Reprinted
April 7, 2005

ENGROSSED
HOUSE BILL No. 1407

DIGEST OF HB 1407 (Updated April 6, 2005 6:16 pm - DI 102)

Citations Affected: IC 3-5; IC 3-6; IC 3-8; IC 3-10; IC 3-11; IC 3-11.5; IC 3-12; IC 3-14; noncode.

Synopsis: Voting systems. Makes changes regarding the certification process for voting systems and establishes a uniform date for the expiration of voting system certifications. Establishes a voting systems technical oversight program. Requires county election boards to perform public tests of electronic voting systems before election day. Allows a county election board to conduct tests concerning the operation of an electronic voting system before the system is delivered to the polls in addition to the tests the precinct election board is required to perform before the polls open. Requires precinct election boards to document certain information concerning optical scan tabulation systems before the polls open. Establishes civil penalties for violations of statutes concerning the use of voting systems in Indiana

(Continued next page)

Effective: Upon passage; July 1, 2005.

Richardson, Mahern, Thomas
(SENATE SPONSORS — LAWSON C, BREAUX)

January 13, 2005, read first time and referred to Committee on Elections and Apportionment.
February 8, 2005, amended, reported — Do Pass.
February 14, 2005, read second time, ordered engrossed. Engrossed.
February 15, 2005, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Elections and Civic Affairs.
March 29, 2005, amended, reported favorably — Do Pass.
April 6, 2005, read second time, amended, ordered engrossed.

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Digest Continued

elections. Removes a requirement that the inspector of a precinct using an electronic voting system read the vote totals aloud and requires the inspector to announce that printouts of the vote totals from the system are available for inspection. Requires a county that uses a punch card voting system to enter into a contract, not later than July 1, 2005, for a voting system certified for use in Indiana elections for delivery not later than January 1, 2006, and allows the secretary of state to purchase a voting system for the county if the county does not act. Permits a voting system previously certified for use in Indiana to continue to be used after the certification expires if the voting system complies with the requirements of HAVA. Repeals obsolete references to voting machines, punch card voting systems and paper ballots formerly printed by the election division. Repeals obsolete statutes relating to voting machines.

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Reprinted
April 7, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1407

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

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

SECTION 1. IC 3-5-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. "Ballot" means:

(1) the paper ballot prepared, printed, and supplied for use at an election;

(2) the ballot label prepared, printed, and supplied for use on the front of ~~a voting machine or~~ **an** electronic voting system; or

(3) the ballot card prepared, printed, and supplied for use in a ballot card voting system.

SECTION 2. IC 3-5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. "Ballot card" refers to ~~either a punch card ballot or~~ an optical scan ballot.

SECTION 3. IC 3-5-2-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. "Ballot card voting system" refers to ~~either a punch card voting system or~~ an optical scan voting system.

SECTION 4. IC 3-5-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. "Ballot label" means:

(1) the printed strip or sheet of cardboard or paper, supplied for

use on ~~a voting machine or~~ **an** electronic voting system, that contains the names of the candidates and the public questions on the ballot; or

(2) the ~~booklet, pamphlet, or other~~ material, supplied for use with a ballot card voting system, that contains those names and questions.

SECTION 5. IC 3-5-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. "Marking device" means:

~~(1) an apparatus in which paper ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter;~~

~~(2)~~ **(1)** a pencil for marking a paper ballot or ballot card; or

~~(3)~~ **(2)** an approved touch-sensitive device that automatically registers a vote on an electronic voting system.

SECTION 6. IC 3-5-2-48.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.5. "Testing authority" means an independent test authority ~~as described in:~~ **or independent laboratory:**

(1) **as described in the** Voting System Standards issued by the Federal Election Commission on April 30, 2002; or

~~(2) other more recent voting systems standards adopted by the commission under IC 3-11-15-13.~~

(2) accredited under Section 231 of HAVA (42 U.S.C. 15371).

SECTION 7. IC 3-5-2-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 52. "Voting method" means the use of:

(1) paper ballots;

~~(2) voting machines;~~

~~(3)~~ **(2)** ballot card voting systems;

~~(4)~~ **(3)** electronic voting systems; or

~~(5)~~ **(4)** any combination of these;

to register votes in a precinct.

SECTION 8. IC 3-6-4.2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. The election division shall do the following:

~~(1) Prepare and distribute paper ballots for the election or retention of persons to federal and state offices and for public questions in compliance with this title.~~

~~(2)~~ **(1)** Maintain complete and uniform descriptions and maps of all precincts in Indiana.

~~(3)~~ **(2)** Promptly update the information required by subdivision ~~(2)~~ **(1)** after each precinct establishment order is filed with the

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commission under IC 3-11-1.5.

~~(4)~~ **(3)** Issue media watcher cards under IC 3-6-10-6.

~~(5)~~ **(4)** Prepare and transfer to the department of state revenue voter registration affidavits for inclusion in state adjusted gross income tax booklets under IC 6-8.1-3-19.

~~(6) After December 31, 2003,~~ **(5)** Serve in accordance with 42 U.S.C. 1973ff-1(b) as the office in Indiana responsible for providing information regarding voter registration procedures and absentee ballot procedures to absent uniformed services voters and overseas voters.

~~(7)~~ **(6)** As required by 42 U.S.C. 1973ff-1(c), submit a report to the federal Election Assistance Commission not later than ninety (90) days after each general election setting forth the combined number of absentee ballots:

(A) transmitted to absent uniformed services voters and overseas voters for the election; and

(B) returned by absent uniformed services voters and overseas voters and cast in the election.

~~(8)~~ **(7)** Implement the state plan in accordance with the requirements of HAVA (42 U.S.C. 15401 through 15406) and this title, and appoint members of the committee established under 42 U.S.C. 15405.

~~(9)~~ **(8)** Submit reports required under 42 U.S.C. 15408 to the federal Election Assistance Commission concerning the use of federal funds under Title II, Subtitle D, Part I of HAVA.

SECTION 9. IC 3-6-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) Each county election board, in addition to duties otherwise prescribed by law, shall do the following:

(1) Adopt and amend a written plan to implement NVRA within the county.

(2) Conduct all elections and administer the election laws within the county, except as provided in IC 3-8-5 and IC 3-10-7 for town conventions and municipal elections in certain small towns.

(3) Prepare all ballots. ~~except those prepared by the election division.~~

(4) Distribute all ballots and pasters to all of the precincts in the county.

(b) This subsection does not apply to pasters to be attached to ballots during the final three (3) days before an election. Not later than the Monday before distributing ballots, pasters, and voting systems to the precincts in the county, the county election board shall notify the

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county chairman of each major political party and, upon request, the chairman of any other bona fide political party in the county, that sample ballots and pasters are available for inspection.

SECTION 10. IC 3-6-6-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34. **(a)** In a precinct where the voting is by any voting method except entirely by paper ballot, the poll clerks of the precinct shall perform all the duties connected with voting by ~~voting machine,~~ ballot card voting system or electronic voting system, and the assistant poll clerks shall perform all the duties connected with voting by paper ballot. It is necessary for only the two (2) assistant poll clerks to place their initials on the back of the paper ballots.

(b) The poll clerks shall tally the vote cast by paper ballot, and they alone shall sign the election certificates and returns. However, the precinct election board may call upon the assistant poll clerks to assist the poll clerks in any of their duties.

SECTION 11. IC 3-6-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. A watcher appointed under this chapter is entitled to:

(1) enter the polls at least thirty (30) minutes before the opening of the polls and remain there throughout election day until all tabulations have been completed;

(2) inspect the paper ballot boxes, ~~voting machines,~~ ballot card voting system, or electronic voting system before votes have been cast;

(3) inspect the work being done by any precinct election officer;

(4) enter, leave, and reenter the polls at any time on election day;

(5) witness the calling and recording of the votes ~~the reading of the totals from the voting machines,~~ and any other proceedings of the precinct election officers in the performance of official duties;

(6) receive a summary of the vote prepared under IC 3-12-2-15, ~~IC 3-12-2.5-4,~~ IC 3-12-3-2, IC 3-12-3-11, or IC 3-12-3.5-3, signed by the precinct election board, providing:

(A) the names of all candidates of the political party whose primary election is being observed by the watcher and the number of votes cast for each candidate;

(B) the names of all candidates at a general, municipal, or special election and the number of votes cast for each candidate; or

(C) the vote cast for or against a public question;

(7) accompany the inspector and judge in delivering the tabulation and election returns to the county election board by the

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most direct route;

(8) be present when the inspector takes a receipt for the tabulation and election returns delivered to the county election board; and

(9) call upon the election sheriffs to make arrests.

SECTION 12. IC 3-6-9-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. A watcher appointed under this chapter is entitled to do the following:

(1) Enter the polls at least thirty (30) minutes before the opening of the polls and remain there throughout election day until all tabulations have been completed.

(2) Inspect the paper ballot boxes, ~~voting machines,~~ ballot card voting system, or electronic voting system before votes have been cast.

(3) Inspect the work being done by any precinct election officer.

(4) Enter, leave, and reenter the polls at any time on election day.

(5) Witness the calling and recording of the votes ~~the reading of the totals from the voting machines,~~ and any other proceedings of the precinct election officers in the performance of official duties.

(6) Receive a summary of the vote prepared under IC 3-12-2-15, ~~IC 3-12-2.5-4,~~ IC 3-12-3-2, IC 3-12-3-11, or IC 3-12-3.5-3, signed by the precinct election board, providing:

(A) the names of all candidates of the political party whose primary election is being observed by the watcher and the number of votes cast for each candidate if the watcher is appointed under section 1(a)(1) of this chapter; or

(B) the names of all candidates at a school board election and the number of votes cast for each candidate if the watcher is appointed under section 1(a)(2) of this chapter.

(7) Accompany the inspector and the judge in delivering the tabulation and the election returns to the county election board by the most direct route.

(8) Be present when the inspector takes a receipt for the tabulation and the election returns delivered to the county election board.

(9) Call upon the election sheriffs to make arrests.

SECTION 13. IC 3-6-10-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.5. A watcher appointed under this chapter is entitled to do the following:

(1) Enter the polls at least thirty (30) minutes before the opening of the polls and remain there throughout election day until all tabulations have been completed.

(2) Inspect the paper ballot boxes, ~~voting machines,~~ ballot card

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voting system, or electronic voting system before votes have been cast.

(3) Inspect the work being done by any precinct election officer.

(4) Enter, leave, and reenter the polls at any time on election day.

(5) Witness the calling and recording of the votes ~~the reading of the totals from the voting machines,~~ and any other proceedings of the precinct election officers in the performance of official duties.

(6) Receive a summary of the vote prepared under IC 3-12-2-15, ~~IC 3-12-2.5-4,~~ IC 3-12-3-2, IC 3-12-3-11, or IC 3-12-3.5-3, signed by the precinct election board, providing the names of all candidates and the number of votes cast for each candidate and the votes cast for or against a public question.

(7) Accompany the inspector and the judge in delivering the tabulation and the election returns to the county election board by the most direct route.

(8) Be present when the inspector takes a receipt for the tabulation and the election returns delivered to the county election board.

SECTION 14. IC 3-8-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. Candidates shall be nominated or elected at a state convention by using ~~voting machines,~~ ballot card systems or electronic voting systems. However, if there is no contest for an office, the nomination or election may be by motion and acclamation.

SECTION 15. IC 3-8-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. The state chairman of the political party holding a state convention shall appoint an inspector and two (2) poll clerks to attend each voting ~~machine or~~ system at the convention. Each candidate may have one (1) watcher at each voting ~~machine or~~ system to check the voting ~~machine or~~ system before and after each ballot and to check the work of any election officer. The inspector and poll clerks:

(1) shall take an oath to perform their duties faithfully and to the best of their abilities before anyone entitled to administer an oath;

(2) must be qualified in relationship to candidates in the same manner as precinct election officers under IC 3-6-6-7; and

(3) are subject to the same penalties as precinct election officers.

SECTION 16. IC 3-10-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. Each county election board shall prepare and distribute separate primary paper ballots for each political party participating in a primary election equal in number to one hundred percent (100%) of the number of votes cast

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by the party in each precinct at the last general election. If ~~voting machines,~~ ballot card voting systems or electronic voting systems are used, the board shall determine the number of emergency paper ballots to be printed and furnished to the precincts.

SECTION 17. IC 3-10-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) Except as provided by subsection (b), the names of all candidates for each office who have qualified under IC 3-8 shall be arranged in alphabetical order by surnames under the designation of the office.

(b) This subsection applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). The names of all candidates for each office who have qualified under IC 3-8, except for a school board office, precinct committeeman, or state convention delegate, shall be arranged in random order by surnames under the designation of the office. The random order shall be determined using a lottery. The lottery held in accordance with this subsection shall be conducted in public by the county election board. The lottery shall be held not later than fifteen (15) days following the last day for a declaration of candidacy under IC 3-8-2-4. All candidates whose names are to be arranged by way of the lottery shall be notified at least five (5) days prior to the lottery of the time and place at which the lottery is to be held. Each candidate may have one (1) designated watcher, and each county political party may have one (1) designated watcher who shall be allowed to observe the lottery procedure.

(c) For paper ballots, the left margin of the ballot for each political party must show the name of the uppermost candidate printed to the right of the number 1, the next candidate number 2, the next candidate number 3, and so on, consecutively to the end of the ballot as prescribed in section 19 of this chapter. The same order shall be followed for the printing of ballot labels and their placement on the ~~voting machine or~~ electronic voting system and for the printing of ballot cards.

(d) This subsection applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). If there is insufficient room on a row to list each candidate of a political party, a second or subsequent row may be utilized. However, a second or subsequent row may not be utilized unless the first row, and all preceding rows, have been filled.

SECTION 18. IC 3-10-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) The ballot for a primary election shall be printed in substantially the following form

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for all the offices for which candidates have qualified under IC 3-8:

OFFICIAL PRIMARY BALLOT

_____ Party

To vote for a person make a voting mark (X or ✓) on or in the box before the person's name in the proper column.

Vote for one only

Representative in Congress

[] (1) AB_____

[] (2) CD_____

[] (3) EF _____

[] (4) GH_____

(b) The offices with candidates for nomination shall be placed on the primary election ballot in the following order:

(1) Federal and state offices:

(A) President of the United States.

(B) United States Senator.

(C) Governor.

(D) United States Representative.

(2) Legislative offices:

(A) State senator.

(B) State representative.

(3) Circuit offices and county judicial offices:

(A) Judge of the circuit court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the circuit court.

(B) Judge of the superior court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the superior court.

(C) Judge of the probate court.

(D) Judge of the county court, with each division separate, as required by IC 33-30-3-3.

(E) Prosecuting attorney.

(F) ~~Clerk of the~~ Circuit court **clerk.**

(4) County offices:

(A) County auditor.

(B) County recorder.

(C) County treasurer.

(D) County sheriff.

(E) County coroner.

(F) County surveyor.

(G) County assessor.

(H) County commissioner.

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(I) County council member.

(5) Township offices:

(A) Township assessor.

(B) Township trustee.

(C) Township board member.

(D) Judge of the small claims court.

(E) Constable of the small claims court.

(6) City offices:

(A) Mayor.

(B) Clerk or clerk-treasurer.

(C) Judge of the city court.

(D) City-county council member or common council member.

(7) Town offices:

(A) Clerk-treasurer.

(B) Judge of the town court.

(C) Town council member.

(c) The political party offices with candidates for election shall be placed on the primary election ballot in the following order after the offices described in subsection (b):

(1) Precinct committeeman.

(2) State convention delegate.

(d) The following offices and public questions shall be placed on the primary election ballot in the following order after the offices described in subsection (c):

(1) School board offices to be elected at the primary election.

(2) Other local offices to be elected at the primary election.

(3) Local public questions.

