

## **IC 20-23-8**

### **Chapter 8. Governing Body Composition Change**

#### **IC 20-23-8-1**

##### **"Circuit court"**

Sec. 1. As used in this chapter, "circuit court" means:

- (1) the circuit court of the county in which a school corporation is located; or
- (2) if a school corporation is located in more than one (1) county, the circuit court of the county in which the largest number of registered voters of the school corporation are residents.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-2**

##### **"Clerk"**

Sec. 2. As used in this chapter, "clerk" means:

- (1) the clerk of the circuit court of the county in which a school corporation is located; or
- (2) if a school corporation is located in more than one (1) county, the clerks in each of the counties in which the school corporation is located.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-3**

##### **"County election board"**

Sec. 3. As used in this chapter, "county election board" means:

- (1) the county election board in the county in which a school corporation is located; or
- (2) if a school corporation is located in more than one (1) county, the county election boards of the counties in which the school corporation is located, acting jointly.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-4**

##### **"Plan"**

Sec. 4. As used in this chapter, "plan" means the manner in which the governing body of a school corporation is constituted, including the number, qualifications, length of terms, manner, and time of selection, either by appointment or by election of the members of the governing body.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-5**

##### **"School corporation"**

Sec. 5. As used in this chapter, "school corporation" means a local public school corporation established under the laws of Indiana. The term does not include a school township or a school corporation covered by IC 20-23-12, IC 20-23-17, or IC 20-23-17.2.

*As added by P.L.1-2005, SEC.7. Amended by P.L.179-2011, SEC.16.*

### **IC 20-23-8-6**

#### **"Voter"**

Sec. 6. As used in this chapter, "voter", with respect to a petition, means a registered voter in the school corporation as determined in this chapter.

*As added by P.L.1-2005, SEC.7.*

### **IC 20-23-8-7**

#### **Contents of plan**

Sec. 7. (a) A plan or proposed plan must contain the following items:

(1) The number of members of the governing body, which shall be:

- (A) three (3);
- (B) five (5); or
- (C) seven (7);

members.

(2) Whether the governing board shall be elected, appointed, or both.

(3) If appointed, when and by whom, and a general description of the manner of appointment that conforms with the requirements of IC 20-23-4-28.

(4) A provision that the members of an elected governing board shall be elected at the general election at which county officials are elected.

(5) If the governing board will have members who are elected and members who are appointed, the following information:

- (A) The number of appointed members.
- (B) When and by whom each of the appointed members are appointed.
- (C) A general description of the manner of appointment that conforms with the requirements of IC 20-23-4-28.
- (D) The number of elected members.
- (E) A general description of the manner of election that conforms with the requirements of IC 20-23-4-27.

(6) The limitations on:

- (A) residence;
- (B) term of office; and
- (C) other qualifications;

required by members of the governing body.

(7) The time the plan takes effect.

A plan or proposed plan may have additional details to make the provisions of the plan workable. The details may include provisions relating to the commencement or length of terms of office of the members of the governing body taking office under the plan.

(b) Except as provided in subsection (a)(1), in a city having a population of more than fifty-nine thousand seven hundred (59,700) but less than sixty-five thousand (65,000), the governing body described in a plan may have up to nine (9) members.

*As added by P.L.1-2005, SEC.7. Amended by P.L.179-2011, SEC.17.*

## **IC 20-23-8-8**

### **Limitations on the plan**

Sec. 8. (a) A plan is subject to the following limitations:

(1) A member of the governing body may not serve for a term of more than four (4) years, but a member may succeed himself or herself in office. This limitation does not apply to members who hold over during an interim period to effect a new plan awaiting the selection and qualification of a member under the new plan.

(2) The plan, if the members are:

(A) to be elected, shall conform with one (1) of the types of board organization permitted by IC 20-23-4-27; or

(B) appointed, shall conform with one (1) of the types permitted by IC 20-23-4-28.

(3) The terms of the members of the governing body, either elected to or taking office on or before the time the plan takes effect, may not be shortened. The terms of the members taking office under the plan may be shortened to make the plan workable on a permanent basis.

