

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 202

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AN ACT to amend the Indiana Code concerning higher education.

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

SECTION 1. IC 4-15-10.5-4, AS ADDED BY P.L.205-2019, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. **(a) Except as provided in subsection (b)**, as used in this chapter, "agency" means an authority, board, branch, bureau, commission, committee, council, department, division, office, service, or other instrumentality of the executive, including the administrative, department of state government. The term does not include any of the following:

- (1) Any body corporate and politic set up as an instrumentality of the state.
- (2) Any private, nonprofit, government related corporation.
- (3) The judicial department of state government.
- (4) The legislative department of state government.
- (5) A state educational institution.
- (6) A political subdivision.

**(b) The term includes a state educational institution if the office, pursuant to IC 21-39.5-6-2(d), reviews a state educational institution's final decision regarding a violation of IC 21-39.5 and issues an opinion on behalf of the commission for higher education.**

SECTION 2. IC 21-27-3-5, AS ADDED BY P.L.167-2007,

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SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) The board of trustees shall create a diversity committee to do the following:

- (1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.
- (2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.
- (3) Make recommendations to promote and maintain **cultural and intellectual** diversity among faculty members.
- (4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the board of trustees.

SECTION 3. IC 21-27-4-4, AS ADDED BY P.L.167-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. (a) The board of trustees shall create a diversity committee at the home campus and at each regional campus to do the following:

- (1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.
- (2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.
- (3) Make recommendations to promote and maintain **cultural and intellectual** diversity among faculty members.
- (4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the board of trustees.

SECTION 4. IC 21-27-5-4, AS ADDED BY P.L.167-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. (a) The board of trustees shall create a diversity committee to do the following:

- (1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.
- (2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.
- (3) Make recommendations to promote and maintain **cultural and intellectual** diversity among faculty members.
- (4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

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(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the board of trustees.

SECTION 5. IC 21-27-6-7, AS AMENDED BY P.L.174-2018, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. (a) The board of trustees shall create a diversity committee at the home campus and at each campus to do the following:

- (1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.
- (2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.
- (3) Make recommendations to promote and maintain **cultural and intellectual** diversity among faculty members.
- (4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the state board.

SECTION 6. IC 21-27-7-6, AS ADDED BY P.L.167-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. (a) The board of trustees shall create a diversity committee at the home campus and at each regional campus to do the following:

- (1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.
- (2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.
- (3) Make recommendations to promote and maintain **cultural and intellectual** diversity among faculty members.
- (4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the board of trustees.

SECTION 7. IC 21-27-8-7, AS ADDED BY P.L.167-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. (a) The board shall create a diversity committee to do the following:

- (1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.
- (2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.



(3) Make recommendations to promote and maintain cultural **and intellectual** diversity among faculty members.

(4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the board.

SECTION 8. IC 21-27-9-6, AS ADDED BY P.L.167-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. (a) The board of trustees shall create a diversity committee at the home campus and at each regional campus to do the following:

(1) Review and recommend faculty employment policies concerning **cultural and intellectual** diversity issues.

(2) Review faculty and administration personnel complaints concerning **cultural and intellectual** diversity issues.

(3) Make recommendations to promote and maintain cultural **and intellectual** diversity among faculty members.

(4) Make recommendations to promote recruitment and retention of minority **and underrepresented** students.

(b) The diversity committee shall issue an annual report stating the findings, conclusions, and recommendations of the committee to the board of trustees.

SECTION 9. IC 21-38-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

#### **Chapter 10. Diversity Programming**

**Sec. 1. A state educational institution that establishes, supports, sustains, or employs an office or individual whose primary duties include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting noncredit earning diversity programming shall include within the mission of the office or position programming that substantially promotes both cultural and intellectual diversity.**

SECTION 10. IC 21-39-8-12, AS ADDED BY P.L.145-2022, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 12. A state educational institution shall:

(1) create student protected expressive activity policies that are consistent with this chapter;

**(2) create a policy that includes a range of disciplinary actions with regard to an employee, student, student organization, or contractor of the state educational institution that materially**



**and substantially disrupts the protected expressive activity of another employee, student, student organization, or contractor of the state educational institution;**

~~(2)~~ **(3)** make ~~protected expressive activity~~ policies **created under subdivisions (1) and (2)** public in the state educational institution's handbooks, on the state educational institution's ~~Internet web site;~~ **website**, and at the state educational institution's student orientation programs; and

~~(3)~~ **(4)** develop materials, programs, and procedures to ensure that individuals who are responsible for disciplining and educating students, including administrators, campus police officers, residence life officials, and professors, understand the policies, regulations, and duties of the state educational institution regarding protected expressive activity on campus.

