



February 11, 2011

SENATE BILL No. 63

DIGEST OF SB 63 (Updated February 9, 2011 1:03 pm - DI 106)

Citations Affected: IC 5-8; IC 36-9.

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 a member of the legislative body who is charged with an offense is not eligible to vote on the member's suitability for office, and provides that certain relatives of the member are likewise ineligible to vote. Specifies that the local elected official will be reinstated with back pay if the official is acquitted or charges are dropped.

Effective: July 1, 2011.

**Gard, Bray, Arnold,
Lawson C, Eckerty, Steele**

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

February 10, 2011, pursuant to Senate Rule 68(b), reassigned to Committee on Judiciary. Amended, reported favorably — Do Pass.

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SB 63—LS 6339/DI 106+



February 11, 2011

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 a member of the legislative body of a unit is related to the local elected official as:

- (1) father;**
- (2) mother;**
- (3) son;**
- (4) daughter;**
- (5) husband;**
- (6) wife;**
- (7) brother;**
- (8) sister;**
- (9) uncle;**
- (10) aunt;**
- (11) nephew;**
- (12) niece;**
- (13) father in law;**
- (14) mother in law;**
- (15) son in law;**

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1 (16) daughter in law;
 2 (17) brother in law; or
 3 (18) sister in law;
 4 **the member is ineligible to vote on the resolution described in**
 5 **subsection (a).**

6 **(d) If the number of:**
 7 **(1) local elected officials who are members of the legislative**
 8 **body of a unit charged with an eligible offense; or**
 9 **(2) members of the legislative body of the unit who are**
 10 **ineligible to vote under subsection (b);**
 11 **results in the legislative body of the unit being unable to reach a**
 12 **quorum or adopt a resolution by a two-thirds (2/3) vote of all of the**
 13 **members of the unit, the resolution may be adopted by a majority**
 14 **of the voting members.**

15 **Sec. 8. (a) A local elected official who has been suspended under**
 16 **section 7 of this chapter may seek judicial review of the suspension**
 17 **by filing a petition for review with a circuit court located:**

- 18 (1) in the county where the local elected official served; or
- 19 (2) in a county adjacent to the county where the local elected
- 20 official served;

21 **not later than thirty (30) days after the date on which the local**
 22 **elected official was suspended. The official shall serve a copy of the**
 23 **petition on the prosecuting attorney and on the legislative body.**

24 **(b) A petition for review filed under this section must be verified**
 25 **and set forth specific facts to demonstrate:**

- 26 (1) that the prosecuting attorney did not charge the local
- 27 elected official with an eligible offense;
- 28 (2) that a court did not find probable cause to believe that the
- 29 offense was committed;
- 30 (3) that the appropriate legislative body abused its discretion
- 31 in determining that the offense is relevant to the official's
- 32 suitability for office; or
- 33 (4) that the appropriate legislative body abused its discretion
- 34 in determining it is in the best interests of the unit that the
- 35 local elected official be suspended from office.

36 **(c) The court shall set a hearing on the suspension of the local**
 37 **elected official not later than thirty (30) days after the petition for**
 38 **judicial review is filed. Judicial review of the suspension of a local**
 39 **elected official shall be determined on an expedited basis.**

40 **(d) The petitioner, the prosecuting attorney, and one (1) or more**
 41 **members of the legislative body have the right to appear and**
 42 **present relevant evidence at the hearing, in person or by counsel.**

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1 (e) The court conducting judicial review of the suspension of a
2 local elected official may stay the suspension pending the resolution
3 of the judicial review.

4 (f) If the reviewing court finds that the petitioner has established
5 one (1) of the elements described in subsection (b)(1) through
6 (b)(4), the court shall order the petitioner immediately reinstated
7 with back pay, if applicable.

8 (g) The court's determination granting or denying relief is a
9 final judgment.

10 Sec. 9. (a) A local elected official who is suspended from office
11 under this chapter shall not act in the official's official capacity and
12 is not entitled to receive any salary or remuneration as a local
13 elected official during the suspension period.

