

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1022 be amended to read as follows:

- 1           Page 2, between lines 11 and 12, begin a new paragraph and insert:  
2           "SECTION 2. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS  
3           A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
4           1, 2011]:  
5           **Chapter 7. Suspension of Local Officeholders**  
6           **Sec. 1. As used in this chapter, "eligible offense" means:**  
7               (1) a felony under IC 35;  
8               (2) a felony under IC 9-30-5;  
9               (3) a felony concerning an election under IC 3; or  
10              (4) a misdemeanor involving a breach of the peace that is  
11              committed while a local official is performing the official's  
12              official duties.  
13           **Sec. 2. As used in this chapter, "legislative body" has the**  
14           **meaning set forth in IC 36-1-2-9.**  
15           **Sec. 3. As used in this chapter, "local elected official" means an**  
16           **elected official of a unit who is not a judge or a prosecuting**  
17           **attorney subject to discipline by the supreme court.**  
18           **Sec. 4. As used in this chapter, "unit" has the meaning set forth**  
19           **in IC 36-1-2-23.**  
20           **Sec. 5. A local elected official may be suspended from office as**  
21           **described in this chapter if the official is charged with an eligible**  
22           **offense.**  
23           **Sec. 6. If:**  
24               (1) a prosecuting attorney charges a local elected official with  
25               an eligible offense; and  
26               (2) a court finds probable cause to believe that the offense has  
27               been committed;  
28           **the prosecuting attorney shall notify the legislative body of the**  
29           **appropriate unit.**  
30           **Sec. 7. (a) If the appropriate legislative body adopts a resolution**

- 1 by a two-thirds (2/3) vote of all of the members of the legislative  
 2 body finding that:
- 3 (1) the eligible offense with which the local elected official is  
 4 charged is relevant to the official's suitability for office; and  
 5 (2) it is in the best interests of the unit that the local elected  
 6 official be suspended from office;
- 7 the local elected official shall be suspended from office until the  
 8 official is convicted or acquitted, charges against the official are  
 9 dropped, or the end of the official's term of office.
- 10 (b) If the local elected official charged with the eligible offense  
 11 is a member of the legislative body of a unit, the local elected  
 12 official is ineligible to vote on the resolution described in subsection  
 13 (a).
- 14 (c) If a member of the legislative body of a unit is related to the  
 15 local elected official as:
- 16 (1) father;  
 17 (2) mother;  
 18 (3) son;  
 19 (4) daughter;  
 20 (5) husband;  
 21 (6) wife;  
 22 (7) brother;  
 23 (8) sister;  
 24 (9) uncle;  
 25 (10) aunt;  
 26 (11) nephew;  
 27 (12) niece;  
 28 (13) father in law;  
 29 (14) mother in law;  
 30 (15) son in law;  
 31 (16) daughter in law;  
 32 (17) brother in law; or  
 33 (18) sister in law;
- 34 the member is ineligible to vote on the resolution described in  
 35 subsection (a).
- 36 (d) If the number of:
- 37 (1) local elected officials who are members of the legislative  
 38 body of a unit charged with an eligible offense; or  
 39 (2) members of the legislative body of the unit who are  
 40 ineligible to vote under subsection (b);  
 41 results in the legislative body of the unit being unable to reach a  
 42 quorum or adopt a resolution by a two-thirds (2/3) vote of all of the  
 43 members of the unit, the resolution may be adopted by a majority  
 44 of the voting members.
- 45 Sec. 8. (a) A local elected official who has been suspended under  
 46 section 7 of this chapter may seek judicial review of the suspension  
 47 by filing a petition for review with a circuit court located:

- 1           (1) in the county where the local elected official served; or  
 2           (2) in a county adjacent to the county where the local elected  
 3           official served;

4           not later than thirty (30) days after the date on which the local  
 5           elected official was suspended. The official shall serve a copy of the  
 6           petition on the prosecuting attorney and on the legislative body.

7           (b) A petition for review filed under this section must be verified  
 8           and set forth specific facts to demonstrate:

9           (1) that the prosecuting attorney did not charge the local  
 10          elected official with an eligible offense;

11          (2) that a court did not find probable cause to believe that the  
 12          offense was committed;

13          (3) that the appropriate legislative body abused its discretion  
 14          in determining that the offense is relevant to the official's  
 15          suitability for office; or

16          (4) that the appropriate legislative body abused its discretion  
 17          in determining it is in the best interests of the unit that the  
 18          local elected official be suspended from office.

