

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Local Government, to which was referred House Bill No. 1022, 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:**

- 1 Delete everything after the enacting clause and insert the following:  
2 SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS  
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2011]:  
5 **Chapter 9. Government Employees Holding Office**  
6 **Sec. 1. As used in this chapter, "elected office" refers only to the**  
7 **following:**  
8 (1) **The executive of a unit.**  
9 (2) **A member of the legislative body or fiscal body of a unit.**  
10 **Sec. 2. As used in this chapter, "government employee" refers**  
11 **to an employee of a unit. The term does not include an individual**  
12 **who holds an elected office and is not otherwise employed by the**  
13 **unit.**  
14 **Sec. 3. As used in this chapter, "unit" means a county, city,**  
15 **town, or township.**  
16 **Sec. 4. Except as provided in section 6 of this chapter, an**  
17 **individual is considered to have resigned as a government**  
18 **employee when the individual assumes an elected office of the unit**  
19 **that employs the individual.**  
20 **Sec. 5. This chapter does not prohibit a government employee**  
21 **from holding an elected office of a unit other than the unit that**

1 employs the government employee.

2 **Sec. 6. (a) A government employee who holds an elected office**  
 3 **of the unit on December 31, 2011, is not subject to this chapter**  
 4 **until the term of office that the employee is serving on December**  
 5 **31, 2011, expires.**

6 **(b) A government employee who assumes an elected office of the**  
 7 **unit on January 1, 2012, is not subject to this chapter until the term**  
 8 **of office that the employee is serving on January 1, 2012, expires.**

9 SECTION 2. IC 5-11-13-1, AS AMENDED BY P.L.169-2006,  
 10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2011]: Sec. 1. **(a)** Every state, county, city, town, township, or  
 12 school official, elective or appointive, who is the head of or in charge  
 13 of any office, department, board, or commission of the state or of any  
 14 county, city, town, or township, and every state, county, city, town, or  
 15 township employee or agent who is the head of, or in charge of, or the  
 16 executive officer of any department, bureau, board, or commission of  
 17 the state, county, city, town, or township, and every executive officer  
 18 by whatever title designated, who is in charge of any state educational  
 19 institution or of any other state, county, or city institution, shall during  
 20 the month of January of each year prepare, make, and sign a written or  
 21 printed certified report, correctly and completely showing the names  
 22 and business addresses of each and all officers, employees, and agents  
 23 in their respective offices, departments, boards, commissions, and  
 24 institutions, and the respective duties and compensation of each, and  
 25 shall forthwith file said report in the office of the state examiner of the  
 26 state board of accounts. However, no more than one (1) report covering  
 27 the same officers, employees, and agents need be made from the state  
 28 or any county, city, town, township, or school unit in any one (1) year.

29 **(b) This subsection applies to a unit (as defined in IC 36-1-2-23).**  
 30 **A report under subsection (a) that is submitted after December 31,**  
 31 **2011, must include a statement by the executive (as defined in**  
 32 **IC 36-1-2-5) of the unit, certified under the penalties for perjury,**  
 33 **regarding whether the unit has implemented a policy that complies**  
 34 **with IC 36-1-20 and IC 36-1-21. The executive (as defined in**  
 35 **IC 36-1-2-5) and the unit are subject to the penalties set forth in**  
 36 **IC 36-1-20 and IC 36-1-21.**

37 SECTION 3. IC 25-1-5-3.5 IS ADDED TO THE INDIANA CODE  
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

1 1, 2011]: **Sec. 3.5. For purposes of Article 2, Section 9 of the**  
 2 **Constitution of the State of Indiana, membership on a board is not**  
 3 **a lucrative office.**

4 SECTION 4. IC 25-1-6-3.5 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 6 1, 2011]: **Sec. 3.5. For purposes of Article 2, Section 9 of the**  
 7 **Constitution of the State of Indiana, membership on a board is not**  
 8 **a lucrative office.**

9 SECTION 5. IC 33-42-2-7 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) ~~A person who~~  
 11 ~~holds any lucrative office or appointment under the United States or~~  
 12 ~~under this state; and prohibited by the Constitution of the State of~~  
 13 ~~Indiana from holding more than one (1) lucrative office; may not serve~~  
 14 ~~as a notary public. If a person accepts a lucrative office or appointment;~~  
 15 ~~the person shall vacate the person's appointment as a notary. For~~  
 16 **purposes of Article 2, Section 9 of the Constitution of the State of**  
 17 **Indiana, notary public is not a lucrative office.**

18 (b) Subsection (a) does not apply to a person who holds a lucrative  
 19 office or appointment under any civil or school city or town of Indiana.  
 20 A person who is a public official, or a deputy or appointee acting for or  
 21 serving under a public official, may not make any charge for services  
 22 as a notary public in connection with any official business of that  
 23 office, or of any other office in the governmental unit in which the  
 24 person serves unless the charges are specifically authorized by a statute  
 25 other than the statute that establishes generally the fees and charges of  
 26 notaries public.

