualified publication for
36 comparable use of the same amount of space for other purposes
37 and must include all multiple insertion discounts extended to the
38 newspaper's, locality newspaper's, or qualified publication's other
39 advertisers.

40 An additional charge of fifty percent (50%) shall be allowed for the
41 publication of all public notice advertising containing rule or tabular
42 work.

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1 **(c) Notwithstanding subsection (b), a political subdivision may**
 2 **not pay more than two hundred fifty dollars (\$250) for each**
 3 **insertion of a public notice. If a public notice that is required to be**
 4 **published:**

5 **(1) exceeds the amount set forth in this subsection; or**

6 **(2) contains an error or mistake;**

7 **publication of the public notice on the political subdivision's**
 8 **Internet web site satisfies the requirements of this chapter.**

9 ~~(d)~~ **(d)** All public notice advertisements shall be set in solid type that
 10 is at least 7 point type, without any leads or other devices for increasing
 11 space. All public notice advertisements shall be headed by not more
 12 than two (2) lines, neither of which shall total more than four (4) solid
 13 lines of the type in which the body of the advertisement is set. Public
 14 notice advertisements may be submitted by an appointed or elected
 15 official or a governmental agency to a newspaper, locality newspaper,
 16 or qualified publication in electronic form, if the newspaper, locality
 17 newspaper, or qualified publication is equipped to accept information
 18 in compatible electronic form.

19 ~~(e)~~ **(e)** Each newspaper, locality newspaper, or qualified publication
 20 publishing public notice advertising shall submit proof of publication
 21 and claim for payment in duplicate on each public notice advertisement
 22 published. For each additional proof of publication required by a public
 23 official, a charge of one dollar (\$1) per copy shall be allowed each
 24 newspaper, locality newspaper, or qualified publication furnishing
 25 proof of publication.

26 ~~(f)~~ **(f)** The circulation of a newspaper, locality newspaper, or
 27 qualified publication is determined as follows:

28 (1) For a newspaper, by the circulation stated on line 10.C. (Total
 29 Paid and/or Requested Circulation of Single Issue Published
 30 Nearest to Filing Date) of the Statement of Ownership,
 31 Management and Circulation required by 39 U.S.C. 3685 that was
 32 filed during the previous year.

33 (2) For a locality newspaper, by a verified affidavit filed with each
 34 agency, department, or office of the political subdivision that has
 35 public notices the locality newspaper wants to publish. The
 36 affidavit must:

37 (A) be filed with the agency, department, or office of the
 38 political subdivision before January 1 of each year; and

39 (B) attest to the circulation of the locality newspaper for the
 40 issue published nearest to October 1 of the previous year, as
 41 determined by an independent audit of the locality newspaper
 42 performed for the previous year.



1 (3) For a qualified publication, by a verified affidavit filed with
 2 each governmental agency that has public notices the qualified
 3 publication wants to publish. The affidavit must:

4 (A) be filed with the governmental agency before January 1 of
 5 each year; and

6 (B) attest to the circulation of the qualified publication for the
 7 issue published nearest to October 1 of the previous year.

8 SECTION 2. IC 8-1.5-6-2, AS ADDED BY P.L.213-2014,
 9 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2019]: Sec. 2. As used in this chapter, "regulated territory"
 11 means the area outside the corporate boundaries of a municipality
 12 described in:

13 (1) IC 36-9-2-18;

14 ~~(2) IC 36-9-2-19;~~ or

15 ~~(3) (2) IC 36-9-23-36.~~

16 SECTION 3. IC 36-1-4-5 IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2019]: Sec. 5. **(a) Except as provided in**
 18 **subsection (b)**, a unit may acquire by eminent domain or other means,
 19 and own interests in real and personal property.

20 **(b) Except as provided in subsection (c), a municipality may**
 21 **exercise the powers in subsection (a), except for the power of**
 22 **eminent domain, within four (4) miles outside of its corporate**
 23 **boundaries. A municipality may not exercise the power of eminent**
 24 **domain outside of its corporate boundaries, unless a statute**
 25 **expressly provides otherwise.**

26 **(c) This subsection applies only to a municipality. A board (as**
 27 **defined in IC 8-22-1-5) may exercise the power of eminent domain**
 28 **under IC 8-22-2-10 or IC 8-22-3-15 within four (4) miles outside of**
 29 **the municipality's corporate boundaries. However, with regard to**
 30 **an airport in existence on January 1, 2019, the board (as defined in**
 31 **IC 8-22-1-5) may exercise the power of eminent domain to acquire**
 32 **land contiguous to the airport that is located more than four (4)**
 33 **miles from the corporate boundaries of the municipality.**