19          (c) The court shall set a hearing on the suspension of the local  
 20          elected official not later than thirty (30) days after the petition for  
 21          judicial review is filed. Judicial review of the suspension of a local  
 22          elected official shall be determined on an expedited basis.

23          (d) The petitioner, the prosecuting attorney, and one (1) or more  
 24          members of the legislative body have the right to appear and  
 25          present relevant evidence at the hearing, in person or by counsel.

26          (e) The court conducting judicial review of the suspension of a  
 27          local elected official may stay the suspension pending the resolution  
 28          of the judicial review.

29          (f) If the reviewing court finds that the petitioner has established  
 30          one (1) of the elements described in subsection (b)(1) through  
 31          (b)(4), the court shall order the petitioner immediately reinstated  
 32          with back pay, if applicable.

33          (g) The court's determination granting or denying relief is a  
 34          final judgment.

35          Sec. 9. (a) A local elected official who is suspended from office  
 36          under this chapter shall not act in the official's official capacity and  
 37          is not entitled to receive any salary or remuneration as a local  
 38          elected official during the suspension period.

39          (b) A local elected official who is suspended from office under  
 40          this chapter is entitled to continue to receive any health benefits the  
 41          local elected official would have been entitled to receive if the local  
 42          elected official had not been suspended.

43          Sec. 10. (a) This section does not apply if a legislative body  
 44          suspends a local elected official who is a member of the legislative  
 45          body.

46          (b) If a legislative body suspends a local elected official under  
 47          section 7 of this chapter, the legislative body shall ensure that the

1 **duties of the suspended local elected official are carried out and**  
 2 **may appoint an acting replacement for the suspended local elected**  
 3 **official.**

4 **Sec. 11. If a local elected official suspended under section 7 of**  
 5 **this chapter is convicted of an eligible offense, the local elected**  
 6 **official shall be removed from office in accordance with**  
 7 **IC 5-8-1-38.**

8 **Sec. 12. (a) If:**

9 **(1) a local elected official suspended under section 7 of this**  
 10 **chapter is acquitted or charges against the official are**  
 11 **dropped;**

12 **(2) a local elected official was charged with a felony but is**  
 13 **convicted only of a misdemeanor; or**

14 **(3) a local elected official was charged with a misdemeanor**  
 15 **involving a breach of the peace that is committed while the**  
 16 **local official is performing the official's official duties but is**  
 17 **convicted only of a misdemeanor that does not involve a**  
 18 **breach of the peace;**

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

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

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

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

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

34 **A local elected official who is convicted of a misdemeanor is not**  
 35 **entitled to vote to award back pay under this subsection."**

36 Page 11, after line 5, begin a new paragraph and insert:

37 "SECTION 13. IC 36-9-37-7 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) A municipal  
 39 fiscal officer acting under this chapter shall, in the manner prescribed  
 40 by IC 5-4-1, obtain, execute, and file a bond conditioned upon the  
 41 following:

42 (1) The faithful compliance of the municipal fiscal officer with  
 43 this chapter.

44 (2) The faithful accounting for all money coming into the  
 45 municipal fiscal officer's possession under the Barrett Law.

46 (b) A municipal fiscal officer who does any of the following is  
 47 personally liable to a person suffering loss due to that action and may

- 1 be removed from office by proper action filed under IC 5-8-1-35:  
2 **subject to other action as prescribed by law:**  
3 (1) Fails to collect the interest or penalties provided for by this  
4 chapter on delinquent assessments and installments of  
5 assessments.  
6 (2) Fails to enforce the collection of the assessments by the sale  
7 of the property. However, this subdivision does not apply to a  
8 municipal fiscal officer of a municipality that has adopted an  
9 ordinance under section 24(a) of this chapter.  
10 (3) Otherwise fails to comply with this chapter.  
11 (c) The surety on the municipal fiscal officer's bond is also liable to  
12 the extent of the bond."  
13 Renumber all SECTIONS consecutively.  
(Reference is to EHB 1022 as printed April 1, 2011.)

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Senator GARD