



Reprinted  
February 19, 2021

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## SENATE BILL No. 392

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DIGEST OF SB 392 (Updated February 18, 2021 3:11 pm - DI 87)

**Citations Affected:** IC 36-7.

**Synopsis:** Marion County zoning. Requires all townships to be represented across all the divisions of the board of zoning appeals. Provides that not more than two members appointed to each division of the board of zoning appeals may be residents of the same township. Requires the appointing authority to consult with the township executive regarding the appointments. Requires appeals and applications for variances, special exceptions, special uses, contingent uses, and conditional uses to be allocated to a division of the board of zoning appeals that has at least one member who is a resident of a township in which the property is located that is the subject of the appeal or application.

**Effective:** July 1, 2021.

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

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January 14, 2021, read first time and referred to Committee on Local Government.  
February 8, 2021, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.  
February 9, 2021, reassigned to Committee on Rules and Legislative Procedure pursuant to Rule 68(b). Committee Report: Without recommendation, adopted.  
February 18, 2021, read second time, amended, ordered engrossed.

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SB 392—LS 7036/DI 87





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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

## SENATE BILL No. 392

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A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-7-4-902 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 902. (a) ADVISORY.  
3 Each division of the advisory board of zoning appeals consists of five  
4 (5) members as follows:  
5 (1) Three (3) citizen members appointed by the executive of the  
6 municipality or county, of whom one (1) must be a member of the  
7 plan commission and two (2) must not be members of the plan  
8 commission.  
9 (2) One (1) citizen member appointed by the fiscal body of the  
10 municipality or county, who must not be a member of the plan  
11 commission.  
12 (3) One (1) member appointed by the plan commission from the  
13 plan commission's membership, who must be a county  
14 agricultural agent or a citizen member of the plan commission  
15 other than the member appointed under subdivision (1).  
16 (b) ADVISORY. In each county having a metropolitan plan  
17 commission, subsection (a) does not apply. In such a county, each

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1 division of the advisory board of zoning appeals consists of five (5)  
2 members as follows:

3 (1) Two (2) members, of whom no more than one (1) may be of  
4 the same political party, appointed by the county legislative body.

5 (2) Three (3) members, of whom no more than two (2) may be of  
6 the same political party, appointed by the second class city  
7 executive. One (1) only of these members must be a member of  
8 the plan commission.

9 (c) AREA. When the area board of zoning appeals was established  
10 before January 1, 1984, as a seven (7) member board, the board  
11 consists of seven (7) members as follows:

12 (1) Two (2) citizen members appointed by the area plan  
13 commission from its membership, one (1) of whom must be a  
14 municipal representative and the other must be a county  
15 representative.

16 (2) Three (3) citizen members, who may not be members of any  
17 plan commission, appointed by the executive of the largest  
18 municipality in the county. However, if there are two (2) or more  
19 municipalities having a population of at least twenty thousand  
20 (20,000) in the county, the executive of the largest municipality  
21 shall appoint two (2) citizen members and the executive of the  
22 second largest municipality shall appoint one (1) citizen member.  
23 Furthermore, if there are no cities in the county participating in  
24 the commission, then the three (3) members appointed under this  
25 subdivision shall be appointed as follows:

26 (A) One (1) member appointed by the county executive.

27 (B) One (1) member appointed by the county fiscal body.

28 (C) One (1) member appointed by the legislative bodies of  
29 those towns participating in the commission.

30 (3) Two (2) citizen members, who may not be members of any  
31 plan commission, appointed by the county legislative body.

32 (d) AREA. Except as provided in subsection (c), each division of  
33 the area board of zoning appeals consists of five (5) members as  
34 follows:

35 (1) One (1) citizen member appointed by the area plan  
36 commission from its membership.

37 (2) One (1) citizen member, who may not be a member of any  
38 plan commission, appointed by the executive of the largest  
39 municipality in the county participating in the commission.

40 (3) Two (2) citizen members, of whom one (1) must be a member  
41 of the area plan commission and one (1) must not be a member of  
42 any plan commission, appointed by the county legislative body.



1 (4) One (1) citizen member, who may not be a member of any  
2 plan commission, appointed by the executive of the second largest  
3 municipality in the county participating in the commission.  
4 However, if there is only one (1) municipality in the county  
5 participating in the commission, then the county legislative body  
6 shall make this appointment.

7 (e) METRO. Each division of the metropolitan board of zoning  
8 appeals consists of five (5) members as follows:

9 (1) Two (2) citizen members appointed by the executive of the  
10 consolidated city.

11 (2) Two (2) citizen members appointed by the legislative body of  
12 the consolidated city.

13 (3) One (1) citizen member, who may also be a member of the  
14 metropolitan development commission, appointed by the  
15 commission.

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

22 (f) METRO. The municipal board of zoning appeals for an excluded  
23 city consists of five (5) members as follows:

24 (1) Three (3) citizen members appointed by the legislative body  
25 of the excluded city.

26 (2) Two (2) citizen members, who may also be members of the  
27 metropolitan development commission, appointed by the  
28 commission.

29 (g) Whenever the zoning ordinance provides for a certain division  
30 of the board of zoning appeals to have limited territorial jurisdiction,  
31 it must also provide for that division to consist of members who are all  
32 residents of that limited territory. Those members shall be appointed in  
33 the same manner that is prescribed by subsection (a) for divisions of an  
34 advisory board of zoning appeals, but if the plan commission is unable  
35 to make its appointment in that manner, the appointment shall be made  
36 instead by the legislative body.

37 SECTION 2. IC 36-7-4-907, AS AMENDED BY P.L.126-2011,  
38 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2021]: Sec. 907. (a) If a vacancy occurs among the members  
40 of the board of zoning appeals, the appointing authority shall appoint  
41 a member for the unexpired term of the vacating member. In addition,  
42 the appointing authority may appoint an alternate member to



1 participate with the board in any hearing or decision if the regular  
 2 member it has appointed has a disqualification under section 909 of  
 3 this chapter, or is otherwise unavailable to participate in the hearing or  
 4 decision. An alternate member shall have all of the powers and duties  
 5 of a regular member while participating in the hearing or decision.

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

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

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

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

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

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

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

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

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

- 42 (1) appeals; and



1           **(2) applications for variances, special exceptions, special uses,**  
2           **contingent uses, and conditional uses;**  
3           **to a division of the board of zoning appeals that has at least one (1)**  
4           **member of the board who is a resident of a township in which the**  
5           **property that is the subject of the appeal or application is located.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 392, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 10.

Page 3, delete lines 25 through 42.

Delete pages 4 through 6.

Page 7, delete lines 1 through 16.

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

Renumber all sections consecutively.

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

(Reference is to SB 392 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 3.

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REPORT OF THE PRESIDENT  
PRO TEMPORE

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

BRAY

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COMMITTEE REPORT

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

BRAY

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## SENATE MOTION

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

Page 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 34.

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

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

Page 6, delete lines 27 through 28.

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

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

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

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

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

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

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

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

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

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

Page 6, delete lines 34 through 42.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Delete pages 8 through 11.

Renumber all SECTIONS consecutively.

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

YOUNG M

