

# HOUSE BILL No. 1182

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-11; IC 35-31.5-2-185; IC 35-50-2-11.

**Synopsis:** State board of accounts. Authorizes the state examiner to appoint an employee of the state board of accounts as the director of special investigations (director). Requires that the director must have completed certain law enforcement training programs and must have at least 10 years of law enforcement experience. Provides that the director is a law enforcement officer for purposes of the criminal law. Adds the director to the definition of "police officer" for purposes of the statute providing a sentence enhancement for individuals who point a firearm or discharge a firearm at a police officer while committing certain crimes. (The introduced version of this bill was prepared by the audit and financial reporting subcommittee of the legislative council.)

**Effective:** July 1, 2017.

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**Mahan, Lehman, Gutwein, Stemler**

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January 9, 2017, read first time and referred to Committee on Government and Regulatory Reform.

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First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1182

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 5-11-1-31 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2017]: **Sec. 31. This article does not limit the power of the state**  
4 **to punish a person for conduct that constitutes a crime under any**  
5 **other statute.**

6 SECTION 2. IC 5-11-5-1, AS AMENDED BY P.L.188-2016,  
7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2017]: Sec. 1. (a) Whenever an examination is made under  
9 this article, a report of the examination shall be made. The report must  
10 include a list of findings and shall be signed and verified by the  
11 examiner making the examination. A finding that is critical of an  
12 examined entity must be based upon one (1) of the following:

- 13 (1) Failure of the entity to observe a uniform compliance  
14 guideline established under IC 5-11-1-24(a).
- 15 (2) Failure of the entity to comply with a specific law.

16 A report that includes a finding that is critical of an examined entity  
17 must designate the uniform compliance guideline or the specific law



1 upon which the finding is based. The reports shall immediately be filed  
2 with the state examiner, and, after inspection of the report, the state  
3 examiner shall immediately file one (1) copy with the officer or person  
4 examined, one (1) copy with the auditing department of the  
5 municipality examined and reported upon (if the subject of the report  
6 is a municipality), and one (1) copy in an electronic format under  
7 IC 5-14-6 with the legislative services agency, as staff to the audit  
8 committee and the general assembly. Upon filing, the report becomes  
9 a part of the public records of the office of the state examiner, of the  
10 office or the person examined, of the auditing department of the  
11 municipality examined and reported upon, and of the legislative  
12 services agency, as staff to the audit committee and the general  
13 assembly. A report is open to public inspection at all reasonable times  
14 after it is filed. If an examination discloses malfeasance, misfeasance,  
15 or nonfeasance in office or of any officer or employee, a copy of the  
16 report, signed and verified, shall be placed by the state examiner with  
17 the attorney general and the inspector general. The attorney general  
18 shall diligently institute and prosecute civil proceedings against the  
19 delinquent officer, or upon the officer's official bond, or both, and  
20 against any other proper person that will secure to the state or to the  
21 proper municipality the recovery of any funds misappropriated,  
22 diverted, or unaccounted for.

23 (b) Before an examination report is signed, verified, and filed as  
24 required by subsection (a), the officer or the chief executive officer of  
25 the state office, municipality, or entity examined must have an  
26 opportunity to review the report and to file with the state examiner a  
27 written response to that report. If a written response is filed, it becomes  
28 a part of the examination report that is signed, verified, and filed as  
29 required by subsection (a). As part of the review of the examination  
30 report, the state examiner shall hold a gathering of the officer or chief  
31 executive officer of the state office, municipality, or entity examined,  
32 any employees or agents of the state office, municipality, or entity  
33 examined who are requested to attend by the officer or chief executive  
34 officer of the state office, municipality, or entity examined, and the  
35 members of the legislative and fiscal bodies of the municipality or  
36 entity examined. Such a gathering is referred to as an "exit conference"  
37 for purposes of this subsection. The following apply to an exit  
38 conference:

39 (1) All information discussed and materials presented or delivered  
40 by any person during an exit conference are confidential and may  
41 not be discussed or shared publicly until the earliest of the  
42 occurrences set forth in subsection (g). However, the information



1 discussed and materials presented or delivered during an exit  
2 conference may be shared with an officer, employee, consultant,  
3 adviser, or attorney of the officer or chief executive officer of the  
4 state office, municipality, or entity examined who was not present  
5 at the exit conference. An individual with whom information and  
6 materials are shared must maintain the confidentiality of the  
7 information and materials as provided in this subdivision until the  
8 earliest of the occurrences set forth in subsection (g).

9 (2) An individual attending an exit conference may not  
10 electronically record the exit conference.

