

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

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:*

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2011]:
- 5 **Chapter 9. Government Employees Holding Office**
- 6 **Sec. 1. This chapter applies to a government employee who,**
- 7 **after December 31, 2011, assumes an elected office of the unit that**
- 8 **employs the employee.**
- 9 **Sec. 2. As used in this chapter, "government employee" refers**
- 10 **to an employee of a unit. The term includes a special deputy or a**
- 11 **reserve officer of a police department, regardless of whether the**
- 12 **deputy or officer receives compensation from the unit for services**
- 13 **as a deputy or reserve officer. The term does not include an**

1 individual who holds only an elected office.

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

4 Sec. 4. Except as provided in sections 6 through 8 of this
5 chapter, an individual is considered to have resigned as a
6 government employee when the individual assumes an elected
7 office of the unit that employs the individual.

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

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

13 (1) was elected at the municipal election in November 2011,
14 and assumes an elected office of the unit on January 1, 2012;
15 or

16 (2) on December 31, 2011, holds an elected office of the unit
17 that employs the individual;

18 is not considered to have resigned as a government employee
19 during the employee's term of office. However, if the government
20 employee is reelected to the office or elected to another office of the
21 unit that employs the employee, the individual is considered to
22 have resigned as a government employee when the individual
23 assumes the office.

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

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

1 **employs the officer or firefighter.**

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

6 (1) An elected or appointed officer.

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

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

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

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

13 SECTION 3. IC 36-1-20 IS ADDED TO THE INDIANA CODE AS
14 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2011]:

16 **Chapter 20. Employment of Relatives**

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

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

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

24 (1) **A husband.**

25 (2) **A wife.**

26 (3) **A father.**

27 (4) **A mother.**

28 (5) **A son or grandson.**

29 (6) **A daughter or granddaughter.**

30 (7) **A brother.**

31 (8) **A sister.**

32 (9) **A individual who resides or shares a residence with an**
33 **elected official for a total of at least six (6) months of the**
34 **calendar year.**

35 (10) **Any other individual designated by ordinance or**
36 **resolution of the local unit to be a relative.**

37 **Sec. 4. Except as provided in section 5 of this chapter, an**
38 **individual who is a relative of an elected official of a local unit may**

1 not be employed by the local unit in a position in which the
2 individual is within the direct line of authority of the elected
3 official.

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

6 (1) employed in the same position with the local unit for at
7 least twelve (12) consecutive months immediately preceding
8 the date on which the relative of the employee assumes the
9 elected office; and

10 (2) has not been suspended or demoted during the period
11 described in subdivision (1).

12 **However, this chapter applies to an individual described in this
13 subsection if the individual is promoted to a higher rank, grade, or
14 position after the date the relative of the employee assumes the
15 elected office. If the individual meets the requirements of this
16 subsection and is a merit police officer or merit firefighter
17 employed by the police or fire department after June 30, 2011, this
18 chapter applies to the individual only if the individual is promoted
19 to a higher rank other than a merit rank.**

20 **(b) This chapter does not apply to:**

21 (1) a police officer employed by a police department on June
22 30, 2011, and serving a probationary period with the intent of
23 becoming a merit employee of the police department; or

24 (2) a firefighter employed by a fire department on June 30,
25 2011, and serving a probationary period with the intent of
26 becoming a merit employee of the fire department.

27 **However, this chapter applies to an individual described in this
28 subsection if the individual is promoted to a higher rank other than
29 a merit rank.**

30 **(c) This chapter does not apply to an elected official and
31 relatives of the elected official if the sum of actual compensation
32 and benefits of the relatives of the elected official who are
33 employed by the local unit total not more than ten thousand dollars
34 (\$10,000), including:**

35 (1) salary;

36 (2) use of a vehicle of the local unit;

37 (3) mileage or vehicle allowance;

