

January 15, 1998

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## HOUSE BILL No. 1020

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DIGEST OF HB 1020 (Updated January 14, 1998 1:22 pm - DI 93)

**Citations Affected:** IC 36-8-3-4.

**Synopsis:** Police and firefighter disciplinary procedures. Requires a safety board of a city, town, or township with a full-time paid police or fire department to offer a member of the department a fair public hearing before a suspension without pay for more than five days or before a demotion or dismissal. (Current law requires only that the safety board offer the member a hearing. Current law also only applies to the safety board of a second or third class city, a town, or a township.) Requires all cities, towns, and townships that have at least ten full-time, sworn employees of a police or fire department to use the statutory merit system or establish their own merit system for their police and fire departments not later than January 1, 2000.

**Effective:** July 1, 1998.

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January 6, 1998, read first time and referred to Committee on Public Safety.  
January 14, 1998, amended, reported — Do Pass.

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HB 1020—LS 6272/DI 79



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January 15, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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## HOUSE BILL No. 1020

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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 36-8-3-4, AS AMENDED BY P.L.234-1996,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998] : Sec. 4. (a) This section also applies to all towns and  
4 townships that have full-time, paid police or fire departments.  
5 **Subsection (c) also applies to first class cities.** For purposes of this  
6 section, the appropriate appointing authority of a town or township is  
7 considered the safety board of a town or township. In a town with a  
8 board of metropolitan police commissioners, that board is considered  
9 the safety board of the town for police department purposes.  
10 (b) Except as provided in subsection (m), a member of the police or  
11 fire department holds office or grade until the member is dismissed or  
12 demoted by the safety board. Except as provided in subsection (n), a  
13 member may be disciplined by demotion, dismissal, reprimand,  
14 forfeiture, or suspension upon either:  
15 (1) conviction in any court of any crime; or  
16 (2) a finding and decision of the safety board that the member has  
17 been or is guilty of any one (1) or more of the following:

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- 1 (A) Neglect of duty.  
 2 (B) A violation of rules.  
 3 (C) Neglect or disobedience of orders.  
 4 (D) Incapacity.  
 5 (E) Absence without leave.  
 6 (F) Immoral conduct.  
 7 (G) Conduct injurious to the public peace or welfare.  
 8 (H) Conduct unbecoming an officer.  
 9 (I) Another breach of discipline.

10 The safety board may not consider the political affiliation of the  
 11 member in making a decision under this section. If a member is  
 12 suspended or placed on administrative leave under this subsection, the  
 13 member is entitled to the member's allowances for insurance benefits  
 14 to which the member was entitled before being suspended or placed on  
 15 administrative leave. In addition, the local unit may provide the  
 16 member's allowances for any other fringe benefits to which the member  
 17 was entitled before being suspended or placed on administrative leave.

18 (c) Before a member of a police or fire department may be  
 19 suspended in excess of five (5) days without pay, demoted, or  
 20 dismissed, the safety board shall offer the member an opportunity for  
 21 a **fair public** hearing. If a member desires a hearing, the member must  
 22 request the hearing not more than five (5) days after the notice of the  
 23 suspension, demotion, or dismissal. Written notice shall be given either  
 24 by service upon the member in person or by a copy left at the member's  
 25 last and usual place of residence at least fourteen (14) days before the  
 26 date set for the hearing. The hearing conducted under this subsection  
 27 shall be held not more than thirty (30) days after the hearing is  
 28 requested by the member, unless a later date is mutually agreed upon  
 29 by the parties. The notice must state:

- 30 (1) the time and place of the hearing;  
 31 (2) the charges against the member;  
 32 (3) the specific conduct that comprises the charges;  
 33 (4) that the member is entitled to be represented by counsel;  
 34 (5) that the member is entitled to call and cross-examine  
 35 witnesses;  
 36 (6) that the member is entitled to require the production of  
 37 evidence; and  
 38 (7) that the member is entitled to have subpoenas issued, served,  
 39 and executed in the county where the unit is located.

40 If the corporation counsel or city attorney is a member of the safety  
 41 board of a city, the counsel or attorney may not participate as a safety  
 42 board member in a disciplinary hearing concerning a member of either



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1 department. The safety board shall determine if a member of the police  
2 or fire department who is suspended in excess of five (5) days shall  
3 continue to receive the member's salary during the suspension.

