January 19, 2023

HOUSE BILL No. 1016

DIGEST OF HB 1016 (Updated January 19, 2023 9:04 am - DI 140)

Citations Affected: IC 36-8.

Synopsis: Police and fire merit systems. Allows a fire protection district or fire protection territory to establish a merit system. Provides that unless a resolution or ordinance to establish a merit system is rejected not later than July 1, 2024, a merit system is established on January 1, 2025, for eligible: (1) city and town police and fire departments and township fire departments; and (2) fire protection districts and fire protection territories. Provides that the merit system may be dissolved after January 1, 2025. Repeals a provision containing definitions and moves the definitions to another location.

Effective: July 1, 2023.

Pressel, Frye R, Bartels, Campbell

January 9, 2023, read first time and referred to Committee on Employment, Labor and Pensions.
January 19, 2023, reported — Do Pass.

January 19, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1016

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:

SECTION 1. IC 36-8-2.2-1, AS ADDED BY P.L.140-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) This chapter applies only to a firefighter who is a full-time, paid, nonprobationary member of a fire department.

(b) This chapter does not apply to any of the following:

(1) A member of the fire department who holds an upper level policy making position.

(2) A member of the fire department who holds a position in the fire department:

(A) that is not an upper level policy making position; and

(B) to which the member was appointed by the chief.

(3) A fire department, **fire protection district, or fire protection territory** having a merit system established under IC 36-8-3.5.

SECTION 2. IC 36-8-3.5-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.1. This chapter applies to the following:**

(1) A municipality or township that has a full-time paid police or fire department.

(2) A fire protection district established under IC 36-8-11.

(3) A fire protection territory established under IC 36-8-19.

SECTION 3. IC 36-8-3.5-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.2. As used in this chapter, "commission" refers to the merit commission for a merit system established under this chapter.**

SECTION 4. IC 36-8-3.5-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.3. As used in this chapter, "department" refers to:**

(1) the police department of a unit;

(2) the fire department of a unit;

(3) a district; or

(4) a territory.

SECTION 5. IC 36-8-3.5-0.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.4. As used in this chapter, "district" refers to a fire protection district established under IC 36-8-11.**

SECTION 6. IC 36-8-3.5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.5. As used in this chapter, "governing board" refers to the following:**

(1) In the case of a fire protection district, the board of fire trustees appointed under IC 36-8-11-12.

(2) In the case of a fire protection territory, the body or board delegated the responsibilities for overseeing the hiring, promotion, conduct, and discipline of the members of the department by the terms of the interlocal agreement entered into by the participating units of the fire protection territory.

SECTION 7. IC 36-8-3.5-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.6. As used in this chapter, "territory" refers to a fire protection territory established under IC 36-8-19.**

SECTION 8. IC 36-8-3.5-1, AS AMENDED BY P.L.13-2010, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) This ~~chapter~~ **section** applies **only** to ~~each~~ **a** municipality or township that has a full-time paid police or fire

department.

(b) A municipality may exercise the power of establishing a merit system for its police or fire department under this chapter or by ordinance adopted under IC 36-1-4-14. A township may exercise the power of establishing a merit system for its fire department under this chapter or by resolution under IC 36-1-4-14. This chapter does not affect merit systems established:

(1) by ordinance under IC 36-1-4-14, except as provided by subsection ~~(e)~~ **(f)** and section 19.3 of this chapter;

(2) by resolution under IC 36-1-4-14, except as provided by subsection ~~(f)~~ **(g)** and section 19.3 of this chapter; or

(3) by a prior statute, except as provided by subsection ~~(b)~~ **(c)** and section 19.3 of this chapter.

~~(b)~~ **(c)** If a city had a merit system for its police or fire department under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2, IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29, IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain that system by ordinance of the city legislative body passed before January 1, 1983. The ordinance must initially incorporate all the provisions of the prior statute but may be amended by the legislative body after December 31, 1984. The ordinance retaining the system must be amended, if necessary, to include a provision under which the commission (or governing board of the merit system) has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must:

(1) be a person of good moral character; and

(2) except for a member of a fire department having a merit system established under IC 19-1-37.5, not be an active member of a police or fire department or agency.

