

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1804 be amended to read as follows:

- 1 Page 67, between lines 15 and 16, begin a new paragraph and insert:
2 "SECTION 90. IC 3-11.7-5-1.5, AS AMENDED BY P.L.164-2006,
3 SECTION 123, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2007]: Sec. 1.5. (a) Subsection (c) applies to a
5 provisional ballot that the county election board determines, by a
6 majority vote of its members and in accordance with this title:
7 (1) has been marked and cast by a voter in compliance with this
8 title; but
9 (2) may not otherwise be counted solely as the result of the act or
10 failure to act of an election officer.
11 (b) Subsection (c) does not apply to either of the following:
12 (1) A provisional ballot cast by an individual who seeks to vote in
13 an election as the result of a court or other order extending the
14 time established for closing the polls under IC 3-11-8-8 if the
15 county election board determines or is directed under a court or
16 other order that all provisional ballots issued after regular poll
17 closing hours are not to be counted.
18 (2) A provisional ballot that is required to be rejected by a county
19 election board under section 2(b) of this chapter as the result of
20 information or lack of information provided by a voter registration
21 agency.
22 (c) The sealed envelope containing a provisional ballot described in
23 subsection (a) shall nevertheless be opened under section 4 of this
24 chapter and the provisional ballot counted unless evidence of fraud,
25 tampering, or misconduct affecting the integrity of the ballot is
26 demonstrated. The act or failure to act by an election officer is not by
27 itself evidence of fraud, tampering, or misconduct affecting the
28 integrity of the ballot.
29 (d) Notwithstanding subsection (c) **or (g)**, if the county election
30 board, by a majority vote of its members, determines that there is

1 evidence presented to the board demonstrating that the individual who
 2 cast the provisional ballot was ineligible to cast a regular ballot in ~~that~~
 3 ~~precinct, the county~~, or evidence has been presented to the board
 4 demonstrating any other reason set forth in HAVA or this title not to
 5 count a provisional ballot, the provisional ballot may not be counted.

6 (e) This subsection applies to a provisional ballot cast by a voter
 7 after the voter was challenged solely because the voter was unable or
 8 declined to provide proof of identification and not for any other reason.
 9 If the voter later complies with the requirements of this title for proof
 10 of identification, the provisional ballot cast by the voter shall be
 11 counted in accordance with sections 2 and 2.5 of this chapter.

12 (f) This subsection applies to a provisional ballot cast by a voter
 13 after the voter was challenged for any reason except the voter's inability
 14 or declination to provide proof of identification. If the only evidence
 15 before the county election board on the question of counting of the
 16 provisional ballot cast by the voter is:

- 17 (1) the affidavit of the voter who cast the provisional ballot; and
- 18 (2) the affidavit of a challenger challenging the voter who cast the
 19 provisional ballot;

20 the provisional ballot shall be counted.

21 **(g) This subsection applies to a provisional ballot cast by a voter**
 22 **whom the county election board determines on the basis of**
 23 **evidence presented to the board was eligible to cast a regular ballot**
 24 **in the county, but who cast a provisional ballot in a precinct other**
 25 **than the precinct in which the voter resides. The provisional ballot**
 26 **shall be counted as provided in section 2(d) of this chapter.**

27 SECTION 91. IC 3-11.7-5-2, AS AMENDED BY P.L.103-2005,
 28 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2007]: Sec. 2. (a) Except as provided in section 5 of this
 30 chapter, if the county election board determines that all the following
 31 apply, a provisional ballot is valid and shall be counted under this
 32 chapter:

- 33 (1) The affidavit executed by the provisional voter under
 34 IC 3-11.7-2-1 is properly executed.
- 35 (2) The provisional voter is a qualified voter of the ~~precinct~~
 36 **county** and has provided proof of identification, if required, under
 37 IC 3-10-1, IC 3-11-8, or IC 3-11-10-26.
- 38 (3) Based on all the information available to the county election
 39 board, including:
 - 40 (A) information provided by the provisional voter;
 - 41 (B) information contained in the county's voter registration
 42 records; and
 - 43 (C) information contained in the statewide voter registration
 44 file;

45 the provisional voter registered to vote at a registration agency
 46 under this article on a date within the registration period.

- 47 (b) If the provisional voter has provided information regarding the

1 registration agency where the provisional voter registered to vote, the
 2 board shall promptly make an inquiry to the agency regarding the
 3 alleged registration. The agency shall respond to the board not later
 4 than noon of the first Friday after the election, indicating whether the
 5 agency's records contain any information regarding the registration. If
 6 the agency does not respond to the board's inquiry, or if the agency
 7 responds that the agency has no record of the alleged registration, the
 8 board shall reject the provisional ballot. The board shall endorse the
 9 ballot with the word "Rejected" and document on the ballot the inquiry
 10 and response, if any, by the agency.

11 (c) Except as provided in section 5 of this chapter, a provisional
 12 ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be
 13 counted if the county election board determines under this article that
 14 the voter filed the documentation required under IC 3-7-33-4.5 and 42
 15 U.S.C. 15483 with the county voter registration office not later than the
 16 closing of the polls on election day.

17 **(d) This subsection applies to the provisional ballot of a voter**
 18 **whom the county election board determines on the basis of**
 19 **evidence presented to the board was eligible to cast a regular ballot**
 20 **in the county, but who cast a provisional ballot in a precinct other**
 21 **than the precinct in which the voter resides. Except as provided in**
 22 **section 5 of this chapter, if the provisional ballot meets the**
 23 **requirements of subsection (a), the provisional ballot is valid, but**
 24 **only the votes for those offices and public questions that are**
 25 **identical to the offices and public questions on the ballot in the**
 26 **precinct in which the voter resides shall be counted.**

27 SECTION 92. IC 3-11.7-5-3, AS AMENDED BY P.L.103-2005,
 28 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2007]: Sec. 3. (a) If the board determines that the affidavit
 30 executed by the provisional voter has not been properly executed, that
 31 the provisional voter is not a qualified voter of the ~~precinct~~, **county**,
 32 that the voter failed to provide proof of identification when required
 33 under IC 3-10-1, IC 3-11-8, or IC 3-11-10-26, or that the provisional
 34 voter did not register to vote at a registration agency under this article
 35 on a date within the registration period, the board shall make the
 36 following findings:

- 37 (1) The provisional ballot is invalid.
- 38 (2) The provisional ballot may not be counted.
- 39 (3) The provisional ballot envelope containing the ballots cast by
 40 the provisional voter may not be opened.

41 (b) If the county election board determines that a provisional ballot
 42 is invalid, a notation shall be made on the provisional ballot envelope:
 43 "Provisional ballot determined invalid".

44 SECTION 93. IC 3-11.7-5-9 IS AMENDED TO READ AS
 45 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. **(a) Except as**
 46 **provided in subsection (b), during the counting of the ballots:**

- 47 (1) the counter counting the ballots;

1 (2) a member of the county election board; or
2 (3) a representative designated by the member;
3 may protest the counting of any ballot or any part of a ballot.

4 **(b) A counter, member, or representative described in**
5 **subsection (a) may not protest the counting of a provisional ballot**
6 **or any part of a ballot that is valid under section 2(d) of this**
7 **chapter because the voter voted in a precinct other than the**
8 **precinct in which the voter resides."**

9 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1804 as printed April 6, 2007.)

Senator BRODEN