38 (4) health, vision, and dental insurance; and

- 1 **(5) any other:**
 2 **(A) amount paid to the relatives of the elected official; or**
 3 **(B) benefit provided to the relatives of the elected official;**
 4 **to compensate the relatives of the elected official for services**
 5 **provided to the local unit.**

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

8 **(b) An elected official who violates this chapter shall reimburse**
 9 **the local unit for the following:**

10 **(1) If the relative of the elected official is employed in**
 11 **violation of this chapter for not more than one (1) year, the**
 12 **salary paid to the employee by the local unit.**

13 **(2) If the relative of the elected official is employed in**
 14 **violation of this chapter for more than one (1) year, the**
 15 **greater of the following:**

16 **(A) The employee's salary for one (1) year.**

17 **(B) Twenty percent (20%) of total salary paid to the**
 18 **employee by the local unit during the term of employment**
 19 **that violates this chapter.**

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

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

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

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

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

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

- 1 (2) be appointed to any office and serve in that office if appointed;
 2 and
 3 (3) as long as they are not in uniform and not on duty, solicit votes
 4 and campaign funds and challenge voters for the office for which
 5 they are candidates.

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

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

- 16 (1) Sickness.
 17 (2) Disability.
 18 (3) Sabbatical purposes.

19 However, a leave of absence because of disability may not be granted
 20 to a member of the 1977 fund under this subsection unless a leave
 21 granted under subsection ~~(g)~~ **(h)** has expired without disability benefits
 22 having been paid from the 1977 fund. In the case of such an expiration,
 23 a leave for purposes of disability may be granted under this subsection
 24 but only until the member's eligibility for disability benefits is finally
 25 determined.

26 (c) Before a leave of absence may be granted for sabbatical
 27 purposes, the member must submit a written request explaining and
 28 justifying the leave to the appointing authority. Sabbatical purposes
 29 must be related to the improvement of the member's professional
 30 performance and skills, such as education, special training, work
 31 related experience, and exchange programs.

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

36 (e) **Except as provided in subsection (f)**, this subsection applies to
 37 leaves of absence granted for service in an elected office. A police
 38 officer or firefighter who serves in the general assembly shall be

1 granted a leave for the time spent in this service, including the time
2 spent for committee or legislative council meetings. A police officer or
3 firefighter who serves in any other elected office may be granted a
4 leave for the time spent in this service. Leave for service in an elected
5 office does not diminish a police officer's or firefighter's rights under
6 the police officer's or firefighter's retirement or pension fund, except as
7 provided in section 10 of this chapter, or advancement on the police
8 officer's or firefighter's department salary schedule. For these purposes,
9 the police officer or firefighter is, despite the leave, considered to be a
10 member of the department during that time.

11 **(f) This subsection applies to leaves of absence granted for**
12 **service in an elected office of the unit that employs the police**
13 **officer or firefighter. A police officer or firefighter who serves in**
14 **an elected office shall be granted and required to take a leave of**
15 **absence for the entire time spent in this service and may not be**
16 **employed in any other position with the department while serving**
17 **in an elected office. Leave for service in an elected office does not**
18 **diminish a police officer's or firefighter's rights under the police**
19 **officer's or firefighter's retirement or pension fund, except as**
20 **provided in section 10 of this chapter, or advancement on the**
21 **police officer's or firefighter's department salary schedule. For**
22 **these purposes, the police officer or firefighter is, despite the leave,**
23 **considered to be a member of the department during that time.**

24 ~~(f)~~ **(g)** This subsection applies to leaves of absence granted under
25 subsection (b)(1), (b)(2), or (b)(3). A member on leave may receive
26 compensation in an amount determined by the appointing authority, up
27 to a maximum amount that equals the member's salary before the leave
28 began.

