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# HOUSE BILL No. 1372

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-31.

**Synopsis:** State executive branch collective bargaining. Authorizes collective bargaining for employees of the executive branch of the state. Establishes the public employees relations board to conduct elections and make determinations concerning exclusive bargaining representatives and representation matters. Allows an elected state officer to opt in to collective bargaining for the officer's employees. Establishes 11 statewide bargaining units, and requires the director of the state personnel department to determine each employee's bargaining unit assignment. Provides that an employee who threatens, encourages, or participates in a strike, slowdown, or other interruption is subject to immediate dismissal and is ineligible for rehiring for at least one year. Provides that an employee organization that threatens, encourages, or participates in a strike, slowdown, or other interruption is decertified as an exclusive bargaining representative for at least one year. Reinstates the bargaining unit assignments, the exclusive bargaining representatives, and settlements between the state and employee organizations that were rescinded by Executive Order 05-14.

**Effective:** Upon passage.

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### Bauer, Stilwell

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January 12, 2006, read first time and referred to Committee on Employment and Labor.

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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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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## HOUSE BILL No. 1372



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

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

1 SECTION 1. IC 5-31 IS ADDED TO THE INDIANA CODE AS A  
2 **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON  
3 PASSAGE]:

4 **ARTICLE 31. COLLECTIVE BARGAINING**

5 **Chapter 1. Definitions**

6 **Sec. 1. The definitions in this chapter apply throughout this**  
7 **article.**

8 **Sec. 2. "Bargaining unit" means classes or groups of jobs or**  
9 **positions that are held by employees whose collective interests may**  
10 **be suitably represented by an employee organization for collective**  
11 **bargaining.**

12 **Sec. 3. "Confidential employee" means an employee:**  
13 **(1) who works in the personnel office of the employer;**  
14 **(2) who has access to confidential or discretionary**  
15 **information that may be used by the employer in negotiating**  
16 **a collective bargaining agreement under this article;**  
17 **(3) who works in a close and continuing working relationship**



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- with:
- (A) an individual holding elective office; or
- (B) individuals who represent the employer in negotiations under this article;
- (4) whose:
  - (A) functional responsibilities; or
  - (B) knowledge;
- concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or
- (5) who is a personal secretary of:
  - (A) the chief administrative or executive officer of an agency;
  - (B) a deputy or assistant to the chief administrative or executive officer of an agency; or
  - (C) an individual holding an elected office.

Sec. 4. "Employee" means an individual who is employed by the employer, unless the individual is any of the following:

- (1) An intermittent, temporary, or student employee.
- (2) A member of a board or commission.
- (3) A confidential employee.
- (4) A supervisor.
- (5) A managerial employee.
- (6) A patient or resident of a state institution.
- (7) An individual in the custody of the department of correction or any law enforcement agency.
- (8) The chief administrative or executive officer of an agency.
- (9) An attorney whose responsibilities include providing legal advice or legal research.
- (10) A physician or dentist.
- (11) An administrative law judge.
- (12) An individual who performs internal investigations.
- (13) Teachers at state institutions whose compensation is determined under any of the following:
  - (A) IC 11-10-5-4.
  - (B) IC 12-24-3-4.
  - (C) IC 16-19-6-7.

Sec. 5. "Employee organization" means an organization:

- (1) in which employees participate; and
- (2) that exists for the purpose of dealing with the employer concerning wages, hours, settlement of grievances, and other terms and conditions of employment.

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**Sec. 6. (a) "Employer" means the executive branch.**

**(b) The term does not include any of the following:**

- (1) The senate, the house of representatives, the legislative services agency, and any commission or agency of the legislative department of the state.**
- (2) The judicial department of government, including any commission or agency of the judicial department.**
- (3) A school corporation.**
- (4) Unless specifically included under section 8 of this chapter, the office of an individual holding an elected office.**
- (5) Bodies corporate and politic.**
- (6) The budget agency.**
- (7) Uniformed members of the national guard.**
- (8) The state personnel department.**
- (9) The PERB.**
- (10) The Indiana education employment relations board.**
- (11) The state board of accounts.**
- (12) A state educational institution (as defined in IC 20-12-0.5-1).**