SECTION 11. IC 21-39.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

**ARTICLE 39.5. STATE EDUCATIONAL INSTITUTIONS:  
THE PROTECTION OF FREE INQUIRY, FREE EXPRESSION,  
AND INTELLECTUAL DIVERSITY**

**Chapter 1. Definitions**

**Sec. 1.** The definitions in this chapter apply throughout this article.

**Sec. 2.** "Board of trustees" refers to the board of trustees of each of the following:

- (1) Ball State University.**
- (2) Indiana State University.**
- (3) Indiana University.**
- (4) Ivy Tech Community College.**
- (5) Purdue University.**
- (6) University of Southern Indiana.**
- (7) Vincennes University.**

**Sec. 3.** "Faculty member" means an employee of an institution whose employment duties include teaching students of the institution.

**Sec. 4.** "Institution" refers to a state educational institution.

**Sec. 5.** "Intellectual diversity" means multiple, divergent, and varied scholarly perspectives on an extensive range of public policy issues.

**Sec. 6.** "Promotion" means the advancement of a faculty member's employment position to a higher rank, level, or distinction within an institution.



**Sec. 7. "Tenure" means a status of continuous employment granted to a faculty member of an institution in which the faculty member may not be dismissed except for good cause or in accordance with one (1) or more of the following:**

- (1) The policies and procedures adopted by the institution.**
- (2) An employment agreement entered into between the institution and faculty member.**

**Chapter 2. Tenure, Promotion, Employment, Complaints, and Disciplinary Actions**

**Sec. 1. (a) This section applies to an institution that grants tenure or promotions to faculty members.**

**(b) Subject to subsection (c), each board of trustees of an institution shall establish a policy that provides that a faculty member may not be granted tenure or a promotion by the institution if, based on past performance or other determination by the board of trustees, the faculty member is:**

- (1) unlikely to foster a culture of free inquiry, free expression, and intellectual diversity within the institution;**
- (2) unlikely to expose students to scholarly works from a variety of political or ideological frameworks that may exist within and are applicable to the faculty member's academic discipline; or**
- (3) likely, while performing teaching duties within the scope of the faculty member's employment, to subject students to political or ideological views and opinions that are unrelated to the faculty member's academic discipline or assigned course of instruction.**

**(c) A policy established under subsection (b) must provide that the board of trustees of an institution may not consider the following actions by a faculty member when determining whether a faculty member may not be granted tenure or a promotion by the institution:**

- (1) Expressing dissent or engaging in research or public commentary on subjects.**
- (2) Criticizing the institution's leadership.**
- (3) Engaging in any political activity conducted outside the faculty member's teaching or mentoring duties at the institution.**

**Sec. 2. (a) Not later than five (5) years after the date that a faculty member is granted tenure by an institution and not later than every five (5) years thereafter, the board of trustees of an institution shall review and determine whether the faculty member**



has met the following criteria:

- (1) Helped the institution foster a culture of free inquiry, free expression, and intellectual diversity within the institution.
- (2) Introduced students to scholarly works from a variety of political or ideological frameworks that may exist within the curricula established by the:
  - (A) board of trustees of the institution under IC 21-41-2-1(b); or
  - (B) faculty of the institution acting under authority delegated by the board of trustees of the institution.
- (3) While performing teaching duties within the scope of the faculty member's employment, refrained from subjecting students to views and opinions concerning matters not related to the faculty member's academic discipline or assigned course of instruction.
- (4) Adequately performed academic duties and obligations.
- (5) Met any other criteria established by the board of trustees.

