

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WITHDRAWN	Noes _____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

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

MR. SPEAKER:

I move that Engrossed Senate Bill 335 be amended to read as follows:

1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 4-15-2-12 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. Vacancies in the  
5 classified service shall be filled only by:  
6           (1) appointment from an eligible list certified by the director;  
7           (2) provisional appointments under section 22 of this chapter;  
8           (3) temporary appointments made under IC 4-15-1.8-7;  
9           (4) transfer, promotion or demotion of a regular employee; or  
10          (5) reinstatement under section 35 **or 35.2** of this chapter.  
11          SECTION 2. IC 4-15-2-24 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. An appointing  
13 authority may at any time assign an employee from one **(1)** position to  
14 another position in the same class or rank in ~~his~~ **the appointing**  
15 **authority's** division of the service. Upon making such an assignment  
16 the appointing authority shall immediately give written notice of ~~his~~  
17 **the** action to the director. A transfer of an employee from a position in  
18 one **(1)** division of the service to a position in the same class or rank in  
19 another division of the service may be made with the approval of the  
20 director and of the appointing authorities of both divisions of the  
21 service. No employee shall be transferred from a position in one **(1)**  
22 class to a position in another class of a higher rank or for which there  
23 are substantially dissimilar requirements for appointment unless ~~he~~ **the**  
24 **employee** is appointed to the latter position after certification of ~~his~~ **the**

1 **employee's** name from a list in accordance with this chapter. Any  
2 change of a regular employee from a position in one **(1)** class to a  
3 position in a class of a lower rank shall be considered a demotion and  
4 shall be made only in accordance with the procedure prescribed by  
5 section 34 of this chapter for cases of dismissal. An employee thus  
6 demoted shall have the right to appeal under section 35 **or 35.2** of this  
7 chapter. The removal of an employee from a promotional working test  
8 is not appealable unless the removal results in a dismissal or lay-off.

9 SECTION 3. IC 4-15-2-34, AS AMENDED BY P.L.222-2005,  
10 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2007]: Sec. 34. An appointing authority, the appointing  
12 authority's designee, or the ethics commission may dismiss for cause  
13 any regular employee. No dismissal of a regular employee shall take  
14 effect, unless, at least thirty (30) days before the effective date of the  
15 dismissal, the appointing authority, the appointing authority's designee,  
16 or the ethics commission gives to the employee a written statement of  
17 the reasons for the dismissal and files a copy of the statement with the  
18 director. During the thirty (30) day notice period the employee shall be  
19 suspended without pay pending dismissal. The employee shall have an  
20 opportunity to file with the appointing authority or the ethics  
21 commission a written statement regarding the proposed dismissal, a  
22 copy of which shall be filed with the director. A regular employee who  
23 is dismissed shall have the right to appeal under section 35, **35.2**, or  
24 35.5 of this chapter.

25 SECTION 4. IC 4-15-2-35, AS AMENDED BY P.L.222-2005,  
26 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2007]: Sec. 35. (a) This section does not apply to an  
28 employee:

29 (1) who has been suspended or terminated by the ethics  
30 commission; or

31 **(2) to whom section 35.2 of this chapter applies.**

32 (b) Any regular employee may file a complaint if the employee's  
33 status of employment is involuntarily changed or if the employee  
34 deems conditions of employment to be unsatisfactory. However, the  
35 complaint procedure shall be initiated as soon as possible after the  
36 occurrence of the act or condition complained of and in no event shall  
37 be initiated more than thirty (30) calendar days after the employee is  
38 notified of a change in the status of employment or after an  
39 unsatisfactory condition of employment is created. Failure to initiate  
40 the complaint procedure within this time period shall render the  
41 complaint procedure unavailable to the employee. The following  
42 complaint procedure shall be followed:

43 Step I: The complaint procedure shall be initiated by a discussion of  
44 the complaint by the employee and the employee's immediate  
45 supervisor and, if a mutually satisfactory settlement has not been made  
46 within two (2) consecutive working days, the complaint may be

1 referred to Step II.

