



February 15, 2011

# HOUSE BILL No. 1022

DIGEST OF HB 1022 (Updated February 15, 2011 12:33 pm - DI 87)

**Citations Affected:** IC 3-5; IC 36-1; IC 36-4; IC 36-8.

**Synopsis:** Officeholder qualifications and nepotism. 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 becomes an elected officer of the unit. Makes the following exceptions: (1) An employee of a unit is not prohibited from holding an elected office of a unit other than the unit that employs the government employee. (2) An employee of a unit elected in the November 2011 municipal election who assumes office on January 1, 2012, or who is serving in an elected office on December 31, 2011, may serve the remainder of the employee's elected term of office. (3) A member of a county sheriff's department who is elected county sheriff does not resign as an employee of the sheriff's department when the member assumes the office of county sheriff, but may not be employed by the department in any other position while serving as sheriff. (4) A police officer or firefighter who assumes an elected office of the unit that employs the officer does not resign from the police or fire department but must be granted and take a leave of absence from the department for the entire period the police officer or firefighter serves in the elected office. Prohibits certain relatives of an elected official of a county, city, town, township, or school corporation (local unit) from being employed by the local unit in which the relative is within the direct line of authority of the elected official. Exempts an individual who: (1) has been employed in the same position with the local unit for at least 12 consecutive months immediately preceding the date the relative of the employee assumes the elected office; and (2) has not been suspended (Continued next page)

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**Effective:** July 1, 2011.

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**Saunders, Stemler, Welch**

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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.

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or demoted during that period; unless the individual is promoted to a higher rank, grade, or position or, if the individual is a police officer or firefighter, is promoted to a higher rank other than a merit rank, after the date the relative of the employee assumes office. Exempts: (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 individual is promoted to a higher rank other than a merit rank. Exempts an elected official and relatives of the elected official if the sum of actual compensation and benefits from the local unit of the relatives of the elected official total not more than \$10,000. Includes in the definition of "relative": (1) an individual who shares a residence with an elected official for a total of at least six months of the calendar year; and (2) any other individual designated by ordinance or resolution of the local unit. Provides that an elected official who violates the nepotism provisions shall reimburse the local unit for the following: (1) If the relative is employed for not more than one year, the salary paid to the relative by the local unit. (2) If the relative is employed for more than one year, the greater of the relative's salary for one year or 20% of total salary paid to the relative.

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February 15, 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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## 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:*

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

4 **Chapter 9. Government Employees Holding Office**

5 **Sec. 1. This chapter applies to a government employee who,**  
6 **after December 31, 2011, assumes an elected office of the unit that**  
7 **employs the employee.**

8 **Sec. 2. As used in this chapter, "government employee" refers**  
9 **to an employee of a unit. The term includes a special deputy or a**  
10 **reserve officer of a police department, regardless of whether the**  
11 **deputy or officer receives compensation from the unit for services**  
12 **as a deputy or reserve officer. The term does not include an**  
13 **individual who holds only an elected office.**

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

16 **Sec. 4. Except as provided in sections 6 through 8 of this**  
17 **chapter, an individual is considered to have resigned as a**

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1 government employee when the individual assumes an elected  
2 office of the unit that employs the individual.

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

6 Sec. 6. Except as provided in sections 7 and 8 of this chapter, a  
7 government employee who:

- 8 (1) was elected at the municipal election in November 2011,  
9 and assumes an elected office of the unit on January 1, 2012;  
10 or
- 11 (2) on December 31, 2011, holds an elected office of the unit  
12 that employs the individual;

13 is not considered to have resigned as a government employee  
14 during the employee's term of office. However, if the government  
15 employee is reelected to the office or elected to another office of the  
16 unit that employs the employee, the individual is considered to  
17 have resigned as a government employee when the individual  
18 assumes the office.

19 Sec. 7. A member of a county sheriff's department who assumes  
20 the office of county sheriff is not considered to have resigned as an  
21 employee of the sheriff's department when the member assumes  
22 the office of county sheriff. However, while serving as sheriff, the  
23 member may not be employed by the department in any other  
24 position. IC 36-8-10-8 applies to a member of the department who  
25 serves as county sheriff.

