

SENATE BILL No. 166

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-5-9; IC 36-1-8-10.5; IC 36-4-4-2; IC 36-8.

Synopsis: Local government employment. Provides that an employee of a political subdivision is considered to have resigned from employment with the political subdivision if the employee assumes the elected executive office of the political subdivision or becomes an elected member of the political subdivision's legislative or fiscal body. Specifies that the restriction applies to an employee of a political subdivision who assumes an elected office after June 30, 2011, but provides that the restriction does not apply to an employee of a political subdivision who holds elective office on June 30, 2011, as long as the individual continues to hold or be reelected to that office. Provides that the restriction does not prohibit an employee of a political subdivision from holding an elected office of a political subdivision other than the political subdivision that employs the government employee.

Effective: July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Local Government.

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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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SENATE BILL No. 166



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. (a) Except as provided in subsection (b), this chapter**
6 **applies to a government employee who, after June 30, 2011,**
7 **assumes an elected office of the political subdivision that employs**
8 **the individual.**

9 **(b) This chapter does not apply to a government employee who,**
10 **on June 30, 2011, holds an elected office of the political subdivision**
11 **that employs the individual, as long as the individual continues to:**

- 12 (1) hold; or
- 13 (2) be reelected to;

14 **the elected office the individual held on June 30, 2011.**

15 **Sec. 2. This chapter does not prohibit a government employee**
16 **from holding an elected office of a political subdivision other than**
17 **the political subdivision that employs the government employee.**



1 **Sec. 3. As used in this chapter, "elected office" refers only to the**
2 **following:**

- 3 **(1) The elected executive of a political subdivision.**
- 4 **(2) An elected member of the legislative body or fiscal body of**
5 **a political subdivision.**

6 **Sec. 4. As used in this chapter, "government employee" refers**
7 **to an employee of a political subdivision. The term does not include**
8 **an individual who holds an elected office and is not otherwise**
9 **employed by the political subdivision.**

10 **Sec. 5. An individual is considered to have resigned as a**
11 **government employee when the individual assumes an elected**
12 **office of the political subdivision that employs the individual.**

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

- 17 (1) An elected or appointed officer.
- 18 (2) An individual described in IC 20-26-4-11.

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

- 20 (1) be a candidate for any elected office and serve in that office if
21 elected; or
- 22 (2) be appointed to any office and serve in that office if appointed;
23 without having to resign as an employee of the political subdivision.

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

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

- 31 (1) be a candidate for any elective office and serve in that office
32 if elected; or
- 33 (2) be appointed to any office and serve in that office if appointed;
34 without having to resign as a city employee.

35 SECTION 4. IC 36-8-3-12 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. **Subject to**
37 **IC 3-5-9**, members of the safety board and members of any township,
38 town, or city (including a consolidated city) police department, fire
39 department, or volunteer fire department (as defined by IC 36-8-12-2)
40 may:

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

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

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

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

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

- 24 (1) be a candidate for elective office and serve in that office if
- 25 elected;
- 26 (2) be appointed to an office and serve in that office if appointed;
- 27 and
- 28 (3) except when in uniform or on duty, solicit votes or campaign
- 29 funds for the officer or others.

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

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

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1 cases against the county. Neither the board nor the members of it may
 2 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
 35 section.

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

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