

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

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

- 1 Page 2, line 28, after "discharge" insert "**reduce in grade under**
- 2 **IC 36-8-3-4**".
- 3 Page 2, between lines 28 and 29, begin a new paragraph and insert:
- 4 "SECTION 5. IC 36-8-3-4 IS AMENDED TO READ AS
- 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section
- 6 also applies to all towns and townships that have full-time, paid police
- 7 or fire departments. For purposes of this section, the appropriate
- 8 appointing authority of a town or township is considered the safety
- 9 board of a town or township. In a town with a board of metropolitan
- 10 police commissioners, that board is considered the safety board of the
- 11 town for police department purposes.
- 12 (b) Except as provided in subsection (m), a member of the police or
- 13 fire department holds office or grade until the member is dismissed or
- 14 demoted by the safety board. Except as provided in subsection (n), a
- 15 member may be disciplined by demotion, dismissal, reprimand,
- 16 forfeiture, or suspension upon either:
- 17 (1) conviction in any court of any crime; or
- 18 (2) a finding and decision of the safety board that the member has
- 19 been or is guilty of any one (1) or more of the following:
- 20 (A) Neglect of duty.
- 21 (B) A violation of rules.
- 22 (C) Neglect or disobedience of orders.
- 23 (D) Incapacity.
- 24 (E) Absence without leave.

- 1 (F) Immoral conduct.  
 2 (G) Conduct injurious to the public peace or welfare.  
 3 (H) Conduct unbecoming an officer.  
 4 (I) Another breach of discipline.

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

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

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

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

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

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

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

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

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

39 (h) A decision of the safety board is considered prima facie correct,  
40 and the burden of proof is on the party appealing. All appeals shall be  
41 tried by the court. The appeal shall be heard de novo only upon any  
42 new issues related to the charges upon which the decision of the safety  
43 board was made. The charges are considered to be denied by the  
44 accused person. Within ten (10) days after the service of summons the  
45 safety board shall file in court a complete transcript of all papers,  
46 entries, and other parts of the record relating to the particular case.

1 Inspection of these documents by the person affected, or by the person's  
2 agent, must be permitted by the safety board before the appeal is filed,  
3 if requested. Each party may produce evidence relevant to the issues  
4 that it desires, and the court shall review the record and decision of the  
5 safety board upon appeal.

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

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

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

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

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

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

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

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

- 1      Renumber all SECTIONS consecutively.  
         (Reference is to HB 1024 as printed February 17, 1999.)

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Representative Stevenson