26 Sec. 8. A police officer or firefighter who assumes an elected  
27 office of the unit that employs the officer or firefighter is not  
28 considered to have resigned from the police or fire department  
29 when the police officer or firefighter assumes the elected office.  
30 The police officer or firefighter shall be granted and take a leave  
31 of absence from the officer or firefighter's position with the  
32 department under IC 36-8-5-2 for the entire period the police  
33 officer or firefighter serves in the elected office of the unit that  
34 employs the officer or firefighter.

35 SECTION 2. IC 36-1-8-10.5, AS AMENDED BY P.L.1-2005,  
36 SECTION 231, IS AMENDED TO READ AS FOLLOWS  
37 [EFFECTIVE JULY 1, 2011]: Sec. 10.5. (a) This section does not  
38 apply to the following:

- 39 (1) An elected or appointed officer.
- 40 (2) An individual described in IC 20-26-4-11.
- 41 (b) **Subject to IC 3-5-9**, an employee of a political subdivision may:  
42 (1) be a candidate for any elected office and serve in that office if

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1 elected; or  
2 (2) be appointed to any office and serve in that office if appointed;  
3 without having to resign as an employee of the political subdivision.

4 SECTION 3. IC 36-1-20 IS ADDED TO THE INDIANA CODE AS  
5 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 2011]:

7 **Chapter 20. Employment of Relatives**

8 **Sec. 1. As used in this chapter, "employee" means an individual**  
9 **who is employed by a local unit on a full-time, part-time,**  
10 **temporary, intermittent, or hourly basis.**

11 **Sec. 2. As used in this chapter, "local unit" means a county, city,**  
12 **town, township, or school corporation.**

13 **Sec. 3. As used in this chapter, "relative" means any of the**  
14 **following:**

- 15 (1) A husband.
- 16 (2) A wife.
- 17 (3) A father.
- 18 (4) A mother.
- 19 (5) A son or grandson.
- 20 (6) A daughter or granddaughter.
- 21 (7) A brother.
- 22 (8) A sister.
- 23 (9) A individual who resides or shares a residence with an
- 24 elected official for a total of at least six (6) months of the
- 25 calendar year.
- 26 (10) Any other individual designated by ordinance or
- 27 resolution of the local unit to be a relative.

28 **Sec. 4. Except as provided in section 5 of this chapter, an**  
29 **individual who is a relative of an elected official of a local unit may**  
30 **not be employed by the local unit in a position in which the**  
31 **individual is within the direct line of authority of the elected**  
32 **official.**

33 **Sec. 5. (a) This chapter does not apply to an individual who has**  
34 **been:**

- 35 (1) employed in the same position with the local unit for at
- 36 least twelve (12) consecutive months immediately preceding
- 37 the date on which the relative of the employee assumes the
- 38 elected office; and
- 39 (2) has not been suspended or demoted during the period
- 40 described in subdivision (1).

41 **However, this chapter applies to an individual described in this**  
42 **subsection if the individual is promoted to a higher rank, grade, or**

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1 position after the date the relative of the employee assumes the  
2 elected office. If the individual meets the requirements of this  
3 subsection and is a merit police officer or merit firefighter  
4 employed by the police or fire department after June 30, 2011, this  
5 chapter applies to the individual only if the individual is promoted  
6 to a higher rank other than a merit rank.

- 7 (b) This chapter does not apply to:
  - 8 (1) a police officer employed by a police department on June
  - 9 30, 2011, and serving a probationary period with the intent of
  - 10 becoming a merit employee of the police department; or
  - 11 (2) a firefighter employed by a fire department on June 30,
  - 12 2011, and serving a probationary period with the intent of
  - 13 becoming a merit employee of the fire department.

14 However, this chapter applies to an individual described in this  
15 subsection if the individual is promoted to a higher rank other than  
16 a merit rank.