(4) If the plan provides for electoral districts, where a member of the governing body is elected solely by the voters of a single district, the districts must be as near as practicable equal in population. The districts shall be reapportioned and their boundaries changed, if necessary, by resolution of the governing body before the election next following the effective date of the subsequent decennial census to preserve the equality by resolution of the governing body.

(5) The plan shall comply with the:

(A) Constitution of the State of Indiana; and

(B) Constitution of the United States;

including the equal protection clauses of both constitutions.

(6) The provisions of IC 20-23-4-26 through IC 20-23-4-33 relating to the board of trustees of a community school corporation and to the community school corporation, including provisions relating to powers of the board and corporation and provisions relating to the mechanics of selection of the board, where elected and where appointed, apply to a governing body set up by a plan under this chapter and to the school corporation.

(b) The limitations set forth in this section do not have to be specifically set forth in a plan but are a part of the plan. A plan shall be construed, if possible, to comply with this chapter. If a provision of the plan or an application of the plan violates this chapter, the invalidity does not affect the other provisions or applications of the plan that can be given effect without the invalid provision or application. The provisions of a plan are severable.

*As added by P.L.1-2005, SEC.7. Amended by P.L.2-2006, SEC.99.*

## **IC 20-23-8-9**

### **Authorization to change plan**

Sec. 9. The plan of school board organization of a governing body may be changed in accordance with the procedures set out in this chapter.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-10**

##### **Initiation of plan change**

Sec. 10. (a) A change in a plan may be initiated by one (1) of the following procedures:

- (1) By filing a petition signed by at least ten percent (10%) of the voters of the school corporation with the clerk of the circuit court.
- (2) By a resolution adopted by the governing body of the school corporation.
- (3) By ordinance adopted by a city legislative body under section 13 of this chapter.

(b) A petition, resolution, or ordinance must set forth a description of the plan that conforms with section 7 of this chapter.

*As added by P.L.1-2005, SEC.7. Amended by P.L.179-2011, SEC.18.*

#### **IC 20-23-8-11**

##### **Filing and certification of petitions**

Sec. 11. (a) A voter is entitled to file a petition under this chapter with the clerk of the circuit court to:

- (1) initiate a plan;
- (2) protest a plan; or
- (3) initiate an alternative plan.

(b) If a voter files a petition under subsection (a), the filing and certification of the petition is governed by the following provisions:

- (1) The petition must show:
  - (A) the date that a person has signed the petition; and,
  - (B) in order to identify the person as a registered voter of the school corporation, the person's residence on that date.
- (2) The petition may be executed in several counterparts, the total of which constitutes a petition. A counterpart must:
  - (A) contain the names of voters residing within a single county;
  - (B) be filed with the clerk of the circuit court of that county;
  - (C) have attached to it the affidavit of the person circulating the counterpart stating that each signature:
    - (i) appearing on the counterpart was affixed in the person's presence; and
    - (ii) is the true and lawful signature of the person who made the signature.

(3) A person who signs a petition or a counterpart may file the petition or a counterpart.

(4) All counterparts constituting a petition shall be filed on the same day.

(5) A person who signs a petition filed under subsection (a) may withdraw the person's name from the petition before the petition

is filed with the clerk. Names may not be added to a petition after the petition has been filed with the clerk.

- (6) After the receipt of a petition, the clerk shall:
- (A) strike all signatures appearing on the petition more than once; and
  - (B) make a certification under the clerk's hand and seal of the office as to the following:
    - (i) The number of signatures on the petition that are not duplicates representing persons who are registered voters residing within that part of the school corporation located within the county, as disclosed by the voter registration records in the office of the clerk or the board of registration of the county, or wherever the registration records are kept.
    - (ii) The total number of registered voters residing within the boundaries of that part of the school corporation located within the county, as disclosed in the records described in item (i).
    - (iii) The date of the filing of the petition with the clerk.
- (7) The clerk shall:
- (A) certify a petition not more than thirty (30) days after the filing of the petition, excluding time when the registration records are unavailable to the clerk, or within additional time as is reasonably necessary not to exceed an additional thirty (30) days, to permit the clerk to make a certification;
  - (B) establish a record of the certification at the clerk's office; and
  - (C) file:
    - (i) the original petition; and
    - (ii) a copy of the clerk's certification;with the governing body.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-12**

##### **Action by the governing body on a petition**

Sec. 12. The governing body shall, by resolution adopted not more than thirty (30) days after a petition is filed with it, either approve or disapprove a plan. The failure to take action within the thirty (30) day period constitutes disapproval of the plan.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-13**

##### **School corporations in certain cities; increase in membership of governing body**

Sec. 13. (a) This section applies to a school corporation located in a city having a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000).

