



March 19, 2021

ENGROSSED HOUSE BILL No. 1030

DIGEST OF HB 1030 (Updated March 18, 2021 12:03 pm - DI 87)

Citations Affected: IC 5-8; IC 36-2.

Synopsis: Removal of a county elected officer. Allows a county executive and county fiscal body to adopt identical resolutions to initiate an action in court to remove a county officer for neglect of duties or charging illegal fees. (Current law only allows an action to be initiated by a written accusation verified by the oath of a person.)

Effective: July 1, 2021.

Aylesworth, Jackson

(SENATE SPONSOR — NIEMEYER)

January 4, 2021, read first time and referred to Committee on Local Government.
February 4, 2021, amended, reported — Do Pass.
February 8, 2021, read second time, amended, ordered engrossed.
February 9, 2021, engrossed. Read third time, passed. Yeas 91, nays 3.

SENATE ACTION

February 23, 2021, read first time and referred to Committee on Local Government.
March 18, 2021, amended, reported favorably — Do Pass.

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March 19, 2021

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.

ENGROSSED 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 5-8-1-35, AS AMENDED BY P.L.84-2016,
2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 35. (a) When an accusation in writing, verified by
4 the oath of any person **or in resolutions adopted by a county**
5 **executive and county fiscal body in accordance with IC 36-2-8.7**, is
6 presented to a circuit court, superior court, or probate court, alleging
7 that any officer within the jurisdiction of the court has been guilty of:
8 (1) charging and collecting illegal fees for services rendered or to
9 be rendered in the officer's office;
10 (2) refusing or neglecting to perform the official duties pertaining
11 to the officer's office; or
12 (3) violating IC 36-6-4-17(b) if the officer is the executive of a
13 township;
14 the court must cite the party charged to appear before the court at any
15 time not more than ten (10) nor less than five (5) days from the time the
16 accusation was presented, and on that day or some other subsequent
17 day not more than twenty (20) days from the time the accusation was

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1 presented must proceed to hear, in a summary manner, the accusation
2 and evidence offered in support of the same, and the answer and
3 evidence offered by the party accused.

4 (b) If after the hearing under subsection (a) it appears that the
5 charge is sustained, the court must do the following:

6 (1) Enter a decree that the party accused be deprived of the party's
7 office.

8 (2) Enter a judgment as follows:

9 (A) For five hundred dollars (\$500) in favor of the prosecuting
10 officer.

11 (B) For costs as are allowed in civil cases.

12 (C) For the amount of money that was paid to the officer in
13 compensation from the day when the accusation was filed
14 under this section to the day when judgment is entered in favor
15 of the public entity paying the compensation to the officer.

16 (c) In an action under this section, a court may award reasonable
17 attorney's fees, court costs, and other reasonable expenses of litigation
18 to the accused officer if:

19 (1) the officer prevails; and

20 (2) the court finds that the accusation is frivolous or vexatious.

21 SECTION 2. IC 36-2-8.7 IS ADDED TO THE INDIANA CODE
22 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2021]:

24 **Chapter 8.7. Initiation of Action for Removal of County Officer**

25 **Sec. 1. As used in this chapter, "county executive" has the**
26 **meaning set forth in IC 36-1-2-5.**

27 **Sec. 2. As used in this chapter, "county fiscal body" has the**
28 **meaning set forth in IC 36-1-2-6.**

29 **Sec. 3. As used in this chapter, "county officer" refers to any of**
30 **the following:**

31 (1) A county auditor.

32 (2) A county treasurer.

33 (3) A county recorder.

34 (4) A county surveyor.

35 (5) A county assessor.

36 **Sec. 4. (a) The county executive may initiate the removal of a**
37 **county officer from office under this chapter by adopting a**
38 **resolution in accordance with this section.**

39 (b) At least one (1) public hearing must be held by the county
40 executive on the resolution at least ten (10) business days before the
41 resolution is adopted. The resolution must contain a concise
42 statement of the underlying basic facts that support the county



1 executive's finding that the county officer committed a violation
2 described in IC 5-8-1-35(a)(1) or IC 5-8-1-35(a)(2).

3 (c) In the case of a county that:

4 (1) has a consolidated city, the resolution must be adopted by
5 the county executive; or

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

9 (d) Not later than ten (10) days after adoption of the resolution,
10 the county executive shall certify the resolution to:

11 (1) the county fiscal body;

12 (2) the county officer; and

13 (3) the clerk of the court in which the action is filed under
14 IC 5-8-1-35.

15 Sec. 5. (a) Upon receiving a resolution certified by the county
16 executive under section 4 of this chapter, the county fiscal body
17 may adopt a resolution to initiate an action for removal of a county
18 officer under IC 5-8-1-35.

19 (b) At least one (1) public hearing must be held by the county
20 fiscal body on the resolution at least ten (10) business days before
21 the resolution is adopted. The resolution must contain a concise
22 statement of the underlying basic facts that support the county
23 fiscal body's finding that the county officer committed a violation
24 described in IC 5-8-1-35(a)(1) or IC 5-8-1-35(a)(2). The finding and
25 statement of underlying basic facts supporting the finding must be
26 identical to those in the resolution adopted by the county executive
27 under section 4 of this chapter.

28 (c) The resolution must be adopted by an affirmative vote of at
29 least:

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

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

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

36 (d) Not later than ten (10) days after the resolution is adopted,
37 the county fiscal body shall certify the resolution to:

38 (1) the county executive;

39 (2) the county officer; and

40 (3) the clerk of the court in which the action is filed under
41 IC 5-8-1-35.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1030, 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 1, delete line 16.

