# *2006*
# Election
# Administrator's Manual

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**Indiana Election Division**
**302 West Washington Street**
**Indiana Government Center South, Room E-204**
**Indianapolis, IN 46204-2743**
**(317) 232-3939 * (800) 622-4941**
**FAX: (317) 233-6793**
**www.in.gov/sos/elections**

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This Manual is designed to serve as a comprehensive overview of election procedures. Although the Election Division takes every effort to ensure the accuracy of the information in this publication**, where your legal rights are involved, do not rely on this Manual. Instead, review the law yourself or consult with your attorney.**

# KEY PLAYERS

**On the national level,** the *Election Assistance Commission* and the *Federal Election Commission* are the primary agencies responsible for administering election law. *The United States Department of Justice* also acts to enforce voting rights and election crime laws. *The United States Department of Defense* assists military and overseas voters. *The Federal Communications Commission* enforces certain campaign advertising rules for television and radio stations. The *Office of the Special Counsel* of the U.S. Merit Systems Protection Board administers the Hatch Act, which governs political activity by Federal and certain state and local government employees.

**On the state level,** *The Secretary of State* is the chief election official of Indiana and has several responsibilities related to the implementation of the Help America Vote Act of 2002. *The Election Division of the Indiana Secretary of State* is responsible for the administration of various routine election functions. The Election Division performs many election related tasks to assist the Secretary of State and the Indiana Election Commission, including campaign finance, candidate filings and certification of election results. *The Indiana Election Commission* is a four member body appointed by the governor, responsible for establishing election policies and enforcing certain parts of the state election laws, such as determining whether a challenged candidate should appear on a ballot, and whether a civil penalty should be assessed for a campaign finance violation. The Commission also approves all official election forms And certified voting equipment for sale and use in Indiana elections.

**On the county level,** the *county election board*, *circuit court clerk* and in some counties, the *board of voter registration*, are responsible for administering different areas of election law. In some smaller towns, a town election board may be responsible for conducting town elections. The county commissioners are responsible for performing certain functions such as selecting the polling locations in the county and changing precinct boundary lines, subject to approval by the Election Division (or by the Commission if the precinct boundary change is contested).

**On Election Day,** thousands of precinct inspectors, judges, clerks and poll sheriffs are responsible for administering elections in Indiana's polling locations.

**Political parties and partisan committees** are active at all levels of government, and are responsible in Indiana for filling vacancies on the ballot and in certain elected offices. The political parties are also called upon to muster an army of dedicated individuals who volunteer their services for staffing precinct election boards and performing other Election Day tasks.

## FEDERAL OFFICES WITH ELECTION DUTIES

### THE U.S. ELECTION ASSISTANCE COMMISSION

The U.S. Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 and is primarily responsible for administering programs created by that statute at the federal level. The EAC can be reached at:

1225 New York Avenue, N.W., Suite 1100

Washington, DC 20005

**Telephone(s):** (202) 566-3100; Toll-Free (866) 747-1471

**Fax:** (202) 566-3127

**E-mail Address:** HAVAinfo@eac.gov

Website: www.eac.gov

### THE FEDERAL ELECTION COMMISSION

The Federal Election Commission (FEC) administers federal campaign finance laws, maintains the campaign finance reports filed by candidates to federal offices, and administers disclaimer requirements concerning web sites and email distribution lists. The Federal Election Commission also compiles official voting results from all of the states for national offices.

Campaign finance reports filed with the FEC are accessible on the FEC's website at www.fec.gov. A public terminal permitting access to this website is available in the offices of the Election Division.

### UNITED STATES DEPARTMENT OF JUSTICE

On occasion, a voter or a candidate may believe that a person has **violated a federal election law,** and wishes to contact a federal law enforcement officer. These persons can be referred to:

Department of Justice, Election Crimes Branch, Public Integrity Section, Criminal Division
Mr. Craig Donsanto
1400 New York Avenue, N.W., 12th Fl.
Washington, DC 20005
Telephone: (202) 514-1421

Department of Justice, Voting Section, Civil Rights Division
Room 7254 NWB, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Telephone: (800) 253-3931; (202) 307-2767
Fax Number: (202) 307-3961

## FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission administers the federal regulations regarding political advertisements on radio, television and cable. Questions and concerns regarding broadcast political advertisements can be referred to the Federal Communications Commission at:

Mr. Robert Baker
Complaints and Political Programming Group, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street S.W., Room 3A 461
Washington, DC 20554
Telephone: (202) 418-1440
E-mail Address: rbaker@fcc.gov

## UNITED STATES DEPARTMENT OF DEFENSE

The Federal Voting Assistance Program (FVAP) assists military voters and civilian overseas voters by: (1) providing information about state election procedures and deadlines; and (2) furnishing federal absentee registration forms and federal write-in absentee ballots to these voters. For information or assistance, contact:

Ms. Polli Brunelli, Director; Mr. John B. Godley, State of Indiana Liaison
Federal Voting Assistance Program,
Office of the Secretary of Defense
1155 Defense Pentagon
Washington, DC 20301-1155
Telephone: (800) 438-8683; (703) 588-1584
FAX: (703) 588-0108
Internet Address: www.fvap.ncr.gov
E-Mail: vote@fvap.ncr.gov

## OFFICE OF THE SPECIAL COUNSEL

The Office of the Special Counsel of the U.S. Merit Systems Protection Board can provide information about the application of the "Hatch Act", which restricts political activity by federal employees and about the "Little Hatch Act", which restricts political activity by certain state or local employees whose agencies are federally funded. For information, contact:

Hatch Act Unit, U.S. Office of Special Counsel
1730 M Street NW, Suite #201
Washington, DC 20036-4505
Toll free: (800) 872-9855; (202) 653-7143
FAX: (202) 653-5151
Internet Address: www.osc.gov
E-Mail: hatchact@osc.gov

## THE SECRETARY OF STATE OF INDIANA; INDIANA ELECTION COMMISSION; AND THE ELECTION DIVISION

**The Secretary of State is the chief election official of Indiana.** The Secretary of State is a statewide elected official, who is chosen by the voters of Indiana to serve a four-year term.

The Secretary of State has several election-related responsibilities under the federal Help America Vote Act of 2002 (HAVA) and Indiana law, including the following:

(1) Encouraging students at colleges and universities to serve as poll workers or assistants.
(2) Encouraging high school and home-schooled students to serve as poll workers or assistants.
(3) Developing and implementing the Help America Vote Act (HAVA) Indiana State Plan, including the statewide voter registration system, in cooperation with the Co-Directors of the Division.
(4) Performing the duties of the chief state election official under HAVA.

The Secretary of State works with the Co-Directors of the Indiana Election Division to administer the voting equipment reimbursement program for county governments, and to establish a statewide voter registration system.

**The Indiana Election Commission (IEC) is a four-member appointed commission responsible for administering and interpreting certain Indiana election laws.** The four members of the Commission are appointed by the Governor upon recommendation by the state chair of each of the two major political parties. The Commission enforces certain campaign finance laws; determines whether the names of challenged candidates may appear on the ballot; conducts hearings regarding complaints under the Help America Vote Act of 2002 (HAVA); and approves standardized election forms for use in Indiana. The Commission also certifies voting systems that are marketed or used in Indiana. Before a voting system can be used in an election, or modified after sale to a county, the vendor must demonstrate that the system, as sold or modified, will meet minimum standards set by state law.

**The Election Division of the Office of the Indiana Secretary of State** assists the Indiana Election Commission and the Secretary of State in the administration of Indiana election laws, including the following:

1) Overseeing and implementing the National Voter Registration Act ("Motor Voter") for Indiana.
2) Implementing the Help America Vote Act of 2002 (HAVA) in Indiana.
3) Printing and distributing special write-in absentee ballots for statewide offices and questions. These ballots are provided by the Election Division to county election offices for mailing to certain military and overseas voters.
4) Maintaining maps and legal descriptions of all precincts in Indiana.
5) Approving proposed precinct boundary changes for conformity with state law, subject to any challenge being filed with the IEC.
6) Maintaining campaign finance reports filed by candidates for state legislative and statewide offices and by political action committees and regular party committees that contribute to candidates for these offices.
7) Developing and revising election forms for review and approval by the Commission.
8) Reviewing applications for voting system certification.
9) Advising and instructing local election officials on election administration.
10) Publishing brochures and manuals to assist candidates, political parties, the media, and the general public in understanding election administration issues.
11) Publishing election returns on the Division's web site.
12) Providing information regarding voter registration and absentee ballot procedures to military and overseas voters.

State law requires that the Election Division staff consist of an equal number of employees from both major political parties. The staff is divided into legal, voter registration and precinct mapping, and campaign finance departments. The Division is headed by two co-directors of opposite political affiliation, appointed by the Governor, following nomination by the major political party state chairs.

If a local election administrator is unclear concerning the application of Indiana campaign finance requirements or general election law provisions, the Election Division can be used as an interpretive resource.

**The Election Division requests that any person who wishes to obtain information in writing from the Election Division concerning election law, submit a written request to the Division for that information.**

The Indiana Election Division may issue **advisory opinions regarding election administration issues.** However, where important legal rights are concerned, individuals must consult with their own attorney to be fully and properly advised. The Election Division does not serve as a judge or jury to determine the **facts** in a dispute. Inquirers are sometimes advised that they must decide if they should go to court as the proper forum to establish or protect their legal rights.

## COUNTY ELECTION BOARDS

Each county, with the exception of Lake County and Tippecanoe County, has a **county election board.** The county election board is composed of three members.

*In Lake and Tippecanoe Counties, separate state statutes govern the organization of the county board of elections and registration. Reference those specific citations for Lake and Tippecanoe Counties rather than referring to the information provided in this Manual.* See IC 3-6-5.2 (Lake County) and IC 3-6-5.4 (Tippecanoe County).

In most counties, **the circuit court clerk is automatically a member and serves as secretary of the county election board** by virtue of being elected as clerk. The circuit court clerk in the county appoints the other two members of the county election board. (IC 3-6-5) **The county chairperson of each major political party nominates, in writing, an individual to serve on the county election board.** The term of county election board member is not specified by state law. The circuit court clerk **is required** to appoint whomever the county chairperson nominates.(Form CEB-6) The two appointed members of the county election board represent each of the two major political parties in the county. The term of a county election board member is not specified by state law. However, the appointing county chairperson may remove a person appointed to serve on a county election board at any time. Before a county election board member assumes the duties of this office, the individual must take and file an oath of office. (Form CEB-6 available at back of this Manual)

**If a vacancy occurs** on a county election board for a reason **other than removal by a county chairperson,** the circuit court clerk **must** notify the county chairperson within five (5) days of the vacancy. The county chairperson then has five (5) days in which to nominate a successor. The circuit court clerk **must** appoint whomever the county chairperson nominates. If the county chairperson fails to make the appropriate nomination by the deadline, then the circuit court clerk may proceed to select a person of the clerk's own choosing to serve on the county election board. The person the clerk selects, however, must be of the same major political party in which the vacancy occurred. The circuit court clerk has an additional five (5) days to make an appointment to the county election board if the county chairperson fails to nominate a successor to fill a vacancy.

Each member of the county election board is entitled to receive compensation for serving on the board. The amount of the compensation is established by the county fiscal body, which is the county council, (or in Marion County, the city-county council). Since state statute does not prescribe a specific amount of compensation for the county election board members, the county council may pay county election board members whatever amount they determine to be appropriate in their county. Indiana Code 3-6-5-9 states:

**Compensation of members. -** Each county fiscal body shall determine, in the manner provided by law, the compensation of:

1) The appointed members of the county election board; and
2) The clerk for the clerk's services as secretary of the county election board.

**The primary job of the county election board is to administer the election process within the county.** The county election board supervises and oversees the conduct of the General Election year primaries, the General Election in November, city primaries and elections, and in some cases, town primaries and elections. The county election board may also be called upon to conduct a special election in accordance with state law.

In conducting an election, the county election board is responsible for preparing and distributing ballots or ballot pages depending on the county's type of voting system. The circuit court clerk may exercise these powers and duties with assistance of the appointed members of the county election board. Some statutes specifically require the circuit court clerk to perform some election duties (such as affixing the clerk's seal to absentee ballots). In Lake County, the chief deputy of the board of elections performs the election related duties of the circuit court clerk.

**A county election board member may appoint a proxy to serve in the member's place on the county election board.** As an election draws near, situations arise that may require members to meet on short notice. A county election board member unable to attend a meeting may appoint both a proxy of record and an alternate proxy by filing a written statement with the circuit court clerk naming the proxy. (IC 3-6-5-4.5) The CEB proxy has the same authority to act and vote on all matters, as does the CEB member. A proxy or an alternate proxy ***may not*** hold an elected office, or be a candidate for elected office. The member may revoke the authority of the proxy at any time. The proxy's authority may be either general or limited with regard to duration or subject matter. The member making the appointment must define the authority of the proxy in the written statement.

**The county commissioners must provide the county election board with office space in (or conveniently located near), the county courthouse.** The chairman of the county election board must call meetings whenever the chairman considers it necessary for the performance of the board's duties. If the chairman fails to call meetings, then the other two members may meet and perform the powers and duties of the county election board.

**Unless specifically authorized to conduct an "executive session" under the Indiana Open Door Law, all meetings of the county election board are open to the public to observe, although the board is not required to provide the opportunity for public comment.**

In most cases, forty-eight (48) hours' notice must be given (not including Saturdays, Sundays and legal holidays), by **posting a written agenda (if any) and notice of the meeting at the principal office of the board and by mailing or delivering a notice to all news media requesting such notice. The county election board is not required to publish a legal notice of the meeting in a newspaper unless it wishes to do so. (IC 5-14-1.5-5)**

As secretary, the circuit court clerk must maintain minutes of all meetings, including the "yes" and "no" votes of each member on all questions. (IC 3-6-5-13) The minutes should also indicate which members are present and if the board provides a sign-in sheet, which members of the public were present or gave comments or testimony before the board. Particularly in meetings on controversial matters which could lead to later legal action, it may be useful to tape record the board's proceedings.

**The county election board may hire clerks and other employees** necessary for the execution of its powers. The county election board may determine the duties, rank and salaries of its employees. (IC 3-6-5-23)

***A candidate for elected office or a member of a candidate's campaign finance committee may not serve as an appointed member of the board, a proxy for an appointed member of the board, or be employed by a county election board. The circuit court clerk may not serve as a member of a candidate's campaign finance committee other than the clerk's own candidate's campaign finance committee.*** (IC 3-6-5-3; IC 3-6-5.2-4.5; IC 3-6-5.4-4.5)

These state laws do not define which individuals are considered a "member" of a committee. However, the Court of Appeals has ruled that the individual serving as chairman and the individual serving as treasurer are automatically considered campaign finance committee members, and may be held personally liable for unpaid committee debts.

