Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1345

AN ACT to amend the Indiana Code concerning elections.

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

SECTION 1. IC 5-9-4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 4. Leaves of Absence for Military Service

Sec. 1. (a) This chapter applies to a person who:

(1) holds a state, legislative, local, or school board office (all as defined in IC 3-5-2);

(2) is called into active duty in the:

(A) armed forces of the United States; or

(B) the national guard; and

(3) may not appoint a deputy under IC 5-6-2.

(b) This chapter may not be applied in violation of Article 2, Section 9 of the Constitution of the State of Indiana.

Sec. 2. As used in this chapter, "active duty" means full-time service in:

(1) the armed forces of the United States; or

(2) the national guard;

for a period that exceeds thirty (30) consecutive days in a calendar year.

Sec. 3. As used in this chapter, "armed forces of the United States" means the active or reserve components of:

(1) the army;

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(2) the navy;
(3) the air force;
(4) the coast guard;
(5) the marine corps; or
(6) the merchant marine.

Sec. 4. As used in this chapter, "national guard" means:
(1) the Indiana army national guard; or
(2) the Indiana air national guard.

Sec. 5. As used in this chapter, "officeholder" refers to a person who holds a state, legislative, local, or school board office (all as defined in IC 3-5-2).

Sec. 6. (a) An officeholder who:
(1) is called into active duty in the:
(A) armed forces of the United States; or
(B) national guard; and
(2) as a result of the action described in subdivision (1), is unable to perform the duties of the officeholder's office;
is entitled to a leave of absence from the officeholder's office for the period of the active duty.

(b) An officeholder has not vacated the officeholder's office by taking a leave of absence described in subsection (a).

Sec. 7. (a) Except as provided in subsection (b) or (c), an officeholder who elects to take the leave of absence described in section 6 of this chapter shall give written notice that the officeholder is taking a leave of absence for military service to the person or entity designated in IC 5-8-3.5-1 to receive a resignation for the office the officeholder holds.

(b) An officeholder who is:
(1) a justice of the supreme court, a judge of the court of appeals, or a judge of the tax court; or
(2) a judge of a circuit, city, county, probate, or superior court;
shall give the written notice required by subsection (a) to the clerk of the supreme court.

(c) An officeholder who holds a school board office shall give the written notice required by subsection (a) to the person or entity designated in IC 20-3, IC 20-4, or IC 20-5 to receive a resignation for the office the officeholder holds.

(d) The written notice required by subsection (a) must state that the officeholder is taking a leave of absence because the officeholder:
(1) has been called for active duty in the:

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(A) armed forces of the United States; or

(B) the national guard; and

(2) will be temporarily unable to perform the duties of the officeholder's office.

Sec. 8. (a) Except as provided in subsection (b), during the officeholder's leave of absence the officeholder's office must be filled by a temporary appointment made under:

(1) IC 3-13-4;

(2) IC 3-13-5;

(3) IC 3-13-6;

(4) IC 3-13-7;

(5) IC 3-13-8;

(6) IC 3-13-9;

(7) IC 3-13-10;

(8) IC 3-13-11;

(9) IC 20-3;

(10) IC 20-4; or

(11) IC 20-5;

in the same manner as a vacancy created by a resignation is filled.

(b) For an officeholder who:

(1) is:

(A) a justice of the supreme court, a judge of the court of appeals, or a judge of the tax court; or

(B) a judge of a circuit, city, county, probate, or superior court; and

(2) is taking a leave of absence under this chapter;

the supreme court shall appoint a judge pro tempore to fill the officeholder's office in accordance with the court's rules and procedures.

(c) The person selected or appointed under subsection (a) or (b) serves until the earlier of:

(1) the date the officeholder's leave of absence ends as provided in section 10 of this chapter; or

(2) the officeholder's term of office expires.

(d) The person selected or appointed to an office under subsection (a) or (b):

(1) assumes all the rights and duties of; and

(2) is entitled to the compensation established for;

the office for the period of the temporary appointment.

Sec. 9. (a) Whenever the person or entity that receives the written notice under section 7(a) or 7(c) of this chapter has the power to fill a vacancy created by a resignation from the office the

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officeholder holds, the person or entity shall make the temporary appointment needed during the officeholder's leave of absence.

(b) Whenever the person or entity that receives the written notice under section 7(a) or 7(c) of this chapter does not have the power to fill a vacancy created by a resignation from the office the officeholder holds, the person or entity shall, not later than seventy-two (72) hours after receipt of the officeholder's notice, give written notice of the need for a temporary appointment during the officeholder's leave of absence to the person or entity who has the power to:

(1) fill a vacancy; or

(2) call a caucus under IC 3-13-11 for the purpose of filling a vacancy;

created by a resignation from the office the officeholder holds.

(c) Whenever the clerk of the supreme court receives the written notice under section 7(b) of this chapter, the clerk shall give notice of the officeholder's leave of absence to the supreme court in accordance with the court's rules and procedures.

Sec. 10. (a) A leave of absence under this chapter begins on the date the officeholder enters active duty and ends on the earliest of:

(1) the date of the officeholder's death;

(2) the thirtieth day after the date of the discharge or release of the officeholder from active duty; or

(3) the date the officeholder provides the written notice required by subsection (b).

(b) An officeholder returning from a leave of absence under this chapter shall give written notice that the officeholder's leave of absence has ended to the person or entity to which the officeholder provided notice under section 7 of this chapter.

(c) The person or entity that receives the written notice under subsection (b) shall, not later than seventy-two (72) hours after receipt of the officeholder's notice, give written notice that the officeholder's leave of absence has ended to the:

(1) person temporarily appointed to the officeholder's office; and

(2) any person or entity that received the written notice of the leave of absence under section 9(b) of this chapter.

(d) On the date an officeholder's leave of absence ends, as determined under subsection (a), the officeholder shall resume the duties of the officeholder's office for the remainder of the term for which the officeholder was elected.

Sec. 11. (a) In the event that the officeholder's term of office

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expires during the officeholder's leave of absence, the office shall be filled as required by law.

(b) Except as provided by a federal law or regulation, an officeholder who is on a leave of absence under this chapter is entitled to become a candidate for and be elected to the office from which the officeholder has taken a leave of absence.

Sec. 12. This chapter may not be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of:

(1) the armed forces of the United States; or

(2) the national guard;

under federal law.

SECTION 2. **An emergency is declared for this act.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved:

Governor of the State of Indiana

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