Digest Change
February 18, 2011

SENATE BILL No. 273

DIGEST OF SB 273 (Updated February 18, 2011 2:54 pm - DI 84)

Citations Affected: IC 4-15; noncode.

Synopsis: State civil service system; employee organizations. Establishes the state personnel department (department), which applies to employees of a governmental entity that exercises any of the executive powers of the state under the direction of the governor or lieutenant governor, except for a body corporate and politic and the state police. Requires the governor to appoint a director (director) who is responsible for administering the department. Establishes the state civil service system (system) under which state employees are categorized according to two classifications of state employment: (1) classified; and (2) unclassified service. Provides that an employee in the state classified service who successfully completes a working test period may be dismissed, demoted, or suspended only for just cause. Establishes a process for an employee to file a complaint and appeal an adverse personnel decision. Provides that an unclassified employee is an employee at will and serves at the pleasure of the employee's appointing authority. Requires the director to establish and maintain a classification and pay plan for the system. Requires the director, in cooperation with appointing authorities, to establish and amend standards of performance and expected outcomes for employees and a system of service ratings based on the standards. Requires each appointing authority to make, at least annually, service ratings for the employees in the authority's division of the system. Provides that the

(Continued next page)

Effective: July 1, 2011.

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Boots

January 6, 2011, read first time and referred to Committee on Rules and Legislative Procedure.
January 20, 2011, amended; reassigned to Committee on Pensions and Labor.
February 17, 2011, amended, reported favorably — Do Pass.

Digest Continued

state shall not recognize, bargain collectively with, enter into a collectively bargained agreement with, or require an employee to join or financially support an employee organization. Provides that a contract or any other form of agreement resulting from negotiations between the state and an employee organization is illegal, unlawful, unenforceable, void, and of no effect. Provides that a state employee is entitled to be a member of or otherwise associate with an employee organization, consult with others for the common good of employees, financially support an employee organization, and petition for the redress of grievances in a manner that does not interfere with the performance of the duties of the employee or of another employee or adversely affect the conduct of state business. Provides that a state employee shall not strike. Provides that a person who knowingly or intentionally violates the provisions concerning employee organizations commits a Class A misdemeanor, and forfeits all rights, benefits, and privileges the person enjoys as a public employee or former public employee. Provides that a citizen of Indiana may institute a civil action for injunctive relief to enforce, prevent, or stop a violation of the provisions concerning employee organizations. Repeals provisions establishing the state personnel advisory board, the state personnel department, the state merit system, the career bipartisan personnel system, and the merit system for engineers. Repeals provisions concerning the removal of a public officer after a hearing. Repeals and replaces provisions concerning a government reorganization. Makes technical corrections.

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February 18, 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. 273

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-15-1.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. The appeals commission is hereby authorized and required to do the following:

(1) To hear or investigate those appeals from state employees as is set forth in ~~IC 4-15-2,~~ **IC 4-15-2.2-42,** and fairly and impartially render decisions as to the validity of the appeals or lack thereof. Hearings shall be conducted in accordance with IC 4-21.5.

(2) To make, alter, or repeal rules by a majority vote of its members for the purpose of conducting the business of the commission, in accordance with the provisions of IC 4-22-2.

(3) To recommend to the personnel director such changes, additions, or deletions to personnel policy which the appeals commission feels would be beneficial and desirable.

SECTION 2. IC 4-15-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 2.2. State Civil Service System

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to employees of a governmental entity that exercises any of the executive powers of the state under the direction of the governor or lieutenant governor.

(b) This chapter does not apply to the following:

(1) The legislative department of state government.

(2) The judicial department of state government.

(3) The following state elected officers and their personal staffs:

(A) The governor.

(B) The lieutenant governor.

(C) The secretary of state.

(D) The treasurer of state.

(E) The auditor of state.

(F) The superintendent of public instruction.

(G) The attorney general.

(4) A body corporate and politic of the state created by state statute.

(5) A political subdivision (as defined in IC 36-1-2-13).

(6) An inmate who is working in a state penal, charitable, correctional, or benevolent institution.

(7) The state police department.

(c) The chief executive officer of a governmental entity that is exempt from this chapter under subsection (b) may elect to have this chapter apply to all or a part of the entity's employees by submitting a written notice of the election to the director.

Sec. 2. As used in this chapter, "appointing authority" means the head of a department, division, board, or commission, or an individual or group of individuals who have the power by law or by lawfully delegated authority to make appointments to positions in the state civil service.

Sec. 3. As used in this chapter, "class" or "class of positions" means a group of positions in the state civil service determined by the director to have sufficiently similar duties, authority, and responsibility such that:

(1) the same qualifications may reasonably be required for; and

(2) the same schedule of pay can be equitably applied to;

all positions in the group.

