Reprinted
April 8, 2011

ENGROSSED
HOUSE BILL No. 1022

DIGEST OF HB 1022 (Updated April 7, 2011 2:23 pm - DI 106)

Citations Affected: IC 3-5; IC 5-8; IC 5-11; IC 25-1; IC 33-42; IC 36-1; IC 36-4; IC 36-8; IC 36-9.

Synopsis: Officeholder qualifications, nepotism, and public contracts. Provides that the following are not lucrative offices: (1) Notary public. (2) Membership on a board administered by the professional licensing agency. Provides that an employee of a county, city, town, or township (unit) is considered to have resigned from employment with the unit if the employee assumes the elected executive office of the unit or becomes an elected member of the unit's legislative or fiscal body. Provides that an employee of a unit who: (1) on December 31, 2011, holds an elected office of the unit that employs the individual; or (2) on January 1, 2012, assumes an elected office of the unit that employs the individual; may serve the remainder of the employee's elected term of office without resigning as a government employee. Provides that the
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Effective: July 1, 2011.

Saunders, Stemler, Welch, Candelaria Reardon
(SENATE SPONSORS — LAWSON C, DELPH, YOUNG R, GARD)

January 5, 2011, read first time and referred to Committee on Local Government.
January 18, 2011, reassigned to Committee on Government and Regulatory Reform.
February 15, 2011, amended, reported — Do Pass.
February 17, 2011, read second time, ordered engrossed. Engrossed.
February 21, 2011, read third time, call withdrawn.
February 21, 2011, re-read third time, passed. Yeas 79, nays 21.

SENATE ACTION
February 22, 2011, read first time and referred to Committee on Local Government.
March 31, 2011, amended, reported favorably — Do Pass.
April 5, 2011, read second time, amended, ordered engrossed.
April 5, 2011, returned to second reading.
April 6, 2011, engrossed.
April 7, 2011, re-read second time, amended, ordered engrossed.

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restriction does not prohibit an employee of a unit from holding an elected office of a unit other than the unit that employs the government employee. Subject to certain exceptions, prohibits a relative of an executive, a member of the legislative body, or a member of the fiscal body (elected official) of a county, city, town, or township (unit) from being employed by the unit. Provides that provisions concerning nepotism apply to a person who contracts with a unit to fill a vacancy in a position with the unit that was formerly held by an employee. Provides that the performance of duties of a precinct election officer or a volunteer firefighter is not considered employment by the unit for purpose of the nepotism law. Provides that an individual who is: (1) a relative of an elected officer of the unit (excluding a member of the executive, legislative, or fiscal body); or (2) a relative of an employee of the unit; may not be employed in a position in which the individual is in the line of supervision of the elected officer or employee. Specifies that an employee includes an appointed officer of the unit. Allows a person who has been employed in the same position with the unit for at least 12 consecutive months on June 30, 2011, or for at least 12 consecutive months immediately preceding the date the relative assumes office, to remain employed by the unit and be within the relative's line of supervision unless the person: (1) is a merit police officer; and (2) is promoted after June 30, 2011, to a higher rank other than a merit rank. Allows a person to remain employed by the unit and be in the relative's line of supervision, if the person is: (1) a police officer employed by a police department on June 30, 2011, and serving a probationary period with the intent of becoming a merit employee of the police department; or (2) a firefighter employed by a fire department on June 30, 2011, and serving a probationary period with the intent of becoming a merit employee of the fire department; unless the police officer or firefighter is promoted after June 30, 2011, to a higher rank other than a merit rank. Makes the following additional exceptions: (1) Allows a township trustee whose office is located in the trustee's personal residence to employ not more than one relative to work in the township trustee's office and be in the trustee's line of supervision. (2) Allows a coroner who is ineligible for another term of office due to term limits, to be hired by the coroner's successor, even though the successor is a relative and will result in the coroner working in the successor's line of supervision. (3) Allows a sheriff to hire the sheriff's spouse as prison matron for the county and work in the sheriff's line of supervision. Limits the total compensation of the township trustee's employed relative to $5,000 per year. Requires a unit to implement a policy that complies with the nepotism law and contracting law. Requires each elected official of the unit to annually certify in writing, subject to the penalties for perjury, that the official is in compliance with the nepotism and contracting law and submit the certification to the executive of the local unit. Requires the executive of the local unit to file with the annual personnel report filed with the state board of accounts a statement: (1) certified under the penalties for perjury; and (2) regarding whether the unit has implemented a policy that complies with the nepotism law and contracting law. Provides that a unit can enter into or renew: (1) a contract for the procurement of goods and services; or (2) a contract for public works; with a relative of an elected official or a business entity in which a relative has an ownership interest if: (1) the elected official does not violate the criminal conflict of interest statute; and (2) the elected official makes full written disclosure and satisfies any other requirements of the public purchasing law or the public works law. Provides that a local elected officeholder may be suspended from office if the officeholder is charged with certain felonies or misdemeanors and a two-thirds majority of the legislative body finds that the offense with which the local elected official is charged is relevant to the official's suitability for office and it is in the best interests of the unit that the official be

