

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 322 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 36-1-8-10.5, AS AMENDED BY P.L.1-2005,
- 4 SECTION 231, IS AMENDED TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2009]: Sec. 10.5. (a) This section does not
- 6 apply to the following:
- 7 (1) An elected or appointed officer.
- 8 (2) An individual described in IC 20-26-4-11.
- 9 (b) **Subject to IC 36-1-20**, an employee of a political subdivision
- 10 may:
- 11 (1) be a candidate for any elected office and serve in that office if
- 12 elected; or
- 13 (2) be appointed to any office and serve in that office if appointed;
- 14 without having to resign as an employee of the political subdivision.
- 15 SECTION 2. IC 36-1-20 IS ADDED TO THE INDIANA CODE AS
- 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 17 1, 2009]:
- 18 **Chapter 20. Public Safety Employees Serving on Legislative**
- 19 **Bodies**
- 20 **Sec. 1. This chapter applies only to a member of the legislative**
- 21 **body of a political subdivision who is employed by the political**
- 22 **subdivision as a public safety employee.**
- 23 **Sec. 2. As used in this chapter, "confidential or policy making**
- 24 **position" refers to either of the following:**

1 **(1) An upper level policymaking position (as defined in**
2 **IC 36-8-1-12).**

3 **(2) A position subject to the appointment of the executive or**
4 **legislative body of the political subdivision.**

5 **Sec. 3. As used in this chapter, "employer" refers to the**
6 **department of a political subdivision that employs a member of the**
7 **legislative body of the political subdivision as a public safety**
8 **employee.**

9 **Sec. 4. As used in this chapter, "public safety employee" has the**
10 **meaning set forth in IC 5-10-8-2.2.**

11 **Sec. 5. A member of the legislative body of a political**
12 **subdivision may not do any of the following:**

13 **(1) Accept an appointment to a confidential or policy making**
14 **position of the political subdivision.**

15 **(2) Serve in a confidential or policy making position of the**
16 **political subdivision.**

17 **(3) Serve as a member of a committee of the legislative body**
18 **that has jurisdiction over the member's employer.**

19 **(4) Vote on any matter relating to the budget of the member's**
20 **employer.**

21 **Sec. 6. A member of the legislative body of a political**
22 **subdivision who violates section 5 of this chapter is considered to**
23 **have resigned as a member of the legislative body.**

24 **Sec. 7. The legislative body of a political subdivision may adopt**
25 **ordinances for the implementation of the details of this chapter.**

26 SECTION 3. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The powers of a city are
28 divided between the executive and legislative branches of its
29 government. A power belonging to one (1) branch of a city's
30 government may not be exercised by the other branch.

31 (b) **Subject to IC 36-1-20**, a city employee other than an elected or
32 appointed public officer may:

33 (1) be a candidate for any elective office and serve in that office
34 if elected; or

35 (2) be appointed to any office and serve in that office if appointed;
36 without having to resign as a city employee.

37 SECTION 4. IC 36-8-3-12 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. **Subject to**
39 **IC 36-1-20**, members of the safety board and members of any
40 township, town, or city (including a consolidated city) police
41 department, fire department, or volunteer fire department (as defined
42 by IC 36-8-12-2) may:

43 (1) be candidates for elective office and serve in that office if
44 elected;

45 (2) be appointed to any office and serve in that office if appointed;
46 and

47 (3) as long as they are not in uniform and not on duty, solicit votes

1 and campaign funds and challenge voters for the office for which
2 they are candidates.

3 SECTION 5. IC 36-8-10-11 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) The sheriff may
5 dismiss, demote, or temporarily suspend a county police officer for
6 cause after preferring charges in writing and after a fair public hearing
7 before the board, which is reviewable in the circuit court. Written
8 notice of the charges and hearing must be delivered by certified mail
9 to the officer to be disciplined at least fourteen (14) days before the
10 date set for the hearing. The officer may be represented by counsel. The
11 board shall make specific findings of fact in writing to support its
12 decision.

13 (b) The sheriff may temporarily suspend an officer with or without
14 pay for a period not exceeding fifteen (15) days, without a hearing
15 before the board, after preferring charges of misconduct in writing
16 delivered to the officer.

17 (c) A county police officer may not be dismissed, demoted, or
18 temporarily suspended because of political affiliation nor after the
19 officer's probationary period, except as provided in this section.

20 **Subject to IC 36-1-20**, an officer may:

21 (1) be a candidate for elective office and serve in that office if
22 elected;

23 (2) be appointed to an office and serve in that office if appointed;
24 and

25 (3) except when in uniform or on duty, solicit votes or campaign
26 funds for the officer or others.

27 (d) The board has subpoena powers enforceable by the circuit court
28 for hearings under this section. An officer on probation may be
29 dismissed by the sheriff without a right to a hearing.

30 (e) An appeal under subsection (a) must be taken by filing in court,
31 within thirty (30) days after the date the decision is rendered, a verified
32 complaint stating in a concise manner the general nature of the charges
33 against the officer, the decision of the board, and a demand for the
34 relief asserted by the officer. A bond must also be filed that guarantees
35 the appeal will be prosecuted to a final determination and that the
36 plaintiff will pay all costs only if the court finds that the board's
37 decision should be affirmed. The bond must be approved as bonds for
38 costs are approved in other cases. The county must be named as the
39 sole defendant and the plaintiff shall have a summons issued as in other
40 cases against the county. Neither the board nor the members of it may
41 be made parties defendant to the complaint, but all are bound by
42 service upon the county and the judgment rendered by the court.

43 (f) All appeals shall be tried by the court. The appeal shall be heard
44 de novo only upon any new issues related to the charges upon which
45 the decision of the board was made. Within ten (10) days after the
46 service of summons, the board shall file in court a complete written

1 transcript of all papers, entries, and other parts of the record relating to
2 the particular case. Inspection of these documents by the person
3 affected, or by the person's agent, must be permitted by the board
4 before the appeal is filed, if requested. The court shall review the
5 record and decision of the board on appeal.

6 (g) The court shall make specific findings and state the conclusions
7 of law upon which its decision is made. If the court finds that the
8 decision of the board appealed from should in all things be affirmed,
9 its judgment should so state. If the court finds that the decision of the
10 board appealed from should not be affirmed in all things, then the court
11 shall make a general finding, setting out sufficient facts to show the
12 nature of the proceeding and the court's decision on it. The court shall
13 either:

14 (1) reverse the decision of the board; or

15 (2) order the decision of the board to be modified.

16 (h) The final judgment of the court may be appealed by either party.
17 Upon the final disposition of the appeal by the courts, the clerk shall
18 certify and file a copy of the final judgment of the court to the board,
19 which shall conform its decisions and records to the order and
20 judgment of the court. If the decision is reversed or modified, then the
21 board shall pay to the party entitled to it any salary or wages withheld
22 from the party pending the appeal and to which the party is entitled
23 under the judgment of the court.

24 (i) Either party shall be allowed a change of venue from the court or
25 a change of judge in the same manner as such changes are allowed in
26 civil cases. The rules of trial procedure govern in all matters of
27 procedure upon the appeal that are not otherwise provided for by this
28 section.

29 (j) An appeal takes precedence over other pending litigation and
30 shall be tried and determined by the court as soon as practical."

31 Renumber all SECTIONS consecutively.

(Reference is to ESB 322 as printed April 7, 2009.)

Representative Murphy