Sec 4. As used in this chapter, "classified employee" means an employee who:

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(1) has been appointed to a position in the state classified service;

(2) has completed the working test period under section 34 of this chapter; and

(3) has been certified by the appointing authority for that classification of positions.

Sec. 5. As used in this chapter, "commission" refers to the state employees appeals commission created by IC 4-15-1.5-1.

Sec. 6. As used in this chapter, "department" refers to the state personnel department established under section 13 of this chapter. The term includes the director.

Sec. 7. As used in this chapter, "director" refers to the state personnel director appointed under section 14 of this chapter.

Sec. 8. As used in this chapter, "division of the service" means any of the following that are subject to this chapter and whose positions are under the same appointing authority:

(1) A state department.

(2) A division or branch of a state department.

(3) An agency of the state government.

(4) A branch of the state civil service.

Sec. 9. As used in this chapter, "state agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of state government that is subject to this chapter. The term does not include a state educational institution (as defined in IC 21-7-13-32).

Sec. 10. As used in this chapter, "state civil service" means public service by individuals who are subject to this chapter. The term includes the state classified service (as the term is described in section 21 of this chapter) and the unclassified service (as the term is described in section 22 of this chapter).

Sec. 11. As used in this chapter, "state institution" means any of the following:

(1) A state institution as defined in IC 12-7-2-184.

(2) A correctional facility (as defined in IC 4-13.5-1-1) owned by the state and operated by the department of correction.

(3) The Indiana School for the Deaf established by IC 20-22-2-1.

(4) The Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1.

(5) The Indiana Veterans' Home as described in IC 10-17-9.

(6) Any other facility owned and operated by the state whose employees participate in the state civil service.

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Sec. 12. (a) This chapter shall be liberally construed so as to increase governmental efficiency and responsiveness and to ensure the employment of qualified persons in the state classified service on the basis of the following merit principles:

(1) Recruitment, selection, and promotion of employees on the basis of an individual's relative ability, knowledge, and skills.

(2) The provision of equitable and adequate compensation.

(3) The training of employees to ensure high quality performance.

(4) The retention of employees based on:

(A) the quality of the employees' performance; and

(B) the correction of inadequate performance;

and the dismissal of employees whose inadequate performance is not corrected.

(5) Fair treatment of applicants and employees in all aspects of personnel administration:

(A) without regard to political affiliation, race, color, national origin, gender, religious creed, age, or disability; and

(B) with proper regard for the applicants' and employees' privacy and constitutional rights as citizens.

(6) Protection of employees from coercion for partisan political purposes, and prohibition on an employee using the employee's official authority to interfere with, or affect the result of, an election or nomination for political office.

(b) All employment matters in the state classified service are guided by the merit principles set forth in subsection (a).

(c) The personnel administration systems adopted under this chapter govern and limit all other state employment matters and every appointing authority.

Sec. 13. The state personnel department is established.

Sec. 14. (a) The governor shall appoint a director who is responsible for administering the department.

(b) The director serves at the governor's pleasure.

(c) The governor shall set the director's compensation.

Sec. 15. The director shall do the following:

(1) Direct and supervise all administrative and technical activities of the department.

(2) Survey the administrative organization and procedures, including personnel procedures, of all state agencies, and submit to the governor measures to do the following among state agencies:

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(A) Secure greater efficiency and economy.
(B) Minimize the duplication of activities.
(C) Effect better organization and procedures.
(3) Develop personnel policies, methods, procedures, and standards for all state agencies.
(4) Establish and maintain a roster of all employees in the state civil service.
(5) Prepare, or cause to be prepared, a classification and pay plan for the state civil service.
(6) Administer the classification and pay plan prepared under subdivision (5).
(7) Allocate each position in the state civil service to its proper class.
(8) Approve individuals for appointment to positions in the state civil service.
(9) Approve employees for transfer, demotion, or promotion within the state civil service.
(10) Approve employees for suspension, layoff, or dismissal from the state civil service.
(11) Rate the service of employees.
(12) Arrange, in cooperation with the directors of the divisions of the service, for employee training.
(13) Make available employee relations specialists to help employees:
(A) resolve employment related problems; and
(B) understand the procedures that are available for redress of grievances that the employee relations specialists do not resolve.
(14) Investigate systems of appointment and promotion in operation in various departments or divisions of the state government.
(15) Investigate and approve the need for existing and new positions in the state civil service.
(16) Investigate periodically the operation and effectiveness of this chapter and rules adopted under this chapter.
(17) Implement, administer, and enforce this chapter and rules and policies adopted under this chapter.
(18) Appoint employees, experts, and special assistants, as necessary, to effectively carry out this chapter.
(19) Perform any other lawful acts that the director considers necessary or desirable to carry out this chapter.
(20) Perform any other duties imposed by this chapter or

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assigned by the governor.