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suspended from office. Specifies that a member of the legislative body who is charged with an offense is not eligible to vote on the member's suitability for office, and provides that certain relatives of the member are likewise ineligible to vote. Specifies that the local elected official will be reinstated with back pay if the official is acquitted or charges are dropped.

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Reprinted
April 8, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1022

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 3-5-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 9. Government Employees Holding Office

Sec. 1. As used in this chapter, "elected office" refers only to the following:

(1) The executive of a unit.

(2) A member of the legislative body or fiscal body of a unit.

Sec. 2. As used in this chapter, "government employee" refers to an employee of a unit. The term does not include an individual who holds an elected office and is not otherwise employed by the unit.

Sec. 3. As used in this chapter, "unit" means a county, city, town, or township.

Sec. 4. Except as provided in section 6 of this chapter, an individual is considered to have resigned as a government employee when the individual assumes an elected office of the unit

that employs the individual.

Sec. 5. This chapter does not prohibit a government employee from holding an elected office of a unit other than the unit that employs the government employee.

Sec. 6. (a) A government employee who holds an elected office of the unit on December 31, 2011, is not subject to this chapter until the term of office that the employee is serving on December 31, 2011, expires.

(b) A government employee who assumes an elected office of the unit on January 1, 2012, is not subject to this chapter until the term of office that the employee is serving on January 1, 2012, expires.

SECTION 2. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 7. Suspension of Local Officeholders

Sec. 1. As used in this chapter, "eligible offense" means:

(1) a felony under IC 35;

(2) a felony under IC 9-30-5;

(3) a felony concerning an election under IC 3; or

(4) a misdemeanor involving a breach of the peace that is committed while a local official is performing the official's official duties.

Sec. 2. As used in this chapter, "legislative body" has the meaning set forth in IC 36-1-2-9.

Sec. 3. As used in this chapter, "local elected official" means an elected official of a unit who is not a judge or a prosecuting attorney subject to discipline by the supreme court.

Sec. 4. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 5. A local elected official may be suspended from office as described in this chapter if the official is charged with an eligible offense.

Sec. 6. If:

(1) a prosecuting attorney charges a local elected official with an eligible offense; and

(2) a court finds probable cause to believe that the offense has been committed;

the prosecuting attorney shall notify the legislative body of the appropriate unit.

Sec. 7. (a) If the appropriate legislative body adopts a resolution by a two-thirds (2/3) vote of all of the members of the legislative body finding that:

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(1) the eligible offense with which the local elected official is charged is relevant to the official's suitability for office; and

(2) it is in the best interests of the unit that the local elected official be suspended from office;

the local elected official shall be suspended from office until the official is convicted or acquitted, charges against the official are dropped, or the end of the official's term of office.

(b) If the local elected official charged with the eligible offense is a member of the legislative body of a unit, the local elected official is ineligible to vote on the resolution described in subsection (a).

(c) If a member of the legislative body of a unit is related to the local elected official as:

(1) father;
(2) mother;
(3) son;
(4) daughter;
(5) husband;
(6) wife;
(7) brother;
(8) sister;
(9) uncle;
(10) aunt;
(11) nephew;
(12) niece;
(13) father in law;
(14) mother in law;
(15) son in law;
(16) daughter in law;
(17) brother in law; or
(18) sister in law;

the member is ineligible to vote on the resolution described in subsection (a).

(d) If the number of:

(1) local elected officials who are members of the legislative body of a unit charged with an eligible offense; or

(2) members of the legislative body of the unit who are ineligible to vote under subsection (b);

results in the legislative body of the unit being unable to reach a quorum or adopt a resolution by a two-thirds (2/3) vote of all of the members of the unit, the resolution may be adopted by a majority of the voting members.