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

39 SECTION 5. IC 36-1-4-18 IS REPEALED [EFFECTIVE JULY 1,
 40 2019]. ~~Sec. 18: A municipality may exercise powers granted by~~
 41 ~~sections 5 and 6 of this chapter in areas within four (4) miles outside~~
 42 ~~its corporate boundaries.~~



1 SECTION 6. IC 36-7-4-205, AS AMENDED BY P.L.207-2014,
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2019]: Sec. 205. (a) ADVISORY. A municipal plan
 4 commission shall adopt a comprehensive plan, as provided for under
 5 the 500 series of the advisory planning law, for the development of the
 6 municipality.

7 **(b) ADVISORY. For comprehensive plans that were initially**
 8 **adopted before July 1, 2019, if the municipal plan commission**
 9 **provided in its comprehensive plan for the development of a**
 10 **contiguous unincorporated area that is outside the corporate**
 11 **boundaries of the municipality, the municipal plan commission**
 12 **may continue to exercise territorial jurisdiction over that area**
 13 **unless the jurisdiction of the municipal plan commission is**
 14 **terminated by the affected county as provided in subsection (h).**

15 **(c) ADVISORY. For comprehensive plans that are initially**
 16 **adopted after July 1, 1999, June 30, 2019, the following provisions**
 17 **apply:**

18 **(1) If the municipality is located in a county that has not**
 19 **adopted a comprehensive plan and ordinance covering the**
 20 **contiguous unincorporated area and ~~(†)~~ the municipality**
 21 **~~provides~~ is providing municipal services to the contiguous**
 22 **unincorporated area, ~~or~~ the municipal plan commission may**
 23 **exercise territorial jurisdiction over that area by filing the**
 24 **notices required by subsections (f) and (j).**

25 **(2) If the municipality is located in a county that has adopted**
 26 **a comprehensive plan and ordinance covering the contiguous**
 27 **unincorporated area, the municipal plan commission may**
 28 **exercise territorial jurisdiction over that area only if it obtains**
 29 **the approval of the county legislative body of each affected**
 30 **county under subsection (h).**

31 **(d) ADVISORY. To exercise territorial jurisdiction outside the**
 32 **corporate boundaries of the municipality, the municipal plan**
 33 **commission ~~may~~ must provide in the comprehensive plan (regardless**
 34 **of the date the plan is adopted) for the development of the contiguous**
 35 **unincorporated area, designated by the commission, ~~that is outside the~~**
 36 **~~corporate boundaries of the municipality, and that, in the judgment of~~**
 37 **the commission, bears reasonable relation to the development of the**
 38 **municipality. For purposes of this section, participation of a**
 39 **municipality in a fire protection territory established under IC 36-8-19**
 40 **that includes unincorporated areas contiguous to the municipality may**
 41 **not be treated as providing municipal services to the contiguous**
 42 **unincorporated areas.**



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

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

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

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

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

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

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



1 plan commission first acting designates.

2 ~~(e)~~ **(h) ADVISORY.** If the legislative body of a county adopts a
3 comprehensive plan and ordinance **after June 30, 2019**, covering the
4 unincorporated areas of the county, a municipal plan commission may
5 not exercise jurisdiction, as provided in this section, over any part of
6 that unincorporated area unless it is authorized by ordinance of the
7 legislative body of the county. This ordinance may be initiated by the
8 county legislative body or by petition duly signed and presented to the
9 county auditor by:

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

14 Before final action on the ordinance by the county legislative body, the
15 county plan commission must hold an advertised public hearing as
16 required for other actions of the county plan commission under the
17 advisory planning law. Upon the passage of the ordinance by the
18 county legislative body and the subsequent acceptance of jurisdiction
19 by the municipal plan commission, the municipal plan commission
20 shall exercise the same rights, powers, and duties conferred in this
21 section exclusively with respect to the contiguous unincorporated area.

22 **(i) ADVISORY.** The jurisdiction of a municipal plan commission,
23 as authorized under this ~~subsection~~, **section**, may be terminated by
24 ordinance at the discretion of the legislative body of the county, but
25 only if the county has adopted a comprehensive plan for that area that
26 is as comprehensive in scope and subject matter as that in effect by
27 municipal ordinance.

