



February 11, 2011

SENATE BILL No. 166

DIGEST OF SB 166 (Updated February 9, 2011 6:55 pm - DI 87)

Citations Affected: IC 3-5; IC 36-1; IC 36-4; IC 36-8.

Synopsis: Local government employment. 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 assumes the elected executive office of the unit or becomes an elected member of the unit's legislative or fiscal body. Provides that an employee of a unit: (1) who is elected in the November 2011 municipal election and assumes office on January 1, 2012; or (2) who is serving in an elected office on December 31, 2011; may serve the remainder of the employee's elected term of office. Provides that the restriction does not prohibit an employee of a unit from holding an elected office of a unit other than the unit that employs the government employee.

Effective: July 1, 2011.

Lawson C

January 5, 2011, read first time and referred to Committee on Local Government.
February 10, 2011, amended, reported favorably — Do Pass.

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SB 166—LS 6847/DI 73+



February 11, 2011

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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SENATE BILL No. 166



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 3-5-9 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:

4 **Chapter 9. Government Employees Holding Office**

5 **Sec. 1. (a) Except as provided in subsection (b), this chapter**
6 **applies to a government employee who, after June 30, 2011,**
7 **assumes an elected office of the unit that employs the individual.**

8 **(b) This subsection applies to a government employee:**

9 **(1) who was elected at the municipal election in November**
10 **2011 and assumes an elected office of the unit on January 1,**
11 **2012; or**

12 **(2) who, on December 31, 2011, holds an elected office of the**
13 **unit that employs the individual.**

14 **This chapter does not apply to a government employee during the**
15 **employee's term of office. However, this chapter applies to the**
16 **government employee on the date the government employee's term**
17 **of office expires.**

SB 166—LS 6847/DI 73+



1 **Sec. 2. This chapter does not prohibit a government employee**
2 **from holding an elected office of a unit other than the unit that**
3 **employs the government employee.**

4 **Sec. 3. As used in this chapter, "elected office" refers only to the**
5 **following:**

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

9 **Sec. 4. As used in this chapter, "government employee" refers**
10 **to an employee of a unit. The term does not include an individual**
11 **who holds an elected office and is not otherwise employed by the**
12 **unit.**

13 **Sec. 5. As used in this chapter, "unit" means a county, city,**
14 **town, or township.**

15 **Sec. 6. An individual is considered to have resigned as a**
16 **government employee when the individual assumes an elected**
17 **office of the unit that employs the individual.**

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

- 22 (1) An elected or appointed officer.
- 23 (2) An individual described in IC 20-26-4-11.
- 24 (b) **Subject to IC 3-5-9**, an employee of a political subdivision may:
25 (1) be a candidate for any elected office and serve in that office if
26 elected; or
27 (2) be appointed to any office and serve in that office if appointed;
28 without having to resign as an employee of the political subdivision.

29 SECTION 3. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The powers of a city are
31 divided between the executive and legislative branches of its
32 government. A power belonging to one (1) branch of a city's
33 government may not be exercised by the other branch.

34 (b) **Subject to IC 3-5-9**, a city employee other than an elected or
35 appointed public officer may:

- 36 (1) be a candidate for any elective office and serve in that office
37 if elected; or
38 (2) be appointed to any office and serve in that office if appointed;
39 without having to resign as a city employee.

40 SECTION 4. IC 36-8-3-12 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. **Subject to**
42 **IC 3-5-9**, members of the safety board and members of any township,

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1 town, or city (including a consolidated city) police department, fire
2 department, or volunteer fire department (as defined by IC 36-8-12-2)
3 may:

- 4 (1) be candidates for elective office and serve in that office if
- 5 elected;
- 6 (2) be appointed to any office and serve in that office if appointed;
- 7 and
- 8 (3) as long as they are not in uniform and not on duty, solicit votes
- 9 and campaign funds and challenge voters for the office for which
- 10 they are candidates.

11 SECTION 5. IC 36-8-10-11 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) The sheriff may
13 dismiss, demote, or temporarily suspend a county police officer for
14 cause after preferring charges in writing and after a fair public hearing
15 before the board, which is reviewable in the circuit court. Written
16 notice of the charges and hearing must be delivered by certified mail
17 to the officer to be disciplined at least fourteen (14) days before the
18 date set for the hearing. The officer may be represented by counsel. The
19 board shall make specific findings of fact in writing to support its
20 decision.