Sec. 16. The director shall appoint one (1) or more employees of the department as the director's deputies.

Sec. 17. (a) The director may employ such expert or special examiners as may be required for the conduct of tests for positions in the state civil service.

(b) The director may select officers or employees in the state civil service to act as examiners in the preparation and rating of the tests described in subsection (a). An appointing authority may excuse any employee in the appointing authority's division of the service from the employee's regular duties for the time required to work as an examiner.

(c) Officers and employees are not entitled to extra pay for their service as examiners, but are entitled to reimbursement for necessary traveling and other expenses.

Sec. 18. The department may do the following:

(1) Acquire, lease, own, or sell property in the name of the state in order to carry out its responsibilities under this chapter.

(2) Adopt a seal.

(3) Contract with persons outside the department to do those things that in the director's opinion cannot be adequately or efficiently handled by the department.

(4) Sue and be sued.

(5) Hire attorneys.

(6) Administer oaths.

(7) Take depositions.

(8) Issue subpoenas.

Sec. 19. The director may adopt rules under IC 4-22-2 that the director considers necessary, appropriate, or desirable to carry out the department's responsibilities under this chapter.

Sec. 20. The state civil service is divided into the following parts:

(1) The state classified service.

(2) The unclassified service.

Sec. 21. (a) Except as provided in subsection (b), the state classified service consists of positions in programs that have a federal statutory or regulatory requirement for the establishment and maintenance of personnel standards on a merit basis, including positions under the following:

(1) Employment Security (Unemployment Insurance and Employment Services) (26 U.S.C. 3301 et seq., 29 U.S.C. 2801 et seq., 38 U.S.C. 2000 et seq., 42 U.S.C. 501 et seq., and 42

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U.S.C. 1101 et seq.).

(2) Federal Payments for Foster Care and Adoption Assistance (42 U.S.C. 673).

(3) Supplemental Nutrition Assistance Program (7 U.S.C. 2011 et seq.).

(4) Grants to States for Aid to the Blind (42 U.S.C. 1201 et seq.).

(5) Medical Assistance (Medicaid) (42 U.S.C. 1396 et seq.).

(6) Occupational Safety and Health Act (29 U.S.C. 651 et seq.).

(7) Occupational Safety and Health Grants to States (29 U.S.C. 673).

(8) Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5121 et seq.).

(9) Social Security Act (42 U.S.C. 301 et seq.).

(10) State and Community Programs on Aging and the Older Americans Act (42 U.S.C. 3001 et seq.).

(11) Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(b) The following positions are exempt from the state classified service:

(1) An officer or employee appointed by the governor or lieutenant governor.

(2) A deputy, an administrative assistant, a secretary, or another position in a confidential relationship to an officer or employee described in subdivision (1).

(3) An employee who holds an executive level position:

(A) who is the head of a division or major unit within a state agency;

(B) who is a regional director or manager for a state agency, regardless of the title of the position; or

(C) who, as a substantial part of the position's duties, provides meaningful input on:

(i) the development of policy goals; or

(ii) the implementation of policy.

(4) The superintendent or director of a state institution.

(5) The highest ranking employee of a state agency who:

(A) holds an executive level position; and

(B) has primary responsibility for one (1) or more of the following functions:

(i) Public information.

(ii) Legal matters.

(iii) Fiscal matters.

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(iv) Security or internal affairs.

(v) Human resources.

(c) This section may not be construed to include in the state classified service a position in a governmental entity listed in section 1(b) of this chapter unless the chief executive officer of the governmental entity makes the election described in section 1(c) of this chapter to have all or a part of the governmental entity's employees participate in the state civil service.

Sec. 22. (a) The unclassified service consists of all offices and positions in the state civil service other than those in the state classified service.

(b) The unclassified service is separate from the state classified service.

(c) Except as expressly provided in this chapter, the human resource management systems applicable to the state classified service do not apply to the unclassified service.

Sec. 23. (a) An employee in the state classified service who has successfully completed a working test period may be dismissed, demoted, or suspended only for just cause, including cause under section 49 of this chapter.

(b) A classified employee is entitled to appeal a dismissal, demotion, or suspension as provided in section 42 of this chapter.

Sec. 24. (a) An employee in the unclassified service is an employee at will and serves at the pleasure of the employee's appointing authority.