(e) The offices and public questions described in subsection (d) shall be placed in a separate column on the ballot if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

(f) A public question shall be placed on the primary election ballot in the following form:

(The explanatory text for the public question,
if required by law.)
"Shall (insert public question)?"

[] YES

[] NO

SECTION 19. IC 3-10-1-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. In a primary election in a county having a city, ~~voting machines,~~ ballot card voting systems and electronic voting systems shall be employed as available

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and adaptable and shall be supplemented by paper ballots as necessary. However, this section does not require the purchase of ~~voting machines,~~ ballot card voting systems or electronic voting systems for a primary election.

SECTION 20. IC 3-10-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. If ~~voting machines or~~ electronic voting systems are used in a precinct, one (1) of the poll clerks shall give a printed political party identification card to a voter after the voter signs the poll list. Before entering the ~~voting machine or~~ voting booth, the voter must give the party identification card to a judge, and the judge shall set or have the ~~voting machine or~~ electronic voting system set to allow the voter to vote only for the candidates of the voter's party. After the ~~machine or~~ system is set, the voter may register a vote upon it within the time provided under

~~(1) IC 3-11-12-29.5, for a voting machine; or~~

~~(2)~~ IC 3-11-14-26. ~~for an electronic voting system.~~

SECTION 21. IC 3-10-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. After setting the ~~voting machine or~~ electronic voting system, the judge shall immediately deposit the political party identification card in a sealed container provided for that purpose. After the polls have closed, all party identification cards shall be counted and compared with the total number of votes cast in the election. All party identification cards must be of durable quality and the same color irrespective of the party that is designated.

SECTION 22. IC 3-10-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The names of the candidates of:

(1) a political party;

(2) a group of petitioners under IC 3-8-6; or

(3) a write-in candidate for the office of President or Vice President of the United States under ~~IC 3-8-2-1.5;~~ **IC 3-8-2-2.5;**

for electors of President and Vice President of the United States may not be placed on the ballot.

(b) The names of the nominees for President and Vice President of the United States of each political party or group of petitioners shall be placed:

(1) in one (1) column on the ballot if paper ballots or a ballot card voting system is used; **or**

~~(2) on one (1) ballot label in one (1) column or row if voting machines are used; or~~

~~(3)~~ **(2)** in a separate column on the ballot label if an electronic

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voting system is used.

(c) The name of each write-in candidate for the office of President or Vice President of the United States shall be placed as provided under IC 3-11-2-6.

SECTION 23. IC 3-10-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If paper ballots or a ballot card voting system is used, a single square shall be printed in front of a bracket enclosing the names of the nominees for President and Vice President of the United States on the left margin of each separate column of the ballot, immediately opposite the names of the nominees.

(b) The device named and list of nominees of the political party whose nominee received the highest number of votes in that county for secretary of state at the last election shall be placed in the first column on the left side of the ballot if paper ballots or a ballot card voting system is used or, if ~~voting machines or~~ an electronic voting system is used, in the first column or row. The political party whose nominee received the second highest number of votes in that county for secretary of state at the last election shall be placed in the second column or row. Other political parties shall be placed on the ballot in the same order.

(c) If a political party or an independent ticket did not have a candidate for secretary of state in the last election, the party or ticket shall be placed on the ballot after the parties described in subsection (b). If more than one (1) political party or independent ticket that has qualified to be on the ballot did not have a candidate for secretary of state in the last election, each party or independent ticket shall be listed on the ballot in the order in which the party or independent ticket filed a petition of nomination under IC 3-8-6-12.

SECTION 24. IC 3-10-7-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. Upon request of a town election board, the county election board of each county in which the town is located shall furnish any available equipment that is necessary for a municipal election, including ~~voting machines,~~ ballot card voting systems and electronic voting systems. The town shall pay the expense of moving the equipment to and from the polls and for any loss of or damage to the equipment.

SECTION 25. IC 3-11-1.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. If a county executive adopts the use of ~~voting machines,~~ ballot card voting systems or electronic voting systems in a county in which ~~voting machines,~~ ballot card voting systems or electronic voting systems have not been

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previously used, the county executive may establish precincts after primary election day and before August l by combining two (2) or more precincts into one (1) precinct.

SECTION 26. IC 3-11-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The following statement shall be printed in underlined print at the extreme top of a ballot to be used in an election covered by this title: ~~(or in the voting instructions for a voting machine).~~ "It is a crime to falsify this ballot or to violate Indiana election laws.".

SECTION 27. IC 3-11-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. All written or printed instructions must be at the top of the ballot ~~(or above the ballot labels on a voting machine)~~ immediately below the statement required by section 7 of this chapter. No other instructions or writing may appear at any other place on the ballot, including the ballot for federal and state offices, except as specified by this title. The instructions must be in English and any other language that the board considers necessary, clear, concise, and written so that a voter will not be confused about the effect of the voter's voting mark and vote.

SECTION 28. IC 3-11-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The name or title of the political party or independent ticket described in section 6 of this chapter shall be placed at the top of the ballot. The device of the political party or independent ticket shall be placed immediately under the name of the political party or independent ticket. The instructions for voting a straight party ticket shall be placed to the right of the device, or if the ballot is part of a direct recording electronic voting system:

(1) the instructions for voting a straight party ticket; and

(2) the statement concerning presidential electors required under IC 3-10-4-3;

may be posted in any location within the voting booth that permits the voter to easily read the instructions instead of on the ballot face.

(b) The instructions for voting a straight party ticket must conform as nearly as possible to the following: "To vote a straight (insert political party name) ticket for all (political party name) candidates on this ballot, make a voting mark on or in this circle and do not make any other marks on this ballot. If you wish to vote for a candidate seeking a nonpartisan office or on a public question, you must make another voting mark on the appropriate place on this ballot.".

(c) If the ballot contains an independent ticket described in section 6 of this chapter and at least one (1) other independent candidate, the

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ballot must also contain a statement that reads substantially as follows: "A vote cast for an independent ticket will only be counted for the candidates for President and Vice President or governor and lieutenant governor comprising that independent ticket. This vote will NOT be counted for any OTHER independent candidate appearing on the ballot.".

(d) The ballot must also contain a statement that reads substantially as follows: "A write-in vote will NOT be counted unless the vote is for a DECLARED write-in candidate. To vote for a write-in candidate, you must make a voting mark on or in the square to the left of the name you have written in or your vote will not be counted.".

(e) Except for variations in ballot arrangement permitted for ~~voting machines under IC 3-11-12-7,~~ ballot card voting systems under IC 3-11-13-11 or electronic voting systems under IC 3-11-14-7, the list of candidates of the political party shall be placed immediately under the instructions for voting a straight party ticket. The names of the candidates shall be placed three-fourths (3/4) of an inch apart from center to center of the name. The name of each candidate must have, immediately on its left, a square three-eighths (3/8) of an inch on each side.

(f) The election division or the circuit court clerk may authorize the printing of ballots containing a ballot variation code to ensure that the proper version of a ballot is used within a precinct.

SECTION 29. IC 3-11-2-12.9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.9. (a) School board offices to be elected at the general election shall be placed on the general election ballot after the offices described in section 12 of this chapter.

(b) School board offices shall be placed in a separate column on the ballot or ballot label if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

(c) This subsection applies to voting done by paper ballot or a ballot card voting system. If the ballot contains a candidate for a school board office, the ballot must also contain a statement that reads substantially as follows:

> "To vote for a candidate for this office, make a voting mark on or in the square to the left of the candidate's name.".

SECTION 30. IC 3-11-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) The following offices and public questions shall be placed on the general election ballot in the following order after the offices described in section 12.9

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of this chapter:

(1) Retention of a justice of the supreme court.

(2) Retention of a judge of the court of appeals.

(3) Retention of the judge of the tax court.

(4) Ratification of a state constitutional amendment.

(b) Whenever more than one (1) justice of the supreme court is subject to retention, the name of each justice must appear on the ballot in alphabetical order. However, if the justice serving as chief justice is subject to retention, the chief justice's name must appear first.

(c) Whenever more than one (1) judge of the court of appeals is subject to retention, the name of each judge must appear on the ballot in alphabetical order. However, if the judge serving as chief judge is subject to retention, the chief judge's name must appear first.

(d) These offices and public questions shall be placed in a separate column on the ballot or ballot label if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

SECTION 31. IC 3-11-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) The following offices and public questions shall be placed on the general election ballot in the following order after the offices and public questions described in section 13 of this chapter:

(1) Retention of a local judge.

(2) Local nonpartisan judicial offices.

(3) Local public questions.

(b) These offices and public questions shall be placed in a separate column on the ballot or ballot label if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

(c) If the ballot contains a candidate for a local nonpartisan judicial office, the ballot must also contain a statement that reads substantially as follows: "To vote for a candidate for this office, make a voting mark on or in the square to the left of the candidate's name."

(d) If more than one (1) local public question concerning the retention of a local judge is to be placed on a ballot, the public questions shall be placed on the ballot:

(1) in alphabetical order according to the surname of the local judge; and

(2) identifying the court (including division or room) in which the judge serves.

SECTION 32. IC 3-11-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The election

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division shall have printed and shall distribute to the circuit court clerk of each county at each general election the following:

(1) If only paper ballots are used, the number of state paper ballots (and presidential ballots in a presidential election year) equal to one hundred percent (100%) of the number of voters in the county.

(2) If ~~voting machines,~~ ballot card voting systems or electronic voting systems are used, only the number of presidential and state paper ballots that, in the election division's judgment, are necessary to meet an emergency.

(3) The number of provisional ballots for state offices (and provisional ballots for electors for President of the United States in presidential election years) that the election division considers necessary.

(b) The paper ballots shall be wrapped in packages, plainly marked, and securely sealed.

(c) The provisional ballots shall be separately wrapped in packages from the other paper ballots, plainly marked, and securely sealed.

(d) The clerk shall give a receipt for the paper ballots and the provisional ballots.

SECTION 33. IC 3-11-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~(a)~~ If, in the judgment of a county election board, the number of voters in a precinct of the county where a voting ~~machine~~ **system** is used for voting is so large that the ~~machine~~ **voting system** in use will not be sufficient to register the vote of all the voters in the precinct, the board may use paper ballots in addition to the ~~machine.~~ **voting system.** The voting by paper ballot is subject to all the restrictions prescribed by this article.

~~(b) The county election board shall then notify the election division of the board's determination and of the estimated number of state and presidential ballots that will be required in the precinct.~~

SECTION 34. IC 3-11-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. The county election board shall deliver the following to each inspector or the inspector's representative:

~~(1) The sealed package of paper ballots, provisional ballots, sample ballots, and any other supplies provided for the inspector's precinct by the election division.~~

~~(2)~~ **(1)** The ~~local~~ sample ballots, the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.

~~(3)~~ **(2)** The ~~local~~ ballots printed under the direction of the county

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election board as follows:

(A) The number of ballots equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.

(B) In those precincts where ~~voting machines,~~ ballot card systems or electronic voting systems are to be used, the number of paper ballots that will be required for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

~~(4)~~ **(3)** Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.

~~(5)~~ **(4)** Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.

~~(6)~~ **(5)** Copies of the instructions for a provisional voter required by 42 U.S.C. 15482. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under ~~subdivision (3).~~ **subdivision (2).**

SECTION 35. IC 3-11-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The ~~local~~ ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the ballots. The ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready for the reception of votes.

(b) The ~~local~~ provisional ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, separate from the bag described in subsection (a), which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

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(2) the precinct election board is fully organized and ready to receive votes.

SECTION 36. IC 3-11-3-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. (a) Each county election board shall have printed in at least 14 point type on cards in English, braille, and any other language that the board considers necessary, the following:

(1) Instructions for the guidance of voters in preparing their ballots.

(2) Instructions explaining the procedure for write-in voting.

(3) Write-in voting notice cards that must be posted in each precinct that utilizes a ~~voting machine or~~ ballot card voting system that does not permit write-in voting. The notice cards must direct voters who want to cast write-in votes to request a write-in ballot from an election official.

(b) The board shall furnish the number of cards it determines to be adequate for each precinct to the inspector at the same time the board delivers the ballots for the precinct and shall furnish a magnifier upon request to a voter who requests a magnifier to read the cards.

SECTION 37. IC 3-11-3-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) This section applies to a county having a population of more than four hundred thousand (400,000), but less than seven hundred thousand (700,000).

(b) In each precinct where voting is by ~~voting machine or~~ electronic voting system, the county election board shall provide the following to be used if ~~a voting machine or~~ an electronic voting system malfunctions:

(1) The following number of paper ballots:

(A) Not less than ten (10) if the number of registered voters in the precinct is not more than three hundred (300).

(B) Not less than twenty-five (25) if the number of registered voters in the precinct is more than three hundred (300).

(2) The necessary supplies and equipment as required by IC 3-11-11.

(c) Upon notice that ~~a voting machine or~~ an electronic voting system is out of order or fails to work, the precinct election board shall make the paper ballots provided under subsection (b) available to voters. The precinct election board shall contact the county election board to obtain additional ballots.

(d) Upon notice that ~~a voting machine or~~ an electronic voting system is out of order or fails to work, the county election board shall deliver additional necessary supplies to any precinct in the county, including

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additional paper ballots.

SECTION 38. IC 3-11-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The legislative body of a county may establish a cumulative fund under IC 6-1.1-41 to provide funds for the purchase of ~~voting machines,~~ ballot card voting systems or electronic voting systems.

SECTION 39. IC 3-11-6.5-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6.1. **(a)** When approving applications for reimbursement for voting systems under this chapter, the budget agency shall give priority to approving applications to replace a punch card voting system or voting machine system.

(b) This section expires January 1, 2006.

SECTION 40. IC 3-11-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. ~~(a)~~ The commission must approve a ballot card voting system before it may be used in an election.

~~(b) After June 30, 2001, the commission may not approve a punch card voting system for use in an election.~~

SECTION 41. IC 3-11-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. A ballot card voting system must permit a voter to vote either:

(1) a straight party ticket for all of the candidates of a political party by a single mark ~~or punch~~ on each ballot card;

(2) a split ticket for the candidates of different political parties and for independent candidates; or

(3) a straight party ticket and then split that ticket by casting individual votes for candidates of another political party or independent candidate.

SECTION 42. IC 3-11-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. **(a)** The commission shall:

(1) require the vendor to have tests conducted concerning the ~~suitability~~ **compliance** of a ballot card voting system **with HAVA and the standards set forth in this chapter and IC 3-11-15; and**

(2) have the results of the tests evaluated by the person designated under IC 3-11-16;

before determining whether to approve the **application for certification of a** ballot card voting system.

(b) The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses

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incurred under this section.

(c) A ballot card voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.

(d) An approval of a ballot card voting system under this chapter expires on the date specified in section 19(a) of this chapter.

SECTION 43. IC 3-11-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A **vendor may apply for approval of a** proposed improvement or change to a ballot card voting system ~~shall be reported to the election division by:~~

~~(1) the vendor, if a vendor is involved in the proposed change, and~~

~~(2) the county election board, if a county is proposing the change.~~ **that is currently certified by the commission.** A proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the **application for the** improvement or change is approved by the commission.

(b) ~~A report of~~ An **application for approval of an** improvement or change must be in the form prescribed by the commission.

(c) The vendor applying for approval of an improvement or a change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.

~~(c)~~ **(d)** The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** shall review the **proposed** improvement or change to the voting system and report the results of the review to the commission. ~~The commission shall determine, within a reasonable period of time, whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this chapter or the standards adopted by the commission under section 2 of this chapter.~~ **The review must indicate:**

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

~~(d)~~ **(e)** After the commission has approved **the application for** an improvement or change **to a ballot card voting system,** the

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improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(f) An approval of an application under this section expires on the date specified under section 19(a) of this chapter.

SECTION 44. IC 3-11-7-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. The commission may not approve the **marketing,** sale, **lease, installation, or implementation** of a ballot card voting system by a vendor if the commission finds that the system fails to meet all statutory requirements.