~~(c)~~ **(d)** After December 31, 1984, the legislative body also may repeal the ordinance described in subsection ~~(b),~~ **(c),** but the legislative body shall in the repealing ordinance concurrently establish a new merit system under section 3 of this chapter. (This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend the ordinance under subsection ~~(b).)~~ **(c).)** After the new merit system takes effect, all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

~~(d)~~ **(e)** If a city had a merit system for its police or fire department under a prior statute but fails to retain that system under subsection ~~(b),~~

(c), the city legislative body shall, before July 1, 1983, pass an ordinance to establish a new merit system under section 3 of this chapter. If the new merit system is approved as provided by section 4 of this chapter, it takes effect as provided by that section. However, if the new merit system is rejected under section 4 of this chapter, within thirty (30) days the city legislative body shall adopt an ordinance to retain the prior merit system. The prior merit system remains in effect until the new merit system takes effect, after which time all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

~~(e)~~ **(f)** An ordinance adopted under IC 36-1-4-14 to establish a police or fire merit system must include a provision under which the commission, or governing board of the merit system, has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must be a person of good moral character who is not an active member of a police or fire department or agency. If an ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the ordinance must be amended to include this requirement.

~~(f)~~ **(g)** This chapter does not prevent a township or other unit that has adopted a merit system under section 3 of this chapter from later amending or deleting any provisions of the merit system contained in this chapter. However, the merit system must include a provision under which the commission has at least one-third (1/3) of its members elected by the active members of the department, as set forth in section 8 of this chapter and a provision that incorporates the requirements of section ~~6(a)~~ **6(b)** of this chapter. This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend under this subsection.

SECTION 9. IC 36-8-3.5-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 1.1. (a) This section applies only to a district or territory.**

(b) The governing board may, by resolution, establish a merit system under this chapter. Before the merit system takes effect, however, the merit system must be approved by a majority of the active members of the department in a referendum as provided in section 4 of this chapter. The governing board shall specify in the adopting resolution which provisions of this chapter are being adopted that are:

(1) applicable to the district or territory; and

(2) left to the governing board's discretion;
under this chapter.

(c) This chapter does not prevent a district or territory that has adopted a merit system under this chapter from later amending or deleting any provisions of the merit system contained in this chapter. However, the merit system must include a provision under which the commission has at least one-third (1/3) of its members elected by the active full-time members of the department, as set forth in section 8 of this chapter and a provision that incorporates the requirements of section 6(c) of this chapter. This subsection does not require the governing board under subsection (b) to establish a new merit system when the governing board exercises its power to amend under this subsection.

SECTION 10. IC 36-8-3.5-2 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 2. As used in this chapter:~~

~~"Commission" refers to the merit commission for a merit system established under this chapter.~~

~~"Department" refers to the police or fire department of a unit.~~

SECTION 11. IC 36-8-3.5-4, AS AMENDED BY P.L.127-2017, SECTION 227, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) Within sixty (60) days after the adoption of an ordinance or resolution establishing a merit system, the safety board **or governing board** shall give at least three (3) weeks' notice to all active members of the department that a meeting will be held to approve or reject the merit system. The notice shall be given by posting it in prominent places in all stations of the department. The notice must designate the time, place, and purpose of the meeting.

(b) A copy of the ordinance or resolution shall be distributed to each active member of the department at least one (1) week before the date of the meeting.

(c) Only active members of the department may attend the meeting, and at the meeting one (1) of them shall be selected as chair. All voting must be by secret written ballot. The other procedures for holding the meeting may be determined by the safety board **or governing board** and shall be posted in accordance with subsection (a).

(d) If a majority of the active members of the department vote to approve the merit system, the merit system takes effect on January 1 following the vote. Appointments to the merit commission shall be made by March 1 following that January 1.