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Sec. 8. (a) A local elected official who has been suspended under section 7 of this chapter may seek judicial review of the suspension by filing a petition for review with a circuit court located:

(1) in the county where the local elected official served; or

(2) in a county adjacent to the county where the local elected official served;

not later than thirty (30) days after the date on which the local elected official was suspended. The official shall serve a copy of the petition on the prosecuting attorney and on the legislative body.

(b) A petition for review filed under this section must be verified and set forth specific facts to demonstrate:

(1) that the prosecuting attorney did not charge the local elected official with an eligible offense;

(2) that a court did not find probable cause to believe that the offense was committed;

(3) that the appropriate legislative body abused its discretion in determining that the offense is relevant to the official's suitability for office; or

(4) that the appropriate legislative body abused its discretion in determining it is in the best interests of the unit that the local elected official be suspended from office.

(c) The court shall set a hearing on the suspension of the local elected official not later than thirty (30) days after the petition for judicial review is filed. Judicial review of the suspension of a local elected official shall be determined on an expedited basis.

(d) The petitioner, the prosecuting attorney, and one (1) or more members of the legislative body have the right to appear and present relevant evidence at the hearing, in person or by counsel.

(e) The court conducting judicial review of the suspension of a local elected official may stay the suspension pending the resolution of the judicial review.

(f) If the reviewing court finds that the petitioner has established one (1) of the elements described in subsection (b)(1) through (b)(4), the court shall order the petitioner immediately reinstated with back pay, if applicable.

(g) The court's determination granting or denying relief is a final judgment.

Sec. 9. (a) A local elected official who is suspended from office under this chapter shall not act in the official's official capacity and is not entitled to receive any salary or remuneration as a local elected official during the suspension period.

(b) A local elected official who is suspended from office under

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this chapter is entitled to continue to receive any health benefits the local elected official would have been entitled to receive if the local elected official had not been suspended.

Sec. 10. (a) This section does not apply if a legislative body suspends a local elected official who is a member of the legislative body.

(b) If a legislative body suspends a local elected official under section 7 of this chapter, the legislative body shall ensure that the duties of the suspended local elected official are carried out and may appoint an acting replacement for the suspended local elected official.

Sec. 11. If a local elected official suspended under section 7 of this chapter is convicted of an eligible offense, the local elected official shall be removed from office in accordance with IC 5-8-1-38.

Sec. 12. (a) If:

(1) a local elected official suspended under section 7 of this chapter is acquitted or charges against the official are dropped;

(2) a local elected official was charged with a felony but is convicted only of a misdemeanor; or

(3) a local elected official was charged with a misdemeanor involving a breach of the peace that is committed while the local official is performing the official's official duties but is convicted only of a misdemeanor that does not involve a breach of the peace;

the official is reinstated in office by operation of law if the term of the official has not expired.

(b) If a local elected official suspended under section 7 of this chapter is acquitted or charges are dropped, the local elected official is entitled to back pay for the suspension period.

(c) If a local elected official suspended under section 7 of this chapter is convicted only of a misdemeanor as described in subsection (a)(2) or (a)(3), the legislative body may award full or partial back pay to the official, if the legislative body adopts a resolution finding that:

(1) the misdemeanor of which the local elected official is convicted does not reflect upon the official's suitability for office; and

(2) fairness and the best interests of the unit require that the local elected official be awarded back pay.

A local elected official who is convicted of a misdemeanor is not

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entitled to vote to award back pay under this subsection.

SECTION 3. IC 5-11-13-1, AS AMENDED BY P.L.169-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. **(a)** Every state, county, city, town, township, or school official, elective or appointive, who is the head of or in charge of any office, department, board, or commission of the state or of any county, city, town, or township, and every state, county, city, town, or township employee or agent who is the head of, or in charge of, or the executive officer of any department, bureau, board, or commission of the state, county, city, town, or township, and every executive officer by whatever title designated, who is in charge of any state educational institution or of any other state, county, or city institution, shall during the month of January of each year prepare, make, and sign a written or printed certified report, correctly and completely showing the names and business addresses of each and all officers, employees, and agents in their respective offices, departments, boards, commissions, and institutions, and the respective duties and compensation of each, and shall forthwith file said report in the office of the state examiner of the state board of accounts. However, no more than one (1) report covering the same officers, employees, and agents need be made from the state or any county, city, town, township, or school unit in any one **(1)** year.