If an appointed member or an employee of a county election board becomes a candidate for elected office or a member of a candidate's campaign finance committee, the person must immediately resign from the board. The county election board may, **by unanimous resolution** (including the approval of the circuit court clerk), authorize an employee of the county election board to perform the election duties of the circuit court clerk.

**A county election board may also investigate and rule on questions concerning reported election law violations. If the county election board has substantial reason to believe that an election violation has or will occur,** the board may conduct a hearing to resolve the issue. The county election board has the power to subpoena witnesses, and question those witnesses under oath. If, after affording due notice and an opportunity for a hearing, the county election board believes that an act constitutes or will constitute an election violation, the board may take whatever action it deems proper under the circumstances. This includes referring the matter to the attorney general for civil action or the county prosecuting attorney for criminal prosecution. (IC 3-6-5-31; 3-14-5-3)

**Indiana law also requires that a county election board forward challenge affidavits returned by precinct election officers following the close of the polls to the foreman of the grand jury when the jury is next in session.** The grand jury is required to inquire into the truth or falsity of the affidavits, and file a report of the results of its inquiry with the court. (IC 3-14-5-2) This procedure does not apply when the only reason that an affidavit was executed was that an individual was required to provide "additional documentation" as a first time voter who registered by mail, and has now complied with that requirement.

State law also requires that the county election board open sealed bags and envelopes returned by the precinct inspector and judge, and forward a copy of each affidavit to the Secretary of State of Indiana. (IC 3-14-5-2)

Indiana election law provides that the following offenses are Class D felonies, which subject a person to up to three years of imprisonment, a $10,000 fine, or both, upon conviction. The laws cited below should be studied carefully, since they may contain requirements or exemptions that are not set forth in detail in this summary.

(1) Filing a declaration of candidacy or other similar document to place or remove a candidate from the ballot, knowing that any part of the document is falsely made. (IC 3-14-1-1)
(2) Refusing to receive and record a declaration of candidacy or other similar document when presented in accordance with the election laws, or suppressing such a document that has been duly filed.(IC 3-14-1-1)
(3) Paying a person to apply for an absentee ballot, to cast an absentee ballot, to register to vote, or voting. (IC 3-14-2-1)
(4) Signs the name of another person to an absentee ballot application or voter registration application, knowing that the application contains a false statement. (IC 3-14-2-3)
(5) Recklessly destroying or failing to deliver a completed absentee ballot application or voter registration form. (IC 3-14-2-5)
(6) Allowing a person to vote who is not entitled to vote, or by use of an unauthorized procedure, if a precinct election officer or a public official. (IC 3-14-2-14)
(7) Unauthorized delivery of ballots by a member of a county election board. (IC 3-14-2-15)
(8) Applying for or receiving a ballot in a precinct other than the precinct in which a person may vote. (IC 3-14-2-16)
(9) Showing a marked ballot to another person in a way to reveal the contents of the ballot, except when a voter is receiving assistance in marking the ballot in a manner authorized by law. (IC 3-14-2-16)
(10) Examining a ballot that a voter has prepared for marking, or soliciting the voter to show the ballot, except when a voter is receiving assistance in marking the ballot in a manner authorized by law. (IC 3-14-2-16)
(11) Receiving from a voter a ballot prepared for voting, except by an inspector, county election board member, absentee voter board member, or a member of the voter's household, an individual designated as the attorney in fact for the voter, the U.S. mail, or a bonded courier company when delivering an envelope containing an absentee ballot. (IC 3-14-2-16)
(12) Delivering an absentee ballot to an election official that is not the ballot cast by the voter. (IC 3-14-2-16)
(13) Making a distinguishing mark on the ballot to indicate to another person how the voter voted, or doing anything to enable another person to see how a person has cast a ballot on a voting system. (IC 3-14-2-17; 3-14-2-18)
(14) Destroying or defacing a ballot, or delivering a package of ballots to an unauthorized person, if the person has been entrusted with custody of the ballots. (IC 3-14-2-23; 3-14-2-24; 3-14-2-25; 3-14-3-14)
(15) Tampering with or destroying a ballot box, poll list, tally sheet, voting system, or voting supplies. (IC 3-14-2-26; 3-14-2-28; 3-14-3-5; 3-14-3-6; 3-14-3-8; 3-14-3-10; 3-14-3-11; 3-14-3-13)
(16) Fraudulently causing a vote total to be taken down incorrectly or making a false statement or return of the votes. (IC 3-14-2-27)
(17) Procuring or submitting voter registration applications or casting and tabulating ballots known by the person to be materially false, fictitious, or fraudulent. (IC 3-14-1.1)
(18) Interfering with a watcher. (IC 3-14-3-3)
(19) Obstructing or interfering with an election officer or a voter within the chute. (IC 3-14-3-4)
(20) Knowingly injuring an election officer or voter. (IC 3-14-3-4)
(21) Failing to receive the vote of a legal voter. (IC 3-14-3-9)
(22) Interfering with the secrecy of voting. (IC 3-14-3-11)

(23) "Electioneering" in the presence of a person known to possess an absentee ballot, unless the electioneering is by the person's spouse, member of their household, or guardian of an incapacitated person. (IC 3-14-3-16) "Electioneering" does not include material mailed to a voter, or a telephone or an electronic communication to a voter expressing support or opposition to a candidate or a political party or expressing approval or disapproval of a public question. (IC 3-14-3-16)
(24) Inducing or persuading a voter to vote for a candidate, while acting as a precinct election officer or absentee voter board member. (IC 3-14-3-17)
(25) Inducing or procuring a person to apply for or cast an absentee ballot, or to vote or refrain from voting for or against a candidate by giving, offering, or promising money or other property. (IC 3-14-3-19)
(26) Receiving, accepting, or soliciting money or other property to apply for or cast an absentee ballot, or to vote or refrain from voting for or against a candidate. (IC 3-14-3-20)
(27) Intimidate, threaten, or coerce an individual for voting or attempting to vote or urging another person to vote.(IC 3-14-3-21.5)
(28) Serving as an inspector or judge in violation of state law. (IC 3-14-4-1)
(29) Omitting to perform a duty required under election laws, if a precinct election officer or public official. (IC 3-14-4-3)
(30) Allowing a voter to be observed preparing a ballot without a screen to preserve the ballot from observation, if an inspector or judge. (IC 3-14-4-4)
(31) Disclosing how a voter voted, if an inspector, judge, or other election officer. (IC 3-14-4-7)
(32) Disclosing absentee vote totals before the closing of the polls. (IC 3-14-4-10)

See the *2006 Indiana Campaign Finance Manual,* published by the Indiana Election Division, for information regarding criminal violations of the campaign finance laws, and the county election board's authority to impose civil penalties for campaign finance related violations. See the *Voter Registration Guidebook*, published by the Indiana Election Division, for information regarding criminal violations of the voter registration law.

Under the Help America Vote Act of 2002 (HAVA), as implemented by Indiana law (IC 3-6-5.1), a voter may choose to file a complaint with the county election board that the requirements of HAVA have not been complied with. These complaints could include the lack of voting systems at a polling place to permit a blind or visually impaired voter to cast a ballot privately and independently. If a voter files a complaint under this procedure, the clerk and county election board must conduct an investigation and issue a written report containing their findings.

**A county election board may also investigate and rule on questions concerning the validity of a declaration of candidacy or other petitions or certifications to place the name of a candidate on the ballot.**

A filing that is made **after the deadline set by state law** "may not be received for filing" by a county or state election office after the applicable deadline. This would apply to a declaration of candidacy, a recount petition and a candidate vacancy filing after the primary, and to all other election document filings, except when state law explicitly permits late filings**. (IC 3-5-4-1.9)**

***PLEASE NOTE:*** **This law does not apply to campaign finance reports or voter registration applications.** Campaign finance reports are to be accepted after the reporting deadline, but are subject to fines. A late voter registration application is to be accepted, and is to be entered into SVRS (the Indiana Statewide Voter Registration System), but the acknowledgment card cannot be mailed to the voter until after the next election day**.**

**Except for late filings, a circuit court clerk may not refuse to accept a declaration of candidacy filed on the proper form, and is NOT responsible for bringing a question or dispute regarding a declaration of candidacy to the attention of the county election board when the declaration is filed with the clerk.** (IC 3-5-4-8(c); 3-14-1-1(4))

Instead, under Indiana's "Put Up or Shut Up Law", before the board can act concerning a declaration of candidacy, **a voter of the election district must file a sworn statement** with the board questioning the eligibility of the candidate and setting forth the facts known to the voter. (Form CAN-1) (IC 3-8-1-2)

**There is one exception to this requirement: A circuit court clerk must determine whether a sufficient number of signatures have been obtained to meet the requirements to nominate a candidate by petition**. If the clerk determines, based on the certification of the signatures by the county voter registration office, that the petition does not have enough signatures to nominate the candidate(s) on the petition, the clerk must deny certification to the petitioner(s). A challenge to this denial can then be brought before the county election board by a registered voter in the election district by filing Form CAN-1. (IC 3-8-1-2; 3-8-6-12)

**A question regarding a declaration of candidacy or petition of nomination must be filed with the county election board not later than noon:**

1) 67 days before the primary and resolved no later than noon, 54 days before the primary (for candidates to be nominated by a major party at a primary election, and for school board candidates to be elected at the same time as the primary), IC 3-8-2-14;
2) 74 days before the general or municipal election and resolved by 60 days before the date on which the general or municipal election will be held for candidates nominated by petition (independent and third party candidates), IC 3-8-6-14;
3) 74 days before the general or municipal election and resolved by noon, 60 days before the election for candidates selected to fill a vacancy (frequently due to no candidate running on the primary ballot), IC 3-13-1-16.5;
4) 67 days before the general election and resolved no later than noon, 54 days before the general election (for school board candidates to be elected at the general election), IC 3-8-6-14;
5) 14 days before the general or municipal election and resolved no later than noon, seven (7) days before Election Day for candidates selected to fill a vacancy occurring less than thirty (30) days before Election Day, IC 3-13-2-11; and
6) 74 days before the general or municipal election and resolved no later than noon, 67 days before Election Day for write-in candidates, IC 3-8-2-14.

**To resolve the challenge, the county election board must conduct a public meeting.** The Board must give notice under the Open Door Law (see page 8 of this Manual). The Board should also provide a copy of the challenge to the challenged candidate, along with written notice of the meeting. Although it is preferable to send these documents to the candidate by certified mail, return receipt requested, it may be necessary to contact the candidate by telephone or by regular mail due to the short period of time during which the Board must conduct this meeting. The important point is to give as much notice to the challenged candidate as possible regarding the content of the complaint and the time and location of the Board's meeting. If either the challenger or candidate will be represented by an attorney, the Board may request that the attorney enter an appearance with the Clerk before the meeting so that communications from the Board will be sent directly to the attorney.

**At the meeting itself, the chairman of the Board may wish to begin by setting some rules of procedure, and explaining the rules to those present as the first item of business.** It may be a good idea to limit the amount of time for each side to present information. For example, the Board may provide that the person filing the challenge has 15 minutes to present information, that the challenged candidate has 15 minutes to respond, and that the challenger and the candidate each have an additional 5 minutes to rebut what the other side has presented. It may also be useful to remind audience members that all remarks or questions should be addressed to the chair, and that discussions (or arguments!) between audience members will not be allowed. If you think that emotions will be heated at the meeting, and that it will be difficult to keep order, you may wish to contact the Sheriff's office to request that a uniformed deputy be present. Usually this is enough to prevent any serious breach of order.

The Board may then ask each person who plans to testify for one side or the other to stand and take an oath that they will testify truthfully before the Board. The Board can then recognize the challenger. The challenger, or individuals called by the challenger, should be asked to begin by stating their name and address for the minutes. The chairman of the Board should be recognized if any Board member wishes to question an individual who is testifying. As a courtesy, the time taken by Board member questions should not be deducted from the time that is to be made available to the challenger or the candidate.

After both sides have presented their evidence, the Board members must consider this information and reach a decision. This discussion must take place in public. A private (or "executive") session for this purpose is not allowed under the Open Door Law. When the Board members have finished their discussion, any member of the Board (including the chair) can make a motion. If the motion is seconded, then the Chair should call for a vote. The minutes of the meeting must show how each Board member voted on each motion.

After the meeting, the Clerk should send a short letter to both the candidate and the challenger given written notice of the Board's decision. This letter can be very straightforward, and can simply state that at the Board's meeting on a specific date, the Board voted to uphold (or deny) the challenge, and that as a result, the candidate will (or will not) appear on the ballot.

A person who files a declaration of candidacy or other document to place or remove a candidate from the ballot, knowing that any part of the document is falsely made, or a person who refuses to receive and record the document when presented in accordance with the election laws, commits a Class D felony. (IC 3-14-1-1)

**No later than fourteen (14) days *after* a primary, general, municipal or special election, the county election board must submit a report to the Election Division.** The Election Division provides the county with an appropriate form for this report. (Form CEB-9 included in the back of this Manual) The report must describe the county election board's activities in administering the election and include a statement of election expenses for administering elections and a copy of the canvass sheets for the election. The Election Division may require additional information in this report as well.

A county is no longer required to use any *paper* version of the CEB-23, CEB-24, or CEB-25 forms, or CEB-9 election report form, to certify primary or school board election results to the Election Division. The former requirement that these reports be signed and sealed by the circuit court clerk has been repealed so long as the county uses the SVRS to provide these reports to the State.

There may be some additional information requested on the CEB-9 election report form which would require a county to send paper versions of these attachments to the Election Division later,, but there is no requirement for a county to send the state (or any other county) a paper copy of any CEB-23 or CEB-24 report. See IC 3-10-1-33.

The same rule applies to the certification of general election results to the Election Division. A county is no longer required to use any *paper* version of the CEB-10, CEB-11, CEB-12, CEB-13, or CEB-25 forms, or the CEB-9 election report form, to certify general election results to the Election Division. The former requirement that these reports be signed and sealed by the circuit court clerk has been repealed so long as the county uses the SVRS to provide these reports to the State. See IC 3-12-5-1.5.

## CANDIDATE AND OFFICEHOLDERS GENERAL QUALIFICATIONS

All candidates, regardless of party affiliation (major party, minor party, independent, write-in), must meet the same qualifications before the candidate may run for a particular office. A person is **not** qualified to run for:

1) a state office;
2) a state legislative office;
3) a local office; or
4) a school board office

unless the person is **a registered voter IN THE ELECTION DISTRICT the person seeks to represent** not later than the deadline set by statute for filing a declaration of candidacy, petition of nomination or certificate of nomination. (IC 3-8-1-1) Indiana law requires many candidates, but not all, seeking state and local office to have resided in their election district for at least one (1) year prior to the general election. See the ***Indiana Candidate Guide***, published by the Indiana Election Division, for more specific information.

