

Adopted	Rejected
---------	----------

MINORITY COMMITTEE REPORT

MR. SPEAKER:

*A minority of your Committee on Employment, Labor and Pensions, which met on February 15, 2011, to consider House Bill 1585, 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:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 offices and administration.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 4-15-1.5-6 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. The appeals
- 7 commission is hereby authorized and required to do the following:
- 8 (1) To hear or investigate those appeals from state employees as
- 9 is set forth in ~~IC 4-15-2~~, IC 4-15-2.2-42, and fairly and
- 10 impartially render decisions as to the validity of the appeals or
- 11 lack thereof. Hearings shall be conducted in accordance with
- 12 IC 4-21.5.
- 13 (2) To make, alter, or repeal rules by a majority vote of its

1 members for the purpose of conducting the business of the
2 commission, in accordance with the provisions of IC 4-22-2.

3 (3) To recommend to the personnel director such changes,
4 additions, or deletions to personnel policy which the appeals
5 commission feels would be beneficial and desirable.

6 SECTION 2. IC 4-15-2.2 IS ADDED TO THE INDIANA CODE
7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2011]:

9 **Chapter 2.2. State Civil Service System**

10 **Sec. 1. (a) Except as provided in subsection (b), this chapter**
11 **applies to employees of a governmental entity that exercises any of**
12 **the executive powers of the state under the direction of the**
13 **governor or lieutenant governor.**

14 **(b) This chapter does not apply to the following:**

- 15 **(1) The legislative department of state government.**
- 16 **(2) The judicial department of state government.**
- 17 **(3) The following state elected officers and their personal**
18 **staffs:**
 - 19 **(A) The governor.**
 - 20 **(B) The lieutenant governor.**
 - 21 **(C) The secretary of state.**
 - 22 **(D) The treasurer of state.**
 - 23 **(E) The auditor of state.**
 - 24 **(F) The superintendent of public instruction.**
 - 25 **(G) The attorney general.**
- 26 **(4) A body corporate and politic of the state created by state**
27 **statute.**
- 28 **(5) A political subdivision (as defined in IC 36-1-2-13).**
- 29 **(6) An inmate who is working in a state penal, charitable,**
30 **correctional, or benevolent institution.**
- 31 **(7) The state police department.**

32 **Sec. 2. As used in this chapter, "appointing authority" means**
33 **the head of a department, division, board, or commission, or an**
34 **individual or group of individuals who have the power by law or by**
35 **lawfully delegated authority to make appointments to positions in**
36 **the state civil service.**

37 **Sec. 3. As used in this chapter, "class" or "class of positions"**
38 **means a group of positions in the state civil service determined by**

1 **the director to have sufficiently similar duties, authority, and**
2 **responsibility such that:**

- 3 **(1) the same qualifications may reasonably be required for;**
4 **and**
5 **(2) the same schedule of pay can be equitably applied to;**
6 **all positions in the group.**

7 **Sec. 4. As used in this chapter, "classified employee" means an**
8 **employee who:**

- 9 **(1) has been appointed to a position in the state classified**
10 **service;**
11 **(2) has completed the working test period under section 34 of**
12 **this chapter; and**
13 **(3) has been certified by the appointing authority for that**
14 **classification of positions.**

15 **Sec. 5. As used in this chapter, "commission" refers to the state**
16 **employees appeals commission created by IC 4-15-1.5-1.**

17 **Sec. 6. As used in this chapter, "department" refers to the state**
18 **personnel department established under section 13 of this chapter.**
19 **The term includes the director and the state personnel advisory**
20 **board.**

21 **Sec. 7. As used in this chapter, "director" refers to the state**
22 **personnel director appointed under section 14 of this chapter.**

23 **Sec. 8. As used in this chapter, "division of the service" means**
24 **any of the following that are subject to this chapter and whose**
25 **positions are under the same appointing authority:**

- 26 **(1) A state department.**
27 **(2) A division or branch of a state department.**
28 **(3) An agency of the state government.**
29 **(4) A branch of the state civil service.**

30 **Sec. 9. As used in this chapter, "state agency" means an**
31 **authority, board, branch, commission, committee, department,**
32 **division, or other instrumentality of state government that is**
33 **subject to this chapter. The term does not include a state**
34 **educational institution (as defined in IC 21-7-13-32).**

35 **Sec. 10. As used in this chapter, "state civil service" means**
36 **public service by individuals who are subject to this chapter. The**
37 **term includes the state classified service (as the term is described**
38 **in section 21 of this chapter) and the unclassified service (as the**

1 term is described in section 22 of this chapter).

2 Sec. 11. As used in this chapter, "state institution" means any of
3 the following:

- 4 (1) A state institution as defined in IC 12-7-2-184.
5 (2) A correctional facility (as defined in IC 4-13.5-1-1) owned
6 by the state and operated by the department of correction.
7 (3) The Indiana School for the Deaf established by
8 IC 20-22-2-1.
9 (4) The Indiana School for the Blind and Visually Impaired
10 established by IC 20-21-2-1.
11 (5) The Indiana Veterans' Home as described in IC 10-17-9.
12 (6) Any other facility owned and operated by the state whose
13 employees participate in the state civil service.

