
HOUSE BILL No. 1102

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5-6.1; IC 8-5-15-3; IC 33-27-3-2.

Synopsis: Executive sessions of public boards. Allows a governing body of a public agency to conduct an executive session to discuss strategy with respect to the initiation of litigation, including any judicial action, administrative proceeding, or other legal proceeding under federal or state law that is pending or has been threatened specifically in writing. Allows a governing body to conduct an executive session to discuss with legal counsel the legal ramifications of and legal options for rectifying actions or conditions under the control of the governing body that expose the public agency to potential legal liability through litigation, including any judicial action, administrative proceeding, or other legal proceeding under federal or state law. Provides that a passenger member or employee member of the board of trustees of a commuter transportation district may not participate in an executive session of the board to discuss matters of potential legal liability with the board's legal counsel.

Effective: July 1, 2013.

Davisson

January 8, 2013, read first time and referred to Committee on Government and Regulatory Reform.

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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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HOUSE BILL No. 1102



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 5-14-1.5-6.1, AS AMENDED BY P.L.24-2012,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 6.1. (a) As used in this section, "public official"
4 means a person:
5 (1) who is a member of a governing body of a public agency; or
6 (2) whose tenure and compensation are fixed by law and who
7 executes an oath.
8 (b) Executive sessions may be held only in the following instances:
9 (1) Where authorized by federal or state statute.
10 (2) For discussion of strategy with respect to any of the following:
11 (A) Collective bargaining.
12 (B) Initiation of litigation or litigation that is either pending or
13 has been threatened specifically in writing. **As used in this**
14 **clause, "litigation" includes any judicial action,**
15 **administrative proceeding, or other legal proceeding under**
16 **federal or state law.**
17 (C) The implementation of security systems.



- 1 (D) The purchase or lease of real property by the governing
 2 body up to the time a contract or option to purchase or lease is
 3 executed by the parties.
 4 (E) School consolidation.
 5 However, all such strategy discussions must be necessary for
 6 competitive or bargaining reasons and may not include
 7 competitive or bargaining adversaries.
 8 **(3) For discussion with legal counsel regarding the:**
 9 **(A) legal ramifications of; and**
 10 **(B) legal options for;**
 11 **rectifying actions or conditions under the control of the**
 12 **governing body that expose the public agency to potential**
 13 **legal liability through litigation, including any judicial action,**
 14 **administrative proceeding, or other legal proceeding under**
 15 **federal or state law.**
 16 ~~(3)~~ **(4)** For discussion of the assessment, design, and
 17 implementation of school safety and security measures, plans, and
 18 systems.
 19 ~~(4)~~ **(5)** Interviews and negotiations with industrial or commercial
 20 prospects or agents of industrial or commercial prospects by the
 21 Indiana economic development corporation, the office of tourism
 22 development, the Indiana finance authority, the ports of Indiana,
 23 an economic development commission, the Indiana state
 24 department of agriculture, a local economic development
 25 organization (as defined in IC 5-28-11-2(3)), or a governing body
 26 of a political subdivision.
 27 ~~(5)~~ **(6)** To receive information about and interview prospective
 28 employees.
 29 ~~(6)~~ **(7)** With respect to any individual over whom the governing
 30 body has jurisdiction:
 31 (A) to receive information concerning the individual's alleged
 32 misconduct; and
 33 (B) to discuss, before a determination, the individual's status
 34 as an employee, a student, or an independent contractor who
 35 is:
 36 (i) a physician; or
 37 (ii) a school bus driver.
 38 ~~(7)~~ **(8)** For discussion of records classified as confidential by state
 39 or federal statute.
 40 ~~(8)~~ **(9)** To discuss before a placement decision an individual
 41 student's abilities, past performance, behavior, and needs.
 42 ~~(9)~~ **(10)** To discuss a job performance evaluation of individual

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1 employees. This subdivision does not apply to a discussion of the
 2 salary, compensation, or benefits of employees during a budget
 3 process.

4 ~~(10)~~ **(11)** When considering the appointment of a public official,
 5 to do the following:

6 (A) Develop a list of prospective appointees.