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

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

38 (2) The leave must be approved by the local board after a hearing

- 1 conducted under IC 36-8-8-12.7.
- 2 (3) The leave may not begin until the police officer or firefighter
3 has exhausted all paid leave for sickness.
- 4 (4) The leave shall continue until disability benefits are paid from
5 the 1977 fund. However, the leave may not continue for more
6 than six (6) months.
- 7 (5) During the leave, the police officer or firefighter is entitled to
8 receive compensation in an amount equal to fifty percent (50%)
9 of the salary of a first class patrolman or first class firefighter on
10 the date the leave begins.
- 11 Payments of compensation under this subsection may not be made from
12 the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund.
- 13 ~~(h)~~ (i) Determinations under subsection ~~(g)~~ (h) are not reviewable
14 by the board of trustees of the public employees' retirement fund.
- 15 ~~(i)~~ (j) This subsection applies to leaves of absence granted under
16 subsection (a) or (b). An appointing authority shall establish a policy
17 in writing that specifies whether a police officer or firefighter is
18 entitled, during a leave of absence, to participate in any promotional
19 process or earn seniority. A policy established under this subsection is
20 subject to a department's existing disciplinary procedures. An
21 appointing authority shall reinstate a police officer or firefighter
22 returning from a leave at the merit or permanent rank determined under
23 the policy established under this subsection. However, except as
24 otherwise provided by federal law, an appointing authority is not
25 required to reinstate a police officer or firefighter in the job that the
26 police officer or firefighter held at the time the police officer's or
27 firefighter's leave began.
- 28 SECTION 7. IC 36-8-8-12.7, AS AMENDED BY P.L.29-2006,
29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2011]: Sec. 12.7. (a) This section applies to hearings
31 conducted by local boards concerning determinations of impairment
32 under this chapter or of disability under ~~IC 36-8-5-2(g)~~;
33 **IC 36-8-5-2(h)**, IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.
- 34 (b) At least five (5) days before the hearing, the local board shall
35 give notice to the fund member and the safety board of the time, date,
36 and place of the hearing.
- 37 (c) The local board must hold a hearing not more than ninety (90)
38 days after the fund member requests the hearing.

- 1 (d) At the hearing, the local board shall permit the fund member and
 2 the safety board to:
- 3 (1) be represented by any individual;
 - 4 (2) through witnesses and documents, present evidence;
 - 5 (3) conduct cross-examination; and
 - 6 (4) present arguments.
- 7 (e) At the hearing, the local board shall require all witnesses to be
 8 examined under oath, which may be administered by a member of the
 9 local board.
- 10 (f) The local board shall, at the request of the fund member or the
 11 safety board, issue:
- 12 (1) subpoenas;
 - 13 (2) discovery orders; and
 - 14 (3) protective orders;
- 15 in accordance with the Indiana Rules of Trial Procedure that govern
 16 discovery, depositions, and subpoenas in civil actions.
- 17 (g) The local board shall have the hearing recorded so that a
 18 transcript may be made of the proceedings.
- 19 (h) After the hearing, the local board shall make its determinations,
 20 including findings of fact, in writing and shall provide copies of its
 21 determinations to the fund member and the safety board not more than
 22 thirty (30) days after the hearing.
- 23 (i) If the local board:
- 24 (1) does not hold a hearing within the time required under
 - 25 subsection (c); or
 - 26 (2) does not issue its determination within the time required under
 - 27 subsection (h);
- 28 the fund member shall be considered to be totally impaired for
 29 purposes of section 13.5 of this chapter and, if the issue before the local
 30 board concerns the class of the member's impairment, the member shall
 31 be considered to have a Class 1 impairment. The PERF board shall
 32 review an impairment determined under this subsection as provided in
 33 section 13.1 of this chapter.
- 34 (j) The local board may on its own motion issue:
- 35 (1) subpoenas;
 - 36 (2) discovery orders; and
 - 37 (3) protective orders;
- 38 in accordance with the Indiana Rules of Trial Procedure that govern

1 discovery, depositions, and subpoenas in civil actions.

2 (k) At the hearing, the local board may exclude evidence that is
3 irrelevant, immaterial, unduly repetitious, or excludable on the basis of
4 evidentiary privilege recognized by the courts.

5 (l) At the hearing, the local board may request the testimony of
6 witnesses and the production of documents.

