

IC 3-12-3

Chapter 3. Counting Ballot Card Votes

IC 3-12-3-1

Counting of ballot cards

Sec. 1. (a) Subject to IC 3-12-2-5, after the marking devices have been secured against further voting under IC 3-11-13-36, the inspector shall open the ballot box and count the number of ballot cards or envelopes containing ballot cards that have been cast to determine whether the number of cards cast exceeds the number of voters shown on the poll lists. If the number of ballot cards cast exceeds the total number of voters, this fact shall be reported in writing to the appropriate election officer together with the reasons for the discrepancy, if known. The total number of voters shall be entered on the tally sheets.

(b) A ballot card may not be removed from a secrecy envelope containing a write-in vote under this section.

As added by P.L.5-1986, SEC.8. Amended by P.L.4-1991, SEC.112.

IC 3-12-3-1.1

Chapter establishes standards to define vote

Sec. 1.1. This chapter is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what will be counted as a vote on an optical scan voting system.

As added by P.L.209-2003, SEC.183.

IC 3-12-3-1.2

Closing of all polls located in one room before vote count

Sec. 1.2. This section applies to a precinct where votes have been cast on a ballot card system that is designed to allow the counting and tabulation of votes by the precinct election board. Except as provided in section 14 of this chapter, if the polls for more than one (1) precinct are located in the same room, the inspector of a precinct using the room may not begin the vote counting procedure until all the polls in the room are officially closed and no more persons are waiting in line to vote.

As added by P.L.10-1988, SEC.125. Amended by P.L.1-1993, SEC.8; P.L.3-1995, SEC.123.

IC 3-12-3-1.5

Protest; marking and signing of protested ballots

Sec. 1.5. (a) During the tabulation of the votes, any member of the precinct election board in a precinct where votes have been cast on a ballot card system that is designed to allow the counting and tabulation of votes by the precinct election board may protest the counting of any ballot or any part of a ballot cast in that precinct.

(b) During the tabulation of votes at a central counting location under section 3 of this chapter:

(1) a member of the precinct election board in a precinct where votes were cast on a ballot card system; or

(2) a member of the county election board, if a member of the precinct election board is not present during the tabulation of the votes of the precinct;

may protest the counting of any ballot or part of a ballot cast in that precinct.

(c) If a ballot or any part of a ballot is protested, the poll clerks in the precinct where votes have been cast or the member of the county election board, if the poll clerks are not present during the tabulation of votes at a central counting location, immediately shall write on the back of the protested ballot card the word "counted" or "not counted" as appropriate. The clerks or county election board member then shall officially sign each protested ballot card.

As added by P.L.10-1988, SEC.126. Amended by P.L.5-1989, SEC.65; P.L.1-1993, SEC.9; P.L.3-1993, SEC.184.

IC 3-12-3-2

Counted ballot cards; processing

Sec. 2. (a) After the ballot cards have been counted under section 1 of this chapter, the precinct election board shall comply with this section.

(b) This subsection applies if the votes have been cast on a ballot card voting system that is not designed to allow the counting and tabulation of votes by the precinct election board. The inspector shall place all cards that have been cast in the container provided for that purpose and the container shall be sealed by the inspector in the presence of the precinct election board. The inspector and the judge of the opposite political party shall immediately deliver the container, together with the unused, uncounted, and defective cards and returns, to the central counting location or other designated place.

(c) This subsection applies if the votes have been cast on a ballot card voting system that is designed to allow the counting and tabulation of votes by the precinct election board. The precinct election board shall:

(1) process the ballot cards with the automatic tabulating machine provided to the precinct, if the vote is not automatically registered by the ballot card voting system;

(2) take the vote as tabulated under subdivision (1) or as automatically registered by the ballot card voting system; and

(3) certify the totals and the ballot count as required under section 1 of this chapter on forms supplied to the precinct for that purpose.

Copies of the totals shall be delivered to each member of the precinct election board. One (1) copy of the vote totals shall be prepared and signed for the news media on the form furnished by the county election board.

As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.40; P.L.3-1987, SEC.349; P.L.1-1993, SEC.10.

IC 3-12-3-2.5

Central counting location

Sec. 2.5. (a) Not later than ten (10) days before any election at which ballot cards will be tabulated at a central counting location, the county election board shall designate the counting location to be used for the processing or counting of ballots.

(b) This counting location must be located within the county or within an adjoining county in Indiana. If the counting location is within the county, the board shall also determine whether the precinct officials are to make their returns directly to the counting location or to the office of the clerk of the circuit court. If the counting location is outside the county, all precinct returns shall be made directly to the office of the clerk of the circuit court or to the chief deputy of a combined election board established under IC 3-6-5.2.

(c) No counting location shall be used by more than one (1) county at an election without the approval of the commission.

(d) Whenever the precinct returns are made directly to the office of the clerk of the circuit court and the counting location is not performed in that office, the county election board is responsible for arranging adequate security during the transfer of all ballot cards to the counting location. This security shall include the following:

(1) All ballot cards must at all times be under the supervision of at least two (2) persons, one (1) from each of two (2) political parties entitled to have a member on the county election board.