(b) An employee in the unclassified service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy.

Sec. 25. Whenever a state agency or state institution is added to the classified part of the state civil service established by this chapter, an employee of the state agency or state institution who is in a position that is not subject to the classified provisions of this chapter is entitled to continue in that position until the employee has an opportunity to acquire classified employee status.

Sec. 26. (a) The director, after consulting with appointing authorities and other qualified authorities, shall determine, or cause to be determined, the authority, duties, and responsibilities of all positions in the state civil service.

(b) The director shall prepare a classification plan that groups all positions in the state civil service in classes, based on the authority, duties, and responsibilities of each position. The classification plan must set forth, for each class of positions, the

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class title and a statement of the authority, duties, and responsibilities of the class. Each class of positions may be subdivided, and classes may be grouped and ranked in such manner as the director considers appropriate.

(c) New, reclassified, or reallocated positions must be classified, reclassified, or reallocated in the same manner as positions were initially classified or allocated.

(d) The director periodically shall:

(1) review the positions in state civil service; and

(2) reallocate the positions to the proper classes based on the duties and responsibilities of the positions at the time of the review under subdivision (1).

Sec. 27. (a) After consultation with the budget agency, the director shall prepare and recommend to the governor a pay plan for all employees holding positions for which compensation is not fixed by law.

(b) The pay plan shall provide, for each class of positions, a minimum and maximum rate of pay as well as any intermediate rates of pay that the director considers necessary or equitable. In establishing the rates, the director shall consider the following factors:

(1) The experience in recruiting for positions in the state civil service.

(2) The prevailing rates of pay for the service performed and for comparable services in public and private employment.

(3) The cost of living.

(4) Benefits, other than the rate of pay, available to or received by employees.

(5) The state's financial condition and policies.

(c) The pay plan takes effect after the plan is approved by the budget agency and accepted by the governor.

Sec. 28. (a) Classification titles or corresponding code numbers must be used to designate positions in all personnel, accounting, budget, appropriation, and financial records and communications of all state departments, institutions, and agencies.

(b) A person may not be appointed to or employed in a position in the state civil service unless the director has approved the class title of the position as appropriate to the duties to be performed.

Sec. 29. Vacancies in the state classified service may be filled only by a process approved by the director in accordance with the merit principles set forth in section 12 of this chapter.

Sec. 30. An application for employment may be rejected if the

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department determines that the applicant:

(1) lacks any of the required qualifications;

(2) is incapable of performing the essential functions of the position that the applicant is seeking;

(3) has been convicted of a crime;

(4) has been dismissed from the public service;

(5) has made a false statement of a material fact; or

(6) committed or attempted to commit a fraud or deception in connection with submitting an application or attempting to secure an appointment to the state civil service.

Sec. 31. (a) The director shall inform prospective applicants for state employment of the process for obtaining state employment.

(b) The director may advertise or employ any other methods of publicizing opportunities for employment in state civil service.

Sec. 32. (a) Former members of the armed forces of the United States who meet both of the following requirements shall receive a preference for appointment or reemployment in the state classified service:

(1) The veteran served on active duty in any branch of the armed forces.

(2) The veteran was not discharged or separated from the armed forces under other than honorable conditions, unless the veteran presents appropriate records from:

(A) the United States Department of Defense; or

(B) the appropriate branch of the armed forces;

showing a correction of a separation or discharge to "honorable".

(b) When:

(1) preemployment interviews of external candidates are conducted; and

(2) the qualified applicant pool includes veterans;

veterans must be included in the group offered interviews.

(c) In computing seniority for purposes of a personnel reduction in state civil service, the computation must include the length of time the employee spent on active duty in the armed forces of the United States.

Sec. 33. (a) As used in this section, "individual with a disability" means an individual:

(1) with a physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual; or

(2) who:

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(A) has a record of; or

(B) is regarded as;

having an impairment described in subdivision (1).

(b) Notwithstanding any other provision of this chapter, an Indiana rehabilitation facility or the division of disability and rehabilitative services may certify that an individual:

(1) is an individual with a disability; and

(2) possesses the required knowledge, skill, and ability to perform the essential functions of a position classification:

(A) with or without reasonable accommodation; or

(B) with special accommodation for supported employment.

(c) An applicant with a disability who is certified under subsection (b) may be appointed to a position in a classification for which the applicant is certified.

Sec. 34. (a) Every person appointed to a classification in the state classified service shall complete a working test period while occupying a position in the classification. The working test period begins immediately upon the person's appointment and continues until a time established by the director. At least once during the working test period, the appointing authority shall prepare for the director, in the manner specified by the director, a full performance appraisal of the employee's work.