28 ~~(f)~~ **(j) ADVISORY.** Each municipal plan commission in a
29 municipality located in a county ~~having:~~

- 30 ~~(1) a population of less than ninety-five thousand (95,000); and~~
31 ~~(2) a county plan commission~~

32 that has **not** adopted, in accord with the advisory planning law, a
33 comprehensive plan and ordinance covering the unincorporated areas
34 of the county may, at any time, after filing notice with the county
35 recorder and the county ~~plan commission~~, **legislative body**, exercise or
36 reject territorial jurisdiction over any part of the area within two (2)
37 miles of the corporate boundaries of that municipality and within that
38 county, whether or not that commission has previously exercised that
39 jurisdiction, if the municipality is providing municipal services to the
40 area. ~~Within sixty (60) days after receipt of that notice, the county plan~~
41 ~~commission and the county legislative body shall have the county~~
42 ~~comprehensive plan and ordinance revised to reflect the decision of the~~



1 municipal plan commission exercising the option provided for in this
 2 subsection. If the municipality is not providing municipal services to
 3 the area, the municipal plan commission must obtain the approval of
 4 the county legislative body of each affected county before exercising
 5 jurisdiction.

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

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

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

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

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

23 SECTION 7. IC 36-8-2-5 IS AMENDED TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2019]: Sec. 5. **(a)** A unit may **do the following:**

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

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

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

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

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

40 SECTION 9. IC 36-8-2-13 IS REPEALED [EFFECTIVE JULY 1,
 41 2019]. Sec. 13. ~~A municipality may exercise powers granted by~~
 42 ~~sections 4, 5 and 6 of this chapter in areas within four (4) miles outside~~



- 1 its corporate boundaries.
- 2 SECTION 10. IC 36-8-2-14 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2019]: **Sec. 14. (a) The repeal of section 13 of this chapter does**
- 5 **not operate to void an ordinance or resolution adopted by a**
- 6 **municipality before January 1, 2019, that exercises a power:**
- 7 **(1) under the sole authority of section 4 of this chapter; and**
- 8 **(2) within the four (4) mile area outside the municipality's**
- 9 **boundaries under the authority of section 13 of this chapter**
- 10 **(before its repeal).**
- 11 **(b) The validity of an ordinance or resolution described in**
- 12 **subsection (a) may be challenged in a legal proceeding by an**
- 13 **aggrieved party.**
- 14 **(c) The repeal of section 13 of this chapter operates to void an**
- 15 **ordinance or resolution adopted by a municipality after December**
- 16 **31, 2018, that exercises a power under the sole authority of section**
- 17 **4 of this chapter.**
- 18 SECTION 11. IC 36-8-2-15 IS ADDED TO THE INDIANA CODE
- 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 20 1, 2019]: **The repeal of section 13 of this chapter operates to void**
- 21 **an ordinance or resolution adopted by a municipality before July**
- 22 **1, 2019, that exercises a power:**
- 23 **(1) under the sole authority of:**
- 24 **(A) section 5(a)(2) of this chapter;**
- 25 **(B) section 6(a)(1) of this chapter; or**
- 26 **(C) both section 5(a)(2) of this chapter and section 6(a)(1)**
- 27 **of this chapter; and**
- 28 **(2) within the four (4) mile area outside the municipality's**
- 29 **boundaries under the authority of section 13 of this chapter**
- 30 **(before its repeal).**
- 31 SECTION 12. IC 36-9-2-19 IS REPEALED [EFFECTIVE JULY 1,
- 32 2019]. **Sec. 19: A municipality may exercise powers granted by**
- 33 **sections 9, 10, 11, 12, and 13 of this chapter in areas within ten (10)**
- 34 **miles outside its corporate boundaries.**
- 35 SECTION 13. IC 36-9-2-20 IS ADDED TO THE INDIANA CODE
- 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 37 1, 2019]: **Sec. 20. The repeal of section 19 of this chapter operates**
- 38 **to void an ordinance or resolution adopted by a municipality**
- 39 **before July 1, 2019, that exercises a power:**
- 40 **(1) under the sole authority of:**
- 41 **(A) section 9 of this chapter;**
- 42 **(B) section 10 of this chapter;**



- 1 (C) section 11 of this chapter;
- 2 (D) section 12 of this chapter;
- 3 (E) section 13 of this chapter; or
- 4 (F) any combination of the statutes listed in clauses (A)
- 5 through (E); and
- 6 (2) within the ten (10) mile area outside the municipality's
- 7 boundaries under the authority of section 19 of this chapter
- 8 (before its repeal).

