



February 6, 2015

SENATE BILL No. 538

DIGEST OF SB 538 (Updated February 4, 2015 1:02 pm - DI 102)

Citations Affected: IC 20-28; IC 20-29.

Synopsis: Teacher collective bargaining. Provides that the Indiana education employment relations board (board) must publish a model salary schedule that a school corporation may adopt. (Current law requires the department of education (department) to publish a model salary schedule.) Adds a definition of "professional employee organization". Provides that a school employer shall submit a copy of the affidavit submitted by the exclusive representative indicating the number of teachers who are members of the exclusive representative to the board. Provides that if the board determines that the affidavit indicates that the exclusive representative does not represent a majority of the employees, the board shall investigate the affidavit. Provides that after investigation by the board, the board may, if necessary, hold a hearing concerning representation by the school employee organization, and, based on the results of the hearing, direct an election by secret ballot within the bargaining unit to determine representation. Provides that an election based on the investigation of an affidavit may be held only once in a five year period. Reduces from 20% to 10% the minimum number of school employees in a unit that may file a petition asserting that the designated exclusive representative is no longer the representative of the majority of school employees in the unit. Removes a requirement that a school corporation submit its local salary schedule to the department for posting on the department's Internet web site. Provides that the board must rule on an appeal of a factfinder's decision within 60 days of receipt of the notice of appeal. Provides that
(Continued next page)

Effective: July 1, 2015.

Yoder

January 14, 2015, read first time and referred to Committee on Pensions & Labor.
February 5, 2015, amended, reported favorably — Do Pass.

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Digest Continued

factfinding by a factfinder may not last longer than 30 days. Provides that the public hearing for a collective bargaining impasse proceeding may begin not earlier than October 1 in the first year of the state budget biennium and must be concluded by February 1 of the year following the commencement of bargaining. Requires the board to develop and maintain a form summarizing a school employee's rights and protections. Requires a school corporation, beginning in the 2016-2017 school year, to distribute the form to the school corporation's employees. Requires a school corporation to establish and maintain procedures or policies that provide equal treatment of and equal access for professional employee organizations.

SB 538—LS 6944/DI 116



February 6, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 538

A BILL FOR AN ACT to amend the Indiana Code concerning education.

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

1 SECTION 1. IC 20-28-9-1.5, AS ADDED BY P.L.286-2013,
2 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1.5. (a) This subsection applies to a contract in
4 effect July 1, 2012, or upon the expiration of a contract in existence on
5 July 1, 2011, whichever is earlier, and governs salary increases for a
6 teacher employed by a school corporation on or after the date this
7 subsection takes effect. Compensation attributable to additional
8 degrees or graduate credits earned before the effective date of the local
9 salary schedule created under this chapter shall continue.
10 Compensation attributable to additional degrees for which a teacher has
11 started course work before July 1, 2011, and completed course work
12 before September 2, 2014, shall also continue.
13 (b) Increases or increments in a local salary scale must be based
14 upon a combination of the following factors:

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1 (1) A combination of the following factors taken together may
 2 account for not more than thirty-three percent (33%) of the
 3 calculation used to determine a teacher's increase or increment:

4 (A) The number of years of a teacher's experience.

5 (B) The attainment of either:

6 (i) additional content area degrees beyond the requirements
 7 for employment; or

8 (ii) additional content area degrees and credit hours beyond
 9 the requirements for employment, if required under an
 10 agreement bargained under IC 20-29.

11 (2) The results of an evaluation conducted under IC 20-28-11.5.

12 (3) The assignment of instructional leadership roles, including the
 13 responsibility for conducting evaluations under IC 20-28-11.5.

14 (4) The academic needs of students in the school corporation.

15 (c) A teacher rated ineffective or improvement necessary under
 16 IC 20-28-11.5 may not receive any raise or increment for the following
 17 year if the teacher's employment contract is continued. The amount that
 18 would otherwise have been allocated for the salary increase of teachers
 19 rated ineffective or improvement necessary shall be allocated for
 20 compensation of all teachers rated effective and highly effective based
 21 on the criteria in subsection (b).

22 (d) A teacher who does not receive a raise or increment under
 23 subsection (c) may file a request with the superintendent or
 24 superintendent's designee not later than five (5) days after receiving
 25 notice that the teacher received a rating of ineffective. The teacher is
 26 entitled to a private conference with the superintendent or
 27 superintendent's designee.