SECTION 45. IC 3-11-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** may periodically examine a ballot card voting system that the commission has previously approved to determine ~~if~~ **whether** the system is still in compliance with all statutory requirements **and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.**

(b) If ~~the election division or competent person finds that~~ a system ~~examined under~~ **does not comply with** subsection (a), ~~fails to meet all requirements and standards, and the commission concurs in these findings,~~ the commission may ~~by unanimous vote of all of the members of the commission,~~ rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may ~~by unanimous vote of all of the members of the commission:~~

~~(1) recommend that use of the system be discontinued; and~~

~~(2)~~ prohibit the system from being **installed, implemented,** leased, marketed, **used, permitted to be used,** or sold for use in Indiana in an election conducted under this title.

~~(d) This subsection applies to a ballot card voting system approved for its initial certification before:~~

~~(1) March 25, 1992; or~~

~~(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.~~

~~The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing~~

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~~expenses under this subsection.~~

~~(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.~~

SECTION 46. IC 3-11-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) The ~~commission may require a~~ county executive ~~to~~ **shall** file a copy of all contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

(b) The ~~election division may advise or instruct county officials on the content of the~~ documents listed in subsection (a) **must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.**

SECTION 47. IC 3-11-7-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) Except as provided in subsection (g), the approval of a ballot card voting system under this chapter expires ~~five (5) years after the date the commission approves the system.~~ **October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.**

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before ~~considering~~ **the commission considers** the application for renewal, the election division shall give notice ~~by regular United States mail~~ of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the commission shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

~~(e) The commission may, by unanimous consent of its entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any~~

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~~testing expenses under this subsection.~~

~~(f)~~ **(e) After receiving the report under subsection (d) and receiving comments from interested persons,** the commission shall approve an application for renewal under this section if the commission finds that the voting system:

(1) complies with the standards prescribed under this chapter;

(2) has worked effectively where the system has been used; and

(3) has been adequately supported by the vendor of the system.

~~(g)~~ **(f)** If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

(1) has not been certified by the commission for use in Indiana; or

(2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

~~(h)~~ **(g)** A vendor subject to subsection ~~(g)~~ **(f)** may continue to provide support during the period specified in subsection ~~(g)~~ **(f)** to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.

SECTION 48. IC 3-11-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A person ~~owning or interested in an electronic voting system~~ may ~~request the election division (or a competent person designated by the commission to act on behalf of the election division) to examine the~~ **submit an application for approval of an electronic voting** system ~~and report on its accuracy, efficiency, and capacity.~~ **in the form prescribed by the commission.**

SECTION 49. IC 3-11-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) The commission shall:**

(1) require the vendor to have tests conducted concerning the compliance of an electronic voting system with HAVA and the standards set forth in this chapter and IC 3-11-15; and

(2) have the results of the tests evaluated by the person designated under IC 3-11-16;

before determining whether to approve the application for certification of an electronic voting system.

(b) The tests required under this section must be performed by

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an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses under this section.

(c) If the commission finds that an electronic voting system complies with this article, the commission may approve the system. The approved system then may be adopted for use at an election.

(d) An electronic voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.

(e) An approval of an electronic voting system under this chapter expires on the date specified by section 28(a) of this chapter.

SECTION 50. IC 3-11-7.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A **vendor may apply for approval of a** proposed improvement or change to an electronic voting system ~~shall be reported to the election division by:~~

~~(1) the vendor, if a vendor is involved in the proposed change, and~~

~~(2) the county election board, if a county is proposing the change.~~ **that is currently certified by the commission.** A proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the **application for the** improvement or change is approved by the commission.

(b) ~~A report of~~ An **application for approval of an** improvement or **a** change must be in the form prescribed by the commission.

(c) The vendor applying for approval of an improvement or a change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.

~~(c)~~ **(d)** The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** shall review the improvement or change to the voting system and report the results of the review to the commission. ~~The commission shall determine within a reasonable period of time whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this article.~~ **The review must indicate:**

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would

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comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

~~(d)~~ **(e)** After the commission has examined and approved **the application for** an improvement or change to an electronic voting system, the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(f) An approval of an application under this section expires on the date specified by section 28(a) of this chapter.

SECTION 51. IC 3-11-7.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The commission may not approve **the marketing, sale, lease, installation, or implementation of** an electronic voting system unless the system meets the specifications in sections 8 through 19 of this chapter and in IC 3-11-15.

SECTION 52. IC 3-11-7.5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. A county executive may ~~adopt and~~ purchase, ~~or~~ procure, **lease, install, implement, or authorize the use of** an electronic voting system only after the system has been approved by the commission.

SECTION 53. IC 3-11-7.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** may periodically examine an electronic voting system that the commission has previously approved to determine ~~if~~ **whether** that system is still in compliance with all statutory requirements **and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.**

(b) If ~~the election division or competent person finds that~~ a system ~~examined under~~ **does not comply with** subsection (a), ~~fails to meet all requirements and standards, and the commission concurs in these findings,~~ the commission may ~~by unanimous vote of all of the members of the commission,~~ rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may ~~by unanimous vote of all of the members of the commission:~~

~~(1) recommend that use of the system be discontinued; and~~

~~(2)~~ prohibit the system from being **installed, implemented,** leased, marketed, **used, permitted to be used,** or sold for use in Indiana in an election conducted under this title.

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~~(d) This subsection applies to an electronic voting system approved for its initial certification before:~~

~~(1) March 25, 1992; or~~

~~(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.~~

~~The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.~~

SECTION 54. IC 3-11-7.5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) The ~~commission may require a~~ county executive ~~to~~ **shall** file a copy of all contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

(b) The ~~election division may advise or instruct county officials on the content of the~~ documents listed in subsection (a) **must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.**

SECTION 55. IC 3-11-7.5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) Except as provided in subsection (g), the approval of an electronic voting system under this chapter expires ~~five (5) years after the date the commission approves the system.~~ **October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.**

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before the commission considers the application for renewal, the election division shall give notice ~~by regular United States mail~~ of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the election division shall request comments regarding the renewal of the application from any interested person. **Before acting on the**

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application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.

~~(e) The commission may, by unanimous consent of the commission's entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(f)~~ **(e) After receiving the report under subsection (d) and comments from interested persons,** the commission shall approve an application for renewal under this section if the commission finds that the voting system:

(1) complies with the standards prescribed under this chapter;

(2) has worked effectively where the system has been used; and

(3) has been adequately supported by the vendor of the system.

~~(g)~~ **(f)** If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

(1) has not been certified by the commission for use in Indiana; or

(2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

~~(h)~~ **(g)** A vendor subject to ~~subsection (g)~~ **subsection (f)** may continue to provide support during the period specified in ~~subsection (g)~~ **subsection (f)** to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.

SECTION 56. IC 3-11-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. In preparing the polls for an election, the county executive shall:

(1) have placed within the room a railing separating the part of the room to be occupied by the precinct election board from that part of the room to be occupied by the ~~voting machines,~~ ballot card voting systems, electronic voting systems, and the three (3) or more booths or compartments for marking paper ballots, whenever either or two (2) of these voting systems are used;

(2) ensure that the portion of the room set apart for the precinct election board includes a door at which each voter appears for

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challenge; and

(3) provide a chute with a railing, rope, or wire on each side, beginning a distance equal to the length of the chute (as defined in IC 3-5-2-10) away from and leading to the door for challenge and to the room in which the election is held.

SECTION 57. IC 3-11-8-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) Only the following persons are permitted in the polls during an election:

(1) Members of a precinct election board.

(2) Poll clerks and assistant poll clerks.

(3) Election sheriffs.

(4) Deputy election commissioners.

(5) Pollbook holders.

(6) Watchers.

(7) Voters for the purposes of voting.

(8) Minor children accompanying voters as provided under IC 3-11-11-8. ~~and IC 3-11-12-29.~~

(9) An assistant to a precinct election officer appointed under IC 3-6-6-39.

(10) An individual authorized to assist a voter in accordance with IC 3-11-9.

(11) A member of a county election board, acting on behalf of the board.

(12) A mechanic authorized to act on behalf of a county election board to repair a voting system (if the mechanic bears credentials signed by each member of the board).

(13) Either of the following who have been issued credentials signed by the members of the county election board:

(A) The county chairman of a political party.

(B) The county vice chairman of a political party.

(b) This subsection applies to a simulated election for minors conducted with the authorization of the county election board. An individual participating in the simulated election may be in the polls for the purpose of voting. A person supervising the simulated election may be in the polls to perform the supervision.

(c) The inspector of a precinct has authority over all simulated election activities conducted under subsection (b) and shall ensure that the simulated election activities do not interfere with the election conducted in that polling place.

SECTION 58. IC 3-11-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A voter who:

(1) is a voter with disabilities; or

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(2) is unable to read or write English;

may request assistance in voting before entering the voting booth and designate a person (other than the voter's employer, an officer of the voter's union, or an agent of the voter's employer or union) to assist the voter in voting at an election, as required by 42 U.S.C. 1973aa-6.

(b) This subsection does not apply to a person designated by a voter described by subsection (a) who is voting absentee before two (2) members of the absentee voter board. The person designated must execute a sworn affidavit on a form provided by the precinct election board stating that, to the best of the designated person's knowledge, the voter:

(1) is a voter with disabilities or is unable to read or write English; and

(2) has requested the designated person to assist the voter in voting under this section.

(c) The person designated may then accompany the voter into the voting booth and assist the voter in marking the voter's paper ballot or ballot card or in registering the voter's vote on the ~~voting machine or~~ electronic voting system.

SECTION 59. IC 3-11-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The following individuals shall assist a voter described by section 2 of this chapter who requests assistance in voting before entering the voting booth but does not wish to designate a person under that section.

(1) The two (2) judges if the voter is voting at a precinct.

(2) Two (2) members of the absentee voter board if the voter is voting absentee.

(b) This subsection does not apply to a person designated by a voter described by subsection (a) who is voting absentee before two (2) members of the absentee voter board. The individuals described in subsection (a) shall execute a sworn affidavit on a form provided by the precinct election board stating that, to the best of the individuals' knowledge, the voter:

(1) is a voter with disabilities or is unable to read or write English;

(2) has requested assistance in voting; and

(3) does not wish to designate a person to assist the voter in voting under section 2 of this chapter.

(c) The two (2) individuals described in subsection (a) shall then accompany the voter into the voting booth to assist the voter in marking the voter's paper ballot or ballot card or in registering the voter's vote on the ~~voting machine or~~ electronic voting system.

SECTION 60. IC 3-11-10-16 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) If the inspector finds under section 15 of this chapter that:

(1) the affidavit is properly executed;

(2) the signatures correspond;

(3) the absentee voter is a qualified voter of the precinct;

(4) the absentee voter is registered and is not required to file additional information with the county voter registration office under IC 3-7-33-4.5;

(5) the absentee voter has not voted in person at the election; and

(6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications and the political party with which the absentee voter intends to affiliate;

then the inspector shall open the envelope containing the absentee ballots so as not to deface or destroy the affidavit and take out each ballot enclosed without unfolding or permitting a ballot to be unfolded or examined.

(b) The inspector shall then hand the ballots to the judges who shall deposit the ballots in the proper ballot box and enter the absentee voter's name on the poll list, as if the absentee voter had been present and voted in person. The judges shall mark the poll list to indicate that the voter has voted by absentee ballot. If the voter has registered and voted under IC 3-7-36-14, the inspector shall attach to the poll list the circuit court clerk's certification that the voter has registered.

~~(c) If an absentee ballot is opened under this section in a precinct using voting machines, the precinct election board shall prepare certificates and memoranda under IC 3-12-2-6 that distinguish the votes cast by absentee ballots from votes cast on voting machines.~~

SECTION 61. IC 3-11-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Before an election at which a ballot card voting system is used, a county election board shall:

(1) have the marking devices prepared for the election;

(2) have the marking devices put in order, set and adjusted, and made ready for voting when delivered to the precincts; and

(3) provide the precinct election officers with marking devices, a demonstration marking device, ~~(except in precincts using optical scan ballots),~~ ballot cards, ballot boxes, ballot labels, and other records and supplies as required.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

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(c) Each county election board shall have each ballot card voting system, along with all necessary furniture and appliances that go with the system at the polls, delivered to the appropriate precinct not later than 6 p.m. of the day before election day. The county executive shall provide transportation for the systems if requested to do so by the county election board.

SECTION 62. IC 3-11-13-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. In partisan elections, the ballot labels must include a voting square or position where a voter may by one (1) mark ~~or punch~~ on each card record a straight party or an independent ticket vote for all the candidates of one (1) political party or the independent ticket, except for offices for which the voter has voted individually for a candidate. If the voter records a vote for the two (2) candidates comprising an independent ticket, the vote must not count for any other independent candidate on the ballot.

SECTION 63. IC 3-11-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. ~~(a) This subsection does not apply to an optical scan voting system and expires January 1, 2006. Each ballot card provided under section 17 of this chapter must have two (2) attached perforated stubs on which is printed the same serial number. The top stub shall be bound or stapled in the package of ballot cards retained by the precinct election officers. The following information must be printed on the second stub:~~

~~(1) The name of the political subdivision holding the election.~~

~~(2) The designation of the election.~~

~~(3) The date of the election.~~

~~(4) The instructions to the voters.~~

~~(5) In a primary election, the name of the political party.~~

~~(b)~~ **(a)** The county election board in a county using a ballot card voting system shall provide ballot cards to the precinct election board that permit voters to cast write-in votes for each officer to be voted for at that election.

~~(c)~~ **(b)** The ballot cards provided under ~~subsection (b)~~ **subsection (a)** must be:

(1) designed to be folded; or

(2) accompanied by a secrecy envelope;

to ensure the secrecy of each of the votes cast by a voter.

~~(d)~~ **(c)** This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. Except as provided in subsection ~~(c),~~ **(d),** a write-in vote shall be cast by printing the name of the candidate and the title of the office in the space

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provided for write-in votes on a ballot card or secrecy envelope.

~~(c)~~ **(d)** Space for write-in voting for an office is not required if there are no declared write-in candidates for that office. However, procedures must be implemented to permit write-in voting for candidates for federal offices.

SECTION 64. IC 3-11-13-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. The test required by section 22 of this chapter must:

~~(1) include the visual inspection of the voting devices for the correct alignment of the card stock and the templates for proper punching;~~

~~(2)~~ **(1)** be conducted by processing a preaudited group of ballot cards ~~punched or~~ marked so as to record a predetermined number of valid votes for each candidate and on each public question; and

~~(3)~~ **(2)** include for each office one (1) or more ballot cards that have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating machines to reject the votes.

SECTION 65. IC 3-11-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26. After completion of the count, the tabulating machines shall be sealed ~~in the same manner as voting machines under IC 3-12-2.5-6.~~ **as provided in IC 3-12-3-10.** The ballot cards and all other election materials shall be sealed, retained, and disposed of as provided for paper ballots.

SECTION 66. IC 3-11-13-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) After the delivery of a ballot card voting system to a precinct, the precinct election board may meet at the polls on the same day and open the package containing the sample ballot cards, to determine whether the system is ready for use in accordance with section 16 of this chapter. If a ballot card voting system is not in compliance with that section, the board shall immediately label, set and adjust, and place the system in order or have it done.

(b) While acting under subsection (a), the precinct election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

(c) On the morning of election day, the precinct election officers shall meet at the polls at least one (1) hour before the time for opening the polls. The inspector then shall have:

(1) the chute erected;

(2) the sample ballots and instruction cards posted; and

(3) everything put in readiness for the commencement of voting

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at the opening of the polls.

(d) Before the opening of the polls, the precinct election officers shall **do the following:**

(1) Compare the ballot cards used in the marking device with the sample ballots furnished and determine whether the names, numbers, and letters are in agreement.

(2) Determine that the system records that zero (0) votes have been cast for each candidate and on each public question.

(3) Assure that the system is otherwise in perfect order.