(b) Subject to subsection (c), the appointing authority may remove an employee for any reason at any time during the employee's working test period. The appointing authority shall immediately report the removal to the director and to the employee who is removed.

(c) If the director finds during an employee's working test period that the employee was appointed as a result of error or fraud, the director may remove the employee after providing the employee with notice and an opportunity to be heard.

(d) Before the expiration of an employee's working test period, the appointing authority shall notify the director as to:

(1) whether the services of the employee have been satisfactory; and

(2) whether the appointing authority will continue the employee's employment after the working test period ends.

The appointing authority shall provide the employee with a copy of the notice given to the diretor.

(e) Sections 23 and 42 of this chapter do not apply to an employee who is removed during a working test period for the

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initial classification in the state classified service to which the employee is appointed.

(f) The removal of an employee in the classified service from a working test for a promotion from one (1) classification to another classification is not appealable, unless the removal results in the employee's dismissal or layoff.

Sec. 35. (a) An appointing authority may at any time reassign an employee from one position to another position in the same class or rank in the division of the service. The appointing authority shall, immediately after making the reassignment, give notice of the reassignment to the director.

(b) The transfer of a classified employee from a position in a division of the service to a position of the same class or rank in another division of the service requires the approval of:

(1) the appointing authorities of both divisions of the service; and

(2) the director.

(c) A classified employee must be appointed, rather than transferred, to a position:

(1) in another class of a higher rank; or

(2) for which the requirements for appointment are substantially dissimilar to the requirements for the position the employee currently holds.

(d) The reassignment of a classified employee to a position in a class of a lower rank is a demotion. Unless the employee consents to the demotion in writing, the appointing authority must comply with section 23 of this chapter in making the demotion. A classified employee is entitled to appeal the demotion in accordance with section 42 of this chapter.

(e) This section may not be construed to prohibit an appointing authority from temporarily substituting duties unrelated to an employee's position classification for the employee's usual duties.

(f) This section may not be construed to impair the director's authority to reclassify or reorganize positions in the state civil service as long as the reclassification or reorganization is not based on a classified employee's misconduct or poor performance. The just cause standard described in section 23 of this chapter does not apply to such a reclassification or reorganization.

Sec. 36. (a) In cooperation with appointing authorities, the director shall establish, and may periodically amend:

(1) the standards of performance for employees;

(2) the expected outcomes for employees; and

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(3) a system of service ratings based upon the standards described in subdivisions (1) and (2).

(b) Employee performance standards and expected outcomes must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or state institution, and time sensitive.

(c) Each employee at all levels of the state civil service shall be held accountable for participating in the process of establishing the standards, outcomes, and ratings described in this section.

(d) Each appointing authority shall, at periodic intervals (but at least annually), make, and report to the director, service ratings for the employees in the appointing authority's division of the service. As requested by the director, the appointing authority shall provide the information on which the appointing authority relied in determining a service rating.

(e) Service ratings may be used as follows:

(1) To determine salary increases and decreases within the limits established by law and by the pay plan developed under section 27 of this chapter.

(2) As a factor in making promotions.

(3) As a means of discovering employees:

(A) who are candidates for promotion or transfer; or

(B) who, because of a low service rating, are candidates for demotion or dismissal.

Sec. 37. (a) An appointing authority shall report to the director each appointment, transfer, promotion, demotion, dismissal, change of salary rate, absence from duty, and other temporary or permanent change in the status of an employee in the appointing authority's division of the service.

(b) The director shall prescribe the submission deadline, the form, and the supporting or pertinent information required for the report.

Sec. 38. (a) The director shall maintain a perpetual roster that includes at least the following information for each employee in the state civil service system:

(1) Whether the employee is in the state classified service or the unclassified service.

(2) The title of the position the employee holds.

(3) The department, state agency, or state institution to which the employee is assigned.

(4) The employee's pay rate.

(5) The employee's date of appointment.

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(6) Any other information that the director considers pertinent.

(b) The director shall maintain any other personnel records that the director considers desirable.

(c) The director shall provide tabulations and analyses of state employee personnel data that are available to the director to:

(1) the governor;

(2) the general assembly in the electronic format required by IC 5-14-6;

(3) the budget director;

(4) department and institution directors; and

(5) other persons to the extent required by and in accordance with IC 5-14-3.

(d) All officers and employees shall, during usual business hours:

(1) grant to the director, or any agent or employee of the department designated by the director, unlimited access to the premises and records pertaining to personnel matters that are under the officers' or employees' control; and

(2) furnish to the director, or the director's agent, the facilities, assistance, and information required to administer this chapter.

