
HOUSE BILL No. 1255

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-13-11-3.5; IC 5-8.

Synopsis: Residency requirements for elected officials. Provides that an elected official who ceases to reside in the election district of the elected office vacates the office on the date the individual ceases to reside in the election district. Requires an elected official who intends to cease residency in the elected office's election district to give notice of the elected official's resignation not later than 30 days before the elected official ceases residency in the election district. Provides that a voter who resides in the election district of an elected official may file a petition with the legislative body associated with the elected office to determine whether the elected official has ceased residency in the election district. Describes the procedure for the legislative body to make a determination regarding the residency of an elected official. Defines the status of an elected official whose residency is questioned before and after the legislative body makes a determination. Provides that an individual who holds an elected office and exercises the powers and duties of the elected office after the individual ceases to be a resident of the election district of the elected office is considered a de facto officer. Specifies that the acts of an individual acting as a de facto officer are not subject to challenge based on the individual's status as a de facto officer. Repeals a superseded statute relating to removal from office of a town board member who ceases to reside in the election district.

Effective: July 1, 2012.

VanDenburgh

January 9, 2012, read first time and referred to Committee on Elections and Apportionment.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1255



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 3-13-11-3.5, AS AMENDED BY P.L.119-2005,
- 2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2012]: Sec. 3.5. (a) If a vacancy exists on a town council
- 4 because a circumstance has occurred under IC 36-5-2-6.5(3), the
- 5 caucus shall meet and select an individual to fill the vacancy not later
- 6 than thirty (30) days after the county chairman receives a notice of the
- 7 vacancy. ~~under IC 5-8-5.~~
- 8 (b) The county chairman shall:
- 9 (1) give notice of the caucus meeting to caucus members under
- 10 section 4 of this chapter; and
- 11 (2) keep the notice of the vacancy with the records of the caucus.
- 12 SECTION 2. IC 5-8-5 IS REPEALED [EFFECTIVE JULY 1, 2012].
- 13 (Notice of a Town Council Vacancy).
- 14 SECTION 3. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS
- 15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 16 1, 2012]:
- 17 **Chapter 7. Vacancy in Office Created by Elected Official**



1 **Ceasing to Reside in the Election District**

2 **Sec. 1.** Except as provided in this chapter, a term used in this
3 chapter that is defined in IC 3-5-2 has the meaning set forth in
4 IC 3-5-2.

5 **Sec. 2.** For purposes of this chapter, "elected office" does not
6 include a federal office.

7 **Sec. 3.** As used in this chapter, "elected official" refers to an
8 individual who holds an elected office.

9 **Sec. 4.** For purposes of this chapter, an individual is an
10 "interested person" with respect to an election district if the
11 individual is a voter who resides in the election district.

12 **Sec. 5.** As used in this chapter, "legislative body" refers to the
13 following:

14 (1) With respect to a state office, the general assembly.

15 (2) With respect to a legislative office, the following:

16 (A) The house of representatives of the general assembly if
17 the office is a representative of the general assembly.

18 (B) The senate of the general assembly, if the office is a
19 senator of the general assembly.

20 (3) With respect to a local office, other than a local judicial
21 office, the legislative body (as defined in IC 36-1-2-9) of the
22 political subdivision the local office serves.

23 (4) With respect to a local judicial office, the supreme court.

24 **Sec. 6.** As used in this chapter, "petitioner" refers to an
25 interested person who files a petition challenging the residency of
26 an elected official under this chapter.

27 **Sec. 7.** As used in this chapter, "respondent" refers to an elected
28 official whose residency has been challenged under this chapter.

29 **Sec. 8.** For purposes of this chapter, if an elected official is
30 required to reside in a geographically defined territory that is
31 included in, but does not include all, of the election district for the
32 office (as defined in IC 3-5-2-19), the election district for that
33 individual is considered to be:

34 (1) the smaller, geographically included territory; and

35 (2) not the election district (as defined in IC 3-5-2-19).

36 **Sec. 9.** For purposes of this chapter, an individual's residence is
37 determined as provided in IC 3-5-5.

38 **Sec. 10.** Notwithstanding any other law, an elected official who
39 ceases to reside in the election district of the elected office vacates
40 the office on the date the individual ceases to reside in the election
41 district.