(b) This subsection applies to a unit (as defined in IC 36-1-2-23). A report under subsection (a) that is submitted after December 31, 2011, must include a statement by the executive (as defined in IC 36-1-2-5) of the unit, certified under the penalties for perjury, regarding whether the unit has implemented a policy that complies with IC 36-1-20 and IC 36-1-21. The executive (as defined in IC 36-1-2-5) and the unit are subject to the penalties set forth in IC 36-1-20 and IC 36-1-21.

SECTION 4. IC 25-1-5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 3.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a board is not a lucrative office.**

SECTION 5. IC 25-1-6-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 3.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a board is not a lucrative office.**

SECTION 6. IC 33-42-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) ~~A person who holds any lucrative office or appointment under the United States or~~

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~~under this state, and prohibited by the Constitution of the State of Indiana from holding more than one (1) lucrative office, may not serve as a notary public. If a person accepts a lucrative office or appointment, the person shall vacate the person's appointment as a notary.~~ **For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, notary public is not a lucrative office.**

(b) ~~Subsection (a) does not apply to a person who holds a lucrative office or appointment under any civil or school city or town of Indiana.~~ A person who is a public official, or a deputy or appointee acting for or serving under a public official, may not make any charge for services as a notary public in connection with any official business of that office, or of any other office in the governmental unit in which the person serves unless the charges are specifically authorized by a statute other than the statute that establishes generally the fees and charges of notaries public.

SECTION 7. IC 36-1-8-10.5, AS AMENDED BY P.L.1-2005, SECTION 231, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10.5. (a) This section does not apply to the following:

(1) An elected or appointed officer.

(2) An individual described in IC 20-26-4-11.

(b) **Subject to IC 3-5-9,** an employee of a political subdivision may:

(1) be a candidate for any elected office and serve in that office if elected; or

(2) be appointed to any office and serve in that office if appointed;

without having to resign as an employee of the political subdivision.

SECTION 8. IC 36-1-20 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 20. Nepotism

Sec. 1. (a) This chapter applies only to a unit.

(b) This chapter applies to a person who contracts with a unit to fill a vacancy in a position with the unit that was formerly held by an employee.

Sec. 2. For purposes of this chapter, the performance of the duties of:

(1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or

(2) a volunteer firefighter (as defined in IC 36-8-12-2);

is not considered employment by a unit.

Sec. 3. As used in this chapter, "employee" means an individual who is employed by a unit on a full-time, part-time, temporary,

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intermittent, or hourly basis. The term includes an appointed officer of a unit. The term does not include an individual who holds an elected office and is not otherwise employed by the unit.

Sec. 4. As used in this chapter, "police officer" means the following:

(1) A regular member of a city or town police department.

(2) A town marshal or town marshal deputy.

(3) A regular member of a county sheriff's department.

Sec. 5. (a) As used in this chapter "relative" means any of the following:

(1) A spouse.

(2) A parent or stepparent.

(3) A child or stepchild.

(4) A brother, sister, stepbrother, or stepsister.

(5) A niece or nephew.

(6) An aunt or uncle.

(7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

Sec. 6. Except as provided in sections 8 through 13 of this chapter, an individual may not be employed by a unit if the individual is a relative of any of the following:

(1) The executive or a member of the executive body of the unit.

(2) A member of the legislative body of the unit.

(3) A member of the fiscal body of the unit.

Sec. 7. Except as provided in sections 8 through 13 of this chapter, individuals who are:

(1) relatives; and

(2) employees or elected officers of the unit (excluding an elected officer described in section 6 of this chapter);

may not be employed in a position in which the elected officer or employee is in the line of supervision over the individual.

Sec. 8. An individual who is employed on June 30, 2011, in the same position with the unit that the person has held for at least twelve (12) consecutive months is not subject to sections 6 and 7 of this chapter. However, if the individual meets the requirements of this section and is a merit police officer or merit firefighter, sections 6 and 7 of this chapter applies to the individual only if the individual is promoted after June 30, 2011, to a higher rank other

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than a merit rank.