27 SECTION 6. IC 36-1-8-10.5, AS AMENDED BY P.L.1-2005,  
 28 SECTION 231, IS AMENDED TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2011]: Sec. 10.5. (a) This section does not  
 30 apply to the following:

- 31 (1) An elected or appointed officer.  
 32 (2) An individual described in IC 20-26-4-11.  
 33 (b) **Subject to IC 3-5-9**, an employee of a political subdivision may:  
 34 (1) be a candidate for any elected office and serve in that office if  
 35 elected; or  
 36 (2) be appointed to any office and serve in that office if appointed;  
 37 without having to resign as an employee of the political subdivision.

38 SECTION 7. IC 36-1-20 IS ADDED TO THE INDIANA CODE AS

1 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2011]:

3 **Chapter 20. Nepotism**

4 **Sec. 1. This chapter applies only to a unit.**

5 **Sec. 2. For purposes of this chapter, the performance of the**  
6 **duties of a precinct election officer (as defined in IC 3-5-2-40.1)**  
7 **that are imposed by IC 3 is not considered employment by a unit.**

8 **Sec. 3. As used in this chapter, "employee" means an individual**  
9 **who is employed by a unit on a full-time, part-time, temporary,**  
10 **intermittent, or hourly basis.**

11 **Sec. 4. (a) As used in this chapter "relative" means any of the**  
12 **following:**

- 13 (1) A spouse.
- 14 (2) A parent or stepparent.
- 15 (3) A child or stepchild.
- 16 (4) A brother, sister, stepbrother, or stepsister.
- 17 (5) A niece or nephew.
- 18 (6) An aunt or uncle.
- 19 (7) A daughter-in-law or son-in-law.

20 **(b) For purposes of this section, an adopted child of an**  
21 **individual is treated as a natural child of the individual.**

22 **(c) For purposes of this section, the terms "brother" and**  
23 **"sister" include a brother or sister by the half blood.**

24 **Sec. 5. Except as provided in sections 7 through 12 of this**  
25 **chapter, an individual may not be employed by a unit if the**  
26 **individual is a relative of any of the following:**

- 27 (1) The executive or a member of the executive body of the  
28 unit.
- 29 (2) A member of the legislative body of the unit.
- 30 (3) A member of the fiscal body of the unit.

31 **Sec. 6. Except as provided in sections 7 through 12 of this**  
32 **chapter, individuals who are:**

- 33 (1) relatives; and
  - 34 (2) employees or elected officers of the unit (excluding an  
35 elected officer described in section 5 of this chapter);
- 36 **may not be placed in a direct supervisory-subordinate relationship.**

37 **Sec. 7. An individual who is employed on June 30, 2011, in the**  
38 **same position with the unit that the person has held for at least**

1 twelve (12) consecutive months is not subject to sections 5 and 6 of  
 2 this chapter. However, if the individual meets the requirements of  
 3 this section and is a merit police officer or merit firefighter,  
 4 sections 5 and 6 of this chapter applies to the individual only if the  
 5 individual is promoted after June 30, 2011, to a higher rank other  
 6 than a merit rank.

7 **Sec. 8. An individual who:**

- 8 (1) is employed after June 30, 2011; and  
 9 (2) has been employed in the same position with the unit for  
 10 at least twelve (12) consecutive months immediately preceding  
 11 the date the relative described in section 5(1), 5(2), or 5(3) of  
 12 this chapter assumes office;

13 is not subject to sections 5 and 6 of this chapter. However, if the  
 14 individual meets the requirements of this section and is a merit  
 15 police officer or merit firefighter, sections 5 and 6 of this chapter  
 16 apply to the individual only if the individual is promoted to a  
 17 higher rank other than a merit rank.

18 **Sec. 9. An individual who:**

- 19 (1) is a police officer employed by a police department on  
 20 June 30, 2011, and serving a probationary period with the  
 21 intent of becoming a merit employee of the police department;  
 22 or  
 23 (2) is a firefighter employed by a fire department on June 30,  
 24 2011, and serving a probationary period with the intent of  
 25 becoming a merit employee of the fire department;

26 is not subject to sections 5 and 6 of this chapter. However, sections  
 27 5 and 6 of this chapter apply to an individual described in this  
 28 section if the individual is promoted after June 30, 2011, to a  
 29 higher rank other than a merit rank.

