Citations Affected: IC 36-8.

Synopsis: Disciplinary process for firefighters. Establishes minimum rights of a full-time, paid, nonprobationary member of a fire department to be represented in any interaction that may result in a firefighter's termination or demotion with cause. Allows the firefighter to choose representation by either or both of the following: (1) Legal counsel. (2) A labor organization representative or other representative. Provides that an interaction with the firefighter's employer or supervisor may not proceed until the firefighter is provided a reasonable opportunity and amount of time to obtain the requested representation.

Effective: July 1, 2017.

Mahan, Frye R, Steuerwald, Lawson L

January 9, 2017, read first time and referred to Committee on Veterans Affairs and Public Safety.
HOUSE BILL No. 1171

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 36-8-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) Except as provided in subsection (b), "member of the fire department" means the fire chief or a firefighter appointed to the department.

(b) "Member of the fire department", for purposes of IC 36-8-2.5, does not include a person who holds an upper level policy making position.

SECTION 2. IC 36-8-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

Chapter 2.5. Firefighter Representation

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 a member of the fire department who holds an upper level policy making position.

Sec. 2. This chapter does not apply to any interview, interrogation, or other proceeding that is part of an investigation.
of criminal charges against a firefighter.

Sec. 3. As used in this chapter, "fire department" means a fire department established by a county, city, town, or township, including a fire protection district under IC 36-8-11 or a fire protection territory established under IC 36-8-19. The term does not include a volunteer fire department.

Sec. 4. A firefighter has at least the rights set forth in this chapter, in any interaction that:

(1) the firefighter is the subject of and is present at, including:
   (A) an interview or interrogation of the firefighter; or
   (B) a meeting or administrative proceeding;
(2) is conducted by a supervisor or commanding officer or board, commission, body, officer, or employee of the:
   (A) fire department; or
   (B) municipal corporation (as defined in IC 36-1-2-10);
that employs the firefighter; and
(3) concerns any matter that may result in the firefighter's:
   (A) termination; or
   (B) demotion with cause.

Sec. 5. (a) A firefighter has the right to be represented in any interaction under section 4 of this chapter by either or both of the following of the firefighter's own choosing:
   (1) Legal counsel.
   (2) A labor organization representative or other representative.

(b) Nothing in this chapter prohibits a firefighter from waiving the firefighter's right of representation under this chapter.

Sec. 6. (a) An interaction under section 4 of this chapter may not proceed until the firefighter is provided a reasonable:
   (1) opportunity; and
   (2) amount of time;
to obtain the representation requested by the firefighter.

(b) A firefighter may request representation at any time before or during an interaction under section 4 of this chapter.

Sec. 7. This chapter does not affect a contract executed or renewed before July 1, 2017.

Sec. 8. The rights of a firefighter provided by this chapter are in addition to and do not abridge, diminish, or cancel the rights and privileges of a firefighter that are provided under contract or any other law.

SECTION 3. IC 36-8-3-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
Sec. 3.5. (a) This section applies to a member of the fire department of a city, town, or township to whom IC 36-8-2.5 applies.

(b) A member has at least the rights of representation set forth in IC 36-8-2.5 in any interaction or proceeding under this chapter that:

(1) is described in IC 36-8-2.5-4; and
(2) may result in the member's:
   (A) termination; or
   (B) demotion with cause.

SECTION 4. IC 36-8-3-4 IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2017]: Sec. 4. (a) This section also applies to all towns and townships that have full-time, paid police or fire departments. For purposes of this section, the appropriate appointing authority of a town or township is considered the safety board of a town or township. In a town with a board of metropolitan police commissioners, that board is considered the safety board of the town for police department purposes.