(2) At least one (1) member of the county sheriff's department shall accompany the ballot cards from the clerk's office to the counting location. This assistance shall be rendered under IC 3-6-5-33.

As added by P.L.3-1997, SEC.340.

IC 3-12-3-3

Proceedings at central counting location; direction and observation; open to public

Sec. 3. All proceedings at a central counting location shall be directed by the appropriate election officers under the observation of at least two (2) precinct judges or other appropriate election officers who are not of the same political party. The proceedings must be open to the public, but no persons except those employed and authorized for that purpose may touch a ballot card, ballot container, or return.

As added by P.L.5-1986, SEC.8.

IC 3-12-3-4

Opening of ballot cards container and removal of contents

Sec. 4. At a central counting location each container of ballot cards shall be opened and its contents removed. The ballot cards shall be:

- (1) checked to determine if the cards are properly grouped; and
- (2) arranged so that all similar cards from a precinct are together.

As added by P.L.5-1986, SEC.8.

IC 3-12-3-5

Damaged or defective ballot card; absentee ballot of absent uniformed services voter or overseas voter; failure of tabulating machine

Sec. 5. (a) If a ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating machines, then a remake team composed of one (1) person from each of the major political parties of the county shall have the card prepared for processing so as to record accurately the intention of the voter insofar as it can be ascertained.

(b) If the ballot card voting system is designed to allow the counting and tabulation of votes by the precinct election board, the members of the remake team must be members of the precinct election board in which the ballot was cast.

(c) If necessary, a true, duplicate copy shall be made of the damaged ballot card in the presence of witnesses and substituted for the damaged card. Similarly, a duplicate ballot card shall be made of a defective card, not including the uncounted votes.

(d) This subsection applies to an absent uniformed services voter or overseas voter permitted to transmit an absentee ballot by fax or electronic mail under IC 3-11-4-6. To facilitate the transmittal and return of the voter's absentee ballot by fax or electronic mail, the county election board may provide the voter with a paper ballot rather than a ballot card. The paper ballot must conform with the requirements for paper ballots set forth in IC 3-10 and IC 3-11. After the voter returns the ballot by fax or electronic mail, a remake team appointed under this section shall prepare a ballot card for processing that accurately records the intention of the voter as indicated on the paper ballot. The ballot card created under this subsection must be marked and counted as a duplicate ballot under sections 6 through 7 of this chapter.

(e) If an automatic tabulating machine fails during the counting and tabulation of votes following the close of the polls, the county election board shall immediately arrange for the repair and proper functioning of the system. The county election board may, by unanimous vote of its entire membership, authorize the counting and tabulation of votes for this election on an automatic tabulating machine approved for use in Indiana by the commission:

(1) until the repair and retesting of the malfunctioning machine; and

(2) whether or not the machine was tested under IC 3-11-13-22.

As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.41; P.L.3-1987, SEC.350; P.L.1-1993, SEC.11; P.L.3-1997, SEC.341; P.L.263-2003, SEC.4; P.L.97-2004, SEC.12; P.L.198-2005, SEC.16.

IC 3-12-3-6

Duplicate ballot card to be clearly labeled and bear serial number

Sec. 6. All duplicate ballot cards must:

- (1) be clearly labeled "duplicate"; and
- (2) bear a serial number, which shall be recorded on the damaged or defective card.

As added by P.L.5-1986, SEC.8.

IC 3-12-3-7

Duplicate ballot card to be counted

Sec. 7. Each duplicate ballot card shall be counted instead of the damaged or defective card.

As added by P.L.5-1986, SEC.8.

IC 3-12-3-8

Votes to be counted manually if automatic tabulating machines test not conducted

Sec. 8. If either test of automatic tabulating machines required by IC 3-11-13-22 and IC 3-11-13-26 is not conducted for a particular office or public question, the votes for that office or question shall be counted manually. If for any reason it becomes impracticable to count all or some of the ballot cards with automatic tabulating machines:

- (1) the precinct election board in which the machine is located, if the ballot card voting system is designed to allow the counting and tabulation of votes by the precinct election board;
- or
- (2) the county election board, if the ballot card voting system is not designed to allow the counting and tabulation of votes by the precinct election board;

may direct that they be counted manually.

As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.42; P.L.3-1987, SEC.351; P.L.1-1993, SEC.12.

IC 3-12-3-9

Manual counting of ballot cards; compliance with tabulating standards

Sec. 9. If ballot cards are counted manually, the tabulation of votes must comply with the standards prescribed by IC 3-11-7.

As added by P.L.5-1986, SEC.8.

IC 3-12-3-10

Procedures after vote totals have been taken and certified; ballot cards and automatic tabulating machines; disposition; inspector's oath

Sec. 10. (a) After the voting totals have been taken and certified by a precinct election board under section 2(c) of this chapter, the inspector shall:

- (1) seal each automatic tabulating machine used in the precinct;
- (2) place all ballot cards that have been counted in the container provided for that purpose; and
- (3) seal the container into which the ballot cards have been placed;

in the presence of the precinct election board. The automatic tabulating machine may not be moved from the polls after the polls are closed until collected.