30 **Sec. 10. (a) This section applies to an individual who meets all of**  
 31 **the following requirements:**

- 32 (1) The individual:  
 33 (A) served as coroner; and  
 34 (B) is currently ineligible to serve as coroner under Article  
 35 6, Section 2(b) of the Constitution of the State of Indiana.  
 36 (2) The individual received certification under IC 36-2-14.  
 37 (3) The individual's successor in the office of coroner is a  
 38 relative of the individual.

1           **(b) An individual described in subsection (a) may be hired in the**  
 2 **position of deputy coroner and is not subject to sections 5 and 6 of**  
 3 **this chapter.**

4           **Sec. 11. If the township trustee's office is located in the township**  
 5 **trustee's personal residence, the township trustee may not hire**  
 6 **more than one (1) employee who is a relative. The employee:**

7           **(1) may be hired to work only in the township trustee's office;**

8           **and**

9           **(2) may not receive total salary, benefits, and compensation**  
 10 **that exceed five thousand dollars (\$5,000) per year.**

11 **An individual employed under this section is not subject to sections**  
 12 **5 and 6 of this chapter.**

13           **Sec. 12. A sheriff may hire the sheriff's spouse as prison matron**  
 14 **for the county under IC 36-8-10-5. An individual employed under**  
 15 **this section is not subject to sections 5 and 6 of this chapter.**

16           **Sec. 13. (a) Each elected officer of the unit shall annually certify**  
 17 **in writing, subject to the penalties for perjury, that the officer is in**  
 18 **compliance with this chapter. An officer shall submit the**  
 19 **certification to the executive of the unit not later than December 31**  
 20 **of each year.**

21           **(b) The unit must implement a policy that complies with this**  
 22 **chapter. The annual report filed by a unit with the state board of**  
 23 **accounts under IC 5-11-13-1 must include a statement by the**  
 24 **executive of the unit stating whether the unit has implemented a**  
 25 **policy that complies with this chapter. The executive's statement**  
 26 **must be certified under penalties for perjury.**

27           **Sec. 14. If the state board of accounts finds that a unit has not**  
 28 **implemented a policy that complies with this chapter, the state**  
 29 **board of accounts shall forward the information to:**

30           **(1) the prosecuting attorney of each county where the unit is**  
 31 **located; and**

32           **(2) the department of local government finance.**

33           **Sec. 15. If a unit has not implemented a policy that complies**  
 34 **with this chapter:**

35           **(1) the prosecutor of the county in which the unit is located**  
 36 **may prosecute the executive for perjury under IC 35-44-2-1;**  
 37 **and**

38           **(2) the department of local government finance may not**

- 1           **approve:**  
 2           **(A) the unit's budget; or**  
 3           **(B) any additional appropriations for the unit;**  
 4           **for the ensuing calendar year until the state board of accounts**  
 5           **certifies to the department of local government finance that**  
 6           **the unit is in compliance with this chapter.**

7           SECTION 8. IC 36-1-21 IS ADDED TO THE INDIANA CODE AS  
 8           A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 9           1, 2011]:

10          **Chapter 21. Contracting With a Unit**

11          **Sec. 1. This chapter applies only to a unit.**

12          **Sec. 2. As used in this chapter, "elected official" means:**

- 13           **(1) the executive or a member of the executive body of the**  
 14           **unit;**  
 15           **(2) a member of the legislative body of the unit; or**  
 16           **(3) a member of the fiscal body of the unit.**

17          **Sec. 3. (a) As used in this chapter "relative" means any of the**  
 18          **following:**

- 19           **(1) A spouse.**  
 20           **(2) A parent or stepparent.**  
 21           **(3) A child or stepchild.**  
 22           **(4) A brother, sister, stepbrother, or stepsister.**  
 23           **(5) A niece or nephew.**  
 24           **(6) An aunt or uncle.**  
 25           **(7) A daughter-in-law or son-in-law.**  
 26          **(b) For purposes of this section, an adopted child of an**  
 27          **individual is treated as a natural child of the individual.**  
 28          **(c) For purposes of this section, the terms "brother" and**  
 29          **"sister" include a brother or sister by the half blood.**

30          **Sec. 4. (a) A unit may enter into a contract or renew a contract**  
 31          **for the procurement of goods and services or a contract for public**  
 32          **works with:**

- 33           **(1) an individual who is a relative of an elected official; or**  
 34           **(2) a business entity that is wholly or partially owned by a**  
 35           **relative of an elected official;**

36          **only if the requirements of this section are satisfied and the elected**  
 37          **official does not violate IC 35-44-1-3.**