14 Sec. 12. (a) This chapter shall be liberally construed so as to
15 increase governmental efficiency and responsiveness and to ensure
16 the employment of qualified persons in the state classified service
17 on the basis of the following merit principles:

- 18 (1) Recruitment, selection, and promotion of employees on the
19 basis of an individual's relative ability, knowledge, and skills.
20 (2) The provision of equitable and adequate compensation.
21 (3) The training of employees to ensure high quality
22 performance.
23 (4) The retention of employees based on:
24 (A) the quality of the employees' performance; and
25 (B) the correction of inadequate performance;
26 and the dismissal of employees whose inadequate
27 performance is not corrected.
28 (5) Fair treatment of applicants and employees in all aspects
29 of personnel administration:
30 (A) without regard to political affiliation, race, color,
31 national origin, gender, religious creed, age, or disability;
32 and
33 (B) with proper regard for the applicants' and employees'
34 privacy and constitutional rights as citizens.
35 (6) Protection of employees from coercion for partisan
36 political purposes, and prohibition on an employee using the
37 employee's official authority to interfere with, or affect the
38 result of, an election or nomination for political office.

1 **(b) All employment matters in the state classified service are**
 2 **guided by the merit principles set forth in subsection (a).**

3 **(c) The personnel administration systems adopted under this**
 4 **chapter govern and limit all other state employment matters and**
 5 **every appointing authority.**

6 **Sec. 13. The state personnel department is established.**

7 **Sec. 14. (a) The governor shall appoint a director who is**
 8 **responsible for administering the department.**

9 **(b) The director serves at the governor's pleasure.**

10 **(c) The governor shall set the director's compensation.**

11 **Sec. 15. (a) The director shall do the following:**

12 **(1) Direct and supervise all administrative and technical**
 13 **activities of the department.**

14 **(2) Survey the administrative organization and procedures,**
 15 **including personnel procedures, of all state agencies, and**
 16 **submit to the governor measures to do the following among**
 17 **state agencies:**

18 **(A) Secure greater efficiency and economy.**

19 **(B) Minimize the duplication of activities.**

20 **(C) Effect better organization and procedures.**

21 **(3) Develop personnel policies, methods, procedures, and**
 22 **standards for all state agencies.**

23 **(4) Establish and maintain a roster of all employees in the**
 24 **state civil service.**

25 **(5) Prepare, or cause to be prepared, a classification and pay**
 26 **plan for the state civil service.**

27 **(6) Administer the classification and pay plan prepared under**
 28 **subdivision (5).**

29 **(7) Allocate each position in the state civil service to its proper**
 30 **class.**

31 **(8) Approve individuals for appointment to positions in the**
 32 **state civil service.**

33 **(9) Approve employees for transfer, demotion, or promotion**
 34 **within the state civil service.**

35 **(10) Approve employees for suspension, layoff, or dismissal**
 36 **from the state civil service.**

37 **(11) Rate the service of employees.**

38 **(12) Arrange, in cooperation with the directors of the**

- 1 **divisions of the service, for employee training.**
- 2 **(13) Make available employee relations specialists to help**
- 3 **employees:**
- 4 **(A) resolve employment related problems; and**
- 5 **(B) understand the procedures that are available for**
- 6 **redress of grievances that the employee relations**
- 7 **specialists do not resolve.**
- 8 **(14) Investigate systems of appointment and promotion in**
- 9 **operation in various departments or divisions of the state**
- 10 **government.**
- 11 **(15) Investigate and approve the need for existing and new**
- 12 **positions in the state civil service.**
- 13 **(16) Investigate periodically the operation and effectiveness of**
- 14 **this chapter and rules adopted under this chapter and report**
- 15 **the director's findings and recommendations to the state**
- 16 **personnel advisory board.**
- 17 **(17) Implement, administer, and enforce this chapter and**
- 18 **rules and policies adopted under this chapter.**
- 19 **(18) Appoint employees, experts, and special assistants, as**
- 20 **necessary, to effectively carry out this chapter.**
- 21 **(19) Perform any other lawful acts that the director considers**
- 22 **necessary or desirable to carry out this chapter.**
- 23 **(20) Perform any other duties imposed by this chapter or**
- 24 **assigned by the governor or the state personnel advisory**
- 25 **board.**
- 26 **(b) The state personnel advisory board shall advise the director**
- 27 **and cooperate in the improvement of the personnel policies of the**
- 28 **state.**
- 29 **Sec. 16. The director shall appoint one (1) or more employees of**
- 30 **the department as the director's deputies.**
- 31 **Sec. 17. (a) The director may employ such expert or special**
- 32 **examiners as may be required for the conduct of tests for positions**
- 33 **in the state civil service.**
- 34 **(b) The director may select officers or employees in the state**
- 35 **civil service to act as examiners in the preparation and rating of**
- 36 **the tests described in subsection (a). An appointing authority may**
- 37 **excuse any employee in the appointing authority's division of the**
- 38 **service from the employee's regular duties for the time required to**

1 work as an examiner.