## RESIDENCY QUESTIONS

One of the most common candidate disputes that county election boards deal with concerns whether (or for how long) a candidate has resided in the election district. Until recently, candidates and election boards had only a few, and sometimes contradictory, state laws to guide them on this issue. A long-time favorite was IC 3-7-1-9, which stated: "The residence of an unmarried man (changed to "person" in 1987 and repealed in 1995), is where the man usually sleeps." This language is now found in IC 3-5-5 (along with other state laws for determining residence).

Under IC 3-5-2-42.5, **"Residence" means the place where a person has the person's true, fixed, permanent home and principal establishment, and to which place the person has, whenever absent, the intention of returning...A person's residence may be established by...origin or birth [or] intent and conduct taken to implement the intent.**

Although Indiana residency laws still include presumptions that a candidate must overcome to establish a different residence, **a county election board will have to determine the facts of each particular situation** to resolve questions regarding any candidate's residence.

**The county election board will need to determine the actual facts in each residency dispute and decide what, if anything, the candidate did to establish the candidate's residency, if it is called into question.** The same process is utilized when a county voter registration office must determine if a ***voter*** resides at the location stated in a voter registration application.

## "SORE LOSER" PROVISION

**A person who is defeated** at a primary election, state convention or town convention **is not** eligible to become a candidate **for the same office** in the next general or municipal election. This *"sore loser"* provision does not apply to a person who is **selected** to fill a ballot or office vacancy. It also applies to a defeated candidate who wants to be a write-in candidate for that office. (IC 3-8-1-5.5)

## HOLDING MORE THAN ONE LUCRATIVE "OFFICE"

In Indiana, the State Constitution (Article 2, Section 9) provides that **no person is eligible to hold more than one lucrative office at the same time.** This restriction applies to **any office, whether appointed or elected, but does not apply to a person who is merely an "employee" and not an "officer."**

The Attorney General's office has opined that elected or appointed **offices** are "created by law instead of contract." Duties of someone holding an office, ***as opposed to employment***, include performance of some sovereign power for the public's benefit.

The Supreme Court has defined **"lucrative office" as any office to which there is attached compensation, regardless of whether or not the compensation is paid directly to the individual.** The definition of "lucrative office" does not depend upon the ***amount*** of compensation affixed to it or whether the office holder ***accepts*** any compensation. (Refer to Attorney General Opinion #91-14.)

Not all persons who work for a government are considered officeholders. Instead, they may be considered employees. For example, a county commissioner is an officeholder. The receptionist at the county highway garage office is an employee. Sometimes, whether an individual is an officeholder or an employee is not as clear cut.

State statutes and Attorney General Opinions can shed light on this question in some cases. Indiana Code 5-4-1-1(c) and IC 5-6-4-3 provide that the position of an appointed deputy of an officer of a political subdivision or of a judicial circuit (a deputy county auditor, a deputy mayor, or a deputy circuit court clerk, for example) is not considered to be a "lucrative office." Likewise, a county attorney is not considered a lucrative officeholder. (IC 36-2-2-30 and 36-2-3-10)

***A person who assumes a second lucrative office is considered to have resigned from the first office automatically when the person begins serving in the second office. ***

## QUALIFICATIONS FOR SPECIFIC OFFICES

Specific references to candidate qualifications can be found in Indiana Code 3-8-1 and the Indiana State Constitution. Qualifications by office are detailed in the *2006 Indiana Candidate Guide*, published by the Indiana Election Division. References to statutory qualifications for federal, state, judicial, county and other local offices are outlined in IC 3-8-1, including the qualifications for candidates for offices such as the Clerk of the Circuit Court. A Circuit Court Clerk candidate must be a registered voter in the county that the candidate seeks to represent. (IC 3-8-1-1 and IC 3-8-1-19.5) The clerk serves a four-year term upon election and may serve only eight out of twelve years. (Article 6, Section 2, Indiana State Constitution) Time spent filling a vacancy does not count against the Constitutional time limit. (Article 2, Section 11, Indiana State Constitution)

Please refer to the *2006 Indiana Candidate Guide* for other specific office or candidate qualifications.

## MINOR PARTY AND INDEPENDENT CANDIDATES

A person is considered a minor party candidate if the person is affiliated with an organized party that did not obtain the highest or second-highest number of votes cast for Indiana secretary of state at the last election held for the secretary of state's office. (IC 3-5-2-30) Thus, the Democratic Party and Republican Party are considered "major parties" based on the results of the 2002 election for Indiana Secretary of State.

If a minor party received at least two percent (2%), but less than ten percent (10%) of the vote cast for Indiana's Secretary of State at the last election held for that office, the party may nominate candidates for the general election by conducting a state, county or municipal convention. (IC 3-8-4-10, 3-8-5-17, 3-10-2-15, and 3-10-6-12) The Libertarian Party falls into this category of "minor party" based on the 2002 election results. A person is considered an independent candidate if the candidate is a person who is not affiliated with **any** political party. (IC 3-5-2-26.6)

Although other minor parties and independents may hold conventions to nominate candidates, these nominations are not recognized in Indiana for purposes of winning a place on the general election ballot. A minor party (other than the Libertarian Party), or independent candidate in Indiana is nominated for placement on the general election ballot by **petition of nomination.**

To be nominated by this method, the candidate circulates a petition (Form CAN-19), acquiring a number of signatures that is equal to two percent **(2%) of the total vote cast in the last election for secretary of state in the election district that candidate seeks to represent.** (IC 3-8-6-3) An individual who signs a petition of nomination **must** be a registered voter and able to vote for the candidate submitting the petition *when signing the petition.*

The Indiana Election Commission prescribes a petition of nomination form. (Form CAN-19) The most recent Commission approved version of this form must be used by these candidates. (IC 3-5-4-8)

A candidate's name cannot be placed on the ballot if the petition does not meet the following statutory requirements under IC 3-8-6-5. The petition of nomination (form CAN-19) must include the following:

1) The name of the candidate (as permitted by IC 3-5-7), and address, including the mailing address if different from the residence address of the candidate.
2) The office the candidate is seeking.
3) The information required under IC 3-10-4-5, if the petition nominates candidates for presidential electors.
4) The statement that the people signing the petition are registered voters, qualified to vote for the candidate.

The CAN-19 form may also designate a brief name, symbol or principle that the candidate represents.

The candidate then files the petition of nomination with the county voter registration office (usually the clerk or board of voter registration), of **each** county in which the election district is located. The clerk or board of voter registration then certifies how many individuals who have signed the petition are registered voters of the county. The petition must be filed with the appropriate county voter registration office for verification of petition signatures by the candidate between **noon, January 1 and June 30 before the election.** (IC 3-8-6-10) A candidate may withdraw a petition of nomination not later than **noon, July 15** before the General Election. (IC 3-8-6-13.5)

After verification by the county voter registration office, the petition of nomination is filed with the same office in which a declaration of candidacy is filed under Indiana Code 3-8-2. The petition of nomination must be accompanied by the candidate's written consent to become a candidate (form CAN-20), which includes the following on the form:

1) A signed statement that the candidate is aware of the provisions regarding IC 3-9 and the reporting of contributions and expenditures and agrees to comply with IC 3-9.
2) A statement that the candidate, if subject to Indiana's campaign finance filing requirements, has filed a statement of organization as required by law (or is aware of the requirement to do so not more than 7 days after the petition filing deadline).

## WRITE-IN CANDIDATES

A person may run as a write-in candidate. However, **votes for write-in candidates are only counted if the write-in candidate filed a declaration of intent to be a write-in candidate** before the election no later than the deadline to do so set by state law. The declaration must be filed with the same person authorized to place names on the ballot [Form CAN-3 or other specialized CAN form for the particular office], available in the office of the circuit court clerk. This declaration is filed with the secretary of state or circuit court clerk in each county. A declaration of intent may be filed **not earlier than January 1 nor later than noon July 3 before a general or municipal election. (**IC 3-8-2-4(b)) A write-in candidate must meet the same qualifications as any other candidate and must follow Indiana campaign finance laws.

**A person <u>may not</u> be a write-in candidate during a primary** (except for school board offices elected at a primary), or for a political office, such as precinct committeeman or state convention delegate. (IC 3-8-2-2.5) A write-in candidate may withdraw no later than noon, July 15 before the general or municipal Election Day. (IC 3-8-2-2.7(a))

The Election Division certifies the names of declared write-in candidates (and political party affiliation, if any), to the circuit court clerks for those candidates that file with the Election Division. Except in counties where optical scan ballot cards are tabulated at a central location, the circuit court clerk must provide each inspector with a list of declared write-in candidates for state and local offices so that the precinct election officials (boards) will know which persons are **officially declared** write-in candidates. (IC 3-8-7-30(b))

***<u>The write-in candidate's name is NEVER printed on the election ballot!!!</u>***

In tabulating write-in votes, the county election board may encounter numerous variations in how the name of a candidate is written in by voters. While certain legal requirements must be met, the intent of the voter must be the primary factor in determining the validity of any write-in vote.

In addition to voter intent, the following guidelines must be applied when counting write-in votes (IC 3-12-1-1.7):

1) Only votes cast for declared write-in candidates may be counted and certified. **EXCEPTION: If a write-in vote is cast for a candidate who IS on the ballot FOR THE SAME OFFICE, then the write-in vote is counted. For example, a write-in vote for U.S. Senator cast for one of the parties' candidates for U.S. Senator already on the ballot in 2006 must be counted for the candidate the voter indicated as a write in**.
2) A write-in vote cast in the appropriate place on the ballot is not a distinguishing mark that invalidates the ballot.
3) A write-in vote may be printed in ink OR lead pencil. The use of stickers, labels, or rubber stamps, etc., is not permitted.
4) Abbreviations, misspellings or other minor variations do not invalidate a write-in vote, ***<u>if the intent of the voter can be ascertained.</u>***
5) **<u>For military and overseas absentee ballots,</u>** if a person writes in the name of a political party, the vote is counted for a declared write-in candidate of that party. **EXAMPLE: The declared write-in candidate list shows "John Doe, Garden Party candidate for U.S. Senate". A military or overseas voter writes in "GARDEN PARTY" under the office of U.S. Senate. The ballot is counted as a vote for John Doe, even though the voter did not write in John Doe's name on the ballot.**

## CANDIDATE VACANCIES

If a candidate nominated in a primary by a major political party has withdrawn from the ballot, there are procedures in state law that permit the party to replace the candidate. In many cases, a caucus of precinct committeemen will fill the ticket vacancy by noon, June 30 before the General Election. In other cases, the county chairman can replace the candidate by direct appointment. (IC 3-13-1 and 3-13-2) The Libertarian Party and other minor parties can also fill candidate vacancies. (IC 3-8-6-17, 3-13-1-20 and 3-13-2-12)

## WHERE AND WHEN TO FILE

The following outline summarizes where major political party candidates (Democratic and Republican), file their declarations of candidacy. [Form CAN-2 for candidates to be nominated in a primary] Current law requires that all candidates affiliated with one of the two major political parties file a declaration of candidacy with the appropriate authority between **one hundred four (104) days and noon, local time, seventy-four (74) days** before the primary election, IC 3-8-2-4, 3-8-2-5 and 3-8-2-6. Different deadlines apply in certain small towns, (IC 3-8-5-10.5; IC 3-8-5-13).

| OFFICE | WHERE TO FILE DECLARATION |
|---|---|
| Federal, state or legislative office (U.S. Senate or U.S. Representative), state offices, state senator, and state representative | Indiana Election Division |
| Judge of a circuit, superior, county, probate, or small claims court; prosecuting attorneys | Indiana Election Division |
| All other county offices | county election board |
| All township offices | county election board |
| All city offices (including city judges) | county election board |
| Town offices in towns over 3,500 population, in Marion County, or which have an agreement with the county election board under IC 3-10-7-4 | county election board |
| Town officers in towns under 3,500 population (without an agreement under IC 3-10-7-4) | county election board |
| Party officers (precinct committeemen and state convention delegates) | county election board |

**Note: The deadline to withdraw a declaration of candidacy is noon, 71 days before the primary election. (IC 3-8-2-20) Once nominated, the deadline to withdraw as a candidate is noon, July 15. (IC 3-8-7-28) The deadline for a candidate nominated by petition or for a write-in candidate to withdraw is also noon, July 15. (IC 3-8-2-2.7; 3-8-6-13.5) There are procedures for a disqualified candidate to be removed from the ballot after July 15. (IC 3-8-1-5; 3-8-7-29; IC 3-8-8)**

## DISQUALIFICATION AS A CANDIDATE OR OFFICEHOLDER

An individual can be disqualified as a candidate or removed from office if the individual becomes **ineligible to become a candidate or hold an office because of failing to comply with a specific requirement under state law.** For example, IC 3-8-1-5 prohibits anyone from being a candidate or being elected to public office who:

1) gave or offered a bribe, threat, or reward to procure the person's election;
2) entered a plea of guilty or nolo contendere to a felony;
3) was convicted of a felony under IC 35-50-2-1;
4) has been removed as a judge or prosecuting attorney by the Indiana Supreme Court and seeks to be a candidate for the same office; or
5) is subject to the Hatch Act or Little Hatch Act, and would violate these federal statutes by being a candidate for federal office.

If a person is a voter of the election district a candidate seeks to represent and believes that a candidate is not eligible to be on the ballot, then the voter may file a sworn statement [Form CAN-1], with the Indiana Election Division (for federal, statewide, state legislative, judicial candidates and candidates for prosecuting attorney), or with the county election board (for all other candidates for local and school board office). The sworn statement must set forth the facts known to the voter as to why the candidate is ineligible. The Indiana Election Commission or the county election board must then conduct a hearing to determine if the candidate is ineligible.

With regard to officeholders, IC 5-8-3-1 prohibits anyone from serving as a public officer in Indiana (not a federal office) who has been ***convicted*** of:

1) evading the Selective Service Act of the United States;
2) engaging in any conspiracy or attempt to defraud the United States government;
3) any seditious utterances in violation of any of the laws of the United States; and
4) any other crime against the laws of the United States where the sentence imposed exceeds six (6) months.

