February 10, 2012

ENGROSSED
HOUSE BILL No. 1005

DIGEST OF HB 1005 (Updated February 8, 2012 4:20 pm - DI 87)

Citations Affected: IC 3-5; IC 5-11; IC 25-1; IC 33-42; IC 36-1; IC 36-4; IC 36-8.

Synopsis: Nepotism; conflict of interest. Specifies that the following are not lucrative offices: (1) Notary public. (2) Membership on a board

(Continued next page)

Effective: July 1, 2012.

Mahan, Bosma, Dobis, Wesco, Bacon, Baird, Behning, Borders, Brown C, Brown T, Burton, Candelaria Reardon, Cheatham, Cherry, Clere, Crouch, Culver, Davis, Davisson, Espich, Foley, Friend, Frizzell, Gutwein, Harris, Heaton, Heuer, Hinkle, Karickhoff, Klinker, Knollman, Kubacki, Lehe, Lehman, Leonard, McMillin, McNamara, Messmer, Morris, Noe, Riecken, Smith M, Soliday, Speedy, Stemler, Steuerwald, Sullivan, Torr, Truitt, Turner, Ubelhor, VanNatter, Welch, Wolkins, Yarde

(SENATE SPONSORS — LAWSON C, HOLDMAN)

January 9, 2012, read first time and referred to Committee on Government and Regulatory Reform.
January 13, 2012, amended, reported — Do Pass.
January 25, 2012, read second time, ordered engrossed. Engrossed.
January 30, 2012, read third time, passed. Yeas 70, nays 26.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Local Government.
February 9, 2012, amended, reported favorably — Do Pass.

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administered by the professional licensing agency. 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 a volunteer firefighter may not assume or hold a position on the executive, legislative, or fiscal body of a unit that receives fire protection services from the department in which the volunteer firefighter serves. Specifies that the restriction does not prevent an elected officer from serving on a board, commission, or committee of the unit. Provides that the restriction does not prohibit an employee or volunteer firefighter from holding an elected office of another unit. Allows an employee or a volunteer firefighter who assumes or holds an elected office on January 1, 2013, to continue to hold the office and be employed by the unit or serve as a volunteer firefighter until the expiration of the term of office. Provides that relatives may not be employed by a unit in positions that result in one relative being in the direct line of supervision of the other relative. Provides that an individual who is employed by a unit on July 1, 2012, is not subject to the provisions regarding nepotism unless the individual has a break in employment with the unit. Provides that for purposes of the nepotism law, the performance of the duties of a precinct election officer or a volunteer firefighter is not considered employment by a unit. Provides that an individual who is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit: (1) may remain employed by the unit and maintain the individual's position or rank even if the individual would be in the direct line of supervision of the individual's relative; and (2) may not be promoted to a position or, in the case of an individual who is a member of a merit police department or merit fire department, promoted to a position that is not within the merit ranks, if the new position would place the individual in the direct line of supervision of the individual's relative. Makes the following additional exceptions: (1) Allows a township trustee whose office is located in the trustee's personal residence to employ only one relative to work in the township trustee's office and be in the trustee's line of supervision. (2) Allows a coroner who is ineligible for another term of office due to term limits to be hired by the coroner's successor, even though the successor is a relative and will result in the coroner working in the successor's direct line of supervision. (3) Allows a sheriff to hire the sheriff's spouse as prison matron for the county and work in the sheriff's direct line of supervision. Limits the total compensation of the township trustee's employed relative to $5,000 per year. Provides that provisions concerning nepotism apply to a person who is a party to an employment contract with a unit. Requires a unit to implement a policy under the nepotism and contracting provisions. Allows a unit to implement a policy that is more stringent and detailed. Requires each elected official of the unit to annually certify in writing, subject to the penalties for perjury, that the official is in compliance with the nepotism and contracting law and to submit the certification to the executive of the local unit. Requires the executive of the local unit to file with the annual personnel report filed with the state board of accounts a statement regarding whether the unit has implemented a policy under the nepotism and contracting provisions Provides that a unit can enter into or renew: (1) a contract for the procurement of goods and services; or (2) a contract for public works; with a relative of an elected official or a business entity in which a relative has an ownership interest if the elected official does not violate the criminal conflict of interest statute and the elected official makes full, written disclosure and satisfies any other requirements of the public purchasing law or the public works law.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1005

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:

SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 9. Government Employees and Volunteer Firefighters Holding Office

Sec. 1. As used in this chapter, "elected office" refers only to the following:

(1) The executive of a unit.