(e) If a majority of the active members of the department vote to reject the merit system, another proposal may not be put to a vote within one (1) year after the day the meeting is held.

SECTION 12. IC 36-8-3.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A majority of the active members of the department, by referendum under section 4 of this chapter, may request the:

(1) unit's legislative body; **or**

(2) governing board;

to establish a merit system for the department.

(b) The **unit's** legislative body **or the governing board** shall vote on the request within sixty (60) days after ~~it~~ **the request** is filed with **the following:**

(1) In the case of a unit:

(A) the clerk of the legislative body of a county or a municipality; or

(B) the executive of a township.

(2) In the case of a district or territory, the governing board.

~~(b)~~ **(c)** If the **unit's** legislative body votes to grant the request, the legislative body shall adopt an ordinance or resolution establishing a merit system under this chapter. **If the governing board votes to grant the request, the governing board shall adopt a resolution establishing a merit system under this chapter.** A copy of the ordinance or resolution shall be distributed to each active member of the department, and another referendum under section 4 of this chapter is required before the merit system takes effect.

~~(c)~~ **(d)** If the **unit's** legislative body **or a governing board** votes to deny the request, the request may not be resubmitted to the legislative body **or governing board** for one (1) year. Before the request may be resubmitted, another referendum under section 4 of this chapter must be held.

SECTION 13. IC 36-8-3.5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 5.5. (a) This section applies to the following:**

(1) A unit that:

(A) has an eligible police department or fire department; and

(B) does not have a merit system established under:

(i) this chapter;

(ii) IC 36-1-4-14; or

(iii) a prior statute and retained by ordinance as provided in section 1(c) of this chapter;

for an eligible police department, fire department, or both.

(2) A district or a territory that is an eligible fire department.

(b) For purposes of this section, a police department is eligible if the police department:

(1) has at least twelve (12) active full-time, paid members; and

(2) provides service to a geographic area that has a resident population of at least ten thousand (10,000), excluding the resident population of any geographic area that the department provides service to under a mutual aid agreement.

(c) For purposes of this section, a fire department is eligible if the fire department:

(1) has at least twelve (12) active full-time, paid members; and

(2) provides service to a geographic area that has a resident population of at least ten thousand (10,000):

(A) excluding the resident population of any geographic area that the department provides service to under a mutual aid agreement; and

(B) including the resident population of any geographic area within a district or territory.

(d) Effective January 1, 2025, a merit system is established for each eligible department that does not have a merit system unless, not later than December 31, 2024, the unit, territory, or district:

(1) establishes a merit system:

(A) under section 3 of this chapter, in the case of a unit; or

(B) section 1.1 of this chapter, in the case of a district or territory; or

(2) adopts a resolution rejecting establishment of a merit system in accordance with subsection (e).

(e) For each eligible department that does not have a merit system, the unit's legislative body or the governing board of the district or territory may adopt a resolution not later than December 31, 2024, that rejects the establishment of a merit system. The resolution rejecting establishment of a merit system must be adopted by an affirmative vote of at least a majority of the members of each of the following:

(1) In the case of a:

(A) unit, the unit's legislative body; or

(B) district or territory, the governing board.

(2) The active full-time, paid members of the department.

The legislative body or governing board shall vote on the resolution first. If the legislative body or governing body votes "yes" on the resolution (thereby rejecting a merit system), the resolution shall be voted on by the active full-time, paid members of the

department in accordance with the procedure set forth in section 4 of this chapter. If a majority of the active full-time, paid members of the department vote "yes" on the resolution (thereby rejecting a merit system), a merit system is not established for the department on January 1, 2025.

(f) If a unit, district, or territory does not reject the establishment of a merit system under subsection (e), a merit system is established on January 1, 2025, without complying with section 3 of this chapter (in the case of a unit), section 1.1 of this chapter (in the case of a district or territory), or any other law. The following apply to the merit system:

(1) The merit system shall be considered to be established by the ordinance or resolution, whichever is appropriate, that adopts all of the provisions applicable to the establishing unit, district, or territory.