Other statutes disqualify a person from holding office if the individual has been convicted of a felony (IC 5-8-1-37), is habitually intoxicated (IC 5-8-2-1), or fails to reside in the election district that the person represents. (IC 36-2-3-5, for example)

A public officer convicted of a felony while in office is removed from office by operation of law when the conviction of the person for the felony is publicly announced by a jury or the court. (IC 5-8-1-37) In other cases, if an elected official does not meet these requirements**, then an interested person can file a lawsuit in court to have the official removed. The court must decide whether the complaints made by the interested person are true, and whether or not the official should be removed from office.** A city council and town council can also remove a council member from office in certain cases. (IC 5-8-5; IC 36-4-6-6)

## RESIGNATION FROM OFFICE

An office holder may resign from office by filing a letter of resignation with the appropriate officer listed below. **In some cases, it may be necessary for a person to file a copy of the resignation with MORE THAN ONE OFFICE OR PERSON.** Unless the resignation specifies a different time or date, the resignation takes effect when filed with the first office or person required to receive the resignation. (IC 5-8-4-4; 5-8-4-5; 5-8-4-6) A person submitting a letter of resignation may not withdraw, rescind, annul or amend the resignation without the consent of the officer or person(s) having the power to fill a vacancy for the office being resigned. (IC 5-8-4-1) Political party chairpersons should also be notified in writing.

| OFFICE | WHERE TO FILE RESIGNATION |
|---|---|
| Governor, Lieutenant Governor | Principal Clerk of the House of Representatives and the Principal Secretary of the Senate |
| State Senate | President Pro Tempore of the Senate |
| State Representative | Speaker of the House of Representatives |
| All officers commissioned by the governor (state officers, judges, prosecuting attorneys, circuit court clerk, county auditor, county coroner, county recorder, county sheriff, county surveyor, county treasurer) | Governor |
| All other officers of a political subdivision (This includes all county, city, town, township, school board members, other local elected officials) | Circuit Court Clerk of the county in which the largest percentage of population of the political subdivision resides |

**NOTE: An officer or board that receives a notice of resignation must, within 72 hours after receiving the resignation, give notice of the vacancy to the officer, board or court that has the power to fill the vacancy. (IC 5-8-3.5-1)**

**If a resignation has been filed with the appropriate person or office by a person elected or selected as a major party candidate, the political party can begin the process of filling the vacant office EVEN IF THE RESIGNATION has not taken effect yet. (IC 3-13-5-1 and 3-13-11-3)** If the party fills the vacancy before the resignation takes effect, the individual selected fills the office without a "gap" following the effective date of the resignation.

## DEATH OF OFFICEHOLDER

State law (IC 5-8-6) now sets forth specific procedures requiring written notice of the death of an officeholder to be given to the authority that has the power to fill the resulting vacancy.

The person who certifies the death of an officeholder shall:

1) state the information that causes the person to believe the officeholder has died; and
2) certify, under the penalties for perjury, that to the best of the person's knowledge and belief, the information stated is true.

The certification must be filed with the following:

1) The governor in the case of the death of a person who holds state office or a person who is a judge of a circuit, superior, probate, county or city court and the governor shall, if reasonably satisfied that the information is true, fill the vacancy as provided by law.
2) The secretary of state in case of the death of a person who holds a legislative office and the secretary of state shall, if reasonably satisfied that the information is true, give notice of the death to the state chairman of the political party that elected or selected the deceased individual within 72 hours after the secretary of state determines that he or she is reasonably satisfied that the information is true.
3) The circuit court clerk of the county in which the officeholder resided in the case of the person who holds a county, city, town, township, or school corporation office not covered by section 1) above. The circuit court clerk shall, if reasonably satisfied that the information is true, give the notice to either (a) the person who must give notice of a political party caucus (state or county chairman) or to the person who must give notice of a meeting to fill the vacancy (county auditor gives notice of a meeting to the county commissioners, for example), OR (b) to the person or entity who has the power to fill the vacancy if no political party caucus is required. The circuit court clerk must give the required notice within 72 hours after the clerk is reasonably satisfied that the information is true. For example, it the entity with the power to fill the vacancy is the county commissioners or county council, then the circuit court clerk shall forward the notice to the county auditor. If the entity with the power to fill the vacancy is the city council, then the circuit court clerk shall forward the notice to the city clerk, etc.

A vacancy may not be filled until the notice is filed with the person who has the power to fill the vacancy or the person who must give notice of the caucus to fill the vacancy. The period in which to fill a vacancy by caucus does not begin until the person who must give notice of the caucus or notice of the meeting receives the notice of death.

Former laws permitting a town council to hold a public meeting to determine that a town council vacancy has occurred because of the death of a council member are repealed.

Cross references to these vacancy by reason of death provisions are added to laws providing for filling vacancies in school board offices. The remaining members of the school board fill the vacancy after the secretary of the board receives notice of the death from the circuit court clerk.

If an officeholder is removed by operation of law for conviction of a felony, a procedure to document that removal and to begin the vacancy filling process is established. The court hearing the case must file a certified copy of the sentencing order with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions. If the person's conviction is reversed, vacated or set aside, and the officer's term has not expired, the court must file a certified copy of the order reversing, vacating or setting aside the conviction with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the court's order must also give notice to the person who was selected to fill the vacancy before the court order was issued.

A court may include in a sentencing order for the conviction of a misdemeanor that the convicted person is incapable of holding a public office of trust or profit. If the court includes such a provision in a sentencing order and it results in a vacancy in office, the court must file a certified copy of the sentencing order with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions.

Whenever a court enters a judgment removing an individual from public office the court must file a certified copy of its judgment with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions.

(SEA 179 §§ 1 through 35; Effective date: July 1, 2005; Citations affected: 3-13-4-3, 3-13-5-1, 3-13-5-2, 3-13-6-1, 3-13-7-2, 3-13-7-3, 3-13-8-3, 3-13-8-4, 3-13-8-5, 3-13-8-6, 3-13-8-7, 3-13-8-8, 3-13-8-9, 3-13-8-10, 3-13-9-2, 3-13-9-3, 3-13-9-4, 3-13-10-2, 3-13-10-3, 3-13-10-4, 3-13-10-5, 3-13-11-3, 3-13-11-3.5, 5-8-1-37, 5-8-5-1, 5-8-5-3, 5-8-5-4, 5-8-6, 20-3-11-3.1, 20-5-3-3.5, 20-25-3-4, 20-26-4-4.5, 34-17-3-2, and 35-50-5-1.1)

## RECALL AND IMPEACHMENT

A **"recall"** refers to a special election held to decide if an elected official should be removed from office before the date that the official's term is scheduled to end**. Indiana does not allow for recall elections.** Although some other states do permit recall elections, the Indiana General Assembly has not enacted legislation to permit recall elections.

**"Impeachment"** is the removal of a person from office by the state legislature or a circuit court for committing a crime. (IC 5-8-1) An official cannot be impeached for making an unpopular or unwise decision. For more information, refer to the brochure on ***Referendum, Initiative, Recall and Impeachment***, published by the Indiana Election Division.

## VACANCIES IN ELECTED OFFICE

State law prescribes how to fill a vacancy in an ***elected office.*** An "elected office" is a federal office, state office, legislative office, school board office, or local office, but not a political party office (such as precinct committeeman and state convention delegate). IC 3-5-2-17.

**To determine which statutes apply to filling a vacated office, the first determination to be made is whether the elected officeholder vacating the office was elected as a Democrat or Republican.** If a local elected office holder was elected as a member of either the Democratic or Republican Party, or was selected by the Democratic or Republican Party to fill an earlier vacancy in the office, then Indiana Code 3-13-11 applies. IC 3-13-11 outlines the procedures for calling a caucus of precinct committeemen to fill a vacant elected office. An *elected* precinct committeeman is eligible to participate in the caucus regardless of when the vacancy occurred. An *appointed* precinct committeeman is eligible to participate in a caucus to fill an elected office if the appointed precinct committeeman had served as a committeeman thirty days before the vacancy occurred. A vice-committeeman of appointed committeemen is eligible to participate in a caucus to fill a vacant elected office if the vice-committeeman is the proxy for the committeeman and was serving as vice-committeeman thirty days before the vacancy occurred. A vice committeeman of elected committeemen are eligible to participate in a caucus to fill an elected office if the vice committeeman is the proxy for the elected committeeman and serves as vice committeeman 5 days before the caucus. The chair of the caucus must send a notice to all eligible people who can participate in the caucus. After the caucus has filled the vacancy, the chair must also certify who was chosen to fill the vacancy. (CEB-4 form)

If the elected officeholder was **not** elected as a Democrat or Republican, refer to the appropriate chapter in IC 3-13. IC 3-13-7 pertains to county office vacancies where the vacating officeholder was **not** elected as either a Democrat or Republican. IC 3-13-8 applies to city office vacancies where the vacating officeholder was **not** elected as either a Democrat or Republican. IC 3-13-9 applies to town office vacancies where the vacating officeholder was **not** elected as either a Democrat or Republican. IC 3-13-10 applies to township office vacancies where the vacating officeholder was **not** elected as either a Democrat or Republican. These chapters also apply if the vacating officer was not "selected" to fill an earlier vacancy by a party caucus. For more information refer to the brochure ***"Vacancies in Elected Offices,"*** published by the Indiana Election Division.

State law specifies who serves as the acting officeholder until the vacancy is filled using these procedures. If a circuit, county, city, town, or township office (other than judge or township board member) has a chief deputy employee, that employee temporarily assumes the duties of the office after taking the required oath. (IC 3-13-11-12; IC 5-4-1-1) If there is no chief deputy employee in a local government office (or that person declines or is ineligible to serve), then the office is temporarily filled by another officer designated by state law, or individual appointed to fill that office on a temporary basis. See IC 3-13-11-13 through 3-13-11-17 for details depending on the type of office vacancy involved.

## OATHS OF OFFICE

The Indiana Constitution provides that every person elected or appointed to an OFFICE under the Constitution must take an oath before assuming his or her duties.

**Who can administer oaths?**

IC 33-42-4-1 states that any of the following officials can administer an oath:

The Secretary of State of Indiana, Clerk of the Supreme Court, Notaries Public, Justices and Judges of a court, (in the court's jurisdiction), County Auditors, Mayors, City Clerks, City or Town Clerk-Treasurers, township trustees, Circuit Court Clerks and Master Commissioners, (in their respective counties, cities, towns and townships), and State Senators and State Representatives (anywhere within Indiana). A member of the Indiana Election Commission, a co-director of the election division, or an employee of the election division may also administer oaths.

Prosecuting attorneys and their deputies can also administer oaths. (IC 33-39-2-1)

**What must the oath say?**

Except for school board members, there is no specific form for the oath set forth in state statute. However, the following form should be sufficient in most situations:

STATE OF INDIANA )<br>
) SS:<br>
COUNTY OF _____ )

I do solemnly swear that I will support the Constitution of the State of Indiana and the Constitution of the United States, and will, to the best of my ability, faithfully and impartially discharge the duties of *(name of the office),* according to law.

_____<br>
Signature of Officeholder

Subscribed and sworn to before me, on this _____day of _____, 20_____:

_____ _____<br>
Signature of Person Administering Oath — Printed Name of Person Administering Oath

**NOTES**: The person administering the oath must give the person taking the oath a copy of the oath. (IC 5-4-1-2) A notary public or an official authorized to administer oaths may also be required to add documentation indicating their county of residence, and when their term of office or commission expires. **The special form of the oath for school board members can be found at IC 20-26-4-2.**

## CAMPAIGN FINANCE ISSUES

Nearly all candidates for elected office are responsible for the establishment of a principal candidate's committee and periodic financial disclosure reports throughout an election year. Indiana Code 3-9 pertains to the administration of the campaign finance laws, and IC 3-9-1-1 states that the campaign finance laws apply to all candidates' committees, regular party committees, political action committees and legislative caucus committees.

There are a few entities that ARE NOT required to organize a campaign finance committee and file reports with either the Indiana Election Division or individual county election boards. Those exceptions are:

- Candidates for local offices for which the annual compensation is less than $5,000, and who do not receive more than $500 in contributions or spend more than $500 in expenditures campaigning for the office; and

- Candidates for school board offices, unless the candidate receives more than $500 in contributions or spends more than $500 in expenditures campaigning for the office;

- Candidates for election for precinct committeeman or delegate to a state convention;

- Auxiliary party organizations as defined by IC 3-5-2-2.5.

Each county election board or board of elections and registration must compile and maintain a listing of all campaign finance statements and reports pertaining to each candidate, committee and local public question. These statements and reports must be available to the public for inspection and copying no later than the end of the second business day following the day during which the county election officials received the filings. (IC 3-9-4-5)

County election boards are responsible for enforcing civil penalties for any delinquent or defective reports, and must administer the appropriate auditing and notification to the delinquent filers as required by Indiana Code 3-9-4. Particular attention should be directed to IC 3-8-1-1.6 and IC 3-9-4-14, which details the specific duties the county election board must perform to enforce the campaign finance laws.

The county election board must notify delinquent filers of the reports that were due at their offices and must also post a listing of delinquent filers in a public place or near the entrance to the county election board's office(s). The county election board MUST then assess civil penalties against *delinquent* filers in the amount of fifty dollars ($50) for each day that the statement or report is late, with the afternoon of the final date for filing the statement or report being calculated as the first day of the penalty. (IC 3-9-4-17(c)) The civil penalty cannot exceed $1,000, plus other costs incurred by the county election board, such as certified mailing costs. For a committee or organization that files a *defective* report, the county election board must send a notice stating that the statement or report is defective and allow the committee or organization five (5) days to correct any deficiencies. The civil penalty is $10 for each day that the report is not corrected after the expiration of the 5-day period, not to exceed a total of $100. (IC 3-9-4-19)

Pursuant to IC 3-9-4-17(h), proceedings of the county election board to enforce the campaign finance laws are governed by the Administrative Orders and Procedures Act. (IC 4-21.5) The county election board should provide at least five (5) days notice to a committee of any hearing before the board. (IC 4-21.5-3-20) The notice should include a description of the time, place, and nature of the hearing. After the hearing, the county election board should issue an order reflecting the action taken by the board, including written findings that support the order. (IC 4-21.5-3-27)

County election boards are allowed some discretion under Indiana law to waive or suspend all or some of the required civil penalties established in Indiana law for unusual or mitigating circumstances. The suspension or waiving of all or any of the civil penalties will be made based upon an audit and investigation by the county election board or officials and at a public meeting to which all interested parties have received adequate notification.

Indiana Code 3-9-4-19 states that: "…[I]f upon the unanimous vote of its entire membership… a county election board finds that imposition of a civil penalty required to be imposed would be unjust under the circumstances; the….board may do either of the following:

1) Waive the penalty.
2) Reduce the penalty to an amount specified by the….board."

This law requires the waiving or reducing of a civil penalty to be based on a unanimous vote of the entire county election board, so the individual members may need to have an active role in the collection and auditing of the committee reports and statements. See the *2006 Indiana Campaign Finance Manual*, published by Indiana Election Division for more detailed information.

**After a primary or general election, a defeated candidate may choose to disband a committee, but the candidate is not required to do so.** However, if a candidate keeps a committee open, that committee is required to continue filing reports (at least on an annual basis every January).

On occasion, a candidate's committee or political action committee will cease to exist without filing the required final report. If this occurs, the county election board can act to disband the committee (rather than continue to send delinquency notices and assess fines without any hope of collecting them).

Under IC 3-9-1-12, no later than the last Friday in January of each year, the county election board is to review the list of open committees that file campaign finance reports with that office. If the board notes that a committee has not filed reports during the previous three years, and that the committee had less than $1,000 of cash on hand, according to the last report filed, the board can begin a proceeding to formally dissolve this committee. The board must send a notice by certified mail to the chairman and treasurer of the committee at their last known addresses. The notice must state that the board will conduct a hearing on a specific date to dissolve the committee. If the board conducts the hearing, and finds that the committee should be dissolved, then the board issues an order disbanding the committee. The board then arranges for the publication of a legal notice stating the name of the committee and the date that the committee was disbanded. The entire text of the order is not required to be published in the legal notice.