(2) A member of the legislative body or fiscal body of a unit.

Sec. 2. As used in this chapter, "government employee" refers to an employee of a unit. The term does not include an individual who holds only an elected office.

Sec. 3. As used in this chapter, "unit" means a county, city, town, or township.

Sec. 4. (a) An individual who is serving as a volunteer firefighter

for a volunteer fire department or a fire department that provides fire protection services to a unit:

(1) under a contract, excluding a mutual aid agreement; or

(2) as the unit's fire department;

may not assume or hold an elected office of a unit that receives services from the department in which the volunteer firefighter serves.

(b) An individual who serves as a volunteer firefighter in a department that provides fire service to more than one (1) unit, excluding fire service provided under mutual aid agreements, may not assume or hold an elected office of any unit that receives fire service from the department.

Sec. 5. Except as provided in section 7 of this chapter, an individual is considered to have resigned as a government employee when the individual assumes an elected office of the unit that employs the individual.

Sec. 6. This chapter does not prohibit:

(1) a government employee from assuming or holding an elected office of a unit other than the unit that employs the government employee;

(2) a volunteer firefighter from assuming or holding an elected office of a unit other than the unit receiving services from the department in which the volunteer firefighter serves; or

(3) an individual who assumes or holds an elected office from also being appointed to and serving on a board, commission, or committee of the unit.

Sec. 7. (a) Notwithstanding sections 4 and 5 of this chapter:

(1) a volunteer firefighter who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and serve as a volunteer firefighter; and

(2) a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee;

until the term of the elected office that the volunteer firefighter or government employee is serving on January 1, 2013, expires.

(b) After the expiration of the term of the elected office that the volunteer firefighter referred to in subsection (a) is serving on January 1, 2013, the volunteer firefighter is subject to section 4 of this chapter with respect to serving as a volunteer firefighter and assuming or holding an elected office of the unit that receives services from the department in which the volunteer firefighter

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serves.

(c) After the expiration of the term of the elected office that the government employee referred to in subsection (a) is serving on January 1, 2013, the government employee is subject to section 5 of this chapter with respect to assuming or holding an elected office and being employed by the unit that employs the government employee.

SECTION 2. IC 5-11-13-1, AS AMENDED BY P.L.172-2011, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) Every state, county, city, town, township, or school official, elective or appointive, who is the head of or in charge of any office, department, board, or commission of the state or of any county, city, town, or township, and every state, county, city, town, or township employee or agent who is the head of, or in charge of, or the executive officer of any department, bureau, board, or commission of the state, county, city, town, or township, and every executive officer by whatever title designated, who is in charge of any state educational institution or of any other state, county, or city institution, shall during the month of January of each year prepare, make, and sign a written or printed certified report, correctly and completely showing the names and business addresses of each and all officers, employees, and agents in their respective offices, departments, boards, commissions, and institutions, and the respective duties and compensation of each, and shall forthwith file said report in the office of the state examiner of the state board of accounts. However, no more than one (1) report covering the same officers, employees, and agents need be made from the state or any county, city, town, township, or school unit in any one **(1)** year.

(b) The department of local government finance may not approve the budget of a county, city, town, or township or a supplemental appropriation for a county, city, town, or township until the county, city, town, or township files an annual report under subsection (a) for the preceding calendar year.

(c) This subsection applies to a unit (as defined in IC 36-1-2-23). A report under subsection (a) that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the unit regarding whether the unit has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a unit does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the department of local government finance may not approve the unit's budget or any additional appropriations for the unit for the ensuing calendar year.