(2) Not later than March 1, 2025, a merit commission shall be appointed that establishes or administers policies based on merit for the appointment, promotion, demotion, and dismissal of members of the department as set forth in this chapter.

(g) After January 1, 2025, a merit system established under this section may amended or dissolved as follows:

(1) The merit system may be amended by the:

(A) unit's legislative body adopting an ordinance or resolution as provided in section 3 of this chapter; or

(B) governing body adopting a resolution under section 1.1 of this chapter;

that has the effect of amending or deleting provisions of the merit system that are left to the discretion of the unit, district, or territory under this chapter.

(2) A merit system may be dissolved by following the procedure for establishing or rejecting a merit system under section 4 or 5 of this chapter. The dissolution takes effect on January 1 following the vote of at least a majority of the:

(A) active full-time paid members of the department to approve the ordinance or resolution dissolving the merit system under section 4 of this chapter; or

(B) members of the unit's legislative body or governing board to adopt the ordinance or resolution to dissolve the merit system under section 5 of this chapter, whichever is appropriate.

(h) A unit, district, or territory that rejects the establishment of

a merit system under subsection (e) may adopt or attempt to adopt an ordinance or resolution that establishes a merit system for the department:

(1) under this chapter or IC 36-1-4-14, in the case of a unit; or

(2) under this chapter, in the case of a district or territory;

after December 31, 2024, and at least one (1) year after the date of the vote rejecting the merit system under subsection (e).

SECTION 14. IC 36-8-3.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. (a) A merit commission consisting of five (5) commissioners shall be established for:

(1) each department of a unit;

(2) a district; or

(3) a territory;

having a merit system.

(b) The commissioners **of a unit** are:

(1) two (2) persons, who must be of different political parties, appointed by the unit's executive;

(2) one (1) person appointed by the unit's legislative body; and

(3) two (2) persons, who must be of different political parties, elected by the active members of the department.

Notwithstanding IC 36-1-8-10, political affiliation shall be determined through the voters' registration records of the three (3) most recent primary elections.

(c) The commissioners of a district or territory are:

(1) the members of the governing board; and

(2) two (2) persons, who must be of different political parties, elected by the active members of the department.

Notwithstanding IC 36-1-8-10, the political affiliation of the persons appointed under subdivision (2) shall be determined through the voters' registration records of the three (3) most recent primary elections.

~~(b)~~ **(d)** ~~Each~~ **This subsection does not apply to a commissioner who is a member of the governing board of a district or territory. A** commissioner must have been a legal resident of the unit, **district, or territory** for three (3) consecutive years immediately preceding the commissioner's term and must be a person of good moral character. The **unit's** legislative body may, upon the recommendation of the safety board, determine a per diem to be paid to each commissioner for each day of actual service for the commission. **The governing board may determine a per diem to be paid to each commissioner appointed under subsection (c)(2) for each day of actual service for**

the commission. A commissioner must be at least twenty-one (21) years of age. A commissioner may not be an active member of a police or fire department or agency and not more than two (2) of the commissioners may be past members of a police or fire department or agency. In addition, a person may not serve on the commission if the person receives any remuneration as salary from the unit.

~~(c)~~ **(e)** Each commissioner shall take an oath of office to conscientiously discharge the commissioner's duties. A signed copy of the oath shall be filed with the safety **board of a unit or the governing** board.

SECTION 15. IC 36-8-3.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. (a) **This subsection applies only to a unit.** The term of a commissioner is four (4) years. However, one (1) of the executive's initial selections and one (1) of the department's initial selections are for terms of two (2) years.

(b) This subsection applies only to a district or territory. A commissioner who is a member of the governing board serves on the commission until the member ceases to be a member of the governing board. The term of a commissioner elected by the department under section 6(c)(2) of this chapter is four (4) years. However, the initial term of one (1) of the commissioners elected by the department is for a term of two (2) years.

~~(b)~~ **(c)** A vacancy on the commission shall be filled within thirty (30) days by the appointing or electing authority. The selection is for the remainder of the unexpired term.