**Sec. 7. "Exclusive bargaining representative" means an employee organization that has been certified as the result of a representation proceeding under IC 5-31-5 to be the sole representative of the members of a bargaining unit.**

**Sec. 8. "Executive branch" means the following:**

- (1) Agencies (as defined by IC 4-22-2-3) under the direct authority of the governor.**
- (2) Agencies under the direct authority of any other elected state officer electing coverage under IC 5-31-3.**

**Sec. 9. "Intervening employee organization" means an employee organization that demonstrates to the PERB a showing of interest of at least ten percent (10%) of the members of a bargaining unit not more than thirty (30) days after the notice of a representation proceeding given under IC 5-31-5-3.**

**Sec. 10. "Managerial employee" means an individual who is:**

- (1) engaged predominantly in executive and management functions; or**
- (2) charged with the responsibility of directing the effectuation of management policies and practices.**

**Sec. 11. "PERB" refers to the public employees relations board established by IC 5-31-2-1.**

**Sec. 12. "Strike" means an employee's:**

- (1) refusal to report for duty;**

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- 1 (2) willful absence from the employee's assigned work area;
- 2 (3) stoppage of work; or
- 3 (4) abstinence in whole or in part, from the full, faithful, and
- 4 proper performance of the employee's duties of employment;
- 5 in concerted action with other persons or employees without the
- 6 lawful approval of the employer.

7 Sec. 13. "Supervisor" means an individual having authority in  
 8 the interest of the employer to:

- 9 (1) hire, transfer, suspend, lay off, recall, promote, discharge,
- 10 assign, reward, or discipline other employees;
- 11 (2) adjust employee grievances; or
- 12 (3) effectively recommend any of the actions in subdivision (1)
- 13 or (2);

14 if the exercise of the authority is not merely of a routine or clerical  
 15 nature, but requires the use of independent judgment.

16 Sec. 14. "Temporary employee" means an individual who is  
 17 employed in a temporary position for not more than ninety (90)  
 18 days.

19 Chapter 2. Public Employees Relations Board

20 Sec. 1. The public employees relations board (PERB) is  
 21 established.

22 Sec. 2. (a) The PERB has five (5) members who are appointed  
 23 by the governor.

- 24 (b) A PERB member may not:
  - 25 (1) be a representative of or be employed by an employee
  - 26 organization or an affiliate of an employee organization; or
  - 27 (2) hold any other public office.
- 28 (c) The term of each member is four (4) years.

29 Sec. 3. A vacancy on the PERB shall be filled by the governor.

30 Sec. 4. The governor shall designate a PERB member to serve  
 31 as the chairperson.

32 Sec. 5. A majority of the PERB members appointed to the board  
 33 constitutes a quorum.

- 34 Sec. 6. The PERB shall do the following:
  - 35 (1) Conduct elections under this article.
  - 36 (2) Make determinations concerning exclusive bargaining
  - 37 representatives and representation matters under this article.
  - 38 (3) Resolve issues that may arise under this article.

39 Sec. 7. The PERB may adopt rules under IC 4-22-2 to carry out  
 40 this article.

41 Sec. 8. The Indiana education employment relations board  
 42 established by IC 20-29-3-1 shall provide staff assistance needed by

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1 the PERB.

2 Chapter 3. Opt In

3 Sec. 1. (a) An elected state officer may elect to have the officer's  
4 employees to be subject to this article by submitting a written  
5 notice to the PERB.

6 (b) The notice must be consistent with the provisions of this  
7 article and may not include employees otherwise excluded.

8 (c) The notice must indicate the agencies or groups of employees  
9 for whom the officer is electing inclusion.

10 Chapter 4. Bargaining Units

11 Sec. 1. An employee must be included under one (1) of the  
12 following eleven (11) bargaining units:

13 (1) Labor, trades, and crafts classes, including the following:

14 (A) Carpenters.

15 (B) Electricians.

16 (C) Plumbers.

17 (D) Print shop workers.

18 (E) Auto mechanics.

19 (F) Maintenance workers.

20 (G) Similar classes.

21 (2) Administrative and technical support that includes clerical  
22 and administrative nonprofessional classes, including the  
23 following:

24 (A) Typists.