Sec. 39. Rules adopted by the department for state civil service employees must provide for the hours of work and leaves of absence.

Sec. 40. (a) An appointing authority has the authority to lay off or furlough employees or to reduce hours of employment for any of the following reasons:

(1) Lack of funds.

(2) A reduction in spending authorization.

(3) Lack of work.

(4) Efficiency.

(b) The appointing authority has the authority to determine the extent, effective dates, and length of a layoff, furlough, or reduction in hours taken under subsection (a).

(c) The appointing authority shall determine the classifications affected and the number of employees laid off in each classification and county to which a layoff applies.

(d) In determining a layoff, the appointing authority must consider all employees under the same appointing authority, within the classification affected, and within the county affected, and consider service ratings first. Thereafter, consideration may be

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given to the following relevant factors:

(1) Disciplinary record.

(2) Knowledge, skill, and ability.

(3) Seniority.

Sec. 41. (a) As used in this section, "state seniority" means the length of an employee's unbroken, continuous state employment.

(b) A former employee in the state civil service system has a right of recall to the classification from which the employee was laid off. Recall rights under this section are to positions under the same appointing authority and in the same county from which a former employee was laid off.

(c) A former employee must assert in a timely manner the claim of entitlement to recall in response to the official posting of a vacancy.

(d) A recall under this section is contingent upon the former employee having the knowledge, skill, and ability to perform the duties of the position for which the former employee is applying.

(e) The appointing authority shall recall former employees in the order of the employees' service ratings. In the event of a tie in service ratings, the right to recall is determined by state seniority. If there is a tie in state seniority, the former employee with the highest number comprised of the last four (4) digits of the employee's Social Security number is the employee recalled.

(f) The right to recall under this section expires on the earlier of:

(1) one (1) year after date the employee is laid off; or

(2) the date the employee is reemployed in a permanent position.

(g) For state seniority purposes, an employee who becomes reemployed within one (1) year after the date the employee is laid off is considered to have unbroken, continuous state employment, except that the time that the employee spent in out-of-pay status as a result of the layoff must be deducted from the employee's total seniority.

Sec 42. (a) An employee in the state civil service system may file a complaint concerning the application of a law, rule, or policy to the complainant. However, a gubernatorial appointee does not have standing to file a complaint under this section.

(b) A complaint filed under this section must identify the law, rule, or policy that was allegedly violated.

(c) An employee who files a complaint under this section must initiate the complaint procedure as soon as possible after the occurrence of the act or condition complained of, and not later

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than thirty (30) calendar days after the date the employee became aware, or by the exercise of reasonable diligence should have been aware, of the occurrence giving rise to the complaint. An employee who does not initiate the complaint procedure within the thirty (30) day period waives the right to file that complaint.

(d) A remedy granted under this section may not extend back more than thirty (30) calendar days before the complaint was initiated.

(e) The following complaint procedure is established:

Step I: The complainant shall reduce the complaint to writing and present the complaint to the appointing authority or the appointing authority's designated representative. The appointing authority or designee shall conduct any investigation considered necessary and issue a decision, in writing, not later than fifteen (15) calendar days after the date the appointing authority receives the complaint.

Step II: If the appointing authority or the appointing authority's designated representative does not find in favor of the complainant, the complainant may submit the complaint to the director not later than fifteen (15) calendar days after the date of the appointing authority's finding. The director or the director's designee shall review the complaint and issue a decision not later than thirty (30) calendar days after the date the complaint is submitted to the director.

Step III: If the employee is not satisfied with the director's decision, the employee may submit an appeal in writing to the commission not later than fifteen (15) calendar days after the date the employee receives notice of the action taken by the director or the director's designee. The commission shall determine whether all previous steps were completed properly and in a timely manner, and, subject to subsection (f), whether the employee and subject of the complaint meet the jurisdictional requirements. If a procedural or jurisdictional requirement is not met, the commission shall dismiss the appeal. If the procedural and jurisdictional requirements have been met, the commission shall conduct proceedings in accordance with IC 4-21.5-3.

(f) An unclassified employee must establish that the commission has subject matter jurisdiction to hear the employee's wrongful discharge claim by establishing that a public policy exception to the employment at will doctrine was the reason for the employee's discharge. The former employee has the burden of proof on this

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issue.

(g) In a disciplinary case involving a classified employee, the commission shall defer to the appointing authority's choice as to the discipline imposed, if the appointing authority establishes that there was just cause for the imposition of the discipline. The appointing authority has the burden of proof on this issue.

(h) Decisions of the commission are subject to judicial review in accordance with IC 4-21.5-3.