~~(c)~~ **(d)** A commissioner **appointed by the unit's legislative body** serves at the pleasure of the appointing or electing authority and may be removed at any time. In the case of a commissioner elected by the department, the safety board **or governing board** shall call a meeting of the active members of the department under the procedures specified in section 4 of this chapter if a recall petition signed by a majority of the active members is submitted to the board.

SECTION 16. IC 36-8-3.5-8, AS AMENDED BY P.L.127-2017, SECTION 228, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) An election to be made by the active members of the department shall be made at a meeting called specifically for that purpose by the safety **board or governing** board. The **safety** board **or governing board** shall give at least three (3) weeks' notice of the meeting to all active members of the department by posting the notice in prominent locations in stations of the department. The notice shall also be read during shift roll calls. The notice must designate the time, place, and purpose of the meeting.

(b) Only active members of the department may attend the meeting, and at the meeting one (1) of them shall be selected as chair. All voting must be by secret written ballot. The other procedures for holding the meeting may be determined by the safety board **or governing board** and shall be posted in accordance with subsection (a).

SECTION 17. IC 36-8-3.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) ~~Within~~ **Not later than** thirty (30) days after the commission is selected, the commission shall adopt rules to govern the commission, including the time and place of regular monthly meetings and special meetings that are necessary to transact the business of the commission. A majority of the commissioners constitutes a quorum, and a majority vote of all the commissioners is necessary to transact the business of the commission. Each year the commissioners shall select from among ~~their number~~ **the commissioners** a president, vice president, and secretary. The commission shall keep a permanent record of its proceedings.

(b) **In the case of a unit,** the commission shall submit a proposed annual budget to the unit as other budgets of the unit are submitted. The legislative body shall include in its budget an amount sufficient for the necessary expenses of the commission.

(c) The commissioners for a territory or district who are:

(1) members of the governing board may not receive a per diem for serving on the commission, but may receive compensation for expenses actually incurred in the performance of a commissioner's duties; and

(2) described in section 6(c)(2) of this chapter may receive a per diem for serving on the commission and compensation for expenses actually incurred in the performance of a commissioner's duties.

SECTION 18. IC 36-8-3.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. (a) Within ninety (90) days after the commission is selected, the commission shall adopt rules governing:

(1) the selection and appointment of persons to be employed as members of the department, subject to applicable pension statutes;

(2) promotions and demotions of members of the department; and

(3) disciplinary action or dismissal of members of the department.

(b) Before the rules required by this chapter are adopted by the commission, the commission must hold a public hearing to consider the adoption of the proposed rules. At least ten (10) days before the public hearing, the commission must have a notice of the hearing published

in accordance with IC 5-3-1. The notice must state the time and place of the hearing and give briefly the subject matter of the proposed rules.

(c) At least ten (10) days before the hearing, one (1) copy of the proposed rules must be placed on file ~~in~~ **as follows:**

(1) In the case of a unit, the office of the:

~~(1)~~ **(A)** clerk of a county, city, or town; or

~~(2)~~ **(B)** executive of a township;

for inspection by residents of the unit.

(2) In the case of a district or territory, the office of the:

(A) county legislative body of each county in which the district or territory is located;

(B) governing body; and

(C) clerk of each city or town and the executive of each township that is:

(i) located in; and

(ii) part of the district or territory;

for inspection by residents of the district or territory.

(d) At least ten (10) days before the hearing, three (3) copies of the proposed rules must be forwarded to the chief of the department and retained on file in the chief's office for inspection at all times by members of the department.

(e) At the hearing, any interested person of the unit, **district, or territory** and any member of the department must be afforded an opportunity to present both oral and written evidence on any matter relating to the adoption of the proposed rules. The commission shall give due consideration to this evidence in making ~~its~~ **the commission's** final decision concerning the adoption of the proposed rules.

SECTION 19. IC 36-8-3.5-11, AS AMENDED BY P.L.127-2017, SECTION 229, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. (a) The commission may appoint and remove members of the department, except for a member in an upper level policymaking position. The executive of the unit **or the governing board** shall appoint and may remove a member in an upper level policymaking position.