- 17 (c) This chapter does not apply to an elected official and  
18 relatives of the elected official if the sum of actual compensation  
19 and benefits of the relatives of the elected official who are  
20 employed by the local unit total not more than ten thousand dollars  
21 (\$10,000), including:

- 22 (1) salary;
  - 23 (2) use of a vehicle of the local unit;
  - 24 (3) mileage or vehicle allowance;
  - 25 (4) health, vision, and dental insurance; and
  - 26 (5) any other:
    - 27 (A) amount paid to the relatives of the elected official; or
    - 28 (B) benefit provided to the relatives of the elected official;
- 29 to compensate the relatives of the elected official for services  
30 provided to the local unit.

31 Sec. 6. (a) An employee who violates this chapter shall be  
32 dismissed from employment by the local unit.

33 (b) An elected official who violates this chapter shall reimburse  
34 the local unit for the following:

- 35 (1) If the relative of the elected official is employed in  
36 violation of this chapter for not more than one (1) year, the  
37 salary paid to the employee by the local unit.
- 38 (2) If the relative of the elected official is employed in  
39 violation of this chapter for more than one (1) year, the  
40 greater of the following:
  - 41 (A) The employee's salary for one (1) year.
  - 42 (B) Twenty percent (20%) of total salary paid to the

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1                   **employee by the local unit during the term of employment**  
2                   **that violates this chapter.**

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

8                   (b) **Subject to IC 3-5-9**, a city employee other than an elected or  
9 appointed public officer may:

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

12                   (2) be appointed to any office and serve in that office if appointed;  
13 without having to resign as a city employee.

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

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

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

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

27                   SECTION 6. IC 36-8-5-2, AS AMENDED BY P.L.130-2008,  
28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 JULY 1, 2011]: Sec. 2. (a) The police chief or fire chief may be granted  
30 a leave of absence by the authority who appointed the police chief or  
31 fire chief. This appointing authority may also grant a leave of absence  
32 to any other full-time, fully paid police officer or firefighter.

33                   (b) A leave of absence under subsection (a) shall be granted for  
34 service in the Indiana general assembly. A leave of absence under  
35 subsection (a) may also be granted for service in any other elected  
36 office or for one (1) of the following reasons:

37                   (1) Sickness.

38                   (2) Disability.

39                   (3) Sabbatical purposes.

40                   However, a leave of absence because of disability may not be granted  
41 to a member of the 1977 fund under this subsection unless a leave  
42 granted under subsection ~~(g)~~ **(h)** has expired without disability benefits

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1 having been paid from the 1977 fund. In the case of such an expiration,  
2 a leave for purposes of disability may be granted under this subsection  
3 but only until the member's eligibility for disability benefits is finally  
4 determined.

5 (c) Before a leave of absence may be granted for sabbatical  
6 purposes, the member must submit a written request explaining and  
7 justifying the leave to the appointing authority. Sabbatical purposes  
8 must be related to the improvement of the member's professional  
9 performance and skills, such as education, special training, work  
10 related experience, and exchange programs.

11 (d) This subsection applies to leaves of absence granted under  
12 subsection (b)(1), (b)(2), or (b)(3). A leave of absence may extend for  
13 a period of not more than one (1) year, determined by the appointing  
14 authority, and may be renewed upon written request of the member.

15 (e) **Except as provided in subsection (f),** this subsection applies to  
16 leaves of absence granted for service in an elected office. A police  
17 officer or firefighter who serves in the general assembly shall be  
18 granted a leave for the time spent in this service, including the time  
19 spent for committee or legislative council meetings. A police officer or  
20 firefighter who serves in any other elected office may be granted a  
21 leave for the time spent in this service. Leave for service in an elected  
22 office does not diminish a police officer's or firefighter's rights under  
23 the police officer's or firefighter's retirement or pension fund, except as  
24 provided in section 10 of this chapter, or advancement on the police  
25 officer's or firefighter's department salary schedule. For these purposes,  
26 the police officer or firefighter is, despite the leave, considered to be a  
27 member of the department during that time.

