

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

1 legislative body finding that:
2 (1) the eligible offense with which the local elected official is
3 charged is relevant to the official's suitability for office; and
4 (2) it is in the best interests of the unit that the local elected
5 official be suspended from office;
6 the local elected official shall be suspended from office until the
7 official is convicted or acquitted, charges against the official are
8 dropped, or the end of the official's term of office.
9 (b) If the local elected official charged with the eligible offense
10 is a member of the legislative body of a unit, the local elected
11 official is ineligible to vote on the resolution described in subsection
12 (a).
13 (c) If a member of the legislative body of a unit is related to the
14 local elected official as:
15 (1) father;
16 (2) mother;
17 (3) son;
18 (4) daughter;
19 (5) husband;
20 (6) wife;
21 (7) brother;
22 (8) sister;
23 (9) uncle;
24 (10) aunt;
25 (11) nephew;
26 (12) niece;
27 (13) father in law;
28 (14) mother in law;
29 (15) son in law;
30 (16) daughter in law;
31 (17) brother in law; or
32 (18) sister in law;
33 the member is ineligible to vote on the resolution described in
34 subsection (a).
35 (d) If the number of:
36 (1) local elected officials who are members of the legislative
37 body of a unit charged with an eligible offense; or
38 (2) members of the legislative body of the unit who are
39 ineligible to vote under subsection (b);
40 results in the legislative body of the unit being unable to reach a
41 quorum or adopt a resolution by a two-thirds (2/3) vote of all of the
42 members of the unit, the resolution may be adopted by a majority
43 of the voting members.
44 Sec. 8. (a) A local elected official who has been suspended
45 under section 7 of this chapter may seek judicial review of the
46 suspension by filing a petition for review with a circuit court
47 located:
48 (1) in the county where the local elected official served; or
49 (2) in a county adjacent to the county where the local elected
50 official served;
51 not later than thirty (30) days after the date on which the local
52 elected official was suspended. The official shall serve a copy of the

- 1 petition on the prosecuting attorney and on the legislative body.
- 2 (b) A petition for review filed under this section must be
3 verified and set forth specific facts to demonstrate:
- 4 (1) that the prosecuting attorney did not charge the local
5 elected official with an eligible offense;
- 6 (2) that a court did not find probable cause to believe that the
7 offense was committed;
- 8 (3) that the appropriate legislative body abused its discretion
9 in determining that the offense is relevant to the official's
10 suitability for office; or
- 11 (4) that the appropriate legislative body abused its discretion
12 in determining it is in the best interests of the unit that the
13 local elected official be suspended from office.
- 14 (c) The court shall set a hearing on the suspension of the local
15 elected official not later than thirty (30) days after the petition for
16 judicial review is filed. Judicial review of the suspension of a local
17 elected official shall be determined on an expedited basis.
- 18 (d) The petitioner, the prosecuting attorney, and one (1) or
19 more members of the legislative body have the right to appear and
20 present relevant evidence at the hearing, in person or by counsel.
- 21 (e) The court conducting judicial review of the suspension of
22 a local elected official may stay the suspension pending the
23 resolution of the judicial review.
- 24 (f) If the reviewing court finds that the petitioner has
25 established one (1) of the elements described in subsection (b)(1)
26 through (b)(4), the court shall order the petitioner immediately
27 reinstated with back pay, if applicable.
- 28 (g) The court's determination granting or denying relief is a
29 final judgment.
- 30 Sec. 9. (a) A local elected official who is suspended from office
31 under this chapter shall not act in the official's official capacity and
32 is not entitled to receive any salary or remuneration as a local
33 elected official during the suspension period.
- 34 (b) A local elected official who is suspended from office under
35 this chapter is entitled to continue to receive any health benefits the
36 local elected official would have been entitled to receive if the local
37 elected official had not been suspended.
- 38 Sec. 10. (a) This section does not apply if a legislative body
39 suspends a local elected official who is a member of the legislative
40 body.
- 41 (b) If a legislative body suspends a local elected official under
42 section 7 of this chapter, the legislative body shall ensure that the
43 duties of the suspended local elected official are carried out and
44 may appoint an acting replacement for the suspended local elected
45 official.
- 46 Sec. 11. If a local elected official suspended under section 7 of
47 this chapter is convicted of an eligible offense, the local elected
48 official shall be removed from office in accordance with
49 IC 5-8-1-38.
- 50 Sec. 12. (a) If:

- 1 **(1) a local elected official suspended under section 7 of this**
 2 **chapter is acquitted or charges against the official are**
 3 **dropped;**
 4 **(2) a local elected official was charged with a felony but is**
 5 **convicted only of a misdemeanor; or**
 6 **(3) a local elected official was charged with a misdemeanor**
 7 **involving a breach of the peace that is committed while the**
 8 **local official is performing the official's official duties but is**
 9 **convicted only of a misdemeanor that does not involve a**
 10 **breach of the peace;**

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

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

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

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

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

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

28 Page 11, after line 18, begin a new paragraph and insert:

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

34 (1) The faithful compliance of the municipal fiscal officer with
 35 this chapter.

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

38 (b) A municipal fiscal officer who does any of the following is
 39 personally liable to a person suffering loss due to that action and may
 40 be removed from office by proper action filed under IC 5-8-1-35:
 41 **subject to other action as prescribed by law:**

42 (1) Fails to collect the interest or penalties provided for by this
 43 chapter on delinquent assessments and installments of
 44 assessments.

45 (2) Fails to enforce the collection of the assessments by the sale
 46 of the property. However, this subdivision does not apply to a
 47 municipal fiscal officer of a municipality that has adopted an
 48 ordinance under section 24(a) of this chapter.

49 (3) Otherwise fails to comply with this chapter.

50 (c) The surety on the municipal fiscal officer's bond is also liable

- 1 to the extent of the bond."
- 2 Renumber all SECTIONS consecutively.
(Reference is to EHB 1022 as reprinted April 6, 2011.)

Senator GARD