7 (B) Consider applications.

8 (C) Make one (1) initial exclusion of prospective appointees
 9 from further consideration.

10 Notwithstanding IC 5-14-3-4(b)(12), a governing body may
 11 release and shall make available for inspection and copying in
 12 accordance with IC 5-14-3-3 identifying information concerning
 13 prospective appointees not initially excluded from further
 14 consideration. An initial exclusion of prospective appointees from
 15 further consideration may not reduce the number of prospective
 16 appointees to fewer than three (3) unless there are fewer than
 17 three (3) prospective appointees. Interviews of prospective
 18 appointees must be conducted at a meeting that is open to the
 19 public.

20 ~~(11)~~ **(12)** To train school board members with an outside
 21 consultant about the performance of the role of the members as
 22 public officials.

23 ~~(12)~~ **(13)** To prepare or score examinations used in issuing
 24 licenses, certificates, permits, or registrations under IC 25.

25 ~~(13)~~ **(14)** To discuss information and intelligence intended to
 26 prevent, mitigate, or respond to the threat of terrorism.

27 ~~(14)~~ **(15)** To train members of a board of aviation commissioners
 28 appointed under IC 8-22-2 or members of an airport authority
 29 board appointed under IC 8-22-3 with an outside consultant about
 30 the performance of the role of the members as public officials. A
 31 board may hold not more than one (1) executive session per
 32 calendar year under this subdivision.

33 (c) A final action must be taken at a meeting open to the public.

34 (d) Public notice of executive sessions must state the subject matter
 35 by specific reference to the enumerated instance or instances for which
 36 executive sessions may be held under subsection (b). The requirements
 37 stated in section 4 of this chapter for memoranda and minutes being
 38 made available to the public is modified as to executive sessions in that
 39 the memoranda and minutes must identify the subject matter
 40 considered by specific reference to the enumerated instance or
 41 instances for which public notice was given. The governing body shall
 42 certify by a statement in the memoranda and minutes of the governing

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1 body that no subject matter was discussed in the executive session
2 other than the subject matter specified in the public notice.

3 (e) A governing body may not conduct an executive session during
4 a meeting, except as otherwise permitted by applicable statute. A
5 meeting may not be recessed and reconvened with the intent of
6 circumventing this subsection.

7 SECTION 2. IC 8-5-15-3, AS AMENDED BY P.L.48-2010,
8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2013]: Sec. 3. (a) The district shall be supervised and
10 managed by a board of trustees, which consists of the following:

11 (1) Four (4) members, one (1) from each county that is a member
12 of the district, appointed by that county's board of county
13 commissioners. In the case of a member appointed or reappointed
14 under this subdivision after December 31, 2009, the member must
15 be a member of the board of county commissioners of the county
16 that the member represents.

17 (2) Four (4) members, one (1) from each county that is a member
18 of the district, each of whom is the president of that county's
19 county council or another council member designated by the
20 president as a board member.

21 (3) After June 30, 2010, one (1) member representing the rest of
22 the state, appointed by the governor.

23 (4) After June 30, 2010, one (1) passenger member appointed by
24 the governor. The member appointed under this subdivision must
25 be selected from passengers who have submitted a letter of
26 interest to the governor. To be considered for this position, a
27 passenger must submit a letter of interest to the governor during
28 a two (2) week period that begins, in 2010, on May 2, 2010, and,
29 in any year after 2010 in which the term of a member appointed
30 under this subsection expires, sixty (60) days before the
31 expiration of the term of the member appointed under this
32 subdivision. A member of the board serving under this
33 subdivision is not required to submit a letter of interest to be
34 eligible for appointment to a successive term.

35 (5) After June 30, 2010, one (1) member who is an employee of
36 the district, appointed by the governor from a list of names
37 submitted by the labor unions representing the employees of the
38 district. Each labor union representing employees of the district
39 may submit one (1) name to be included on the list of names
40 under this subdivision.

41 (b) A member shall serve for a term of two (2) years from the
42 beginning of the term for which the member was appointed and until

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1 a successor has qualified for the office. Each member shall serve at the
 2 pleasure of the appointing authority but is eligible for reappointment
 3 for successive terms.