(b) The city legislative body may adopt an ordinance to increase the membership of the governing body of a school corporation to seven (7) members.

- (c) The ordinance must provide the following:
  - (1) The additional members of the governing body are to be appointed by the city executive.
  - (2) If the plan is subsequently changed to provide for the election of governing body members:
    - (A) the membership of the governing body may not be less than seven (7); and
    - (B) the members of the governing body are to be elected.
  - (3) The initial terms of the members appointed under this section.
  - (4) The effective date of the ordinance.
- (d) An ordinance adopted under this section:
  - (1) supersedes a part of the plan that conflicts with the ordinance;
  - (2) must be filed with the state superintendent under section 22 of this chapter; and
  - (3) may only be amended or repealed by the city legislative body.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-14**

##### **Notice of plan and further petitions**

Sec. 14. (a) Not more than ten (10) days after a governing body has:

- (1) initiated;
- (2) approved; or
- (3) disapproved;

a plan initiated by the petition filed with it, the governing body shall publish a notice one (1) time in a newspaper of general circulation in the county of the school corporation. If a newspaper of general circulation is not published in the county of the school corporation, the governing body shall publish a notice one (1) time in a newspaper of general circulation published in a county adjoining the county of the school corporation.

(b) The notice must set out the text of a plan initiated by the governing body or another plan filed with the governing body before the preparation of the notice. The notice must also state the right of a voter, as provided in this section, to file a petition for alternative plans or a petition protesting the adoption of a plan or plans to which the notice relates.

(c) If the governing body fails to publish a notice required by this section, the governing body shall, not more than five (5) days after the expiration of the ten (10) day period for publication of notice under this section, submit the petition that has been filed with the clerk to the state board, whether or not the plan contained in the petition or the petition meets the requirements of this chapter.

(d) Not later than one hundred twenty (120) days after the publication of the notice, voters of the school corporation may file with the clerk a petition protesting a plan initiated or approved by the governing body or a petition submitting an alternative plan as

follows:

- (1) A petition protesting a plan shall be signed by at least twenty percent (20%) of the voters of the school corporation or five hundred (500) voters of the school corporation, whichever is less.
- (2) A petition submitting an alternative plan shall be signed by at least twenty percent (20%) of the voters of the school corporation.

A petition filed under this subsection shall be certified by the clerk and shall be filed with the governing body in the same manner as is provided for a petition in section 11 of this chapter.

(e) The governing body or the voters may not initiate or file additional plans until the plans that were published in the notice or submitted as alternative plans not later than one hundred twenty (120) days after the publication of the notice have been disposed of by:

- (1) adoption;
- (2) defeat at a special election held under section 16 of this chapter; or
- (3) combination with another plan by the state board under section 15 of this chapter.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-15**

##### **Submission of plans to state board of education; publication of notice of plan**

Sec. 15. (a) Not more than thirty (30) days after the expiration of the one hundred twenty (120) day period for filing a petition, plans that have been published in accordance with section 14 of this chapter, whether the plans were initiated by the governing body or in connection with a petition, shall be submitted to the state board.

(b) The state board shall:

- (1) review a plan;
- (2) revise a plan, if possible, to:
  - (A) cure ambiguities; and
  - (B) ensure that the plan complies with the limitations set out in section 8 of this chapter;
- (3) if a plan provides for electoral districts, verify that the districts are, as near as practicable, equal in population according to the decennial census immediately preceding the first petition or resolution initiating the plan; and
- (4) certify a plan, with revisions, to the governing body and to the clerk.

