



Reprinted
March 24, 1999

ENGROSSED HOUSE BILL No. 1024

DIGEST OF HB 1024 (Updated March 23, 1999 2:52 pm - DI 94)

Citations Affected: IC 31-11; IC 36-4; IC 36-5; IC 36-8; IC 36-9.

Synopsis: Municipal administrative matters. Requires that the appropriations for the salaries of attorneys and legal research assistants employed by a clerk or clerk-treasurer must be allocated to the clerk or clerk-treasurer for the payment of the salaries. Provides that a clerk-treasurer is an ex-officio member of the town legislative body for the purpose of tie-breaking. Eliminates an obsolete reference to a state agency public purchasing statute in municipal sewage law. (Current municipal sewage law refers to a public purchasing statute that was repealed for local governments by P.L.57-1981.) Requires the town executive to have the approval of the town council before discharging or removing a town employee.

Effective: Upon passage; July 1, 1999.

Ayres, Stevenson, Richardson

(SENATE SPONSORS — SKILLMAN, MERRITT, ROGERS, WOLF)

January 6, 1999, read first time and referred to Committee on Local Government.
February 16, 1999, amended, reported — Do Pass.
March 1, 1999, read second time, amended, ordered engrossed.
March 2, 1999, engrossed. Read third time, passed. Yeas 96, nays 0.

SENATE ACTION

March 4, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.

March 18, 1999, amended, reported favorably — Do Pass.
March 23, 1999, read second time, amended, ordered engrossed.

EH 1024—LS 6183/DI 94+



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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1024

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 31-11-6-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Marriages may be
3 solemnized by any of the following:
4 (1) A member of the clergy of a religious organization (even if the
5 cleric does not perform religious functions for an individual
6 congregation), such as a minister of the gospel, a priest, a bishop,
7 an archbishop, or a rabbi.
8 (2) A judge.
9 (3) A mayor, within the mayor's ~~city~~ **county**.
10 (4) A clerk or a clerk-treasurer of a city or town, within a county
11 in which the city or town is located.
12 (5) A clerk of the circuit court.
13 (6) The Friends Church, in accordance with the rules of the
14 Friends Church.
15 (7) The German Baptists, in accordance with the rules of their
16 society.

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1 (8) The Bahai faith, in accordance with the rules of the Bahai
2 faith.

3 (9) The Church of Jesus Christ of Latter Day Saints, in
4 accordance with the rules of the Church of Jesus Christ of Latter
5 Day Saints.

6 (10) An imam of a masjid (mosque), in accordance with the rules
7 of the religion of Islam.

8 SECTION 2. IC 36-4-10-5.5 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) A clerk or
10 clerk-treasurer may hire or contract with competent attorneys or legal
11 research assistants on terms the clerk or clerk-treasurer considers
12 appropriate.

13 (b) Employment of an attorney under this section does not affect a
14 city department of law established under IC 36-4-9-4.

15 (c) Appropriations for the salaries of attorneys and legal research
16 assistants employed under this section shall be approved in the annual
17 budget **and must be allocated to the clerk or clerk-treasurer for the**
18 **payment of attorney's and legal research assistant's salaries.**

19 SECTION 3. IC 36-5-2-8 IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The town clerk-treasurer is
21 the clerk of the legislative body.

22 (b) ~~Whenever the legislative body has an even number of members~~
23 ~~for any reason;~~ The clerk-treasurer is an ex officio member for the
24 purpose of casting the deciding vote to break a tie.

25 SECTION 4. IC 36-5-2-13 IS ADDED TO THE INDIANA CODE
26 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
27 UPON PASSAGE]: **Sec. 13. The town executive must have the**
28 **approval of a majority of the town council before the executive**
29 **may discharge, reduce in grade under IC 36-8-3-4, or remove a**
30 **town employee.**

31 SECTION 5. IC 36-8-3-4 IS AMENDED TO READ AS FOLLOWS
32 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section also applies to
33 all towns and townships that have full-time, paid police or fire
34 departments. For purposes of this section, the appropriate appointing
35 authority of a town or township is considered the safety board of a town
36 or township. In a town with a board of metropolitan police
37 commissioners, that board is considered the safety board of the town for
38 police department purposes.

39 (b) Except as provided in subsection (m), a member of the police or
40 fire department holds office or grade until the member is dismissed or
41 demoted by the safety board. Except as provided in subsection (n), a
42 member may be disciplined by demotion, dismissal, reprimand,

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1 forfeiture, or suspension upon either:

- 2 (1) conviction in any court of any crime; or
 3 (2) a finding and decision of the safety board that the member has
 4 been or is guilty of any one (1) or more of the following:
 5 (A) Neglect of duty.
 6 (B) A violation of rules.
 7 (C) Neglect or disobedience of orders.
 8 (D) Incapacity.
 9 (E) Absence without leave.
 10 (F) Immoral conduct.
 11 (G) Conduct injurious to the public peace or welfare.
 12 (H) Conduct unbecoming an officer.
 13 (I) Another breach of discipline.

