

HOUSE BILL No. 1092

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-2; IC 21-39-3-2; IC 22-5-3-3; IC 36-1-8-8.

Synopsis: Enforcement of ALJ code of conduct. Provides that: (1) the state ethics commission shall receive complaints concerning an alleged violation of the statewide code of judicial conduct for administrative law judges (ALJ code); (2) an action taken based on a violation of the ALJ code is in addition to any remedy provided by IC 4-21.5 (the statute governing administrative orders and procedures); and (3) if there is a conflict between IC 4-21.5 and the ALJ code, IC 4-21.5 controls. Deletes a provision providing that the inspector general is not responsible for enforcing or conducting investigations under the ALJ code.

Effective: July 1, 2017.

Washburne

January 5, 2017, read first time and referred to Committee on Judiciary.



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. 1092

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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

- 1 SECTION 1. IC 4-2-6-4, AS AMENDED BY P.L.126-2012,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 4. (a) The commission may do any of the
4 following:
5 (1) Upon a vote of four (4) members, refer any matter within the
6 inspector general's authority to the inspector general for
7 investigation.
8 (2) Receive and hear any complaint filed with the commission by
9 the inspector general that alleges a violation of:
10 (A) this chapter;
11 (B) a rule adopted under this chapter;
12 (C) IC 4-2-7;
13 (D) a rule adopted under IC 4-2-7;
14 (E) IC 4-2-8; or
15 (F) a rule adopted under IC 4-2-8.
16 (3) Obtain information and, upon a vote of four (4) members,
17 compel the attendance and testimony of witnesses and the



- 1 production of pertinent books and papers by a subpoena
 2 enforceable by the circuit or superior court of the county where
 3 the subpoena is to be issued.
- 4 (4) Recommend legislation to the general assembly relating to the
 5 conduct and ethics of state officers, employees, special state
 6 appointees, and persons who have business relationships with
 7 agencies.
- 8 (5) Adopt rules under IC 4-22-2 to implement this chapter.
- 9 (6) Accept and file information:
 10 (A) voluntarily supplied; and
 11 (B) that exceeds the requirements of this chapter.
- 12 (7) Conduct research.
- 13 (b) The commission shall do the following:
- 14 (1) Act as an advisory body by issuing advisory opinions to
 15 interpret this chapter, IC 4-2-7, or the rules adopted under this
 16 chapter or IC 4-2-7, upon:
 17 (A) request of:
 18 (i) a state officer or a former state officer;
 19 (ii) an employee or a former employee;
 20 (iii) a person who has or had a business relationship with an
 21 agency;
 22 (iv) a special state appointee or former special state
 23 appointee; or
 24 (v) the inspector general; or
 25 (B) motion of the commission.
- 26 **(2) Receive complaints alleging a violation of the statewide**
 27 **code of judicial conduct for administrative law judges**
 28 **established under IC 4-2-7-9(a).**
- 29 ~~(2)~~ (3) Conduct its proceedings in the following manner:
 30 (A) When a complaint is filed with the commission, the
 31 commission may:
 32 (i) reject, without further proceedings, a complaint that the
 33 commission considers frivolous or inconsequential;
 34 (ii) reject, without further proceedings, a complaint that the
 35 commission is satisfied has been dealt with appropriately by
 36 an agency;
 37 (iii) upon the vote of four (4) members, determine that the
 38 complaint does not allege facts sufficient to constitute a
 39 violation of this chapter or the code of ethics and dismiss the
 40 complaint; or
 41 (iv) forward a copy of the complaint to the attorney general,
 42 the prosecuting attorney of the county in which the alleged



1 violation occurred, the state board of accounts, a state
2 officer, the appointing authority, or other appropriate person
3 for action, and stay the commission's proceedings pending
4 the other action.

5 (B) If a complaint is not disposed of under clause (A), a copy
6 of the complaint shall be sent to the person alleged to have
7 committed the violation.