The state board may combine plans if the state board determines that the plans are substantially similar. In making its determinations, the commission may, but is not obligated to, hold hearings and shall make an investigation as it considers necessary. If the state board holds a hearing, the state board may hear the evidence through hearing examiners, who do not have to be members of the state board. The state board shall send a certified record of its

determinations to the governing body, the clerk, and the county election board.

(c) Not more than sixty (60) days after receiving a plan submitted by a governing body under section 14 of this chapter, the state board shall publish notice of the plan in accordance with section 14 of this chapter, unless the state board determines that the plan or the petition does not meet the requirements of this chapter.

*As added by P.L.1-2005, SEC.7.*

### **IC 20-23-8-16**

#### **Special election**

Sec. 16. (a) If:

- (1) the governing body has disapproved a plan submitted;
- (2) an alternative plan has been filed; or
- (3) a petition of protest has been filed;

the county election board shall hold a special election at a date to be determined by the county election board not more than ninety (90) days after the receipt of the determination of the state board on a plan in the form certified by the state board.

(b) If a special election under subsection (a) can be held not more than six (6) months after the receipt of the determination from the state board in conjunction with a primary or general election at which:

- (1) county officials are to be elected or nominated; or
- (2) city or town officials are to be elected in those areas of the school corporations that are within the city or town;

the county election board may delay the special election until the date of the regular election.

(c) If a school corporation is located in more than one (1) county, the county election board of the county containing the greatest percentage of population of the school corporation shall determine the date of an election held under this section.

*As added by P.L.1-2005, SEC.7.*

### **IC 20-23-8-17**

#### **Form of election notice and ballot**

Sec. 17. (a) The clerk shall create the form of notice of the election and the ballot not more than thirty (30) days after receiving the certification from the state board as required by section 15 of this chapter. The notice must:

- (1) state the date when the election shall take place; and
- (2) describe generally the plans to be voted upon.

(b) The text of the public question on the ballot must include a description of the plan proposed, including:

- (1) the number of members on the board;
- (2) the number of electoral or resident member districts, if any;
- (3) the number of at-large districts, if any;
- (4) a general description of the geographical boundaries of the districts, referring to civil boundaries where applicable or merely general descriptions, such as the north half or north part

of a civil geographical district or the territory north of a geographical boundary; and

(5) other information sufficient to distinguish a plan from other plans.

If the text of the public question includes a description of the plan regarding how the current board is organized, as required by subsection (d), the plan must be identified as the existing plan.

(c) If only one (1) plan is proposed, the ballot shall be prepared so that voters who wish to vote on the plan must cast either an affirmative vote or a negative vote.

(d) If more than one (1) plan is proposed, the plan organizing the governing body must appear on the ballot as an option. The text of the public question must include a description of the existing plan that meets the criteria specified in subsection (b). The ballot must be prepared so that voters who wish to vote on the plans may vote for only one (1) plan.

(e) The text of the public question must be placed on the ballot in the form prescribed by IC 3-10-9-4.

(f) Subject to IC 3-12-1, the notice or ballot is not invalid if there has been a good faith effort to comply with this section.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-18**

##### **Conduct of election**

Sec. 18. (a) The county election board shall give notice of an election under section 16 of this chapter after receiving the form of notice and ballot from the clerk. The county election board shall publish notice one (1) time in two (2) newspapers of general circulation in the school corporation, or if only one (1) newspaper is of general circulation, then in that newspaper. The publication may not be made less than ten (10) days nor more than forty-five (45) days before the election. Any other notice of the election or requirement for the time of printing ballots, whether prescribed by IC 3 or otherwise, is not required to be given or observed. A person may not vote at the special election unless the person is then qualified as a registered voter.

(b) IC 3 applies to the conduct of an election under this chapter, except if the provisions of this chapter are in conflict with provisions of IC 3 or if IC 3 cannot be practicably applied.

(c) If the special election is not conducted at a primary or general election, the school corporation shall pay the cost of conducting the election from the school corporation's general fund not otherwise appropriated without appropriation.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-19**

##### **When plan adopted**

Sec. 19. (a) A plan shall be adopted in the following circumstances:

(1) At the expiration of one hundred twenty (120) days after the

publication of notice by the governing body if:

- (A) the governing body has initiated or approved the plan;
- (B) a petition has not been filed either protesting the plan or setting forth an alternative plan; and
- (C) the state board has reviewed and certified the plan.