4 (d) Upon an investigation into the conduct of a member of the police  
5 or fire department, or upon the trial of a charge preferred against a  
6 member of either department, the safety board may compel the  
7 attendance of witnesses, examine them under oath, and require the  
8 production of books, papers, and other evidence at a meeting of the  
9 board. For this purpose, the board may issue subpoenas and have them  
10 served and executed in any part of the county where the unit is located.  
11 If a witness refuses to testify or to produce books or papers in the  
12 witness's possession or under the witness's control, IC 36-4-6-21  
13 controls to the extent applicable. The proper court may compel  
14 compliance with the order by attachment, commitment, or other  
15 punishment.

16 (e) The reasons for the suspension, demotion, or dismissal of a  
17 member of the police or fire department shall be entered as specific  
18 findings of fact upon the records of the safety board. A member who is  
19 suspended for a period exceeding five (5) days, demoted, or dismissed  
20 may appeal the decision to the circuit or superior court of the county in  
21 which the unit is located. However, a member may not appeal any other  
22 decision.

23 (f) An appeal under subsection (e) must be taken by filing in court,  
24 within thirty (30) days after the date the decision is rendered, a verified  
25 complaint stating in concise manner the general nature of the charges  
26 against the member, the decision of the safety board, and a demand for  
27 the relief asserted by the member. A bond must also be filed that  
28 guarantees the appeal will be prosecuted to a final determination and  
29 that the plaintiff will pay all costs adjudged against the plaintiff. The  
30 bond must be approved as bonds for costs are approved in other cases.  
31 The unit must be named as the sole defendant, and the plaintiff shall  
32 have a summons issued as in other cases against the unit. Neither the  
33 safety board nor the members of it may be made parties defendant to  
34 the complaint, but all are bound by service upon the unit and the  
35 judgment rendered by the court.

36 (g) In an appeal under subsection (e), no pleading is required by the  
37 unit to the complaint, but the allegations are considered denied. The  
38 unit may file a motion to dismiss the appeal for failure to perfect it  
39 within the time and in the manner required by this section. If more than  
40 one (1) person was included in the same charges and in the same  
41 decision of dismissal by the safety board, then one (1) or more of the  
42 persons may join as plaintiffs in the same complaint, but only the



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1 persons that appeal from the decision are affected by it. The decision  
2 of the safety board is final and conclusive upon all persons not  
3 appealing. The decision appealed from is not stayed or affected  
4 pending the final determination of the appeal, but remains in effect  
5 unless modified or reversed by the final judgment of the court.

6 (h) A decision of the safety board is considered prima facie correct,  
7 and the burden of proof is on the party appealing. All appeals shall be  
8 tried by the court. The appeal shall be heard de novo only upon any  
9 new issues related to the charges upon which the decision of the safety  
10 board was made. The charges are considered to be denied by the  
11 accused person. Within ten (10) days after the service of summons the  
12 safety board shall file in court a complete transcript of all papers,  
13 entries, and other parts of the record relating to the particular case.  
14 Inspection of these documents by the person affected, or by the person's  
15 agent, must be permitted by the safety board before the appeal is filed,  
16 if requested. Each party may produce evidence relevant to the issues  
17 that it desires, and the court shall review the record and decision of the  
18 safety board upon appeal.

19 (i) The court shall make specific findings and state the conclusions  
20 of law upon which its decision is made. If the court finds that the  
21 decision of the safety board appealed from should in all things be  
22 affirmed, its judgment should state that, and judgment for costs shall  
23 be rendered against the party appealing. If the court finds that the  
24 decision of the safety board appealed from should not be affirmed in all  
25 things, then the court shall make a general finding, setting out  
26 sufficient facts to show the nature of the proceeding and the court's  
27 decision on it. The court shall either:

- 28 (1) reverse the decision of the safety board; or
- 29 (2) order the decision of the safety board to be modified.

30 (j) The final judgment of the court may be appealed by either party.  
31 Upon the final disposition of the appeal by the courts, the clerk shall  
32 certify and file a copy of the final judgment of the court to the safety  
33 board, which shall conform its decisions and records to the order and  
34 judgment of the court. If the decision is reversed or modified, then the  
35 safety board shall pay to the party entitled to it any salary or wages  
36 withheld from the party pending the appeal and to which the party is  
37 entitled under the judgment of the court.

38 (k) Either party shall be allowed a change of venue from the court  
39 or a change of judge in the same manner as such changes are allowed  
40 in civil cases. The Indiana Rules of Trial Procedure govern in all  
41 matters of procedure upon the appeal that are not otherwise provided  
42 for by this section.



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1 (l) An appeal takes precedence over other pending litigation and  
2 shall be tried and determined by the court as soon as practical.

3 (m) The executive may reduce in grade any member of the police or  
4 fire department who holds an upper level policy making position. The  
5 reduction in grade may be made without adhering to the requirements  
6 of subsections (b) through (l). However, a member may not be reduced  
7 in grade to a rank below that which the member held before the  
8 member's appointment to the upper level policy making position.