28 (e) ~~Not later than January 31, 2012;~~ The ~~department~~ **Indiana**
 29 **education employment relations board** shall publish a model salary
 30 schedule that a school corporation may adopt.

31 (f) Each school corporation shall submit its local salary schedule to
 32 the ~~department~~ **Indiana education employment relations board**. The
 33 ~~department~~ **Indiana education employment relations board** shall
 34 publish the local salary schedules on the ~~department's~~ **Indiana**
 35 **education employment relations board's** Internet web site.

36 (g) The ~~department~~ **Indiana education employment relations**
 37 **board** shall report any noncompliance with this section to the state
 38 board.

39 (h) The state board shall take appropriate action to ensure
 40 compliance with this section.

41 (i) This chapter may not be construed to require or allow a school
 42 corporation to decrease the salary of any teacher below the salary the



1 teacher was earning on or before July 1, 2012, if that decrease would
2 be made solely to conform to the new salary scale.

3 (j) After June 30, 2011, all rights, duties, or obligations established
4 under IC 20-28-9-1 before its repeal are considered rights, duties, or
5 obligations under this section.

6 SECTION 2. IC 20-29-2-11.5 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2015]: **Sec. 11.5. "Professional employee
9 organization" means any one (1) or more organizations, agencies,
10 committees, councils, or groups of any kind in which certificated
11 employees participate, and that exist for the primary purpose of
12 engaging in negotiations with a governing body regarding the
13 terms and conditions of employment or for the purpose of
14 providing professional development or liability protection to
15 certificated employees. The term does not include an organization
16 or entity whose primary purpose is commercial.**

17 SECTION 3. IC 20-29-3-15 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2015]: **Sec. 15. (a) Before July 30, 2015, the board shall develop
20 and maintain a form that summarizes a school employee's rights
21 and protections under IC 20-28 and IC 20-29. The form must be
22 made available on the board's Internet web site.**

23 **(b) Beginning with the 2015-2016 school year, a school
24 corporation shall distribute copies of the form developed and
25 maintained under subsection (a) to the school corporation's school
26 employees.**

27 SECTION 4. IC 20-29-4-4 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2015]: **Sec. 4. (a) Except as provided in subsection (d), a school
30 corporation shall establish and maintain procedures or policies
31 that provide equal treatment of and equal access for professional
32 employee organizations. A school corporation may not deny
33 professional employee organizations equal access to school
34 employees if a professional employee organization requests access
35 to the same extent that access is granted to any other professional
36 employee organization. A professional employee organization may
37 not be granted the exclusive privilege of access to the use of school
38 facilities for meetings, the use of bulletin boards in a school facility,
39 or the use of school mail systems.**

40 **(b) A governing body may not grant access to any school
41 employee's mailbox or electronic mail account to a professional
42 employee organization without giving access to any other**



1 professional employee organization.

2 (c) If a professional employee organization is permitted to
3 attend a school employee orientation meeting, then any other
4 professional employee organization that requests permission to
5 attend the meeting shall be granted permission.

6 (d) For purposes of subsection (a), access to school employees
7 includes the following:

8 (1) Setting up informational tables at inservice, orientation, or
9 other similar meetings.

10 (2) Speaking at inservice, orientation, or other similar
11 meetings.

12 (3) Distributing information by mail or electronic mail to
13 school employees.

14 (4) Using school corporation meeting rooms during nonwork
15 hours.

16 (5) Representing employment matters when requested by a
17 school employee.

18 (6) Sponsoring a school employee activity or event.

19 (e) The board may adopt rules under IC 4-22-2 necessary to
20 administer this section.

21 (f) The board is not bound by IC 4-21.5 in conducting any
22 hearings or findings relating to this section.

23 SECTION 5. IC 20-29-5-3, AS AMENDED BY P.L.1-2006,
24 SECTION 333, IS AMENDED TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) If an exclusive school
26 employee organization is not determined under section 2 of this
27 chapter, the determination of whether a school employee organization
28 shall be the exclusive representative shall be determined under this
29 section.

30 (b) A school employee organization may file a petition asserting
31 that:

32 (1) twenty percent (20%) of the employees in an appropriate unit
33 wish to be represented for collective bargaining by the school
34 employee organization as exclusive representative; or

35 (2) the designated exclusive representative is no longer the
36 representative of the majority of school employees in the unit.