28 (f) **This subsection applies to leaves of absence granted for**  
29 **service in an elected office of the unit that employs the police**  
30 **officer or firefighter. A police officer or firefighter who serves in**  
31 **an elected office shall be granted and required to take a leave of**  
32 **absence for the entire time spent in this service and may not be**  
33 **employed in any other position with the department while serving**  
34 **in an elected office. Leave for service in an elected office does not**  
35 **diminish a police officer's or firefighter's rights under the police**  
36 **officer's or firefighter's retirement or pension fund, except as**  
37 **provided in section 10 of this chapter, or advancement on the**  
38 **police officer's or firefighter's department salary schedule. For**  
39 **these purposes, the police officer or firefighter is, despite the leave,**  
40 **considered to be a member of the department during that time.**

41 (f) (g) This subsection applies to leaves of absence granted under  
42 subsection (b)(1), (b)(2), or (b)(3). A member on leave may receive

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1 compensation in an amount determined by the appointing authority, up  
2 to a maximum amount that equals the member's salary before the leave  
3 began.

4 ~~(g)~~ **(h)** This subsection applies only to members of the 1977 fund.  
5 The local board may grant a leave of absence for purposes of disability  
6 to full-time, fully paid police officers or firefighters (including the  
7 police chief or fire chief). The leave is subject to the following  
8 conditions:

9 (1) The police chief or fire chief must make a written  
10 determination that there is no suitable and available work on the  
11 appropriate department for which the fund member is or may be  
12 capable of becoming qualified.

13 (2) The leave must be approved by the local board after a hearing  
14 conducted under IC 36-8-8-12.7.

15 (3) The leave may not begin until the police officer or firefighter  
16 has exhausted all paid leave for sickness.

17 (4) The leave shall continue until disability benefits are paid from  
18 the 1977 fund. However, the leave may not continue for more  
19 than six (6) months.

20 (5) During the leave, the police officer or firefighter is entitled to  
21 receive compensation in an amount equal to fifty percent (50%)  
22 of the salary of a first class patrolman or first class firefighter on  
23 the date the leave begins.

24 Payments of compensation under this subsection may not be made from  
25 the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund.

26 ~~(h)~~ **(i)** Determinations under subsection ~~(g)~~ **(h)** are not reviewable  
27 by the board of trustees of the public employees' retirement fund.

28 ~~(i)~~ **(j)** This subsection applies to leaves of absence granted under  
29 subsection (a) or (b). An appointing authority shall establish a policy  
30 in writing that specifies whether a police officer or firefighter is  
31 entitled, during a leave of absence, to participate in any promotional  
32 process or earn seniority. A policy established under this subsection is  
33 subject to a department's existing disciplinary procedures. An  
34 appointing authority shall reinstate a police officer or firefighter  
35 returning from a leave at the merit or permanent rank determined under  
36 the policy established under this subsection. However, except as  
37 otherwise provided by federal law, an appointing authority is not  
38 required to reinstate a police officer or firefighter in the job that the  
39 police officer or firefighter held at the time the police officer's or  
40 firefighter's leave began.

41 SECTION 7. IC 36-8-8-12.7, AS AMENDED BY P.L.29-2006,  
42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 12.7. (a) This section applies to hearings  
2 conducted by local boards concerning determinations of impairment  
3 under this chapter or of disability under ~~IC 36-8-5-2(g)~~;  
4 **IC 36-8-5-2(h)**, IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

5 (b) At least five (5) days before the hearing, the local board shall  
6 give notice to the fund member and the safety board of the time, date,  
7 and place of the hearing.

8 (c) The local board must hold a hearing not more than ninety (90)  
9 days after the fund member requests the hearing.

10 (d) At the hearing, the local board shall permit the fund member and  
11 the safety board to:

- 12 (1) be represented by any individual;
- 13 (2) through witnesses and documents, present evidence;
- 14 (3) conduct cross-examination; and
- 15 (4) present arguments.

16 (e) At the hearing, the local board shall require all witnesses to be  
17 examined under oath, which may be administered by a member of the  
18 local board.

