

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I MOVE that House Bill 1540 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-15-1.8-3.5 IS ADDED TO THE INDIANA
- 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2001]: **Sec. 3.5. There is created within the**
- 6 **department the office of chief negotiator. The chief negotiator is**
- 7 **appointed by and serves at the pleasure of the governor. The chief**
- 8 **negotiator may be the director. The chief negotiator is responsible**
- 9 **for negotiating all collective bargaining agreements of the**
- 10 **executive branch (as defined in IC 5-27-1).**
- 11 SECTION 2. IC 4-15-2-35 IS AMENDED TO READ AS
- 12 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 35. (a) This section**
- 13 **does not apply to an individual who is a member of a collective**
- 14 **bargaining unit that has entered into a collective bargaining**
- 15 **agreement under IC 5-27 for complaints arising while the**
- 16 **agreement is in force.**
- 17 **(b) Any regular employee may file a complaint if his status of**
- 18 **employment is involuntarily changed or if he deems conditions of**
- 19 **employment to be unsatisfactory. However, the complaint procedure**
- 20 **shall be initiated as soon as possible after the occurrence of the act or**
- 21 **condition complained of and in no event shall be initiated more than**
- 22 **thirty (30) calendar days after the employee is notified of a change in**
- 23 **his status of employment or after an unsatisfactory condition of**
- 24 **employment is created. Failure to initiate the complaint procedure**

1 within such time period shall render the complaint procedure  
2 unavailable to the employee. The following complaint procedure shall  
3 be followed:

4 ~~Step I:~~ **(1)** The complaint procedure shall be initiated by a  
5 discussion of the complaint by the employee and his immediate  
6 supervisor and, if a mutually satisfactory settlement has not been  
7 made within two (2) consecutive working days, such complaint  
8 may be referred to ~~Step H:~~ **subdivision (2).**

9 ~~Step H:~~ **(2)** The complaint shall be reduced to writing and  
10 presented to the intermediate supervisor. If a mutually satisfactory  
11 settlement has not been reached within four (4) consecutive  
12 working days, such complaint may then be referred to the  
13 Appointing Authority.

14 ~~Step H:~~ **(3)** The Appointing Authority or his designated  
15 representative shall hold such hearings and conduct such  
16 investigations as he deems necessary to render a decision and  
17 shall make such decision in writing within ten (10) consecutive  
18 working days.

19 **(4)** Should the appointing authority or his designated  
20 representative not find in favor of the employee, the complaint  
21 may be submitted within fifteen (15) calendar days to the state  
22 personnel director. The director or his designee shall review the  
23 complaint and render a decision within fifteen (15) calendar days.  
24 If the decision is not agreeable to the employee, an appeal may be  
25 submitted by the employee in writing to the commission no later  
26 than fifteen (15) calendar days from the date the employee has  
27 been given notice of the action taken by the personnel director or  
28 his designee. After submission of the appeal, the commission  
29 shall, prior to rendering its decision, grant the appealing employee  
30 and the appointing authority a public hearing, with the right to be  
31 represented and to present evidence. With respect to all appeals,  
32 the commission shall render its decision within thirty (30) days  
33 after the date of the hearing on the appeal. If the commission finds  
34 that the action against the employee was taken on the basis of  
35 politics, religion, sex, age, race or because of membership in an  
36 employee organization, the employee shall be reinstated to his  
37 position without loss of pay. In all other cases the appointing  
38 authority shall follow the recommendation of the commission  
39 which may include reinstatement and payment of salary or wages  
40 lost by the employee which may be mitigated by any wages the  
41 employee earned from other employment during a dismissed or  
42 suspended period.

43 **(5)** If the recommendation of the commission is not agreeable to  
44 the employee, the employee, within fifteen (15) calendar days  
45 from receipt of the commission recommendation, may elect to  
46 submit the complaint to arbitration. The cost of arbitration shall

1 be shared equally by the employee and the state of Indiana. The  
 2 commissioner of labor shall prepare a list of three (3) impartial  
 3 individuals trained in labor relations, and from this list each party  
 4 shall strike one (1) name. The remaining arbitrator shall consider  
 5 the issues which were presented to the commission and shall  
 6 afford the parties a public hearing with the right to be represented  
 7 and to present evidence. The arbitrator's findings and  
 8 recommendations shall be binding on both parties and shall  
 9 immediately be instituted by the commission.