(b) Except as provided in subsection (m), a member of the police or fire department holds office or grade until the member is dismissed or demoted by the safety board. Except as provided in subsection (n), a member may be disciplined by demotion, dismissal, reprimand, forfeiture, or suspension upon either:

(1) conviction in any court of any crime; or
(2) a finding and decision of the safety board that the member has been or is guilty of any one (1) or more of the following:
   (A) Neglect of duty.
   (B) A violation of rules.
   (C) Neglect or disobedience of orders.
   (D) Incapacity.
   (E) Absence without leave.
   (F) Immoral conduct.
   (G) Conduct injurious to the public peace or welfare.
   (H) Conduct unbecoming an officer.
   (I) Another breach of discipline.

The safety board may not consider the political affiliation of the member in making a decision under this section. If a member is suspended or placed on administrative leave under this subsection, the member is entitled to the member's allowances for insurance benefits to which the member was entitled before being suspended or placed on administrative leave. In addition, the local unit may provide the member's allowances for any other fringe benefits to which the member...
was entitled before being suspended or placed on administrative leave.

(c) Before a member of a police or fire department may be suspended in excess of five (5) days without pay, demoted, or dismissed, the safety board shall offer the member an opportunity for a hearing. If a member desires a hearing, the member must request the hearing not more than five (5) days after the notice of the suspension, demotion, or dismissal. Written notice shall be given either by service upon the 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 hearing conducted under this subsection shall be held not more than thirty (30) days after the hearing is requested by the member, unless a later date is mutually agreed upon by the parties. 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;
(5) that, in the case of a member who is a firefighter subject to IC 36-8-2.5, the member is entitled to representation by the member's labor organization or other representative instead of or in addition to representation by counsel;
(6) that the member is entitled to call and cross-examine witnesses;
(7) that the member is entitled to require the production of evidence; and
(8) that the member is entitled to have subpoenas issued, served, and executed in the county where the unit is located.

If the corporation counsel or city attorney is a member of the safety board of a city, the counsel or attorney may not participate as a safety board member in a disciplinary hearing concerning a member of either department. The safety board shall determine if a member of the police or fire department who is suspended in excess of five (5) days shall continue to receive the member's salary during the suspension.

(d) Upon an investigation into the conduct of a member of the police or fire department, or upon the trial of a charge preferred against a member of either department, the safety board may compel the attendance of witnesses, examine them under oath, and require the production of books, papers, and other evidence at a meeting of the board. For this purpose, the board may issue subpoenas and have them served and executed in any part of the county where the unit is located. If a witness refuses to testify or to produce books or papers in the witness's possession or under the witness's control, IC 36-4-6-21...
controls to the extent applicable. The proper court may compel
compliance with the order by attachment, commitment, or other
punishment.

(e) The reasons for the suspension, demotion, or dismissal of a
member of the police or fire department shall be entered as specific
findings of fact upon the records of the safety board. A member who is
suspended for a period exceeding five (5) days, demoted, or dismissed
may appeal the decision to the circuit or superior court of the county in
which the unit is located. However, a member may not appeal any other
decision.

(f) An appeal under subsection (e) must be taken by filing in court,
within thirty (30) days after the date the decision is rendered, a verified
complaint stating in concise manner the general nature of the charges
against the member, the decision of the safety board, and a demand for
the relief asserted by the member. A bond must also be filed that
guarantees the appeal will be prosecuted to a final determination and
that the plaintiff will pay all costs adjudged against the plaintiff. The
bond must be approved as bonds for costs are approved in other cases.
The unit must be named as the sole defendant, and the plaintiff shall
have a summons issued as in other cases against the unit. Neither the
safety board nor the members of it may be made parties defendant to
the complaint, but all are bound by service upon the unit and the
judgment rendered by the court.

(g) In an appeal under subsection (e), no pleading is required by the
unit to the complaint, but the allegations are considered denied. The
unit may file a motion to dismiss the appeal for failure to perfect it
within the time and in the manner required by this section. If more than
one (1) person was included in the same charges and in the same
decision of dismissal by the safety board, then one (1) or more of the
persons may join as plaintiffs in the same complaint, but only the
persons that appeal from the decision are affected by it. The decision
of the safety board is final and conclusive upon all persons not
appealing. The decision appealed from is not stayed or affected
pending the final determination of the appeal, but remains in effect
unless modified or reversed by the final judgment of the court.