19 (f) The local board shall, at the request of the fund member or the  
20 safety board, issue:

- 21 (1) subpoenas;
- 22 (2) discovery orders; and
- 23 (3) protective orders;

24 in accordance with the Indiana Rules of Trial Procedure that govern  
25 discovery, depositions, and subpoenas in civil actions.

26 (g) The local board shall have the hearing recorded so that a  
27 transcript may be made of the proceedings.

28 (h) After the hearing, the local board shall make its determinations,  
29 including findings of fact, in writing and shall provide copies of its  
30 determinations to the fund member and the safety board not more than  
31 thirty (30) days after the hearing.

- 32 (i) If the local board:
  - 33 (1) does not hold a hearing within the time required under
  - 34 subsection (c); or
  - 35 (2) does not issue its determination within the time required under
  - 36 subsection (h);

37 the fund member shall be considered to be totally impaired for  
38 purposes of section 13.5 of this chapter and, if the issue before the local  
39 board concerns the class of the member's impairment, the member shall  
40 be considered to have a Class 1 impairment. The PERF board shall  
41 review an impairment determined under this subsection as provided in  
42 section 13.1 of this chapter.

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- 1 (j) The local board may on its own motion issue:  
 2 (1) subpoenas;  
 3 (2) discovery orders; and  
 4 (3) protective orders;  
 5 in accordance with the Indiana Rules of Trial Procedure that govern  
 6 discovery, depositions, and subpoenas in civil actions.
- 7 (k) At the hearing, the local board may exclude evidence that is  
 8 irrelevant, immaterial, unduly repetitious, or excludable on the basis of  
 9 evidentiary privilege recognized by the courts.
- 10 (l) At the hearing, the local board may request the testimony of  
 11 witnesses and the production of documents.
- 12 (m) If a subpoena or order is issued under this section, the party  
 13 seeking the subpoena or order shall serve it in accordance with the  
 14 Indiana Rules of Trial Procedure. However, if the subpoena or order is  
 15 on the local board's own motion, the sheriff of the county in which the  
 16 subpoena or order is to be served shall serve it. A subpoena or order  
 17 under this section may be enforced in the circuit or superior court of  
 18 the county in which the subpoena or order is served.
- 19 (n) With respect to a hearing conducted for purposes of determining  
 20 disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination  
 21 of the local board after a hearing is final and may be appealed to the  
 22 court.
- 23 (o) With respect to a hearing conducted for purposes of determining  
 24 impairment or class of impairment under this chapter, the fund member  
 25 may appeal the local board's determinations. An appeal under this  
 26 subsection:  
 27 (1) must be made in writing;  
 28 (2) must state the class of impairment and the degree of  
 29 impairment that is claimed by the fund member;  
 30 (3) must include a written determination by the chief of the police  
 31 or fire department stating that there is no suitable and available  
 32 work; and  
 33 (4) must be filed with the local board and the PERF board's  
 34 director no later than thirty (30) days after the date on which the  
 35 fund member received a copy of the local board's determinations.
- 36 (p) To the extent required by the Americans with Disabilities Act,  
 37 the transcripts, records, reports, and other materials generated as a  
 38 result of a hearing, review, or appeal conducted to determine an  
 39 impairment under this chapter or a disability under IC 36-8-6,  
 40 IC 36-8-7, or IC 36-8-7.5 must be:  
 41 (1) retained in the separate medical file created for the member;  
 42 and

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1 (2) treated as a confidential medical record.  
 2 (q) If a local board determines that a fund member described in  
 3 section 13.3(a) of this chapter has a covered impairment, the local  
 4 board shall also make a recommendation to the 1977 fund advisory  
 5 committee concerning whether the covered impairment is an  
 6 impairment described in section 13.3(c) of this chapter or whether it is  
 7 an impairment described in section 13.3(d) of this chapter. The local  
 8 board shall forward its recommendation to the 1977 fund advisory  
 9 committee.

10 (r) The 1977 fund advisory committee shall review the local board's  
 11 recommendation not later than forty-five (45) days after receiving the  
 12 recommendation and shall then issue an initial determination of  
 13 whether the disability is in the line of duty or not in the line of duty.  
 14 The 1977 fund advisory committee shall notify the local board, the  
 15 safety board, and the fund member of its initial determination.