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

6 Step III: The appointing authority or the appointing authority's  
7 designee shall hold a hearing, if necessary, and conduct whatever  
8 investigation the appointing authority or the appointing authority's  
9 designee considers necessary to render a decision. The appointing  
10 authority or the appointing authority's designee must render a decision  
11 in writing not later than ten (10) business days from the date of the  
12 hearing, if applicable, or close of the investigation, whichever occurs  
13 later.

14 If the appointing authority or the appointing authority's designee  
15 does not find in favor of the employee, the complaint may be submitted  
16 within fifteen (15) calendar days to the state personnel director. The  
17 director or the director's designee shall review the complaint and render  
18 a decision not later than fifteen (15) calendar days after the director or  
19 the director's designee receives the complaint. If the decision is not  
20 agreeable to the employee, an appeal may be submitted by the  
21 employee in writing to the commission not later than fifteen (15)  
22 calendar days from the date the employee has been given notice of the  
23 action taken by the personnel director or the director's designee. After  
24 submission of the appeal, the commission shall, prior to rendering its  
25 decision, grant the appealing employee and the appointing authority a  
26 public hearing, with the right to be represented and to present evidence.  
27 With respect to all appeals, the commission shall render its decision  
28 within thirty (30) days after the date of the hearing on the appeal. If the  
29 commission finds that the action against the employee was taken on the  
30 basis of politics, religion, sex, age, race, or because of membership in  
31 an employee organization, the employee shall be reinstated without loss  
32 of pay. In all other cases, the appointing authority shall follow the  
33 recommendation of the commission, which may include reinstatement  
34 and payment of salary or wages lost by the employee, which may be  
35 mitigated by any wages the employee earned from other employment  
36 during a dismissed or suspended period.

37 If the recommendation of the commission is not agreeable to the  
38 employee, the employee, within fifteen (15) calendar days from receipt  
39 of the commission recommendation, may elect to submit the complaint  
40 to arbitration. The cost of arbitration shall be shared equally by the  
41 employee and the state of Indiana. The commissioner of labor shall  
42 prepare a list of three (3) impartial individuals trained in labor  
43 relations, and from this list each party shall strike one (1) name. The  
44 remaining arbitrator shall consider the issues which were presented to  
45 the commission and shall afford the parties a public hearing with the  
46 right to be represented and to present evidence. The arbitrator's

1 findings and recommendations shall be binding on both parties and  
2 shall immediately be instituted by the commission.

3 SECTION 5. IC 4-15-2-35.2 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2007]: **Sec. 35.2. (a) This section applies only to an employee who  
6 is a teacher at a state institution under:**

7 (1) IC 11-10-5;

8 (2) IC 12-24-3;

9 (3) IC 16-33-4;

10 (4) IC 20-21-2-1; or

11 (5) IC 20-22-2-1.

12 (b) This section does not apply to an employee who has been  
13 suspended or terminated by the ethics commission.

14 (c) A regular employee may file a complaint under this section  
15 if:

16 (1) the employee's status of employment is involuntarily  
17 changed; or

18 (2) the employee considers conditions of employment to be  
19 unsatisfactory.

20 (d) An employee shall initiate the complaint procedure as soon  
21 as possible after the occurrence of the act or condition complained  
22 of and not later than thirty (30) calendar days after:

23 (1) the employee is notified of a change in the status of  
24 employment; or

25 (2) an unsatisfactory condition of employment is created.

26 Failure to initiate the complaint procedure within this period  
27 renders the complaint procedure unavailable to the employee.

28 (e) The complaint procedure is as follows:

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

34 **Step II:** The complaint shall be reduced to writing and  
35 presented to the appointing authority. The appointing authority or  
36 the appointing authority's designee shall hold a hearing, if  
37 necessary, and conduct whatever investigation the appointing  
38 authority or the appointing authority's designee considers  
39 necessary to render a decision. The appointing authority or the  
40 appointing authority's designee must render a decision in writing  
41 not later than ten (10) business days after the date of the hearing.

