

HOUSE BILL No. 1296

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15-2; IC 8-23-2-3.

Synopsis: Makes INDOT personnel merit employees. Makes all employees and officers of the Indiana department of transportation merit employees except for the following: (1) The commissioner. (2) A deputy commissioner. (3) A division chief. Allows an appointing authority to dismiss an employee only for just cause. Provides that if the time limitations provided for in the employee complaint procedure are not adhered to by the agency, state personnel department, state employee appeals commission, or employee, the complaint shall be decided in favor of the opposing party. Provides that a decision of the state employee appeals commission is subject to arbitration. (Current law provides that only a recommendation of the commission is subject to arbitration.)

Effective: July 1, 1998.

Mangus

January 13, 1998, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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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. 1296



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

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

1 SECTION 1. IC 4-15-2-3.8, AS AMENDED BY P.L.24-1997,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 3.8. "State service" means public service by:
4 (1) employees and officers, including the incumbent directors, of
5 the county offices of family and children; ~~and~~
6 (2) employees and officers, except members of boards and
7 commissions or individuals hired for or appointed to, after June
8 30, 1982, positions as appointing authorities, deputies, assistants
9 reporting to appointing authorities, or supervisors of major units
10 within state agencies, irrespective of the title carried by those
11 positions, of the division of disability, aging, and rehabilitative
12 services, Fort Wayne State Developmental Center, Muscatatuck
13 State Developmental Center, New Castle State Developmental
14 Center, Northern Indiana State Developmental Center, division of
15 mental health, Larue D. Carter Memorial Hospital, Evansville
16 State Psychiatric Treatment Center for Children, Central State
17 Hospital, Evansville State Hospital, Logansport State Hospital,

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1 Madison State Hospital, Richmond State Hospital, state
 2 department of health, Indiana School for the Blind, Indiana
 3 School for the Deaf, Indiana Veterans' Home, Indiana Soldiers'
 4 and Sailors' Children's Home, Silvercrest Children's Development
 5 Center, department of correction, Westville Correctional Facility,
 6 Plainfield Juvenile Correctional Facility, Putnamville
 7 Correctional Facility, Indianapolis Juvenile Correctional Facility,
 8 Indiana State Prison, Indiana Women's Prison, Pendleton
 9 Correctional Facility, Reception and Diagnostic Center, Rockville
 10 Correctional Facility, Youth Rehabilitation Facility, Plainfield
 11 Correctional Facility, department of fire and building services,
 12 state emergency management agency (excluding a county
 13 emergency management organization and any other local
 14 emergency management organization created under IC 10-4-1),
 15 civil rights commission, criminal justice planning agency,
 16 department of workforce development, Indiana historical bureau,
 17 Indiana state library, division of family and children, Indiana state
 18 board of animal health, Federal Surplus Property Warehouse,
 19 Indiana education employment relations board, public employees'
 20 retirement fund, teachers' retirement fund, department of labor,
 21 Indiana protection and advocacy services commission,
 22 commission on public records, Indiana horse racing commission,
 23 and state personnel department; **and**

24 **(3) employees and officers of the Indiana department of**
 25 **transportation, except for the commissioner, deputy**
 26 **commissioner, and division chiefs.**

27 SECTION 2. IC 4-15-2-33 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 33. An appointing
 29 authority or his designee may, for ~~disciplinary purposes~~; **just cause**,
 30 suspend without pay a regular employee in his division of the service
 31 for such length of time as he considers appropriate, not exceeding thirty
 32 (30) days in any twelve (12) month period. With the approval of the
 33 director a regular employee may be suspended for a longer period
 34 pending the administrative investigation or trial of any charges against
 35 him. If the outcome of the charges or trial of any charges is favorable
 36 to the employee, the appointing authority shall reimburse the employee
 37 any lost wages and benefits for the suspension period less any wages
 38 the employee might have earned during the suspension period from
 39 other employment.