2 (c) Officers and employees are not entitled to extra pay for their
3 service as examiners, but are entitled to reimbursement for
4 necessary traveling and other expenses.

5 Sec. 18. The department may do the following:

6 (1) Acquire, lease, own, or sell property in the name of the
7 state in order to carry out its responsibilities under this
8 chapter.

9 (2) Adopt a seal.

10 (3) Contract with persons outside the department to do those
11 things that in the director's opinion cannot be adequately or
12 efficiently handled by the department.

13 (4) Sue and be sued.

14 (5) Hire attorneys.

15 (6) Administer oaths.

16 (7) Take depositions.

17 (8) Issue subpoenas.

18 Sec. 19. The director may adopt rules under IC 4-22-2 that the
19 director considers necessary, appropriate, or desirable to carry out
20 the department's responsibilities under this chapter.

21 Sec. 20. The state civil service is divided into the following parts:

22 (1) The state classified service.

23 (2) The unclassified service.

24 Sec. 21. (a) Except as provided in subsection (b), the state
25 classified service consists of positions in programs that have a
26 federal statutory or regulatory requirement for the establishment
27 and maintenance of personnel standards on a merit basis, including
28 positions under the following:

29 (1) Employment Security (Unemployment Insurance and
30 Employment Services) (26 U.S.C. 3301 et seq., 29 U.S.C. 2801
31 et seq., 38 U.S.C. 2000 et seq., 42 U.S.C. 501 et seq., and 42
32 U.S.C. 1101 et seq.).

33 (2) Federal Payments for Foster Care and Adoption
34 Assistance (42 U.S.C. 673).

35 (3) Supplemental Nutrition Assistance Program (7 U.S.C.
36 2011 et seq.).

37 (4) Grants to States for Aid to the Blind (42 U.S.C. 1201 et
38 seq.).

- 1 **(5) Medical Assistance (Medicaid) (42 U.S.C. 1396 et seq.).**
 2 **(6) Occupational Safety and Health Act (29 U.S.C. 651 et**
 3 **seq.).**
 4 **(7) Occupational Safety and Health Grants to States (29**
 5 **U.S.C. 673).**
 6 **(8) Robert T. Stafford Disaster Assistance and Emergency**
 7 **Relief Act (42 U.S.C. 5121 et seq.).**
 8 **(9) Social Security Act (42 U.S.C. 301 et seq.).**
 9 **(10) State and Community Programs on Aging and the Older**
 10 **Americans Act (42 U.S.C. 3001 et seq.).**
 11 **(11) Wagner-Peyser Act (29 U.S.C. 49 et seq.).**
 12 **(b) The following positions are exempt from the state classified**
 13 **service:**
 14 **(1) An officer or employee appointed by the governor or**
 15 **lieutenant governor.**
 16 **(2) A deputy, an administrative assistant, a secretary, or**
 17 **another position in a confidential relationship to an officer or**
 18 **employee described in subdivision (1).**
 19 **(3) An employee who holds an executive level position:**
 20 **(A) who is the head of a division or major unit within a**
 21 **state agency;**
 22 **(B) who is a regional director or manager for a state**
 23 **agency, regardless of the title of the position; or**
 24 **(C) who, as a substantial part of the position's duties,**
 25 **provides meaningful input on:**
 26 **(i) the development of policy goals; or**
 27 **(ii) the implementation of policy.**
 28 **(4) The superintendent or director of a state institution.**
 29 **(5) The highest ranking employee of a state agency who:**
 30 **(A) holds an executive level position; and**
 31 **(B) has primary responsibility for one (1) or more of the**
 32 **following functions:**
 33 **(i) Public information.**
 34 **(ii) Legal matters.**
 35 **(iii) Fiscal matters.**
 36 **(iv) Security or internal affairs.**
 37 **(v) Human resources.**
 38 **(c) This section may not be construed to include in the state**

1 classified service a position in a governmental entity listed in
2 section 1(b) of this chapter unless the chief executive officer of the
3 governmental entity makes the election described in section 1(c) of
4 this chapter to have all or a part of the governmental entity's
5 employees participate in the state civil service.

6 Sec. 22. (a) The unclassified service consists of all offices and
7 positions in the state civil service, other than those in the state
8 classified service.

9 (b) The unclassified service is separate from the state classified
10 service.

11 (c) Except as expressly provided in this chapter, the human
12 resource management systems applicable to the state classified
13 service do not apply to the unclassified service.

14 Sec. 23. (a) An employee in the state classified service who has
15 successfully completed a working test period may be dismissed,
16 demoted, or suspended only for just cause, including cause under
17 section 49 of this chapter.