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

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

- 34 (1) the time and place of the hearing;
 35 (2) the charges against the member;
 36 (3) the specific conduct that comprises the charges;
 37 (4) that the member is entitled to be represented by counsel;
 38 (5) that the member is entitled to call and cross-examine
 39 witnesses;
 40 (6) that the member is entitled to require the production of
 41 evidence; and
 42 (7) that the member is entitled to have subpoenas issued, served,



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1 and executed in the county where the unit is located.
2 If the corporation counsel or city attorney is a member of the safety
3 board of a city, the counsel or attorney may not participate as a safety
4 board member in a disciplinary hearing concerning a member of either
5 department. The safety board shall determine if a member of the police
6 or fire department who is suspended in excess of five (5) days shall
7 continue to receive the member's salary during the suspension.

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

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

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

40 (g) In an appeal under subsection (e), no pleading is required by the
41 unit to the complaint, but the allegations are considered denied. The
42 unit may file a motion to dismiss the appeal for failure to perfect it

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1 within the time and in the manner required by this section. If more than
2 one (1) person was included in the same charges and in the same
3 decision of dismissal by the safety board, then one (1) or more of the
4 persons may join as plaintiffs in the same complaint, but only the
5 persons that appeal from the decision are affected by it. The decision
6 of the safety board is final and conclusive upon all persons not
7 appealing. The decision appealed from is not stayed or affected
8 pending the final determination of the appeal, but remains in effect
9 unless modified or reversed by the final judgment of the court.

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

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

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

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

42 (k) Either party shall be allowed a change of venue from the court

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1 or a change of judge in the same manner as such changes are allowed
 2 in civil cases. The Indiana Rules of Trial Procedure govern in all
 3 matters of procedure upon the appeal that are not otherwise provided
 4 for by this section.

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

7 (m) **Except as provided in IC 36-5-2-13**, the executive may reduce
 8 in grade any member of the police or fire department who holds an
 9 upper level policy making position. The reduction in grade may be
 10 made without adhering to the requirements of subsections (b) through
 11 (l). However, a member may not be reduced in grade to a rank below
 12 that which the member held before the member's appointment to the
 13 upper level policy making position.

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

22 SECTION 6. IC 36-9-23-6 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The board
 24 may enter into all contracts or agreements necessary or incidental to the
 25 performance of its duties and the execution of its powers under this
 26 chapter. However, the board may not obligate itself or the municipality
 27 beyond the extent to which money has been or may be provided under
 28 this chapter.

29 (b) A contract relating to the financing of the acquisition or
 30 construction of any sewage works, or to any trust indenture authorized
 31 by this chapter, is not effective until it is approved by the municipal
 32 legislative body.

33 (c) A contract or an agreement with any contractor or contractors for
 34 labor, equipment, or materials shall be let and entered into under the
 35 statutes governing the letting of contracts by agencies of municipalities.
 36 ~~including IC 5-17-1.~~

37 (d) The board or any public utility (as defined in IC 8-1-6-3)
 38 contracting with the board for the treatment, purification, or disposal
 39 in a sanitary manner of liquid and solid waste, sewage, night soil, or
 40 industrial waste may contract with a water utility furnishing water
 41 service to users or property served in the municipality or by the public
 42 utility to do the following:



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- 1 (1) Ascertain the amount of water consumed.
- 2 (2) Compute the amount of the charge to be billed for sewer
- 3 services to each user or property served.
- 4 (3) Bill and collect the amounts due for sewer services.
- 5 (4) Discontinue water service to delinquent sewer users.
- 6 A contract under this subsection is enforceable without the approval of
- 7 the Indiana utility regulatory commission.
- 8 (e) The procedures in IC 36-9-25-11.5(a) through
- 9 IC 36-9-25-11.5(e) apply to the discontinuance of water service to a
- 10 delinquent sewer user under a contract between the board and a water
- 11 utility described in subsection (d).
- 12 **SECTION 7. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1024, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 31-11-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Marriages may be solemnized by any of the following:

- (1) A member of the clergy of a religious organization (even if the cleric does not perform religious functions for an individual congregation), such as a minister of the gospel, a priest, a bishop, an archbishop, or a rabbi.
- (2) A judge.
- (3) A mayor, within the mayor's ~~city~~ **county**.
- (4) A clerk or a clerk-treasurer of a city or town, within a county in which the city or town is located.
- (5) A clerk of the circuit court.
- (6) The Friends Church, in accordance with the rules of the Friends Church.
- (7) The German Baptists, in accordance with the rules of their society.
- (8) The Bahai faith, in accordance with the rules of the Bahai faith.
- (9) The Church of Jesus Christ of Latter Day Saints, in accordance with the rules of the Church of Jesus Christ of Latter Day Saints.
- (10) An imam of a masjid (mosque), in accordance with the rules of the religion of Islam."