10 SECTION 3. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE  
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 12 1, 2001]: **Sec. 7. (a) This article applies to the following:**

13 **(1) The public employees relations board established by**  
 14 **IC 5-27-2.**

15 **(2) Interest arbitration under IC 5-27-14.**

16 **(b) This article does not apply to grievance arbitration under**  
 17 **IC 5-27-15.**

18 SECTION 4. IC 5-14-1.5-6.5 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6.5. (a) Whenever a  
 20 ~~governing body; or any person authorized to act for a governing body;~~  
 21 ~~meets with an employee organization; or any person authorized to act~~  
 22 ~~for an employee organization; for the purpose of: there is collective~~  
 23 ~~bargaining or discussion between the parties under IC 20-7.5 or~~  
 24 ~~IC 5-27, the following apply:~~

25 (1) Any party may inform the public of the status of collective  
 26 bargaining or discussion as it progresses by release of factual  
 27 information and expression of opinion based upon factual  
 28 information.

29 (2) If a mediator is appointed, any report the mediator may file at  
 30 the conclusion of mediation is a ~~public record open to public~~  
 31 ~~inspection: confidential.~~

32 (3) If a factfinder is appointed, any hearings the factfinder holds  
 33 must be open at all times for the purpose of permitting members  
 34 of the public to observe and record them. Any findings and  
 35 recommendations the factfinder makes are public records ~~open to~~  
 36 ~~public inspection subject to inspection and copying~~ as provided  
 37 by IC 20-7.5-1-13(e) ~~or any other applicable statute relating to~~  
 38 ~~factfinding in connection with public collective bargaining: and~~  
 39 ~~IC 5-27-13-2(e).~~

40 **(4) If an arbitrator is appointed, all decisions, opinions, or**  
 41 **awards made by an arbitrator are subject to public inspection**  
 42 **and copying under IC 5-14-3-3.**

43 (b) This section supplements and does not limit any other provision  
 44 of this chapter."

45 Page 1, line 15, before "decision" insert "**final and binding**".

46 Page 1, line 16, after "individual" insert "**or designee**".

- 1 Page 3, line 8, after "subdivision" insert "**as defined in section 6(1)**  
2 **of this chapter**".
- 3 Page 3, delete lines 11 through 12.
- 4 Page 3, between lines 15 and 16, begin a new line block indented  
5 and insert:  
6 "**(17) A certificated employee of a school corporation as**  
7 **defined in IC 20-7.5-1-2(f).**".
- 8 Page 4, line 18, delete "ten" and insert "**thirty**".
- 9 Page 4, line 18, delete "(10%)" and insert "**(30%)**".
- 10 Page 5, delete lines 32 through 33, begin a new paragraph and  
11 insert:  
12 "**Sec. 4. (a) The governor shall designate a member of the PERB**  
13 **to serve as the chairman. The chairman:**  
14 **(1) shall serve as the full time director; and**  
15 **(2) must possess educational credentials and experience in**  
16 **labor relations matters as a prerequisite to designation as**  
17 **chairman.**  
18 **(b) The chairman shall give full time to the chairman's duties.**  
19 **The chairman of the PERB shall not engage in any other business,**  
20 **vocation, or employment. "**
- 21 Page 6, between lines 14 and 15, begin a new line double block  
22 indented and insert:  
23 "**(7) Enforce its own decisions and determinations according**  
24 **to IC 4-21.5.**".
- 25 Page 10, delete lines 11 and 12, begin a new paragraph and insert:  
26 "**(b) Other bargaining units, other than those listed in subsection**  
27 **(a) may be established by the PERB.**".
- 28 Page 12, line 8, delete "January 1, 1996" and insert "**July 1, 2001**".
- 29 Page 13, delete lines 30 through 42, begin a new paragraph and  
30 insert:  
31 "**Sec. 7. (a) A representation proceeding held under this chapter:**  
32 **(1) must be by secret ballot;**  
33 **(2) may not be held unless one (1) year has elapsed since the**  
34 **last representation proceeding if there is no recognized**  
35 **exclusive representative; and**  
36 **(3) may not be held unless two (2) years have elapsed since the**  
37 **last representation proceeding if there is an exclusive**  
38 **representative and an agreement ratified by both parties; or**  
39 **(4) if otherwise provided for in a collectively bargained**  
40 **agreement, may not exceed an elapsed time of five (5) years**  
41 **unless no party petitions the PERB for a representation**  
42 **proceeding.**  
43 **(b) The rules adopted by the PERB under this article must**  
44 **provide for a thirty (30) day period in advance of the date fixed for**  
45 **the initiation of negotiations under IC 5-27-12 during which a**  
46 **decertification petition concerning employees of eligible political**

1 subdivisions may be filed. The PERB may order a representation  
 2 proceeding based on a decertification petition filed under this  
 3 subsection.

