
HOUSE BILL No. 1263

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-8-7; IC 35-44-1-8.

Synopsis: Removal of public officers from office. 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 suspended from office. Specifies that the local elected official must be reinstated with back pay if the official is acquitted or charges are dropped. Provides that a local elected official who, without a valid reason, knowingly or intentionally fails to perform the official's duties on ten or more days during a calendar month commits dereliction of duty, a Class D felony.

Effective: July 1, 2011.

Stemler, Rhoads

January 12, 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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HOUSE BILL No. 1263



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 5-8-7 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2011]:
- 4 **Chapter 7. Suspension of Local Officeholders**
- 5 **Sec. 1. As used in this chapter, "eligible offense" means:**
- 6 (1) a felony under IC 35;
- 7 (2) a felony under IC 9-30-5;
- 8 (3) a felony concerning an election under IC 3; or
- 9 (4) a misdemeanor involving a breach of the peace that is
- 10 committed while the local official is performing the official's
- 11 official duties.
- 12 **Sec. 2. As used in this chapter, "legislative body" has the**
- 13 **meaning set forth in IC 36-1-2-9.**
- 14 **Sec. 3. As used in this chapter, "local elected official" means an**
- 15 **elected official of a unit who is not a judge or a prosecuting**
- 16 **attorney subject to discipline by the supreme court.**
- 17 **Sec. 4. As used in this chapter, "unit" has the meaning set forth**



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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:

- (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 official's term of office ends.

(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 the number of local elected officials who are members of the legislative body of a unit charged with an eligible offense 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 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. 9. (a) This section does not apply if a legislative body suspends a local elected official who is a member of the legislative body.

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

6 Sec. 10. If a local elected official suspended under section 7 of
7 this chapter is convicted of an eligible offense, the local elected
8 official shall be removed from office in accordance with
9 IC 5-8-1-38.

10 Sec. 11. (a) If:
11 (1) a local elected official suspended under section 7 of this
12 chapter is acquitted or charges are dropped;
13 (2) a local elected official was charged with a felony but is
14 convicted of only a misdemeanor; or
15 (3) a local elected official was charged with a misdemeanor
16 involving a breach of the peace that is committed while the
17 local official is performing the official's official duties but is
18 convicted of only a misdemeanor that does not involve a
19 breach of the peace;

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

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

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

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

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

35 A local elected official who was convicted of the misdemeanor is
36 not entitled to vote to award back pay under this subsection.

37 SECTION 2. IC 35-44-1-8 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2011]: Sec. 8. (a) This section applies only to a local elected
40 official (as defined in IC 5-8-7-3).

41 (b) A local elected official who:
42 (1) without being on medical, vacation, military, or other

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1 **leave; or**
2 **(2) while not traveling on official business;**
3 **knowingly or intentionally fails to perform the official's duties for**
4 **ten (10) or more days in any calendar month commits dereliction**
5 **of duty, a Class D felony.**
6 **(c) In determining whether a local elected official has failed to**
7 **perform the official's duties, the trier of fact may consider whether**
8 **the official was absent from the official's assigned workplace.**

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