25 (B) Secretaries.

26 (C) Account clerks.

27 (D) Computer operators.

28 (E) Office service personnel.

29 (F) Personnel who provide support services to  
30 professionals.

31 (G) Other nonprofessional employees who do not meet the  
32 standards of other nonprofessional units.

33 (3) Regulatory, inspection, and licensure nonprofessionals  
34 that include individuals who review public and commercial  
35 activities, including the following:

36 (A) Tax examiners.

37 (B) Driver's license examiners.

38 (C) Meat inspectors.

39 (D) Similar classes.

40 (4) Health and human services nonprofessionals, including the  
41 following:

42 (A) Licensed practical nurses.

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- 1           **(B) Nursing aides.**  
 2           **(C) Psychiatric attendants.**  
 3           **(D) Therapy aides.**  
 4           **(E) Claims takers.**  
 5           **(F) Similar classes.**  
 6           **(5) Regulatory, inspection, and licensure professional**  
 7           **employees empowered to review certain public and**  
 8           **commercial activities, including the following:**  
 9           **(A) Revenue auditors.**  
 10           **(B) Bank and insurance examiners.**  
 11           **(C) Public health inspectors.**  
 12           **(D) Similar classes.**  
 13           **(6) Health care professionals, including the following:**  
 14           **(A) Registered nurses.**  
 15           **(B) Pharmacists.**  
 16           **(C) Licensed therapists.**  
 17           **(D) Similar classes.**  
 18           **(7) Social services and counseling professionals who provide**  
 19           **services and benefits to eligible persons, including the**  
 20           **following:**  
 21           **(A) Employment and training personnel.**  
 22           **(B) Welfare caseworkers.**  
 23           **(C) Social workers.**  
 24           **(D) Counselors.**  
 25           **(E) Similar classes.**  
 26           **(8) Engineering, scientific, and information services**  
 27           **professionals, including the following:**  
 28           **(A) Architects.**  
 29           **(B) Chemists.**  
 30           **(C) Geologists.**  
 31           **(D) Civil engineers.**  
 32           **(E) Computer programmers.**  
 33           **(F) System analysts.**  
 34           **(G) Similar classes.**  
 35           **(9) Professional administrative employees with general**  
 36           **business responsibilities, including the following:**  
 37           **(A) Accountants.**  
 38           **(B) Buyers.**  
 39           **(C) Administrators.**  
 40           **(D) Other professional employees who do not meet the**  
 41           **standards of the other professional units.**  
 42           **(10) Public safety, protective service workers, and**

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**institutional security employees, including the following:**

- (A) Correctional officers.**
- (B) Building guards.**
- (C) Firefighters.**
- (D) Motor carrier inspectors of the state police department.**
- (E) Similar classes.**

**(11) Sworn police officers, including the following:**

- (A) Law enforcement officers of the state police department.**
- (B) Conservation officers of the department of natural resources.**
- (C) Excise police of the alcohol and tobacco commission.**

**Sec. 2. The director of the state personnel department shall determine the assignment of each employee, including the employees of a state officer electing coverage under IC 5-31-3, to a bargaining unit under section 1 of this chapter based on the employee's job classification and position.**

**Sec. 3. In determining the appropriateness of the assignment of an employee to a unit in section 1 of this chapter, the director of the state personnel department shall consider the following:**

- (1) The principles of efficient administration of government, including limiting the fragmentation of government administrative authority.**
- (2) The existence of a community of interest among the employees assigned to the bargaining unit.**
- (3) The recommendations of the parties involved.**

**Sec. 4. Each bargaining unit under this chapter must be established on a statewide basis.**

**Chapter 5. Representation Proceedings**

**Sec. 1. The certification of an employee organization as the exclusive bargaining representative of a bargaining unit may be held under this chapter.**

**Sec. 2. An employee organization may file a petition for a representation proceeding with the PERB and must include a showing of interest of at least thirty percent (30%) of the employees within a bargaining unit.**

**Sec. 3. (a) Not more than fifteen (15) days after a determination that a valid petition has been submitted, the PERB shall notify interested employee organizations of a proceeding under this chapter.**

**(b) Any intervening employee organization must file a petition**

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of intervention with the PERB.