4 (c) The PERB and an employer shall provide employees a  
 5 liberal opportunity to participate in elections held under this  
 6 chapter. Mail-in ballots may be used if agreed to by the parties.

7 (d) Absentee ballots may be used in an election under this  
 8 chapter."

9 Page 14, delete lines 1 through 9.

10 Page 15, delete lines 12 through 38, begin a new paragraph and  
 11 insert:

12 "Sec. 1. An employee organization that has been certified as the  
 13 exclusive bargaining representative of a bargaining unit shall be  
 14 decertified as the exclusive bargaining representative of the  
 15 bargaining unit under this chapter if a majority of the employees  
 16 vote in an election under IC 5-27-8:

17 (1) not to be represented by an exclusive bargaining  
 18 representative; or

19 (2) to be represented by a different employee organization.

20 Sec. 2. Petitions for decertification of an exclusive bargaining  
 21 representative may be filed by an:

22 (1) employee; or  
 23 (2) employee organization."

24 Page 16, delete lines 8 through 14.

25 Page 16, line 15, delete "(d)" and insert "(c)".

26 Page 16, line 15, delete "interested" and insert "the recognized".

27 Page 16, line 15, delete "organizations" and insert "organization".

28 Page 16, delete lines 18 through 32, begin a new paragraph and  
 29 insert:

30 "Sec. 1. (a) As used in this section, "just cause", as the term  
 31 pertains to employees, includes any of the following:

32 (1) Falsification of an employment application to obtain  
 33 employment through subterfuge.

34 (2) Knowing violation of a reasonable and uniformly enforced  
 35 rule of an employer.

36 (3) Unsatisfactory attendance, if the employee is unable to  
 37 show good cause for the employee's absences or tardiness.

38 (4) Damaging the employer's property through willful  
 39 negligence.

40 (5) Refusing to obey lawful instructions.

41 (6) Reporting to work under the influence of alcohol or drugs  
 42 or consuming alcohol or drugs on the employer's premises or  
 43 while operating the employer's vehicles during work hours.

44 (7) Conduct endangering the safety of the employee, any other  
 45 employees, clients, or others entrusted to the employee's care.

46 (8) Incarceration following the conviction of a misdemeanor  
 47 or felony.

- 1           **(9) Any breach of a duty in connection with the employee's**
- 2           **employment that is reasonably owed the employer by an**
- 3           **employee.**
- 4           **(b) An employer has the right to do the following:**
- 5           **(1) Direct the work of the employer's employees.**
- 6           **(2) Hire, classify, evaluate, promote, transfer, assign, and**
- 7           **retain employees.**
- 8           **(3) Suspend, demote, reassign, or discharge employees for just**
- 9           **cause.**
- 10          **(4) Maintain the efficiency of all governmental operations.**
- 11          **(5) Relieve an employee from duties because of a lack of work**
- 12          **or funds.**
- 13          **(6) Determine and implement the methods, means,**
- 14          **assignments, and personnel by which the employer's**
- 15          **operations are to be conducted.**
- 16          **(7) Initiate, prepare, certify, and administer the employer's**
- 17          **budget.**
- 18          **(8) Exercise all other powers and duties granted to the**
- 19          **employer by law."**

20           Page 18, delete lines 22 through 23.  
 21           Page 18, line 24, delete "(8)" and insert "(7)".  
 22           Page 18, line 26, delete "(9)" and insert "(8)".  
 23           Page 19, delete lines 32 through 42, begin a new paragraph and  
 24           insert:

25           **"Chapter 12. Collective Bargaining**

26           **Sec. 1. As used in this section, "deficit financing" means, with**  
 27           **respect to any budget year, expenditures that exceed money legally**  
 28           **available to the employer.**

29           **Sec. 2. The employer's duty to begin collective bargaining arises**  
 30           **when the exclusive bargaining representative submits a written**  
 31           **notice regarding entering into negotiations. Negotiations shall**  
 32           **begin within thirty (30) days of this notification unless the parties**  
 33           **agree mutually to an alternative arrangement.**

34           **Sec. 3. (a)The parties shall determine collective bargaining**  
 35           **negotiations calendar and contract duration.**

36           **(b) Contracts continue in effect until replaced by a successor**  
 37           **agreement ratified by the parties.**

38           **(c) During this status quo period, in order to permit the**  
 39           **successful resolution of the dispute, the employer may not**  
 40           **unilaterally change the:**

- 41           **(1) terms; or**
- 42           **(2) conditions;**
- 43           **of employment that are issues in dispute.**

44           **Sec. 4. The parties shall not enter into any agreement that would**  
 45           **place the employer in a position of deficit financing."**

46           Page 20, delete lines 1 through 37.  
 47           Page 21, line 13, delete "5-27-14." and insert "**5-27-14, unless the**

1 exclusive bargaining representative chooses to be free of binding  
 2 arbitration impasse resolution before bargaining begins by  
 3 notifying:

- 4 (1) the PERB; and
- 5 (2) the chief negotiator or designee."