(b) The chief of a fire department shall be selected from the members of the department, and the chief must have at least five (5) years service in the department before the chief's appointment. These requirements may be waived by a majority vote of the:

(1) unit's legislative body upon request of the unit's executive; **or**

(2) governing board.

However, the chief must still have at least five (5) years service in a full-time, paid fire department or agency.

(c) To be appointed chief or deputy chief of a police department, an applicant must meet the qualifications in IC 36-8-4-6.5.

(d) The removal of a member from an upper level policymaking position is removal from rank only and not from the department. When the member is removed, the member shall be appointed by the commission to the rank in the department that the member held at the time of the member's upper level appointment or to any rank to which the member had been promoted during the member's tenure in the upper level position. If such a rank is not open in either case, the member is entitled to the pay of that rank and shall be promoted to that rank as soon as an opening is available.

SECTION 20. IC 36-8-3.5-16, AS AMENDED BY P.L.127-2017, SECTION 233, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 16. (a) When a vacancy in rank occurs, the commission shall certify to the chief of the department the three (3) members with the highest scores on the eligibility list for that particular rank. Within six (6) months the commission, upon the recommendation of the chief, shall promote one (1) of those members to fill the vacant position.

(b) All promotions are probationary for a period not to exceed one (1) year. At the end of the period, a probationary member's superior shall review the member's performance and recommend to the commission that:

(1) the promotion be made permanent; or

(2) the promotion be revoked.

(c) The commission shall prepare a rating chart for the superior's use in making the report. The commission shall review the report and decide what action should be taken. The probationary member is entitled to appear before the commission and be heard on any matter detrimental to the member in the report of the member's superior. The member is also entitled to be represented by counsel or another representative of the member's choice. If the promotion is finally revoked the member may not be returned to a rank lower than that the member held before the probationary promotion.

(d) Actions by the commission other than making the promotion permanent may be appealed within thirty (30) days to the circuit or superior court of the county, with the unit, **district, or territory** being named as the sole defendant.

SECTION 21. IC 36-8-3.5-17, AS AMENDED BY P.L.84-2016, SECTION 180, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) The commission may take the following disciplinary actions against a regular member of the

department:

(1) Suspension with or without pay.

(2) Demotion.

(3) Dismissal.

If a member is suspended under this subsection, the member is entitled to the member's remuneration and allowances for insurance benefits to which the member was entitled before the suspension. In addition, the ~~local~~ unit, **territory, or district** may provide the member's allowances for any other fringe benefits to which the member was entitled before the suspension. The commission shall determine if a member of the department who is suspended in excess of five (5) days shall continue to receive the member's salary during suspension.

(b) A member may be disciplined by the commission if:

(1) the member is convicted of a crime; or

(2) the commission finds the member guilty of a breach of discipline, including:

(A) neglect of duty;

(B) violation of commission rules;

(C) neglect or disobedience of orders;

(D) continuing incapacity;

(E) absence without leave;

(F) immoral conduct;

(G) conduct injurious to the public peace or welfare;

(H) conduct unbecoming a member; or

(I) furnishing information to an applicant for appointment or promotion that gives that person an advantage over another applicant.

(c) If the chief of the department, after an investigation within the department, prefers charges against a member of the department for an alleged breach of discipline under subsection (b), including any civilian complaint of an alleged breach of discipline under subsection (b)(2)(F), (b)(2)(G), or (b)(2)(H), a hearing shall be conducted upon the request of the member. If a hearing is requested within five (5) days of the chief preferring charges, the parties may by agreement designate a hearing officer who is qualified by education, training, or experience. If the parties do not agree within this five (5) day period, the commission may hold the hearing or designate a person or board to conduct the hearing, as provided in the commission's rules. The designated person or board must be qualified by education, training, or experience to conduct such a hearing and may not hold an upper level policy making position. The hearing conducted under this subsection shall be held within thirty (30) days after it is requested by the member.