8 (C) If the complaint is not disposed of under clause (A), the
9 commission may promptly refer the alleged violation for
10 additional investigation by the inspector general. If the
11 commission finds by a majority vote that probable cause exists
12 to support an alleged violation, it shall set a public hearing on
13 the matter. The respondent shall be notified within fifteen (15)
14 days of the commission's determination. Except as provided in
15 this section, the commission's evidence relating to an
16 investigation is confidential.

17 (D) A complaint filed with the commission is open for public
18 inspection after the commission finds that probable cause
19 exists. However, a complaint filed by the inspector general that
20 contains confidential information under IC 4-2-7-8 may be
21 redacted to exclude the confidential information. Every
22 hearing and other proceeding in which evidence is received by
23 the commission is open to the public. Investigative reports by
24 the inspector general that are not filed with the commission
25 may be kept confidential.

26 (E) A:

- 27 (i) complaint that is filed with; or
28 (ii) proceeding that is held by;

29 the commission before the commission has found probable
30 cause is confidential unless the target of the investigation
31 elects to have information disclosed, or the commission elects
32 to respond to public statements by the person who filed the
33 complaint.

34 (F) The commission may acknowledge:

- 35 (i) the existence and scope of an investigation before the
36 finding of probable cause; or
37 (ii) that the commission did not find probable cause to
38 support an alleged violation.

39 (G) If a hearing is to be held, the respondent may examine and
40 make copies of all evidence in the commission's possession
41 relating to the charges. At the hearing, the charged party shall
42 be afforded appropriate due process protection consistent with



- 1 IC 4-21.5, including the right to be represented by counsel, the
 2 right to call and examine witnesses, the right to introduce
 3 exhibits, and the right to cross-examine opposing witnesses.
 4 (H) After the hearing, the commission shall state its findings
 5 of fact. If the commission, based on a preponderance of the
 6 evidence, finds by a majority vote that the respondent has
 7 violated this chapter, IC 4-2-7, IC 4-2-8, or a rule adopted
 8 under this chapter, IC 4-2-7, or IC 4-2-8, it shall state its
 9 findings in writing in a report, which shall be supported and
 10 signed by a majority of the commission members and shall be
 11 made public.
- 12 (I) If the commission, based on a preponderance of the
 13 evidence, finds by a majority vote a violation of this chapter,
 14 IC 4-2-7, IC 4-2-8, or a rule adopted under this chapter,
 15 IC 4-2-7, or IC 4-2-8, the commission may also take any of the
 16 actions provided in section 12 of this chapter.
- 17 (J) The report required under clause (H) shall be presented to:
 18 (i) the respondent;
 19 (ii) the appointing authority or state officer of the employee,
 20 former employee, or special state appointee;
 21 (iii) the appointing authority or state officer of an agency or
 22 office that has a business relationship with the person
 23 sanctioned; and
 24 (iv) the governor.
- 25 (K) The commission may also forward the report to any of the
 26 following:
 27 (i) The prosecuting attorney of each county in which the
 28 violation occurred.
 29 (ii) The state board of accounts.
 30 (iii) The state personnel director.
 31 (iv) The attorney general.
 32 (v) A state officer.
 33 (vi) The appointing authority of the state employee or
 34 agency that has a business relationship with the person
 35 sanctioned.
 36 (vii) Any other appropriate person.
- 37 (L) If the commission finds the respondent has not violated a
 38 code or statutory provision or a rule adopted under this
 39 chapter, IC 4-2-7, or IC 4-2-8, it shall dismiss the charges.
- 40 (3) (4) Review all conflict of interest disclosures received by the
 41 commission under IC 35-44.1-1-4, maintain an index of those
 42 disclosures, and issue advisory opinions and screening procedures



1 as set forth in section 9 of this chapter.

