
SENATE BILL No. 356

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-5-9; IC 36-1-8-10.5; IC 36-4-4-2; IC 36-8.

Synopsis: Officeholder qualifications. Provides that an employee of a county, city, town, or township (unit) is considered to have resigned from employment with the unit if the employee assumes the elected executive office of the unit or becomes an elected member of the unit's legislative or fiscal body. Provides that an individual who is serving as a volunteer firefighter may not: (1) assume the office of executive of the unit; or (2) become an elected member of the executive, legislative, or fiscal body of the unit; that oversees the budget and operations of the fire department in which the volunteer firefighter serves. Provides, however, that an individual who holds an elected office of a unit may also be appointed to and serve on a board, commission, or committee of the unit, and that an employee of a unit or a volunteer firefighter serving a unit is not prohibited 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 continue to serve as a volunteer firefighter until the expiration of the term of the elected office that the employee or volunteer firefighter is serving on January 1, 2013.

Effective: July 1, 2012.

Charbonneau

January 9, 2012, read first time and referred to Committee on Local Government.

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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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SENATE BILL No. 356



A BILL FOR AN ACT to amend the Indiana Code concerning elections.

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

1 SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2012]:
 4 **Chapter 9. Government Employees and Volunteer Firefighters**
 5 **Holding Office**
 6 **Sec. 1. As used in this chapter, "elected office" refers only to the**
 7 **offices of the 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 only an elected office.**
 13 **Sec. 3. As used in this chapter, "unit" means a county, city,**
 14 **town, or township.**
 15 **Sec. 4. An individual who is serving as a volunteer firefighter**
 16 **may not assume an elected office of the unit that oversees the**
 17 **budget and operations of the fire department in which the**



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volunteer firefighter serves.

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 holding an elected office of a unit other than the unit that employs the government employee;
- (2) a volunteer firefighter from assuming an elected office of a unit other than the unit that oversees the budget and operations of the fire department in which the volunteer firefighter serves; or
- (3) an individual who 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 holding an elected office of the unit that oversees the budget and operations of the fire 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 being a government employee of a unit and holding an elected office of the unit.

SECTION 2. 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.

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1 (2) An individual described in IC 20-26-4-11.
2 (b) **Subject to IC 3-5-9**, an employee of a political subdivision may:
3 (1) be a candidate for any elected office and serve in that office if
4 elected; or
5 (2) be appointed to any office and serve in that office if appointed;
6 without having to resign as an employee of the political subdivision.
7 SECTION 3. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) The powers of a city are
9 divided between the executive and legislative branches of its
10 government. A power belonging to one (1) branch of a city's
11 government may not be exercised by the other branch.
12 (b) **Subject to IC 3-5-9**, a city employee other than an elected or
13 appointed public officer may:
14 (1) be a candidate for any elective office and serve in that office
15 if elected; or
16 (2) be appointed to any office and serve in that office if appointed;
17 without having to resign as a city employee.
18 SECTION 4. IC 36-8-3-12 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. **Subject to**
20 **IC 3-5-9**, members of the safety board and members of any township,
21 town, or city (including a consolidated city) police department, fire
22 department, or volunteer fire department (as defined by IC 36-8-12-2)
23 may:
24 (1) be candidates for elective office and serve in that office if
25 elected;
26 (2) be appointed to any office and serve in that office if appointed;
27 and
28 (3) as long as they are not in uniform and not on duty, solicit votes
29 and campaign funds and challenge voters for the office for which
30 they are candidates.
31 SECTION 5. IC 36-8-5-2, AS AMENDED BY P.L.130-2008,
32 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2012]: Sec. 2. (a) The police chief or fire chief may be granted
34 a leave of absence by the authority who appointed the police chief or
35 fire chief. This appointing authority may also grant a leave of absence
36 to any other full-time, fully paid police officer or firefighter.
37 (b) A leave of absence under subsection (a) shall be granted for
38 service in the Indiana general assembly. A leave of absence under
39 subsection (a) may also be granted for service in any other elected
40 office or for one (1) of the following reasons:
41 (1) Sickness.
42 (2) Disability.

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1 (3) Sabbatical purposes.

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

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

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

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

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

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

- 41 (1) The police chief or fire chief must make a written
42 determination that there is no suitable and available work on the

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- 1 appropriate department for which the fund member is or may be
- 2 capable of becoming qualified.
- 3 (2) The leave must be approved by the local board after a hearing
- 4 conducted under IC 36-8-8-12.7.
- 5 (3) The leave may not begin until the police officer or firefighter
- 6 has exhausted all paid leave for sickness.
- 7 (4) The leave shall continue until disability benefits are paid from
- 8 the 1977 fund. However, the leave may not continue for more
- 9 than six (6) months.
- 10 (5) During the leave, the police officer or firefighter is entitled to
- 11 receive compensation in an amount equal to fifty percent (50%)
- 12 of the salary of a first class patrolman or first class firefighter on
- 13 the date the leave begins.

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

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

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

31 SECTION 6. IC 36-8-10-11 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) The sheriff may
 33 dismiss, demote, or temporarily suspend a county police officer for
 34 cause after preferring charges in writing and after a fair public hearing
 35 before the board, which is reviewable in the circuit court. Written
 36 notice of the charges and hearing must be delivered by certified mail
 37 to the officer to be disciplined at least fourteen (14) days before the
 38 date set for the hearing. The officer may be represented by counsel. The
 39 board shall make specific findings of fact in writing to support its
 40 decision.

41 (b) The sheriff may temporarily suspend an officer with or without
 42 pay for a period not exceeding fifteen (15) days, without a hearing

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1 before the board, after preferring charges of misconduct in writing
2 delivered to the officer.

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

6 **Subject to IC 3-5-9**, an officer may:

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

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

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

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

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

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

38 (g) The court shall make specific findings and state the conclusions
39 of law upon which its decision is made. If the court finds that the
40 decision of the board appealed from should in all things be affirmed,
41 its judgment should so state. If the court finds that the decision of the
42 board appealed from should not be affirmed in all things, then the court

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1 shall make a general finding, setting out sufficient facts to show the
2 nature of the proceeding and the court's decision on it. The court shall
3 either:

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

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

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

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

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

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