
SENATE BILL No. 226

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-8-7; IC 36-9-37-7.

Synopsis: Suspension of local officeholders. Provides that a local elected officeholder may be suspended from office if the officeholder is charged with certain felonies or misdemeanors 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. Specifies that the local elected officeholder will be reinstated with back pay if the officeholder is acquitted or charges are dropped.

Effective: July 1, 2013.

Glick

January 7, 2013, read first time and referred to Committee on Local Government.

C
O
P
Y



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.

C
o
p
y

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:

1 SECTION 1. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2013]:

4 **Chapter 7. Suspension of Local Elected Officials**

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

- 6 (1) a felony under IC 35;
- 7 (2) a felony under IC 9-30-5;
- 8 (3) a felony concerning an election under IC 3; or
- 9 (4) a misdemeanor involving a breach of the peace that is
- 10 committed while a local elected official is performing the
- 11 official's official duties.

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

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

17 **Sec. 4. As used in this chapter, "unit" has the meaning set forth**



1 in IC 36-1-2-23.

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

5 **Sec. 6. If:**

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

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

10 **the prosecuting attorney shall notify the legislative body of the**
 11 **appropriate unit.**

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

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

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

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

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

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

27 **(1) father;**

28 **(2) mother;**

29 **(3) son;**

30 **(4) daughter;**

31 **(5) husband;**

32 **(6) wife;**

33 **(7) brother;**

34 **(8) sister;**

35 **(9) uncle;**

36 **(10) aunt;**

37 **(11) nephew;**

38 **(12) niece;**

39 **(13) father-in-law;**

40 **(14) mother-in-law;**

41 **(15) son-in-law;**

42 **(16) daughter-in-law;**

C
O
P
Y



1 (17) brother-in-law; or
 2 (18) sister-in-law;
 3 the member is ineligible to vote on the resolution described in
 4 subsection (a).

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

7 (1) charged with an eligible offense; or
 8 (2) ineligible to vote under subsection (b) or (c);
 9 makes it impossible for the legislative body to reach a quorum or
 10 adopt a resolution by a two-thirds (2/3) vote of all the members of
 11 the legislative body. If this subsection applies, a resolution under
 12 subsection (a) may be adopted by a majority of the voting
 13 members.

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

17 (1) in the county where the local elected official served; or
 18 (2) in a county adjacent to the county where the local elected
 19 official served;

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

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

25 (1) that the prosecuting attorney did not charge the local
 26 elected official with an eligible offense;
 27 (2) that a court did not find probable cause to believe that the
 28 offense was committed;
 29 (3) that the legislative body abused its discretion in
 30 determining that the offense is relevant to the official's
 31 suitability for office; or
 32 (4) that the legislative body abused its discretion in
 33 determining that it is in the best interests of the unit that the
 34 local elected official be suspended from office.

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

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



C
O
P
Y

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

4 (f) If the reviewing court finds that the petitioner has established
 5 one (1) of the elements described in subsection (b)(1) through
 6 (b)(4), the court shall order the petitioner immediately reinstated
 7 with back pay, if applicable.

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

10 Sec. 9. (a) A local elected official who is suspended from office
 11 under this chapter shall not act in the official's official capacity and
 12 is not entitled to receive any salary or remuneration as a local
 13 elected official during the suspension period.

14 (b) A local elected official who is suspended from office under
 15 this chapter is entitled to continue to receive any health benefits the
 16 official would have been entitled to receive if the official had not
 17 been suspended.

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

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

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

28 Sec. 12. (a) If:

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

31 (A) is acquitted; or

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

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

35 (3) a local elected official was charged with a misdemeanor
 36 involving a breach of the peace that is committed while the
 37 local official is performing the official's official duties but is
 38 convicted only of a misdemeanor that does not involve a
 39 breach of the peace;

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

42 (b) If a local elected official suspended under section 7 of this

C
O
P
Y



1 chapter is acquitted or charges are dropped, the official is entitled
2 to back pay for the suspension period.

3 (c) If a local elected official suspended under section 7 of this
4 chapter is convicted only of a misdemeanor as described in
5 subsection (a)(2) or (a)(3), the legislative body may award full or
6 partial back pay to the official, if the legislative body adopts a
7 resolution finding that:

8 (1) the misdemeanor of which the local elected official is
9 convicted does not reflect upon the official's suitability for
10 office; and

11 (2) fairness and the best interests of the unit require that the
12 local elected official be awarded back pay.

13 A local elected official who is convicted of a misdemeanor is not
14 entitled to vote to award back pay under this subsection.

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

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

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

24 (b) A municipal fiscal officer who does any of the following is
25 personally liable to a person suffering loss due to that action and may
26 be removed from office by proper action filed under IC 5-8-1-35:
27 **subject to other action as prescribed by law:**

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

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

35 (3) Otherwise fails to comply with this chapter.

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

C
o
p
y