9 SECTION 14. IC 36-10-4-21 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 21. (a) The board may
 11 exercise the power of eminent domain **for the purposes of this**
 12 **chapter:**

- 13 (1) within the corporate boundaries of the city; and
- 14 (2) **before July 1, 2019**, outside of the city within:
 - 15 (A) ten (10) miles; or
 - 16 (B) five (5) miles if the city adopted this chapter by ordinance
 - 17 under IC 19-7-9 (before its repeal on September 1, 1981);

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

28 (b) If the land or surface of the ground on, over, or across which it
 29 is necessary or advisable to establish, construct, or improve a
 30 boulevard, parkway, or pleasure driveway is already in use for another
 31 public purpose or has been condemned or appropriated for a use
 32 authorized by statute and is being used for that purpose by the entity
 33 appropriating it, the public use or prior condemnation does not bar the
 34 board from condemning the use of the ground for park purposes.
 35 However, the use by the board does not permanently prevent the use of
 36 the land or the surface of the ground for the prior public use or by the
 37 entity condemning or appropriating it. In a proceeding prosecuted by
 38 the board to condemn the use of land or the surface of the ground for
 39 purposes permitted by this chapter, the board must show that its
 40 proposed use will not permanently or seriously interfere with the
 41 continued use of the land or the surface of the ground.

42 SECTION 15. IC 36-10-5-2, AS AMENDED BY P.L.119-2012,



1 SECTION 238, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) This section applies to:
 3 (1) third class cities and towns, unless otherwise provided by law;
 4 and
 5 (2) each second class city that:
 6 (A) adopted second class city status by ordinance under
 7 IC 36-4-1-1.1, as a result of the 2010 federal decennial census;
 8 and
 9 (B) has adopted all or part of this section by ordinance or
 10 resolution.
 11 (b) As used in this section, "park authority" means:
 12 (1) the municipal legislative body; or
 13 (2) any of the following designated by the legislative body as the
 14 park authority:
 15 (A) The governing body of the school corporation.
 16 (B) A recreation board.
 17 (C) The municipal works board.
 18 (D) Any other appropriate board or commission.
 19 (c) If a recreation board is established under subsection (b)(2)(B),
 20 it must consist of five (5) resident freeholders appointed by the city
 21 executive or the town legislative body. At least one (1) member must
 22 be a member of the governing body of the school corporation and no
 23 members may serve on the municipal legislative body. All members
 24 must be qualified by an interest in and knowledge of the social and
 25 educational value of recreation. The members serve without
 26 compensation. The members shall be appointed for four (4) year terms
 27 from January 1 of the year of their appointment or until their successors
 28 are appointed. The initial terms of board members, however, are as
 29 follows:
 30 (1) One (1) for a term of one (1) year.
 31 (2) One (1) for a term of two (2) years.
 32 (3) One (1) for a term of three (3) years.
 33 (4) Two (2) for terms of four (4) years.
 34 A vacancy shall be filled by the appointing authority for the remainder
 35 of the unexpired term.
 36 (d) The park authority shall manage all public parks, including
 37 approaches, that belong to the municipality.
 38 (e) If a municipality decides, by ordinance, to establish, lay out, or
 39 improve a public park or grounds, or to make an extension of a park or
 40 grounds, it may locate the park or grounds, including appurtenances,
 41 and it may lay out and open the public ways necessary for the
 42 improvement. If it is necessary to acquire land, water rights, or



1 easements, or a pool, lake, or natural stream of water, the park authority
 2 may condemn that property and take possession of it if it is located
 3 within ~~five (5)~~ **miles the corporate boundaries** of the municipality.
 4 Before the park authority condemns the property, it shall assess the
 5 damages to the owners of the property at a meeting of the authority.
 6 Additional condemnation proceedings are the same as those provided
 7 for the taking of property to open streets.