(i) An employee who is suspended or terminated after a hearing held by the state ethics commission is not entitled to use the procedure set forth in this section. An employee who seeks further review of a suspension or termination imposed by the state ethics commission must seek judicial review of the state ethics commission's decision in accordance with IC 4-21.5-3.

Sec. 43. (a) An employee covered by this chapter:

(1) is eligible for;

(2) must participate in; and

(3) receives the benefits of;

the public employees' retirement fund under IC 5-10.2 and IC 5-10.3.

(b) An employee holding an hourly, temporary, and intermittent appointment:

(1) is not eligible to become a member of the public employees' retirement fund; and

(2) does not earn creditable service for purposes of the public employees' retirement fund for service in those positions.

(c) Notwithstanding any contrary provision, an employee who served in an intermittent form of temporary employment after June 30, 1986, and before July 1, 2003, shall receive creditable service for the period of intermittent employment.

Sec. 44. (a) An officer or employee implementing or administering this chapter may not consider the political, religious, or racial characteristics of a classified employee.

(b) A classified employee may not be compelled to make political contributions or participate in any form of political activity.

Sec. 45. (a) This section does not apply to precinct committeemen, state or national party convention delegates, or candidates for these party positions.

(b) A classified employee who is elected to a federal or state public office is considered to have resigned from state service on the date the person takes office.

Sec. 46. A person may not:

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(1) make a false statement, certificate, mark, rating, or report in connection with an appointment under this chapter; or

(2) commit or attempt to commit in any manner fraud that prevents the impartial implementation or administration of this chapter or rules adopted under this chapter.

Sec. 47. A person may not, directly or indirectly, give, render, pay, offer, solicit, or accept money, service, or other valuable consideration:

(1) for, or in connection with, an appointment, a proposed appointment, a promotion, or a proposed promotion to; or

(2) to obtain any advantage in;

a position in the state classified service.

Sec. 48. (a) For the purpose of enforcing this chapter, the director and authorized employees of the department have authority to:

(1) administer oaths;

(2) conduct examinations;

(3) subpoena witnesses; and

(4) require:

(A) the attendance of witnesses; and

(B) the production of books, records, and papers;

at any reasonable place.

(b) The director must sign all subpoenas issued under this section.

(c) The circuit or superior court of a county shall compel obedience to subpoenas and requests for the production of books, records, and papers issued under this section, upon a verified written application by the person conducting the examination, ten (10) days notice to the person whose testimony or production is sought, and a showing of the probability of any of the following:

(1) The books, records, and papers are material to the examination.

(2) The witness has information that is material to the examination.

(d) It is unlawful to fail to:

(1) appear in response to a subpoena;

(2) answer questions; or

(3) produce books or papers;

in connection with an investigation or hearing under this chapter.

(e) It is unlawful to knowingly give false testimony at an investigation or hearing under this chapter.

Sec. 49. The refusal or failure of an employee in the state

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classified service to do any of the following is sufficient grounds for the employee's dismissal by the appointing authority:

(1) The employee willfully refuses or fails to appear before:

(A) a court or judge;

(B) a legislative committee; or

(C) an officer, board, or body authorized to conduct a hearing or inquiry.

(2) After making an appearance, the employee refuses to testify or answer questions relating to:

(A) the affairs or government of the state; or

(B) the conduct of any officer or employee.

Sec. 50. The director may enter into an agreement with a political subdivision (as defined in IC 36-1-2-13) to furnish services related to or involving the administration of the political subdivision's personnel system. The agreement must provide for the reimbursement to the state of the reasonable cost, as determined by the director, of the services and facilities furnished. All political subdivisions are authorized to enter into such agreements.

Sec. 51. This chapter may not be construed so as to result in the delay or stoppage of grants-in-aid to the state by agencies of the federal government.

Sec. 52. (a) Any reference or cross-reference to the state personnel department in the Indiana Code shall be treated after June 30, 2011, as a reference or cross-reference to the department.

(b) Any reference or cross-reference to IC 4-15-1.8 or IC 4-15-2 shall be treated after June 30, 2011, as a reference or cross-reference to IC 4-15-2.2.

(c) The provisions of this chapter supersede any inconsistent or conflicting provisions of the Indiana Code. Any inconsistency or conflict between or among the provisions shall be resolved in favor of the provisions of this chapter.

Sec. 53. The human resources management system established by this chapter shall be known as the state civil service system.

SECTION 3. IC 4-15-17 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 17. Employee Organizations

Sec. 1. As used in this chapter, "employee organization" means an entity that works in whole or in part for the common interest of employees.

Sec. 2. Collective bargaining between the state and employee

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organizations and strikes by state employees are illegal.