(2) If only one (1) plan is on the ballot and it receives more affirmative than negative votes, the plan is adopted at the expiration of thirty (30) days following the special election.

(3) If more than one (1) plan is on the ballot, the plan receiving the most votes is adopted at the expiration of thirty (30) days after the special election.

(b) The plan is effective:

- (1) at the time provided in the plan; or
- (2) if a time is not provided or if the time provided is inapplicable due to the lapse of time of the proceedings under this chapter, either on the January 1 or July 1 following the time of adoption of the plan.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-20**

##### **Limitation on actions**

Sec. 20. An action to:

- (1) contest the validity of the adoption of a plan to declare that the plan has not been validly adopted; or
- (2) enjoin the operation of a plan;

may not be instituted with respect to the adoption of the plan under section 19(a)(1) of this chapter at any time later than the one hundred twenty (120) days following the publication of the notice required by section 14 of this chapter or under section 19(a)(2) or 19(a)(3) of this chapter at any time later than the thirtieth day following the election at which the plan is adopted.

*As added by P.L.1-2005, SEC.7.*

#### **IC 20-23-8-21**

##### **Limitation on elections and adoption of plan**

Sec. 21. An election may not be held under this chapter more than once each eighteen (18) months. A plan for a governing body may not be adopted more than once each six (6) years, except if either of the following applies:

- (1) A plan adopted is declared or held to be invalid by a binding judgment or order in a United States or an Indiana court that no appeal or further approval can be taken.
- (2) The plan provides solely for changes in items specified in section 7(a)(5) of this chapter.

*As added by P.L.1-2005, SEC.7. Amended by P.L.179-2011, SEC.19.*

#### **IC 20-23-8-22**

##### **Plans to be filed with state superintendent**

Sec. 22. (a) A school corporation shall file with the state superintendent:

(1) a transcript showing the acts and resolutions related to the school corporation's formation; and

(2) a description, if not otherwise contained in the transcript under subdivision (1), of the structure and manner of selection of its governing body.

(b) The transcript or description under subsection (a) shall be filed not more than sixty (60) days after the school corporation's creation or the school corporation's adoption of a new plan.

(c) A school corporation shall file with the state superintendent, before August 1 of each year, a list of names and addresses of:

(1) members of its governing body; and

(2) the school corporation's officers along with the expiration of the officer's respective terms.

(d) A school corporation shall file any change to a list under subsection (c) not later than thirty (30) days after the change occurs.

*As added by P.L.1-2005, SEC.7.*

### **IC 20-23-8-23**

#### **Failure of public officials to perform duties; actions; attorney's fees; cost and fees of employees**

Sec. 23. (a) The failure of a public official or body to perform the duties specified in this chapter within the time limits prescribed does not invalidate any proceedings taken by the official or board.

(b) If a public official or body refuses to perform duties within the time limits provided in this chapter, the official or body may be mandated to perform the duties in an action filed in the circuit or superior court by a voter or by the governing body.

(c) The court shall award reasonable attorney's fees to a voter who brings an action under this section against a governing body or public official and prevails. The governing body or employer of a public official shall pay costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

*As added by P.L.1-2005, SEC.7.*

### **IC 20-23-8-24**

#### **Court orders on plans**

Sec. 24. If a United States or an Indiana court enters a binding temporary or permanent order directing or approving a change in the manner of selecting the governing body, any governing body selected under the order is the legal governing body of the school corporation, until its manner of selection is changed under this or any other applicable Indiana statute.

*As added by P.L.1-2005, SEC.7.*

### **IC 20-23-8-25**

#### **Special elections; supervision by county election board; expenses**

Sec. 25. (a) In implementing a plan adopted under this chapter,

requiring the holding of a special election, the county election board, or county election boards in the case of a multicounty school corporation, shall hold, manage, and supervise a special election.

(b) The county election board shall pay the costs of a special election.

(c) A school corporation shall reimburse the county election board from the school corporation's general fund money not otherwise appropriated, without appropriation, if a special election occurs under this chapter.

*As added by P.L.1-2005, SEC.7.*