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

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

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

29 (i) Any nonreverting fund that was created under IC 19-7-6 (before
 30 its repeal on September 1, 1981) continues until abolished by ordinance
 31 of the municipal legislative body. The legislative body may include in
 32 the park authority's annual budget an item and an appropriation for the
 33 specific purposes of a nonreverting capital fund. Money put in the fund
 34 may not be withdrawn except for the purposes for which the fund was
 35 created, unless the legislative body repeals the ordinance creating the
 36 fund. The repeal may not be made under suspension of the rules.
 37 Money procured from fees shall be deposited at least once each month
 38 with the municipal fiscal officer. The fiscal officer shall deposit the
 39 money either in a special nonreverting operating fund or in the
 40 nonreverting capital fund as directed by the park authority. The
 41 legislative body may provide by ordinance that expenditures may be
 42 made from the special nonreverting operating fund without



1 appropriation. Money from fees procured from golf courses, swimming
 2 pools, skating rinks, or other similar facilities requiring major
 3 expenditures for management and maintenance may not be deposited
 4 in this fund. Money from either fund shall be disbursed only on
 5 approved claims that are allowed and signed in the same manner as
 6 other claims of the municipality are allowed and signed.

7 SECTION 16. [EFFECTIVE JANUARY 1, 2019
 8 (RETROACTIVE)] **(a) This SECTION applies only to a
 9 municipality that exercises the power of eminent domain in the
 10 area outside of its corporate boundaries under the sole authority
 11 of:**

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

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

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

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

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

26 SECTION 17. 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

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(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.

~~(c)~~ **(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.

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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

COMMITTEE REPORT

Mr. Speaker: Your Committee on Select Committee on Government Reduction, to which was referred Senate Bill 535, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

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

"SECTION 1. IC 5-3-1-1, AS AMENDED BY P.L.147-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) The cost of all public notice advertising which any elected or appointed public official or governmental agency is required by law to have published, or orders published, for which the compensation to the newspapers, locality newspapers, or qualified publications publishing such advertising is drawn from and is the ultimate obligation of the public treasury of the governmental unit concerned with the advertising shall be charged to and collected from the proper fund of the public treasury and paid over to the newspapers, locality newspapers, or qualified publications publishing such advertising, after proof of publication and claim for payment has been filed.

(b) The basic charges for publishing public notice advertising shall be by the line and shall be computed based on a square of two hundred and fifty (250) ems at the following rates:

(1) Before January 1, 1996, three dollars and thirty cents (\$3.30) per square for the first insertion in newspapers or qualified publications plus one dollar and sixty-five cents (\$1.65) per square for each additional insertion in newspapers, or qualified publications.

(2) After December 31, 1995, and before December 31, 2005, a newspaper or qualified publication may, effective January 1 of



any year, increase the basic charges by five percent (5%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper, or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper, or qualified publication for comparable use of the same amount of space for other purposes.

(3) After December 31, 2009, and before January 1, 2017, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by not more than two and three-quarters percent (2.75%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper or qualified publication for comparable use of the same amount of space for other purposes and must include all multiple insertion discounts extended to the newspaper's other advertisers.

(4) After December 31, 2016, a newspaper, locality newspaper, or qualified publication may, effective January 1 of any year, increase the basic charges by not more than two and three-quarters percent (2.75%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper, locality newspaper, or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper, locality newspaper, or qualified publication for comparable use of the same amount of space for other purposes and must include all multiple insertion discounts extended to the newspaper's, locality newspaper's, or qualified publication's other advertisers.

An additional charge of fifty percent (50%) shall be allowed for the publication of all public notice advertising containing rule or tabular work.

(c) Notwithstanding subsection (b), a political subdivision may not pay more than two hundred fifty dollars (\$250) for each insertion of a public notice. If a public notice that is required to be published:

- (1) exceeds the amount set forth in this subsection; or**
- (2) contains an error or mistake;**

publication of the public notice on the political subdivision's Internet web site satisfies the requirements of this chapter.



~~(c)~~ (d) All public notice advertisements shall be set in solid type that is at least 7 point type, without any leads or other devices for increasing space. All public notice advertisements shall be headed by not more than two (2) lines, neither of which shall total more than four (4) solid lines of the type in which the body of the advertisement is set. Public notice advertisements may be submitted by an appointed or elected official or a governmental agency to a newspaper, locality newspaper, or qualified publication in electronic form, if the newspaper, locality newspaper, or qualified publication is equipped to accept information in compatible electronic form.

~~(d)~~ (e) Each newspaper, locality newspaper, or qualified publication publishing public notice advertising shall submit proof of publication and claim for payment in duplicate on each public notice advertisement published. For each additional proof of publication required by a public official, a charge of one dollar (\$1) per copy shall be allowed each newspaper, locality newspaper, or qualified publication furnishing proof of publication.