4 (c) The members of the board shall elect for a one (1) year term:

- 5 (1) one (1) member as chairman;
- 6 (2) one (1) member to serve as vice chairman;
- 7 (3) one (1) member to serve as secretary; and
- 8 (4) one (1) member to serve as treasurer.

9 (d) Not later than:

- 10 (1) April 1, 2010; and
- 11 (2) in any year after 2010 in which the term of a member
- 12 appointed under subsection (a)(4) expires, ninety (90) days before
- 13 the expiration of the term of the board member appointed under
- 14 subsection (a)(4);

15 the district shall post in each commuter station in the district a notice
 16 of the opening on the board of trustees. The notice must announce the
 17 opening for a passenger member on the board of trustees and provide
 18 information on submitting a letter of interest. The notice must state the
 19 period in which the passenger must submit a letter of interest. The
 20 notice must remain posted until, in 2010, May 15, 2010, and, in any
 21 subsequent year in which the term of a member appointed under
 22 subsection (a)(4) expires, the expiration of the two (2) week period
 23 described in subsection (a)(4).

24 (e) A member appointed under subsection (a)(4) or (a)(5) may not:

- 25 (1) vote on issues involving perceived or actual financial conflicts
- 26 of interest, including personnel issues, collective bargaining, and
- 27 assessment or levy of taxes; or
- 28 (2) participate in an executive session of the board under
- 29 IC 5-14-1.5-6.1, on issues regarding:

30 (A) the discussion of strategy for:

- 31 (i) collective bargaining; or
- 32 (ii) the initiation of litigation or litigation that is either
- 33 pending or has been threatened specifically in writing;
- 34 as described in IC 5-14-1.5-6.1(b)(2); or

35 **(B) the discussion with legal counsel of:**

- 36 **(i) the legal ramifications of; and**
- 37 **(ii) legal options for;**

38 **rectifying actions or conditions under the control of the**
 39 **board that expose the district to potential legal liability**
 40 **through litigation, including any judicial action,**
 41 **administrative proceeding, or other legal proceeding under**
 42 **federal or state law as described in IC 5-14-1.5-6.1(b)(3);**

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1 **or**

2 ~~(B)~~ (C) the discussion of job performance evaluation of
 3 individual employees, except for a discussion of the salary,
 4 compensation, or benefits of employees during a budget
 5 process, as described in ~~IC 5-14-1.5-6.1(b)(9)~~.
 6 **IC 5-14-1.5-6.1(b)(10).**

7 (f) The members appointed under subsection (a)(4) and (a)(5) must
 8 reside in different counties.

9 SECTION 3. IC 33-27-3-2 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The judicial
 11 nominating commission shall submit to the governor, from those names
 12 the commission considers for a vacancy, the names of only the three (3)
 13 most highly qualified candidates. In determining which candidates are
 14 most highly qualified each commission member shall evaluate each
 15 candidate, in writing, on the following considerations:

16 (1) Legal education, including law schools attended and education
 17 after law school, and any academic honors and awards achieved.

18 (2) Legal writings, including legislative draftings, legal briefs, and
 19 contributions to legal journals and publications.

20 (3) Reputation in the practice of law, as evaluated by attorneys
 21 and judges with whom the candidate has had professional contact,
 22 and the type of legal practice, including experience and reputation
 23 as a trial lawyer or trial judge.

24 (4) Physical condition, including general health, stamina, vigor,
 25 and age.

26 (5) Financial interests, including any interest that might conflict
 27 with the performance of judicial responsibilities.

28 (6) Activities in public service, including writings and speeches
 29 concerning public affairs and contemporary problems, and efforts
 30 and achievements in improving the administration of justice.

31 (7) Any other pertinent information that the commission feels is
 32 important in selecting the most highly qualified individuals for
 33 judicial office.

34 (b) The commission may not make an investigation to determine
 35 these considerations until the individual states in writing that the
 36 individual desires to hold a judicial office that has been or will be
 37 created by a vacancy and that the individual consents to the public
 38 disclosure of information under subsections (d) and (g).