SECTION 3. IC 25-1-5-3.5 IS ADDED TO THE INDIANA CODE

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AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a board is not a lucrative office.**

SECTION 4. IC 25-1-6-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a board is not a lucrative office.**

SECTION 5. IC 33-42-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) ~~A person who holds any lucrative office or appointment under the United States or under this state, and prohibited by the Constitution of the State of Indiana from holding more than one (1) lucrative office, may not serve as a notary public. If a person accepts a lucrative office or appointment, the person shall vacate the person's appointment as a notary.~~ **For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, notary public is not a lucrative office.**

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

SECTION 6. IC 36-1-8-10.5, AS AMENDED BY P.L.1-2005, SECTION 231, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10.5. (a) This section does not apply to the following:

(1) An elected or appointed officer.

(2) An individual described in IC 20-26-4-11.

(b) **Subject to IC 3-5-9,** an employee of a political subdivision may:

(1) be a candidate for any elected office and serve in that office if elected; or

(2) be appointed to any office and serve in that office if appointed;

without having to resign as an employee of the political subdivision.

SECTION 7. IC 36-1-20.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 20.2. Nepotism

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Sec. 1. This chapter applies to all units.

Sec. 2. An individual who is employed by a unit on July 1, 2012, is not subject to this chapter unless the individual has a break in employment with the unit. The following are not considered a break in employment with the unit:

(1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation.

(2) The individual's employment with the unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.

Sec. 3. For purposes of this chapter, the performance of the duties of:

(1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or

(2) a volunteer firefighter;

is not considered employment by a unit.

Sec. 4. As used in this chapter, "direct line of supervision" means an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

Sec. 5. As used in this chapter, "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

Sec. 6. As used in this chapter, "member of the fire department" means the fire chief or a firefighter appointed to the department.

Sec. 7. As used in this chapter, "member of the police department" means the police chief or a police officer appointed to the department.

Sec. 8. (a) As used in this chapter, "relative" means any of the following:

(1) A spouse.

(2) A parent or stepparent.

(3) A child or stepchild.

(4) A brother, sister, stepbrother, or stepsister.

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(5) A niece or nephew.
(6) An aunt or uncle.
(7) A daughter-in-law or son-in-law.

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

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

Sec. 9. (a) This chapter establishes minimum requirements regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

(1) include requirements that are more stringent or detailed than any provision in this chapter; and
(2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

Sec. 10. Individuals who are relatives may not be employed by a unit in a position that results in one (1) relative being in the direct line of supervision of the other relative.

Sec. 11. (a) This section applies to an individual who:

(1) is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit; and
(2) is not exempt from the application of this chapter under section 2 of this chapter.

(b) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate section 10 of this chapter.

(c) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual described in subsection (b) may not:

(1) be promoted to a position; or
(2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department;

if the new position would violate section 10 of this chapter.

Sec. 12. This chapter does not abrogate or affect an employment

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contract with a unit that:

(1) an individual is a party to; and

(2) is in effect on the date the individual's relative begins serving a term of an elected office of the unit.

Sec. 13. Unless the policy adopted under section 9 of this chapter provides otherwise, a sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.

Sec. 14. Unless the policy adopted under section 9 of this chapter provides otherwise, an individual:

(1) who served as coroner;

(2) who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana;

(3) who, as coroner, received certification under IC 36-2-14-22.3; and

(4) whose successor in the office of coroner is a relative of the individual;

may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

Sec. 15. If the township trustee's office is located in the township trustee's personal residence, unless the policy adopted under section 9 of this chapter provides otherwise the township trustee may hire only one (1) employee who is a relative. The employee:

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

(2) may be in the township trustee's direct line of supervision; and

(3) may not receive total salary, benefits, and compensation that exceed five thousand dollars ($5,000) per year.

Sec. 16. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer has not violated this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

Sec. 17. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

Sec. 18. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

(1) the unit's budget; or

(2) any additional appropriations for the unit;

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for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter.

SECTION 8. IC 36-1-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 21. Contracting With a Unit

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

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

(1) the executive or a member of the executive body of the unit;

(2) a member of the legislative body of the unit; or

(3) a member of the fiscal body of the unit.

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

(1) A spouse.

(2) A parent or stepparent.

(3) A child or stepchild.

(4) A brother, sister, stepbrother, or stepsister.

(5) A niece or nephew.

(6) An aunt or uncle.

(7) A daughter-in-law or son-in-law.