16 (s) The fund member, the safety board, or the local board may object  
 17 in writing to the 1977 fund advisory committee's initial determination  
 18 under subsection (r) not later than fifteen (15) days after the initial  
 19 determination is issued. If a written objection is not filed, the 1977 fund  
 20 advisory committee's initial determination becomes final. If a timely  
 21 written objection is filed, the 1977 fund advisory committee shall issue  
 22 a final determination after a hearing. The final determination must be  
 23 issued not later than one hundred eighty (180) days after the date of  
 24 receipt of the local board's recommendation.

25 SECTION 8. IC 36-8-10-8 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. A member of the  
 27 department who becomes sheriff either by election or by appointment  
 28 shall, upon the expiration of ~~his~~ **the sheriff's** term and upon ~~his~~ **the**  
 29 **sheriff's** written application, be appointed by the board to the rank in  
 30 the department that ~~he~~ **the member** held at the time of his election or  
 31 appointment as sheriff, if there is a vacancy in the department. **While**  
 32 **-serving as sheriff, the member may not be employed by the**  
 33 **department in any other position.** However, if the sheriff during ~~his~~  
 34 **the sheriff's** tenure of office has qualified in accordance with the  
 35 promotion procedure prescribed by the board in its rules for a rank in  
 36 the department that is higher than the rank ~~he~~ **the sheriff** previously  
 37 held, the board shall, upon the expiration of ~~his~~ **the member's** term as  
 38 sheriff, appoint ~~him~~ **the member** to the rank for which ~~he~~ **the member**  
 39 has qualified under the promotion procedure if there is a vacancy in  
 40 that rank.

41 SECTION 9. IC 36-8-10-11 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The sheriff may

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1 dismiss, demote, or temporarily suspend a county police officer for  
2 cause after preferring charges in writing and after a fair public hearing  
3 before the board, which is reviewable in the circuit court. Written  
4 notice of the charges and hearing must be delivered by certified mail  
5 to the officer to be disciplined at least fourteen (14) days before the  
6 date set for the hearing. The officer may be represented by counsel. The  
7 board shall make specific findings of fact in writing to support its  
8 decision.

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

13 (c) A county police officer may not be dismissed, demoted, or  
14 temporarily suspended because of political affiliation nor after the  
15 officer's probationary period, except as provided in this section.

16 **Subject to IC 3-5-9**, an officer may:

- 17 (1) be a candidate for elective office and serve in that office if
- 18 elected;
- 19 (2) be appointed to an office and serve in that office if appointed;
- 20 and
- 21 (3) except when in uniform or on duty, solicit votes or campaign
- 22 funds for the officer or others.

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

26 (e) An appeal under subsection (a) 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 a concise manner the general nature of the charges  
29 against the officer, the decision of the board, and a demand for the  
30 relief asserted by the officer. A bond must also be filed that guarantees  
31 the appeal will be prosecuted to a final determination and that the  
32 plaintiff will pay all costs only if the court finds that the board's  
33 decision should be affirmed. The bond must be approved as bonds for  
34 costs are approved in other cases. The county must be named as the  
35 sole defendant, and the plaintiff shall have a summons issued as in  
36 other cases against the county. Neither the board nor the members of  
37 it may be made parties defendant to the complaint, but all are bound by  
38 service upon the county and the judgment rendered by the court.

39 (f) All appeals shall be tried by the court. The appeal shall be heard  
40 de novo only upon any new issues related to the charges upon which  
41 the decision of the board was made. Within ten (10) days after the  
42 service of summons, the board shall file in court a complete written

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1 transcript of all papers, entries, and other parts of the record relating to  
2 the particular case. Inspection of these documents by the person  
3 affected, or by the person's agent, must be permitted by the board  
4 before the appeal is filed, if requested. The court shall review the  
5 record and decision of the board on appeal.

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

- 14 (1) reverse the decision of the board; or
- 15 (2) order the decision of the board to be modified.

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

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

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

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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.

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**Y**