39 (c) The commission shall inquire into the personal and legal
 40 backgrounds of each candidate by investigations made independent
 41 from the statements on an application of the candidate or in an
 42 interview with the candidate. In completing these investigations, the

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1 commission may use information or assistance provided by:

- 2 (1) a law enforcement agency;
 3 (2) any organization of lawyers, judges, or individual
 4 practitioners; or
 5 (3) any other person or association.

6 (d) The commission shall publicly disclose the names of all
 7 candidates who have filed for judicial appointment after the
 8 commission has received the consent required by subsection (b) but
 9 before the commission has begun to evaluate any of the candidates. If
 10 the commission's screening of the candidates for judicial appointment
 11 occurs in an executive session conducted under ~~IC 5-14-1.5-6.1(b)(10)~~;
 12 **IC 5-14-1.5-6.1(b)(11)**, the screening may not reduce the number of
 13 candidates for further consideration to fewer than ten (10) individuals
 14 unless there are fewer than ten (10) individuals from which to choose
 15 before the screening. When the commission's screening has reduced the
 16 number of candidates for further consideration to not less than ten (10)
 17 or it has less than ten (10) eligible candidates otherwise from which to
 18 choose, the commission shall:

- 19 (1) publicly disclose the names of the individuals and their
 20 applications before taking any further action; and
 21 (2) give notice of any further action in the same manner that
 22 notice is given under IC 5-14-1.5.

23 (e) Information described in subsection (d)(1) is identifying
 24 information for the purposes of ~~IC 5-14-1.5-6.1(b)(10)~~;
 25 **IC 5-14-1.5-6.1(b)(11)**.

26 (f) The commission shall submit with the list of three (3) nominees
 27 to the governor its written evaluation of each nominee, based on the
 28 considerations set forth in subsection (a). The list of names submitted
 29 to the governor and the written evaluation of each nominee shall be
 30 publicly disclosed by the commission.

31 (g) Notwithstanding IC 5-14-3-4, all public records (as defined in
 32 IC 5-14-3-2) of the judicial nominating commission are subject to
 33 IC 5-14-3-3, including records described in IC 5-14-3-4(b)(12).
 34 However, the following records are excepted from public inspection
 35 and copying at the discretion of the judicial nominating commission:

- 36 (1) Personnel files of commission employees and files of
 37 applicants for employment with the commission to the extent
 38 permitted under IC 5-14-3-4(b)(8).
 39 (2) Records specifically prepared for discussion or developed
 40 during discussion in an executive session under IC 5-14-1.5-6.1,
 41 unless the records are prepared for use in the consideration of a
 42 candidate for judicial appointment.

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- 1 (3) Investigatory records prepared for the commission under
2 subsection (c) until:
3 (A) the records are filed or introduced into evidence in
4 connection with the consideration of a candidate;
5 (B) the records are publicly discussed by the commission in
6 connection with the consideration of a candidate;
7 (C) a candidate elects to have the records released by the
8 commission; or
9 (D) the commission elects to release the records that the
10 commission considers appropriate in response to publicly
11 disseminated statements relating to the activities or actions of
12 the commission;
13 whichever occurs first.
14 (4) Applications of candidates for judicial appointment who are
15 not among the applicants eligible for further consideration
16 following the commission's screening under subsection (d).
17 (5) The work product of an attorney (as defined in IC 5-14-3-2)
18 representing the commission.
19 (h) When an event described by subsection (g)(3) occurs, the
20 investigatory record becomes available for public inspection and
21 copying under IC 5-14-3-3.
22 (i) As used in this subsection, "attributable communication" refers
23 to a communication containing the sender's name, address, and
24 telephone number. The commission shall provide a copy of all
25 attributable communications concerning a candidate for judicial
26 appointment to each member of the commission. An attributable
27 communication becomes available for public inspection and copying
28 under IC 5-14-3-3 after a copy is provided to each member of the
29 commission. The commission may not consider a communication other
30 than an attributable communication in evaluating a candidate for
31 judicial appointment.
32 (j) The commission shall release the investigatory records prepared
33 for the commission under subsection (c) to the candidate for judicial
34 appointment described by the records.

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