

HOUSE BILL No. 1020

DIGEST OF INTRODUCED BILL

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

Synopsis: Police and firefighter disciplinary procedures. Requires a safety board of a second or third class 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.)

Effective: July 1, 1998.

Mahern

January 6, 1998, read first time and referred to Committee on Public Safety.



Introduced

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.

HOUSE BILL No. 1020

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. For
5 purposes of this section, the appropriate appointing authority of a town or
6 township is considered the safety board of a town or township. In a town
7 with a board of metropolitan police commissioners, that board is
8 considered the safety board of the town for police department purposes.
9 (b) Except as provided in subsection (m), a member of the police or
10 fire department holds office or grade until the member is dismissed or
11 demoted by the safety board. Except as provided in subsection (n), a
12 member may be disciplined by demotion, dismissal, reprimand, forfeiture,
13 or suspension upon either:
14 (1) conviction in any court of any crime; or
15 (2) a finding and decision of the safety board that the member has
16 been or is guilty of any one (1) or more of the following:
17 (A) Neglect of duty.

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

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

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

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

37 If the corporation counsel or city attorney is a member of the safety board
 38 of a city, the counsel or attorney may not participate as a safety board
 39 member in a disciplinary hearing concerning a member of either
 40 department. The safety board shall determine if a member of the police or
 41 fire department who is suspended in excess of five (5) days shall continue
 42 to receive the member's salary during the suspension.



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

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

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

30 (g) In an appeal under subsection (e), no pleading is required by the
31 unit to the complaint, but the allegations are considered denied. The unit
32 may file a motion to dismiss the appeal for failure to perfect it within the
33 time and in the manner required by this section. If more than one (1)
34 person was included in the same charges and in the same decision of
35 dismissal by the safety board, then one (1) or more of the persons may
36 join as plaintiffs in the same complaint, but only the persons that appeal
37 from the decision are affected by it. The decision of the safety board is
38 final and conclusive upon all persons not appealing. The decision
39 appealed from is not stayed or affected pending the final determination of
40 the appeal, but remains in effect unless modified or reversed by the final
41 judgment of the court.

42 (h) A decision of the safety board is considered prima facie correct,



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

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

21 (1) reverse the decision of the safety board; or

22 (2) order the decision of the safety board to be modified.

23 (j) The final judgment of the court may be appealed by either party.
24 Upon the final disposition of the appeal by the courts, the clerk shall
25 certify and file a copy of the final judgment of the court to the safety
26 board, which shall conform its decisions and records to the order and
27 judgment of the court. If the decision is reversed or modified, then the
28 safety board shall pay to the party entitled to it any salary or wages
29 withheld from the party pending the appeal and to which the party is
30 entitled under the judgment of the court.

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

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

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



1 appointment to the upper level policy making position.
2 (n) If the member is subject to criminal charges, the board may place
3 the member on administrative leave until the disposition of the criminal
4 charges in the trial court. Any other action by the board is stayed until the
5 disposition of the criminal charges in the trial court. An administrative
6 leave under this subsection may be with or without pay, as determined by
7 the board. If the member is placed on leave without pay, the board, in its
8 discretion, may award back pay if the member is exonerated in the
9 criminal matter.