18 (b) A classified employee is entitled to appeal a dismissal,
19 demotion, or suspension as provided in section 42 of this chapter.

20 Sec. 24. (a) An employee in the unclassified service is an
21 employee at will and serves at the pleasure of the employee's
22 appointing authority.

23 (b) An employee in the unclassified service may be dismissed,
24 demoted, disciplined, or transferred for any reason that does not
25 contravene public policy.

26 Sec. 25. (a) Whenever a state agency or state institution is added
27 to the classified part of the state civil service established by this
28 chapter, an employee of the state agency or state institution who is
29 in a position that is not subject to the classified provisions of this
30 chapter is entitled to continue in that position until the employee
31 has an opportunity to acquire classified employee status.

32 (b) Upon the recommendation of the director and the approval
33 of the state personnel advisory board, the employees of a state
34 agency or state institution who have been appointed under a
35 classified service satisfactorily complying with this chapter may be
36 brought into the state classified service without a working test
37 period and retain their existing positions.

38 Sec. 26. (a) The director, after consulting with appointing

1 authorities, the state personnel advisory board, and other qualified
2 authorities, shall determine, or cause to be determined, the
3 authority, duties, and responsibilities of all positions in the state
4 civil service.

5 (b) The director shall prepare a classification plan that groups
6 all positions in the state civil service in classes, based on the
7 authority, duties, and responsibilities of each position. The
8 classification plan must set forth, for each class of positions, the
9 class title and a statement of the authority, duties, and
10 responsibilities of the class. Each class of positions may be
11 subdivided, and classes may be grouped and ranked in such
12 manner as the director considers appropriate.

13 (c) New, reclassified, or reallocated positions must be classified,
14 reclassified, or reallocated in the same manner as positions were
15 initially classified or allocated.

16 (d) The director periodically shall:

17 (1) review the positions in state civil service; and

18 (2) reallocate the positions to the proper classes based on the
19 duties and responsibilities of the positions at the time of the
20 review under subdivision (1).

21 Sec. 27. (a) After consultation with the budget agency, the
22 director shall prepare and recommend to the governor a pay plan
23 for all employees holding positions for which compensation is not
24 fixed by law.

25 (b) The pay plan shall provide, for each class of positions, a
26 minimum and maximum rate of pay as well as any intermediate
27 rates of pay that the director considers necessary or equitable. In
28 establishing the rates, the director shall consider the following
29 factors:

30 (1) The experience in recruiting for positions in the state civil
31 service.

32 (2) The prevailing rates of pay for the service performed and
33 for comparable services in public and private employment.

34 (3) The cost of living.

35 (4) Benefits, other than the rate of pay, available to or
36 received by employees.

37 (5) The state's financial condition and policies.

38 (c) The pay plan takes effect after the plan is approved by the

1 **budget agency and accepted by the governor.**

2 **Sec. 28. (a) Classification titles or corresponding code numbers**
 3 **must be used to designate positions in all personnel, accounting,**
 4 **budget, appropriation, and financial records and communications**
 5 **of all state departments, institutions, and agencies.**

6 **(b) A person may not be appointed to or employed in a position**
 7 **in the state civil service unless the director has approved the class**
 8 **title of the position as appropriate to the duties to be performed.**

9 **Sec. 29. Vacancies in the state classified service may be filled**
 10 **only by a process approved by the director in accordance with the**
 11 **merit principles set forth in section 12 of this chapter.**

12 **Sec. 30. An application for employment may be rejected if the**
 13 **department determines that the applicant:**

- 14 **(1) lacks any of the required qualifications;**
- 15 **(2) is incapable of performing the essential functions of the**
 16 **position that the applicant is seeking;**
- 17 **(3) has been convicted of a crime;**
- 18 **(4) has been dismissed from the public service;**
- 19 **(5) has made a false statement of a material fact; or**
- 20 **(6) committed or attempted to commit a fraud or deception in**
 21 **connection with submitting an application or attempting to**
 22 **secure an appointment to the state civil service.**

23 **Sec. 31. (a) The director shall inform prospective applicants for**
 24 **state employment of the process for obtaining state employment.**

25 **(b) The director may advertise or employ any other methods of**
 26 **publicizing opportunities for employment in state civil service.**

27 **Sec. 32. (a) Former members of the armed forces of the United**
 28 **States who meet both of the following requirements shall receive**
 29 **a preference for appointment or reemployment in the state**
 30 **classified service:**

- 31 **(1) The veteran served on active duty in any branch of the**
 32 **armed forces.**
- 33 **(2) The veteran was not discharged or separated from the**
 34 **armed forces under other than honorable conditions, unless**
 35 **the veteran presents appropriate records from:**
 - 36 **(A) the United States Department of Defense; or**
 - 37 **(B) the appropriate branch of the armed forces;**
- 38 **showing a correction of a separation or discharge to**