The process of administratively disbanding a committee takes some time, but can be worthwhile as a way to clean up campaign finance databases maintained by the county.

## VOTER REGISTRATION ISSUES

**In Indiana, a person cannot vote on Election Day unless the person has previously registered to vote.** To be eligible to become registered, a person must meet standards established by both the United States and the Indiana Constitution. **When registering to vote in Indiana, a person does not declare any party affiliation, unlike in some other states**. Registering to vote is a non-partisan function of government.

In Indiana, voter registration is conducted pursuant to the National Voter Registration Act (NVRA). All voter registration applications must be processed at the county level and approved or rejected by the county voter registration office. Under a transitional provision that expired July 1, 2006, a county voter registration office shall process a voter registration application transmitted in electronic format from a license branch and is not required to receive the paper copy of the application from the license branch before approving or denying the application and mailing a notice of approval or denial to the applicant. Refer to the ***Voter Registration Guidebook***, published by Indiana Election Division, for detailed information regarding this process.

## REGISTERING TO VOTE

To register to vote in Indiana a person must be: (1) at least eighteen (18) years of age; (2) a United States citizen; and (3) a resident of the precinct for at least thirty (30) days prior to the election. (IC 3-7-13-1)

A person who on the day of the next general or municipal election ***will*** meet these age and residency requirements may register to vote in that precinct. Therefore, a 17-year-old who will meet these requirements on the day of the next general or municipal election may register and vote in a primary election.

**A 17-year-old may vote for *nomination* of candidates only.**

**A 17-year-old *may not* vote for offices elected at the primary, such as school board, or on public questions decided at the same time as the primary.** Precinct committeemen and state convention delegates are political party offices, not "elected offices" under the Indiana election code. **A 17-year-old *may not* vote for precinct committeeman or state convention delegates in a primary election.** (IC 3-7-13-3)

A person is only required to register once, so long as they remain a resident of the precinct and are not convicted and imprisoned for a crime in accordance with federal or state law. While voter registration is closed immediately before and after an election, the following registration deadlines are observed in Indiana: (IC 3-7-13-8):

(1) Beginning December 1 (or the first Monday in December if December 1 falls on a Saturday or Sunday).
(2) Registration in the county voter registration office ends on the twenty-ninth (29) day before the primary election;
(3) Registration reopens two weeks after the primary.
(4) Registration in the county voter registration office ends on the twenty-ninth day before the general election.

**If a county voter registration office receives a registration application during the "closed" registration period, the application will be retained and processed. However, the applicant's name will not appear on the poll list for the next election. The application will be identified as "pending" in the statewide voter registration system.**

**Some military voters and their family members may register until noon on election day.** (IC 3-7-36-14)

## STATEWIDE VOTER REGISTRATION SYSTEM

The Secretary of State and the Co-Directors of the Election Division have established a statewide voter registration system to implement the requirements of the Help America Vote Act of 2002 (HAVA) and Indiana law.

## REGISTRATION FORMS AVAILABLE ON ELECTION DIVISION WEBSITE

The Election Division makes voter registration forms available on its Internet website. **Indiana law does not permit direct registration from the website.** The form must be downloaded from the Division's website, printed, signed, and forwarded to the appropriate county voter registration office or to the Election Division. (IC 3-7-31-1)

## VOTER REGISTRATION FORMS DO NOT HAVE TO BE PRINTED ON CARD STOCK

The state law that required that voter registration forms be printed on durable card stock was repealed in 2001. Therefore, voter registration forms no longer have to be printed on card stock. (statute repealed IC 3-7-31-6)

## STATE AGENCIES WITH AN ELECTRONIC LINK TO THE STATEWIDE VOTER REGISTRATION SYSTEM

Using the statewide voter registration system, the Indiana Department of Health and the Indiana Department of Correction make information concerning deceased voters and incarcerated individuals available to the Election Division electronically. (IC 3-7-45-8; 3-7-46-4)

## VOTER IDENTIFICATION NUMBER

Each individual applying to register to vote is ***required*** to provide a "voter identification number." This number must either be the Indiana driver's license number issued by the Bureau of Motor Vehicles (BMV). If an individual does not have a BMV-issued driver's license, the individual must provide the last four digits of the individual's social security number as a voter identification number. If the individual does not have a BMV license number or a social security number, the individual will be assigned a voter identification number by the statewide voter registration system.

During an election, a precinct election clerk must explain the voter identification number to each voter and request that each voter provide (or update) the voter's identification number on the poll book. However, the clerk must also explain that a voter is ***not required*** to provide a voter identification number at the polls in order to vote. If a voter does give a voter's identification number, then the county voter registration office updates the voter's registration to include that information. (IC 3-5-2-50.1; 3-7; 3-7-13-13; IC 3-10; IC 3-11)

## ADDRESS CONFIDENTIALITY PROGRAM

Indiana law establishes an address confidentiality program for persons who are victims of domestic abuse. A person who applies to the Indiana Attorney General and qualifies under this program may designate an address provided by the Attorney General as his or her address for service of process and receipt of mail.

Like an absent uniformed services voter, a participant in this program is entitled to an absentee ballot in any election that is conducted during the twelve (12) months following the date of the application. The absentee ballot application allows the program participant to provide the address designated by the Attorney General as the mailing address for receipt of the absentee ballot.

The name, address, telephone number, and any other identifying information relating to a program participant, as contained in a voting registration record, is confidential for purposes of Indiana's public records law. The county voter registration office may not disclose for public inspection or copying a name, an address, a telephone number, or any other information described in this subsection, as contained in a voting registration record except as follows:

1) To a law enforcement agency, upon request;
2) As directed by a court order. (IC 3-11-4-6; IC 5-26.5; IC 5-14-3-4(a)(1))

## DISFRANCHISEMENT WHILE IMPRISONED

A person who has been **convicted** of a crime **AND imprisoned following conviction** is ineligible to vote while in prison and is removed from the registration rolls. IC 3-7-46-2 specifies:

**"**A person imprisoned following conviction of a crime is disfranchised during the person's imprisonment."

This law prevents a person from voting or qualifying as a candidate while imprisoned after conviction of any crime." *However, a person who is imprisoned but has not been convicted (meaning a person who is imprisoned awaiting trial), is still eligible to vote or run for office*.

In addition, while a person may be subject to an order issued by a court, some orders are not considered "imprisonment" for purposes of this statute. More specifically, a person who is:

1) on probation;
2) on parole;
3) subject to home detention under IC 35-38-2.5; or
4) placed in a community corrections program under IC 35-38-2.6;

is eligible to register and to vote. (IC 3-7-13-5; IC 3-7-13-6)

Through the statewide voter registration system, the election division forwards to the county voter registration offices lists of disfranchised individuals provided from the Indiana Department of Correction. Each county sheriff is also required to provide the county voter registration office with lists of disfranchised persons in the county jail. (IC 3-7-46-6) The county voter registration office must notify the person of disfranchisement by sending a notice (Form VRG-17), to the person's last known address. (IC 3-7-46-8; 3-7-46-9)

After a person is released from prison, the person may apply to register to vote, even if the person is on probation, parole or performing community service. (IC 3-7-13-6)

Many of these issues are discussed in more detail in the *Voter Registration Guidebook* published by the Indiana Election Division.

## BALLOTS

With all of the new advances in modern technology, a candidate cannot be elected, nor can voters vote unless they have *something* to cast a vote upon. Therefore, a county election board must provide a ballot to each voter.

In Indiana, voters in Indiana cast their ballots through a variety of methods. Some counties use a ballot card upon which the voter marks their selections with a pen or pencil. These ballot cards are "read" by an electronic card reader and tabulated. This is called an "optical scan" voting system. Other Indiana counties vote upon a direct record electronic voting system (or "computerized voting system"), in which voters cast their ballot selections on the face of the unit. Whichever voting system is used, each county must prepare a "ballot" in some form for use on both Election Day and for absentee voting purposes. In some special elections, or small town elections, a traditional hand-counted paper ballot may still be used.

There are very specific Indiana statutes spelling out the format and language requirements that apply to optical scan ballots (IC 3-11-13) and direct record electronic voting system ballots (IC 3-11-14). The ballot requirements discussed below are general provisions taken from the traditional hand-counted paper ballot statutes (IC 3-11-2). A county election board or ballot printer must carefully study the statutes that apply to the ballot being printed for optical scan or direct record electronic voting systems.

A special ballot, the "federal write-in ballot", is prepared for military and overseas voters by the Department of Defense. On this ballot, a voter writes-in the names of candidates for federal office. Indiana also prepares a special write-in ballot that these voters can use to vote for statewide offices and public questions (Form ABS-3).

## BALLOT INFORMATION

Generally speaking, the information contained on a ballot does not change from a primary to a general election. Ballot instructions, order and placement of offices and ballot standards will not differ significantly between the two elections. However, the primary ballots may be of different colors than the ballots used in a general election. Since Indiana law only permits a voter to receive a primary ballot that lists the candidates of **one party**, state law ***requires*** the paper ballots and ballot cards of each party participating in the primary be **distinctively marked or be of different colors to be easily distinguishable.** (IC 3-10-1-13; 3-10-1-17) However, state law does not require that **the primary ballot(s) be printed in any specific colors,** so long as this requirement is met.

When a voter enters the polling location during a primary, the voter must provide the poll clerks with the voter's name and designate a political party affiliation **if the voter wishes to cast a primary ballot. (**IC 3-10-1-24)

**NOTE: A voter who DOES NOT wish to vote in a primary, but wishes to vote for school board offices or on a public question on the ballot at a primary IS NOT REQUIRED TO DESIGNATE THE VOTER'S PARTY, AND MUST BE PERMITTED TO VOTE ONLY IN THE SCHOOL BOARD ELECTION OR ON THE PUBLIC QUESTION. The county election board must provide a means, whether by separate ballot or by "locking out" positions on a voting system, to allow a voter to vote only for school board or on a public question without giving the voter who does not declare party affiliation access to the primary ballot.**

After verification of the voter's registration status, the voter is given a ballot containing the names of the candidates of the party of the voter's choice. However, if all of the candidates for election as a party's precinct committeemen or state convention delegate are unopposed, the names of those unopposed candidates will not be printed on the primary ballot unless the appointed member of the county election board representing that party files a written request for the unopposed candidates to appear on the party's primary ballot. (IC 3-10-1-5)

## SEPARATE BALLOTS

The Election Division ***no longer*** prepares ***any*** primary election or general election ballots, with the exception of the Form ABS-3 write-in ballot for military voters discussed below.

**Each county election board prepares all primary ballots,** with the names of all candidates for major political party nominations, the names of the candidates for election as precinct committeemen and delegates to the state political party conventions, and any other offices or elections on a public question held at the same time as the primary election. The voters of some school corporations elect nonpartisan candidates to serve on their school corporation's governing board at the same time as the primary election is held.

**Each county election board is now responsible for preparing all general election** ballots with the names of **all** candidates for federal offices, statewide offices, state legislative offices, local offices, and school board offices. The county election board also prepares ballots containing any applicable local public questions. **The county may print all general election offices on a single ballot.** (IC 3-11-2-2)

The Election Division is responsible under state law, for preparing a special ballot for military voters who are stationed outside of the United States and overseas voters. These voters will be able to cast a special "early" absentee ballot. This ballot is similar to the federal write-in ballot, and will not contain party or candidate names. Instead, this ballot will list all "statewide" offices on the general election ballot and statewide public questions, other than judicial retention questions. Military and overseas voters may then write-in the names of parties or candidates. The Division must supply this ballot to clerks by June in each general election year. If the voter ALSO applies for and returns a regular county absentee ballot, the special "early" absentee ballot is not counted. (IC 3-11-4; IC 3-11-10-12)

## BALLOT SIZE, COLOR, AND BALLOT VARIATION CODING

All ballots must be of **uniform size and quality.** The ballots must also be of sufficient thickness so that the printing cannot be distinguished from the back of the ballot.

**The Indiana law requiring that hand counted paper ballots used in general elections must be specific colors has been repealed.** (IC 3-11-2-4) *Optical scan ballot cards* used in general elections are not required to be printed in any specific color. Primary ballots *may* be printed in different colors to distinguish one party's ballot from the other. (IC 3-10-1-17). If pasters must be applied to a ballot, the pasters must be of the same color as the ballot paper. (IC 3-11-3-29)

A ballot may also contain a *ballot variation code* to ensure that the proper ballot is used in a precinct. (IC 3-11-2-10(f))

## GENERAL INSTRUCTIONS FOR ALL BALLOT TYPES

The following cautionary statement must appear, underlined, at the top of all ballots:

**"It is a crime to falsify this ballot or to violate Indiana election laws."** (IC 3-11-2-7)

Ballots must also contain written instructions for casting a vote. (IC 3-11-2-8) Although the instructions can vary based on the type of voting system used, the language must include instructions for casting a straight party vote. (IC 3-11-2-10(b)) The instructions must be in English and any other language that the county election board considers necessary so that the voter will not be confused.

The ballot shall also contain a statement indicating the number of candidates for each office for which a voter may cast a vote. These instructions should read, "Vote for no more than (insert number of candidates to be elected) candidates for this office." (IC 3-11-2-14.5) Additional special ballot instructions must be added for at-large county, city or town council candidates, and for school board candidates. (IC 3-11-2-12.7; 3-11-2-12.9; 3-11-2-14.5)

**NOTE: State law REQUIRES the following language to be printed on each ballot:**

**"A write-in vote will NOT be counted unless the vote is for a DECLARED write-in candidate."**

***This instruction must be printed even IF there are no declared write-in candidates who have filed. The name of a write-in candidate is NEVER printed on the ballot.***

**There are also special instructions that must be printed IF there is more than one independent candidate on the ballot. (IC 3-11-2-10)**

## CANDIDATE NAME AND PARTY DEVICES: ORDER AND SPECIFICATION

**In a primary election, candidate names are listed in alphabetical order according to surname** under each office and given a numerical designation. A special "ballot lottery" procedure is used in Lake County.

**If no candidate files for a party's nomination in a primary, the ballots may contain the phrase "no candidate" under that office heading or the office may be omitted from that party's primary ballot.** The party's county chair, or county election board member, may have a preference in these cases.

**In a general election, the nominees of a political party are listed on the ballot according to the results of the last election for the office of secretary of state in the county**. Political parties will be listed on a ballot in the following order (IC 3-11-2-6):

1) The party device and nominees of the party whose candidate received the highest number of votes in the county in the last election for secretary of state (2002) will be placed in the first row or column.
2) The party device and nominees of the party whose candidate received the second highest number of votes in the county in the last election for secretary of state (2002) is placed second on the ballot.
3) The party device and nominees of the party whose candidate received the third highest number of votes in the county in the last election for secretary of state (2002) is placed third on the ballot. This will be the location for the Libertarian Party device and candidates in every Indiana county.