37 (c) The school employer may file a petition asserting:

38 (1) that one (1) or more school employee organizations have
39 presented to the school employer a claim to be recognized as the
40 exclusive representative in an appropriate unit; or

41 (2) that the school employer has good faith doubt that the
42 previously certified school employee organization represents a



majority of employees in the bargaining unit.

(d) ~~Twenty Ten percent (20%)~~ **(10%)** of the school employees in a unit may file a petition asserting that the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(e) If a copy of an affidavit sent to the board under section 7(f) of this chapter indicates that the school employee organization no longer represents a majority of the school employees in the unit, the board shall investigate the affidavit under subsection (f).

~~(e)~~ **(f)** The board shall investigate a petition filed under subsection (b), (c), ~~or~~ (d), **or an affidavit described in subsection (e)**. If the board has reasonable cause to believe that a question exists as to whether the designated exclusive representative or any school employee organization represents a majority of the school employees in a unit, the board shall provide for an appropriate hearing within thirty (30) days. In holding a hearing, the board is not required to comply with IC 4-21.5.

~~(f)~~ **(g)** If the board finds, based on the record of a hearing held under subsection ~~(e)~~; **(f)**, that a question of representation exists, the board shall direct an election by secret ballot in a unit the board determines to be appropriate.

~~(g)~~ **(h)** Certification as the exclusive representative may be granted only to a school employee organization that has been selected in a secret ballot election under subsection ~~(f)~~; **(g)**, by a majority of all the employees in an appropriate unit as their representative.

~~(h)~~ **(i)** An election described in subsection ~~(f)~~ **(g)** may not be held in a bargaining unit if a valid election has been held in the preceding:

(1) twenty-four (24) month period, in response to a petition filed under subsection (b), (c), or (d); or

(2) five (5) year period, in response to an affidavit described in subsection (e).

SECTION 6. IC 20-29-5-7, AS ADDED BY P.L.48-2011, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) This section does not apply to the bargaining team for the exclusive representative.

(b) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school corporation who are members of the exclusive representative does not produce a whole number, the



1 product must be rounded up to the nearest whole number. The
 2 percentage of positions applies to the number of teacher positions on
 3 a committee and not to the total number of positions on a committee.

4 (c) The percentage of teacher positions the exclusive representative
 5 may appoint to serve on a statutory or locally created school wide
 6 committee may not exceed the percentage of teachers in the school who
 7 are members of the exclusive representative. If multiplying the number
 8 of teacher positions on the committee by the percentage of teachers in
 9 the school who are members of the exclusive representative does not
 10 produce a whole number, the product must be rounded up to the nearest
 11 whole number. The percentage of positions applies to the number of
 12 teacher positions on a committee and not to the total number of
 13 positions on a committee.

14 (d) A committee to which this section applies may not address
 15 subjects of bargaining under this article. A school employer's
 16 appointment of a teacher to a committee is not an unfair practice as it
 17 relates to the appointment of the teacher committee members.

18 (e) By September 15 of each school year, the local president or other
 19 officer or designee of the exclusive representative shall certify by
 20 affidavit to the school employer the number of teachers in each school
 21 and in the entire school corporation who are members of the exclusive
 22 representative.

23 **(f) By October 1 of each school year, the school employer shall**
 24 **provide the board with a copy of the affidavit submitted to the**
 25 **school board under subsection (e).**

26 SECTION 7. IC 20-29-6-15.1, AS ADDED BY P.L.229-2011,
 27 SECTION 181, IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2015]: Sec. 15.1. (a) If an agreement has not
 29 been reached on the items permitted to be bargained collectively under
 30 section 4 of this chapter, within fifteen (15) days after mediation under
 31 section 13 of this chapter has ended, the board shall initiate factfinding.

32 (b) Factfinding must culminate in the factfinder imposing contract
 33 terms on the parties. The factfinder must select one (1) party's last best
 34 offer as the contract terms. The factfinder's order must be restricted to
 35 only those items permitted to be bargained and included in the
 36 collective bargaining agreement under section 4 of this chapter and
 37 must not put the employer in a position of deficit financing (as defined
 38 in IC 20-29-2-6). The factfinder's order may not impose terms beyond
 39 those proposed by the parties in their last, best offers.

40 (c) Costs for the factfinder shall be borne equally by the parties.

41 (d) Factfinding may not last longer than ~~fifteen (15)~~ **thirty (30)**
 42 days.