- 1 **"honorable".**
- 2 **(b) When:**
- 3 **(1) preemployment interviews of external candidates are**
4 **conducted; and**
- 5 **(2) the qualified applicant pool includes veterans;**
6 **veterans must be included in the group offered interviews.**
- 7 **(c) In computing seniority for purposes of a personnel reduction**
8 **in state civil service, the computation must include the length of**
9 **time the employee spent on active duty in the armed forces of the**
10 **United States.**
- 11 **Sec. 33. (a) As used in this section, "individual with a disability"**
12 **means an individual:**
- 13 **(1) with a physical or mental impairment that substantially**
14 **limits one (1) or more of the major life activities of the**
15 **individual; or**
- 16 **(2) who:**
- 17 **(A) has a record of; or**
- 18 **(B) is regarded as;**
19 **having an impairment described in subdivision (1).**
- 20 **(b) Notwithstanding any other provision of this chapter, an**
21 **Indiana rehabilitation facility or the division of disability and**
22 **rehabilitative services may certify that an individual:**
- 23 **(1) is an individual with a disability; and**
- 24 **(2) possesses the required knowledge, skill, and ability to**
25 **perform the essential functions of a position classification:**
- 26 **(A) with or without reasonable accommodation; or**
- 27 **(B) with special accommodation for supported**
28 **employment.**
- 29 **(c) An applicant with a disability who is certified under**
30 **subsection (b) may be appointed to a position in a classification for**
31 **which the applicant is certified.**
- 32 **Sec. 34. (a) Every person appointed to a classification in the**
33 **state classified service shall complete a working test period while**
34 **occupying a position in the classification. The working test period**
35 **begins immediately upon the person's appointment and continues**
36 **until a time established by the director. At least once during the**
37 **working test period, the appointing authority shall prepare for the**
38 **director, in the manner specified by the director, a full**

- 1 performance appraisal of the employee's work.
- 2 (b) Subject to subsection (c), the appointing authority may
3 remove an employee for any reason at any time during the
4 employee's working test period. The appointing authority shall
5 immediately report the removal to the director and to the employee
6 who is removed.
- 7 (c) If the director finds during an employee's working test
8 period that the employee was appointed as a result of error or
9 fraud, the director may remove the employee after providing the
10 employee with notice and an opportunity to be heard.
- 11 (d) Before the expiration of an employee's working test period,
12 the appointing authority shall notify the director as to:
- 13 (1) whether the services of the employee have been
14 satisfactory; and
- 15 (2) whether the appointing authority will continue the
16 employee's employment after the working test period ends.
- 17 The appointing authority shall provide the employee with a copy
18 of the notice given to the director.
- 19 (e) Sections 23 and 42 of this chapter do not apply to an
20 employee who is removed during a working test period for the
21 initial classification in the state classified service to which the
22 employee is appointed.
- 23 (f) The removal of an employee in the classified service from a
24 working test period for a promotion from one (1) classification to
25 another classification is not appealable, unless the removal results
26 in the employee's dismissal or layoff.
- 27 **Sec. 35. (a)** An appointing authority may at any time reassign an
28 employee from one (1) position to another position in the same
29 class or rank in the division of the service. The appointing
30 authority shall, immediately after making the reassignment, give
31 notice of the reassignment to the director.
- 32 (b) The transfer of a classified employee from a position in a
33 division of the service to a position of the same class or rank in
34 another division of the service requires the approval of:
- 35 (1) the appointing authorities of both divisions of the service;
36 and
- 37 (2) the director.
- 38 (c) A classified employee must be appointed, rather than

1 transferred, to a position:

2 (1) in another class of a higher rank; or

3 (2) for which the requirements for appointment are
4 substantially dissimilar to the requirements for the position
5 the employee currently holds.

6 (d) The reassignment of a classified employee to a position in a
7 class of a lower rank is a demotion. Unless the employee consents
8 to the demotion in writing, the appointing authority must comply
9 with section 23 of this chapter in making the demotion. A classified
10 employee is entitled to appeal the demotion in accordance with
11 section 42 of this chapter.

12 (e) This section may not be construed to prohibit an appointing
13 authority from temporarily substituting duties unrelated to an
14 employee's position classification for the employee's usual duties.

15 (f) This section may not be construed to impair the director's
16 authority to reclassify or reorganize positions in the state civil
17 service as long as the reclassification or reorganization is not based
18 on a classified employee's misconduct or poor performance. The
19 just cause standard described in section 23 of this chapter does not
20 apply to such a reclassification or reorganization.

21 Sec. 36. (a) In cooperation with appointing authorities, the
22 director shall establish, and may periodically amend:

23 (1) the standards of performance for employees;

24 (2) the expected outcomes for employees; and

25 (3) a system of service ratings based upon the standards
26 described in subdivisions (1) and (2).

27 (b) Employee performance standards and expected outcomes
28 must be specific, measurable, achievable, relevant to the strategic
29 objective of the employee's state agency or state institution, and
30 time sensitive.

31 (c) Each employee at all levels of the state civil service shall be
32 held accountable for participating in the process of establishing the
33 standards, outcomes, and ratings described in this section.