(e) The officers then shall certify that:

(1) the marking device and the sample ballots are in agreement;

(2) the system records zero (0) votes cast; and

(3) the system appears to be in perfect order.

Forms shall be provided for certification, and the certification shall be filed with the election returns.

SECTION 67. IC 3-11-13-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) Unless challenged, a voter may proceed to vote.

~~(b) This subsection does not apply to an optical scan voting system. After a voter has signed the poll list, the poll clerk holding the ballot card shall remove the top stub, as described in section 18 of this chapter, and deliver to the voter one (1) of each ballot card that the voter is entitled to vote at the election. The top stub (and any second stub declined by the voter under section 33 of this chapter) shall be retained by the precinct election board and returned to the election board following the close of the polls.~~

~~(c)~~ **(b)** As each successive voter calls for a ballot, the poll clerks shall deliver to the voter the first initialed ballot of each type. The inspector shall then deliver to the poll clerks another ballot of each type, which the clerks shall initial as before.

~~(d)~~ **(c)** This subsection applies after December 31, 2005, to an optical scan ballot card ballot tabulated at a central location. As provided by 42 U.S.C. 15481, when a voter receives an optical scan ballot card ballot, the board must also provide the voter with:

(1) information concerning the effect of casting multiple votes for an office; and

(2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

SECTION 68. IC 3-11-13-28.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.7. (a) The two (2) poll clerks of each precinct shall place their initials in ink on the secrecy envelope of a ballot card (or on the fold-over part of a ballot

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card described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter) at the time the card is issued to a voter. The initials must be in the poll clerk's ordinary handwriting or printing and without a distinguishing mark of any kind.

(b) This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. A write-in vote cast on a secrecy envelope or fold-over envelope:

(1) is not valid unless:

(A) the secrecy envelope is initialed by both poll clerks; and

(B) the vote includes both the name of the write-in candidate and the office for which the write-in vote is cast; and

(2) makes the secrecy envelope or fold-over envelope a ballot for purposes of this title.

SECTION 69. IC 3-11-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) In addition to the instructions printed on the ballot card or ballot labels, instructions to voters shall be posted in each voting booth or placed on the marking device. Each voter shall be instructed by both judges, on request, on how to operate the voting device before the voter enters the voting booth.

(b) The instructions posted in the voting booth or placed on the marking device must state the following:

(1) That the voter should examine the ballot card to determine if it contains the initials of the poll clerks in ink on the back of the card.

(2) That the voter should not make an unnecessary mark ~~or punch~~ on the ballot card because the mark ~~or punch~~ may void the card.

(3) That the voter should examine the ballot card to determine if the card has any mark (other than the initials of the poll clerks) before voting.

(4) That the voter should return the ballot card to the poll clerks and request another ballot card if:

(A) the poll clerks' initials have not been properly placed on the card;

(B) the card has a mark (other than the initials of the poll clerks) before the voter places a voting mark on the ballot; or

(C) the voter has improperly marked ~~or punched~~ the card.

(5) That the voter should examine the ballot card after voting to determine that all marks ~~or punches~~ made on the card to indicate the voter's selections have been completely marked. ~~or punched.~~

(c) This subsection applies after December 31, 2005. As provided

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by 42 U.S.C. 15481, a voter casting an optical scan ballot card under this section must be:

(1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 70. IC 3-11-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. When a voter is handed a ballot card, the voter shall be instructed to:

(1) use only the marking device provided for ~~punching, slotting, or~~ marking the cards and that the voter is not to mark a card in any other way;

(2) be certain that the initials of the poll clerks appear on the voter's card and that if the initials are not on the card it will not be counted, except as provided by IC 3-12-1-12; and

(3) place the voter's card in an envelope after the voter has voted or to fold the card in a manner so that no card is exposed upon which a choice is indicated.

SECTION 71. IC 3-11-13-31.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31.7. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system.

(b) After receiving ballot cards, a voter shall, without leaving the room, go alone into one (1) of the booths or compartments that is unoccupied and indicate:

(1) the candidates for whom the voter desires to vote by ~~punching a hole in or~~ marking the squares immediately beside the candidates' names; and

(2) the voter's preference on each public question by ~~punching a hole in or~~ marking the square beside the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group of petitioners, the voter may ~~punch a hole in or~~ mark the circle enclosing the device and beside the name under which the candidates

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of the party or group of petitioners are printed. The voter's vote shall then be counted for all the candidates under that name. However, if the voter ~~punches a hole in or~~ marks the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

SECTION 72. IC 3-11-13-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33. (a) After a voter has marked a ballot card, the voter shall place it inside the envelope provided for this purpose or fold the envelope described in section 18(c)(1) of this chapter and return the ballot card to the judge.

~~(b) This subsection does not apply to an optical scan ballot or to a ballot card with a fold-over envelope. The judge shall remove the second stub, as described in section 18 of this chapter, from the envelope and offer the second stub to the voter.~~

~~(c)~~ **(b)** The judge shall offer to return the envelope with the ballot card inside to the voter. The voter shall:

(1) accept the envelope and deposit it in the ballot box; or

(2) decline the envelope and require the judge to deposit it in the ballot box.

~~(d)~~ **(c)** If a voter offers to vote a ballot card that is not inside the envelope provided for this purpose or with the envelope not folded if the ballot is described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter, the precinct election board shall direct the voter to return to the booth and place the ballot card in the envelope provided for this purpose or fold the envelope.

~~(e)~~ **(d)** After a voter's ballot cards have been deposited in the ballot box, the poll clerks shall make a voting mark after the voter's name on the poll list.

~~(f)~~ **(e)** After voting, a voter shall leave the polls. However, a voter to whom ballot cards and a marking device have been delivered may not leave the polls without voting the ballot cards or returning them to the poll clerk from whom the voter received them.

SECTION 73. IC 3-11-13-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. ~~(a)~~ If a voter spoils or defaces a ballot card or marks it erroneously, the voter shall return the card so as not to disclose any choices that the voter has made.

~~(b) This subsection does not apply to an optical scan ballot. A voter returning a ballot must comply with subsection (a) by folding the stub on the ballot card.~~

~~(c) After complying with subsection (b), the voter then may receive another ballot card. Upon receipt of a defective ballot card, the precinct election board shall:~~

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~~(1) immediately cancel the defective card by writing on the back of the card and stub the word "VOID" in ink or in indelible pencil; and~~

~~(2) without detaching any stub attached to the card, place the card in the container for voided ballots in a manner that does not expose the choices of the voter.~~

SECTION 74. IC 3-11-14-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Before an electronic voting system is delivered to a precinct, the county election board shall have the system put in order, set and adjusted, and ready for use in voting. **As part of the system's preparation, the county election board may conduct any of the comparisons and determinations required under section 17 of the chapter. However, notwithstanding any action taken by the county election board, each precinct election board must also perform the comparisons and determinations required under section 17 of this chapter before the opening of the polls.** The board may employ one (1) or more competent persons to prepare systems in accordance with this section.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where voting systems and other election material are being handled to safeguard this material.

SECTION 75. IC 3-11-14-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an electronic voting system.

(b) If a voter is not challenged by a member of the precinct election board, the voter may pass the railing to the side where an electronic voting system is and into the voting booth. There the voter shall register the voter's vote in secret by indicating:

(1) the candidates for whom the voter desires to vote by touching a device on or in the squares immediately above the candidates' names;

(2) if the voter intends to cast a write-in vote, a write-in vote by touching a device on or in the square immediately below the candidates' names and printing the name of the candidate in the window provided for write-in voting; and

(3) the voter's preference on each public question by touching a device above the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group

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of petitioners, the voter may cast a straight party ticket by touching that party's device. The voter's vote shall then be counted for all the candidates under that name. However, if the voter casts a vote by touching the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

(d) **This subsection applies after December 31, 2005.** As provided by 42 U.S.C. 15481, a voter casting a ballot on an electronic voting system must be:

(1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 76. IC 3-11-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 14.5. Public Tests of Electronic Voting Systems

Sec. 1. At least fourteen (14) days before election day, the county election board of each county planning to use an electronic voting system at the next election shall randomly select at least three (3) precincts within the county and test the voting system units to be used at those precincts on election day. Each voting system shall be tested to ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct.

Sec. 2. Public notice of the time and place shall be given at least forty-eight (48) hours before the test. The notice shall be published once in accordance with IC 5-3-1-4.

Sec. 3. The two (2) appointed members of the county election board shall observe the test required by this chapter and, if they so determine, shall certify the test as meeting the requirements of this chapter.

Sec. 4. The test must be open to representatives of political parties, candidates, the media, and the public.

Sec. 5. The test required by this chapter must include the following:

(1) The visual inspection of the voting system and ballot

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labels.

(2) The manual entry of a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question.

(3) At least one (1) ballot for each office that has votes in excess of the number allowed by law in order to test the ability of the electronic voting system to reject the overvotes.

Sec. 6. If an error is detected during the test required by section 5 of this chapter, the cause of the error shall be determined and corrected, and an errorless count must be made before the use of the electronic voting system at the election is approved.

Sec. 7. After completion of the count, the voting system shall be sealed. The ballots used to conduct the test and all other election materials shall be sealed, retained, and disposed of as provided for paper ballots.

Sec. 8. Immediately following the completion of the voting system test under section 5 of this chapter, the county election board shall enter the vote totals from the voting systems tested under this chapter into the component of the voting system used by the county election board to tabulate election results under IC 3-12-3.5. The board shall determine whether this component of the voting system properly tabulates the votes cast in each of the precincts tested under this chapter.

Sec. 9. Not later than seven (7) days after conducting the tests required under this chapter, the county election board shall certify to the election division that the tests have been conducted in conformity with this chapter.

Sec. 10. A copy of the certification of the tests conducted under this chapter shall be filed with the election returns.

SECTION 77. IC 3-11-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The performance and test standards and fees under this chapter apply to ~~a~~ **an optical scan voting system or an electronic** voting system ~~procured after March 25, 1992.~~ **described in IC 3-11-7 or IC 3-11-7.5.**

SECTION 78. IC 3-11-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. The commission shall not approve any system until the fee and the expenses incurred by the election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** in making the examination are paid by the person making the application.

SECTION 79. IC 3-11-15-13.3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.3. (a) This section applies after December 31, 2005.

(b) To be approved by the commission for use in Indiana, a voting system must meet the Voting System Standards adopted by the Federal Election Commission on April 30, 2002.

~~(c) The commission may adopt rules under IC 4-22-2 to require a voting system to meet standards more recent than standards described in subsection (b). If the commission adopts rules under this subsection, a voting system must meet the standards described in the rules instead of the standards described in subsection (b).~~

(c) A county may continue to use an optical scan ballot card voting system or an electronic voting system whose approval or certification expired on or before October 1, 2005, if the voting system:

(1) was:

(A) approved by the commission for use in elections in Indiana before July 1, 2003; and

(B) purchased by the county before July 1, 2003; and

(2) otherwise complies with the applicable provisions of HAVA and this article.

However, a voting system vendor may not market, sell, lease, or install a voting system described in this subsection.

(d) As provided by 42 U.S.C. 15481, to be used in an election in Indiana, a voting system must be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

(e) As provided by 42 U.S.C. 15481, an election board conducting an election satisfies the requirements of subsection (d) if the election board provides at least one (1) electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

(f) If a voter who is otherwise qualified to cast a ballot in a precinct chooses to cast the voter's ballot on the voting system provided under subsection (e), the voter must be allowed to cast the voter's ballot on that voting system, whether or not the voter is an individual with disabilities.

SECTION 80. IC 3-11-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Voting System Technical Oversight Program

Sec. 1. As used in this chapter, "program" refers to the voting

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system technical oversight program established by section 2 of this chapter.

Sec. 2. The voting system technical oversight program is established.

Sec. 3. The secretary of state shall contract with a person or an entity to conduct the program for a term specified in the contract.

Sec. 4. The person or entity designated under this chapter to conduct the program shall do the following:

(1) Develop and propose procedures and standards for the certification, acquisition, functioning, training, and security for voting systems used to conduct elections in Indiana.

(2) Compile and maintain an inventory of all voting systems used to conduct elections in Indiana.

(3) Review reports concerning voting systems prepared by independent laboratories and submitted by applicants for voting system certification.

(4) Recommend to the commission whether an application for voting system certification should be approved and, if so, whether the approval should be subject to any restrictions or conditions to ensure compliance with Indiana law.

(5) Perform any additional testing of a voting system necessary to determine whether the voting system complies with state law.

(6) Each year perform random audits of voting systems used to conduct Indiana elections and prepare reports indicating whether the voting systems have been certified, programmed, and used in compliance with Indiana law.

(7) Review contracts, leases, purchase orders, and amendments to those documents concerning the acquisition or maintenance of voting systems.

(8) Assist with the development of quantity purchase agreements and other contracts for the lease or purchase of voting systems.

(9) Perform any other duties related to the approval or use of voting systems as provided in:

(A) state law; or

(B) the contract described in section 3 of this chapter.

SECTION 81. IC 3-11-17 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 17. Voting System Violations

Sec. 1. This chapter applies to a voting system vendor who sells,

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leases, installs, implements, or permits the use of a voting system in an election conducted in Indiana.

Sec. 2. In addition to any other penalty imposed, a vendor who knowingly, recklessly, or negligently sells, leases, installs, implements, or permits the use of a voting system in an election conducted in Indiana in violation of this title is subject to a civil penalty under this chapter.

Sec. 3. If the secretary of state determines that a vendor is subject to a civil penalty under section 2 of this chapter, the secretary of state may assess a civil penalty. The civil penalty assessed under this section may not exceed five hundred thousand dollars ($500,000), plus any investigative costs incurred and documented by the secretary of state.

Sec. 4. The secretary of state is subject to IC 4-21.5 in imposing a civil penalty under this chapter.

Sec. 5. All civil penalties collected under this chapter shall be deposited with the treasurer of state in the voting system technical oversight program account established by section 6 of this chapter.

Sec. 6. (a) The voting system technical oversight program account is established with the state general fund to provide money for administering and enforcing IC 3-11-7, IC 3-11-7.5, IC 3-11-15, IC 11 3-11-16, and this chapter.

(b) The election division shall administer the account. With the approval of the budget agency, funds in the account are available to augment and supplement the funds appropriated to the election division for the purposes described in this section.

(c) The expenses of administering the account shall be paid from the money in the account. The account consists of all civil penalties collected under this chapter.

SECTION 82. IC 3-11.5-4-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) In addition to the preparations described in IC 3-11-11-2, ~~IC 3-11-12-24,~~ IC 3-11-13-27, or IC 3-11-14-16, the inspector shall:

(1) mark the poll list; and

(2) attach the certificates of voters who have registered and voted under IC 3-7-36-14 to the poll list;

in the presence of the poll clerks to indicate the voters of the precinct whose absentee ballots have been received by the county election board according to the certificate supplied under section 1 of this chapter.

(b) The poll clerks shall sign the statement printed on the certificate supplied under section 1 of this chapter indicating that the inspector:

(1) marked the poll list; and

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(2) attached the certificates described in subsection (a)(2);

under this section in the presence of both poll clerks.

(c) The inspector shall retain custody of the certificate supplied under section 1 of this chapter until the certificate is returned under section 9 of this chapter.

SECTION 83. IC 3-12-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.5. (a) This section applies to counting votes cast on ballot cards.