Other political party tickets and independent candidates will be placed on the general election ballot in the order in which the party or candidate's petition of nomination is filed with the Election Division or circuit court clerk, as appropriate. (IC 3-11-2-6, 3-11-2-13, 3-11-2-14, IC 3-11-2-14.5) ***Refer to Indiana Code 3-11-2 for the specific ballot/candidate order for individual offices and for instructions that apply when there are candidates for "at large" seats on the ballot.***

For all hand counted *paper ballots* that are printed, each party device must be enclosed in a circle **not less than three-fourths of an inch (3/4")** in diameter. (IC 3-11-2-9) The names of the candidates must be placed **three-fourths of an inch (3/4")** apart from center to center of the name. The name of each candidate must have, immediately on its left, a square that is **three-eights of an inch (3/8")** on each side. (IC 3-11-2-9)

**If the individual serving as circuit court clerk is a candidate for re-election, or election to another office, then the name or signature of this individual cannot appear on the ballot (except as a candidate). (IC 3-5-4-9)**

As required by IC 3-8-2-7, candidates must file their declarations and petitions with their name along with any nickname of the candidate permitted under IC 3-10-1-14. If questions arise about name usage, review the instructions in the ***Indiana Candidate Guide***, published by the Indiana Election Division.

**NOTE: Sometimes a lengthy candidate name may mean that a printer will want to use a smaller print font to "fit" the name onto the ballot. While there is no requirement to print candidate names in identical font sizes, you may wish to see if there is any other way to accommodate the candidate's name on the ballot. If not, or if a smaller font size is the most practical solution, you may wish to call the county election board's attention to the situation so that they will be aware of possible candidate complaints. As in other areas of election law, there may be no solution to this problem that makes everyone happy!**

## OPTICAL SCAN BALLOT CARDS AND DIRECT RECORDING ELECTRONIC VOTING SYSTEMS

State law contains very detailed requirements concerning the ballot layout to be used for optical scan ballot card voting systems (IC 3-11-13) and direct record electronic voting systems (IC 3-11-14). Please refer to those statutes for specific information.

The following addresses some frequently asked questions concerning ballots prepared for these voting systems:

(1) In a primary election, a party symbol is permitted on an optical scan primary ballot card. However, the party symbol ***must*** be used on primary ballot labels on DRE voting systems. (IC 3-11-14-4)

(2) If a voting system has the ability to do so, the voting system must display both the candidate's name and a ballot number or other candidate designation uniquely associated with the candidate. (IC 3-11-15-13.1)

## WRITE-IN VOTING

**All general election ballots must permit a voter to cast a write-in vote.** This requirement includes absentee ballots. A column or row for write-in candidates is NOT required if there are no declared write-in candidates for that office. However, procedures to permit write-in voting must be included on the ballots where candidates for federal offices appear.

When a column or row for write-in voting is required, each type of voting system must provide an opportunity to cast a write-in vote by using one of the following formats:

1) Paper Ballots: when required, an additional column will be placed to the right of all party and candidate columns (boxes) on the ballot. (IC 3-11-2-6)
2) Ballot Card Voting Systems: ballot cards must be folded or accompanied by a secrecy envelope to ensure the secrecy of a write-in vote. A write-in vote cast on a ballot card voting system must include both the name of the candidate and the title of the office. (IC 3-11-13-18)
3) Direct Recording Electronic Voting System: is designed so that the write-in vote is cast directly upon the voting unit in the proper space. (IC 3-11-14-23)

## BALLOT PRINTING ERRORS

Unfortunately, sometimes all of the safeguards don't work. It is, ***always, always, always*** a good idea to have as many people as possible proof the ballots before the ballots go to print. State law requires the two major political party chairmen, in addition to county election board members, have the opportunity to proof the ballots to uncover any "problems" before they show up in print. (IC 3-6-5-14)

When ballots with omissions, misprints or improperly set up systems make it into the hands of absentee voters (or worse still, election day voters), the county election board that printed the ballots must act quickly to reduce the possibility that an election result will be contested and overturned due to the ballot error. Some ballot errors are harmless. State law now specifically permits an election board to authorize the use of ballots with minor errors if the election board does not believe that the voters will be confused by the error ***and*** no voter objects to the use of the ballots. (IC 3-11-2-16) Other ballot errors are critical, and can lead to a ***court-ordered special election if a candidate contests the election due to a ballot error.***

**NOTE: If the election board is notified of a "*critical error"* during the absentee ballot process, there are procedures to permit voters to "recast" defective absentee ballots. (IC 3-11-10-1.5) The voter must first file a request for a replacement absentee ballot (Form ABS-5) before the voter is issued another absentee ballot.**

## VOTING EQUIPMENT

### Voting System Certification Process and Standards

A voting system (a direct record electronic voting system or an optical scan ballot card system) may not be marketed, sold, leased, installed, or permitted to be used in an Indiana election without first being certified by the Indiana Election Commission. Voting system vendors who violate this requirement are subject to potentially serious sanctions, such as civil penalties or revoking the right of the vendor to do business in Indiana for a specific period of time. All voting system models, including specific hardware, firmware, and software versions, are certified for marketing by vendors for a term expiring October 1, 2009. Voting systems certified after July 1, 2003 must comply with the voting system standards adopted by the Federal Election Commission in April 2002. For a list of currently certified voting systems, see http://www.in.gov/sos/elections/voters/certifiedsystems.html, or contact the Election Division.

### Traditional Hand Counted Paper Ballots

Traditional hand counted paper ballots may continue to be used in Indiana elections, along with optical scan ballot card voting systems or direct recording electronic (DRE) voting systems.

### Overvote Features

**If** a voting system **is capable** of informing a voter that the voter has cast more votes than allowed for candidates, or cast both a "yes" and a "no" vote on a public question, then these capabilities must be operable and activated during an election to inform the voter that the voter has made an error and to inform the voter how the voter may correct the error. The voting system does not have to inform the voter how the voter may correct the error if the information is provided in writing conspicuously on or near the components of the voting system where the voter votes. This does not apply to voting systems that do not have the described capability. (IC 3-11-15-13.7)

### Voting Systems for Disabled Voters

Each *polling place* must be provided with at least one voting system that permits voters with disabilities (including blind voters, visually impaired voters, and voters with mobility impairments) to cast a ballot privately and independently. Under the Help America Vote Act (HAVA), Indiana has received federal funds to assist counties in purchasing voting systems that permit disabled voters to cast ballots privately and independently.

### Voting System Reimbursement Applications

Many counties have applied for reimbursement for voting system upgrade purchases under a program established by Indiana law (IC 3-11-6.5), using federal funds under HAVA and state matching funds. For more information about the application process and requirements for reimbursement, contact the HAVA Administrator at havaadministrator@sos.in.gov in the office of the Secretary of State.

## ABSENTEE VOTING ISSUES

**Many provisions in this part of the County Election Administrator's Manual WILL NOT APPLY in a county whose county election board has adopted a resolution to provide for the central counting of absentee ballots. (IC 3-11.5-1-1.1) Contact the Election Division for more information about these procedures.**

A person who cannot be physically present to vote at the polls on Election Day does not lose the person's right to participate in the electoral process. By completing appropriate forms, a voter may cast an absentee ballot at the county election office before Election Day. To vote an absentee ballot by mail, or before a traveling board, a voter must meet certain additional qualifications.

## ABSENTEE VOTER BOARDS

Each county election board must appoint as many absentee voter boards as it believes will be necessary to administer absentee voting in the county. Absentee voter boards consist of two (2) people, one appointed from each of the two major political parties. To be eligible to serve on an absentee voter board, a person must meet all of the following qualifications (IC 3-11-10-36):

1) be a registered voter of the county;
2) be able to read, write and speak the English language;
3) may not have any property bet or wagered on the outcome of the election;
4) may not be a candidate to be voted for at the election, except as an unopposed candidate for precinct committeeman or state convention delegate; and
5) may not be the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew or niece of a candidate.

**NOTES:** Any relationship that is the result of birth, marriage or adoption would disqualify a person who is the relative of an **opposed** candidate from working on an absentee voter board. This provision **does not** apply if the candidate is **unopposed.**

**A person who is a candidate to be voted on at the election, or who is related to a candidate in a manner that would disqualify the person from serving, may still serve as an absentee voter board if:** (1) the candidate is seeking nomination or election to an office that is not county-wide (a city or township, for example); and (2) the county election board restricts the duties of the person on the absentee voter board to functions that could have no influence on the casting or counting of absentee ballots within that election district.

The county chairmen of each of the two major political parties make nominations for appointment to an absentee voter board. Not later than noon 10 days before absentee voting begins, the county election board must notify the county chairmen of the number of nominations that will be needed. The county chairmen must notify the county election board of their nominations not later than noon three (3) days before absentee voting begins. The county election board **must** appoint those persons nominated by the county chairmen. If a county chairman fails to make the nominations, then the county election board may appoint any voter of the county subject to the qualifications listed above. (IC 3-11-10-37)

A voter appointed to an absentee voter board is entitled to compensation. A member of an absentee voter board must be compensated using the following standards (IC 3-11-10-38):

1) traveling absentee voter boards are entitled to a per diem in an amount set by the county executive (county commissioners) per day and reimbursement for mileage paid at a rate set by the county council;
2) absentee voter boards assigned to the office of the clerk of the circuit court are entitled to a per diem set by the county executive (the county commissioners);
3) absentee voter boards assigned to deliver voted absentee ballots to the precincts on Election Day are entitled to a per diem and reimbursement for mileage paid at a rate set by the county council.

A member of an absentee voter board must receive training from the county election board before beginning to perform the member's duties. (IC 3-11-10-39)

## ABSENTEE BALLOT PRINTING

In addition to printing ballots used on Election Day, each county election board must print absentee ballots. ***Not less than sixty (60) days*** before the date of a primary, general or municipal election, the circuit court clerk must estimate the number of absentee ballots that will be required in the county for the election. (IC 3-11-4-10) After completing the estimate, the county election board shall immediately begin to have these ballots printed. (IC 3-11-4-14) The absentee ballots ***must*** be delivered to the circuit court clerk ***at least forty-five (45) days*** before a primary, general or municipal election, or ***at least thirty-eight (38) days*** before a presidential election. (IC 3-11-4-15)

All absentee ballots, regardless of whether or not they are mailed or voted in person by a voter must have the following three validations placed upon the back of the ballot **before being issued to a voter:**

1) the circuit court clerk's official seal (stamp);
2) the signature or facsimile signature of the circuit court clerk (unless the clerk is a candidate – see below); and
3) the initials of both members of an absentee voter board. In the case of a mailed absentee ballot, the initials of the two appointed members of the county election board could be substituted for those of the absentee voter board. In the case of a ballot delivered by an absentee voter board, the ballot must be initialed by the absentee voter board delivering the ballots or (where a county election board adopts a resolution to permit this procedure), by the county election board or the election board member's representative. (IC 3-11-4-19; 3-11-10-19; 3-11-10-27)

**If the individual serving as circuit court clerk is a candidate for re-election, or election to another office, then the name or signature of this individual cannot appear on the ballot (except as a candidate). Instead, the ballot must contain a uniform device or symbol prescribed by the Indiana election commission. (IC 3-5-4-9)**

***The inspector at the precinct may reject absentee ballots that are not initialed. (IC 3-11-10-17)***

In the case of a recount or contest petition, an absentee ballot that does not have the initials of the absentee voter board or the county election board members runs the risk of not being counted. (IC 3-12-1-13) If the ballot lacks the clerk's seal and signature (or the alternative state prescribed device or symbol), the ballot may also be challenged if there is evidence of fraud. (IC 3-12-1-12) ***Therefore, it is important that each absentee ballot is validated!***

Unless the validity of an absentee ballot application has been challenged in the procedure set forth by state law (IC 3-11-4-18.5), absentee ballots **must** be mailed on the day of the receipt of the voter's application or within five (5) days after the ballots are delivered to the clerk, whichever is later. (IC 3-11-4-15; IC 3-11-4-18)

***EXAMPLE:*** *Suppose that absentee ballots are delivered to the circuit court clerk on the 50th day before an election. If an unchallenged absentee ballot application is received on the 60th day before the election, then the ballots must be mailed out by the 45th day (meaning five days after delivery on day 50), to all voters who have already submitted an absentee application.*

In all cases where unchallenged applications have been received before the 45th day (or 38th day) preceding the election, the ballots **must** be mailed out no later than this 45th day (or 38th) , which is the last day for the printing of all absentee ballots.

NOTE: **When mailing any overseas or military absentee ballots, a special federal ballot envelope provided by the Federal Voting Assistance Program may be used. More information may be obtained from the Federal Voting Assistance Program at*: www.fvap.ncr.gov.***

## ELIGIBILITY TO CAST AN ABSENTEE BALLOT IN PERSON

**An otherwise qualified voter of the county can cast an absentee ballot in person in the office of the circuit court clerk or a satellite office without stating a reason for doing so on the application.** If a voter votes at the clerk's office or a satellite office, the voter is no longer required to attest that the voter is confined, a voter with disabilities, elderly, working at the polls in a precinct other than where the voter resides, a specific, reasonable expectation of being absent from the county on election day, or working during the entire 12 hours the polls are open, observing a religious holiday, or participating in the Attorney General's confidentiality program. **This exemption from stating a reason to vote by absentee ballot does not apply to absentee voting by mail or by traveling board.** (IC 3-11-4-1; 3-11-4-2; 3-11-4-18; 3-11-10-24; 3-11-10-25; 3-11-10-26)

## PHOTO IDENTIFICATION AND ABSENTEE VOTING

An absentee voter casting a ballot before an absentee board in the office of the circuit court clerk (or a satellite office of the clerk) before election day is required to provide proof of identification in the same manner as a voter who casts a vote in person at the polls on election day. (See "Photo Identification" section of this Manual.) (IC 3-11-10-26)

If the voter is unable or declines to present the identification, the voter is permitted to cast an absentee ballot, which shall be treated as a provisional ballot. However, an absentee voter casting a ballot by mail or before a traveling board is not required to provide proof of identification when casting the absentee ballot.