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

25 (c) A county police officer may not be dismissed, demoted, or
26 temporarily suspended because of political affiliation nor after the
27 officer's probationary period, except as provided in this section.
28 **Subject to IC 3-5-9**, an officer may:

- 29 (1) be a candidate for elective office and serve in that office if
- 30 elected;
- 31 (2) be appointed to an office and serve in that office if appointed;
- 32 and
- 33 (3) except when in uniform or on duty, solicit votes or campaign
- 34 funds for the officer or others.

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

38 (e) An appeal under subsection (a) must be taken by filing in court,
39 within thirty (30) days after the date the decision is rendered, a verified
40 complaint stating in a concise manner the general nature of the charges
41 against the officer, the decision of the board, and a demand for the
42 relief asserted by the officer. A bond must also be filed that guarantees

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1 the appeal will be prosecuted to a final determination and that the
 2 plaintiff will pay all costs only if the court finds that the board's
 3 decision should be affirmed. The bond must be approved as bonds for
 4 costs are approved in other cases. The county must be named as the
 5 sole defendant and the plaintiff shall have a summons issued as in other
 6 cases against the county. Neither the board nor the members of it may
 7 be made parties defendant to the complaint, but all are bound by
 8 service upon the county and the judgment rendered by the court.

9 (f) All appeals shall be tried by the court. The appeal shall be heard
 10 de novo only upon any new issues related to the charges upon which
 11 the decision of the board was made. Within ten (10) days after the
 12 service of summons, the board shall file in court a complete written
 13 transcript of all papers, entries, and other parts of the record relating to
 14 the particular case. Inspection of these documents by the person
 15 affected, or by the person's agent, must be permitted by the board
 16 before the appeal is filed, if requested. The court shall review the
 17 record and decision of the board on appeal.

18 (g) The court shall make specific findings and state the conclusions
 19 of law upon which its decision is made. If the court finds that the
 20 decision of the board appealed from should in all things be affirmed,
 21 its judgment should so state. If the court finds that the decision of the
 22 board appealed from should not be affirmed in all things, then the court
 23 shall make a general finding, setting out sufficient facts to show the
 24 nature of the proceeding and the court's decision on it. The court shall
 25 either:

- 26 (1) reverse the decision of the board; or
- 27 (2) order the decision of the board to be modified.

28 (h) The final judgment of the court may be appealed by either party.
 29 Upon the final disposition of the appeal by the courts, the clerk shall
 30 certify and file a copy of the final judgment of the court to the board,
 31 which shall conform its decisions and records to the order and
 32 judgment of the court. If the decision is reversed or modified, then the
 33 board shall pay to the party entitled to it any salary or wages withheld
 34 from the party pending the appeal and to which the party is entitled
 35 under the judgment of the court.

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

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

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 166, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 7, delete "political subdivision" and insert "**unit**".

Page 1, delete lines 9 through 14, begin a new paragraph and insert:

"(b) This subsection applies to a government employee:

(1) who was elected at the municipal election in November 2011 and assumes an elected office of the unit on January 1, 2012; or

(2) who, on December 31, 2011, holds an elected office of the unit that employs the individual.

This chapter does not apply to a government employee during the employee's term of office. However, this chapter applies to the government employee on the date the government employee's term of office expires."

Page 1, line 10, delete "political subdivision" and insert "**unit**".

Page 1, line 16, delete "political subdivision" and insert "**unit**".

Page 1, line 17, delete "political subdivision" and insert "**unit**".

Page 2, delete lines 1 through 5, begin a new paragraph and insert:

"Sec. 3. As used in this chapter, "elected office" refers only to the following:

(1) The elected executive of a unit.

(2) An elected member of the legislative body or fiscal body of a unit."

Page 2, line 7, delete "political subdivision" and insert "**unit**".

Page 2, line 9, delete "political subdivision" and insert "**unit**".

Page 2, between lines 9 and 10, begin a new paragraph and insert:

"Sec. 5. As used in this chapter, "unit" means a county, city, town, or township."

Page 2, line 10, delete "5." and insert "**6.**".

Page 2, line 12, delete "political subdivision" and insert "**unit**".

and when so amended that said bill do pass.

(Reference is to SB 166 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 6, Nays 3.

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