1 SECTION 8. IC 20-29-6-18, AS AMENDED BY P.L.6-2012,
 2 SECTION 140, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2015]: Sec. 18. (a) Either party may appeal the
 4 decision of the factfinder under IC 20-29-6-15.1. The appeal must be
 5 filed not later than thirty (30) days after receiving the factfinder's
 6 decision.

7 (b) The board's decision must be restricted to only those items
 8 permitted to be bargained and included in the collective bargaining
 9 agreement under section 4 of this chapter and must not put the
 10 employer in a position of deficit financing, as defined in IC 20-29-2-6.
 11 The board's decision may not impose terms beyond those proposed by
 12 the parties in their last, best offers.

13 (c) The board must rule on the appeal within ~~thirty (30)~~ **sixty (60)**
 14 days after receipt of notice of appeal.

15 SECTION 9. IC 20-29-8-7, AS AMENDED BY P.L.229-2011,
 16 SECTION 183, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) When a factfinder is
 18 requested or required under IC 20-29-6, the board shall appoint a
 19 factfinder from the staff or panel established under section 6 of this
 20 chapter.

21 (b) The factfinder shall make an investigation and hold hearings as
 22 the factfinder considers necessary in connection with a dispute.

23 (c) The factfinder:

24 (1) may restrict the factfinder's findings to those issues that the
 25 factfinder determines significant;

26 (2) must restrict the findings to the items listed in IC 20-29-6-4;
 27 and

28 (3) may not impose terms beyond those proposed by the parties in
 29 their last, best offers.

30 (d) The factfinder may use evidence furnished to the factfinder by:

31 (1) the parties;

32 (2) the board;

33 (3) the board's staff; or

34 (4) any other state agency.

35 (e) The factfinder shall conduct the factfinding hearing in public in
 36 a room or facility owned by the county or local unit of government
 37 located in the county in which the school employer is located, or if the
 38 school employer is located in more than one (1) county, in the county
 39 in which the greatest number of students who attend the school
 40 employer's schools reside. The public hearing may begin not earlier
 41 than October 1 in the first year of the state budget biennium and must
 42 be concluded by ~~December 31~~ **February 1** of the ~~same~~ **following**



- 1 **the commencement of bargaining.**
- 2 (f) The factfinding process may not exceed ~~fifteen (15)~~ **thirty (30)**
- 3 days from beginning to end, and not more than two (2) of those days
- 4 may be used for public testimony, which may be taken at the discretion
- 5 of the factfinder. During the public hearing, each party shall present
- 6 fully its last, best offer, including the fiscal rationale for the offer. Only
- 7 general operating funds and those funds certified by the department of
- 8 education and the department of local government finance may be
- 9 considered as a source of the funding for items, unless the school
- 10 funding formula allows other funds to be used for certain items.
- 11 (g) The factfinder shall make a recommendation as to the settlement
- 12 of the disputes over which the factfinder has jurisdiction.
- 13 (h) The factfinder shall:
- 14 (1) make the investigation, hearing, and findings as expeditiously
- 15 as the circumstances permit; and
- 16 (2) deliver the findings to the parties and to the board.
- 17 (i) The board, after receiving the findings and recommendations,
- 18 may make additional findings and recommendations to the parties
- 19 based on information in:
- 20 (1) the report; or
- 21 (2) the board's own possession.
- 22 The board may not make any recommendations to the parties related to
- 23 any items not specifically identified in IC 20-29-6-4.
- 24 (j) At any time within five (5) days after the findings and
- 25 recommendations are delivered to the board, the board may make the
- 26 findings and recommendations of the factfinder and the board's
- 27 additional findings and recommendations, if any, available to the
- 28 public through news media and other means the board considers
- 29 effective.
- 30 (k) The board shall make the findings and recommendations
- 31 described in subsection (j) available to the public not later than ten (10)
- 32 days after the findings and recommendations are delivered to the board.



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 538, 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 3, line 11, after "for the" insert "**primary**".

Page 3, line 11, after "purpose" delete ", in whole or".

Page 3, line 12, delete "in part,".

Page 3, line 15, after "employees." insert "**The term does not include an organization or entity whose primary purpose is commercial.**".

Page 5, line 1, strike "Twenty" and insert "**Ten**".

Page 5, line 1, strike "(20%)" and insert "**(10%)**".

Page 7, delete lines 14 through 42.

Page 8, delete lines 1 through 11.

Page 9, delete lines 30 through 40.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 538 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 6, Nays 5.