2 (c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the
3 commission concerning the case of a respondent that are not
4 confidential under IC 5-14-3-4(b)(2)(C) shall be available for
5 inspection and copying in accordance with IC 5-14-3.

6 SECTION 2. IC 4-2-6-4.3, AS AMENDED BY P.L.134-2012,
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2017]: Sec. 4.3. The commission may not conduct a hearing
9 under section ~~4(b)(2)(G)~~ **4(b)(3)(G)** of this chapter by using electronic
10 communication under IC 5-14-1.5-3.6.

11 SECTION 3. IC 4-2-6-4.5, AS AMENDED BY P.L.89-2006,
12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2017]: Sec. 4.5. Whenever an appointing authority or a state
14 officer receives a report under section ~~4(b)(2)(H)~~ **4(b)(3)(H)** of this
15 chapter, the appointing authority or state officer shall report to the
16 commission the action taken in response to the report. The commission
17 may require in the report that the appointing authority or the state
18 officer submit the response required by this section in a reasonable,
19 specified amount of time.

20 SECTION 4. IC 4-2-7-9, AS ADDED BY P.L.72-2014, SECTION
21 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
22 2017]: Sec. 9. (a) The inspector general shall adopt rules under
23 IC 4-22-2 establishing a statewide code of judicial conduct for
24 administrative law judges. The statewide code of judicial conduct for
25 administrative law judges must apply to every person acting as an
26 administrative law judge for a state agency. **Remedies under the
27 statewide code of judicial conduct for administrative law judges
28 are in addition to any remedy provided by IC 4-21.5. If there is a
29 conflict between IC 4-21.5 and the statewide code of judicial
30 conduct for administrative law judges, IC 4-21.5 controls.**

31 (b) The inspector general:

32 (1) shall review 312 IAC 3-1-2.5 and 315 IAC 1-1-2 in adopting
33 a statewide code of judicial conduct for administrative law judges;
34 and

35 (2) may base the statewide code of judicial conduct for
36 administrative law judges on 312 IAC 3-1-2.5 and 315 IAC 1-1-2.

37 (c) A state agency may adopt rules under IC 4-22-2 to establish a
38 supplemental code of judicial conduct for a person acting as an
39 administrative law judge for that agency, if the supplemental code is at
40 least as restrictive as the statewide code of judicial conduct for
41 administrative law judges.

42 (d) The inspector general may adopt emergency rules in the manner



1 provided under IC 4-22-2-37.1 to implement a statewide code of
2 judicial conduct for administrative law judges.

3 (e) The statewide code of judicial conduct for administrative law
4 judges shall be enforced under ~~IC 4-21-5~~. The inspector general is not
5 responsible for enforcing the statewide code of judicial conduct for
6 administrative law judges or for investigating a possible violation of the
7 statewide code.

8 **(e) A complaint concerning an alleged violation of the statewide**
9 **code of judicial conduct for administrative law judges established**
10 **under subsection (a) shall be submitted to the state ethics**
11 **commission as described in IC 4-2-6-4(b)(2).**

12 SECTION 5. IC 21-39-3-2, AS ADDED BY P.L.2-2007, SECTION
13 280, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2017]: Sec. 2. If a supervisor or appointing authority is the person an
15 employee of a state educational institution believes is committing a
16 violation, the employee may report the violation in writing to:

- 17 (1) the supervisor;
- 18 (2) the appointing authority; or
- 19 (3) any official or agency entitled to receive a report from the
20 state ethics commission under ~~IC 4-2-6-4(b)(2)(J)~~ or
21 ~~IC 4-2-6-4(b)(2)(K)~~. **IC 4-2-6-4(b)(3)(J) or IC 4-2-6-4(b)(3)(K).**

22 SECTION 6. IC 22-5-3-3, AS AMENDED BY P.L.149-2016,
23 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2017]: Sec. 3. (a) An employee of a private employer that is
25 under public contract may report in writing the existence of:

- 26 (1) a violation of a federal law or regulation;
- 27 (2) a violation of a state law or rule;
- 28 (3) a violation of an ordinance of a political subdivision (as
29 defined in IC 36-1-2-13); or
- 30 (4) the misuse of public resources;

31 concerning the execution of public contract first to the private
32 employer, unless the private employer is the person whom the
33 employee believes is committing the violation or misuse of public
34 resources. In that case, the employee may report the violation or misuse
35 of public resources in writing to either the private employer or to any
36 official or agency entitled to receive a report from the state ethics
37 commission under ~~IC 4-2-6-4(b)(2)(J)~~ or ~~IC 4-2-6-4(b)(2)(K)~~.
38 **IC 4-2-6-4(b)(3)(J) or IC 4-2-6-4(b)(3)(K).** If a good faith effort is not
39 made to correct the problem within a reasonable time, the employee
40 may submit a written report of the incident to any person, agency, or
41 organization.

42 (b) For having made a report under subsection (a), an employee may



- 1 not:
- 2 (1) be dismissed from employment;
- 3 (2) have salary increases or employment related benefits
- 4 withheld;
- 5 (3) be transferred or reassigned;
- 6 (4) be denied a promotion that the employee otherwise would
- 7 have received; or
- 8 (5) be demoted.
- 9 (c) Notwithstanding subsections (a) through (b), an employee must
- 10 make a reasonable attempt to ascertain the correctness of any
- 11 information to be furnished and may be subject to disciplinary actions
- 12 for knowingly furnishing false information, including suspension or
- 13 dismissal, as determined by the employer. However, any employee
- 14 disciplined under this subsection is entitled to process an appeal of the
- 15 disciplinary action as a civil action in a court of general jurisdiction.
- 16 (d) An employer who violates this section commits a Class A
- 17 infraction.
- 18 SECTION 7. IC 36-1-8-8 IS AMENDED TO READ AS FOLLOWS
- 19 [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) An employee of a political
- 20 subdivision may report in writing the existence of:
- 21 (1) a violation of a federal law or regulation;
- 22 (2) a violation of a state law or rule;
- 23 (3) a violation of an ordinance of a political subdivision; or
- 24 (4) the misuse of public resources;
- 25 first to a supervisor or appointing authority, unless the supervisor or
- 26 appointing authority is the person whom the employee believes is
- 27 committing the violation or misuse of public resources. In that case, the
- 28 employee may report the violation or misuse of public resources in
- 29 writing to either the supervisor or appointing authority or any official
- 30 or agency entitled to receive a report from the state ethics commission
- 31 under ~~IC 4-2-6-4(b)(2)(G) or IC 4-2-6-4(b)(2)(H)~~. **IC 4-2-6-4(b)(3)(G)**
- 32 **or IC 4-2-6-4(b)(3)(H)**. If a good faith effort is not made to correct the
- 33 problem within a reasonable time, the employee may submit a written
- 34 report of the incident to any person, agency, or organization.
- 35 (b) For having made a report under subsection (a), an employee may
- 36 not:
- 37 (1) be dismissed from employment;
- 38 (2) have salary increases or employment related benefits
- 39 withheld;
- 40 (3) be transferred or reassigned;
- 41 (4) be denied a promotion that the employee otherwise would
- 42 have received; or



1 (5) be demoted.
2 (c) Notwithstanding subsections (a) and (b), an employee must
3 make a reasonable attempt to ascertain the correctness of any
4 information to be furnished and may be subject to disciplinary actions
5 for knowingly furnishing false information, including suspension or
6 dismissal, as determined by the employee's appointing authority or the
7 appointing authority's designee. However, any employee disciplined
8 under this subsection is entitled to process an appeal of the disciplinary
9 action under the procedure set forth in any personnel policy or
10 collective bargaining agreement adopted by the political subdivision.
11 (d) An employer who violates this section commits a Class A
12 infraction.