34 (d) Each appointing authority shall, at periodic intervals (but at
35 least annually), make, and report to the director, service ratings
36 for the employees in the appointing authority's division of the
37 service. As requested by the director, the appointing authority shall
38 provide the information on which the appointing authority relied

1 in determining a service rating.

2 (e) Service ratings may be used as follows:

3 (1) To determine salary increases and decreases within the
4 limits established by law and by the pay plan developed under
5 section 27 of this chapter.

6 (2) As a factor in making promotions.

7 (3) As a means of discovering employees:

8 (A) who are candidates for promotion or transfer; or

9 (B) who, because of a low service rating, are candidates for
10 demotion or dismissal.

11 Sec. 37. (a) An appointing authority shall report to the director
12 each appointment, transfer, promotion, demotion, dismissal,
13 change of salary rate, absence from duty, and other temporary or
14 permanent change in the status of an employee in the appointing
15 authority's division of the service.

16 (b) The director shall prescribe the submission deadline, the
17 form, and the supporting or pertinent information required for the
18 report.

19 Sec. 38. (a) The director shall maintain a perpetual roster that
20 includes at least the following information for each employee in the
21 state civil service system:

22 (1) Whether the employee is in the state classified service or
23 the unclassified service.

24 (2) The title of the position the employee holds.

25 (3) The department, state agency, or state institution to which
26 the employee is assigned.

27 (4) The employee's pay rate.

28 (5) The employee's date of appointment.

29 (6) Any other information that the director considers
30 pertinent.

31 (b) The director shall maintain any other personnel records that
32 the director considers desirable or as the state personnel advisory
33 board directs.

34 (c) The director shall provide tabulations and analyses of state
35 employee personnel data that are available to the director to:

36 (1) the governor;

37 (2) the general assembly in the electronic format required by
38 IC 5-14-6;

- 1 **(3) the budget director;**
- 2 **(4) department and institution directors; and**
- 3 **(5) other persons to the extent required by and in accordance**
- 4 **with IC 5-14-3.**

5 **(d) All officers and employees shall, during usual business**
6 **hours:**

- 7 **(1) grant to the director, the state personnel advisory board,**
- 8 **or any agent or employee of the department designated by the**
- 9 **director, unlimited access to the premises and records**
- 10 **pertaining to personnel matters that are under the officers' or**
- 11 **employees' control; and**
- 12 **(2) furnish to the director, the state personnel advisory board,**
- 13 **or the director's agent, the facilities, assistance, and**
- 14 **information required to administer this chapter.**

15 **Sec. 39. Rules adopted by the department for state civil service**
16 **employees must provide for the hours of work and leaves of**
17 **absence.**

18 **Sec. 40. (a) In accordance with the rules of the state personnel**
19 **advisory board, an appointing authority has the authority to lay off**
20 **or furlough employees or to reduce hours of employment for any**
21 **of the following reasons:**

- 22 **(1) Lack of funds.**
- 23 **(2) A reduction in spending authorization.**
- 24 **(3) Lack of work.**
- 25 **(4) Efficiency.**

26 **(b) The appointing authority has the authority to determine the**
27 **extent, effective dates, and length of a layoff, furlough, or reduction**
28 **in hours taken under subsection (a).**

29 **(c) The appointing authority shall determine the classifications**
30 **affected and the number of employees laid off in each classification**
31 **and county to which a layoff applies.**

32 **(d) In determining a layoff, the appointing authority must**
33 **consider all employees under the same appointing authority, within**
34 **the classification affected, and within the county affected, and**
35 **consider service ratings first. Thereafter, consideration may be**
36 **given to the following relevant factors:**

- 37 **(1) Disciplinary record.**
- 38 **(2) Knowledge, skill, and ability.**

1 **(3) Seniority.**

2 **Sec. 41. (a) As used in this section, "state seniority" means the**
3 **length of an employee's unbroken, continuous state employment.**

4 **(b) A former employee in the state civil service system has a**
5 **right of recall to the classification from which the employee was**
6 **laid off. Recall rights under this section are to positions under the**
7 **same appointing authority and in the same county from which a**
8 **former employee was laid off.**

9 **(c) A former employee must assert in a timely manner the claim**
10 **of entitlement to recall in response to the official posting of a**
11 **vacancy.**

12 **(d) A recall under this section is contingent upon the former**
13 **employee having the knowledge, skill, and ability to perform the**
14 **duties of the position for which the former employee is applying.**

15 **(e) The appointing authority shall recall former employees in**
16 **the order of the employees' service ratings. In the event of a tie in**
17 **service ratings, the right to recall is determined by state seniority.**
18 **If there is a tie in state seniority, the former employee with the**
19 **highest number comprised of the last four (4) digits of the**
20 **employee's Social Security number is the employee recalled.**

21 **(f) The right to recall under this section expires on the earlier of:**
22 **(1) one (1) year after the date the employee is laid off; or**
23 **(2) the date the employee is reemployed in a permanent**
24 **position.**