~~(b) As used in this section, "chad" means the part of a ballot card that indicates a vote on the card when entirely punched out by the voter.~~

~~(c) A chad that has been pierced, but not entirely punched out of the card, shall be counted as a vote for the indicated candidate or for the indicated response to a public question.~~

~~(d) A chad that has been indented, but not in any way separated from the remainder of the card, may not be counted as a vote for a candidate or on a public question.~~

~~(e) Whenever:~~

~~(1) a ballot card contains a numbered box indicating which chad should be punched out by the voter to cast a vote for a candidate or on a public question;~~

~~(2) the indicated chad has not been punched out; and~~

~~(3) a hole has been made in the card that touches any part of the numbered box;~~

~~the hole shall be counted as a vote for the candidate or on the public question as if the indicated chad had been punched out. However, if a hole has been made in the ballot that does not touch a numbered box or punch out a chad, the hole may not be counted as a vote for a candidate or on a public question.~~

~~(f) Whenever:~~

~~(1) a chad has been punched out of a ballot card;~~

~~(2) a numbered box indicates that another chad may be punched out to cast a vote for:~~

~~(A) a different candidate for the same office as the candidate for whom a vote was cast under subdivision (1); or~~

~~(B) a different response to the same public question on which a vote was cast under subdivision (1); and~~

~~(3) a hole has been punched in the card that touches the numbered box described in subdivision (2);~~

~~neither the chad described in subdivision (1) nor the hole described in subdivision (3) may be counted as a vote for a candidate or on a public question.~~

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~~(g)~~ **(b)** This subsection applies to a ballot card that:

(1) has been cast in a precinct whose votes are being recounted by a local recount commission or the state recount commission;

(2) is damaged or defective so that it cannot properly be counted by automated tabulating machines; and

(3) cannot be counted for the office subject to the recount due to the damage or defect.

The ballot card shall be remade only if the conditions in subdivisions (1) through (3) exist.

SECTION 84. IC 3-12-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. ~~(a)~~ When all votes have been counted, the precinct election board shall prepare a certificate stating the number of votes that each candidate received for each office and the number of votes cast on each public question. The number of votes that each candidate and public question received shall be written in words and numbers. The board shall also prepare a memorandum of the total vote cast for each candidate and ensure that each member of the board receives a copy of the memorandum.

~~(b) If:~~

~~(1) an absentee ballot has been cast in the precinct; and~~

~~(2) the precinct used voting machines;~~

~~the certificates and memoranda prepared under this section must comply with IC 3-11-10-16(c).~~

SECTION 85. IC 3-12-3.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. After each electronic voting system has been secured and the paper vote total printouts obtained, the inspector shall announce in a distinct tone of voice ~~the result of the vote as shown by~~ **that** the printouts **are available** for **inspection by the members of the precinct election board and any watchers present within the polls. The members and watchers are entitled to inspect and copy the printouts to document the votes cast for:**

(1) each candidate ~~in the order as their offices are arranged~~ on each system; and

(2) each public question **on each system.**

SECTION 86. IC 3-12-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. A county election board may not reject the certificates, poll lists, or tally papers returned from a precinct election board:

(1) for lack of form or for not being strictly in accordance with the directions contained in this title if the certificates can be satisfactorily understood; or

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(2) if the returns are certified by the precinct election board as required by IC 3-12-2-6, ~~IC 3-12-2.5-6,~~ IC 3-12-3-2, and IC 3-12-3.5-6 and returned by the inspector or one (1) of the judges of the board.

SECTION 87. IC 3-12-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. If ~~voting machines or~~ electronic voting systems are used in a precinct, the county election board may request authorization from the state recount commission to inspect the registering counter or other ~~mechanical~~ recording device on any ~~voting machine or~~ electronic voting system showing the number of votes cast for any candidate or public question. If authorized by the state recount commission, the board may conduct an inspection either before it proceeds to count and tabulate the vote or within one (1) day after the count and tabulation are finished.

SECTION 88. IC 3-12-4-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. To inspect ~~a voting machine or~~ **an** electronic voting system under section 18 of this chapter, the county election board may proceed to any place in the county where the ~~machine or~~ system is located, kept, or stored. However, the board shall make the inspection in the presence of an accredited representative of each of the major political parties of the county.

SECTION 89. IC 3-12-4-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. When making an inspection under section 18 of this chapter, a county election board shall compare the number of votes registered on the counter or other ~~mechanical~~ recording device on the ~~voting machines or~~ electronic voting systems with the returns made by the precinct election board of the precinct in which the ~~voting machine or~~ electronic voting system was used.

SECTION 90. IC 3-12-4-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. If there is a discrepancy between the number of votes registered on ~~a voting machine or~~ **an** electronic voting system and the returns made by the precinct election board, the county election board shall correct the returns made by the precinct election board so that the returns conform to the vote registered on the ~~voting machine or~~ electronic voting system. The corrected returns shall be considered the true and correct returns of the number of votes cast for each candidate or on each public question in the precinct.

SECTION 91. IC 3-12-4-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. If a nomination or

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election is contested or a recount is conducted, the returns of each precinct election board, as corrected by the county election board under section 21 of this chapter, constitute prima facie evidence of the vote cast for each candidate and on each public question to the same extent as the tabulation and return of the vote in a precinct where ~~voting machines or~~ electronic voting systems are not used.

SECTION 92. IC 3-12-6-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) A recount commission consists of three (3) persons.

(b) Two (2) members of the commission must be voters who:

(1) are members of different major political parties of the state; and

(2) were qualified to vote at the election in a county in which the election district for the office is located.

(c) This subsection applies to a recount commission conducting a recount of an election in which only paper ballots were used. The third member of the commission must be a person who:

(1) is a member of a major political party of the state; and

(2) was qualified to vote at the election in a county in which the election district for the office is located.

(d) This subsection applies to a recount of an election in which a voting method other than only paper ballots was used. The third member of the commission must be a competent mechanic who is familiar with the ~~voting machines,~~ ballot card voting systems or electronic voting systems used in that election. The mechanic is not required to be qualified to vote at the election in a county in which the election district for the office is located.

SECTION 93. IC 3-12-6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) A court ordering a recount under this chapter shall by order impound and provide for the protection of the following:

(1) All ballots ~~voting machines,~~ and electronic voting systems used at the election for casting votes in the precincts.

(2) All tally sheets relating to the votes cast for nomination or election to the office.

(3) All poll lists of persons registered by the poll clerks as having voted for nomination or election to the office.

(b) An order issued by the state recount commission under IC 3-12-10 supersedes an order issued by a court under this section to the extent that the orders conflict. The state recount commission shall assist a court acting under this section to the extent that the ability of the state recount commission to preserve the integrity of election

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records or equipment is not hindered.

(c) An impoundment order issued under subsection (a) may not prevent a circuit court clerk or board of registration from copying election material other than ballots if the clerk or board copies the material under the supervision of a person designated by the court.

SECTION 94. IC 3-12-6-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. A court acting under section 19 of this chapter shall make the ballots, ~~voting machines,~~ electronic voting systems, tally sheets, and poll lists available to the recount commission appointed under this chapter.

SECTION 95. IC 3-12-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. An election may be contested under section 1 of this chapter if a petitioner alleges that one (1) of the following circumstances existed:

(1) The contestee was ineligible.

(2) A mistake occurred in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes.

(3) A mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(4) ~~A voting machine or~~ An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.

(5) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

SECTION 96. IC 3-12-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A petition filed under section 5 of this chapter must state the following:

(1) That the petitioner desires to contest the nomination or election to an office.

(2) The name of each candidate as set forth on the ballot for the election and address of each candidate as set forth in the records of the county election board or election division.

(3) That the petitioner in good faith believes that one (1) or more of the following occurred:

(A) The person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.

(B) A mistake was made in the printing or distribution of ballots used in the election that makes it impossible to

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determine which candidate received the highest number of votes cast in the election.

(C) A mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(D) ~~A voting machine or~~ An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.

(E) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

(b) A petition stating that the petitioner believes that it is impossible to determine the candidate that received the highest number of votes for one (1) of the reasons described in subsection (a)(3)(B), (a)(3)(C), or (a)(3)(D) must identify each precinct in which:

(1) ballots:

(A) containing the printing mistake; or

(B) distributed by mistake;

were cast;

(2) a mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system; or

(3) ~~a voting machine or~~ an electronic voting system malfunctioned.

(c) A petition stating that the petitioner believes that an act or series of actions described in subsection (a)(3)(E) occurred must identify each precinct or other location in which the act or series of actions occurred to the extent known to the petitioner.

SECTION 97. IC 3-12-8-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) A contest shall be heard and determined by the court without a jury subject to the Indiana Rules of Trial Procedure.

(b) The court shall determine the issues raised by the petition and answer to the petition.

(c) After hearing and determining a petition alleging that a candidate is ineligible, the court shall declare as elected or nominated the qualified candidate who received the highest number of votes and render judgment accordingly.

(d) If the court finds that:

(1) a mistake in the printing or distribution of the ballots used in the election;

(2) a mistake in the programming of ~~a voting machine or~~ an

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electronic voting system;

(3) a malfunction of ~~a voting machine or~~ an electronic voting system; or

(4) the occurrence of a deliberate act or series of actions;

makes it impossible to determine which candidate received the highest number of votes, the court shall order that a special election be conducted under IC 3-10-8.

(e) The special election shall be conducted in the precincts identified in the petition in which the court determines that:

(1) ballots containing the printing mistake or distributed by mistake were cast;

(2) a mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system;

(3) ~~a voting machine or~~ an electronic voting system malfunctioned; or

(4) the deliberate act or series of actions occurred.

SECTION 98. IC 3-12-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Each petition for a recount filed under section 2 of this chapter must state the following:

(1) The office for which the petitioner desires a recount.

(2) The precincts in which the petitioner desires a recount.

(3) That the individual is entitled to a recount under this chapter and that the nomination or election to office at issue was voted upon in the precincts specified.

(4) The name of the candidates as set forth on the ballot for the election and address of the candidates as set forth in the records of the election division.

(5) That the petitioner in good faith believes that the votes cast for nomination or election to the office at the election in the precincts were not correctly counted and returned.

(6) That the petitioner desires a recount of all of the votes cast for nomination or election to the office in the precincts specified.

(b) Each petition for a contest filed under section 2 of this chapter must state the following:

(1) The nomination or election to office that the petitioner contests.

(2) That the individual is entitled to contest an election or a nomination to office under this chapter.

(3) The name of the candidates as set forth on the ballot for the election and address of each of the candidates as set forth in the records of the election division.

(4) That the petitioner in good faith believes that one (1) or more

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of the following occurred:

(A) The person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.

(B) A mistake was made in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes cast in the election.

(C) A mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(D) ~~A voting machine or~~ An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.

(E) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

(c) A petition stating that the petitioner believes that a mistake described in subsection (b)(4)(B), (b)(4)(C), or (b)(4)(D) has occurred must identify each precinct in which:

(1) ballots:

(A) containing the printing mistake; or

(B) distributed by mistake;

were cast;

(2) a mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system; or

(3) ~~a voting machine or~~ an electronic voting system malfunctioned.

(d) A petition stating that the petitioner believes that an act or series of actions described in subsection (b)(4)(E) occurred must identify each precinct or other location in which the act or series of actions occurred to the extent known to the petitioner.

SECTION 99. IC 3-12-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) Except as provided in subsection (b), the state recount commission may by order impound and provide for the protection of the following:

(1) All ballots ~~voting machines,~~ and electronic voting systems used at the election for casting votes in the precincts.

(2) All tally sheets relating to the votes cast for the office.

(3) All poll lists of persons registered by the poll clerks as having voted for the office.

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(b) In a recount of an election for a legislative office, the state recount commission shall by order impound and provide for the protection of the following:

(1) All ballots ~~voting machines,~~ and electronic voting systems used at the election for casting votes in all of the precincts within the legislative district.

(2) All tally sheets relating to the votes cast for the office.

(3) All poll lists of persons registered by the poll clerks as having voted for the office.

SECTION 100. IC 3-12-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) When a recount is completed by the state recount commission or its designee, the commission shall:

(1) make and sign a certificate showing the total number of votes received in the precincts by each candidate for nomination or election to the office;

(2) state in its certificate the candidate who received the highest number of votes in the precincts for nomination or election to the office and by what plurality; and

(3) file its certificate with the election division.

(b) When a contest proceeding in which a candidate is alleged to be ineligible is completed by the state recount commission or its designee, the commission shall make a final determination concerning the eligibility of the candidate for nomination or election to the office.

(c) If the state recount commission or its designee determines that:

(1) a mistake was made in the printing or distribution of ballots used in the election;

(2) a mistake was made in the programming of ~~a voting machine or~~ an electronic voting system;

(3) ~~a voting machine or~~ an electronic voting system malfunctioned; or

(4) a deliberate act or series of actions occurred;

that makes it impossible to determine which candidate received the highest number of votes cast, the commission shall order that a special election be conducted under IC 3-10-8.

(d) The special election ordered under subsection (c) shall be held in the precincts identified in the petition in which the commission determines that:

(1) ballots containing the printing mistake or distributed by mistake were cast;

(2) a mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system;

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(3) ~~a voting machine or~~ an electronic voting system malfunctioned; or

(4) a deliberate act or series of actions occurred.

SECTION 101. IC 3-12-12-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) A recount commission consists of three (3) persons.

(b) Two (2) members of the commission must be voters who:

(1) are members of different major political parties of the state; and

(2) were qualified to vote at the election in a county in which the election district that voted on the public question is located.

(c) This subsection applies to a recount commission conducting a recount of an election in which only paper ballots were used. The third member of the commission must be a person who:

(1) is a member of a major political party of the state; and

(2) was qualified to vote at the election in a county in which the election district that voted on the public question is located.

(d) This subsection applies to a recount of an election in which a voting method other than only paper ballots was used. The third member of the commission must be a competent mechanic who is familiar with the ~~voting machines,~~ ballot card voting systems or electronic voting systems used in that election. The mechanic is not required to be qualified to vote at the election in a county in which the election district that voted on the public question is located.

SECTION 102. IC 3-12-12-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) A court ordering a recount under this chapter shall by order impound and provide for the protection of the following:

(1) All ballots ~~voting machines,~~ and electronic voting systems used at the election for casting votes in the precincts.

(2) All tally sheets relating to the votes cast on the public question.

(3) All poll lists of persons registered by the poll clerks as having voted on the public question.

(b) An order issued by the state recount commission under IC 3-12-10 supersedes an order issued by a court under this section to the extent that the orders conflict. The state recount commission shall assist a court acting under this section to the extent that the ability of the state recount commission to preserve the integrity of election records or equipment is not hindered.

(c) An impoundment order issued under subsection (a) may not prevent a circuit court clerk or board of registration from copying

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election material other than ballots if the clerk or board copies the material under the supervision of a person designated by the court.

SECTION 103. IC 3-12-12-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. A court acting under section 14 of this chapter shall make the ballots, ~~voting machines,~~ electronic voting systems, tally sheets, and poll lists available to the recount commission appointed under this chapter.

SECTION 104. IC 3-14-2-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. A voter who knowingly:

(1) does anything to enable any other person to see or know for what ticket, candidates, or public questions the voter has voted; ~~on a voting machine,~~ or

(2) moves into a position, or does any other thing, to enable the voter to see or know for what ticket, candidates, or public questions any other voter votes; ~~on a voting machine,~~

commits a Class D felony.

SECTION 105. IC 3-14-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. A person who knowingly inspects ~~a voting machine or~~ **an** electronic voting system under IC 3-12-4-18 without obtaining authorization from the state recount commission to conduct the inspection commits a Class D felony.

SECTION 106. IC 3-14-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A person who knowingly:

(1) interferes with a watcher;

(2) prevents a watcher from performing the watcher's duties;

(3) otherwise violates:

(A) IC 3-6-8-3;

(B) IC 3-6-8-4;

(C) IC 3-6-8-5;

(D) IC 3-6-8-6;

(E) IC 3-6-9; or

(F) IC 3-6-10; or

(4) violates ~~IC 3-11-12-21(c) or~~ IC 3-11-13-44(d);

commits a Class D felony.

SECTION 107. IC 3-14-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. A precinct election officer who, with the intent to cause or permit a ~~voting machine,~~ ballot card voting system or **an** electronic voting system to fail to correctly register all votes cast, tampers with or disarranges the ~~machine or~~

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system or any part of it commits a Class D felony.