40 SECTION 3. IC 4-15-2-34, AS AMENDED BY P.L.153-1994,
 41 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 1998]: Sec. 34. An appointing authority or his designee may



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1 dismiss for **just** cause any regular employee in his division of the
 2 service. No dismissal of a regular employee shall take effect, unless, at
 3 least thirty (30) days before the effective date of the dismissal, the
 4 appointing authority or his designee gives to the employee a written
 5 statement of the reasons for the dismissal and files a copy of the
 6 statement with the director. During the thirty (30) day notice period the
 7 employee shall be suspended without pay pending dismissal. The
 8 employee shall have an opportunity to file with the appointing authority
 9 a written statement regarding the proposed dismissal, a copy of which
 10 shall be filed with the director. A regular employee who is dismissed
 11 shall have the right to appeal under section 35 of this chapter.

12 SECTION 4. IC 4-15-2-35, AS AMENDED BY P.L.153-1994,
 13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 1998]: Sec. 35. (a) Any regular employee may file a complaint
 15 if his status of employment is involuntarily changed or if he deems
 16 conditions of employment to be unsatisfactory. However, the complaint
 17 procedure shall be initiated as soon as possible after the occurrence of
 18 the act or condition complained of and in no event shall be initiated
 19 more than thirty (30) calendar days after the employee is notified of a
 20 change in his status of employment or after an unsatisfactory condition
 21 of employment is created. Failure to initiate the complaint procedure
 22 within such time period shall render the complaint procedure
 23 unavailable to the employee.

24 **(b) If the employee, agency, personnel department, or state**
 25 **employee appeals commission fails to adhere to the time limits set**
 26 **forth in this chapter, the complaint shall be decided wholly in favor**
 27 **of the opposing party.**

28 (c) The following complaint procedure shall be followed:

29 Step I: The complaint procedure shall be initiated by a discussion of
 30 the complaint by the employee and his immediate supervisor and, if a
 31 mutually satisfactory settlement has not been made within two (2)
 32 consecutive working days, such complaint **may shall** be referred to
 33 Step II.

34 Step II: The complaint shall be reduced to writing and presented to
 35 the intermediate supervisor. If a mutually satisfactory settlement has
 36 not been reached within four (4) consecutive working days, such
 37 complaint **may shall** then be referred to the appointing authority.

38 Step III: The appointing authority or his designated representative
 39 shall hold such hearings and conduct such investigations as he deems
 40 necessary to render a decision and shall make such decision in writing
 41 within ten (10) consecutive working days.

42 Should the appointing authority or his designated representative not



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1 find in favor of the employee, the complaint may be submitted within
 2 fifteen (15) calendar days to the state personnel director. The director
 3 or his designee shall review the complaint and render a decision within
 4 fifteen (15) calendar days. If the decision is not agreeable to the
 5 employee, an appeal may be submitted by the employee in writing to
 6 the commission no later than fifteen (15) calendar days from the date
 7 the employee has been given notice of the action taken by the personnel
 8 director or his designee. After submission of the appeal, the
 9 commission shall, prior to rendering its decision, grant the appealing
 10 employee and the appointing authority a public hearing, with the right
 11 to be represented and to present evidence. With respect to all appeals,
 12 the commission shall render its decision within thirty (30) days after
 13 the date of the hearing on the appeal. If the commission finds that the
 14 action against the employee was taken on the basis of politics, religion,
 15 sex, age, race or because of membership in an employee organization,
 16 the employee shall be reinstated to his position without loss of pay. In
 17 all other cases the appointing authority shall follow the
 18 recommendation of the commission which may include reinstatement
 19 and payment of salary or wages lost by the employee which may be
 20 mitigated by any wages the employee earned from other employment
 21 during a dismissed or suspended period.

22 If the recommendation **or decision** of the commission is not
 23 agreeable to the employee, the employee, within fifteen (15) calendar
 24 days from receipt of the commission recommendation **or decision**, may
 25 elect to submit the complaint to arbitration. The cost of arbitration shall
 26 be shared equally by the employee and the state of Indiana. The
 27 commissioner of labor shall prepare a list of three (3) impartial
 28 individuals trained in labor relations, and from this list each party shall
 29 strike one (1) name. The remaining arbitrator shall consider the issues
 30 which were presented to the commission and shall afford the parties a
 31 public hearing with the right to be represented and to present evidence.
 32 The arbitrator's findings and recommendations shall be binding on both
 33 parties and shall immediately be instituted by the commission.