## ABSENTEE VOTING PROCEDURES

The absentee ballot may be cast by mail, in the office of the circuit court clerk, or before representatives of the county election board who travel to the confined voter. To facilitate absentee voting, the county election board appoints enough two-member bipartisan absentee voter boards to meet the needs of the county. A county election board may adopt a resolution to authorize the circuit court clerk to establish satellite offices (other than the clerk's office) in the county where voters may cast absentee ballots before an absentee voter board. The county election board must adopt such a resolution by unanimous consent of the entire membership of the board. The resolution must state the locations and hours of operation of any satellite offices. The voting procedures at these offices must be substantially the same as the procedures for absentee voting at the clerk's office. (IC 3-11-10-26; IC 3-11-10-26.3)

**Voters eligible to vote by absentee ballot may select the appropriate method for casting the ballot.** A voter must specify one of the following three ways in which to cast their absentee ballot:

1) A qualified voter may request that the ballot be mailed to them. The ballot is mailed to the voter at the address listed on the application, whether ***outside or inside*** the voter's county of residence. (IC 3-11-4-18; IC 3-11-10-24) In this case, a voter is mailed an envelope, postage fully prepaid, and provided a return envelope with the voter's affidavit also postage prepaid by first class mail. (IC 3-11-4-20; IC 3-11-4-21)
2) A qualified voter may also vote before an absentee voter board at the county courthouse or other designated location for absentee voting in the county. An absentee ballot voted before an absentee voter board must be cast ***not more than 29 days before the election nor later than noon on the day before the election.*** (IC 3-11-10-26)
3) A qualified voter confined within the county because of illness or injury, a voter caring for a confined person, or a disabled voter whose precinct is not accessible to a disabled voter may vote an absentee ballot before a traveling absentee voter board. An absentee ballot voted before a traveling absentee voter board must be cast on ***any of the twelve (12) days*** immediately preceding the election. (IC 3-11-10-25)

**NOTE: State law permits a traveling board to go *OUTSIDE* of the county to provide a ballot to a confined voter IF the county election board unanimously agrees to permit out-of-county travel. (IC 3-11-10-25) Also, a disabled voter who is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope MUST vote before a traveling absentee voter board. (IC 3-11-10-24)**

**If the county election board determines by a unanimous vote that an otherwise qualified voter has been hospitalized or injured after the deadline to apply for an absentee ballot, the board may authorized the person to vote by absentee ballot. (IC 3-11-4-1(b))**

## QUALIFICATIONS TO VOTE BY MAIL OR BEFORE A TRAVELING BOARD

For voters voting absentee by mail or before a traveling board, a voter who is otherwise qualified to vote in person may vote by absentee ballot if the voter meets one of the following qualifications. (IC 3-11-10-24; 3-11-10-25)

**A voter may vote by absentee ballot by mail if the voter expects to be:**

1) Absent from the county on Election Day and has a specific, reasonable expectation of being absent during the entire 12 hours that the polls are open;
2) Absent from the precinct of the voter's residence on Election Day because of working as a precinct election officer, a watcher, a challenger or pollbook holder, or as a person employed by an election board to administer the election for which the absentee ballot is requested;
3) Confined on Election Day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury during the entire 12 hours that the polls are open;
4) A voter with disabilities;
5) An elderly voter (a voter at least 65 years of age);
6) Prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury during the entire 12 hours that the polls are open;
7) Scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open;
8) Prevented from voting due to observance of a religious discipline or religious holiday during the entire 12 hours the polls are open; or

(9) Participates in the Attorney General's address confidentiality program (for domestic abuse). (IC 3-11-10-24)

**A voter may vote an absentee ballot by traveling board if the voter:**

1) Expects to be confined due to illness or injury;
2) Expects to be caring for a confined person at a private residence; or
3) A voter with disabilities who believes the voter's polling place is not accessible. (IC 3-11-10-25)

**IMMEDIATELY upon receiving an application to vote absentee, determine if the applicant is a registered voter of the precinct.**

**If the applicant is not a registered voter of the precinct, their application must be *DENIED.***

**If the voter has changed addresses or name *within the precinct,* then the application serves as a change of address or name request, and the application may be processed. The voter registration record should be updated before Election Day, if possible, to reflect the address change.**

**If the new address of the applicant is *outside* the precinct, the voter must complete a change of address or, if eligible, use the proper form to transfer the voter to the proper precinct. (see Form VRG 4/12) (IC 3-11-4-17.5)**

**If the voter is required by law to provide additional documentation of the name and address of the voter as part of the registration process**, but has not yet provided that documentation to the county voter registration office, then the county election board must approve the application if the application otherwise complies with state law. However, the county election board must attach a notation to the application indicating that the applicant will be required to provide this additional documentation to the county voter registration office before the absentee ballot may be counted. The county election board must also send a notice to the voter stating that the voter is required to provide this additional documentation to the county voter registration office no later than 6 p.m. on Election Day for the absentee ballot to be counted. (IC 3-11-4-18)

## Absentee Ballot Applications

## ABSENTEE BALLOT APPLICATION FORMS

Whether submitted in person or by mail, absentee ballot applications must be made on forms furnished by the county election board, except for the special federal form for military and overseas voters. Forms must be mailed to voters who have filed requests with the circuit court clerk. Applications must be distributed to all other people who request them. Additionally, applications must be furnished to all central party committees in the county by the following dates (IC 3-11-4-4):

1) January 15, for a primary election; and
2) June 15, for a general election.

Absentee ballot applications must require the applicant to swear or affirm that all of the information set forth on the application is true to the best of the applicant's knowledge or belief. The absentee ballot application must also require a person who assisted with the completion of the application to swear under the penalties of perjury to the statements required to be made by the assisting person on the application. The absentee ballot application must also set forth the penalties for perjury. These absentee ballot application requirements do not apply to certain military and overseas voters who swear an oath specified under federal law.

A voter must sign the voter's own absentee ballot application, except for certain voters with disabilities. If a disabled voter cannot sign the application, the voter can name a person to hold the voter's power of attorney, and this person may then sign the absentee application for the voter. The county election board can designate a person to sign the voter's application if the disabled voter has not named a person to hold the voter's power of attorney. (IC 3-11-4-2)

A person may provide another person with a "pre-completed" absentee ballot application with the following items provided:

1) the voter's name;
2) registration or mailing address;
3) date of birth; and
4) voter identification number.

However, a person is prohibited from providing another person with an absentee ballot application with the following items "pre-completed" on the application:

1) the address to mail the ballot (other than the individual's own registration address);
2) the party ballot choice in a primary election;
3) the types of absentee ballots (such as presidential only, or school board only); and
4) the reason why the voter is qualified to vote absentee by mail or before a traveling board.

The county election board shall deny a pre-completed absentee ballot application if the application is challenged by a county election board member or absentee voter board member in a sworn affidavit, and the county election board, after conducting a hearing, determines that the absentee ballot application violates this requirement. (IC 3-11-4-2)

If a person assists another person in completing an absentee ballot application, the person assisting must state the following information on the application under the penalties of perjury:

1) The name, address, and telephone numbers of the person assisting.
2) The date of the assistance.
3) That the individual assisting complied with state laws regarding submitting applications (such as timeliness).
4) That the person assisting had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.

A person who receives an absentee ballot application from another person must file the application with the county election board by noon 7 days after receiving it, or by the applicable absentee ballot deadline, whichever occurs first. However, this requirement for timely delivery does not apply to a postal employee or to an employee of a bonded courier company.

A person, other than a postal employee or an employee of a bonded courier company, who files an absentee ballot application other than the person's own application, must complete and file an affidavit (Form ABS-17) stating the following:

1) The name, address, and telephone numbers of the person filing the application.
2) That the individual filing the application complied with state laws regarding submitting applications.
3) That the person filing the application had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.
4) That the affidavit is completed under the penalties of perjury (with those penalties being set out on the affidavit).

The county election board shall record the date and time the affidavit was filed. (IC 3-11-4-2)

## ABSENTEE BALLOT APPLICATION DEADLINES

A voter who is eligible to vote by absentee ballot must first file a state-approved application form requesting the ballot. [Form ABS-1 or Form ABS-2] An application for an absentee ballot **must** be received by the circuit court clerk or the Lake County Election Director not earlier than ninety (90) days before an election and not later than the following dates: (IC 3-11-4-3)

1) Noon on the day before Election Day, if the voter completes the application in the office of the circuit court clerk;
2) Noon on the day before the Election Day, if the application is a mailed, transmitted by FAX, or hand-delivered application from a confined voter or person caring for a confined person and the applicant requests that the ballot is delivered by an absentee (traveling) voter board;
3) Midnight on the eighth (8th) day before Election Day, if the application is a mailed or faxed application from any other voter. (IC 3-11-4-3)

Special deadlines and procedures apply to absentee ballot applications from Military and Overseas Voters.

### Absentee Ballot Application Review

The county election board (or absentee voter board in clerk's office) must examine each absentee ballot application to determine whether:

1) the applicant is a voter;
2) the information on the application appears to be true; and
3) the application has been completed and filed in accordance with Indiana and federal law.

A county election board member or absentee ballot voter board member may challenge an absentee ballot application by filing an affidavit. The Indiana Election Commission prescribes the form of the affidavit (Form ABS-20). The affidavit must contain a brief statement of the facts indicating:

1) that the applicant is not a voter of the precinct;
2) that the application contains a false statement; or
3) that the application has not been properly executed or filed in accordance with state or federal law.

If the absentee voter board member files a challenge affidavit and the two absentee board members cannot agree on whether to approve or deny the application, the absentee voter board members shall refer the application to the county election board for determination. (IC 3-11-4-17.5)

If a challenge affidavit challenges an absentee ballot application submitted by a person who is applying to vote absentee in the clerk's office, then the absentee voter board shall provide the person with an absentee ballot and the absentee ballot will be processed as a provisional ballot on Election Day. (IC 3-11-4-17.5)

Once the challenge affidavit is filed, the county election board shall conduct a hearing on the challenge and either approve or deny the application. The county election board may also refer the matter, if appropriate, to the county prosecuting attorney as provided under current law.

The requirement that absentee ballots be mailed on the same day that the absentee ballot application is received does not apply to absentee ballot applications that have been challenged. (IC 3-11-4-18.5)

## Absentee Voter's Bill of Rights.

The Indiana Election Commission has prescribed a statement that includes information concerning: (1) the rights and responsibilities of voters in casting and returning an absentee ballot; (2) the laws concerning providing assistance to an absentee voter, completion of the ballot in secret, and return of the voted ballot; and (3) how to report election law and absentee ballot law violations. A county election board must provide a voter who receives an absentee ballot by mail with a copy of the Absentee Voter's Bill of Rights. (IC 3-5-8-2.5)

## Electioneering and Absentee Ballots

The crime of "electioneering" (a Class A misdemeanor) may not be committed in the presence of a voter known to possess the voter's absentee ballot. However, the voter's spouse, the guardian of an incapacitated voter, or a member of the voter's household is not prohibited in engaging in electioneering in the presence of the absentee voter. "Electioneering" does not include material mailed to a voter, or a telephone or an electronic communication to a voter expressing support or opposition to a candidate or a political party or expressing approval or disapproval of a public question.

## New Qualifications and Procedures for Voting Absentee By Mail

A voter who receives an absentee ballot by mail must mark the ballot in secret and seal the ballot in the envelope provided. After voting the mailed absentee ballot, the voter must then deliver the sealed absentee ballot envelope to the county election board by: 1) depositing the envelope in the mail; 2) delivering the envelope in person; or 3) delivering the envelope to a member of the voter's household or the voter's attorney in fact.

Any person who delivers a voted absentee ballot to the county election board must complete an affidavit (Form ABS-19) that contains:

1) information concerning the voter;
2) information concerning the person delivering the voted absentee ballot;
3) the person's statement that the person is delivering the absentee ballot as a member of the voter's household or the voter's attorney in fact (if the individual is an attorney in fact, they must attach a copy of the power or attorney unless it has already been filed with the county election board);
4) the date and location where the absentee ballot was delivered to this person;
5) a statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots;
6) a statement that the affidavit is executed under the penalties of perjury, including a statement of the penalties for perjury.

## WHO CAN RETURN ABSENTEE BALLOTS RECEIVED BY MAIL

A voter who is voting absentee by mail may deliver the absentee ballot envelope, after the voter has marked the ballot, to a member of a voter's household, the voter's attorney in fact, the U.S. mail, or a bonded courier company for delivery to the county election board. If any other person receives from a voter a ballot prepared by a voter for voting, the person commits a Class D felony. (IC 3-14-2-16)

## PROCESSING RETURNED ABSENTEE BALLOTS

To be counted, an absentee ballot must be returned to the county election board in time for the board to deliver the ballot to the appropriate polling place before the close of the polls on Election Day. (IC 3-11-10-3) Absentee ballots received by mail after the county election board has begun final delivery of the ballots are considered to have arrived too late and need not be delivered to the precinct polling locations. (IC 3-11-10-14) Therefore, the county election board should establish a delivery schedule that will permit a final check at the post office and still allow for delivery of any absentee ballots to the precinct polling locations with ample time for the precinct officials to process those ballots. (IC 3-11-10-11; IC 3-11-10-12)

If a voter does not receive a mailed absentee ballot, or if the ballot is spoiled or destroyed, the county election board may issue a replacement ballot, after receiving a request form from the voter to do so. (Form ABS-5) (IC 3-11-4-17.7; 3-11-4-17.8; 3-11-10-1.5)

Upon receiving an absentee ballot, the county election board or the absentee voter board in the clerk's office, must note whether the voter was required to provide additional documentation as part of the voter registration process, but had not done so when the board previously mailed out the absentee ballot to the voter. If the county voter registration office advises the board that the voter has still not provided the required documentation, then the board must add a notation to the application and to the secrecy envelope in which the ballot is contained, alerting the inspector (or central count absentee ballot counter) that the inspector must check the poll list (or other county election board certification) on election day, to determine if the voter has supplied the required documentation. If not, the inspector or counter must be advised to process this absentee ballot as a provisional ballot. (IC 3-11-10-4.5; 3-11.5-4-12)

The county election board or absentee voter board must then examine the signature of the absentee voter to determine its genuineness. The county election board should compare the signature that appears on the envelope containing the absentee ballots with the signature that appears on the voter's absentee ballot application. The county election board may also compare the signature on the ballot envelope with any other signature of the voter that is considered genuine. If an absentee voter board member questions whether a voter's signature is valid, the question is referred to the county election board. (IC 3-11-10-4)

If a voter with a disability is unable to make a signature on the absentee ballot application or absentee ballot secrecy envelope that corresponds to the voter's signature in the records of the county voter registration office, the voter may request that his or her signature be attested to by: (1) the traveling board; (2) a member of the voter's household; or (3) the individual serving as attorney in fact for the voter. If a person attests to the voter's signature, this attestation permits a county election board or team of absentee ballot counters in a central count county to determine that the signature of the voter corresponds to the voter's signature in the county voter registration records.