~~(e)~~ (f) The circulation of a newspaper, locality newspaper, or qualified publication is determined as follows:

(1) For a newspaper, by the circulation stated on line 10.C. (Total Paid and/or Requested Circulation of Single Issue Published Nearest to Filing Date) of the Statement of Ownership, Management and Circulation required by 39 U.S.C. 3685 that was filed during the previous year.

(2) For a locality newspaper, by a verified affidavit filed with each agency, department, or office of the political subdivision that has public notices the locality newspaper wants to publish. The affidavit must:

(A) be filed with the agency, department, or office of the political subdivision before January 1 of each year; and

(B) attest to the circulation of the locality newspaper for the issue published nearest to October 1 of the previous year, as determined by an independent audit of the locality newspaper performed for the previous year.

(3) For a qualified publication, by a verified affidavit filed with each governmental agency that has public notices the qualified publication wants to publish. The affidavit must:

(A) be filed with the governmental agency before January 1 of each year; and

(B) attest to the circulation of the qualified publication for the issue published nearest to October 1 of the previous year."

Page 1, line 13, delete "A" and insert "**Except as provided in**



subsection (c), a".

Page 2, between lines 2 and 3, begin a new paragraph and insert:

"(c) This subsection applies only to a municipality. A board (as defined in IC 8-22-1-5) may exercise the power of eminent domain under IC 8-22-2-10 or IC 8-22-3-15 within four (4) miles outside of the municipality's corporate boundaries. However, with regard to an airport in existence on January 1, 2019, the board (as defined in IC 8-22-1-5) may exercise the power of eminent domain to acquire land contiguous to the airport that is located more than four (4) miles from the corporate boundaries of the municipality."

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

"SECTION 6. 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) ADVISORY. For comprehensive plans that were initially adopted before July 1, 2019, if the municipal plan commission provided in its comprehensive plan for the development of a contiguous unincorporated area that is outside the corporate boundaries of the municipality, the municipal plan commission may continue to exercise territorial jurisdiction over that area unless the jurisdiction of the municipal plan commission is terminated by the affected county as provided in subsection (h).

(c) ADVISORY. For comprehensive plans that are initially adopted after July 1, 1999, June 30, 2019, the following provisions apply:

(1) If the municipality is located in a county that has not adopted a comprehensive plan and ordinance covering the contiguous unincorporated area and (†) the municipality provides is providing municipal services to the contiguous unincorporated area, or the municipal plan commission may exercise territorial jurisdiction over that area by filing the notices required by subsections (f) and (j).

(2) If the municipality is located in a county that has adopted a comprehensive plan and ordinance covering the contiguous unincorporated area, the municipal plan commission may exercise territorial jurisdiction over that area only if it obtains the approval of the county legislative body of each affected county under subsection (h).



(d) ADVISORY. To exercise territorial jurisdiction outside the corporate boundaries of the municipality, the municipal plan commission ~~may~~ **must** provide in the comprehensive plan **(regardless of the date the plan is adopted)** 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)~~ **(e) 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)~~ **(f) 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)~~ **(g) 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) **(h) ADVISORY.** If the legislative body of a county adopts a comprehensive plan and ordinance **after June 30, 2019**, 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.

(i) ADVISORY. The jurisdiction of a municipal plan commission, as authorized under this ~~subsection~~, **section**, 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) **(j) 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 **not** 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; legislative body~~, 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)~~ **(k)** 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)~~ **(l)** 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 20.

Page 5, line 30, delete "of this chapter".

Page 6, delete lines 3 through 23, begin a new line blocked left and insert:

"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 section 4 of this chapter; and**

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(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) The validity of an ordinance or resolution described in subsection (a) may be challenged in a legal proceeding by an aggrieved party.

(c) The repeal of section 13 of this chapter operates to void an ordinance or resolution adopted by a municipality after December 31, 2018, that exercises a power under the sole authority of section 4 of this chapter."

Page 6, line 27, delete "after".

Page 6, line 28, delete "December 31, 2018, and".

Page 6, delete lines 31 through 36, begin a new line double block indented and insert:

"(A) section 5(a)(2) of this chapter;

(B) section 6(a)(1) of this chapter; or

(C) both section 5(a)(2) of this chapter and section 6(a)(1) of this chapter; and".

Page 10, line 25, delete "do" and insert "does".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 535 as reprinted February 12, 2019.)

GUTWEIN

Committee Vote: yeas 11, nays 0.