34 SECTION 5. IC 8-23-2-3 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 1998]: Sec. 3. **(a) All employees and officers**
 36 **of the department are merit employees under IC 4-15-2 except for**
 37 **the following:**

38 (1) **The commissioner.**

39 (2) **A deputy commissioner.**

40 (3) **A division chief.**

41 ~~(a)~~ **(b)** The department may hire qualified individuals to carry out
 42 its responsibilities subject to the budget agency's approval under



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1 IC 4-12-1-13 **and IC 4-15-2** and may prescribe their terms and
 2 conditions of employment subject to this section **and IC 4-15-2**.

3 ~~(b)~~ (c) All employees of the department whose duties require
 4 specialized knowledge or skill, acquired by professional or technical
 5 education, training, and experience:

6 (1) shall be employed solely on the basis of ability, taking into
 7 account their qualifications to perform the duties of their
 8 positions;

9 (2) shall be employed regardless of political affiliation;

10 (3) may not be appointed, promoted, reduced, removed, or in any
 11 way favored or discriminated against because of their political
 12 affiliation, race, religion, color, sex, national origin, or ancestry;

13 (4) are ineligible to hold, or be a candidate for, elected office (as
 14 defined in IC 3-5-2-17) while employed by the department, except
 15 as provided in subsection (h);

16 (5) may not solicit or receive political contributions;

17 (6) may not be required to make contributions for or participate
 18 in political activities;

19 (7) shall be employed on a six (6) month probationary period,
 20 with a written evaluation prepared after five (5) months of service
 21 by their immediate supervisor for the commissioner to determine
 22 if employment should continue beyond the probationary period;
 23 and

24 (8) shall be evaluated annually in writing by their immediate
 25 supervisor for the purpose of advising the commissioner as to
 26 whether the employees should remain in their positions.

27 ~~(c)~~ (d) Highway district managers are and subdistrict
 28 superintendents are not subject to subsection ~~(b)~~: (c). A person may not
 29 be employed by the department as a highway subdistrict superintendent
 30 unless the person has received training or experience in maintaining or
 31 constructing roads, highways, and bridges. Highway subdistrict
 32 superintendents shall devote full time to the performance of their
 33 duties. Highway district managers serve at the pleasure of the
 34 commissioner but Upon reassignment, a highway district manager
 35 shall be retained in a position of equal or higher job classification
 36 within the department. However, the employee may elect to serve in the
 37 next lower job classification within the same district.

38 ~~(d)~~ (e) The appointment or dismissal of the chief highway engineer
 39 for the department is at the discretion of the commissioner. The chief
 40 highway engineer must be a registered professional engineer and must
 41 be a graduate civil engineer or have at least ten (10) years of
 42 experience in highway engineering.



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- 1 (e) (f) All employees of the department are subject to IC 4-15-1.8
- 2 and the rules that implement IC 4-15-1.8.
- 3 (f) Subject to this section:
- 4 (1) all employees of the department are subject to demotion;
- 5 discipline; dismissal; or transfer at the discretion of the
- 6 commissioner; and
- 7 (2) cause for demotion; dismissal; discipline; or transfer may
- 8 include but is not limited to failure to satisfactorily effectuate the
- 9 department's transportation plan and work programs.
- 10 (g) The commissioner may:
- 11 (1) require an employee or agent of the department to execute and
- 12 furnish a bond conditioned upon the faithful discharge and
- 13 performance of the duties of the employee or agent and the
- 14 accurate accounting of public funds that come into the employee's
- 15 or agent's control or custody; and
- 16 (2) prescribe an oath of employment for an employee or agent of
- 17 the department.
- 18 (h) Employees described in subsection (b) (c) may:
- 19 (1) be candidates for:
- 20 (A) school board office (as defined in IC 3-5-2-45); or
- 21 (B) precinct committeeman or state convention delegate;
- 22 and serve in that office if elected; and
- 23 (2) be appointed to an office described in subdivision (1) and
- 24 serve in that office if appointed.

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