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

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

Sec. 4. (a) This chapter establishes minimum requirements regarding contracting with a unit. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

(1) include requirements that are more stringent or detailed than any provision in this chapter; and

(2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

Sec. 5. (a) A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public

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works with:

(1) an individual who is a relative of an elected official; or

(2) a business entity that is wholly or partially owned by a relative of an elected official;

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

(b) A unit may enter into a contract or renew a contract with an individual or business entity described in subsection (a) if:

(1) the elected official files with the unit a full disclosure, which must:

(A) be in writing;

(B) describe the contract or purchase to be made by the unit;

(C) describe the relationship that the elected official has to the individual or business entity that contracts or purchases;

(D) be affirmed under penalty of perjury;

(E) be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and

(F) be filed, not later than fifteen (15) days after final action on the contract or purchase, with:

(i) the state board of accounts; and

(ii) the clerk of the circuit court in the county where the unit takes final action on the contract or purchase;

(2) the appropriate agency of the unit:

(A) makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or

(B) makes a certified statement of the reasons why the vendor or contractor was selected; and

(3) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

(c) An elected official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(d) This section does not affect the initial term of a contract in existence at the time the term of office of the elected official of the unit begins.

Sec. 6. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the unit not later than December 31

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of each year.

Sec. 7. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

Sec. 8. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

(1) the unit's budget; or

(2) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit has adopted a policy under this chapter.

SECTION 9. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) The powers of a city are divided between the executive and legislative branches of its government. A power belonging to one (1) branch of a city's government may not be exercised by the other branch.

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

(1) be a candidate for any elective office and serve in that office if elected; or

(2) be appointed to any office and serve in that office if appointed;

without having to resign as a city employee.

SECTION 10. IC 36-8-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. **Subject to IC 3-5-9,** members of the safety board and members of any township, town, or city (including a consolidated city) police department, fire department, or volunteer fire department (as defined by IC 36-8-12-2) may:

(1) be candidates for elective office and serve in that office if elected;

(2) be appointed to any office and serve in that office if appointed; and

(3) as long as they are not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the office for which they are candidates.

SECTION 11. IC 36-8-5-2, AS AMENDED BY P.L.130-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) The police chief or fire chief may be granted a leave of absence by the authority who appointed the police chief or fire chief. This appointing authority may also grant a leave of absence to any other full-time, fully paid police officer or firefighter.

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(b) A leave of absence under subsection (a) shall be granted for service in the Indiana general assembly. A leave of absence under subsection (a) may also be granted for service in any other elected office or for one (1) of the following reasons:

(1) Sickness.

(2) Disability.

(3) Sabbatical purposes.

However, a leave of absence because of disability may not be granted to a member of the 1977 fund under this subsection unless a leave granted under subsection (g) has expired without disability benefits having been paid from the 1977 fund. In the case of such an expiration, a leave for purposes of disability may be granted under this subsection but only until the member's eligibility for disability benefits is finally determined.

(c) Before a leave of absence may be granted for sabbatical purposes, the member must submit a written request explaining and justifying the leave to the appointing authority. Sabbatical purposes must be related to the improvement of the member's professional performance and skills, such as education, special training, work related experience, and exchange programs.

(d) This subsection applies to leaves of absence granted under subsection (b)(1), (b)(2), or (b)(3). A leave of absence may extend for a period of not more than one (1) year, determined by the appointing authority, and may be renewed upon written request of the member.

(e) This subsection applies to leaves of absence granted for service in an elected office. A police officer or firefighter who serves in the general assembly shall be granted a leave for the time spent in this service, including the time spent for committee or legislative council meetings. **Except as provided in IC 3-5-9,** a police officer or firefighter who serves in any other elected office may be granted a leave for the time spent in this service. Leave for service in an elected office does not diminish a police officer's or firefighter's rights under the police officer's or firefighter's retirement or pension fund, except as provided in section 10 of this chapter, or advancement on the police officer's or firefighter's department salary schedule. For these purposes, the police officer or firefighter is, despite the leave, considered to be a member of the department during that time.

(f) This subsection applies to leaves of absence granted under subsection (b)(1), (b)(2), or (b)(3). A member on leave may receive compensation in an amount determined by the appointing authority, up to a maximum amount that equals the member's salary before the leave began.