SECTION 108. IC 3-14-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. A precinct election officer who permits a ~~voting machine,~~ ballot card voting system or **an** electronic voting system to be used for voting at an election, with knowledge of the fact that the ~~machine or~~ system is not in order or not perfectly set and adjusted so that it will correctly register all votes cast, commits a Class D felony.

SECTION 109. IC 3-14-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. An inspector or poll clerk in a precinct who, for the purpose of:

(1) deceiving a voter;

(2) causing it to be doubtful for what ticket, candidate, or public question a vote is cast; or

(3) causing it to appear that votes cast for one ticket, candidate, or public question were cast for another ticket, candidate, or public question;

removes, changes, or mutilates a ballot label on a voting ~~machine~~ **system** or any part thereof commits a Class D felony.

SECTION 110. IC 3-14-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. A person other than a precinct election officer who knowingly, before or during an election:

(1) damages, disarranges, or tampers with a ~~voting machine,~~ ballot card system or **an** electronic voting system; or

(2) damages a ballot label placed or to be placed on the ~~machine,~~ electronic voting system, or any other appliance used in connection with the ~~machine,~~ ballot card voting system or electronic voting system;

commits a Class D felony.

SECTION 111. IC 3-14-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. A member of a precinct election board, an absentee ballot counter appointed under IC 3-11.5-4-22, or a provisional ballot counter appointed under IC 3-11.7-3 who knowingly:

(1) opens or marks, by folding or otherwise, a ballot presented by a voter, except as provided by law; or

(2) tries to find out how the voter voted before the ballot is deposited in the ballot box or cast on a ~~voting machine,~~ ballot card voting system or **an** electronic voting system or counted by the absentee ballot counter;

commits a Class D felony.

SECTION 112. IC 3-14-4-10 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. A person who knowingly violates:

(1) IC 3-11.5-5;

(2) IC 3-11.5-6;

(3) IC 3-12-2-1;

~~(4) IC 3-12-2.5-9;~~

~~(5)~~ **(4)** IC 3-12-3-14; or

~~(6)~~ **(5)** IC 3-12-3.5-7;

by providing any other person with information concerning the number of votes a candidate received for an office or cast to approve or reject a public question on absentee ballots counted under IC 3-11.5-5, IC 3-11.5-6, or IC 3-12 before the closing of the polls commits a Class D felony.

SECTION 113. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 3-5-2-21.5; IC 3-11-15-10; IC 3-11-15-11; IC 3-11-15-50; IC 3-11-15-51; IC 3-11-15-52; IC 3-11-15-53; IC 3-11-15-55; IC 3-11-15-56; IC 3-11-15-57; IC 3-11-15-58.

SECTION 114. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 3-5-2-41.5; IC 3-5-2-41.6; IC 3-5-2-50.6; IC 3-11-3-2; IC 3-11-3-6; IC 3-11-5; IC 3-11-7.5-20; IC 3-11-12; IC 3-11-13-20; IC 3-12-2.5.

SECTION 115. [EFFECTIVE UPON PASSAGE] **(a) The definitions set forth in IC 3-5-2 apply to this SECTION.**

(b) To perform the duties set forth in IC 3-11-16, as added by this act, in establishing the voting system technical oversight program, the secretary of state shall issue a request for proposals to enter into the contract required under IC 3-11-16-3.

(c) Notwithstanding any other statute or rule:

(1) the secretary of state shall extend invitations to public and private colleges and universities located within Indiana to respond to the request for proposals not later than June 1, 2005; and

(2) the secretary of state and the person selected by the secretary of state shall enter into the contract required under IC 3-11-16-3 not later than July 1, 2005.

(d) This SECTION expires December 31, 2005.

SECTION 116. [EFFECTIVE UPON PASSAGE] **(a) The definitions set forth in IC 3-5-2 apply to this SECTION.**

(b) This SECTION applies to a county:

(1) that used a punch card ballot voting system to conduct the November 2, 2004, general election in any precinct in the

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county; and

(2) whose county executive, before July 1, 2005, has not entered into a contract that complies with this SECTION.

(c) To comply with this SECTION, a contract that a county executive enters into must require a voting system vendor to deliver, not later than December 31, 2005:

(1) an electronic voting system;

(2) an optical scan ballot voting system; or

(3) a combination of both systems;

certified for installation, marketing, and use in Indiana on the effective date of the contract.

(d) If a county described in subsection (b) fails to enter into a contract that complies with subsection (c) before July 1, 2005, the secretary of state may enter into a quantity purchase agreement with a voting system vendor for the purchase of:

(1) an electronic voting system;

(2) an optical scan ballot voting system; or

(3) a combination of both systems;

that is certified for installation, marketing, and use in Indiana on the effective date of the contract.

(e) The agreement described in subsection (d) must require the delivery of the voting system to each county described in this SECTION before January 1, 2006, for use in all elections conducted in the county after December 31, 2005.

(f) This SECTION expires December 31, 2006.

SECTION 117. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred House Bill 1407, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 27, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 57. IC 3-14-2-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. A voter who knowingly:

(1) does anything to enable any other person to see or know for what ticket, candidates, or public questions the voter has voted; ~~on a voting machine;~~ or

(2) moves into a position, or does any other thing, to enable the voter to see or know for what ticket, candidates, or public questions any other voter votes; ~~on a voting machine;~~

commits a Class D felony.".

Page 28, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 62. IC 3-14-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. An inspector or poll clerk in a precinct who, for the purpose of:

(1) deceiving a voter;

(2) causing it to be doubtful for what ticket, candidate, or public question a vote is cast; or

(3) causing it to appear that votes cast for one ticket, candidate, or public question were cast for another ticket, candidate, or public question;

removes, changes, or mutilates a ballot label ~~on a voting machine~~ or any part thereof commits a Class D felony."

Page 29, line 11, delete "; IC 3-14-2-18; IC 3-14-3-7." and insert ".".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1407 as introduced.)

THOMAS, Chair

Committee Vote: yeas 10, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred House Bill No. 1407, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 2. IC 3-5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. "Ballot card" refers to ~~either a punch card ballot or~~ an optical scan ballot.

SECTION 3. IC 3-5-2-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. "Ballot card voting system" refers to ~~either a punch card voting system or~~ an optical scan voting system.".

Page 1, line 15, strike "booklet, pamphlet, or other".

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 5. IC 3-5-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. "Marking device" means:

~~(1) an apparatus in which paper ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter;~~

~~(2)~~ **(1)** a pencil for marking a paper ballot or ballot card; or

~~(3)~~ **(2)** an approved touch-sensitive device that automatically registers a vote on an electronic voting system.

SECTION 6. IC 3-5-2-48.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.5. "Testing authority" means an independent test authority ~~as described in:~~ **or independent laboratory:**

(1) **as described in the** Voting System Standards issued by the Federal Election Commission on April 30, 2002; or

~~(2) other more recent voting systems standards adopted by the commission under IC 3-11-15-13.~~

(2) accredited under Section 231 of HAVA (42 U.S.C. 15371).".

Page 2, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 8. IC 3-6-4.2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. The election division shall do the following:

~~(1) Prepare and distribute paper ballots for the election or retention of persons to federal and state offices and for public questions in compliance with this title.~~

~~(2)~~ **(1)** Maintain complete and uniform descriptions and maps of

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all precincts in Indiana.

~~(3)~~ **(2)** Promptly update the information required by subdivision ~~(2)~~ **(1)** after each precinct establishment order is filed with the commission under IC 3-11-1.5.

~~(4)~~ **(3)** Issue media watcher cards under IC 3-6-10-6.

~~(5)~~ **(4)** Prepare and transfer to the department of state revenue voter registration affidavits for inclusion in state adjusted gross income tax booklets under IC 6-8.1-3-19.

~~(6) After December 31, 2003,~~ **(5)** Serve in accordance with 42 U.S.C. 1973ff-1(b) as the office in Indiana responsible for providing information regarding voter registration procedures and absentee ballot procedures to absent uniformed services voters and overseas voters.

~~(7)~~ **(6)** As required by 42 U.S.C. 1973ff-1(c), submit a report to the federal Election Assistance Commission not later than ninety (90) days after each general election setting forth the combined number of absentee ballots:

(A) transmitted to absent uniformed services voters and overseas voters for the election; and

(B) returned by absent uniformed services voters and overseas voters and cast in the election.

~~(8)~~ **(7)** Implement the state plan in accordance with the requirements of HAVA (42 U.S.C. 15401 through 15406) and this title, and appoint members of the committee established under 42 U.S.C. 15405.

~~(9)~~ **(8)** Submit reports required under 42 U.S.C. 15408 to the federal Election Assistance Commission concerning the use of federal funds under Title II, Subtitle D, Part I of HAVA.

SECTION 9. IC 3-6-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) Each county election board, in addition to duties otherwise prescribed by law, shall do the following:

(1) Adopt and amend a written plan to implement NVRA within the county.

(2) Conduct all elections and administer the election laws within the county, except as provided in IC 3-8-5 and IC 3-10-7 for town conventions and municipal elections in certain small towns.

(3) Prepare all ballots. ~~except those prepared by the election division.~~

(4) Distribute all ballots and pasters to all of the precincts in the county.

(b) This subsection does not apply to pasters to be attached to

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ballots during the final three (3) days before an election. Not later than the Monday before distributing ballots, pasters, and voting systems to the precincts in the county, the county election board shall notify the county chairman of each major political party and, upon request, the chairman of any other bona fide political party in the county, that sample ballots and pasters are available for inspection.".

Page 2, line 11, after "34." insert "**(a)**".

Page 2, line 17, after "ballots." begin a new paragraph and insert: "**(b)**".

Page 13, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 32. IC 3-11-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~(a)~~ If, in the judgment of a county election board, the number of voters in a precinct of the county where a voting ~~machine~~ **system** is used for voting is so large that the ~~machine~~ **voting system** in use will not be sufficient to register the vote of all the voters in the precinct, the board may use paper ballots in addition to the ~~machine.~~ **voting system.** The voting by paper ballot is subject to all the restrictions prescribed by this article.

~~(b) The county election board shall then notify the election division of the board's determination and of the estimated number of state and presidential ballots that will be required in the precinct.~~".

Page 13, strike lines 30 through 32.

Page 13, line 33, strike "(2)" and insert "**(1)**".

Page 13, line 33, strike "local".

Page 13, line 36, strike "(3)" and insert "**(2)**".

Page 13, line 36, strike "local".

Page 14, line 5, strike "(4)" and insert "**(3)**".

Page 14, line 7, strike "(5)" and insert "**(4)**".

Page 14, line 9, strike "(6)" and insert "**(5)**".

Page 14, line 12, strike "subdivision (3)." and insert "**subdivision (2).**".

Page 14, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 34. IC 3-11-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The ~~local~~ ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the ballots. The ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to

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which they are directed; and

(2) the precinct election board is fully organized and ready for the reception of votes.

(b) The ~~local~~ provisional ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, separate from the bag described in subsection (a), which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready to receive votes.".

Page 15, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 38. IC 3-11-6.5-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6.1. **(a)** When approving applications for reimbursement for voting systems under this chapter, the budget agency shall give priority to approving applications to replace a punch card voting system or voting machine system.

(b) This section expires January 1, 2006.

SECTION 39. IC 3-11-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. ~~(a)~~ The commission must approve a ballot card voting system before it may be used in an election.

~~(b) After June 30, 2001, the commission may not approve a punch card voting system for use in an election.~~

SECTION 40. IC 3-11-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. A ballot card voting system must permit a voter to vote either:

(1) a straight party ticket for all of the candidates of a political party by a single mark ~~or punch~~ on each ballot card;

(2) a split ticket for the candidates of different political parties and for independent candidates; or

(3) a straight party ticket and then split that ticket by casting individual votes for candidates of another political party or independent candidate.

SECTION 41. IC 3-11-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. **(a)** The commission shall:

(1) require the vendor to have tests conducted concerning the

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~~suitability~~ **compliance** of a ballot card voting system **with HAVA and the standards set forth in this chapter and IC 3-11-15; and**

(2) have the results of the tests evaluated by the person designated under IC 3-11-16;

before determining whether to approve the **application for certification of a** ballot card voting system.

(b) The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this section.

(c) Except as provided in subsection (d), a ballot card voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.

(d) This subsection applies to a ballot card voting system whose application for certification has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (c), a vendor may market a ballot card system described by this subsection if:

(1) the vendor files the application for certification with the election division before conducting any marketing of the system in Indiana; and

(2) all of the vendor's product information has a prominent and easily readable label that states that the ballot card voting system has not been approved by the commission for use in Indiana elections.

(e) An approval of a ballot card voting system under this chapter expires on the date specified in section 19(a) of this chapter.

SECTION 42. IC 3-11-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A **vendor may apply for approval of a** proposed improvement or change to a ballot card voting system ~~shall be reported to the election division by:~~

~~(1) the vendor, if a vendor is involved in the proposed change, and~~

~~(2) the county election board, if a county is proposing the change.~~

that is currently certified by the commission. Except as provided in subsection (b), a proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the **application for the** improvement or change is approved by the commission.

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(b) This subsection applies to a ballot card voting system whose application for a proposed improvement or change has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (a), a vendor may market a ballot card voting system described by this subsection if:

(1) the vendor files the application with the election division before conducting any marketing of the system in Indiana; and

(2) all of the vendor's product information has a prominent and easily readable label that states that the proposed improvement or change to the ballot card voting system has not been approved by the commission for use in Indiana elections.

~~(b) A report of~~ **(c)** An **application for approval of an** improvement or change must be in the form prescribed by the commission.

(d) The vendor applying for approval of an improvement or a change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.

~~(c)~~ **(e)** The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** shall review the **proposed** improvement or change to the voting system and report the results of the review to the commission. ~~The commission shall determine, within a reasonable period of time, whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this chapter or the standards adopted by the commission under section 2 of this chapter.~~ **The review must indicate:**

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

~~(d)~~ **(f)** After the commission has approved **the application for** an improvement or change **to a ballot card voting system,** the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(g) An approval of an application under this section expires on the date specified under section 19(a) of this chapter.

SECTION 43. IC 3-11-7-16 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. The commission may not approve the **marketing,** sale, **lease, installation, or implementation** of a ballot card voting system by a vendor if the commission finds that the system fails to meet all statutory requirements.

SECTION 44. IC 3-11-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** may periodically examine a ballot card voting system that the commission has previously approved to determine ~~if~~ **whether** the system is still in compliance with all statutory requirements **and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.**

(b) If ~~the election division or competent person finds that~~ a system ~~examined under~~ **does not comply with** subsection (a), ~~fails to meet all requirements and standards, and the commission concurs in these findings,~~ the commission may ~~by unanimous vote of all of the members of the commission,~~ rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may ~~by unanimous vote of all of the members of the commission:~~

~~(1) recommend that use of the system be discontinued; and~~

~~(2)~~ prohibit the system from being **installed, implemented,** leased, marketed, **used, permitted to be used,** or sold for use in Indiana in an election conducted under this title.

~~(d) This subsection applies to a ballot card voting system approved for its initial certification before:~~

~~(1) March 25, 1992; or~~

~~(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.~~

~~The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in~~

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~~Indiana in an election conducted under this title.~~

SECTION 45. IC 3-11-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) The ~~commission may require a~~ county executive ~~to~~ **shall** file a copy of all contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

(b) The ~~election division may advise or instruct county officials on the content of the~~ documents listed in subsection (a) **must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.**

SECTION 46. IC 3-11-7-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) Except as provided in subsection (g), the approval of a ballot card voting system under this chapter expires ~~five (5) years after the date the commission approves the system.~~ **October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.**

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before ~~considering~~ **the commission considers** the application for renewal, the election division shall give notice ~~by regular United States mail~~ of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the commission shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

~~(e) The commission may, by unanimous consent of its entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(f)~~ **(e) After receiving the report under subsection (d) and receiving comments from interested persons,** the commission shall approve an application for renewal under this section if the commission finds that the voting system:

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(1) complies with the standards prescribed under this chapter;

(2) has worked effectively where the system has been used; and

(3) has been adequately supported by the vendor of the system.