11 (3) If a majority of a governing body (as defined in  
12 IC 5-14-1.5-2(b)) is present during an exit conference, the  
13 governing body shall be considered in an executive session under  
14 IC 5-14-1.5. However, the governing body has no obligation to  
15 give notice as prescribed by IC 5-14-1.5-5 when it participates in  
16 the exit conference.

17 (4) If the state examiner determines after the exit conference that  
18 additional actions must be undertaken by a deputy examiner, field  
19 examiner, or private examiner with respect to information  
20 discussed or materials presented at the exit conference, the state  
21 examiner may call for an additional exit conference to be held.

22 (5) Not more than thirty (30) days after the initial exit conference  
23 is held under this subsection, the legislative body of the  
24 municipality or entity examined and reported upon may adopt a  
25 resolution, approved by at least a two-thirds (2/3) vote of the  
26 legislative body, requesting that an additional exit conference be  
27 held. The legislative body shall notify the state board of accounts  
28 if the legislative body adopts a resolution under this subdivision.  
29 If a legislative body adopts a resolution under this subdivision, the  
30 state board of accounts shall conduct an additional exit  
31 conference not more than sixty (60) days after the state board of  
32 accounts receives notice of the adoption of the resolution. The  
33 municipality or entity examined must pay the travel and staff  
34 costs incurred by the state board of accounts in conducting an  
35 additional exit conference under this subdivision.

36 (6) Except as provided in subdivision (7), a final report under  
37 subsection (a) may not be issued earlier than forty-five (45) days  
38 after the initial exit conference is held under this subsection.

39 (7) If:

40 (A) the state examiner does not call for an additional exit  
41 conference to be held as described in subdivision (4); and

42 (B) the:



- 1 (i) legislative body of the municipality or entity examined  
 2 and reported upon provides written notice to the state  
 3 examiner that the legislative body waives an additional exit  
 4 conference described in subdivision (5); or  
 5 (ii) state examiner determines that a final report under  
 6 subsection (a) must be issued as soon as possible;  
 7 the final report may be issued earlier than forty-five (45) days  
 8 after the initial exit conference is held under this subsection.
- 9 (c) Except as provided by subsections (b), (d), and (e), it is unlawful  
 10 for any person, before an examination report is made public as  
 11 provided by this section, to make any disclosure of the result of any  
 12 examination of any public account, except:  
 13 (1) to the state examiner;  
 14 (2) if directed to give publicity to the examination report by the  
 15 state examiner or by any court;  
 16 (3) to another deputy examiner, field examiner, or private  
 17 examiner engaged in conducting the examination; or  
 18 (4) if directed by the state examiner, to the chair of the audit  
 19 committee or the members of the audit committee acting in  
 20 executive session, or both.
- 21 If an examination report shows or discloses the commission of a crime  
 22 by any person, it is the duty of the state examiner to transmit and  
 23 present the examination report to the prosecuting attorney of the county  
 24 in which the crime was committed. The state examiner shall furnish to  
 25 the prosecuting attorney all evidence at the state examiner's command  
 26 necessary in the investigation and prosecution of the crime.
- 27 (d) If, during an examination under this article, **the director of**  
 28 **special investigations**, a deputy examiner, a field examiner, or a  
 29 private examiner acting as an agent of the state examiner determines  
 30 that the following conditions are satisfied, the examiner shall report the  
 31 determination to the state examiner:  
 32 (1) A substantial amount of public funds has been  
 33 misappropriated or diverted.  
 34 (2) The **director of special investigations**, deputy examiner, field  
 35 examiner, or private examiner acting as an agent of the state  
 36 examiner has a reasonable belief that the malfeasance or  
 37 misfeasance that resulted in the misappropriation or diversion of  
 38 the public funds was committed by the officer or an employee of  
 39 the office.
- 40 (e) After receiving a preliminary report under subsection (d), the  
 41 state examiner may provide a copy of the report to the attorney general.  
 42 The attorney general may institute and prosecute civil proceedings



1 against the delinquent officer or employee, or upon the officer's or  
 2 employee's official bond, or both, and against any other proper person  
 3 that will secure to the state or to the proper municipality the recovery  
 4 of any funds misappropriated, diverted, or unaccounted for.

5 (f) In an action under subsection (e), the attorney general may attach  
 6 the defendant's property under IC 34-25-2.

7 (g) Except as permitted in this section, the information and materials  
 8 that are part of an exit conference under subsection (b) and the results  
 9 of an examination, including a preliminary report under subsection (d),  
 10 are confidential until the occurrence of the earliest of the following:

11 (1) The final report is made public under subsection (a).