25 **(g) For state seniority purposes, an employee who becomes**
26 **reemployed within one (1) year after the date the employee is laid**
27 **off is considered to have unbroken, continuous state employment,**
28 **except that the time that the employee spent in out-of-pay status as**
29 **a result of the layoff must be deducted from the employee's total**
30 **seniority.**

31 **Sec. 42. (a) An employee in the state civil service system may file**
32 **a complaint concerning the application of a law, rule, or policy to**
33 **the complainant. However, a gubernatorial appointee does not**
34 **have standing to file a complaint under this section.**

35 **(b) A complaint filed under this section must identify the law,**
36 **rule, or policy that was allegedly violated.**

37 **(c) An employee who files a complaint under this section must**
38 **initiate the complaint procedure as soon as possible after the**

1 occurrence of the act or condition complained of, and not later
2 than thirty (30) calendar days after the date the employee became
3 aware, or by the exercise of reasonable diligence should have been
4 aware, of the occurrence giving rise to the complaint. An employee
5 who does not initiate the complaint procedure within the thirty (30)
6 day period waives the right to file that complaint.

7 (d) A remedy granted under this section may not extend back
8 more than thirty (30) calendar days before the complaint was
9 initiated.

10 (e) The following complaint procedure is established:

11 Step I: The complainant shall reduce the complaint to writing
12 and present the complaint to the appointing authority or the
13 appointing authority's designated representative. The
14 appointing authority or designee shall conduct any
15 investigation considered necessary and issue a decision, in
16 writing, not later than fifteen (15) calendar days after the date
17 the appointing authority receives the complaint.

18 Step II: If the appointing authority or the appointing
19 authority's designated representative does not find in favor of
20 the complainant, the complainant may submit the complaint
21 to the director not later than fifteen (15) calendar days after
22 the date of the appointing authority's finding. The director or
23 the director's designee shall review the complaint and issue a
24 decision not later than thirty (30) calendar days after the date
25 the complaint is submitted to the director.

26 Step III: If the employee is not satisfied with the director's
27 decision, the employee may submit an appeal in writing to the
28 commission not later than fifteen (15) calendar days after the
29 date the employee receives notice of the action taken by the
30 director or the director's designee. The commission shall
31 determine whether all previous steps were completed
32 properly and in a timely manner, and, subject to subsection
33 (f), whether the employee and subject of the complaint meet
34 the jurisdictional requirements. If a procedural or
35 jurisdictional requirement is not met, the commission shall
36 dismiss the appeal. If the procedural and jurisdictional
37 requirements have been met, the commission shall conduct
38 proceedings in accordance with IC 4-21.5-3.

1 **(f) An unclassified employee must establish that the commission**
 2 **has subject matter jurisdiction to hear the employee's wrongful**
 3 **discharge claim by establishing that a public policy exception to the**
 4 **employment at will doctrine was the reason for the employee's**
 5 **discharge. The former employee has the burden of proof on this**
 6 **issue.**

7 **(g) In a disciplinary case involving a classified employee, the**
 8 **commission shall defer to the appointing authority's choice as to**
 9 **the discipline imposed, if the appointing authority establishes that**
 10 **there was just cause for the imposition of the discipline. The**
 11 **appointing authority has the burden of proof on this issue.**

12 **(h) Decisions of the commission are subject to judicial review in**
 13 **accordance with IC 4-21.5-3.**

14 **(i) An employee who is suspended or terminated after a hearing**
 15 **held by the state ethics commission is not entitled to use the**
 16 **procedure set forth in this section. An employee who seeks further**
 17 **review of a suspension or termination imposed by the state ethics**
 18 **commission must seek judicial review of the state ethics**
 19 **commission's decision in accordance with IC 4-21.5-3.**

20 **Sec. 43. (a) An employee covered by this chapter:**

21 **(1) is eligible for;**

22 **(2) must participate in; and**

23 **(3) receives the benefits of;**

24 **the public employees' retirement fund under IC 5-10.2 and**
 25 **IC 5-10.3.**

26 **(b) An employee holding an hourly, temporary, and intermittent**
 27 **appointment:**

28 **(1) is not eligible to become a member of the public**
 29 **employees' retirement fund; and**

30 **(2) does not earn creditable service for purposes of the public**
 31 **employees' retirement fund for service in those positions.**

32 **(c) Notwithstanding any contrary provision, an employee who**
 33 **served in an intermittent form of temporary employment after**
 34 **June 30, 1986, and before July 1, 2003, shall receive creditable**
 35 **service for the period of intermittent employment.**

36 **Sec. 44. (a) An officer or employee implementing or**
 37 **administering this chapter may not consider the political, religious,**
 38 **or racial characteristics of a classified employee.**

1 **(b) A classified employee or a member of the state personnel**
 2 **advisory board may not be compelled to make political**
 3 **contributions or participate in any form of political activity.**

