
HOUSE BILL No. 1394

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-1; IC 36-4-4-2; IC 36-8.

Synopsis: Local public employees and office holders. Provides that an individual employed by an agency or department of a political subdivision is considered to have resigned as an employee when the individual assumes an elected office that has any legal authority to propose or approve: (1) the budget of the agency or department that employs the employee; or (2) the salary or other compensation of employees who are employed by that agency or department. Specifies that a political subdivision may not enter into a contract with, employ, or otherwise use a bond service provider to perform certain services related to the issuance and sale of bonds if an owner, officer, agent, or employee of the bond service provider is a member of the political subdivision's fiscal body, legislative body or executive or is an elected officer of the political subdivision.

Effective: July 1, 2011.

Heuer, Messmer

January 18, 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. 1394



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

- 5 (1) An elected or appointed officer.
- 6 (2) An individual described in IC 20-26-4-11.
- 7 (b) **Subject to IC 36-1-8.5**, an employee of a political subdivision
8 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 2. IC 36-1-8-17 IS ADDED TO THE INDIANA CODE
14 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2011]: **Sec. 17. (a) As used in this section, "bond service
16 provider" means any bond counsel, financial adviser, underwriter,
17 investment banker, trustee, or other technical or professional**



1 assistant that provides:
 2 (1) legal services;
 3 (2) financial services; or
 4 (3) other services;
 5 rendered in conjunction with the issuance and sale or proposed
 6 issuance and sale of bonds.

7 (b) As used in this section, "owner" means a person holding at
 8 least a five percent (5%) ownership interest in an entity.

9 (c) A political subdivision may not enter into a contract with,
 10 employ, or otherwise use a bond service provider to perform the
 11 services described in subsection (a) if an owner, officer, agent, or
 12 employee of the bond service provider:

- 13 (1) is a member of the political subdivision's fiscal body,
 14 legislative body, or executive; or
- 15 (2) is an elected officer of the political subdivision.

16 SECTION 3. IC 36-1-8.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2011]:

19 **Chapter 8.5. Employees of a Political Subdivision Holding**
 20 **Elected Office**

21 **Sec. 1. This chapter applies to an employee who, after December**
 22 **31, 2011, assumes an elected office that has any legal authority to**
 23 **propose or approve:**

- 24 (1) the budget of the government agency that employs the
 25 employee; or
- 26 (2) the salary or other compensation of employees who are
 27 employed by the government agency described in subdivision
 28 (1).

29 **Sec. 2. As used in this chapter, "employee" refers to an**
 30 **employee of a government agency.**

31 **Sec. 3. As used in this chapter, "government agency" refers to**
 32 **an agency or department of a political subdivision.**

33 **Sec. 4. An employee is considered to have resigned as an**
 34 **employee of a government agency when the individual assumes an**
 35 **elected office that has any legal authority to propose or approve:**

- 36 (1) the budget of the government agency that employs the
 37 employee; or
- 38 (2) the salary or other compensation of employees who are
 39 employed by the government agency described in subdivision
 40 (1).

41 SECTION 4. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The powers of a city are

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1 divided between the executive and legislative branches of its
2 government. A power belonging to one (1) branch of a city's
3 government may not be exercised by the other branch.

4 (b) **Subject to IC 36-1-8.5**, a city employee other than an elected or
5 appointed public officer may:

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

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

10 SECTION 5. IC 36-8-3-12 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. **Subject to**
12 **IC 36-1-8.5**, members of the safety board and members of any
13 township, town, or city (including a consolidated city) police
14 department, fire department, or volunteer fire department (as defined
15 by IC 36-8-12-2) may:

16 (1) be candidates for elective office and serve in that office if
17 elected;

18 (2) be appointed to any office and serve in that office if appointed;
19 and

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

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

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

37 (c) A county police officer may not be dismissed, demoted, or
38 temporarily suspended because of political affiliation nor after the
39 officer's probationary period, except as provided in this section.
40 **Subject to IC 36-1-8.5**, an officer may:

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

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1 (2) be appointed to an office and serve in that office if appointed;
 2 and
 3 (3) except when in uniform or on duty, solicit votes or campaign
 4 funds for the officer or others.
 5 (d) The board has subpoena powers enforceable by the circuit court
 6 for hearings under this section. An officer on probation may be
 7 dismissed by the sheriff without a right to a hearing.
 8 (e) An appeal under subsection (a) must be taken by filing in court,
 9 within thirty (30) days after the date the decision is rendered, a verified
 10 complaint stating in a concise manner the general nature of the charges
 11 against the officer, the decision of the board, and a demand for the
 12 relief asserted by the officer. A bond must also be filed that guarantees
 13 the appeal will be prosecuted to a final determination and that the
 14 plaintiff will pay all costs only if the court finds that the board's
 15 decision should be affirmed. The bond must be approved as bonds for
 16 costs are approved in other cases. The county must be named as the
 17 sole defendant, and the plaintiff shall have a summons issued as in
 18 other cases against the county. Neither the board nor the members of
 19 it may be made parties defendant to the complaint, but all are bound by
 20 service upon the county and the judgment rendered by the court.
 21 (f) All appeals shall be tried by the court. The appeal shall be heard
 22 de novo only upon any new issues related to the charges upon which
 23 the decision of the board was made. Within ten (10) days after the
 24 service of summons, the board shall file in court a complete written
 25 transcript of all papers, entries, and other parts of the record relating to
 26 the particular case. Inspection of these documents by the person
 27 affected, or by the person's agent, must be permitted by the board
 28 before the appeal is filed, if requested. The court shall review the
 29 record and decision of the board on appeal.
 30 (g) The court shall make specific findings and state the conclusions
 31 of law upon which its decision is made. If the court finds that the
 32 decision of the board appealed from should in all things be affirmed,
 33 its judgment should so state. If the court finds that the decision of the
 34 board appealed from should not be affirmed in all things, then the court
 35 shall make a general finding, setting out sufficient facts to show the
 36 nature of the proceeding and the court's decision on it. The court shall
 37 either:
 38 (1) reverse the decision of the board; or
 39 (2) order the decision of the board to be modified.
 40 (h) The final judgment of the court may be appealed by either party.
 41 Upon the final disposition of the appeal by the courts, the clerk shall
 42 certify and file a copy of the final judgment of the court to the board,

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1 which shall conform its decisions and records to the order and
2 judgment of the court. If the decision is reversed or modified, then the
3 board shall pay to the party entitled to it any salary or wages withheld
4 from the party pending the appeal and to which the party is entitled
5 under the judgment of the court.

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

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

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