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(g) This subsection applies only to members of the 1977 fund. The local board may grant a leave of absence for purposes of disability to full-time, fully paid police officers or firefighters (including the police chief or fire chief). The leave is subject to the following conditions:

(1) The police chief or fire chief must make a written determination that there is no suitable and available work on the appropriate department for which the fund member is or may be capable of becoming qualified.

(2) The leave must be approved by the local board after a hearing conducted under IC 36-8-8-12.7.

(3) The leave may not begin until the police officer or firefighter has exhausted all paid leave for sickness.

(4) The leave shall continue until disability benefits are paid from the 1977 fund. However, the leave may not continue for more than six (6) months.

(5) During the leave, the police officer or firefighter is entitled to receive compensation in an amount equal to fifty percent (50%) of the salary of a first class patrolman or first class firefighter on the date the leave begins.

Payments of compensation under this subsection may not be made from the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund.

(h) Determinations under subsection (g) are not reviewable by the board of trustees of the public employees' retirement fund.

(i) This subsection applies to leaves of absence granted under subsection (a) or (b). An appointing authority shall establish a policy in writing that specifies whether a police officer or firefighter is entitled, during a leave of absence, to participate in any promotional process or earn seniority. A policy established under this subsection is subject to a department's existing disciplinary procedures. An appointing authority shall reinstate a police officer or firefighter returning from a leave at the merit or permanent rank determined under the policy established under this subsection. However, except as otherwise provided by federal law, an appointing authority is not required to reinstate a police officer or firefighter in the job that the police officer or firefighter held at the time the police officer's or firefighter's leave began.

SECTION 12. IC 36-8-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) The sheriff may dismiss, demote, or temporarily suspend a county police officer for cause after preferring charges in writing and after a fair public hearing before the board, which is reviewable in the circuit court. Written notice of the charges and hearing must be delivered by certified mail

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to the officer to be disciplined at least fourteen (14) days before the date set for the hearing. The officer may be represented by counsel. The board shall make specific findings of fact in writing to support its decision.

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

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

(1) be a candidate for elective office and serve in that office if elected;

(2) be appointed to an office and serve in that office if appointed; and

(3) except when in uniform or on duty, solicit votes or campaign funds for the officer or others.

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

(e) An appeal under subsection (a) must be taken by filing in court, within thirty (30) days after the date the decision is rendered, a verified complaint stating in a concise manner the general nature of the charges against the officer, the decision of the board, and a demand for the relief asserted by the officer. A bond must also be filed that guarantees the appeal will be prosecuted to a final determination and that the plaintiff will pay all costs only if the court finds that the board's decision should be affirmed. The bond must be approved as bonds for costs are approved in other cases. The county must be named as the sole defendant and the plaintiff shall have a summons issued as in other cases against the county. Neither the board nor the members of it may be made parties defendant to the complaint, but all are bound by service upon the county and the judgment rendered by the court.

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

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record and decision of the board on appeal.

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

(1) reverse the decision of the board; or

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

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

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

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

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1005, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 42, after "evaluation." insert "**The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.**".

Page 6, line 31, after "chapter." insert "**A unit may adopt a policy that includes more stringent or detailed requirements than those set forth in this chapter and that does not conflict with this chapter.**".

Page 8, line 32, after "chapter." insert "**A unit may adopt a policy that includes more stringent or detailed requirements than those set forth in this chapter and that does not conflict with this chapter.**".

and when so amended that said bill do pass.

(Reference is to HB 1005 as introduced.)

MAHAN, Chair

Committee Vote: yeas 10, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1005, 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, delete line 15, begin a new paragraph and insert:

"**Sec. 4. (a) An individual who is serving as a volunteer firefighter for a volunteer fire department or a fire department that provides fire protection services to a unit:**

(1) under a contract, excluding a mutual aid agreement; or

(2) as the unit's fire department;

may not assume or hold an elected office of a unit that receives services from the department in which the volunteer firefighter serves.

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(b) An individual who serves as a volunteer firefighter in a department that provides fire service to more than one (1) unit, excluding fire service provided under mutual aid agreements, may not assume or hold an elected office of any unit that receives fire service from the department.".