38          **(b) A unit may enter into a contract or renew a contract with an**

- 1 individual or business entity described in subsection (a) if:
- 2 (1) the elected official files with the unit a full disclosure,
- 3 which must:
- 4 (A) be in writing;
- 5 (B) describe the contract or purchase to be made by the
- 6 unit;
- 7 (C) describe the relationship that the elected official has to
- 8 the business entity or individual that contracts or
- 9 purchases;
- 10 (D) be affirmed under penalty of perjury;
- 11 (E) be submitted to the legislative body of the unit and be
- 12 accepted by the legislative body in a public meeting of the
- 13 unit prior to final action on the contract or purchase; and
- 14 (F) be filed, not later than fifteen (15) days after final
- 15 action on the contract or purchase, with:
- 16 (i) the state board of accounts; and
- 17 (ii) the clerk of the circuit court in the county where the
- 18 unit takes final action on the contract or purchase; and
- 19 (2) the unit satisfies any other requirements under IC 5-22 or
- 20 IC 36-1-12.
- 21 (c) An elected official shall also comply with the disclosure
- 22 provisions of IC 35-44-1-3, if applicable.
- 23 (d) This section does not affect the initial term of a contract in
- 24 existence at the time the term of office of the elected official of the
- 25 unit begins.
- 26 **Sec. 5. (a)** Each elected officer of the unit shall annually certify
- 27 in writing, subject to the penalties for perjury, that the officer is in
- 28 compliance with this chapter. An officer shall submit the
- 29 certification to the executive of the unit not later than December 31
- 30 of each year.
- 31 (b) The unit must implement a policy that complies with this
- 32 chapter. The annual report filed by a unit with the state board of
- 33 accounts under IC 5-11-13-1 must include a statement by the
- 34 executive of the unit stating whether the unit has implemented a
- 35 policy that complies with this chapter. The executive's statement
- 36 must be certified under penalties for perjury.
- 37 **Sec. 6.** If the state board of accounts finds that a unit has not
- 38 implemented a policy that complies with this chapter, the state

- 1 **board of accounts shall forward the information to:**  
 2 **(1) the prosecuting attorney of each county where the unit is**  
 3 **located; and**  
 4 **(2) the department of local government finance.**

5 **Sec. 7. If a unit has not implemented a policy that complies with**  
 6 **this chapter:**

- 7 **(1) the prosecutor of the county in which the unit is located**  
 8 **may prosecute the executive for perjury under IC 35-44-2-1;**  
 9 **and**  
 10 **(2) the department of local government finance may not**  
 11 **approve:**  
 12 **(A) the unit's budget; or**  
 13 **(B) any additional appropriations for the unit;**  
 14 **for the ensuing calendar year until the state board of accounts**  
 15 **certifies to the department of local government finance that**  
 16 **the unit is in compliance with this chapter.**

17 SECTION 9. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The powers of a city are  
 19 divided between the executive and legislative branches of its  
 20 government. A power belonging to one (1) branch of a city's  
 21 government may not be exercised by the other branch.

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

- 24 (1) be a candidate for any elective office and serve in that office  
 25 if elected; or  
 26 (2) be appointed to any office and serve in that office if appointed;  
 27 without having to resign as a city employee.

28 SECTION 10. IC 36-8-3-12 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. **Subject to**  
 30 **IC 3-5-9**, members of the safety board and members of any township,  
 31 town, or city (including a consolidated city) police department, fire  
 32 department, or volunteer fire department (as defined by IC 36-8-12-2)  
 33 may:

- 34 (1) be candidates for elective office and serve in that office if  
 35 elected;  
 36 (2) be appointed to any office and serve in that office if appointed;  
 37 and  
 38 (3) as long as they are not in uniform and not on duty, solicit votes

1           and campaign funds and challenge voters for the office for which  
2           they are candidates.

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

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

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

- 21           (1) be a candidate for elective office and serve in that office if  
22           elected;  
23           (2) be appointed to an office and serve in that office if appointed;  
24           and  
25           (3) except when in uniform or on duty, solicit votes or campaign  
26           funds for the officer or others.

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

30          (e) An appeal under subsection (a) must be taken by filing in court,  
31          within thirty (30) days after the date the decision is rendered, a verified  
32          complaint stating in a concise manner the general nature of the charges  
33          against the officer, the decision of the board, and a demand for the  
34          relief asserted by the officer. A bond must also be filed that guarantees  
35          the appeal will be prosecuted to a final determination and that the  
36          plaintiff will pay all costs only if the court finds that the board's  
37          decision should be affirmed. The bond must be approved as bonds for  
38          costs are approved in other cases. The county must be named as the

1 sole defendant and the plaintiff shall have a summons issued as in other  
2 cases against the county. Neither the board nor the members of it may  
3 be made parties defendant to the complaint, but all are bound by  
4 service upon the county and the judgment rendered by the court.

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

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

22 (1) reverse the decision of the board; or

23 (2) order the decision of the board to be modified.

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

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

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

(Reference is to HB 1022 as printed February 15, 2011.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 7, Nays 1.

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**Lawson C**

**Chairperson**