Page 1, line 17, delete "(6)" and insert "**(5)**".

and when so amended that said bill do pass.

(Reference is to HB 1030 as introduced.)

ZENT

Committee Vote: yeas 13, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1030 be amended to read as follows:

Page 3, between lines 23 and 24, begin a new paragraph and insert:

"(c) A vacancy in the office occurs if:

(1) the county officer does not file a petition for judicial review within the time set forth in section 9 of this chapter; or

(2) the court does not reinstate the county officer under section 10 of this chapter.

(d) The adoption of the resolution operates to suspend the county officer from office until the date:

(1) the court reinstates the county officer under section 10 of this chapter; or

(2) a vacancy in the office is filled under IC 3."

Page 3, line 24, delete "removed" and insert "**suspended**".

Page 3, line 26, delete "removal" and insert "**suspension**".

Page 3, line 31, delete "who has been removed under this".

Page 3, line 32, delete "chapter".

Page 3, line 33, after "body" insert "**to remove the county officer**".

Page 4, line 15, after "chapter." insert "**However, if the court grants the county officer relief, the court shall award the county officer reasonable attorney's fees, court costs, and other reasonable expenses of litigation.**".

Page 4, delete lines 18 through 21, begin a new paragraph and

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insert:

"Sec. 11. (a) Except as provided in subsection (b), the chief deputy employee of the office assumes the duties of the county officer's office for the period of time beginning on the date the county officer is suspended from office under section 7 of this chapter until the date:

- (1) the county officer is reinstated by a court under section 10 of this chapter; or**
- (2) the vacancy in the office is filled under IC 3.**

(b) If a chief deputy employee does not exist in the office, or the chief deputy employee declines or is ineligible to serve, the county executive and the county fiscal body shall appoint, as soon as is reasonably possible, an acting replacement for the county officer until the date set forth in subsection (a)."

(Reference is to HB 1030 as printed February 4, 2021.)

SAUNDERS

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1030, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-8-1-35, AS AMENDED BY P.L.84-2016, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 35. (a) When an accusation in writing, verified by the oath of any person **or in resolutions adopted by a county executive and county fiscal body in accordance with IC 36-2-8.7**, is presented to a circuit court, superior court, or probate court, alleging that any officer within the jurisdiction of the court has been guilty of:

- (1) charging and collecting illegal fees for services rendered or to be rendered in the officer's office;
- (2) refusing or neglecting to perform the official duties pertaining to the officer's office; or
- (3) violating IC 36-6-4-17(b) if the officer is the executive of a township;

the court must cite the party charged to appear before the court at any

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time not more than ten (10) nor less than five (5) days from the time the accusation was presented, and on that day or some other subsequent day not more than twenty (20) days from the time the accusation was presented must proceed to hear, in a summary manner, the accusation and evidence offered in support of the same, and the answer and evidence offered by the party accused.

(b) If after the hearing under subsection (a) it appears that the charge is sustained, the court must do the following:

(1) Enter a decree that the party accused be deprived of the party's office.

(2) Enter a judgment as follows:

(A) For five hundred dollars (\$500) in favor of the prosecuting officer.

(B) For costs as are allowed in civil cases.

(C) For the amount of money that was paid to the officer in compensation from the day when the accusation was filed under this section to the day when judgment is entered in favor of the public entity paying the compensation to the officer.

(c) In an action under this section, a court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the accused officer if:

(1) the officer prevails; and

(2) the court finds that the accusation is frivolous or vexatious."

Page 1, line 4, delete "Removal of County Officer for Lack of Physical" and insert "**Initiation of Action for Removal of County Officer**".

Page 1, delete line 5.

Page 1, delete line 17.

Page 2, delete lines 1 through 25.

Page 2, line 26, delete "6." and insert "4."

Page 2, line 28, delete "resolution." and insert "**resolution in accordance with this section.**

(b)".

Page 2, line 32, delete "failed to comply" and insert "**committed a violation described in IC 5-8-1-35(a)(1) or IC 5-8-1-35(a)(2).**".

Page 2, delete line 33.

Page 2, line 34, delete "(b)" and insert "(c)".

Page 2, line 40, beginning with "Not" begin a new paragraph and insert "(d)".

Page 2, line 41, delete "to" and insert "**to:**

(1)".

Page 2, line 42, delete "body and" and insert "**body;**



(2)".

Page 2, line 42, delete "officer." and insert "**officer; and
(3) the clerk of the court in which the action is filed under
IC 5-8-1-35.**".

Page 3, line 1, delete "7." and insert "5".

Page 3, line 2, delete "6" and insert "4".

Page 3, line 3, delete "remove the county officer from office." and insert "**initiate an action for removal of a county officer under
IC 5-8-1-35.**".

(b)".

Page 3, line 8, delete "failed to comply with" and insert "**committed
a violation described in IC 5-8-1-35(a)(1) or IC 5-8-1-35(a)(2).**".

Page 3, line 9, delete "section 4 of this chapter."

Page 3, line 11, delete "6" and insert "4".

Page 3, line 13, delete "(b)" and insert "(c)".

Page 3, line 21, beginning with "Not" begin a new paragraph and insert "(d)".

Page 3, line 22, delete "to" and insert "**to:**".

(1)".

Page 3, line 23, delete "executive and" and insert "**executive;**".

(2)".

Page 3, line 23, delete "officer." and insert "**officer; and
(3) the clerk of the court in which the action is filed under
IC 5-8-1-35.**".

Page 3, delete lines 24 through 42.

Delete pages 4 through 5.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1030 as reprinted February 9, 2021.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 2.