**Sec. 4.** The PERB shall, not more than thirty (30) days after the filing of a petition under this chapter, issue an order determining the appropriateness of the assignment of an employee to a bargaining unit under section 1 of this chapter, if applicable, and where appropriate, direct that an election be held under this chapter within a reasonable time as specified in the PERB's rules.

**Sec. 5. (a)** A representation proceeding held under this chapter:

- (1) must be by secret ballot;
- (2) may not be held unless at least one (1) year has elapsed since the most recent previous valid election was held for the bargaining unit; and
- (3) may not be held while a bargaining agreement is in effect.

**(b)** The PERB and the employer shall provide employees a liberal opportunity to participate in elections held under this chapter. Mail-in ballots may be used.

**(c)** Absentee ballots may be used in an election under this chapter.

**Sec. 6.** If, as a result of an election under this chapter, an employee organization receives a majority of the votes cast, the PERB shall certify the employee organization as the exclusive bargaining representative of the bargaining unit.

**Chapter 6. Collective Bargaining**

**Sec. 1.** The certification of an employee organization as the exclusive bargaining representative of the bargaining unit continues as long as the employee organization satisfies the requirements of this article.

**Sec. 2.** An employee organization certified as the exclusive bargaining representative of the employees of a bargaining unit may do the following:

- (1) Speak on behalf of all members of the unit.
- (2) Represent the interests of all members of the unit without:
  - (A) discrimination; and
  - (B) regard to employee organization membership.
- (3) Exclusively have organizational membership dues collected by the state by wage assignment under IC 22-2-6-2.
- (4) Negotiate with the director of the state personnel department or the director's designee concerning the following mandatory subjects of negotiation:
  - (A) Wages.
  - (B) Hours.
  - (C) Working conditions.

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1           **Sec. 3. An employee organization shall conduct the solicitation**  
2 **of membership, dues, or other internal employee organization**  
3 **business only during the off duty hours of the employees**  
4 **concerned.**

5           **Chapter 7. Employer and Employee Rights**

6           **Sec. 1. An employer has the right to do the following:**

- 7           (1) **Direct the work of the employer's employees.**
- 8           (2) **Hire, promote, transfer, assign, and retain employees.**
- 9           (3) **Suspend, demote, discharge, or take other disciplinary**  
10 **action against employees.**
- 11           (4) **Maintain the efficiency of all governmental operations.**
- 12           (5) **Relieve an employee from duties because of a lack of work**  
13 **or for any other legitimate reason not prohibited by law.**
- 14           (6) **Determine and implement the methods, means, and**  
15 **personnel by which the employer's operations are to be**  
16 **conducted.**
- 17           (7) **Initiate, prepare, certify, and administer the employer's**  
18 **budget.**
- 19           (8) **Exercise all other powers and duties granted to the**  
20 **employer by law.**

21           **Sec. 2. (a) An employee has the right to do the following:**

- 22           (1) **Organize, form, join, and assist an employee organization**  
23 **under this article.**
- 24           (2) **Negotiate collectively through exclusive bargaining**  
25 **representatives chosen under this article.**
- 26           (3) **Engage in other concerted activities for the purpose of**  
27 **collective bargaining, mutual aid, or protection that:**
  - 28           (A) **are not prohibited by law; and**
  - 29           (B) **do not interfere with the proper performance of**  
30 **another employee's work, unless authorized by a collective**  
31 **bargaining agreement.**
- 32           (4) **Refuse to join or participate in the activities of an**  
33 **employee organization, except for the payment of fair share**  
34 **fees if required in a collective bargaining agreement under**  
35 **this article.**

36           **(b) The rights described in this section do not extend to**  
37 **participation in the collective bargaining process where such**  
38 **participation would result in a conflict of interest or otherwise be**  
39 **incompatible with law.**

40           **Chapter 8. Strikes**

41           **Sec. 1. (a) It is unlawful for an employee organization to directly**  
42 **or indirectly threaten, encourage, or participate in a strike,**

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1 slowdown, or other interruption or interference with the activities  
2 of the state.