(b) If the board of trustees of an institution reviews and makes a determination that a faculty member meets the criteria under subsection (a), the board of trustees shall certify that the board reviewed and made a determination that the faculty member met the criteria.

(c) In determining whether a faculty member has adequately met the criteria under subsection (a), the board of trustees of an institution may not consider the following actions by a faculty member:

- (1) Expressing dissent or engaging in research or public commentary on subjects.
- (2) Criticizing the institution's leadership.
- (3) Engaging in any political activity conducted outside the faculty member's teaching duties at the institution.

(d) The institution shall adopt a policy that establishes disciplinary actions, including:

- (1) termination;
  - (2) demotion;
  - (3) salary reduction;
  - (4) other disciplinary action as determined by the institution;
- or
- (5) any combination of subdivisions (1) through (4);

that the institution will take if the board of trustees determines in a review conducted under subsection (a) that a tenured faculty member has failed to meet one (1) or more of the criteria described



in subsection (a)(1) through (a)(5).

(e) The board of trustees of each institution shall, at least every five (5) years, review and renew or amend:

- (1) the process for reviewing and making a determination under subsection (a); and
- (2) any criteria established under subsection (a)(5).

Sec. 3. (a) This section applies to the following:

- (1) A faculty member.
- (2) A person with whom the institution contracts to teach a student of the institution.

(b) Before an institution:

- (1) renews an employment agreement or other contract with;
- (2) makes a bonus decision regarding; or
- (3) completes a review or performance assessment of;

a faculty member or person described in subsection (a), the institution shall give substantial consideration to the faculty member's or person's performance regarding the criteria described in section 2(a)(1) through 2(a)(5) of this chapter.

Sec. 4. (a) Each institution shall do the following:

- (1) Establish a procedure that allows both students and employees to submit complaints that a faculty member or person described in section 3(a) of this chapter is not meeting the criteria described in section 2(a)(1) through 2(a)(5) of this chapter.
- (2) Provide information regarding the procedure established under subdivision (1):
  - (A) at student orientations;
  - (B) on the institution's website; and
  - (C) during employee onboarding programs.
- (3) Refer complaints submitted under subdivision (1) to appropriate human resource professionals and supervisors for consideration in employee reviews and tenure and promotion decisions.
- (4) Make complaints submitted under subdivision (1) and any relevant documents, summaries, or investigations available to the board of trustees of the institution.
- (5) Not later than April 1, 2025, and not later than April 1 each year thereafter, submit a report to the commission for higher education that summarizes the following:
  - (A) The procedure that the institution established under subdivision (1) for the submission of complaints.
  - (B) How and when the institution has provided or made





available the information concerning the submission of complaints procedure to students, faculty members, other employees, and contractors of the institution.

(C) The number of complaints submitted, disaggregated by a brief description of the types or categories of complaints submitted, during the previous calendar year.

(b) The commission for higher education shall do the following:

(1) Prepare a report that provides the following information:

(A) The total number of complaint submissions that each institution received as provided by the institution under subsection (a)(5).

(B) The number of complaint submissions as described in clause (A), disaggregated by a brief description of the types or categories of complaints submitted.

(2) Not later than July 1, 2025, and not later than July 1 of each odd-numbered year thereafter, submit the report described in subdivision (1) to the legislative council in an electronic format under IC 5-14-6.

(c) An institution and the commission for higher education may not include information in a report submitted under this section that identifies the following:

(1) A student or employee who submits a complaint under this section.

(2) A faculty member or person described in section 3(a)(2) of this chapter against whom a complaint was submitted.

**Sec. 5.** If an institution is unable to fully comply with this chapter due to an employment agreement entered into with a faculty member or person described in section 3(a) of this chapter before July 1, 2024, the institution shall attempt to comply with this chapter to the extent possible under the employment agreement with the faculty member or person.

**Sec. 6.** Nothing in this chapter prohibits or restricts a board of trustees of an institution from:

(1) delegating responsibility under policies approved by the board of trustees to conduct the faculty reviews and make the determinations described in this chapter; or

(2) establishing additional policies or criteria.