42 **Step III:** If a decision has not been made by the appointing  
43 authority or the appointing authority's designee within ten (10)  
44 business days, or if the decision of the appointing authority or the  
45 appointing authority's designee is not agreeable to the employee,  
46 the employee may submit an appeal in writing to the commission  
47 not later than fifteen (15) calendar days after the date the employee

1 has been given notice of the action taken by the appointing  
2 authority or the appointing authority's designee. If an employee  
3 elects to submit the appeal to the commission, the commission  
4 shall, before rendering its decision, grant the appealing employee  
5 and the appointing authority or the appointing authority's  
6 designee, or the state personnel director or the director's designee,  
7 a public hearing, with the right to be represented and to present  
8 evidence. For all appeals, the commission shall render its decision  
9 within thirty (30) days after the date of the hearing on the appeal.  
10 If the commission finds that the action against the employee was  
11 taken on the basis of politics, religion, sex, age, race, or because of  
12 membership in an employee organization, the employee shall be  
13 reinstated to the employee's position without loss of pay. In all  
14 other cases, unless judicial review of the decision is requested in  
15 accordance with IC 4-21.5-5, or the employee appeals to binding  
16 arbitration, the appointing authority, the appointing authority's  
17 designee, the state personnel director, or the director's designee  
18 shall follow the decision of the commission, which may include  
19 reinstatement and payment of salary or wages lost by the  
20 employee, which may be mitigated by any wages the employee  
21 earned from other employment during a dismissed or suspended  
22 period. If the decision of the commission is not agreeable to the  
23 employee, the employee, within fifteen (15) calendar days from  
24 receipt of the commission's decision, may elect to submit the  
25 complaint to arbitration.

26 Step IV: If an employee elects to submit the appeal to  
27 arbitration, an arbitrator must be selected from:

- 28 (1) the American Arbitration Association; or
- 29 (2) the Federal Mediation and Conciliation Service, if an  
30 arbitrator is not available from the American Arbitration  
31 Association;

32 according to selection procedures established by the arbitrator's  
33 association or service. However, if a party to the arbitration fails  
34 to take an action required by the selection procedures within the  
35 timeline required by those procedures, the arbitration is  
36 terminated and the arbitrator is considered to have ruled against  
37 that party unless all the parties to the arbitration have mutually  
38 agreed to extend the timeline for action. The costs of the  
39 arbitration under this STEP shall be shared equally by the  
40 employer and the employee or the employee's representative. The  
41 decision of the arbitrator is final and binding, subject to the  
42 Uniform Arbitration Act.

43 (f) The decision of the commission under Step III is a final order  
44 subject to judicial review in accordance with IC 4-21.5 or binding  
45 arbitration in Step IV. The commission's decision in Step III is  
46 binding unless a party requests judicial review or the employee  
47 submits the decision to binding arbitration in Step IV.

1           **(g) An employee who files a complaint under subsection (c) may**  
 2 **choose a representative who is inside or outside the employee's**  
 3 **agency or facility to represent the employee throughout the**  
 4 **complaint procedure.**

5           **(h) If, at a point in the complaint procedure in Step III, the**  
 6 **employer does not comply with the timeline set forth in subsections**  
 7 **(c) through (e), the employee's complaint proceeds to the next step**  
 8 **of the complaint procedure. However, the parties to an appeal**  
 9 **under Step III may by mutual consent extend a deadline for action**  
 10 **set forth in subsections (c) through (e).**

11           SECTION 6. IC 4-21.5-3-7, AS AMENDED BY P.L.222-2005,  
 12 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2007]: Sec. 7. (a) To qualify for review of a personnel action  
 14 to which IC 4-15-2 applies, a person must comply with IC 4-15-2-35,  
 15 **IC 4-15-2-35.2**, or IC 4-15-2-35.5. To qualify for review of any other  
 16 order described in section 4, 5, or 6 of this chapter, a person must  
 17 petition for review in a writing that does the following:

18           (1) States facts demonstrating that:

19                   (A) the petitioner is a person to whom the order is specifically  
 20 directed;

21                   (B) the petitioner is aggrieved or adversely affected by the  
 22 order; or

23                   (C) the petitioner is entitled to review under any law.