Sec. 9. An individual who:

(1) is employed after June 30, 2011; and

(2) has been employed in the same position with the unit for at least twelve (12) consecutive months immediately preceding the date the relative assumes an elected office of the unit;

is not subject to sections 6 and 7 of this chapter. However, if the individual meets the requirements of this section and is a merit police officer or merit firefighter, sections 6 and 7 of this chapter apply to the individual only if the individual is promoted to a higher rank other than a merit rank.

Sec. 10. An individual who:

(1) is a police officer employed by a police department on June 30, 2011, and serving a probationary period with the intent of becoming a merit employee of the police department; or

(2) is a firefighter employed by a fire department on June 30, 2011, and serving a probationary period with the intent of becoming a merit employee of the fire department;

is not subject to sections 6 and 7 of this chapter. However, sections 6 and 7 of this chapter apply to an individual described in this section if the individual is promoted after June 30, 2011, to a higher rank other than a merit rank.

Sec. 11. (a) This section applies to an individual who meets all of the following requirements:

(1) The individual:

(A) served as coroner; and

(B) is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana.

(2) The individual received certification under IC 36-2-14.

(3) The individual's successor in the office of coroner is a relative of the individual.

(b) An individual described in subsection (a) may be hired in the position of deputy coroner and is not subject to sections 6 and 7 of this chapter.

Sec. 12. If the township trustee's office is located in the township trustee's personal residence, the township trustee may not hire more than one (1) employee who is a relative. The employee:

(1) may be hired to work only in the township trustee's office; and

(2) may not receive total salary, benefits, and compensation that exceed five thousand dollars ($5,000) per year.

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An individual employed under this section is not subject to sections 6 and 7 of this chapter.

Sec. 13. A sheriff may hire the sheriff's spouse as prison matron for the county under IC 36-8-10-5. An individual employed under this section is not subject to sections 6 and 7 of this chapter.

Sec. 14. (a) Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

(b) The unit must implement a policy that complies with this chapter. The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy that complies with this chapter. The executive's statement must be certified under penalties for perjury.

Sec. 15. If the state board of accounts finds that a unit has not implemented a policy that complies with this chapter, the state board of accounts shall forward the information to:

(1) the prosecuting attorney of each county where the unit is located; and

(2) the department of local government finance.

Sec. 16. If a unit has not implemented a policy that complies with this chapter:

(1) the prosecutor of the county in which the unit is located may prosecute the executive for perjury under IC 35-44-2-1; and

(2) the department of local government finance may not approve:

(A) the unit's budget; or

(B) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter.

SECTION 9. IC 36-1-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 21. Contracting With a Unit

Sec. 1. This chapter applies only to a unit.

Sec. 2. As used in this chapter, "elected official" means:

(1) the executive or a member of the executive body of the unit;

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(2) a member of the legislative body of the unit; or

(3) a member of the fiscal body of the unit.

Sec. 3. (a) As used in this chapter "relative" means any of the following:

(1) A spouse.

(2) A parent or stepparent.

(3) A child or stepchild.

(4) A brother, sister, stepbrother, or stepsister.

(5) A niece or nephew.

(6) An aunt or uncle.

(7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

Sec. 4. (a) A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

(1) an individual who is a relative of an elected official; or

(2) a business entity that is wholly or partially owned by a relative of an elected official;

only if the requirements of this section are satisfied and the elected official does not violate IC 35-44-1-3.

(b) A unit may enter into a contract or renew a contract with an individual or business entity described in subsection (a) if:

(1) the elected official files with the unit a full disclosure, which must:

(A) be in writing;

(B) describe the contract or purchase to be made by the unit;

(C) describe the relationship that the elected official has to the business entity or individual that contracts or purchases;

(D) be affirmed under penalty of perjury;

(E) be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and

(F) be filed, not later than fifteen (15) days after final action on the contract or purchase, with:

(i) the state board of accounts; and

(ii) the clerk of the circuit court in the county where the unit takes final action on the contract or purchase; and

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(2) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

(c) An elected official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(d) This section does not affect the initial term of a contract in existence at the time the term of office of the elected official of the unit begins.

Sec. 5. (a) Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

(b) The unit must implement a policy that complies with this chapter. The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy that complies with this chapter. The executive's statement must be certified under penalties for perjury.

Sec. 6. If the state board of accounts finds that a unit has not implemented a policy that complies with this chapter, the state board of accounts shall forward the information to:

(1) the prosecuting attorney of each county where the unit is located; and

(2) the department of local government finance.