**Chapter 3. Requirements Regarding Students, Employees, Contractors, and Applicants**

**Sec. 1.** (a) This section applies to the following:

(1) An applicant for admission, enrollment, or employment at an institution.



(2) An employee of the institution.

(3) A person with whom the institution contracts to teach a student of the institution.

(b) An institution may not require an applicant, an employee, or a person described in subsection (a) to pledge allegiance to or make a statement of personal support for any:

(1) policy or action that would treat similarly situated people or groups of people differently based on the race, color, national origin, sex, sexual orientation, or religion; or

(2) political or ideological movement.

(c) If an institution receives a pledge or statement described in subsection (b), including any statement regarding diversity, equity, and inclusion, or related topics, the institution may not award:

(1) admission, enrollment, or employment;

(2) benefits;

(3) hiring, reappointment, or promotion; or

(4) granting tenure;

to an applicant, an employee, or a person described in subsection (a) on the basis of the viewpoints expressed in the pledge or statement.

Sec. 2. An institution shall include the following information in the institution's programming for new students:

(1) The importance of:

(A) free inquiry and free expression; and

(B) intellectual diversity of viewpoints.

(2) The appropriate and inappropriate responses to speech that a student finds offensive or disagreeable.

#### Chapter 4. Policy on Neutrality

Sec. 1. The board of trustees of each institution shall adopt a policy on the neutrality of the institution that makes a distinction between the official positions of the institution, including its schools, colleges, and departments, from the individual viewpoints of the institution's employees, contractors, students, and alumni.

Sec. 2. A policy adopted under section 1 of this chapter must limit the circumstances in which an employee or group of employees from the institution may establish an official institution, school, college, or department position on political, moral, or ideological issues to only those circumstances that affect the core mission of the institution and its values of free inquiry, free expression, and intellectual diversity.

Sec. 3. Nothing in this chapter may be construed to limit the:

(1) free speech of any individual beyond any employment



- requirements established by the institution; or
- (2) ability of an institution to advocate for state funding or educational policies to the state or federal government.

#### **Chapter 5. Reporting Requirements**

**Sec. 1.** The commission for higher education may establish a student survey that attempts to collect information from students of an institution regarding the current perceptions of whether free speech and academic freedom are recognized and fostered by the institution in a manner that welcomes expression of different opinions and ideologies with respect to, but not limited to, classes, faculty members and other instructors, peer interactions, speakers, and campus groups.

**Sec. 2.** If the commission for higher education establishes a student survey under section 1 of this chapter, each institution may promote and provide to students the survey established under section 1 of this chapter.

**Sec. 3.** If the commission for higher education establishes a student survey under section 1 of this chapter, the commission for higher education may do the following:

- (1) Prepare a biennial report that summarizes, for each institution, the information collected from the student survey responses.
- (2) Submit the report described in subdivision (1) to the legislative council in an electronic format under IC 5-14-6.
- (3) Post the report on the commission for higher education's website.

**Sec. 4.** Not later than September 1, 2024, each institution shall submit the following to the commission for higher education:

- (1) Data describing the institution's budget allocations for diversity, equity, and inclusion initiatives.
- (2) Information regarding the definitions, guidelines, and parameters the institution used in determining which initiatives were considered by the institution to be diversity, equity, and inclusion initiatives.

This section expires July 1, 2025.

**Sec. 5.** Not later than November 1, 2024, the commission for higher education shall do the following:

- (1) Review the information submitted by the institutions under section 4 of this chapter.
- (2) Submit a report to the budget committee regarding consistent definitions, guidelines, and parameters that would allow the information submitted under section 4 of this



chapter to be compared across institutions and academic years.