24           (2) Includes, with respect to determinations of notice of program  
 25 reimbursement and audit findings described in section 6(a)(3) and  
 26 6(a)(4) of this chapter, a statement of issues that includes:

27                   (A) the specific findings, action, or determination of the office  
 28 of Medicaid policy and planning or of a contractor of the  
 29 office of Medicaid policy and planning from which the  
 30 provider is appealing;

31                   (B) the reason the provider believes that the finding, action, or  
 32 determination of the office of Medicaid policy and planning or  
 33 of a contractor of the office of Medicaid policy and planning  
 34 was in error; and

35                   (C) with respect to each finding, action, or determination of  
 36 the office of Medicaid policy and planning or of a contractor  
 37 of the office of Medicaid policy and planning, the statutes or  
 38 rules that support the provider's contentions of error.

39           Not more than thirty (30) days after filing a petition for review  
 40 under this section, and upon a finding of good cause by the  
 41 administrative law judge, a person may amend the statement of  
 42 issues contained in a petition for review to add one (1) or more  
 43 additional issues.

44           (3) Is filed:

45                   (A) if an order described in section 4, 5, 6(a)(1), or 6(a)(2) of  
 46 this chapter, with the ultimate authority for the agency issuing

1           the order within fifteen (15) days after the person is given  
2           notice of the order or any longer period set by statute; or  
3           (B) if a determination described in section 6(a)(3) or 6(a)(4)  
4           of this chapter, with the office of Medicaid policy and  
5           planning not more than one hundred eighty (180) days after  
6           the hospital is provided notice of the determination.

7           The issuance of an amended notice of program reimbursement by  
8           the office of Medicaid policy and planning does not extend the  
9           time within which a hospital must file a petition for review from  
10          the original notice of program reimbursement under clause (B),  
11          except for matters that are the subject of the amended notice of  
12          program reimbursement.

13          If the petition for review is denied, the petition shall be treated as a  
14          petition for intervention in any review initiated under subsection (d).

15          (b) If an agency denies a petition for review under subsection (a)  
16          and the petitioner is not allowed to intervene as a party in a proceeding  
17          resulting from the grant of the petition for review of another person, the  
18          agency shall serve a written notice on the petitioner that includes the  
19          following:

20                  (1) A statement that the petition for review is denied.  
21                  (2) A brief explanation of the available procedures and the time  
22                  limit for seeking administrative review of the denial under  
23                  subsection (c).

24          (c) An agency shall assign an administrative law judge to conduct  
25          a preliminary hearing on the issue of whether a person is qualified  
26          under subsection (a) to obtain review of an order when a person  
27          requests reconsideration of the denial of review in a writing that:

28                  (1) states facts demonstrating that the person filed a petition for  
29                  review of an order described in section 4, 5, or 6 of this chapter;  
30                  (2) states facts demonstrating that the person was denied review  
31                  without an evidentiary hearing; and  
32                  (3) is filed with the ultimate authority for the agency denying the  
33                  review within fifteen (15) days after the notice required by  
34                  subsection (b) was served on the petitioner.

35          Notice of the preliminary hearing shall be given to the parties, each  
36          person who has a pending petition for intervention in the proceeding,  
37          and any other person described by section 5(d) of this chapter. The  
38          resulting order must be served on the persons to whom notice of the  
39          preliminary hearing must be given and include a statement of the facts  
40          and law on which it is based.

41          (d) If a petition for review is granted, the petitioner becomes a party  
42          to the proceeding and the agency shall assign the matter to an  
43          administrative law judge or certify the matter to another agency for the  
44          assignment of an administrative law judge (if a statute transfers  
45          responsibility for a hearing on the matter to another agency). The  
46          agency granting the administrative review or the agency to which the

- 1 matter is transferred may conduct informal proceedings to settle the
- 2 matter to the extent allowed by law."
- 3       Renumber all SECTIONS consecutively.  
      (Reference is to ESB 335 as printed April 3, 2007.)

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Representative Oxley