Page 2, delete lines 1 through 3.

Page 2, line 9, after "from" insert "**assuming or**".

Page 2, delete lines 12 through 15, begin a new line block indented and insert:

"**(2) a volunteer firefighter from assuming or holding an elected office of a unit other than the unit receiving services from the department in which the volunteer firefighter serves; or**".

Page 2, line 16, after "who" insert "**assumes or**".

Page 2, delete lines 19 through 27, begin a new paragraph and insert:

"**Sec. 7. (a) Notwithstanding sections 4 and 5 of this chapter:**

(1) a volunteer firefighter who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and serve as a volunteer firefighter; and

(2) a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee;

until the term of the elected office that the volunteer firefighter or government employee is serving on January 1, 2013, expires.

(b) After the expiration of the term of the elected office that the volunteer firefighter referred to in subsection (a) is serving on January 1, 2013, the volunteer firefighter is subject to section 4 of this chapter with respect to serving as a volunteer firefighter and assuming or holding an elected office of the unit that receives services from the department in which the volunteer firefighter serves.

(c) After the expiration of the term of the elected office that the government employee referred to in subsection (a) is serving on January 1, 2013, the government employee is subject to section 5 of this chapter with respect to assuming or holding an elected office and being employed by the unit that employs the government employee.".

Page 3, line 15, delete "that complies with" and insert "**under**".

Page 3, line 16, delete "that complies with" and insert "**under**".

Page 5, between lines 27 and 28, begin a new paragraph and insert:

"**Sec. 9. (a) This chapter establishes minimum requirements**

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regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

(1) include requirements that are more stringent or detailed than any provision in this chapter; and

(2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.".

Page 5, line 28, delete "9. Except as otherwise provided in this chapter, individuals" and insert "**10. Individuals**".

Page 5, line 32, delete "10." and insert "**11. (a)**".

Page 5, line 32, delete "subsection" and insert "**section**".

Page 5, delete lines 37 through 42, begin a new paragraph and insert:

"**(b) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate section 10 of this chapter.**

(c) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual described in subsection (b) may not:

(1) be promoted to a position; or

(2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department;

if the new position would violate section 10 of this chapter.".

Page 6, delete line 1.

Page 6, line 2, delete "11." and insert "**12.**".

Page 6, line 7, delete "12. A" and insert "**13. Unless the policy adopted under section 9 of this chapter provides otherwise, a**".

Page 6, line 10, delete "13. An" and insert "**14. Unless the policy adopted under section 9 of this chapter provides otherwise, an**".

Page 6, line 21, delete "14." and insert "**15.**".

Page 6, line 22, after "residence," insert "**unless the policy adopted under section 9 of this chapter provides otherwise**".

Page 6, line 29, delete "15. (a)" and insert "**16.**".

Page 6, delete lines 34 through 40.

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Page 6, line 41, delete "16." and insert "**17.**".
Page 6, line 42, delete "that complies with" and insert "**under**".
Page 7, line 3, delete "17." and insert "**18.**".
Page 7, line 3, delete "that complies" and insert "**under**".
Page 7, line 4, delete "with".
Page 7, between lines 33 and 34, begin a new paragraph and insert:
"**Sec. 4. (a) This chapter establishes minimum requirements regarding contracting with a unit. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:**

(1) include requirements that are more stringent or detailed than any provision in this chapter; and

(2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.".
Page 7, line 34, delete "4." and insert "**5.**".
Page 8, line 32, delete "5. (a)" and insert "**6.**".
Page 8, delete lines 37 through 42.
Page 9, delete line 1.
Page 9, line 2, delete "6." and insert "**7.**".
Page 9, line 3, delete "that complies with" and insert "**under**".
Page 9, line 6, delete "7." and insert "**8.**".
Page 9, line 6, delete "that complies with" and insert "**under**".
Page 9, line 13, delete "is in compliance with" and insert "**has adopted a policy under**".

and when so amended that said bill do pass.

(Reference is to HB 1005 as printed January 13, 2012.)

LAWSON C, Chairperson

Committee Vote: Yeas 8, Nays 0.

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