January 29, 2010

SENATE BILL No. 210

DIGEST OF SB 210 (Updated January 27, 2010 7:14 pm - DI 87)

Citations Affected: IC 5-8; IC 36-2; IC 36-9.

Synopsis: Local officer impeachment; county contractor claim. Restates and amends the procedure for impeaching a local officer who has: (1) charged and collected illegal fees for services rendered or to be rendered by the local officer; (2) refused to perform or knowingly violated state law in connection with the performance of official duties pertaining to the local officer's office; or (3) for a local officer who is the executive of a township, failed to perform certain duties. Provides for an expedited hearing of a taxpayer's contest of a claim filed in a circuit court by a contractor employed by the county executive. Removes a provision that provides that a member of the county executive who recklessly employs a county contractor or fails to file the contractor's contract with the circuit court commits a Class C misdemeanor and forfeits the executive's office. Repeals a provision concerning the impeachment of a local officer.

Effective: July 1, 2010.

Gard

January 5, 2010, read first time and referred to Committee on Local Government.
January 28, 2010, amended, reported favorably — Do Pass.

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January 29, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 210

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:

SECTION 1. IC 5-8-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 1.5. Impeachment of Local Officers

Sec. 1. This chapter applies after June 30, 2010.

Sec. 2. As used in this chapter, "local officer" means an individual holding a local office (as defined in IC 3-5-2-29).

Sec. 3. (a) Any person may file a complaint alleging that a local officer has taken any of the following actions in the circuit court of the county in which the local officer resides:

(1) The local officer charged and collected illegal fees for services rendered or to be rendered by the local officer.

(2) The local officer:

(A) refused to perform; or

(B) knowingly violated state law in connection with the performance of;

official duties pertaining to the local officer's office.

(3) If the local officer is the executive of a township, the local officer violated IC 36-6-4-17(b).

(b) The complaint described in subsection (a) must be in writing and verified under oath by the person filing the complaint.

Sec. 4. (a) The court in which the complaint is filed under section 3 of this chapter shall:

(1) have a copy of the complaint served on the local officer named in the complaint; and

(2) set a hearing on the allegations made in the complaint.

(b) Unless the court determines that there is good cause to hold the hearing at a later time, the hearing required under subsection (a) must occur at least five (5) days but not more than twenty (20) days after the date the complaint is filed.

(c) The court's failure to hold the hearing required under subsection (a) by the twentieth day after the complaint is filed does not invalidate an action taken under this chapter.

Sec. 5. (a) The court shall hear, in a summary manner:

(1) the evidence in support of the allegations in the complaint; and

(2) the answer and evidence in support of the answer made by the local officer.

(b) If, after the hearing required under subsection (a), the court determines that it is probable that the local officer has taken the actions alleged in the complaint, the court may take the following actions:

(1) Enter an order that the local officer named in the complaint be removed from office.

(2) Enter a judgment as follows:

(A) For costs of the hearing incurred and documented by the prosecuting officer.

(B) For costs as are allowed in civil cases.

(C) For the amount of compensation paid to the local officer from the day on which a complaint against the local officer was filed under this chapter to the day on which the court enters judgment against the local officer as documented by the public entity paying the local officer's compensation.

(c) The court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to a local officer against whom a complaint was filed under this chapter if:

(1) the local officer prevails; and

(2) the court finds that the allegations in the complaint are

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frivolous or vexatious.

SECTION 2. IC 36-2-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 13. (a) The executive may employ a person:

(1) to perform a duty required of a county officer by statute; or

(2) on a commission or percentage basis;

only if the employment is expressly authorized by statute or is found by the executive to be necessary to the public interest.

(b) If a person's employment under subsection (a) is not expressly authorized by statute, the contract for ~~his~~ **the person's** employment must be filed with the circuit court for the county, and ~~he~~ **the person** must file ~~his~~ claims for compensation with that court. Any taxpayer may contest a claim under this section.

~~(c) A member of the executive who recklessly violates this section commits a Class C misdemeanor and forfeits his office.~~

(c) If a taxpayer contests a claim under subsection (b), the executive may request an expedited hearing on the claim. The court shall:

(1) hear, in a summary manner, the evidence in support of the taxpayer's contest and the answer and evidence in support of the answer made by the executive; and

(2) determine the amount of the claim to be paid.

SECTION 3. IC 36-9-37-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) A municipal fiscal officer acting under this chapter shall, in the manner prescribed by IC 5-4-1, obtain, execute, and file a bond conditioned upon the following:

(1) The faithful compliance of the municipal fiscal officer with this chapter.

(2) The faithful accounting for all money coming into the municipal fiscal officer's possession under the Barrett Law.

(b) A municipal fiscal officer who does any of the following is personally liable to a person suffering loss due to that action and may be removed from office by proper action filed under ~~IC 5-8-1-35.~~ **IC 5-8-1.5:**

(1) Fails to collect the interest or penalties provided for by this chapter on delinquent assessments and installments of assessments.

(2) Fails to enforce the collection of the assessments by the sale of the property. However, this subdivision does not apply to a municipal fiscal officer of a municipality that has adopted an ordinance under section 24(a) of this chapter.

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(3) Otherwise fails to comply with this chapter.

(c) The surety on the municipal fiscal officer's bond is also liable to the extent of the bond.

SECTION 4. IC 5-8-1-35 IS REPEALED [EFFECTIVE JULY 1, 2010].

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 210, 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 24, delete "shall" and insert "**may**".

and when so amended that said bill do pass.

(Reference is to SB 210 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 11, Nays 0.

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