

# HOUSE BILL No. 1030

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-2-8.7.

**Synopsis:** Removal of a county elected officer. Provides a process for removal of a county's auditor, treasurer, recorder, surveyor, coroner, or assessor (county officer) for failure to be physically present in the county officer's office for at least one work day each month, unless the county officer takes leave provided for by law or personnel policy. Exempts a county officer for being physically absent during any month in which a local disaster emergency declaration is in effect for at least one work day. Provides that the county executive initiates a county officer's removal by adopting a resolution. Provides that the removal is effective upon the county fiscal body adopting an identical resolution by an affirmative vote of at least: (1) 17 members, in the case of the 25 member Marion County fiscal body; (2) seven members, in the case of the nine member St. Joseph County fiscal body; or (3) five members, in the case of the seven member county fiscal body of any other county. Allows a county officer who has been removed from office to petition a court for judicial review.

**Effective:** July 1, 2021.

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## Aylesworth

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January 4, 2021, read first time and referred to Committee on Local Government.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

# HOUSE BILL No. 1030

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 36-2-8.7 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2021]:
- 4 **Chapter 8.7. Removal of County Officer for Lack of Physical**
- 5 **Presence in Office**
- 6 **Sec. 1. As used in this chapter, "county executive" has the**
- 7 **meaning set forth in IC 36-1-2-5.**
- 8 **Sec. 2. As used in this chapter, "county fiscal body" has the**
- 9 **meaning set forth in IC 36-1-2-6.**
- 10 **Sec. 3. As used in this chapter, "county officer" refers to any of**
- 11 **the following:**
- 12 **(1) A county auditor.**
- 13 **(2) A county treasurer.**
- 14 **(3) A county recorder.**
- 15 **(4) A county surveyor.**
- 16 **(5) A county coroner.**
- 17 **(6) A county assessor.**



1           **Sec. 4. (a) Subject to subsection (b), a county officer must be**  
 2 **physically present in the county officer's office during regular**  
 3 **office hours at least one (1) work day each month during the**  
 4 **county officer's term of office. For purposes of this chapter, a work**  
 5 **day consists of seven and one-half (7 1/2) hours.**

6           **(b) A county officer does not violate this section if the county**  
 7 **officer takes an entire month of leave time, including vacation**  
 8 **leave, sick leave, personal leave, or other leave to which the county**  
 9 **officer is entitled under state or federal law or county personnel**  
 10 **policies. Days on which a county officer may close the county**  
 11 **officer's office as specified by the county executive according to the**  
 12 **custom and practice of the county are considered leave time to**  
 13 **which a county officer is entitled under the county's personnel**  
 14 **policies.**

15           **Sec. 5. (a) A county officer may be removed from office under**  
 16 **this chapter if the county officer is in violation of section 4 of this**  
 17 **chapter during one (1) or more months of the county officer's term.**

18           **(b) Notwithstanding any other provision of this chapter, a**  
 19 **county officer:**

20               **(1) does not violate section 4 of this chapter; and**

21               **(2) may not be removed from office under this chapter;**

22 **for being physically absent from the county officer's office during**  
 23 **any month in which a declaration of a local disaster emergency**  
 24 **under IC 10-14-3-29 is in effect for at least one (1) work day in the**  
 25 **county or in the municipality in which the county officer's office is**  
 26 **located.**

27           **Sec. 6. (a) The county executive may initiate the removal of a**  
 28 **county officer from office under this chapter by adopting a**  
 29 **resolution. At least one (1) public hearing must be held by the**  
 30 **county executive on the resolution at least ten (10) business days**  
 31 **before the resolution is adopted. The resolution must contain a**  
 32 **concise statement of the underlying basic facts that support the**  
 33 **county executive's finding that the county officer failed to comply**  
 34 **with section 4 of this chapter.**

35           **(b) In the case of a county that:**

36               **(1) has a consolidated city, the resolution must be adopted by**  
 37 **the county executive; or**

38               **(2) does not have a consolidated city, the resolution must be**  
 39 **adopted by an affirmative vote of at least a majority of all**  
 40 **members of the county executive.**

41 **Not later than ten (10) days after adoption of the resolution, the**  
 42 **county executive shall certify the resolution to the county fiscal**



1 body and the county officer.

2 Sec. 7. (a) Upon receiving a resolution certified by the county  
3 executive under section 6 of this chapter, the county fiscal body  
4 may adopt a resolution to remove the county officer from office. At  
5 least one (1) public hearing must be held by the county fiscal body  
6 on the resolution at least ten (10) business days before the  
7 resolution is adopted. The resolution must contain a concise  
8 statement of the underlying basic facts that support the county  
9 fiscal body's finding that the county officer failed to comply with  
10 section 4 of this chapter. The finding and statement of underlying  
11 basic facts supporting the finding must be identical to those in the  
12 resolution adopted by the county executive under section 6 of this  
13 chapter.

14 (b) The resolution must be adopted by an affirmative vote of at  
15 least:

16 (1) five (5) members, in the case of a county fiscal body under  
17 IC 36-2-3-2(a);

18 (2) seven (7) members, in the case of a county fiscal body  
19 under IC 36-2-3-2(b); or

20 (3) seventeen (17) members, in the case of a county fiscal body  
21 of a county that has a consolidated city under IC 36-3-4-2.

22 Not later than ten (10) days after the resolution is adopted, the  
23 county fiscal body shall certify the resolution to the county  
24 executive and the county officer.

25 Sec. 8. The county officer is removed from office on the date the  
26 resolution is adopted by the county fiscal body under section 7 of  
27 this chapter. Upon removal from office, the county officer:

28 (1) shall not act in the county officer's official capacity; and

29 (2) is not entitled to continue to receive the salary and other  
30 benefits the county officer would have been entitled to receive  
31 if the county officer had not been removed from office.

32 Sec. 9. (a) A county officer who has been removed under this  
33 chapter may file a petition for judicial review of the determination  
34 of the county executive and county fiscal body in a court of  
35 appropriate jurisdiction not later than thirty (30) days after the  
36 date the resolution is adopted under section 7 of this chapter.

37 (b) A petition for review must be verified and set forth specific  
38 facts to demonstrate that the county officer has complied with  
39 section 4 of this chapter. The county officer shall serve a copy of  
40 the petition on the county executive and the county fiscal body.  
41 Judicial review of the removal of a county officer shall be  
42 determined on an expedited basis.



1 (c) Any of the following have a right to appear and present  
2 relevant evidence at the hearing, in person or by counsel:

- 3 (1) The county officer who filed the petition.  
4 (2) Any member of the county executive.  
5 (3) Any member of the county fiscal body.

6 Sec. 10. (a) The court shall grant the county officer relief only  
7 if it determines that the findings of the county executive and county  
8 fiscal body are not supported by substantial evidence.

9 (b) If the court grants the county officer relief, and the term of  
10 the county officer has not expired, the court shall set aside the  
11 determination of the county executive and county fiscal body and  
12 order the county officer immediately reinstated in office by  
13 operation of law. The county officer is entitled to payment of salary  
14 that was withheld pending resolution of judicial review of the  
15 petition. A court may not award damages in an action under this  
16 chapter.

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

19 Sec. 11. The county executive and the county fiscal body shall  
20 ensure that the duties of the removed county officer are carried out  
21 and may designate an acting replacement for the county officer  
22 until the vacancy is filled under IC 3.

23 Sec. 12. This chapter does not preclude the removal of a county  
24 officer under any other provision of state law.