(d) Written notice of the hearing shall be served upon the accused member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The notice must state:

(1) the time and place of the hearing;

(2) the charges against the member;

(3) the specific conduct that comprises the charges;

(4) that the member is entitled to be represented by counsel or another representative of the member's choice;

(5) that the member is entitled to call and cross-examine witnesses;

(6) that the member is entitled to require the production of evidence; and

(7) that the member is entitled to have subpoenas issued, served, and executed.

(e) The commission may:

(1) compel the attendance of witnesses by issuing subpoenas;

(2) examine witnesses under oath; and

(3) order the production of books, papers, and other evidence by issuing subpoenas.

(f) If a witness refuses to appear at a hearing of the commission after having received written notice requiring the witness's attendance, or refuses to produce evidence that the commission requests by written notice, the commission may file an affidavit in the circuit court, superior court, or probate court of the county setting forth the facts of the refusal. Upon the filing of the affidavit, a summons shall be issued from the circuit court, superior court, or probate court and served by the sheriff of the county requiring the appearance of the witness or the production of information or evidence to the commission.

(g) Disobedience of a summons constitutes contempt of the circuit court, superior court, or probate court from which the summons has been issued. Expenses related to the filing of an affidavit and the issuance and service of a summons shall be charged to the witness against whom the summons has been issued, unless the circuit court, superior court, or probate court finds that the action of the witness was taken in good faith and with reasonable cause. In that case, and in any case in which an affidavit has been filed without the issuance of a summons, the expenses shall be charged to the commission.

(h) A decision to discipline a member may be made only if the preponderance of the evidence presented at the hearing indicates such a course of action.

(i) A member who is aggrieved by the decision of a person or board

designated to conduct a disciplinary hearing under subsection (c) may appeal to the commission within ten (10) days of the decision. The commission shall on appeal review the record and either affirm, modify, or reverse the decision on the basis of the record and such oral or written testimony that the commission determines, including additional or newly discovered evidence.

(j) The commission, or the designated person or board, shall keep a record of the proceedings in cases of suspension, demotion, or dismissal. The commission shall give a free copy of the transcript to the member upon request if an appeal is filed.

SECTION 22. IC 36-8-3.5-18, AS AMENDED BY P.L.127-2017, SECTION 234, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 18. (a) A member who is aggrieved by a decision of the commission to suspend the member for a period greater than ten (10) calendar days, demote the member, or dismiss the member may appeal to the circuit or superior court of the county **as follows:**

(1) The county in which the unit is located.

(2) The county in which the provider unit (as defined in IC 36-8-19-3) of the territory is located.

(3) If a district is located in:

(A) not more than one (1) county, the county in which the district is located; or

(B) at least two (2) counties, the primary county (as defined in IC 36-8-11-2).

(b) The appeal shall be made according to the Indiana rules of trial procedure with the following exceptions:

(1) The verified appeal must be filed within thirty (30) days after the date of the board's decision.

(2) The unit, **district, or territory** shall be named as the sole defendant.

(3) The unit, **district, or territory** is assumed to have denied the allegations without filing a responsive pleading.

(4) The plaintiff must file a bond at the time of filing the complaint conditioned on the plaintiff prosecuting the appeal to a final determination and paying the court costs incurred in the appeal.

(5) Within thirty (30) days after the service of summons the commission shall file in court a complete transcript of all papers, entries, and other parts of the record relating to the case.

(c) The appeal takes precedence over other litigation pending before the court.

SECTION 23. IC 36-8-3.5-21, AS AMENDED BY P.L.127-2017, SECTION 236, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 21. (a) If it is necessary for the safety board **or governing board** to reduce the number of members of the department, the reduction shall be made by granting a temporary leave of absence, without pay or financial obligation to the unit, **territory, or district,** to the appropriate number of members. The last member appointed shall be put on leave first, with other members also put on leave in reverse hiring order, until the desired level is achieved.