Sec. 7. If a unit has not implemented a policy that complies with this chapter:

(1) the prosecutor of the county in which the unit is located may prosecute the executive for perjury under IC 35-44-2-1; and

(2) the department of local government finance may not approve:

(A) the unit's budget; or

(B) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter.

SECTION 10. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The powers of a city are divided between the executive and legislative branches of its government. A power belonging to one (1) branch of a city's government may not be exercised by the other branch.

(b) **Subject to IC 3-5-9,** a city employee other than an elected or

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appointed public officer may:

(1) be a candidate for any elective office and serve in that office if elected; or

(2) be appointed to any office and serve in that office if appointed;

without having to resign as a city employee.

SECTION 11. IC 36-8-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. **Subject to IC 3-5-9,** members of the safety board and members of any township, town, or city (including a consolidated city) police department, fire department, or volunteer fire department (as defined by IC 36-8-12-2) may:

(1) be candidates for elective office and serve in that office if elected;

(2) be appointed to any office and serve in that office if appointed; and

(3) as long as they are not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the office for which they are candidates.

SECTION 12. IC 36-8-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The sheriff may dismiss, demote, or temporarily suspend a county police officer for cause after preferring charges in writing and after a fair public hearing before the board, which is reviewable in the circuit court. Written notice of the charges and hearing must be delivered by certified mail to the officer to be disciplined at least fourteen (14) days before the date set for the hearing. The officer may be represented by counsel. The board shall make specific findings of fact in writing to support its decision.

(b) The sheriff may temporarily suspend an officer with or without pay for a period not exceeding fifteen (15) days, without a hearing before the board, after preferring charges of misconduct in writing delivered to the officer.

(c) A county police officer may not be dismissed, demoted, or temporarily suspended because of political affiliation nor after the officer's probationary period, except as provided in this section. **Subject to IC 3-5-9,** an officer may:

(1) be a candidate for elective office and serve in that office if elected;

(2) be appointed to an office and serve in that office if appointed; and

(3) except when in uniform or on duty, solicit votes or campaign funds for the officer or others.

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(d) The board has subpoena powers enforceable by the circuit court for hearings under this section. An officer on probation may be dismissed by the sheriff without a right to a hearing.

(e) An appeal under subsection (a) must be taken by filing in court, within thirty (30) days after the date the decision is rendered, a verified complaint stating in a concise manner the general nature of the charges against the officer, the decision of the board, and a demand for the relief asserted by the officer. 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 only if the court finds that the board's decision should be affirmed. The bond must be approved as bonds for costs are approved in other cases. The county must be named as the sole defendant and the plaintiff shall have a summons issued as in other cases against the county. Neither the board nor the members of it may be made parties defendant to the complaint, but all are bound by service upon the county and the judgment rendered by the court.

(f) 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 board was made. Within ten (10) days after the service of summons, the board shall file in court a complete written 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 board before the appeal is filed, if requested. The court shall review the record and decision of the board on appeal.

(g) 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 board appealed from should in all things be affirmed, its judgment should so state. If the court finds that the decision of the 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 board; or

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

(h) 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 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 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

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under the judgment of the court.

(i) 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 rules of trial procedure govern in all matters of procedure upon the appeal that are not otherwise provided for by this section.

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

SECTION 13. IC 36-9-37-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.~~ **subject to other action as prescribed by law:**

(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.

(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.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1022, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1022 as introduced.)

HINKLE, Chair

Committee Vote: yeas 10, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1022, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1022 as printed February 15, 2011.)

LAWSON C, Chairperson

Committee Vote: Yeas 7, Nays 1.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1022 be amended to read as follows:

Page 3, line 41, after "1." insert "**(a)**".

Page 3, delete line 42, begin a new paragraph and insert:

"**(b) This chapter applies to a person who contracts with a unit to fill a vacancy in a position with the unit that was formerly held by an employee.**

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Sec. 2. For purposes of this chapter, the performance of the duties of:

(1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or

(2) a volunteer firefighter (as defined in IC 36-8-12-2);

is not considered employment by a unit.".

Page 4, delete lines 1 through 2.