(b) The inspector and judge of the opposite political party shall deliver:

- (1) the certification of the vote totals and one (1) copy of the certificate prepared under section 2(c) of this chapter for the circuit court clerk;
- (2) the certificate of the vote totals prepared under section 2(c) of this chapter for the news media;
- (3) the container in which ballot cards have been placed under subsection (a); and
- (4) the unused, uncounted, and defective ballot cards and returns;

to the circuit court clerk.

(c) The inspector and judge of the opposite political party shall deliver the certificates and the list of voters to the county election board by midnight on election day. However, if:

- (1) a ballot card voting system failed;
- (2) the failure of the system was reported as required by this title;
- (3) paper ballots were used in place of the system; and
- (4) the use of the paper ballots caused a substantial delay in the vote counting process;

then the certificates, the list of voters, and the tally papers shall be delivered as soon as possible.

(d) Upon delivery of the container to the circuit court clerk under subsection (c), the inspector shall take and subscribe an oath before the clerk stating that the inspector:

- (1) closed and sealed the container in the presence of the judges and poll clerks;
- (2) securely kept the ballot cards in the container;
- (3) did not permit any person to open the container or to otherwise touch or tamper with the ballot cards; and
- (4) has no knowledge of any other person opening the container.

(e) Each oath taken under subsection (d) shall be filed in the circuit court clerk's office with other election papers.

(f) Upon completion of the counting of the votes by a precinct election board under section 2(c) of this chapter or at a central location, all ballot cards shall be arranged by precincts and kept by the circuit court clerk for the period required by IC 3-10-1-31 or IC 3-10-1-31.1. The clerk shall determine the final disposition of all voted ballot cards.

As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.43; P.L.3-1987, SEC.352; P.L.3-1993, SEC.185; P.L.14-2004, SEC.158.

IC 3-12-3-11

Official return of precinct; publication

Sec. 11. (a) The return printed by the automatic tabulating

machines, along with the return of votes by absentee and provisional voters, constitutes the official return of each precinct. Upon completion of the count, the return is open to the public.

(b) This subsection applies if the votes have been cast on a ballot card voting system that is not designed to allow the counting and tabulation of votes by the precinct election board. The circuit court clerk shall, upon request, furnish to the media in the area the results of the tabulation.

(c) This subsection applies if the votes have been cast on a ballot card voting system that is designed to allow the counting and tabulation of votes by the precinct election board. Upon receiving the certificate for the media prepared under section 2(c) of this chapter, the circuit court clerk shall deliver the certificate to any person designated to receive the certificate by the editors of the newspapers published in the county or by the managers of the radio and television stations operating in the county.

(d) If a precinct election board administers more than one (1) precinct, the precinct election board or circuit court clerk shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.

As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.44; P.L.3-1987, SEC.353; P.L.1-1993, SEC.13; P.L.126-2002, SEC.88; P.L.230-2005, SEC.57.

IC 3-12-3-12

Casting of votes by absentee voters; counting

Sec. 12. Votes by absentee voters may be cast on paper ballots or ballot cards, or both methods may be used. The ballots may be counted by an automatic tabulating machine or by special canvassing boards appointed by and under the direction of the county election board. A true copy of each paper absentee ballot may be made on a ballot card, which, after being verified in the presence of witnesses, shall be counted in the same manner as other ballot cards.

As added by P.L.5-1986, SEC.8. Amended by P.L.6-1986, SEC.45.

IC 3-12-3-12.5

Vote count to continue to completion

Sec. 12.5. To minimize the delay in the counting of the vote, the count must begin immediately upon delivery of the cards to the central counting location under section 2(b) of this chapter or upon the closing of the polls under section 2(c) of this chapter. The tabulation must continue without interruption until all votes are canvassed and all certificates of the vote totals required under section 10(b) of this chapter or totals required under section 11(b) of this chapter are completed and delivered to the persons entitled to receive the certificates or totals.

As added by P.L.3-1987, SEC.354.

IC 3-12-3-13**Recount; procedure**

Sec. 13. In case of a recount, all ballot cards shall be recounted in the manner prescribed by this chapter unless:

- (1) the court ordering the recount or the state recount commission directs that they be counted manually; or
- (2) a request for a manual recount is made under IC 3-12-6 or IC 3-12-11.

As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.355.

IC 3-12-3-14**Absentee ballots**

Sec. 14. (a) The precinct election board may count absentee ballots before the polls have closed.

(b) If the precinct election board counts absentee ballots under this section, a member of the precinct election board may not, before the polls have closed, provide any person other than a member of the precinct election board with information concerning the number of votes:

- (1) a candidate received for an office; or
- (2) cast to approve or reject a public question;

on absentee ballots counted under this section.

As added by P.L.3-1995, SEC.124.