~~(g)~~ **(f) This subsection does not apply to the marketing of a voting system performed in compliance with section 12(d) or 15(b) of this chapter.** If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

(1) has not been certified by the commission for use in Indiana; or

(2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

~~(h)~~ **(g)** A vendor subject to subsection ~~(g)~~ **(f)** may continue to provide support during the period specified in subsection ~~(g)~~ **(f)** to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.

SECTION 47. IC 3-11-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A person ~~owning or interested in an electronic voting system~~ may ~~request the election division (or a competent person designated by the commission to act on behalf of the election division) to examine the~~ **submit an application for approval of an electronic voting** system ~~and report on its accuracy, efficiency, and capacity.~~ **in the form prescribed by the commission.**

SECTION 48. IC 3-11-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) The commission shall:**

(1) require the vendor to have tests conducted concerning the compliance of an electronic voting system with HAVA and the standards set forth in this chapter and IC 3-11-15; and

(2) have the results of the tests evaluated by the person designated under IC 3-11-16;

before determining whether to approve the application for certification of an electronic voting system.

(b) The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses under this section.

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(c) If the commission finds that an electronic voting system complies with this article, the commission may approve the system. The approved system then may be adopted for use at an election.

(d) Except as provided in subsection (e), an electronic voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.

(e) This subsection applies to an electronic voting system whose application for certification has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (d), a vendor may market an electronic voting system described by this subsection if:

(1) the vendor files the application with the election division before conducting any marketing of the system in Indiana; and

(2) all of the vendor's product information has a prominent and easily readable label that states that the electronic voting system has not been approved by the commission for use in Indiana elections.

(f) An approval of an electronic voting system under this chapter expires on the date specified by section 28(a) of this chapter.

SECTION 49. IC 3-11-7.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A **vendor may apply for approval of a** proposed improvement or change to an electronic voting system ~~shall be reported to the election division by:~~

~~(1) the vendor, if a vendor is involved in the proposed change, and~~

~~(2) the county election board, if a county is proposing the change.~~ **that is currently certified by the commission. Except as provided in subsection (b),** a proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the **application for the** improvement or change is approved by the commission.

(b) This subsection applies to an electronic voting system whose application for a proposed improvement or change has been filed with the election division and has not been approved by the commission. Notwithstanding subsection (a), a vendor may market an electronic voting system described by this subsection if:

(1) the vendor files the application with the election division before conducting any marketing of the system in Indiana; and

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(2) all of the vendor's product information has a prominent and easily readable label that states that the proposed improvement or change to the electronic voting system has not been approved by the commission for use in Indiana elections.

~~(b) A report of~~ **(c)** An **application for approval of an** improvement or **a** change must be in the form prescribed by the commission.

(d) The vendor applying for approval of an improvement or a change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.

~~(c)~~ **(e)** The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** shall review the improvement or change to the voting system and report the results of the review to the commission. ~~The commission shall determine within a reasonable period of time whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this article.~~ **The review must indicate:**

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

~~(d)~~ **(f)** After the commission has examined and approved **the application for** an improvement or change to an electronic voting system, the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(g) An approval of an application under this section expires on the date specified by section 28(a) of this chapter.

SECTION 50. IC 3-11-7.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The commission may not approve **the marketing, sale, lease, installation, or implementation of** an electronic voting system unless the system meets the specifications in sections 8 through 19 of this chapter and in IC 3-11-15.

SECTION 51. IC 3-11-7.5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. A county executive may ~~adopt and~~ purchase, ~~or~~ procure, **lease, install, implement, or authorize the use of** an electronic voting system only

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after the system has been approved by the commission.

SECTION 52. IC 3-11-7.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** may periodically examine an electronic voting system that the commission has previously approved to determine ~~if~~ **whether** that system is still in compliance with all statutory requirements **and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.**

(b) If ~~the election division or competent person finds that~~ a system ~~examined under~~ **does not comply with** subsection (a), ~~fails to meet all requirements and standards, and the commission concurs in these findings,~~ the commission may ~~by unanimous vote of all of the members of the commission,~~ rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may ~~by unanimous vote of all of the members of the commission:~~

~~(1) recommend that use of the system be discontinued; and~~

~~(2)~~ prohibit the system from being **installed, implemented,** leased, marketed, **used, permitted to be used,** or sold for use in Indiana in an election conducted under this title.

~~(d) This subsection applies to an electronic voting system approved for its initial certification before:~~

~~(1) March 25, 1992; or~~

~~(2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.~~

~~The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.~~

SECTION 53. IC 3-11-7.5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) The ~~commission may require a~~ county executive ~~to~~ **shall** file a copy of all

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contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

(b) The ~~election division may advise or instruct county officials on the content of the~~ documents listed in subsection (a) **must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.**

SECTION 54. IC 3-11-7.5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) Except as provided in subsection (g), the approval of an electronic voting system under this chapter expires ~~five (5) years after the date the commission approves the system.~~ **October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.**

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before the commission considers the application for renewal, the election division shall give notice ~~by regular United States mail~~ of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the election division shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

~~(e) The commission may, by unanimous consent of the commission's entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.~~

~~(f)~~ **(e) After receiving the report under subsection (d) and comments from interested persons,** the commission shall approve an application for renewal under this section if the commission finds that the voting system:

(1) complies with the standards prescribed under this chapter;

(2) has worked effectively where the system has been used; and

(3) has been adequately supported by the vendor of the system.

~~(g)~~ **(f) This subsection does not apply to the marketing of a voting system performed in compliance with section 4(e) or 5(b) of**

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this chapter. If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

(1) has not been certified by the commission for use in Indiana; or

(2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

~~(h)~~ **(g)** A vendor subject to ~~subsection (g)~~ **subsection (f)** may continue to provide support during the period specified in ~~subsection (g)~~ **subsection (f)** to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.".

Page 18, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 60. IC 3-11-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Before an election at which a ballot card voting system is used, a county election board shall:

(1) have the marking devices prepared for the election;

(2) have the marking devices put in order, set and adjusted, and made ready for voting when delivered to the precincts; and

(3) provide the precinct election officers with marking devices, a demonstration marking device, ~~(except in precincts using optical scan ballots),~~ ballot cards, ballot boxes, ballot labels, and other records and supplies as required.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

(c) Each county election board shall have each ballot card voting system, along with all necessary furniture and appliances that go with the system at the polls, delivered to the appropriate precinct not later than 6 p.m. of the day before election day. The county executive shall provide transportation for the systems if requested to do so by the county election board.

SECTION 61. IC 3-11-13-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. In partisan elections, the ballot labels must include a voting square or position where a voter may by one (1) mark ~~or punch~~ on each card record a straight party or an independent ticket vote for all the candidates of one (1) political party or the independent ticket, except for offices for which

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the voter has voted individually for a candidate. If the voter records a vote for the two (2) candidates comprising an independent ticket, the vote must not count for any other independent candidate on the ballot.

SECTION 62. IC 3-11-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. ~~(a) This subsection does not apply to an optical scan voting system and expires January 1, 2006. Each ballot card provided under section 17 of this chapter must have two (2) attached perforated stubs on which is printed the same serial number. The top stub shall be bound or stapled in the package of ballot cards retained by the precinct election officers. The following information must be printed on the second stub:~~

~~(1) The name of the political subdivision holding the election.~~

~~(2) The designation of the election.~~

~~(3) The date of the election.~~

~~(4) The instructions to the voters.~~

~~(5) In a primary election, the name of the political party.~~

~~(b)~~ **(a)** The county election board in a county using a ballot card voting system shall provide ballot cards to the precinct election board that permit voters to cast write-in votes for each officer to be voted for at that election.

~~(c)~~ **(b)** The ballot cards provided under ~~subsection (b)~~ **subsection (a)** must be:

(1) designed to be folded; or

(2) accompanied by a secrecy envelope;

to ensure the secrecy of each of the votes cast by a voter.

~~(d)~~ **(c)** This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. Except as provided in subsection ~~(c),~~ **(d),** a write-in vote shall be cast by printing the name of the candidate and the title of the office in the space provided for write-in votes on a ballot card or secrecy envelope.

~~(e)~~ **(d)** Space for write-in voting for an office is not required if there are no declared write-in candidates for that office. However, procedures must be implemented to permit write-in voting for candidates for federal offices.

SECTION 63. IC 3-11-13-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. The test required by section 22 of this chapter must:

~~(1) include the visual inspection of the voting devices for the correct alignment of the card stock and the templates for proper punching;~~

~~(2)~~ **(1)** be conducted by processing a preaudited group of ballot

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cards ~~punched or~~ marked so as to record a predetermined number of valid votes for each candidate and on each public question; and ~~(3)~~ **(2)** include for each office one (1) or more ballot cards that have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating machines to reject the votes.".

Page 18, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 65. IC 3-11-13-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) After the delivery of a ballot card voting system to a precinct, the precinct election board may meet at the polls on the same day and open the package containing the sample ballot cards, to determine whether the system is ready for use in accordance with section 16 of this chapter. If a ballot card voting system is not in compliance with that section, the board shall immediately label, set and adjust, and place the system in order or have it done.

(b) While acting under subsection (a), the precinct election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

(c) On the morning of election day, the precinct election officers shall meet at the polls at least one (1) hour before the time for opening the polls. The inspector then shall have:

(1) the chute erected;

(2) the sample ballots and instruction cards posted; and

(3) everything put in readiness for the commencement of voting at the opening of the polls.

(d) Before the opening of the polls, the precinct election officers shall **do the following:**

(1) Compare the ballot cards used in the marking device with the sample ballots furnished and determine whether the names, numbers, and letters are in agreement.

(2) Determine that the system records that zero (0) votes have been cast for each candidate and on each public question.

(3) Assure that the system is otherwise in perfect order.

(e) The officers then shall certify that:

(1) the marking device and the sample ballots are in agreement;

(2) the system records zero (0) votes cast; and

(3) the system appears to be in perfect order.

Forms shall be provided for certification, and the certification shall be filed with the election returns.

SECTION 66. IC 3-11-13-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) Unless

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challenged, a voter may proceed to vote.

~~(b) This subsection does not apply to an optical scan voting system. After a voter has signed the poll list, the poll clerk holding the ballot card shall remove the top stub, as described in section 18 of this chapter, and deliver to the voter one (1) of each ballot card that the voter is entitled to vote at the election. The top stub (and any second stub declined by the voter under section 33 of this chapter) shall be retained by the precinct election board and returned to the election board following the close of the polls.~~

~~(c)~~ **(b)** As each successive voter calls for a ballot, the poll clerks shall deliver to the voter the first initialed ballot of each type. The inspector shall then deliver to the poll clerks another ballot of each type, which the clerks shall initial as before.

~~(d)~~ **(c)** This subsection applies after December 31, 2005, to an optical scan ballot card ballot tabulated at a central location. As provided by 42 U.S.C. 15481, when a voter receives an optical scan ballot card ballot, the board must also provide the voter with:

(1) information concerning the effect of casting multiple votes for an office; and

(2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

SECTION 67. IC 3-11-13-28.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.7. (a) The two (2) poll clerks of each precinct shall place their initials in ink on the secrecy envelope of a ballot card (or on the fold-over part of a ballot card described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter) at the time the card is issued to a voter. The initials must be in the poll clerk's ordinary handwriting or printing and without a distinguishing mark of any kind.

(b) This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. A write-in vote cast on a secrecy envelope or fold-over envelope:

(1) is not valid unless:

(A) the secrecy envelope is initialed by both poll clerks; and

(B) the vote includes both the name of the write-in candidate and the office for which the write-in vote is cast; and

(2) makes the secrecy envelope or fold-over envelope a ballot for purposes of this title.

SECTION 68. IC 3-11-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) In addition to the instructions printed on the ballot card or ballot labels, instructions

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to voters shall be posted in each voting booth or placed on the marking device. Each voter shall be instructed by both judges, on request, on how to operate the voting device before the voter enters the voting booth.

(b) The instructions posted in the voting booth or placed on the marking device must state the following:

(1) That the voter should examine the ballot card to determine if it contains the initials of the poll clerks in ink on the back of the card.

(2) That the voter should not make an unnecessary mark ~~or punch~~ on the ballot card because the mark ~~or punch~~ may void the card.

(3) That the voter should examine the ballot card to determine if the card has any mark (other than the initials of the poll clerks) before voting.

(4) That the voter should return the ballot card to the poll clerks and request another ballot card if:

(A) the poll clerks' initials have not been properly placed on the card;

(B) the card has a mark (other than the initials of the poll clerks) before the voter places a voting mark on the ballot; or

(C) the voter has improperly marked ~~or punched~~ the card.

(5) That the voter should examine the ballot card after voting to determine that all marks ~~or punches~~ made on the card to indicate the voter's selections have been completely marked. ~~or punched.~~

(c) This subsection applies after December 31, 2005. As provided by 42 U.S.C. 15481, a voter casting an optical scan ballot card under this section must be:

(1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 69. IC 3-11-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. When a voter is handed a ballot card, the voter shall be instructed to:

(1) use only the marking device provided for ~~punching, slotting, or~~ marking the cards and that the voter is not to mark a card in

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any other way;

(2) be certain that the initials of the poll clerks appear on the voter's card and that if the initials are not on the card it will not be counted, except as provided by IC 3-12-1-12; and

(3) place the voter's card in an envelope after the voter has voted or to fold the card in a manner so that no card is exposed upon which a choice is indicated.

SECTION 70. IC 3-11-13-31.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31.7. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system.

(b) After receiving ballot cards, a voter shall, without leaving the room, go alone into one (1) of the booths or compartments that is unoccupied and indicate:

(1) the candidates for whom the voter desires to vote by ~~punching a hole in or~~ marking the squares immediately beside the candidates' names; and

(2) the voter's preference on each public question by ~~punching a hole in or~~ marking the square beside the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group of petitioners, the voter may ~~punch a hole in or~~ mark the circle enclosing the device and beside the name under which the candidates of the party or group of petitioners are printed. The voter's vote shall then be counted for all the candidates under that name. However, if the voter ~~punches a hole in or~~ marks the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

SECTION 71. IC 3-11-13-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33. (a) After a voter has marked a ballot card, the voter shall place it inside the envelope provided for this purpose or fold the envelope described in section 18(c)(1) of this chapter and return the ballot card to the judge.

~~(b) This subsection does not apply to an optical scan ballot or to a ballot card with a fold-over envelope. The judge shall remove the second stub, as described in section 18 of this chapter, from the envelope and offer the second stub to the voter.~~

~~(c)~~ **(b)** The judge shall offer to return the envelope with the ballot card inside to the voter. The voter shall:

(1) accept the envelope and deposit it in the ballot box; or

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(2) decline the envelope and require the judge to deposit it in the ballot box.

~~(d)~~ **(c)** If a voter offers to vote a ballot card that is not inside the envelope provided for this purpose or with the envelope not folded if the ballot is described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter, the precinct election board shall direct the voter to return to the booth and place the ballot card in the envelope provided for this purpose or fold the envelope.

~~(e)~~ **(d)** After a voter's ballot cards have been deposited in the ballot box, the poll clerks shall make a voting mark after the voter's name on the poll list.

~~(f)~~ **(e)** After voting, a voter shall leave the polls. However, a voter to whom ballot cards and a marking device have been delivered may not leave the polls without voting the ballot cards or returning them to the poll clerk from whom the voter received them.

SECTION 72. IC 3-11-13-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. ~~(a)~~ If a voter spoils or defaces a ballot card or marks it erroneously, the voter shall return the card so as not to disclose any choices that the voter has made.