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

18 Sec. 10. (a) This section does not apply if a legislative body
19 suspends a local elected official who is a member of the legislative
20 body.

21 (b) If a legislative body suspends a local elected official under
22 section 7 of this chapter, the legislative body shall ensure that the
23 duties of the suspended local elected official are carried out and
24 may appoint an acting replacement for the suspended local elected
25 official.

26 Sec. 11. If a local elected official suspended under section 7 of
27 this chapter is convicted of an eligible offense, the local elected
28 official shall be removed from office in accordance with
29 IC 5-8-1-38.

30 Sec. 12. (a) If:

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

33 (A) acquitted; or

34 (B) charges are dropped;

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

37 (3) a local elected official was charged with a misdemeanor
38 involving a breach of the peace that is committed while the
39 local official is performing the official's official duties but is
40 convicted only of a misdemeanor that does not involve a
41 breach of the peace;

42 the official is reinstated in office by operation of law if the term of

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the official has not expired.

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

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

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

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

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

SECTION 2. 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.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 63, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 25 and 26, begin a new paragraph and insert:

"(c) If a member of the legislative body of a unit is related to the local elected official as:

- (1) father;**
- (2) mother;**
- (3) son;**
- (4) daughter;**
- (5) husband;**
- (6) wife;**
- (7) brother;**
- (8) sister;**
- (9) uncle;**
- (10) aunt;**
- (11) nephew;**
- (12) niece;**
- (13) father in law;**
- (14) mother in law;**
- (15) son in law;**
- (16) daughter in law;**
- (17) brother in law; or**
- (18) sister in law;**

the member is ineligible to vote on the resolution described in subsection (a)."

Page 2, line 26, delete "(c)" and insert "**(d)**".

Page 2, line 26, after "number of" insert ":

(1)".

Page 2, line 27, after "offense" insert "; **or**

(2) members of the legislative body of the unit who are ineligible to vote under subsection (b);"

Page 2, line 28, beginning with "results" begin a new line blocked left.

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"Sec. 8. (a) A local elected official who has been suspended under section 7 of this chapter may seek judicial review of the suspension by filing a petition for review with a circuit court located:

- (1) in the county where the local elected official served; or**

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(2) in a county adjacent to the county where the local elected official served;
not later than thirty (30) days after the date on which the local elected official was suspended. The official shall serve a copy of the petition on the prosecuting attorney and on the legislative body.

(b) A petition for review filed under this section must be verified and set forth specific facts to demonstrate:

- (1) that the prosecuting attorney did not charge the local elected official with an eligible offense;
- (2) that a court did not find probable cause to believe that the offense was committed;
- (3) that the appropriate legislative body abused its discretion in determining that the offense is relevant to the official's suitability for office; or
- (4) that the appropriate legislative body abused its discretion in determining it is in the best interests of the unit that the local elected official be suspended from office.

(c) The court shall set a hearing on the suspension of the local elected official not later than thirty (30) days after the petition for judicial review is filed. Judicial review of the suspension of a local elected official shall be determined on an expedited basis.

(d) The petitioner, the prosecuting attorney, and one (1) or more members of the legislative body have the right to appear and present relevant evidence at the hearing, in person or by counsel.

(e) The court conducting judicial review of the suspension of a local elected official may stay the suspension pending the resolution of the judicial review.

(f) If the reviewing court finds that the petitioner has established one (1) of the elements described in subsection (b)(1) through (b)(4), the court shall order the petitioner immediately reinstated with back pay, if applicable.

(g) The court's determination granting or denying relief is a final judgment."

Page 2, line 32, delete "Sec. 8." and insert "**Sec. 9.**"

Page 2, line 40, delete "Sec. 9." and insert "**Sec. 10.**"

Page 3, line 6, delete "Sec. 10." and insert "**Sec. 11.**"

Page 3, line 10, delete "Sec. 11." and insert "**Sec. 12.**"

Page 3, delete lines 39 through 42.

Page 4, delete lines 1 through 10.

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Page 4, delete lines 34 through 35.
Re-number all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to SB 63 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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