March 29, 2013

ENGROSSED
SENATE BILL No. 226

DIGEST OF SB 226 (Updated March 26, 2013 12:24 pm - DI 87)

Citations Affected: IC 5-8; IC 36-9; noncode.

Synopsis: Suspension of local officeholders. Provides that a local elected officeholder may be suspended from office if the officeholder is charged with certain felonies and a 2/3 majority of the legislative body finds that the offense with which the officeholder is charged is relevant to the officeholder's suitability for office, and it is in the best interests of the governmental unit that the officeholder be suspended from office. Specifies that a member of the legislative body who is charged with an offense is not eligible to vote on the member's suitability for office, and provides that certain relatives of the member are likewise ineligible to vote. Urges the legislative council to assign to a study committee during the 2013 legislative interim the topic of the suspension of state elected officials (excluding officials of the judicial branch of state government) who are charged with the commission of a felony.

Effective: July 1, 2013.

Glick, Crider, Arnold J, Randolph, Steele

(HOUSE SPONSORS — HEUER, WESCO)

January 7, 2013, read first time and referred to Committee on Local Government.
February 14, 2013, amended, reported favorably — Do Pass.
February 18, 2013, read second time, ordered engrossed.
February 19, 2013, engrossed. Read third time, passed. Yeas 40, nays 9.

HOUSE ACTION

March 12, 2013, read first time and referred to Committee on Government and Regulatory Reform.
March 28, 2013, amended, reported — Do Pass.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 226

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 5-8-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 7. Suspension of Local Elected Officials

Sec. 1. As used in this chapter, "eligible offense" means:

(1) a felony under IC 35;

(2) a felony under IC 9-30-5; or

(3) a felony concerning an election under IC 3.

Sec. 2. As used in this chapter, "legislative body" has the meaning set forth in IC 36-1-2-9.

Sec. 3. As used in this chapter, "local elected official" means an elected official of a unit who is not a judge or a prosecuting attorney subject to discipline by the supreme court.

Sec. 4. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 5. A local elected official may be suspended from office as described in this chapter if the official is charged with an eligible

offense.

Sec. 6. If:

(1) a prosecuting attorney charges a local elected official with an eligible offense; and

(2) a court finds probable cause to believe that the offense has been committed;

the prosecuting attorney shall notify the legislative body of the appropriate unit.

Sec. 7. (a) If the legislative body notified under section 6 of this chapter adopts a resolution by a two-thirds (2/3) vote of all members of the legislative body, and the resolution specifies:

(1) the eligible offense with which the local elected official is charged is relevant to the official's suitability for office; and

(2) that it is in the best interests of the unit that the local elected official be suspended from office;

the local elected official shall be suspended from office until the official is convicted or acquitted, charges against the official are dropped, or the official's term of office ends.

(b) If the local elected official charged with an eligible offense is a member of the legislative body of a unit, the local elected official is ineligible to vote on the resolution described in subsection (a).

(c) If a member of the legislative body of a unit is related to the local elected official as:

(1) father;

(2) mother;

(3) son;

(4) daughter;

(5) husband;

(6) wife;

(7) brother;

(8) sister;

(9) uncle;

(10) aunt;

(11) nephew;

(12) niece;

(13) father-in-law;

(14) mother-in-law;

(15) son-in-law;

(16) daughter-in-law;

(17) brother-in-law; or

(18) sister-in-law;

the member is ineligible to vote on the resolution described in

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subsection (a).

(d) This subsection applies if the number of members of a legislative body of a unit who are:

(1) charged with an eligible offense; or

(2) ineligible to vote under subsection (b) or (c);

makes it impossible for the legislative body to reach a quorum or adopt a resolution by a two-thirds (2/3) vote of all the members of the legislative body. If this subsection applies, a resolution under subsection (a) may be adopted by a majority of the voting members.

Sec. 8. (a) A local elected official who has been suspended under section 7 of this chapter may seek judicial review of the suspension by filing a petition for review with a circuit court located:

(1) in the county where the local elected official served; or

(2) in a county adjacent to the county where the local elected official served;

not later than thirty (30) days after the date on which the local elected official was suspended. The official shall serve a copy of the petition on the prosecuting attorney and on the legislative body.

(b) A petition for review filed under this section must be verified and must set forth specific facts to demonstrate:

(1) that the prosecuting attorney did not charge the local elected official with an eligible offense;

(2) that a court did not find probable cause to believe that the offense was committed;

(3) that the legislative body abused its discretion in determining that the offense is relevant to the official's suitability for office; or

(4) that the legislative body abused its discretion in determining that it is in the best interests of the unit that the local elected official be suspended from office.

(c) The court shall set a hearing on the suspension of the local elected official not later than thirty (30) days after the petition for judicial review is filed. Judicial review of the suspension of a local elected official shall be determined on an expedited basis.