Page 4, line 5, after "basis." insert "**The term includes an appointed officer of a unit. The term does not include an individual who holds an elected office and is not otherwise employed by the unit.**

Sec. 4. As used in this chapter, "police officer" means the following:

(1) A regular member of a city or town police department.

(2) A town marshal or town marshal deputy.

(3) A regular member of a county sheriff's department.".

Page 4, line 6, delete "4." and insert "**5.**".

Page 4, line 19, delete "5." and insert "**6.**".

Page 4, line 19, delete "7 through 12" and insert "**8 through 13**".

Page 4, line 26, delete "6." and insert "**7.**".

Page 4, line 26, delete "7 through 12" and insert "**8 through 13**".

Page 4, line 30, delete "5" and insert "**6**".

Page 4, line 31, delete "placed in a direct supervisory-subordinate relationship." and insert "**employed in a position in which the elected officer or employee is in the line of supervision over the individual.**".

Page 4, line 32, delete "7." and insert "**8.**".

Page 4, line 34, delete "5 and 6" and insert "**6 and 7**".

Page 4, line 37, delete "5 and 6" and insert "**6 and 7**".

Page 4, line 40, delete "8." and insert "**9.**".

Page 5, line 2, delete "described in section 5(1), 5(2), or 5(3) of".

Page 5, line 3, delete "this chapter assumes office;" and insert "**assumes an elected office of the unit;**".

Page 5, line 4, delete "5 and 6" and insert "**6 and 7**".

Page 5, line 6, delete "5 and 6" and insert "**6 and 7**".

Page 5, line 9, delete "9." and insert "**10.**".

Page 5, line 17, delete "5 and 6" and insert "**6 and 7**".

Page 5, line 18, delete "5 and 6" and insert "**6 and 7**".

Page 5, line 21, delete "10." and insert "**11.**".

Page 5, line 31, delete "5 and 6" and insert "**6 and 7**".

Page 5, line 33, delete "11." and insert "**12.**".

Page 5, line 41, delete "5 and 6" and insert "**6 and 7**".

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Page 5, line 42, delete "12." and insert "**13.**".
Page 6, line 2, delete "5 and 6" and insert "**6 and 7**".
Page 6, line 3, delete "13." and insert "**14.**".
Page 6, line 14, delete "14." and insert "**15.**".
Page 6, line 20, delete "15." and insert "**16.**".

(Reference is to EHB 1022 as printed April 1, 2011.)

LAWSON C

SENATE MOTION

Madam President: I move that Engrossed House Bill 1022, which is eligible for third reading, be returned to second reading for purposes of amendment.

LAWSON C

SENATE MOTION

Madam President: I move that Engrossed House Bill 1022 be amended to read as follows:

Page 2, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 2. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 7. Suspension of Local Officeholders

Sec. 1. As used in this chapter, "eligible offense" means:

(1) a felony under IC 35;

(2) a felony under IC 9-30-5;

(3) a felony concerning an election under IC 3; or

(4) a misdemeanor involving a breach of the peace that is committed while a local official is performing the official's official duties.

Sec. 2. As used in this chapter, "legislative body" has the meaning set forth in IC 36-1-2-9.

Sec. 3. As used in this chapter, "local elected official" means an elected official of a unit who is not a judge or a prosecuting attorney subject to discipline by the supreme court.

Sec. 4. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

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Sec. 5. A local elected official may be suspended from office as described in this chapter if the official is charged with an eligible offense.

Sec. 6. If:

(1) a prosecuting attorney charges a local elected official with an eligible offense; and

(2) a court finds probable cause to believe that the offense has been committed;

the prosecuting attorney shall notify the legislative body of the appropriate unit.

Sec. 7. (a) If the appropriate legislative body adopts a resolution by a two-thirds (2/3) vote of all of the members of the legislative body finding that:

(1) the eligible offense with which the local elected official is charged is relevant to the official's suitability for office; and

(2) it is in the best interests of the unit that the local elected official be suspended from office;

the local elected official shall be suspended from office until the official is convicted or acquitted, charges against the official are dropped, or the end of the official's term of office.

(b) If the local elected official charged with the eligible offense is a member of the legislative body of a unit, the local elected official is ineligible to vote on the resolution described in subsection (a).