9 (n) If the member is subject to criminal charges, the board may  
10 place the member on administrative leave until the disposition of the  
11 criminal charges in the trial court. Any other action by the board is  
12 stayed until the disposition of the criminal charges in the trial court. An  
13 administrative leave under this subsection may be with or without pay,  
14 as determined by the board. If the member is placed on leave without  
15 pay, the board, in its discretion, may award back pay if the member is  
16 exonerated in the criminal matter.

17 SECTION 2. IC 36-8-3.5-1 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) This chapter  
19 applies to each municipality ~~or and~~ township that has a **at least ten**  
20 **(10)** full-time paid **sworn employees of the police or fire department**  
21 **of the municipality or township. A Not later than July 1, 2000, each**  
22 **municipality may exercise the power of establishing and township**  
23 **shall establish** a merit system for ~~its~~ **their** police ~~or and~~ fire  
24 **department departments** under this chapter or by ordinance adopted  
25 under IC 36-1-4-14. This chapter does not affect merit systems  
26 established:

27 (1) by ordinance under IC 36-1-4-14, except as provided by  
28 subsection (e); or

29 (2) by a prior statute, except as provided by subsection (b).

30 (b) If a city had a merit system for its police or fire department  
31 under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2,  
32 IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29,  
33 IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain  
34 that system by ordinance of the city legislative body passed before  
35 January 1, 1983. The ordinance must initially incorporate all the  
36 provisions of the prior statute but may be amended by the legislative  
37 body after December 31, 1984. The ordinance retaining the system  
38 must be amended, if necessary, to include a provision under which the  
39 commission (or governing board of the merit system) has at least  
40 one-third (1/3) of its members elected by the active members of the  
41 department as prescribed by section 8 of this chapter. Each elected  
42 commission member must:



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- 1 (1) be a person of good moral character; and  
 2 (2) except for a member of a fire department having a merit  
 3 system established under IC 19-1-37.5, not be an active member  
 4 of a police or fire department or agency.

5 (c) After December 31, 1984, the legislative body also may repeal  
 6 the ordinance described in subsection (b), but the legislative body shall  
 7 in the repealing ordinance concurrently establish a new merit system  
 8 under section 3 of this chapter. (This subsection does not require the  
 9 legislative body to establish a new merit system when it exercises its  
 10 power to amend the ordinance under subsection (b).) After the new  
 11 merit system takes effect, all members of the department are entitled to  
 12 the same ranks and pay grades the members held under the prior  
 13 system, subject to changes made in accordance with this chapter.

14 (d) If a city had a merit system for its police or fire department  
 15 under a prior statute but fails to retain that system under subsection (b),  
 16 the city legislative body shall, before July 1, 1983, pass an ordinance  
 17 to establish a new merit system under section 3 of this chapter. If the  
 18 new merit system is approved as provided by section 4 of this chapter,  
 19 it takes effect as provided by that section. However, if the new merit  
 20 system is rejected under section 4 of this chapter, within thirty (30)  
 21 days the city legislative body shall adopt an ordinance to retain the  
 22 prior merit system. The prior merit system remains in effect until the  
 23 new merit system takes effect, after which time all members of the  
 24 department are entitled to the same ranks and pay grades the members  
 25 held under the prior system, subject to changes made in accordance  
 26 with this chapter.

27 (e) An ordinance adopted under IC 36-1-4-14 to establish a police  
 28 or fire merit system must include a provision under which the  
 29 commission, or governing board of the merit system, has at least  
 30 one-third (1/3) of its members elected by the active members of the  
 31 department as prescribed by section 8 of this chapter. Each elected  
 32 commission member must be a person of good moral character who is  
 33 not an active member of a police or fire department or agency. If an  
 34 ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the  
 35 ordinance must be amended to include this requirement.

36 SECTION 3. IC 36-8-3.5-3 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) **Except as**  
 38 **provided in section 1 of this chapter**, the legislative body of a unit  
 39 may, by ordinance, establish a merit system under this chapter for the  
 40 police or fire department of the unit. Before the merit system takes  
 41 effect, however, the system must be approved by a majority of the  
 42 active members of the department in a referendum.

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1 (b) The legislative body shall specify in the adopting ordinance  
 2 which of the provisions of this chapter that are left to its discretion are  
 3 being adopted.

4 (c) If a merit system is established under this chapter for each  
 5 department of a unit, each department has a separate merit system.