4 **Sec. 45. The state personnel advisory board is authorized and**
 5 **required to do the following:**

6 **(1) To make investigations concerning the enforcement and**
 7 **effect of the provisions of this chapter.**

8 **(2) To keep minutes of its proceedings, which must be open to**
 9 **public inspection.**

10 **(3) To advise the state personnel director on matters**
 11 **pertaining to state personnel policies and practices.**

12 **Sec. 46. A person may not:**

13 **(1) make a false statement, certificate, mark, rating, or report**
 14 **in connection with an appointment under this chapter; or**

15 **(2) commit or attempt to commit in any manner fraud that**
 16 **prevents the impartial implementation or administration of**
 17 **this chapter or rules adopted under this chapter.**

18 **Sec. 47. A person may not, directly or indirectly, give, render,**
 19 **pay, offer, solicit, or accept money, service, or other valuable**
 20 **consideration:**

21 **(1) for, or in connection with, an appointment, a proposed**
 22 **appointment, a promotion, or a proposed promotion to; or**

23 **(2) to obtain any advantage in;**

24 **a position in the state classified service.**

25 **Sec. 48. (a) For the purpose of enforcing this chapter, the**
 26 **director and authorized employees of the department have**
 27 **authority to:**

28 **(1) administer oaths;**

29 **(2) conduct examinations;**

30 **(3) subpoena witnesses; and**

31 **(4) require:**

32 **(A) the attendance of witnesses; and**

33 **(B) the production of books, records, and papers;**

34 **at any reasonable place.**

35 **(b) The director must sign all subpoenas issued under this**
 36 **section.**

37 **(c) The circuit or superior court of a county shall compel**
 38 **obedience to subpoenas and requests for the production of books,**

1 records, and papers, upon a verified written application by the
 2 person conducting the examination, ten (10) days notice to the
 3 person whose testimony or production is sought, and a showing of
 4 the probability of any of the following:

5 (1) The books, records, and papers are material to the
 6 examination.

7 (2) The witness has information that is material to the
 8 examination.

9 (d) It is unlawful to fail to:

10 (1) appear in response to a subpoena;

11 (2) answer questions; or

12 (3) produce books or papers;

13 in connection with an investigation or hearing under this chapter.

14 (e) It is unlawful to knowingly give false testimony at an
 15 investigation or hearing under this chapter.

16 Sec. 49. The refusal or failure of an employee in the state
 17 classified service to do any of the following is sufficient grounds for
 18 the employee's dismissal by the appointing authority:

19 (1) The employee willfully refuses or fails to appear before:

20 (A) a court or judge;

21 (B) a legislative committee; or

22 (C) an officer, board, or body authorized to conduct a
 23 hearing or inquiry.

24 (2) After making an appearance, the employee refuses to
 25 testify or answer questions relating to:

26 (A) the affairs or government of the state; or

27 (B) the conduct of any officer or employee.

28 Sec. 50. The director may render services to a political
 29 subdivision (as defined in IC 36-1-2-13) related to or involving the
 30 administration of the political subdivision's personnel system.

31 Sec. 51. This chapter may not be construed so as to result in the
 32 delay or stoppage of grants-in-aid to the state by agencies of the
 33 federal government.

34 Sec. 52. (a) Any reference or cross-reference to the state
 35 personnel department in the Indiana Code shall be treated after
 36 June 30, 2011, as a reference or cross-reference to the department.

37 (b) Any reference or cross-reference to IC 4-15-1.8 or IC 4-15-2
 38 shall be treated after June 30, 2011, as a reference or

1 cross-reference to IC 4-15-2.2.

2 (c) The provisions of this chapter supersede any inconsistent or
3 conflicting provisions of the Indiana Code. Any inconsistency or
4 conflict between or among the provisions shall be resolved in favor
5 of the provisions of this chapter.

6 Sec. 53. The human resources management system established
7 by this chapter shall be known as the state civil service system.

8 SECTION 3. THE FOLLOWING ARE REPEALED [EFFECTIVE
9 JULY 1, 2011]: IC 4-15-1.8; IC 4-15-2; IC 4-15-2.5; IC 4-15-3;
10 IC 4-15-4.

11 SECTION 4. [EFFECTIVE JULY 1, 2011] (a) The legislative
12 services agency shall prepare legislation for introduction in the
13 2012 regular session of the general assembly to organize and
14 correct statutes affected by this act, including the updating of:

15 (1) references and cross-references to:

16 (A) the state personnel department under IC 4-15-1.8
17 (before its repeal); and

18 (B) the 1941 State Personnel Act (commonly know as the
19 state merit system) under IC 4-15-2 (before its repeal); and

20 (2) specific agency provisions concerning hiring,

- 1 **compensation, discipline, appeal rights, and other matters**
- 2 **affecting personnel administration.**
- 3 **(b) This SECTION expires June 30, 2013.**
 (Reference is to SB 1585 as introduced.)

and when so amended that said bill do pass.

Representative Kersey