



Reprinted
March 2, 1999

HOUSE BILL No. 1024

DIGEST OF HB 1024 (Updated March 1, 1999 3:56 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 (Current municipal sewage law refers to a public purchasing statute that was repealed for local governments by P.L.57-1981.)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 board before discharging or removing a town employee. Allows the city of Gary to issue certain revenue bonds for sewage works.

Effective: Upon passage; July 1, 1999.

Ayres, Stevenson

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.

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Reprinted
March 2, 1999

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.

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

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- 1 faith.
- 2 (9) The Church of Jesus Christ of Latter Day Saints, in
- 3 accordance with the rules of the Church of Jesus Christ of Latter
- 4 Day Saints.
- 5 (10) An imam of a masjid (mosque), in accordance with the rules
- 6 of the religion of Islam.

7 SECTION 2. IC 36-4-10-5.5 IS AMENDED TO READ AS

8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) A clerk or

9 clerk-treasurer may hire or contract with competent attorneys or legal

10 research assistants on terms the clerk or clerk-treasurer considers

11 appropriate.

12 (b) Employment of an attorney under this section does not affect a

13 city department of law established under IC 36-4-9-4.

14 (c) Appropriations for the salaries of attorneys and legal research

15 assistants employed under this section shall be approved in the annual

16 budget **and must be allocated to the clerk or clerk-treasurer for the**

17 **payment of attorney's and legal research assistant's salaries.**

18 SECTION 3. IC 36-5-2-8 IS AMENDED TO READ AS FOLLOWS

19 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The town clerk-treasurer

20 is the clerk of the legislative body.

21 (b) ~~Whenever the legislative body has an even number of members~~

22 ~~for any reason,~~ The clerk-treasurer is an ex officio member for the

23 purpose of casting the deciding vote to break a tie.

24 SECTION 4. IC 36-5-2-13 IS ADDED TO THE INDIANA CODE

25 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**

26 **UPON PASSAGE]: Sec. 13. The town executive must have the**

27 **approval of a majority of the town board before the executive may**

28 **discharge, reduce in grade under IC 36-8-3-4, or remove a town**

29 **employee.**

30 SECTION 5. IC 36-8-3-4 IS AMENDED TO READ AS FOLLOWS

31 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section also applies

32 to all towns and townships that have full-time, paid police or fire

33 departments. For purposes of this section, the appropriate appointing

34 authority of a town or township is considered the safety board of a town

35 or township. In a town with a board of metropolitan police

36 commissioners, that board is considered the safety board of the town

37 for police department purposes.

38 (b) Except as provided in subsection (m), a member of the police or

39 fire department holds office or grade until the member is dismissed or

40 demoted by the safety board. Except as provided in subsection (n), a

41 member may be disciplined by demotion, dismissal, reprimand,

42 forfeiture, or suspension upon either:

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

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

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

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

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

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

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

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

39 (g) In an appeal under subsection (e), no pleading is required by the
40 unit to the complaint, but the allegations are considered denied. The
41 unit may file a motion to dismiss the appeal for failure to perfect it
42 within the time and in the manner required by this section. If more than

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

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

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

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

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

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

41 (k) Either party shall be allowed a change of venue from the court
42 or a change of judge in the same manner as such changes are allowed

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1 in civil cases. The Indiana Rules of Trial Procedure govern in all
 2 matters of procedure upon the appeal that are not otherwise provided
 3 for by this section.

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

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

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

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

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

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

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

42 (1) Ascertain the amount of water consumed.



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1 (2) Compute the amount of the charge to be billed for sewer
2 services to each user or property served.

3 (3) Bill and collect the amounts due for sewer services.

4 (4) Discontinue water service to delinquent sewer users.

5 A contract under this subsection is enforceable without the approval of
6 the Indiana utility regulatory commission.

7 (e) The procedures in IC 36-9-25-11.5(a) through
8 IC 36-9-25-11.5(e) apply to the discontinuance of water service to a
9 delinquent sewer user under a contract between the board and a water
10 utility described in subsection (d).

11 SECTION 7. IC 36-9-25-1 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) This chapter
13 applies to a second class city located in a county having a population
14 of more than one hundred seven thousand (107,000) but less than one
15 hundred eight thousand (108,000) as well as each municipality in a
16 county having a population of more than four hundred thousand
17 (400,000) but less than seven hundred thousand (700,000) in which the
18 legislative body has adopted this chapter by ordinance.

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

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

25 SECTION 8. IC 36-9-25-41 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 41. (a) ~~This section~~
27 ~~applies to each consolidated city.~~

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

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

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



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

3 ~~(f)~~ **(e)** The resolution authorizing the issuance of the revenue bonds
4 must determine the form of the bonds and must fix the denomination
5 or denominations of the bonds and the place or places of payment of
6 their principal and interest, which may be at any bank or trust company
7 in Indiana or another state.

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

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

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

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

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

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

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

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

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

41 ~~(p)~~ **(o)** Any action to contest the validity of revenue bonds issued
42 under this section must be brought at least five (5) days before the

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1 advertised date for the sale of the bonds.

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

6 ~~(q)~~ (q) After the payments required by subsection ~~(p)~~ (p) have been
7 made, any proceeds of the bond issue that have not been spent shall be
8 deposited in the sinking fund established by subsection ~~(s)~~ (s).

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

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

13 (1) establish a sinking fund for the payment of:

14 (A) the principal of and interest on the revenue bonds; and

15 (B) the charges of banks or trust companies for making
16 payment of the principal or interest on the revenue bonds; and

17 (2) pledge the net revenues of the sewage works, after the
18 payment of the reasonable expense of operation, repair, and
19 maintenance of the works, to the payment of the expenses
20 described in subdivision (1).

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

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

38 (1) charge and collect fees sufficient to provide for the payment
39 of the expenses of operation, repair, and maintenance of the
40 works;

41 (2) pay any revenue bonds and interest outstanding; and

42 (3) apply the revenues in conformity with this chapter, the

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1 resolution authorizing the bond issue, and the trust indenture, if
2 any.
3 ~~(v)~~ **(u)** Bonds issued under this section by a consolidated city are
4 subject to the requirements of IC 36-3-5-8.
5 **(v)** Bonds issued under this section by a second class city having
6 a population of more than one hundred ten thousand (110,000) but
7 less than one hundred twenty thousand (120,000) in a county
8 having a population of more than four hundred thousand (400,000)
9 but less than seven hundred thousand (700,000) are valid only if
10 approved by a resolution of the city's legislative body.
11 SECTION 9. 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.)

STEVENSON

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