(b) If the department is increased in number again, the members of the department who have been granted leaves of absence under this section shall be reinstated before an applicant on the eligibility list is appointed to the department. The reinstatements begin with the last member granted a leave.

(c) A member on leave of absence shall keep the commission advised of the member's current address. A member shall be informed of the member's reinstatement by written notice. Within ten (10) calendar days after a member receives notice of reinstatement, the member must advise the commission that the member accepts reinstatement and will be able to commence employment on the date specified in the notice. All reinstatement rights granted to a member terminate upon the member's failure to accept reinstatement within that period.

SECTION 24. IC 36-8-11-15, AS AMENDED BY P.L.127-2017, SECTION 270, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. (a) The board:

(1) has the same powers and duties as a township executive with respect to fire protection functions, including those duties and powers prescribed by IC 36-8-13, although all cooperative and joint actions permitted by that chapter must be undertaken according to this chapter;

(2) has the same powers and duties as a township executive relative to contracting with volunteer firefighting companies, as prescribed by IC 36-8-12 and IC 36-8-13;

(3) shall appoint, fix the compensation, and prescribe the duties of a fiscal officer, secretarial staff, persons performing special and temporary services or providing legal counsel, and other personnel considered necessary for the proper functioning of the district; however, a person appointed as fiscal officer must be bonded by good and sufficient sureties in an amount ordered by the county legislative body to protect the district from financial loss;

(4) shall exercise general supervision of and make regulations for the administration of the district's affairs;
(5) shall prescribe uniform rules pertaining to investigations and hearings;
(6) shall supervise the fiscal affairs and responsibilities of the district;
(7) may delegate to employees of the district the authority to perform ministerial acts, except in cases in which final action of the board is necessary;
(8) shall keep accurate and complete records of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the district;
(9) shall make an annual report to the executive and the fiscal body of the county that at least lists the financial transactions of the district and a statement of the progress in accomplishing the purposes for which the district has been established;
(10) shall adopt a seal and certify all official acts;
(11) may sue and be sued collectively by its legal name ("Board of Fire Trustees, _____ Fire Protection District"), with service of process made on the chair of the board, but costs may not be taxed against the members individually in an action;
(12) may invoke any legal, equitable, or special remedy for the enforcement of this chapter or of proper action of the board taken in a court;
(13) shall prepare and submit to the fiscal body of the county an annual budget for operation and maintenance expenses and for the retirement of obligations of the district, subject to review and approval by the fiscal body;
(14) may, if advisable, establish one (1) or more advisory committees;
(15) may enter into agreements with and accept money from a federal or state agency and enter into agreements with a municipality located within or outside the district, whether or not the municipality is a part of the district, for a purpose compatible with the purposes for which the district exists and with the interests of the municipality;
(16) may accept gifts of money or other property to be used for the purposes for which the district is established;
(17) may levy taxes at a uniform rate on the real and personal property within the district;
(18) may issue bonds and tax anticipation warrants;

(19) may incur other debts and liabilities;
(20) may purchase or rent property;
(21) may sell services or property that are produced incident to the operations of the district making a fair and reasonable charge for it;
(22) may make contracts or otherwise enter into agreements with public or private persons and federal or state agencies for construction, maintenance, or operations of or in part of the district;
(23) may receive and disburse money; ~~and~~
(24) may impose a false alarm fee or service charge under IC 36-8-13-4;
(25) may, subject to the approval of the active members of the fire department in a referendum, adopt a merit system under IC 36-8-3.5; and
(26) shall serve as merit commissioners if a merit system is adopted under IC 36-8-3.5.

(b) Powers granted by this chapter may be used only to accomplish the purpose or purposes as stated in the ordinance or resolution establishing the district. However, an act of the board necessary and proper to accomplish the purposes for which the district is established is not invalid because it incidentally accomplishes a purpose other than one for which the district is established.

SECTION 25. IC 36-8-19-6.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 6.6. A merit system may be adopted under IC 36-8-3.5 for a fire protection territory.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1016, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1016 as introduced.)

VANNATTER

Committee Vote: Yeas 13, Nays 0