

PROPOSED AMENDMENT

HB 1197 # 3

DIGEST

Removal of county executive. Deletes provisions that: (1) specify, for counties that do not have a consolidated city, the circumstances in which the county executive may expel a member or declare the seat of a member vacant; and (2) require at least two-thirds of the members of the county fiscal body and the county executive to vote in favor of an action to expel a member or declare the seat of a member vacant. Specifies additional grounds on which certain county officers or a township executive may be charged and deprived of office following a hearing. Provides that if the accused party does not appear before the court, the court may proceed to hear and determine the accusation in the accused party's absence. Includes a member of the county executive, if the county does not contain a consolidated city, in a provision concerning the initiation of an action for removal of a county officer. Exempts a member of the county executive from a requirement concerning physical presence in the county officer's office.

1 Page 2, delete lines 18 through 33, begin a new paragraph and
2 insert:
3 "SECTION 2. IC 5-8-1-35, AS AMENDED BY P.L.24-2022,
4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2025]: Sec. 35. (a) When an accusation in writing, verified by
6 the oath of any person or in resolutions adopted by a county executive
7 and county fiscal body in accordance with IC 36-2-8.7 or IC 36-6-4.5,
8 is presented to a circuit court, superior court, or probate court, alleging
9 that any officer within the jurisdiction of the court has been guilty of:
10 (1) charging and collecting illegal fees for services rendered or to
11 be rendered in the officer's office;
12 (2) refusing, ~~or~~ neglecting, **or being unable** to perform the
13 official duties pertaining to the officer's office;
14 (3) in the case of a county officer (as defined in IC 36-2-8.7-1),
15 failing to be physically present in the county officer's office in
16 violation of IC 36-2-8.7-7; ~~or~~
17 (4) violating IC 36-6-4-17(b) if the officer is the executive of a
18 township; **or**
19 **(5) failing, refusing, or being unable to participate in four (4)**
20 **consecutive regular meetings of the county executive, if the**
21 **officer is a member of a county executive;**

the court must cite the party charged to appear before the court at any time not more than ten (10) nor less than five (5) days from the time the accusation was presented, and on that day or some other subsequent day not more than twenty (20) days from the time the accusation was presented must proceed to hear, in a summary manner, the accusation and evidence offered in support of the same, and, **if the accused party appears before the court**, the answer and evidence offered by the party accused. **If the accused party does not appear before the court, the court may proceed to hear and determine the accusation in the accused party's absence.**

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

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

(2) Enter a judgment as follows:

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

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

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

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

(1) the officer prevails; and

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

SECTION 3. IC 36-2-8.7-1, AS ADDED BY P.L.169-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 1. As used in this chapter, "county officer" refers to any of the following:

(1) A county auditor.

(2) A county treasurer.

(3) A county recorder.

(4) A county surveyor.

(5) A county assessor.

(6) A member of the county executive, if the county does not contain a consolidated city.

SECTION 4. IC 36-2-8.7-2, AS ADDED BY P.L.169-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2025]: Sec. 2. (a) The county executive may initiate the process of petitioning a court to remove a county officer from office under IC 5-8-1-35 by adopting a resolution in accordance with this section.

(b) At least one (1) public hearing must be held by the county executive on the resolution at least ten (10) business days before the resolution is adopted. The resolution must contain a concise statement of the underlying basic facts that support the county executive's finding that the county officer committed a violation described in:

(1) section 7 of this chapter;

(2) IC 5-8-1-35(a)(1); ~~or~~

(3) IC 5-8-1-35(a)(2);

(4) IC 5-8-1-35(a)(3);

(5) IC 5-8-1-35(a)(4); or

(6) IC 5-8-1-35(a)(5).

SECTION 5. IC 36-2-8.7-6, AS ADDED BY P.L.169-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 6. (a) At least one (1) public hearing must be held by the county fiscal body on the resolution at least ten (10) business days before the resolution is adopted. The resolution must contain a concise statement of the underlying basic facts that support the county fiscal body's finding that the county officer committed a violation described in IC 5-8-1-35(a)(1), IC 5-8-1-35(a)(2), **IC 5-8-1-35(a)(3), IC 5-8-1-35(a)(4), IC 5-8-1-35(a)(5)**, or section 7 of this chapter. The finding and statement of underlying basic facts supporting the finding must be identical to those in the resolution adopted by the county executive.

(b) The resolution must be adopted by an affirmative vote of at least:

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

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

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

(c) The county fiscal body shall certify the resolution to:

(1) the county executive;

(2) the county officer; and

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

not later than ten (10) days after the resolution is adopted.

SECTION 6. IC 36-2-8.7-7, AS ADDED BY P.L.169-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 7. (a) **This section does not apply to a county officer described in section 1(6) of this chapter.**

(b) A county officer must be physically present in the county officer's office during regular office hours for a reasonable amount of time each month during the county officer's term of office.

~~(b)~~ (c) A county officer may be removed from office by the court under IC 5-8-1-35, if the county officer is in violation of this section during one (1) or more months of the county officer's term. However, it is a defense to any action brought under IC 5-8-1-35 asserting a violation of this section, that the county officer's failure to be physically present in the county officer's office was due to:

- (1) the serious illness of the county officer or the county officer's spouse, parent, child, or stepchild; or
- (2) military service of the county officer.

The defense is available in any action brought under IC 5-8-1-35 regardless of whether the action is brought by a person or upon resolutions adopted by the county executive or fiscal body under this chapter.

~~(c)~~ (d) A county officer:

- (1) does not violate this section; and
- (2) may not be removed from office under IC 5-8-1-35;

for being physically absent from the county officer's office during any month in which a declaration of a local disaster emergency under IC 10-14-3-29 is in effect for at least one (1) work day in the county or in the municipality in which the county officer's office is located."

Renumber all SECTIONS consecutively.

(Reference is to HB 1197 as reprinted January 28, 2025.)