(h) A decision of the safety board is considered prima facie correct,
and the burden of proof is on the party appealing. All appeals shall be
tried by the court. The appeal shall be heard de novo only upon any
new issues related to the charges upon which the decision of the safety
board was made. The charges are considered to be denied by the
accused person. Within ten (10) days after the service of summons the
safety board shall file in court a complete transcript of all papers,
entries, and other parts of the record relating to the particular case.

Inspection of these documents by the person affected, or by the person's
agent, must be permitted by the safety board before the appeal is filed,
if requested. Each party may produce evidence relevant to the issues
that it desires, and the court shall review the record and decision of the
safety board upon appeal.

(i) The court shall make specific findings and state the conclusions
of law upon which its decision is made. If the court finds that the
decision of the safety board appealed from should in all things be
affirmed, its judgment should state that, and judgment for costs shall
be rendered against the party appealing. If the court finds that the
decision of the safety board appealed from should not be affirmed in all
things, then the court shall make a general finding, setting out
sufficient facts to show the nature of the proceeding and the court's
decision on it. The court shall either:

(1) reverse the decision of the safety board; or

(2) order the decision of the safety board to be modified.

(j) The final judgment of the court may be appealed by either party.
Upon the final disposition of the appeal by the courts, the clerk shall
certify and file a copy of the final judgment of the court to the safety
board, which shall conform its decisions and records to the order and
judgment of the court. If the decision is reversed or modified, then the
safety board shall pay to the party entitled to it any salary or wages
withheld from the party pending the appeal and to which the party is
entitled under the judgment of the court.

(k) Either party shall be allowed a change of venue from the court
or a change of judge in the same manner as such changes are allowed
in civil cases. The Indiana Rules of Trial Procedure govern in all
matters of procedure upon the appeal that are not otherwise provided
for by this section.

(l) An appeal takes precedence over other pending litigation and
shall be tried and determined by the court as soon as practical.

(m) Except as provided in IC 36-5-2-13, the executive may reduce
in grade any member of the police or fire department who holds an
upper level policy making position. The reduction in grade may be
made without adhering to the requirements of subsections (b) through
(l). However, a member may not be reduced in grade to a rank below
that which the member held before the member's appointment to the
upper level policy making position.

(n) If the member is subject to criminal charges, the board may
place the member on administrative leave until the disposition of the
criminal charges in the trial court. Any other action by the board is
stayed until the disposition of the criminal charges in the trial court. An administrative leave under this subsection may be with or without pay, as determined by the board. If the member is placed on leave without pay, the board, in its discretion, may award back pay if the member is exonerated in the criminal matter.

SECTION 5. IC 36-8-3-4.3, AS ADDED BY P.L.13-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4.3. (a) This section also applies to a town or township that has at least one (1) certified employee of a full-time, paid fire or police department, without regard to whether:

1. (1) the employee is an appointed police officer or firefighter; or
2. (2) under section 5 of this chapter, the police or fire department is exempt from sections 3, 4, and 4.1 of this chapter.

(b) As used in this section, "certified employee" means an individual who, as a condition of employment, holds a valid certification issued under IC 16-31-3 by the Indiana emergency medical services commission established by IC 16-31-2-1.

(c) As used in this section, "medical director" means a physician with an unlimited license to practice medicine in Indiana and who performs the duties and responsibilities described in 836 IAC 2-2-1.

(d) If a medical director takes any of the following actions against a certified employee, the medical director shall provide to the certified employee and to the chief of the certified employee's department a written explanation of the reasons for the action taken by the medical director:

1. (1) The medical director refuses or fails to supervise or otherwise provide medical control and direction to the certified employee.
2. (2) The medical director refuses or fails to attest to the competency of the certified employee to perform emergency medical services.
3. (3) The medical director suspends the certified employee from performing emergency medical services.