(c) If a member of the legislative body of a unit is related to the local elected official as:

(1) father;
(2) mother;
(3) son;
(4) daughter;
(5) husband;
(6) wife;
(7) brother;
(8) sister;
(9) uncle;
(10) aunt;
(11) nephew;
(12) niece;
(13) father in law;
(14) mother in law;
(15) son in law;
(16) daughter in law;

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(17) brother in law; or

(18) sister in law;

the member is ineligible to vote on the resolution described in subsection (a).

(d) If the number of:

(1) local elected officials who are members of the legislative body of a unit charged with an eligible offense; or

(2) members of the legislative body of the unit who are ineligible to vote under subsection (b);

results in the legislative body of the unit being unable to reach a quorum or adopt a resolution by a two-thirds (2/3) vote of all of the members of the unit, the resolution may be adopted by a majority of the voting members.

Sec. 8. (a) A local elected official who has been suspended under section 7 of this chapter may seek judicial review of the suspension by filing a petition for review with a circuit court located:

(1) in the county where the local elected official served; or

(2) in a county adjacent to the county where the local elected official served;

not later than thirty (30) days after the date on which the local elected official was suspended. The official shall serve a copy of the petition on the prosecuting attorney and on the legislative body.

(b) A petition for review filed under this section must be verified and set forth specific facts to demonstrate:

(1) that the prosecuting attorney did not charge the local elected official with an eligible offense;

(2) that a court did not find probable cause to believe that the offense was committed;

(3) that the appropriate legislative body abused its discretion in determining that the offense is relevant to the official's suitability for office; or

(4) that the appropriate legislative body abused its discretion in determining it is in the best interests of the unit that the local elected official be suspended from office.

(c) The court shall set a hearing on the suspension of the local elected official not later than thirty (30) days after the petition for judicial review is filed. Judicial review of the suspension of a local elected official shall be determined on an expedited basis.

(d) The petitioner, the prosecuting attorney, and one (1) or more members of the legislative body have the right to appear and present relevant evidence at the hearing, in person or by counsel.

(e) The court conducting judicial review of the suspension of a

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local elected official may stay the suspension pending the resolution of the judicial review.

(f) If the reviewing court finds that the petitioner has established one (1) of the elements described in subsection (b)(1) through (b)(4), the court shall order the petitioner immediately reinstated with back pay, if applicable.

(g) The court's determination granting or denying relief is a final judgment.

Sec. 9. (a) A local elected official who is suspended from office under this chapter shall not act in the official's official capacity and is not entitled to receive any salary or remuneration as a local elected official during the suspension period.

(b) A local elected official who is suspended from office under this chapter is entitled to continue to receive any health benefits the local elected official would have been entitled to receive if the local elected official had not been suspended.

Sec. 10. (a) This section does not apply if a legislative body suspends a local elected official who is a member of the legislative body.

(b) If a legislative body suspends a local elected official under section 7 of this chapter, the legislative body shall ensure that the duties of the suspended local elected official are carried out and may appoint an acting replacement for the suspended local elected official.

Sec. 11. If a local elected official suspended under section 7 of this chapter is convicted of an eligible offense, the local elected official shall be removed from office in accordance with IC 5-8-1-38.

Sec. 12. (a) If:

(1) a local elected official suspended under section 7 of this chapter is acquitted or charges against the official are dropped;

(2) a local elected official was charged with a felony but is convicted only of a misdemeanor; or

(3) a local elected official was charged with a misdemeanor involving a breach of the peace that is committed while the local official is performing the official's official duties but is convicted only of a misdemeanor that does not involve a breach of the peace;

the official is reinstated in office by operation of law if the term of the official has not expired.

(b) If a local elected official suspended under section 7 of this

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chapter is acquitted or charges are dropped, the local elected official is entitled to back pay for the suspension period.

(c) If a local elected official suspended under section 7 of this chapter is convicted only of a misdemeanor as described in subsection (a)(2) or (a)(3), the legislative body may award full or partial back pay to the official, if the legislative body adopts a resolution finding that:

(1) the misdemeanor of which the local elected official is convicted does not reflect upon the official's suitability for office; and

(2) fairness and the best interests of the unit require that the local elected official be awarded back pay.

A local elected official who is convicted of a misdemeanor is not entitled to vote to award back pay under this subsection.".

Page 11, after line 18, begin a new paragraph and insert:

"SECTION 13. IC 36-9-37-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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.~~ **subject to other action as prescribed by law:**

(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.

(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.".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1022 as reprinted April 6, 2011.)

GARD

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