7 (m) If a subpoena or order is issued under this section, the party
8 seeking the subpoena or order shall serve it in accordance with the
9 Indiana Rules of Trial Procedure. However, if the subpoena or order is
10 on the local board's own motion, the sheriff of the county in which the
11 subpoena or order is to be served shall serve it. A subpoena or order
12 under this section may be enforced in the circuit or superior court of
13 the county in which the subpoena or order is served.

14 (n) With respect to a hearing conducted for purposes of determining
15 disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination
16 of the local board after a hearing is final and may be appealed to the
17 court.

18 (o) With respect to a hearing conducted for purposes of determining
19 impairment or class of impairment under this chapter, the fund member
20 may appeal the local board's determinations. An appeal under this
21 subsection:

- 22 (1) must be made in writing;
23 (2) must state the class of impairment and the degree of
24 impairment that is claimed by the fund member;
25 (3) must include a written determination by the chief of the police
26 or fire department stating that there is no suitable and available
27 work; and
28 (4) must be filed with the local board and the PERF board's
29 director no later than thirty (30) days after the date on which the
30 fund member received a copy of the local board's determinations.

31 (p) To the extent required by the Americans with Disabilities Act,
32 the transcripts, records, reports, and other materials generated as a
33 result of a hearing, review, or appeal conducted to determine an
34 impairment under this chapter or a disability under IC 36-8-6,
35 IC 36-8-7, or IC 36-8-7.5 must be:

- 36 (1) retained in the separate medical file created for the member;
37 and
38 (2) treated as a confidential medical record.

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

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

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

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

1 that rank.

2 SECTION 9. IC 36-8-10-11 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The sheriff may
4 dismiss, demote, or temporarily suspend a county police officer for
5 cause after preferring charges in writing and after a fair public hearing
6 before the board, which is reviewable in the circuit court. Written
7 notice of the charges and hearing must be delivered by certified mail
8 to the officer to be disciplined at least fourteen (14) days before the
9 date set for the hearing. The officer may be represented by counsel. The
10 board shall make specific findings of fact in writing to support its
11 decision.

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

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

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

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

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

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

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

29 (e) An appeal under subsection (a) must be taken by filing in court,
30 within thirty (30) days after the date the decision is rendered, a verified
31 complaint stating in a concise manner the general nature of the charges
32 against the officer, the decision of the board, and a demand for the
33 relief asserted by the officer. A bond must also be filed that guarantees
34 the appeal will be prosecuted to a final determination and that the
35 plaintiff will pay all costs only if the court finds that the board's
36 decision should be affirmed. The bond must be approved as bonds for
37 costs are approved in other cases. The county must be named as the
38 sole defendant, and the plaintiff shall have a summons issued as in

1 other cases against the county. Neither the board nor the members of
2 it may be made parties defendant to the complaint, but all are bound by
3 service upon the county and the judgment rendered by the court.

4 (f) All appeals shall be tried by the court. The appeal shall be heard
5 de novo only upon any new issues related to the charges upon which
6 the decision of the board was made. Within ten (10) days after the
7 service of summons, the board shall file in court a complete written
8 transcript of all papers, entries, and other parts of the record relating to
9 the particular case. Inspection of these documents by the person
10 affected, or by the person's agent, must be permitted by the board
11 before the appeal is filed, if requested. The court shall review the
12 record and decision of the board on appeal.

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

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

23 (h) The final judgment of the court may be appealed by either party.
24 Upon the final disposition of the appeal by the courts, the clerk shall
25 certify and file a copy of the final judgment of the court to the board,
26 which shall conform its decisions and records to the order and
27 judgment of the court. If the decision is reversed or modified, then the
28 board shall pay to the party entitled to it any salary or wages withheld
29 from the party pending the appeal and to which the party is entitled
30 under the judgment of the court.

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

1 section.

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

(Reference is to HB 1022 as introduced.)

and when so amended that said bill do pass.

Representative Hinkle