6 Page 22, line12, delete "made public." and insert "confidential."

7 Page 23, delete lines 34 through 35, begin a new paragraph and  
 8 insert:

9 "Sec. 3. The compensation and expenses of any mediator or  
 10 fact-finder shall be borne by the PERB."

11 Page 25, delete lines 10 through 42, begin a new paragraph and  
 12 insert:

13 "Sec. 7. Unless the parties reached agreement at the pre-hearing  
 14 conference, the arbitrator may do the following:

- 15 (1) Hold hearings and administer oaths.
- 16 (2) Examine witnesses and documents.
- 17 (3) Take testimony and receive evidence.
- 18 (4) Issue subpoenas to compel the attendance of witnesses and
- 19 the production of records.
- 20 (5) Petition the circuit or superior court in Marion County or
- 21 the county in which a hearing is held to enforce an order
- 22 compelling the attendance of witnesses and the production of
- 23 records.

24 Sec. 8. In making an award, the arbitrator shall consider, in  
 25 addition to any other relevant factors, the following factors:

- 26 (1) Past collective bargaining agreements between the parties,
- 27 including the bargaining that led up to the agreements.
- 28 (2) Comparison of wages, hours, and conditions of
- 29 employment of the employees in the bargaining unit with
- 30 those doing the same work in the public or private sector,
- 31 giving consideration to factors peculiar to the area and the
- 32 classifications involved.
- 33 (3) The interests and welfare of the public, the ability of the
- 34 employer to finance economic adjustments, and the effect of
- 35 the adjustments on the normal standard of services.
- 36 (4) Any other factor customarily considered in the
- 37 negotiations of public sector labor agreements.

38 Sec. 9. (a) The arbitrator shall select, within fifteen (15) days (or  
 39 longer if agreed to by both parties) after the arbitrator's first  
 40 meeting, the most reasonable offer of:

- 41 (1) the final offers on each issue submitted by the parties; or
- 42 (2) the recommendations of the factfinder, if factfinding
- 43 occurred;

44 on each unresolved issue.

45 (b) The arbitrator's selection with respect to a particular issue  
 46 may not deviate from the final offer or factfinding  
 47 recommendation, if any. The award must be accompanied by a

1 written opinion. The arbitrator shall deliver copies of the opinion  
2 and the award within thirty (30) days (or longer if agreed to by  
3 both parties) after the close of the final hearing in the matter to the  
4 parties and the PERB.

5 **Sec. 10.** The selections by the arbitrator and the other issues  
6 agreed upon by the employer and the employee organization shall  
7 be the bargaining agreement between the parties. The agreement  
8 shall be considered final and binding upon the parties.

9 **Sec. 11.** The costs of an arbitrator shall be paid by the PERB  
10 which shall be reimbursed by the two (2) parties to the arbitration  
11 under procedures for collection and payment established by the  
12 PERB.

13 **Sec. 12.** An arbitration award under this chapter is subject to  
14 judicial review under IC 4-21.5.

15 **Chapter 15. Grievance Procedure**

16 **Sec. 1.** A bargaining agreement must contain a grievance  
17 procedure culminating in binding arbitration of unresolved  
18 disputes over the interpretation or application of the collective  
19 bargaining agreement.

20 **Sec. 2.** A binding arbitration award with respect to a grievance  
21 may not amend, add to, or subtract from provisions of the  
22 collective bargaining agreement or other unresolved disputes.

23 **Sec. 3.** The grievance arbitration provisions of bargaining  
24 agreements are subject to IC 34-57-2.

25 **Sec. 4.** The costs of arbitration under this chapter shall be  
26 shared equally by the parties.

27 **Sec. 5.** IC 5-14-1.5 applies to grievance arbitration proceedings  
28 under this chapter.

29 **Chapter 16. Strikes**

30 **Sec. 1. (a)** It is unlawful for an employee or employee  
31 organization to take part in or assist in a strike against an  
32 employer.

33 **(b)** Any employer may, in an action at law, suit in equity, or  
34 other proper proceeding, take action against any employee or  
35 employee organization aiding or abetting in a strike, for redress of  
36 such unlawful act.