3 (b) It is unlawful for an employee to directly or indirectly:  
4 (1) threaten, encourage, or participate in a strike, slowdown,  
5 or other interruption or interference with the activities of the  
6 state; or

7 (2) abstain, in whole or in part, from the full, faithful, and  
8 proper performance of the employee's duties of employment.

9 (c) Each day that an employee or employee organization violates  
10 this section constitutes a separate offense.

11 Sec. 2. An employee who violates section 1 of this chapter shall  
12 be immediately dismissed. An employee dismissed under this  
13 section is ineligible for rehiring with the executive branch for at  
14 least one (1) year following the dismissal.

15 Sec. 3. An employee organization that violates section 1 of this  
16 chapter:

17 (1) shall cease to be the exclusive bargaining representative of  
18 the bargaining unit and shall be decertified;

19 (2) may not have organizational membership dues collected  
20 on its behalf by the state; and

21 (3) may not submit a petition for certification as the exclusive  
22 bargaining representative of the bargaining unit until at least  
23 one (1) year has elapsed since the decertification under  
24 subdivision (1).

25 Sec. 4. The remedies and penalties specified by this chapter are  
26 separate and are in addition to any other legal or equitable remedy  
27 or penalty.

28 Chapter 9. Settlements With Employee Organization

29 Sec. 1. The settlements in effect between the state and the  
30 following employee organizations (before they were rescinded by  
31 Executive Order 05-14 on January 11, 2005) are reinstated on the  
32 effective date of this article and do not expire except as provided by  
33 an enactment of the general assembly:

34 (1) The settlement between the state and The Unity Team  
35 Local 9212/UAW/AFT, approved by Executive Order 03-44.

36 (2) The settlement between the state and ASCME Council 62,  
37 approved by Executive Order 03-45.

38 (3) The settlement between the state and Indiana Professional  
39 Law Enforcement Association, Local 1041,  
40 I.U.P.A./AFL-CIO, approved by Executive Order 4-1.

41 SECTION 2. [EFFECTIVE UPON PASSAGE] (a)  
42 Notwithstanding IC 5-31-4-2 and IC 5-31-4-3, both as added by this

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**act:**

**(1) the director of the state personnel department shall assign all employees (as defined in IC 5-31-1-4, as added by this act) and job descriptions to one (1) of the appropriate statewide bargaining units as required by IC 5-31-4-2, as added by this act; and**

**(2) the assignment of employees and job descriptions to bargaining unit categories under this SECTION may not be challenged until July 1, 2007.**

**(b) Notwithstanding subsection (a), the state personnel director's initial assignment of an employee or a job description to the appropriate bargaining unit is considered to be made, upon the effective date of this act, to the bargaining unit created under Executive Order 03-35 (before it was rescinded by Executive Order 05-14 on January 11, 2005) to which the employee and the job description were assigned on January 10, 2005.**

**SECTION 3. [EFFECTIVE UPON PASSAGE] Notwithstanding IC 5-31, as added by this act, an employee organization that was certified before January 11, 2005, in an election conducted by the public employees relations board created by Executive Order 03-35 (before it was rescinded by Executive Order 05-14 on January 11, 2005) as the exclusive negotiating organization for a bargaining unit is granted recognition as the exclusive bargaining representative for that unit upon the effective date of this act.**

**SECTION 4. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 5-31-2-2, as added by this act, the terms of the persons initially appointed to the public employee relations board established by IC 5-31-2-1, as added by this act, shall be as follows:**

- (1) Two (2) members appointed for a term of one (1) year.**
- (2) One (1) member appointed for a term of two (2) years.**
- (3) One (1) member appointed for a term of three (3) years.**
- (4) One (1) member appointed for a term of four (4) years.**

**(b) The governor shall make the initial appointments to the public employee relations board not later than June 15, 2006.**

**(c) This SECTION expires July 1, 2010.**

**SECTION 5. [EFFECTIVE UPON PASSAGE] (a) The public employee relations board established by IC 5-31-2-1, as added by this act, shall carry out the board's duties under this act under interim written guidelines approved by the governor.**

**(b) This SECTION expires on the earlier of:**

- (1) the date rules are adopted under IC 5-31-2-7, as added by this act; or**

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1           **(2) January 1, 2007.**  
2           **SECTION 6. An emergency is declared for this act.**

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