12 (2) The results of the examination are publicized under subsection  
 13 (c)(2).

14 (3) The attorney general institutes an action under subsection (e)  
 15 on the basis of the preliminary report.

16 (h) Except as permitted in this section, an individual, a public  
 17 agency (as defined in IC 5-14-3-2), a public employee, a public official,  
 18 or an employee or officer of a contractor or subcontractor of a public  
 19 agency that knowingly or intentionally discloses information in  
 20 violation of subsection (b) or (g), regardless of whether the information  
 21 is received orally or by any other means, is subject to the following:

22 (1) A public agency (as defined in IC 5-14-3-2), a public  
 23 employee, a public official, or an employee or officer of a  
 24 contractor or subcontractor of a public agency commits a Class A  
 25 infraction under IC 5-14-3-10.

26 (2) If the disclosure is by a person who is not described in  
 27 subdivision (1), the person commits a Class A infraction.

28 (i) Unless in accordance with a judicial order or as otherwise  
 29 provided in this section, the state board of accounts or its employees,  
 30 former employees, counsel, or agents, or any other person may not  
 31 divulge the examination workpapers and investigation records of **the**  
 32 **director of special investigations**, a deputy examiner, a field  
 33 examiner, or a private examiner acting as an agent of the state  
 34 examiner, except to:

35 (1) employees and members of the state board of accounts;

36 (2) the audit committee;

37 (3) law enforcement officers, the attorney general, a prosecuting  
 38 attorney, or any other legal representative of the state in any  
 39 action with respect to the misappropriation or diversion of public  
 40 funds; or

41 (4) an authorized representative of the United States.

42 (j) An individual described in subsection (i)(3) or (i)(4) who



1 receives examination workpapers and investigation records described  
 2 in subsection (i) may divulge the workpapers and records in any action  
 3 with respect to the misappropriation or diversion of public funds.

4 SECTION 3. IC 5-11-5.1 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2017]:

7 **Chapter 5.1. State Board of Accounts Director of Special**  
 8 **Investigations**

9 **Sec. 1. (a) The state examiner may appoint an eligible employee**  
 10 **of the state board of accounts to be the director of special**  
 11 **investigations.**

12 **(b) An employee of the state board of accounts is eligible for**  
 13 **appointment as the director of special investigations if the**  
 14 **employee has:**

- 15 **(1) completed the law enforcement training required to**  
 16 **exercise the law enforcement powers described in**  
 17 **IC 5-2-1-9(d);**
- 18 **(2) completed the tier III basic training program at the**  
 19 **Indiana law enforcement academy; and**
- 20 **(3) at least ten (10) years of law enforcement experience.**

21 **Sec. 2. The director of special investigations is a law**  
 22 **enforcement officer and has all the powers and duties of a law**  
 23 **enforcement officer to:**

- 24 **(1) make arrests for violations of this article or any other**  
 25 **statute relating to the accounting for, or handling of, public**  
 26 **funds; and**
- 27 **(2) serve any process, notice, or order connected with the**  
 28 **enforcement of this article by whatever officer, authority, or**  
 29 **court issued.**

30 **Sec. 3. The director of special investigations shall cooperate,**  
 31 **coordinate, consult, and share records and information with the**  
 32 **attorney general and the appropriate prosecuting attorney in**  
 33 **accordance with IC 5-11-5-1.**

34 **Sec. 4. The director of special investigations has the same**  
 35 **authority as a law enforcement agency (as defined in**  
 36 **IC 35-47-15-2) to:**

- 37 **(1) access (as defined in IC 35-43-2-3); and**
- 38 **(2) maintain;**

39 **information regarding a violation of this article or any other**  
 40 **statute relating to the accounting for, or handling of, public funds.**