**This section expires July 1, 2025.**

**Chapter 6. Construction and Enforcement**

**Sec. 1. Nothing in this article may be construed to do the following:**

- (1) Preclude efforts to gauge an applicant's commitment, plans, or past performance in fostering intellectual diversity.**
- (2) Prohibit an institution from:**
  - (A) requiring a student, faculty member, contractor, or any other employee of the institution to comply with federal or state antidiscrimination laws; or**
  - (B) taking action against a student, faculty member, contractor, or any other employee of the institution for a violation of federal or state antidiscrimination laws.**
- (3) Limit or restrict the academic freedom of faculty members or prevent faculty members from teaching, researching, or writing publications about diversity, equity, and inclusion or other topics.**
- (4) Prohibit an institution from considering the subject matter competency of any candidate for employment, reappointment, tenure, or promotion when the subject matter is germane to the candidate's or faculty member's field of scholarship.**
- (5) Prohibit an institution from considering the candidate's or faculty member's past or potential for future contributions to fostering a culture of intellectual diversity at the institution.**
- (6) Prohibit an institution from complying with federal requirements to be eligible for federal grants.**

**Sec. 2. (a) As used in this chapter, "petitioner" means any of the following:**

- (1) A student of an institution.**
- (2) An employee of an institution.**

**(b) After completing any applicable complaint process established by the institution regarding a violation of this article, a petitioner may request that the commission for higher education review the institution's final decision under the following circumstances:**

- (1) A procedural defect materially affected the institution's final decision.**
- (2) New evidence that materially affects the institution's final decision and was not reasonably available at the time the final decision was rendered becomes available.**



**(3) The institution's investigator had a conflict of interest or bias concerning the petitioner that materially affected the institution's final decision.**

**(4) The petitioner believes the institution disregarded law in rendering a final decision.**

**(c) The commission for higher education shall review the request submitted under subsection (b) and issue a final opinion regarding the request not later than sixty (60) days after the date that the commission for higher education receives the request.**

**(d) The commission for higher education may enter into an agreement with the office of administrative law proceedings established by IC 4-15-10.5 to carry out this section.**

**SECTION 12. IC 21-49-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:**

**Chapter 4. State Educational Institution Information Reporting**

**Sec. 1. Not later than September 1, 2024, each state educational institution shall submit to the commission for higher education the following information:**

**(1) For each academic year, beginning with the 2017-2018 academic year, the total number of state educational institution:**

**(A) full-time and tenured professors;**

**(B) adjunct instructors;**

**(C) other contingent faculty; and**

**(D) nonacademic support or administrative employees.**

**(2) For each academic year, the total number of employees at the state educational institution whose primary or secondary job duties or job titles include diversity, equity, and inclusion.**

**(3) For each academic year, the total number of state educational institution adjudications or proceedings regarding violations of policies regarding diversity, equity, and inclusion or harassment.**

**(4) A list and description of what the state educational institution does to ensure free speech rights of students.**

**(5) A list and description of what the state educational institution does to ensure intellectual freedom for professors.**

**(6) A list and description of what the state educational institution does to ensure intellectual and ideological diversity of professors.**

**(7) Information regarding the definitions, guidelines, and parameters the institution used in determining which**



information under subdivisions (1) through (6) to include in the submission under this section.

**This section expires July 1, 2025.**

**Sec. 2. Not later than November 1, 2024, the commission for higher education shall do the following:**

- (1) Review the information submitted by the institutions under section 1 of this chapter.**
- (2) Submit a report to the budget committee regarding consistent definitions, guidelines, and parameters that would allow the information submitted under section 1 of this chapter to be compared across state educational institutions and academic years.**

**This section expires July 1, 2025.**

**Sec. 3. Not later than September 1, 2024, and September 1 of each year thereafter, a state educational institution shall submit to the state budget committee a report with the following information for the preceding state fiscal year:**

- (1) The total number of state educational institution:
  - (A) full-time and tenured professors;**
  - (B) adjunct instructors;**
  - (C) other contingent faculty; and**
  - (D) nonacademic support or administrative employees.****
- (2) The total number of employees at the state educational institution whose primary or secondary job duties or job titles include diversity, equity, and inclusion.**
- (3) The total number of state educational institution adjudications or proceedings regarding violations of policies regarding diversity, equity, and inclusion or harassment.**
- (4) A list and description of what the state educational institution did to ensure free speech rights of students.**
- (5) A list and description of what the state educational institution did to ensure intellectual freedom for professors.**
- (6) A list and description of what the state educational institution did to ensure intellectual and ideological diversity of professors.**
- (7) The institution's budget allocations for diversity, equity, and inclusion initiatives.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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