42 **Sec. 11.** An elected official who intends to cease residency in the

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1 elected office's election district shall give notice of the elected
 2 official's resignation under IC 5-8-3.5 not later than thirty (30)
 3 days before the elected official ceases residency in the election
 4 district.

5 **Sec. 12. (a)** This section applies if an elected official vacates an
 6 elected office under section 10 of this chapter without giving notice
 7 of resignation required by section 11 of this chapter.

8 (b) An interested person who believes an elected official has
 9 ceased to reside in the elected office's election district may file a
 10 petition with the legislative body to determine the residency of the
 11 elected official.

12 (c) A petition filed under this section must state the basis for the
 13 petitioner's claim that the elected official has ceased to reside in the
 14 election district.

15 **Sec. 13. (a)** Except as provided in subsection (b), (c), or (d), the
 16 legislative body shall hold a public hearing not later than forty-five
 17 (45) days after a petition is filed under section 12 of this chapter.

18 (b) If the legislative body is the supreme court, the supreme
 19 court shall dispose of the petition as provided in the supreme
 20 court's rules or by the supreme court's orders.

21 (c) If the legislative body is the general assembly, the general
 22 assembly shall dispose of the petition as provided by law or in the
 23 joint rules of the general assembly.

24 (d) If the legislative body is the house of representatives or the
 25 senate, the legislative body shall dispose of the petition as provided
 26 in the legislative body's rules.

27 (e) If the respondent is a member of the legislative body, the
 28 respondent may participate in the legislative body's meetings and
 29 other deliberations on the matter, but may not vote on the issue.

30 **Sec. 14. (a)** The legislative body's determination under this
 31 chapter must be made in writing and state the following:

32 (1) Whether the respondent is or is not a resident of the
 33 elected office's election district.

34 (2) If the legislative body determines that the respondent is
 35 not a resident of the election district, the date that the
 36 respondent ceased to be a resident of the election district.

37 (3) To what extent, if any, the respondent should do any of the
 38 following:

39 (A) Reimburse the state or political subdivision served by
 40 the elected office for any compensation paid to the
 41 respondent after the date determined under subdivision
 42 (2).

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- 1 **(B) Pay the costs of the proceedings under this chapter.**
 2 **(b) The legislative body shall give the petitioner and the**
 3 **respondent a copy of the legislative body's determination.**
 4 **(c) If the legislative body determines that the respondent ceased**
 5 **to reside in the elected office's election district, the elected office is**
 6 **considered vacant.**
 7 **(d) If the legislative body determines that the respondent ceased**
 8 **to reside in the elected office's election district, the appropriate**
 9 **officer of the legislative body shall give notice of the vacancy to the**
 10 **person or entity that has the power to:**
 11 **(1) fill the vacancy; or**
 12 **(2) call a caucus for the purpose of filling the vacancy.**
 13 **(e) A vacancy that occurs under this section shall be filled as**
 14 **provided in IC 3-13 or other applicable law.**
 15 **(f) Notwithstanding the determination of the date that the**
 16 **respondent ceased to be a resident of the election district stated**
 17 **under subsection (a)(2), for purposes of filling the vacancy, the**
 18 **elected office is considered vacant as of the date the legislative body**
 19 **makes the determination under subsection (a).**
 20 **Sec. 15. Until the legislative body makes a determination under**
 21 **this chapter that the respondent does not reside in the elected**
 22 **office's election district, the respondent is considered to be a**
 23 **resident of the election district.**
 24 **Sec. 16. (a) Except as provided in subsection (b), the petitioner**
 25 **or the respondent may appeal a determination of the legislative**
 26 **body to a court with jurisdiction.**
 27 **(b) A determination of the legislative body with respect to a**
 28 **question of residency of the following is final and conclusive and**
 29 **not subject to judicial review:**
 30 **(1) A respondent who holds a judicial office.**
 31 **(2) A respondent who holds a legislative office.**
 32 **Sec. 17. (a) An individual who:**
 33 **(1) holds an elected office; and**
 34 **(2) exercises the powers and duties of the elected office after**
 35 **the individual ceases to be a resident of the election district of**
 36 **the elected office;**
 37 **is considered a de facto officer.**
 38 **(b) The acts of an individual described in subsection (a) are not**
 39 **subject to challenge based on the individual's status as a de facto**
 40 **officer.**

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