6 SECTION 4. IC 36-8-3.5-5 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) **Except as**  
 8 **provided in section 1 of this chapter**, a majority of the active  
 9 members of the department, by referendum under section 4 of this  
 10 chapter, may request the unit's legislative body to establish a merit  
 11 system for the department. The legislative body shall vote on the  
 12 request within sixty (60) days after it is filed with the clerk of the  
 13 legislative body.

14 (b) If the legislative body votes to grant the request, the legislative  
 15 body shall adopt an ordinance establishing a merit system under this  
 16 chapter. A copy of the ordinance shall be distributed to each active  
 17 member of the department, and another referendum under section 4 of  
 18 this chapter is required before the merit system takes effect.

19 (c) If the legislative body votes to deny the request, the request may  
 20 not be resubmitted to the legislative body for one (1) year. Before the  
 21 request may be resubmitted, another referendum under section 4 of this  
 22 chapter must be held.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Safety, to which was referred House Bill 1020, 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:

Page 1, line 4, after "departments." insert "**Subsection (c) also applies to first class cities.**".

Page 5, after line 9, begin a new paragraph and insert:

"SECTION 2. IC 36-8-3.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) This chapter applies to each municipality ~~or~~ **and** township that has ~~a~~ **at least ten (10)** full-time paid **sworn employees of the police or fire department of the municipality or township.** ~~A Not later than July 1, 2000, each municipality may exercise the power of establishing and township shall establish~~ a merit system for its **their** police ~~or~~ **and** fire ~~department departments~~ under this chapter or by ordinance adopted under IC 36-1-4-14. This chapter does not affect merit systems established:

(1) by ordinance under IC 36-1-4-14, except as provided by subsection (e); or

(2) by a prior statute, except as provided by subsection (b).

(b) If a city had a merit system for its police or fire department under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2, IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29, IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain that system by ordinance of the city legislative body passed before January 1, 1983. The ordinance must initially incorporate all the provisions of the prior statute but may be amended by the legislative body after December 31, 1984. The ordinance retaining the system must be amended, if necessary, to include a provision under which the commission (or governing board of the merit system) has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must:

(1) be a person of good moral character; and

(2) except for a member of a fire department having a merit system established under IC 19-1-37.5, not be an active member of a police or fire department or agency.

(c) After December 31, 1984, the legislative body also may repeal the ordinance described in subsection (b), but the legislative body shall in the repealing ordinance concurrently establish a new merit system under section 3 of this chapter. (This subsection does not require the

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legislative body to establish a new merit system when it exercises its power to amend the ordinance under subsection (b).) After the new merit system takes effect, all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(d) If a city had a merit system for its police or fire department under a prior statute but fails to retain that system under subsection (b), the city legislative body shall, before July 1, 1983, pass an ordinance to establish a new merit system under section 3 of this chapter. If the new merit system is approved as provided by section 4 of this chapter, it takes effect as provided by that section. However, if the new merit system is rejected under section 4 of this chapter, within thirty (30) days the city legislative body shall adopt an ordinance to retain the prior merit system. The prior merit system remains in effect until the new merit system takes effect, after which time all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(e) An ordinance adopted under IC 36-1-4-14 to establish a police or fire merit system must include a provision under which the commission, or governing board of the merit system, has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must be a person of good moral character who is not an active member of a police or fire department or agency. If an ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the ordinance must be amended to include this requirement.

SECTION 3. IC 36-8-3.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) **Except as provided in section 1 of this chapter**, the legislative body of a unit may, by ordinance, establish a merit system under this chapter for the police or fire department of the unit. Before the merit system takes effect, however, the system must be approved by a majority of the active members of the department in a referendum.

(b) The legislative body shall specify in the adopting ordinance which of the provisions of this chapter that are left to its discretion are being adopted.

(c) If a merit system is established under this chapter for each department of a unit, each department has a separate merit system.

SECTION 4. IC 36-8-3.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) **Except as provided in section 1 of this chapter**, a majority of the active

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members of the department, by referendum under section 4 of this chapter, may request the unit's legislative body to establish a merit system for the department. The legislative body shall vote on the request within sixty (60) days after it is filed with the clerk of the legislative body.

(b) If the legislative body votes to grant the request, the legislative body shall adopt an ordinance establishing a merit system under this chapter. A copy of the ordinance shall be distributed to each active member of the department, and another referendum under section 4 of this chapter is required before the merit system takes effect.

(c) If the legislative body votes to deny the request, the request may not be resubmitted to the legislative body for one (1) year. Before the request may be resubmitted, another referendum under section 4 of this chapter must be held."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1020 as introduced.)

L. LUTZ, Chair

Committee Vote: yeas 12, nays 2.

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