~~(b) This subsection does not apply to an optical scan ballot. A voter returning a ballot must comply with subsection (a) by folding the stub on the ballot card.~~

~~(c) After complying with subsection (b), the voter then may receive another ballot card. Upon receipt of a defective ballot card, the precinct election board shall:~~

~~(1) immediately cancel the defective card by writing on the back of the card and stub the word "VOID" in ink or in indelible pencil, and~~

~~(2) without detaching any stub attached to the card, place the card in the container for voided ballots in a manner that does not expose the choices of the voter.~~

SECTION 73. IC 3-11-14-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Before an electronic voting system is delivered to a precinct, the county election board shall have the system put in order, set and adjusted, and ready for use in voting. **As part of the system's preparation, the county election board may conduct any of the comparisons and determinations required under section 17 of the chapter. However, notwithstanding any action taken by the county election board, each precinct election board must also perform the comparisons and determinations required under section 17 of this chapter before the opening of the polls.** The board may employ one (1) or

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more competent persons to prepare systems in accordance with this section.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where voting systems and other election material are being handled to safeguard this material.

SECTION 74. IC 3-11-14-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an electronic voting system.

(b) If a voter is not challenged by a member of the precinct election board, the voter may pass the railing to the side where an electronic voting system is and into the voting booth. There the voter shall register the voter's vote in secret by indicating:

(1) the candidates for whom the voter desires to vote by touching a device on or in the squares immediately above the candidates' names;

(2) if the voter intends to cast a write-in vote, a write-in vote by touching a device on or in the square immediately below the candidates' names and printing the name of the candidate in the window provided for write-in voting; and

(3) the voter's preference on each public question by touching a device above the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group of petitioners, the voter may cast a straight party ticket by touching that party's device. The voter's vote shall then be counted for all the candidates under that name. However, if the voter casts a vote by touching the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

(d) **This subsection applies after December 31, 2005.** As provided by 42 U.S.C. 15481, a voter casting a ballot on an electronic voting system must be:

(1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting

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multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 75. IC 3-11-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 14.5. Public Tests of Electronic Voting Systems

Sec. 1. At least fourteen (14) days before election day, the county election board of each county planning to use an electronic voting system at the next election shall randomly select at least three (3) precincts within the county and test the voting system units to be used at those precincts on election day. Each voting system shall be tested to ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct.

Sec. 2. Public notice of the time and place shall be given at least forty-eight (48) hours before the test. The notice shall be published once in accordance with IC 5-3-1-4.

Sec. 3. The two (2) appointed members of the county election board shall observe the test required by this chapter and, if they so determine, shall certify the test as meeting the requirements of this chapter.

Sec. 4. The test must be open to representatives of political parties, candidates, the media, and the public.

Sec. 5. The test required by this chapter must include the following:

(1) The visual inspection of the voting system and ballot labels.

(2) The manual entry of a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question.

(3) At least one (1) ballot for each office that has votes in excess of the number allowed by law in order to test the ability of the electronic voting system to reject the overvotes.

Sec. 6. If an error is detected during the test required by section 5 of this chapter, the cause of the error shall be determined and corrected, and an errorless count must be made before the use of the electronic voting system at the election is approved.

Sec. 7. After completion of the count, the voting system shall be sealed. The ballots used to conduct the test and all other election materials shall be sealed, retained, and disposed of as provided for paper ballots.

Sec. 8. Immediately following the completion of the voting system test under section 5 of this chapter, the county election

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board shall enter the vote totals from the voting systems tested under this chapter into the component of the voting system used by the county election board to tabulate election results under IC 3-12-3.5. The board shall determine whether this component of the voting system properly tabulates the votes cast in each of the precincts tested under this chapter.

Sec. 9. Not later than seven (7) days after conducting the tests required under this chapter, the county election board shall certify to the election division that the tests have been conducted in conformity with this chapter.

Sec. 10. A copy of the certification of the tests conducted under this chapter shall be filed with the election returns.

SECTION 76. IC 3-11-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The performance and test standards and fees under this chapter apply to ~~a~~ **an optical scan voting system or an electronic** voting system ~~procured after March 25, 1992.~~ **described in IC 3-11-7 or IC 3-11-7.5.**

SECTION 77. IC 3-11-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. The commission shall not approve any system until the fee and the expenses incurred by the election division (or ~~a competent~~ **the** person designated ~~by the commission to act on behalf of the election division~~ **under IC 3-11-16)** in making the examination are paid by the person making the application.

SECTION 78. IC 3-11-15-13.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.3. (a) This section applies after December 31, 2005.

(b) To be approved by the commission for use in Indiana, a voting system must meet the Voting System Standards adopted by the Federal Election Commission on April 30, 2002.

~~(c) The commission may adopt rules under IC 4-22-2 to require a voting system to meet standards more recent than standards described in subsection (b). If the commission adopts rules under this subsection, a voting system must meet the standards described in the rules instead of the standards described in subsection (b).~~

(c) A county may continue to use an optical scan ballot card voting system or an electronic voting system whose approval or certification expired on or before October 1, 2005, if the voting system:

(1) was:

(A) approved by the commission for use in elections in Indiana before July 1, 2003; and

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(B) purchased by the county before July 1, 2003; and

(2) otherwise complies with the applicable provisions of HAVA and this article.

However, a voting system vendor may not market, sell, lease, or install a voting system described in this subsection.

(d) As provided by 42 U.S.C. 15481, to be used in an election in Indiana, a voting system must be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

(e) As provided by 42 U.S.C. 15481, an election board conducting an election satisfies the requirements of subsection (d) if the election board provides at least one (1) electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

(f) If a voter who is otherwise qualified to cast a ballot in a precinct chooses to cast the voter's ballot on the voting system provided under subsection (e), the voter must be allowed to cast the voter's ballot on that voting system, whether or not the voter is an individual with disabilities.

SECTION 79. IC 3-11-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Voting System Technical Oversight Program

Sec. 1. As used in this chapter, "program" refers to the voting system technical oversight program established by section 2 of this chapter.

Sec. 2. The voting system technical oversight program is established.

Sec. 3. The secretary of state shall contract with a person or an entity to conduct the program for a term specified in the contract.

Sec. 4. The person or entity designated under this chapter to conduct the program shall do the following:

(1) Develop and propose procedures and standards for the certification, acquisition, functioning, training, and security for voting systems used to conduct elections in Indiana.

(2) Compile and maintain an inventory of all voting systems used to conduct elections in Indiana.

(3) Review reports concerning voting systems prepared by independent laboratories and submitted by applicants for voting system certification.

(4) Recommend to the commission whether an application for

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voting system certification should be approved and, if so, whether the approval should be subject to any restrictions or conditions to ensure compliance with Indiana law.

(5) Perform any additional testing of a voting system necessary to determine whether the voting system complies with state law.

(6) Each year perform random audits of voting systems used to conduct Indiana elections and prepare reports indicating whether the voting systems have been certified, programmed, and used in compliance with Indiana law.

(7) Review contracts, leases, purchase orders, and amendments to those documents concerning the acquisition or maintenance of voting systems.

(8) Assist with the development of quantity purchase agreements and other contracts for the lease or purchase of voting systems.

(9) Perform any other duties related to the approval or use of voting systems as provided in:

(A) state law; or

(B) the contract described in section 3 of this chapter.

SECTION 80. IC 3-11-17 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 17. Voting System Violations

Sec. 1. This chapter applies to a voting system vendor who sells, leases, installs, implements, or permits the use of a voting system in an election conducted in Indiana.

Sec. 2. In addition to any other penalty imposed, a vendor who knowingly, recklessly, or negligently sells, leases, installs, implements, or permits the use of a voting system in an election conducted in Indiana in violation of this title is subject to a civil penalty under this chapter.

Sec. 3. If the secretary of state determines that a vendor is subject to a civil penalty under section 2 of this chapter, the secretary of state may assess a civil penalty. The civil penalty assessed under this section may not exceed five hundred thousand dollars ($500,000), plus any investigative costs incurred and documented by the secretary of state.

Sec. 4. The secretary of state is subject to IC 4-21.5 in imposing a civil penalty under this chapter.

Sec. 5. All civil penalties collected under this chapter shall be deposited with the treasurer of state in the voting system technical

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oversight program account established by section 6 of this chapter.

Sec. 6. (a) The voting system technical oversight program account is established with the state general fund to provide money for administering and enforcing IC 3-11-7, IC 3-11-7.5, IC 3-11-15, IC 11 3-11-16, and this chapter.

(b) The election division shall administer the account. With the approval of the budget agency, funds in the account are available to augment and supplement the funds appropriated to the election division for the purposes described in this section.

(c) The expenses of administering the account shall be paid from the money in the account. The account consists of all civil penalties collected under this chapter.".

Page 18, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 82. IC 3-12-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.5. (a) This section applies to counting votes cast on ballot cards.

~~(b) As used in this section, "chad" means the part of a ballot card that indicates a vote on the card when entirely punched out by the voter.~~

~~(c) A chad that has been pierced, but not entirely punched out of the card, shall be counted as a vote for the indicated candidate or for the indicated response to a public question.~~

~~(d) A chad that has been indented, but not in any way separated from the remainder of the card, may not be counted as a vote for a candidate or on a public question.~~

~~(e) Whenever:~~

~~(1) a ballot card contains a numbered box indicating which chad should be punched out by the voter to cast a vote for a candidate or on a public question;~~

~~(2) the indicated chad has not been punched out; and~~

~~(3) a hole has been made in the card that touches any part of the numbered box;~~

~~the hole shall be counted as a vote for the candidate or on the public question as if the indicated chad had been punched out. However, if a hole has been made in the ballot that does not touch a numbered box or punch out a chad, the hole may not be counted as a vote for a candidate or on a public question.~~

~~(f) Whenever:~~

~~(1) a chad has been punched out of a ballot card;~~

~~(2) a numbered box indicates that another chad may be punched out to cast a vote for:~~

~~(A) a different candidate for the same office as the candidate~~

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~~for whom a vote was cast under subdivision (1); or~~

~~(B) a different response to the same public question on which a vote was cast under subdivision (1); and~~

~~(3) a hole has been punched in the card that touches the numbered box described in subdivision (2);~~

~~neither the chad described in subdivision (1) nor the hole described in subdivision (3) may be counted as a vote for a candidate or on a public question.~~

~~(g)~~ **(b)** This subsection applies to a ballot card that:

(1) has been cast in a precinct whose votes are being recounted by a local recount commission or the state recount commission;

(2) is damaged or defective so that it cannot properly be counted by automated tabulating machines; and

(3) cannot be counted for the office subject to the recount due to the damage or defect.

The ballot card shall be remade only if the conditions in subdivisions (1) through (3) exist.".

Page 19, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 84. IC 3-12-3.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. After each electronic voting system has been secured and the paper vote total printouts obtained, the inspector shall announce in a distinct tone of voice ~~the result of the vote as shown by~~ **that** the printouts **are available** for **inspection by the members of the precinct election board and any watchers present within the polls. The members and watchers are entitled to inspect and copy the printouts to document the votes cast for:**

(1) each candidate ~~in the order as their offices are arranged~~ on each system; and

(2) each public question **on each system.**".

Page 28, line 34, reset in roman "on a voting".

Page 28, line 34, after "machine" insert "**system**".

Page 29, delete lines 30 through 32, begin a new paragraph and insert:

"SECTION 112. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 3-5-2-21.5; IC 3-11-15-10; IC 3-11-15-11; IC 3-11-15-50; IC 3-11-15-51; IC 3-11-15-52; IC 3-11-15-53; IC 3-11-15-55; IC 3-11-15-56; IC 3-11-15-57; IC 3-11-15-58.

SECTION 113. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 3-5-2-41.5; IC 3-5-2-41.6; IC 3-5-2-50.6; IC 3-11-3-2; IC 3-11-3-6; IC 3-11-5; IC 3-11-7.5-20;

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IC 3-11-12; IC 3-11-13-20; IC 3-12-2.5.

SECTION 114. [EFFECTIVE UPON PASSAGE] **(a) The definitions set forth in IC 3-5-2 apply to this SECTION.**

(b) To perform the duties set forth in IC 3-11-16, as added by this act, in establishing the voting system technical oversight program, the secretary of state shall issue a request for proposals to enter into the contract required under IC 3-11-16-3.

(c) Notwithstanding any other statute or rule:

(1) the secretary of state shall extend invitations to public and private colleges and universities located within Indiana to respond to the request for proposals not later than June 1, 2005; and

(2) the secretary of state and the person selected by the secretary of state shall enter into the contract required under IC 3-11-16-3 not later than July 1, 2005.

(d) This SECTION expires December 31, 2005.

SECTION 115. [EFFECTIVE UPON PASSAGE] **(a) The definitions set forth in IC 3-5-2 apply to this SECTION.**

(b) This SECTION applies to a county:

(1) that used a punch card ballot voting system to conduct the November 2, 2004, general election in any precinct in the county; and

(2) whose county executive, before July 1, 2005, has not entered into a contract that complies with this SECTION.

(c) To comply with this SECTION, a contract that a county executive enters into must require a voting system vendor to deliver, not later than December 31, 2005:

(1) an electronic voting system;

(2) an optical scan ballot voting system; or

(3) a combination of both systems;

certified for installation, marketing, and use in Indiana on the effective date of the contract.

(d) If a county described in subsection (b) fails to enter into a contract that complies with subsection (c) before July 1, 2005, the secretary of state may enter into a quantity purchase agreement with a voting system vendor for the purchase of:

(1) an electronic voting system;

(2) an optical scan ballot voting system; or

(3) a combination of both systems;

that is certified for installation, marketing, and use in Indiana on the effective date of the contract.

(e) The agreement described in subsection (d) must require the

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delivery of the voting system to each county described in this SECTION before January 1, 2006, for use in all elections conducted in the county after December 31, 2005.

(f) This SECTION expires December 31, 2006.

SECTION 116. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1407 as printed February 9, 2005.),

LAWSON C, Chairperson

Committee Vote: Yeas 6, Nays 1.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1407 be amended to read as follows:

Page 19, line 2, delete "Except as provided in subsection (d), a" and insert "**A**".

Page 19, delete lines 6 through 17.

Page 19, line 18, delete "(e)" and insert "**(d)**".

Page 19, line 28, delete "Except as provided".

Page 19, line 29, delete "in subsection (b), a" and insert "A".

Page 19, delete lines 33 through 42.

Page 20, delete lines 1 through 3.

Page 20, line 4, reset in roman "(b)".

Page 20, line 4, delete "(c)".

Page 20, line 6, delete "(d)" and insert "**(c)**".

Page 20, line 11, delete "(e)" and insert "**(d)**".

Page 20, line 26, delete "(f)" and insert "**(e)**".

Page 20, line 30, delete "(g)" and insert "**(f)**".

Page 22, line 36, delete "This subsection does not apply to the marketing of a".

Page 22, delete line 37.

Page 22, line 38, delete "of this chapter.".

Page 23, line 36, delete "Except as provided in subsection (e), an" and insert "**An**".

Page 23, delete lines 40 through 42.

Page 24, delete lines 1 through 9.

Page 24, line 10, delete "(f)" and insert "**(e)**".

Page 24, line 20, delete "Except as provided".

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Page 24, line 21, delete "in subsection (b), a" and insert "A".
Page 24, delete lines 25 through 37.
Page 24, line 38, reset in roman "(b)".
Page 24, line 38, delete "(c)".
Page 24, lines 40, delete "(d)" and insert "**(c)**".
Page 25, line 3, delete "(e)" and insert "**(d)**".
Page 25, line 17, delete "(f)" and insert "**(e)**".
Page 25, line 21, delete "(g)" and insert "**(f)**".
Page 27, line 31, delete "This subsection does not apply to the marketing of a".
Page 27, delete line 32.
Page 27, line 33, delete "this chapter.".

(Reference is to EHB 1407 as printed March 30, 2005.)

LAWSON C

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