Page 1, line 2, delete the effective date "[EFFECTIVE JULY 1, 1999]" and insert the effective date "[EFFECTIVE UPON PASSAGE]".

Page 1, line 13, delete the effective date "[EFFECTIVE JULY 1, 1999]" and insert the effective date "[EFFECTIVE UPON PASSAGE]".

Page 1, line 15, strike "Whenever the legislative body has an even number of members".

Page 1, line 16, delete "present at a meeting of the legislative body,".

Page 1, line 16, strike "for any reason,".

Page 1, line 16, delete "the" and insert "The".

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Page 2, between lines 1 and 2, begin a new paragraph and insert:
"SECTION 3. IC 36-5-2-13 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 13. The town executive must have the approval of a majority of the town board before the executive may discharge or remove a town employee.**".

Page 2, line 3, delete the effective date "[EFFECTIVE JULY 1, 1999]" and insert the effective date "[EFFECTIVE UPON PASSAGE]".

Page 2, after line 33, begin a new paragraph and insert:
"SECTION 5. **An emergency is declared for this act.**".

Renumber all sections consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1024 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 9, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1024 be amended to read as follows:

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 6. IC 36-9-25-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) This chapter applies to a second class city located in a county having a population of more than one hundred seven thousand (107,000) but less than one hundred eight thousand (108,000) as well as each municipality in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) in which the legislative body has adopted this chapter by ordinance.

(b) This chapter also applies to each second class city not in such a county in which the legislative body has adopted this chapter by ordinance.

(c) In addition, in a consolidated city sections 9 through 38 **and section 41** of this chapter apply to the department of public works and the board of public works, subject to IC 36-3-4-23.

SECTION 7. IC 36-9-25-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 41. (a) ~~This section applies to each consolidated city:~~

~~(b)~~ To raise money to pay the costs of acquiring, constructing, and improving sewage works and property necessary for sewage works, the board may have issued, in the name of the municipality, revenue bonds payable solely from the revenues of the sewage works for which they are issued. Revenue bonds issued under this section are not a corporate indebtedness of the district or the municipality.

~~(c)~~ **(b)** The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the board and will be payable and mature at the time or times determined by the board in the resolution.

~~(d)~~ **(c)** The revenue bonds may be made redeemable before maturity at the option of the board, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

~~(e)~~ **(d)** The principal and interest of the revenue bonds may be made payable in any lawful medium.

~~(f)~~ **(e)** The resolution authorizing the issuance of the revenue bonds must determine the form of the bonds and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company

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in Indiana or another state.

~~(g)~~ (f) The revenue bonds must contain a statement on their face that neither the district nor the municipality is obligated to pay the principal or interest on them, except from the net revenue of the sewage works that are deposited in the sinking fund established by subsection ~~(t)~~: (s).

~~(h)~~ (g) The revenue bonds are negotiable instruments.

~~(i)~~ (h) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone or as to both principal and interest.

~~(j)~~ (i) The revenue bonds shall be executed in the same manner as other bonds issued under section 27 of this chapter.

~~(k)~~ (j) The revenue bonds shall be sold by the district and the municipal fiscal officer in the manner that is determined to be in the best interests of the district, but only at public sale in accordance with the statutes concerning the sale of municipal bonds.

~~(l)~~ (k) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons. The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

~~(m)~~ (l) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the first issue, the additional revenue bonds are considered part of the first issue and are entitled to payment from the same fund, without priority for the first issue.

~~(n)~~ (m) Subject to the provisions and limitations of any resolution or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section for the purpose of improving any works acquired or constructed under this chapter without priority of one (1) issue over another.

~~(o)~~ (n) Revenue bonds issued under this section are exempt from taxation for all purposes.

~~(p)~~ (o) Any action to contest the validity of revenue bonds issued under this section must be brought at least five (5) days before the advertised date for the sale of the bonds.

~~(q)~~ (p) The first proceeds of any revenue bonds issued under this section shall be used to repay all amounts advanced for preliminary expenses. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

~~(r)~~ (q) After the payments required by subsection ~~(q)~~ (p) have been

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made, any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by subsection ~~(t)~~ (s).

~~(s)~~ (r) The holders of the revenue bonds have a lien on the bond proceeds until they are applied under this section.