Sec. 3. The state, a state agency, or any other instrumentality of state government shall not:

(1) recognize a union or any other employee organization as a representative of the employees of the state, a state agency, or any other instrumentality of state government;

(2) bargain collectively with an employee organization;

(3) enter into a collectively bargained agreement; or

(4) require an employee to join or financially support an employee organization.

Sec. 4. An employee of the state, a state agency, or any other instrumentality of state government is entitled to do any of the following in a manner that does not interfere with the performance of the duties of the employee or of another employee of the state, a state agency, or any other instrumentality of state government or adversely affect the conduct of state business:

(1) Be a member of or otherwise associate with an employee organization.

(2) Consult with others for the common good of employees.

(3) Financially support an employee organization.

(4) Petition for the redress of grievances.

Sec. 5. Any contract, agreement, settlement, conditions of cooperation, or any other device resulting from negotiations between:

(1) the state, a state agency, or any other instrumentality of state government; and

(2) an employee organization;

is contrary to public policy and is illegal, unlawful, unenforceable, void, and of no effect.

Sec. 6. (a) As used in this section, "strike" means any of the following:

(1) A work stoppage or partial cessation of work.

(2) The abstinence, in whole or in part, from the full, faithful, and proper performance of the employee's duties of employment.

(3) Any other interruption or interference with the activities of the state, a state agency, or any other instrumentality of state government.

(4) The threat or encouragement of the activities described in subdivisions (1) through (3).

(b) An employee of the state, a state agency, or any other instrumentality of state government shall not strike.

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(c) An approved leave of absence or the unconditional resignation of an employee from employment is not a strike.

Sec. 7. (a) A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.

(b) A person who violates this chapter forfeits all civil service rights, reemployment rights, and any other rights, benefits, and privileges the person enjoys under IC 4-15-2.2 as a public employee or former public employee.

Sec. 8. Any citizen of Indiana has standing to institute a civil action for injunctive relief in any circuit or superior court in Indiana to:

(1) enforce the provisions of this chapter; or

(2) prevent or stop a violation of this chapter.

Sec. 9. This chapter does not alter, impair, or negate the existing relationship between the state police department and the Indiana state police alliance.

SECTION 4. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 4-15-1; IC 4-15-1.8; IC 4-15-2; IC 4-15-2.5; IC 4-15-3; IC 4-15-4; IC 4-15-9.

SECTION 5. [EFFECTIVE JULY 1, 2011] **(a) On July 1, 2011, 31 IAC 1 is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this article from the Indiana Administrative Code.**

(b) On July 1, 2011, the following rules are void:

(1) 31 IAC 2-1.

(2) 31 IAC 2-2.

(3) 31 IAC 2-4.

(4) 31 IAC 2-5.

(5) 31 IAC 2-6.

(6) 31 IAC 2-7.

(7) 31 IAC 2-8.

(8) 31 IAC 2-10.

(9) 31 IAC 2-12.

(10) 31 IAC 2-13.

(11) 31 IAC 2-15.

(12) 31 IAC 2-16.

(13) 31 IAC 2-17.1.

(14) 31 IAC 18.

(15) 31 IAC 4-3.

(16) 31 IAC 4-5.

(17) 31 IAC 4-6.

The publisher of the Indiana Administrative Code and Indiana

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Register shall remove these rules from the Indiana Administrative Code.

(c) On July 1, 2011, 31 IAC 4-8-2 and 31 IAC 4-8-3 are void. The publisher of the Indiana Administrative Code and Indiana Register shall remove these sections from the Indiana Administrative Code.

(d) This SECTION expires on July 2, 2011.

SECTION 6. [EFFECTIVE JULY 1, 2011] **(a) The legislative services agency shall prepare legislation for introduction in the 2012 regular session of the general assembly to organize and correct statutes affected by this act, including the updating of:**

(1) references and cross-references to:

(A) the state personnel department under IC 4-15-1.8 (before its repeal); and

(B) the 1941 State Personnel Act (commonly know as the state merit system) under IC 4-15-2 (before its repeal); and

(2) specific agency provisions concerning hiring, compensation, discipline, appeal rights, and other matters affecting personnel administration.

(b) This SECTION expires June 30, 2013.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 273, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Pensions and Labor.

(Reference is to SB 273 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 273, 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 6, line 26, delete "(7)" and insert "**(6)**".
Page 6, line 27, delete "(8)" and insert "**(7)**".
Page 6, line 28, delete "(9)" and insert "**(8)**".

and when so amended that said bill do pass.

(Reference is to SB 273 as printed January 21, 2011.)

BOOTS, Chairperson

Committee Vote: Yeas 7, Nays 3.

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