(d) The local elected official who filed the petition, the prosecuting attorney, and one (1) or more members of the legislative body have the right to appear and present relevant evidence at the hearing, in person or by counsel.

(e) The court conducting judicial review of the suspension of a local elected official may stay the suspension pending the resolution of the judicial review.

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(f) If the reviewing court finds that the petitioner has established one (1) of the elements described in subsection (b)(1) through (b)(4), the court shall order the petitioner immediately reinstated.

(g) The court's determination to grant or deny relief is a final judgment.

Sec. 9. (a) A local elected official who is suspended from office under this chapter shall not act in the official's official capacity.

(b) A local elected official who is suspended from office under this chapter is entitled to continue to receive the salary, remuneration, and other benefits the official would have been entitled to receive if the official had not been suspended.

Sec. 10. (a) This section does not apply if a legislative body suspends a local elected official who is a member of the legislative body.

(b) If a legislative body suspends a local elected official under section 7 of this chapter, the legislative body shall ensure that the duties of the suspended local elected official are carried out and may appoint an acting replacement for the suspended official.

Sec. 11. If a local elected official suspended under section 7 of this chapter is convicted of an eligible offense, the official shall be removed from office in accordance with IC 5-8-1-38.

Sec. 12. If:

(1) a local elected official suspended under section 7 of this chapter:

(A) is acquitted; or

(B) has the charges against the official dropped; or

(2) a local elected official was charged with a felony but is convicted only of a misdemeanor;

the official is reinstated in office by operation of law if the term of the official has not expired.

SECTION 2. IC 36-9-37-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) A municipal fiscal officer acting under this chapter shall, in the manner prescribed by IC 5-4-1, obtain, execute, and file a bond conditioned upon the following:

(1) The faithful compliance of the municipal fiscal officer with this chapter.

(2) The faithful accounting for all money coming into the municipal fiscal officer's possession under the Barrett Law.

(b) A municipal fiscal officer who does any of the following is personally liable to a person suffering loss due to that action and may be ~~removed from office by proper action filed under IC 5-8-1-35:~~

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subject to other action as prescribed by law:

(1) Fails to collect the interest or penalties provided for by this chapter on delinquent assessments and installments of assessments.

(2) Fails to enforce the collection of the assessments by the sale of the property. However, this subdivision does not apply to a municipal fiscal officer of a municipality that has adopted an ordinance under section 24(a) of this chapter.

(3) Otherwise fails to comply with this chapter.

(c) The surety on the municipal fiscal officer's bond is also liable to the extent of the bond.

SECTION 3. [EFFECTIVE JULY 1, 2013] **(a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.**

(b) As used in this SECTION, "state elected official" means an elected official of:

(1) the executive (including the administrative) branch; or

(2) the legislative branch;

of state government.

(c) As used in this SECTION, "study committee" means either of the following:

(1) A statutory committee established under IC 2-5.

(2) An interim study committee.

(d) The legislative council is urged to assign to a study committee during the 2013 legislative interim the topic of the suspension from office of state elected officials who are charged with the commission of a felony.

(e) If the topic described in subsection (d) is assigned to a study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2013.

(f) This SECTION expires December 31, 2013.

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 226, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 7, after "IC 9-30-5;" insert "**or**".
Page 1, line 8, delete "; or" and insert "**.**".
Page 1, delete lines 9 through 11.
Page 4, line 6, after "reinstated" insert "**.**".
Page 4, delete line 7.
Page 4, line 11, delete "and" and insert "**.**".
Page 4, delete lines 12 through 13.
Page 4, line 15, delete "any health" and insert "**the salary, remuneration, and other**".
Page 4, line 28, delete "(a)".
Page 4, line 32, after "dropped;" insert "**or**".
Page 4, line 34, delete "or".
Page 4, delete lines 35 through 39.
Page 4, delete line 42.
Page 5, delete lines 1 through 14.

and when so amended that said bill do pass.

(Reference is to SB 226 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 226, 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 5, after line 11, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2013] **(a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.**

(b) As used in this SECTION, "state elected official" means an elected official of:

(1) the executive (including the administrative) branch; or

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(2) the legislative branch;

of state government.

(c) As used in this SECTION, "study committee" means either of the following:

(1) A statutory committee established under IC 2-5.

(2) An interim study committee.

(d) The legislative council is urged to assign to a study committee during the 2013 legislative interim the topic of the suspension from office of state elected officials who are charged with the commission of a felony.

(e) If the topic described in subsection (d) is assigned to a study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2013.

(e) This SECTION expires December 31, 2013.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 226 as printed February 15, 2015.)

MAHAN, Chair

Committee Vote: yeas 10, nays 0.

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