37 **(c)** When any employee organization, or affiliate thereof,  
38 engages in a strike, or aids or abets therein, the employer may  
39 petition a circuit or superior court in:

40 **(1)** the county where the violation has occurred; or

41 **(2)** Marion County;

42 for remedy against the employee organization. The exclusive  
43 remedy against the employee organization, including remedy for  
44 violations of IC 34-47, is loss of its dues deduction privilege for a  
45 period of one (1) year.

46 **(d)** An employer shall not pay a public employee for any day  
47 when the public employee fails as a result of a strike to report for

1 work as required by the employer.

2 Sec. 2. IC 22-6-1 does not apply to this article.

3 Sec. 3. IC 22-6-2 shall apply when in conflict with this article.

4 Chapter 17. Unit Determination and Selection of the Exclusive  
5 Representative

6 Sec. 1. Assignment of employees to units shall be made in the  
7 following manner:

8 (1) for employees under IC 5-27-1-9(a)(1), by mutual  
9 agreement of the state personnel director and the exclusive  
10 bargaining representative of the state employees for the job  
11 classification of the individual employee; or

12 (2) for employees under IC 5-27-1-9(a)(2) or IC 5-27-1-9(a)(3),  
13 by the management designee and the exclusive bargaining  
14 representative.

15 Sec. 2. (a) If:

16 (1) the management designee and the exclusive bargaining  
17 representative cannot agree upon employee assignment to a  
18 unit; or

19 (2) an employee files a complaint to such assigned unit with  
20 the PERB;

21 the proper assigned unit shall be determined by the PERB.

22 (b) The determination under subsection (a) shall be made by the  
23 PERB after a hearing and its decision shall be based on, but shall  
24 not be limited to, the following considerations:

25 (1) Efficient administration of governmental operations.

26 (2) The existence of a community of interest among  
27 governmental employees.

28 (3) The effects on the governmental unit and governmental  
29 employees of fragmentation of units.

30 (4) Recommendations of the parties involved.

31 In making the determination notice shall be given to all interested  
32 parties in accordance with the rules of the board, but the board  
33 need not follow the provisions of IC 4-21.5."

34 Delete pages 26 through 31.

35 Page 32, delete lines 1 through 22.

36 Page 32, between lines 22 and 23, begin a new paragraph and insert:

37 "SECTION 6. IC 20-7.5-1-8 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. The school employer  
39 shall, on receipt of the written authorization of a school employee,  
40 deduct from the pay of such employee any dues **or assessments**  
41 designated or certified by the appropriate officer of a school employee  
42 organization which is an exclusive representative of any employees of  
43 the school employer and shall remit such dues to such school employee  
44 organization; however, such deductions shall be consistent with the  
45 provisions of IC 22-2-6 and IC 22-2-7, and IC 20-6.1-5-11.

46 SECTION 7. IC 20-7.5-1-14 IS AMENDED TO READ AS  
47 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. ~~Strikes:~~

- 1 (a) It shall be unlawful for any school employee, school employee
- 2 organization, or any affiliate, including but not limited to state or
- 3 national affiliates thereof, to take part in or assist in a strike against a
- 4 school employer or school corporation.
- 5 (b) Any school corporation or school employer may, in an action at
- 6 law, suit in equity, or other proper proceeding, take action against any
- 7 ~~school employee organization, any affiliate thereof, or any person~~
- 8 ~~aiding or abetting in a strike, for redress of such unlawful act.~~
- 9 (c) ~~Where~~ **When** any exclusive representative engages in a strike,
- 10 or aids or abets therein, **the school employer or school corporation**
- 11 **may petition a circuit or superior court in:**
- 12 **(1) the county in which the violation has occurred; or**
- 13 **(2) Marion County;**
- 14 **for remedy against the exclusive representative. The exclusive**
- 15 **remedy against the exclusive representative, including remedy for**
- 16 **violations of IC 34-47, it shall lose is loss of its dues deduction**
- 17 **privilege for a period of one (1) year.**
- 18 (d) No regulation, rule or law with respect to the minimum length
- 19 of a school year shall be applicable or shall require make-up days in
- 20 any situation where schools in a school corporation are closed as a
- 21 result of a school employee strike. A school corporation shall not pay
- 22 any school employee for any day when the school employee fails as a
- 23 result of a strike to report for work as required by the school year
- 24 calendar."
- 25 Page 32, line 27, delete "(a)".
- 26 Page 32, delete lines 28 through 40.
- 27 Page 32, line 41, delete "(b) Notwithstanding subsection (a), for"
- 28 and insert "For".
- 29 Page 32, line 41, delete "those".
- 30 Renumber all SECTIONS consecutively.
- (Reference is to HB 1540 as reprinted February 13, 2001.)

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Representative Fry