41 SECTION 4. IC 35-31.5-2-185, AS AMENDED BY P.L.238-2015,  
 42 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2017]: Sec. 185. (a) "Law enforcement officer" means:
- 2 (1) a police officer (including a correctional police officer),
- 3 sheriff, constable, marshal, prosecuting attorney, special
- 4 prosecuting attorney, special deputy prosecuting attorney, the
- 5 securities commissioner, or the inspector general;
- 6 (2) a deputy of any of those persons;
- 7 (3) an investigator for a prosecuting attorney or for the inspector
- 8 general;
- 9 (4) a conservation officer;
- 10 (5) an enforcement officer of the alcohol and tobacco
- 11 commission;
- 12 (6) an enforcement officer of the securities division of the office
- 13 of the secretary of state; ~~or~~
- 14 (7) a gaming agent employed under IC 4-33-4.5 or a gaming
- 15 control officer employed by the gaming control division under
- 16 IC 4-33-20; **or**
- 17 **(8) the director of special investigations of the state board of**
- 18 **accounts.**
- 19 (b) "Law enforcement officer", for purposes of IC 35-42-2-1,
- 20 includes an alcoholic beverage enforcement officer, as set forth in
- 21 IC 35-42-2-1.
- 22 (c) "Law enforcement officer", for purposes of IC 35-45-15,
- 23 includes a federal enforcement officer, as set forth in IC 35-45-15-3.
- 24 (d) "Law enforcement officer", for purposes of IC 35-44.1-3-1 and
- 25 IC 35-44.1-3-2, includes a school resource officer (as defined in
- 26 IC 20-26-18.2-1) and a school corporation police officer appointed
- 27 under IC 20-26-16.
- 28 SECTION 5. IC 35-50-2-11, AS AMENDED BY P.L.157-2016,
- 29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 30 JULY 1, 2017]: Sec. 11. (a) As used in this section, "firearm" has the
- 31 meaning set forth in IC 35-47-1-5.
- 32 (b) As used in this section, "offense" means:
- 33 (1) a felony under IC 35-42 that resulted in death or serious bodily
- 34 injury;
- 35 (2) kidnapping; or
- 36 (3) criminal confinement as a Level 2 or Level 3 felony.
- 37 (c) As used in this section, "police officer" means any of the
- 38 following:
- 39 (1) A state police officer.
- 40 (2) A county sheriff.
- 41 (3) A county police officer.
- 42 (4) A city police officer.





- 1 (5) A state educational institution police officer appointed under  
2 IC 21-39-4.
- 3 (6) A school corporation police officer appointed under  
4 IC 20-26-16.
- 5 (7) A police officer of a public or private postsecondary  
6 educational institution whose board of trustees has established a  
7 police department under IC 21-17-5-2 or IC 21-39-4-2.
- 8 (8) An enforcement officer of the alcohol and tobacco  
9 commission.
- 10 (9) A conservation officer.
- 11 (10) A gaming agent employed under IC 4-33-4.5 or a gaming  
12 control officer employed by the gaming control division under  
13 IC 4-33-20.
- 14 **(11) The director of special investigations of the state board of**  
15 **accounts.**
- 16 (d) The state may seek, on a page separate from the rest of a  
17 charging instrument, to have a person who allegedly committed an  
18 offense sentenced to an additional fixed term of imprisonment if the  
19 state can show beyond a reasonable doubt that the person knowingly or  
20 intentionally used a firearm in the commission of the offense.
- 21 (e) The state may seek, on a page separate from the rest of a  
22 charging instrument, to have a person who allegedly committed a  
23 felony or misdemeanor other than an offense (as defined under  
24 subsection (b)) sentenced to an additional fixed term of imprisonment  
25 if the state can show beyond a reasonable doubt that the person, while  
26 committing the felony or misdemeanor, knowingly or intentionally:
- 27 (1) pointed a firearm; or  
28 (2) discharged a firearm;
- 29 at an individual whom the person knew, or reasonably should have  
30 known, was a police officer.
- 31 (f) If the person was convicted of:
- 32 (1) the offense under subsection (d); or  
33 (2) the felony or misdemeanor under subsection (e);
- 34 in a jury trial, the jury shall reconvene to hear evidence in the  
35 enhancement hearing. If the trial was to the court, or the judgment was  
36 entered on a guilty plea, the court alone shall hear evidence in the  
37 enhancement hearing.
- 38 (g) If the jury (if the hearing is by jury) or the court (if the hearing  
39 is to the court alone) finds that the state has proved beyond a  
40 reasonable doubt that the person knowingly or intentionally used a  
41 firearm in the commission of the offense under subsection (d), the court  
42 may sentence the person to an additional fixed term of imprisonment



1 of between five (5) years and twenty (20) years.  
2 (h) If the jury (if the hearing is by jury) or the court (if the hearing  
3 is to the court alone) finds that the state has proved beyond a  
4 reasonable doubt that the person, while committing a felony or  
5 misdemeanor under subsection (e), knowingly or intentionally:  
6 (1) pointed a firearm; or  
7 (2) discharged a firearm;  
8 at an individual whom the person knew, or reasonably should have  
9 known, was a police officer, the court may sentence the person to an  
10 additional fixed term of imprisonment of between five (5) and twenty  
11 (20) years.  
12 (i) A person may not be sentenced under subsections (g) and (h) for  
13 offenses, felonies, and misdemeanors comprising a single episode of  
14 criminal conduct.