~~(t)~~ (s) At or before the time of issuance of revenue bonds under this section, the board, by resolution, shall:

- (1) establish a sinking fund for the payment of:
 - (A) the principal of and interest on the revenue bonds; and
 - (B) the charges of banks or trust companies for making payment of the principal or interest on the revenue bonds; and
- (2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The resolution may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this section.

~~(t)~~ (t) The rights granted by this section are subject to any restrictions contained in the resolution authorizing the issuance of revenue bonds or in any trust indenture securing the bonds. The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce all rights granted by this section or under the resolution or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works. If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the district, municipality, the bondholders, and the trustee, if any. The receiver may:

- (1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;
- (2) pay any revenue bonds and interest outstanding; and
- (3) apply the revenues in conformity with this chapter, the resolution authorizing the bond issue, and the trust indenture, if any.

~~(v)~~ (u) Bonds issued under this section **by a consolidated city** are subject to the requirements of IC 36-3-5-8."

(v) **Bonds issued under this section by a second class city having a population of more than one hundred ten thousand (110,000) but**



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less than one hundred twenty thousand (120,000) in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) are valid only if approved by a resolution of the city's legislative body."

Renumber all SECTIONS consecutively.

(Reference is to HB1024 as printed February 17, 1999.)

AYRES

HOUSE MOTION

Mr. Speaker: I move that House Bill 1024 be amended to read as follows:

Page 2, line 28, after "discharge" insert "**, reduce in grade under IC 36-8-3-4,**".

Page 2, between lines 28 and 29, begin a new paragraph and insert:
 "SECTION 5. IC 36-8-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section also applies to all towns and townships that have full-time, paid police or fire departments. For purposes of this section, the appropriate appointing authority of a town or township is considered the safety board of a town or township. In a town with a board of metropolitan police commissioners, that board is considered the safety board of the town for police department purposes.

(b) Except as provided in subsection (m), a member of the police or fire department holds office or grade until the member is dismissed or demoted by the safety board. Except as provided in subsection (n), a member may be disciplined by demotion, dismissal, reprimand, forfeiture, or suspension upon either:

- (1) conviction in any court of any crime; or
- (2) a finding and decision of the safety board that the member has been or is guilty of any one (1) or more of the following:
 - (A) Neglect of duty.
 - (B) A violation of rules.
 - (C) Neglect or disobedience of orders.
 - (D) Incapacity.
 - (E) Absence without leave.
 - (F) Immoral conduct.
 - (G) Conduct injurious to the public peace or welfare.
 - (H) Conduct unbecoming an officer.
 - (I) Another breach of discipline.

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

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

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

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

(d) Upon an investigation into the conduct of a member of the police or fire department, or upon the trial of a charge preferred against a member of either department, the safety board may compel the attendance of witnesses, examine them under oath, and require the production of books, papers, and other evidence at a meeting of the board. For this purpose, the board may issue subpoenas and have them

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served and executed in any part of the county where the unit is located. If a witness refuses to testify or to produce books or papers in the witness's possession or under the witness's control, IC 36-4-6-21 controls to the extent applicable. The proper court may compel compliance with the order by attachment, commitment, or other punishment.

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

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

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

(h) A decision of the safety board is considered prima facie correct, and the burden of proof is on the party appealing. All appeals shall be tried by the court. The appeal shall be heard de novo only upon any new issues related to the charges upon which the decision of the safety

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board was made. The charges are considered to be denied by the accused person. Within ten (10) days after the service of summons the safety board shall file in court a complete transcript of all papers, entries, and other parts of the record relating to the particular case. Inspection of these documents by the person affected, or by the person's agent, must be permitted by the safety board before the appeal is filed, if requested. Each party may produce evidence relevant to the issues that it desires, and the court shall review the record and decision of the safety board upon appeal.

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

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

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

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

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

(m) **Except as provided in IC 36-5-2-13**, the executive may reduce in grade any member of the police or fire department who holds an upper level policy making position. The reduction in grade may be made without adhering to the requirements of subsections (b) through (l). However, a member may not be reduced in grade to a rank below that which the member held before the member's appointment to the upper level policy making position.



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

Renumber all SECTIONS consecutively.

(Reference is to HB 1024 as printed February 17, 1999.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred House Bill No. 1024, 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, line 27, delete "board" and insert "**council**".

Page 8, line 13, delete "(I)" and insert "(**†**)".

Page 8, line 16, delete "(I)" and insert "**(i)**".

and when so amended that said bill do pass.

(Reference is to HB 1024 as reprinted March 2, 1999.)

MERRITT, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1024 be amended to read as follows:

Page 7, delete lines 12 through 42.

Delete pages 8 and 9.

Page 10, delete lines 1 through 11.

Re-number all SECTIONS consecutively.

(Reference is to Engrossed House Bill 1024 as printed March 19, 1999.)

SKILLMAN

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