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# HOUSE BILL No. 1261

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-5; IC 36-1-8-10.5; IC 36-4-4-2; IC 36-8-10-11.

**Synopsis:** Government employees holding elected office. 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: (1) assumes the elected executive office of the unit; or (2) becomes an elected member of the unit's executive, legislative, or fiscal body. Makes this provision apply to an employee of a unit who assumes an elected office after June 30, 2011. Makes the provision inapplicable to an employee who is the elected executive of or a member of the executive, legislative, or fiscal body of a unit on June 30, 2011, and who continues to hold or be reelected to that office. Does not prohibit an employee of a unit from holding an elected office of a unit other than the unit that employs the employee.

**Effective:** July 1, 2011.

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**Stemler**

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January 12, 2011, read first time and referred to Committee on Government and Regulatory Reform.

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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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# HOUSE BILL No. 1261



A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-5-2-49.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2011]: **Sec. 49.5. "Unit" means a county, city, town, or township.**  
4 SECTION 2. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS  
5 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 2011]:  
7 **Chapter 9. Government Employees Holding Office**  
8 **Sec. 1. This chapter applies to a government employee who,**  
9 **after June 30, 2011, assumes an elected office of the unit that**  
10 **employs the individual.**  
11 **Sec. 2. This section does not apply to a government employee**  
12 **who, on June 30, 2011, holds an elected office of the unit that**  
13 **employs the individual, as long as the individual continues to:**  
14 (1) hold; or  
15 (2) be reelected to;  
16 **the elected office.**  
17 **Sec. 3. As used in this chapter, "elected office" refers only to the**



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**offices of the following:**

- (1) The elected executive or an elected member of the executive body of a unit.**
- (2) An elected member of the legislative body of a unit.**
- (3) An elected member of the fiscal body of the unit.**

**Sec. 4. 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.**

**Sec. 5. 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. 6. 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.**

SECTION 3. 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) Except as provided in IC 3-5-9,** an employee of a political subdivision may:

- (1) be a candidate for ~~any~~ **an** 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 4. 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) Except as provided in IC 3-5-9,** a city employee other than an elected or appointed public officer may:

- (1) be a candidate for ~~any~~ **an** 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 5. 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

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1 notice of the charges and hearing must be delivered by certified mail  
2 to the officer to be disciplined at least fourteen (14) days before the  
3 date set for the hearing. The officer may be represented by counsel. The  
4 board shall make specific findings of fact in writing to support its  
5 decision.

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

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

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

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

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

36 (f) All appeals shall be tried by the court. The appeal shall be heard  
37 de novo only upon any new issues related to the charges upon which  
38 the decision of the board was made. Within ten (10) days after the  
39 service of summons, the board shall file in court a complete written  
40 transcript of all papers, entries, and other parts of the record relating  
41 to the particular case. Inspection of these documents by the person  
42 affected, or by the person's agent, must be permitted by the board

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1 before the appeal is filed, if requested. The court shall review the  
2 record and decision of the board on appeal.

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

11 (1) reverse the decision of the board; or

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

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

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

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

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