
SENATE BILL No. 63

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-8-1-35; IC 5-8-7; IC 35-44-1-8.

Synopsis: Suspension of local officeholders from office. Provides that a local elected officeholder may be suspended from office if the officeholder is charged with certain felonies or misdemeanors and a two-thirds majority of the legislative body finds that the offense with which the local elected official is charged is relevant to the official's suitability for office and it is in the best interests of the unit that the official be suspended from office. Specifies that the local elected official will be reinstated with back pay if the official is acquitted or charges are dropped. Provides that a local elected official who, without a valid reason, knowingly or intentionally fails to perform the official's duties on ten or more days during a calendar month commits dereliction of duty, a Class D felony. Repeals an obsolete provision concerning impeachment.

Effective: July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Rules and Legislative Procedure.

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First Regular Session 117th General Assembly (2011)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 63



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

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

1 SECTION 1. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:

4 **Chapter 7. Suspension of Local Officeholders**

5 **Sec. 1. As used in this chapter, "eligible offense" means:**

- 6 (1) a felony under IC 35;
- 7 (2) a felony under IC 9-30-5;
- 8 (3) a felony concerning an election under IC 3; or
- 9 (4) a misdemeanor involving a breach of the peace that is
- 10 committed while the local official is performing the official's
- 11 official duties.

12 **Sec. 2. As used in this chapter, "legislative body" has the**
13 **meaning set forth in IC 36-1-2-9.**

14 **Sec. 3. As used in this chapter, "local elected official" means an**
15 **elected official of a unit who is not a judge or a prosecuting**
16 **attorney subject to discipline by the supreme court.**

17 **Sec. 4. As used in this chapter, "unit" has the meaning set forth**



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in IC 36-1-2-23.

Sec. 5. A local elected official may be suspended from office as described in this chapter if the official is charged with an eligible offense.

Sec. 6. If:

- (1) a prosecuting attorney charges a local elected official with an eligible offense; and**
- (2) a court finds probable cause to believe that the offense has been committed;**

the prosecuting attorney shall notify the legislative body of the appropriate unit.

Sec. 7. (a) If the appropriate legislative body adopts a resolution by a two-thirds (2/3) vote of all of the members of the legislative body finding that:

- (1) the eligible offense with which the local elected official is charged is relevant to the official's suitability for office; and**
- (2) it is in the best interests of the unit that the local elected official be suspended from office;**

the local elected official shall be suspended from office until the official is convicted or acquitted, charges against the official are dropped, or the end of the official's term of office.

(b) If the local elected official charged with the eligible offense is a member of the legislative body of a unit, the local elected official is ineligible to vote on the resolution described in subsection (a).

(c) If the number of local elected officials who are members of the legislative body of a unit charged with an eligible offense results in the legislative body of the unit being unable to reach a quorum or adopt a resolution by a two-thirds (2/3) vote of all of the members of the unit, the resolution may be adopted by a majority of the voting members.

Sec. 8. (a) A local elected official who is suspended from office under this chapter shall not act in the official's official capacity and is not entitled to receive any salary or remuneration as a local elected official during the suspension period.

(b) A local elected official who is suspended from office under this chapter is entitled to continue to receive any health benefits the local elected official would have been entitled to receive if the local elected official had not been suspended.

Sec. 9. (a) This section does not apply if a legislative body suspends a local elected official who is a member of the legislative body.

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1 (b) If a legislative body suspends a local elected official under
2 section 7 of this chapter, the legislative body shall ensure that the
3 duties of the suspended local elected official are carried out and
4 may appoint an acting replacement for the suspended local elected
5 official.

6 Sec. 10. If a local elected official suspended under section 7 of
7 this chapter is convicted of an eligible offense, the local elected
8 official shall be removed from office in accordance with
9 IC 5-8-1-38.

10 Sec. 11. (a) If:

11 (1) a local elected official suspended under section 7 of this
12 chapter is:

13 (A) acquitted; or

14 (B) charges are dropped;

15 (2) a local elected official was charged with a felony but is
16 convicted only of a misdemeanor; or

17 (3) a local elected official was charged with a misdemeanor
18 involving a breach of the peace that is committed while the
19 local official is performing the official's official duties but is
20 convicted only of a misdemeanor that does not involve a
21 breach of the peace;

22 the official is reinstated in office by operation of law if the term of
23 the official has not expired.

24 (b) If a local elected official suspended under section 7 of this
25 chapter is acquitted or charges are dropped, the local elected
26 official is entitled to back pay for the suspension period.

27 (c) If a local elected official suspended under section 7 of this
28 chapter is convicted only of a misdemeanor as described in
29 subsection (a)(2) or (a)(3), the legislative body may award full or
30 partial back pay to the official, if the legislative body adopts a
31 resolution finding that:

32 (1) the misdemeanor of which the local elected official is
33 convicted does not reflect upon the official's suitability for
34 office; and

35 (2) fairness and the best interests of the unit require that the
36 local elected official be awarded back pay.

37 A local elected official who is convicted of a misdemeanor is not
38 entitled to vote to award back pay under this subsection.

39 SECTION 2. IC 35-44-1-8 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
41 1, 2011]: **Sec. 8. (a) This section applies only to a local elected
42 official (as defined in IC 5-8-7-3).**

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(b) A local elected official who:
(1) without being on medical, vacation, military, or other leave; or
(2) while not traveling on official business;
knowingly or intentionally fails to perform the official's duties for ten (10) or more days in any calendar month commits dereliction of duty, a Class D felony.

(c) In determining whether a local elected official has failed to perform the official's duties, the trier of fact may consider whether the official was absent from the official's assigned workplace.

SECTION 3. IC 36-9-37-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) A municipal fiscal officer acting under this chapter shall, in the manner prescribed by IC 5-4-1, obtain, execute, and file a bond conditioned upon the following:

- (1) The faithful compliance of the municipal fiscal officer with this chapter.
- (2) The faithful accounting for all money coming into the municipal fiscal officer's possession under the Barrett Law.

(b) A municipal fiscal officer who does any of the following is personally liable to a person suffering loss due to that action and may be removed from office by proper action filed under IC 5-8-1-35: subject to other action as prescribed by law:

- (1) Fails to collect the interest or penalties provided for by this chapter on delinquent assessments and installments of assessments.
- (2) Fails to enforce the collection of the assessments by the sale of the property. However, this subdivision does not apply to a municipal fiscal officer of a municipality that has adopted an ordinance under section 24(a) of this chapter.
- (3) Otherwise fails to comply with this chapter.

(c) The surety on the municipal fiscal officer's bond is also liable to the extent of the bond.

SECTION 4. IC 5-8-1-35 IS REPEALED [EFFECTIVE JULY 1, 2011].

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