(e) Before a police or fire department takes any employment related action against a certified employee as the result of a medical director's action described in subsection (d), the certified employee is entitled to a hearing and appeal concerning the medical director's action as provided in section 4 of this chapter. A certified employee who is a firefighter to whom IC 36-8-2.5 applies has the rights of representation set forth in IC 36-8-2.5 in any interaction or proceeding described in IC 36-8-2.5-4 with the fire department concerning the medical director's action that may result in the firefighter's termination or demotion with cause.
(f) If the medical director's action that is the subject of an appeal under subsection (e) is based on a health care decision made by the certified employee in performing emergency medical services, the safety board conducting the hearing shall consult with an independent medical expert to determine whether the certified employee followed the applicable emergency medical services protocol in making the health care decision. The independent medical expert:

(1) must be a physician trained in emergency medical services; and

(2) may not be affiliated with the same hospital as the medical director.

SECTION 6. IC 36-8-3.5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.5. (a) This section applies to a member of the fire department of a city, town, or township to whom IC 36-8-2.5 applies.

(b) A member has at least the rights of representation set forth in IC 36-8-2.5 in any interaction or proceeding under this chapter that:

(1) is described in IC 36-8-2.5-4; and

(2) may result in the member's:

(A) termination; or

(B) demotion with cause.

SECTION 7. IC 36-8-3.5-17, AS AMENDED BY P.L.84-2016, SECTION 180, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 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
direct 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, in the case of a member who is a firefighter subject
to IC 36-8-2.5, the member is entitled to representation by the
member's labor organization or other representative instead
of or in addition to representation by counsel;
(5) (6) that the member is entitled to call and cross-examine
witnesses;
(6) (7) that the member is entitled to require the production of
evidence; and
(7) (8) 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 8. IC 36-8-3.5-19.3, AS ADDED BY P.L.13-2010,
SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 19.3. (a) This section applies to a department that has at least one (1) certified employee, without regard to whether:

1. the employee is an appointed police officer or firefighter; or
2. the department has a merit system to which this chapter does not otherwise apply as provided under section 1 of this chapter.

(b) As used in this section, "certified employee" means an individual who, as a condition of employment, holds a valid certification issued under IC 16-31-3 by the Indiana emergency medical services commission established by IC 16-31-2-1.

(c) As used in this section, "medical director" means a physician with an unlimited license to practice medicine in Indiana and who performs the duties and responsibilities described in 836 IAC 2-2-1.

(d) If a medical director takes any of the following actions against a certified employee, the medical director shall provide to the certified employee and to the chief of the certified employee's department a written explanation of the reasons for the action taken by the medical director:

1. The medical director refuses or fails to supervise or otherwise provide medical control and direction to the certified employee.
2. The medical director refuses or fails to attest to the competency of the certified employee to perform emergency medical services.
3. The medical director suspends the certified employee from performing emergency medical services.

(e) Before a department takes any employment related action as the result of a medical director's action described in subsection (d) against a certified employee, the certified employee is entitled to a hearing and appeal concerning the medical director's action as provided in sections 17 and 18 of this chapter. A certified employee who is a firefighter to whom IC 36-8-2.5 applies has the rights of representation set forth in IC 36-8-2.5 in any interaction or proceeding with the fire department described in IC 36-8-2.5-4 concerning the medical director's action that may result in the firefighter's termination or demotion with cause.

(f) If the medical director's action that is the subject of an appeal under subsection (e) is based on a health care decision made by the certified employee in performing emergency medical services, the commission conducting the hearing shall consult with an independent medical expert to determine whether the certified employee followed the applicable emergency medical services protocol in making the health care decision. The independent medical expert:
(1) must be a physician trained in emergency medical services; and
(2) may not be affiliated with the same hospital as the medical director.