If the county election board is in unanimous agreement that the signature on the ballot envelope ***is not*** genuine, the board must write on the envelope the words: ***"The county election board has questioned the genuineness of the signature of this voter."*** These ballots still must be delivered to the polls on Election Day with instructions to again verify the voter's signatures. (IC 3-11-10-5)

If the county election board is unable to unanimously agree that the signature on the ballot envelope is genuine, the words: ***"Signature Disputed"***, must be written on the envelope. These disputed ballots must then be delivered to the polls on Election Day together with any documentary evidence that would assist the precinct election officials in determining the genuineness of the signature. (IC 3-11-10-6) The precinct election officials must then decide whether or not the ballot should be counted or rejected. (IC 3-11-10-7)

On Election Day, the appointed members of the county election board or members of an absentee voter board will deliver the absentee ballots to the polls. Delivery of absentee ballots **must at all times** be under the combined control of members of both major political parties. Upon delivery to the polls, the precinct inspector must sign a receipt for the ballots. (IC 3-11-10-12; 3-11-10-13)

The county election board must also deliver a certified list to the precinct election board indicating which voters who were required to provide additional documentation as part of the registration process had provided that documentation to the county voter registration office no later than 3 pm on election day. If a voter's name appears on this certified list, the voter's absentee ballot is entitled to be counted if otherwise in compliance with state law. If not, then the voter's absentee ballot is to be processed as a provisional ballot. (IC 3-11-10-12; 3-11-10-16; 3-11-10-16.5)

If a voter has an attorney in fact sign the absentee ballot secrecy envelope affidavit, a copy of the power of attorney must be attached to the envelope. The attorney in fact *may not* personally mark the ballot for the voter. (IC 3-11-4-21)

Voters may recast an absentee ballot under certain circumstances such as a ballot misprint or the death of a candidate, and prior to the absentee ballot being counted at the polls on Election Day. (IC 3-11-10-1.5) (ABS-5 form)

## MILITARY AND OVERSEAS VOTERS

The county election board must make ABS-1 (or ABS-15) absentee ballot applications available to military and overseas voters after November 20 preceding the election to which the application applies. A military voter or overseas voter may apply for an absentee ballot for the next election at any time by filing the standard absentee ballot application prescribed by the Pentagon under Federal laws.

Whenever a military or overseas voter files an application for a primary election, and indicates on the application that the voter will be absent from the county on general election day, **the application is valid for any election conducted during the period ending with the second general election following the date of the application.**

The county election board must process this application and mail ballots for all elections as if an application had been submitted for each election. (IC 3-11-4-6; 3-11-4-8)

**If an absentee ballot application from a military voter or overseas voter is denied, the county election board must provide the voter with the reason for the denial of the application.** The board must send a written notice to the voter stating the reasons for the denial. The notice must be sent not later than 48 hours after the application is denied, and sent to the voter at the address at which the voter requested that the ballot be mailed. (IC 3-11-4-17.5)

There are other special rules relating to registration and absentee voting applicable to an absent uniformed services voter. The definition of absent uniformed services voter includes a member of the Indiana National Guard deployed outside Indiana. These voters are entitled to all the rights afforded any other absent uniformed services voter.

An absent uniform services voter (or the voter's spouse or dependent) may apply to register after registration closes but before preparation of the poll list if the voter:

1) is otherwise entitled to vote in Indiana;
2) is absent from Indiana during the previous registration period;
3) returns to Indiana after the close of registration but before preparation of the poll list;
4) shows the county registration office a discharge dated on or after the beginning of the preceding registration period or a government movement with a reporting date on or after the beginning of the preceding registration period; and
5) completes a registration application.

If an absent uniform services voter (or the voter's spouse or dependent) registers under these conditions then the voter is entitled to vote in the upcoming election.

An absent uniform services voter (or the voter's spouse or dependent) may apply to register to vote after the poll list is printed until noon election day if the voter:

1) complies with (1) and (2) above;
2) returns to Indiana after preparation of the poll list but before noon election day;
3) shows the county registration office a discharge dated on or after the beginning of the preceding registration period or a government movement order with a reporting date on or after the beginning of the preceding registration period;
4) completes a registration application;
5) signs an affidavit that the voter has not voted at any other precinct in the election.

If an absent uniform services voter (or the voter's spouse or dependent) registers under these conditions then the voter is entitled to vote in the upcoming election **at the office of the circuit court clerk** any time after the voter registers **but before noon election day**. If the person votes in the upcoming election at the office of the circuit court clerk, the voter will cast an absentee ballot and the circuit court clerk will certifies that the voter registered under this statute, and the circuit court clerk will attach the certification to the voter's absentee ballot envelope.

The county election board delivers these certificates by courier to the precinct election boards at the polls on election day. The inspector attaches the certificates to the poll list in the presence of the poll clerks and the poll clerks sign a statement indicating that the inspector did so. If the person does **not** vote in the upcoming election then the circuit court clerk delivers the voter's registration application to the board of registration (if applicable). The voter is then registered effective the first day of the next registration period. (IC 3-5-2-1.5; IC 3-7-36-11; 3-7-36-14; 3-11-4-3; 3-11-10-16; 3-11.5-4-8; 3-11.5-4-9; 3-11.5-4-24)

An absentee ballot application for the primary submitted by an overseas voter that indicates the voter does not expect to be in the county on general election day is considered an **application for any election conducted during the period ending with the second general election following the date of the application.** This application must show that the voter was a resident and otherwise qualified to vote in the precinct where the voter resided before leaving the U.S.

**The county election board shall send and receive absentee ballots by fax from an absent uniform service voter or overseas voter if** the voter:

1) requests to receive and submit an absentee ballot by fax; and
2) signs and dates a statement on the cover of the fax that states: "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot." (Form ABS-9)

If the voter requests to receive and submit an absentee ballot by fax, then the fax number to which the ballot is faxed shall be recorded by the clerk's office with the other information recorded about absentee ballot application. The county election board shall send, not later than the end of the first business day after the absentee ballot is received, confirmation to the voter that the ballot was received to the fax number the voter provides for this purpose or via email if the voter provides an email address (or, if no fax number or email is provided, or the fax number or email does not permit confirmation to be sent, then by U.S. mail). Voters submitting absentee ballots by fax do not have to mark their ballot in secret and seal the ballot into an absentee ballot envelope for delivery.

The person receiving absentee ballots by fax shall: 1) note receipt of the ballot in the records as other absentee ballots; 2) fold each ballot received separately to conceal the marking; 3) enclose the ballot in a blank absentee envelope and secure the envelope (The faxed ballot may not be rejected because the ballot was sealed in the absentee ballot envelope by the person designated by the clerk to receive the ballots); 4) securely attach the faxed affidavit received with the ballot to the envelope; and 5) mark on the envelope "Absentee Ballot Received by FAX".

The county election board (or absentee voter board in the office of the clerk) shall compare the signature as it appears on the affidavit transmitted with the voter's absentee ballot to the voter's signature as it appears on the application for the absentee ballot. The board may also compare the signature on the affidavit with any other admittedly genuine signature of the voter. Once the ballot is sent to the precinct, the inspector shall compare the signature on the absentee ballot application with the signature on the affidavit attached to the ballot envelope. Otherwise, absentee ballots received by fax shall be handled and processed as other absentee ballots.

In counties where absentee ballots are counted at a central location, the absentee ballots arriving by fax after noon on Election Day may not be counted. The county election board shall compare the signature as it appears on the affidavit transmitted with the voter's absentee ballot to the voter's signature as it appears on the application for the absentee ballot. The list of voters who have voted absentee by fax will be included in the certified list of voters who have voted absentee that is delivered to the precinct by couriers. Once the inspector has marked the poll list from this list in the presence of the poll clerks, and the poll clerks have signed the statement on the certificate indicating that the inspector has done so, the certificate shall be enclosed in an envelope with the other certificates regarding absentee voters, and any challenge affidavit concerning the ballots, for delivery by the couriers to the county election board. Once the couriers return with the list signed by the poll clerks, the absentee ballot counters shall open the envelope containing the absentee ballots and compare the signature on the absentee ballot application with the signature on the transmitted affidavit. (IC 3-5-4-6; 3-11-4-7; 3-11-4-8; 3-11-4-17; 3-11-4-22; 3-11-10-1; 3-11-10-1; 3-11-10-4; 3-11-10-5; 3-11-10-6; 3-11-10-8; 3-11-10-14; 3-11-10-16; 3-11-10-7; 3-11.5-2-5; 3-11.5-4-4; 3-11.5-4-5; 3-11.5-4-10; 3-11.5-4-11; 3-11.5-4-13)

**An absentee ballot from an overseas voter or a military voter who is stationed outside of the United States will not be considered as arriving too late to be counted if the ballot is postmarked no later than election day, and is received by the noon 10 day deadline for counting provisional ballots. (IC 3-12-1-17)**

If the postmark is unclear, the county election board, by unanimous vote of the entire board, determines the postmark date. If the board cannot reach a unanimous decision about the postmark, the absentee ballot may not be counted.

NOTE: This extended deadline does not apply to all military voters, <u>only</u> to military voters stationed outside of the United States. Typically, these voters have APO or FPO addresses. (IC 3-12-1-17)

## THE POLLS

Although Oregon now conducts all of its elections solely by mail, Indiana and most other states require that an election be held at a **polling place.** Polling places are located in a wide variety of locations, including government buildings, schools, churches, fire stations and even garages in private homes. In recent years, standards regarding the accessibility of polling places for disabled voters have reduced the number of potential polling place sites in some communities, while many counties have made significant improvements in locating accessible polling sites.

Each polling place has at least one precinct election board, consisting of the inspector and the two precinct judges. Poll clerks, assistant poll clerks and sheriffs assist the precinct election board with their duties. Workers often surround polling places for political parties and candidates, including challengers, watchers, and pollbook holders.

**NOTE: ALL BONA FIDE POLITICAL PARTIES AND INDEPENDENT CANDIDATES ARE ENTITLED TO CHALLENGERS AND POLLBOOK HOLDERS FOR EACH PRECINCT IN WHICH THE POLITICAL PARTY OR CANDIDATE IS ON THE BALLOT AT THE ELECTION.**

In some special circumstances, such as nonpartisan special elections, only one judge or one poll clerk may be present at the precinct. The county election board may also provide that more than one precinct in which the special election will be conducted will be administered by the same precinct election board. (IC 3-10-8-6) The county election board may also adopt a resolution providing that election sheriffs or poll clerks will not be appointed, and that other precinct officers will perform their duties. (IC 3-6-6-38)

## POLLING PLACES

The polls for each precinct may be located in only one (1) place and are designated by the county commissioners of each county. The county commissioners (or in Marion County, the Mayor of Indianapolis as "county executive") must designate polling places **not less than twenty-nine (29) days** before Election Day. Precinct polling places are permanent and remain unchanged until the board of county commissioners orders otherwise. As a result, county commissioners are only ***required*** to designate polling places if there is a ***change.*** (IC 3-11-8-3.1)

However, each precinct does not necessarily have to have its own polling place. If a county election board adopts an order by the unanimous vote of the entire election board, the polls for a precinct may be located in an adjoining precinct. (IC 3-11-8-4.3) **In these cases, however, the poll workers must maintain separate poll books for each precinct and keep ballots separate so that each precinct has its own vote totals for candidates when the canvass is conducted.** There are special procedures for combining polling places in municipal elections and special elections. (IC 3-10-6-11; IC 3-10-8-6)

School buildings, fire stations, and other public buildings must be made available for use as a polling place without charge to the county. A county cannot be required to sign an agreement to assume liability as a condition for using the public building as a polling place. (IC 3-11-8-4)

Each polling place must be located in a facility that is accessible for elderly voters and voters with disabilities. The polling place must comply with state and federal standards concerning parking areas, paths to the facility where voting occurs, the entrance to the facility, passages within the facility, and the room or area within the facility where voting occurs. (IC 3-11-8-1.2)

If there is no accessible facility to use as a polling place in the precinct, then the polls may be located in a building in an adjoining precinct if the building is not more than five (5) miles from the closest boundary of the precinct OR anywhere within the same township if no other accessible place for disabled voters is available. If the county election board unanimously determines that there is still not an accessible facility available, then the most convenient accessible facility ***anywhere in the county*** may be chosen. With the unanimous consent of both county election boards, it is even possible to locate an accessible polling place in a bordering county. This might occur when an accessible facility is located on the other side of a county line road, for example. (IC 3-11-8-3)

The county commissioners **must** publish a legal notice stating the location of each polling place for each precinct. The county commissioners must publish this list of polling places at least once, at least ten (10) days before the election. If it is necessary to make a change after publication, notice of the change must be provided in the same manner. The legal notice must indicate whether the polls for each precinct are located in an accessible facility, the location of any special polling place designated for elderly voters or voters with disabilities, and describe the procedures for elderly voters or disabled voters to apply to vote at a special polling place. (IC 3-11-8-3.2)

Generally, no polling location change can be made within two (2) days of an election. However, **if a county election board unanimously agrees that using a designated polling place would be dangerous or impossible, the county election board can designate a new polling place for the precinct during the final two (2) days before an election. The board must give the best possible notice of the change.** (IC 3-11-8-3.2)

If the county commissioners are unable to secure an accessible facility for a precinct's polling place, the county must file a report not later than 29 days before Election Day with the Indiana Election Division. (Form IEC-6) If the Co-Directors of the Election Division determine that there are no accessible facilities that the county can secure as a polling place, the Co-Directors shall authorize the county to designate at least one special polling place at an accessible facility in the county. **The circuit court clerk must then assign elderly voters and voters with disabilities to a special polling place if the voter submits an application to the clerk requesting this assignment at least ten (10) days before Election Day. (IC 3-11-8-6.5)**

The precinct election board of the "special voting poll" must provide the voter with a ballot that includes all offices and public questions for which the voter is entitled to vote in the precinct where the voter resides. A separate poll list naming each voter assigned to the "special voting poll" must also be provided. Votes will be counted and reported in the same manner as if the votes were cast in the voter's precinct of residence. (IC 3-11-8-6.5) For more information refer to the brochure ***"Polling Place Accessibility in Indiana"*** published by the Indiana Election Division.

The county election board must supply each polling place with instruction cards that explain the voting procedure to voters and the procedure for write-in voting. A precinct that employs a voting system that does not permit write-in voting on the system must post instruction cards directing the voter to request a paper ballot from a precinct election officer. (IC 3-11-3-22) *Instruction cards must direct voters how to obtain a ballot, prepare a ballot, and obtain a new ballot, should the ballot be spoiled.* (IC 3-11-3-23) **The instruction cards must also include in <u>underlined</u> type:**

1) that it is a crime to violate Indiana election laws;
2) that the voter should examine the ballot to determine if it contains the initials of the poll clerks in ink on the back of the ballot;
3) that the voter should examine the ballot to determine if the ballot has any other marks on it;
4) that the voter should not make any mark on the ballot except a voting mark in the appropriate space on the ballot, because a mark other than a voting mark could void the ballot; and
5) that the voter should return to the poll clerks and request another ballot if one of these provisions has been violated.

One instruction card must be posted in each voting booth. One instruction card must be posted at the end of the voting chute. At least three instruction cards must be posted in and about the polling location. (IC 3-11-3-24)

**NOTE: Voting instructions for polling places must be printed in at least 14-point type on cards in English, Braille, and any other language that the board considers necessary. Precinct election boards are also required to furnish a magnifier to a voter upon request. (IC 3-11-3-22)**

## PRECINCT ELECTION OFFICERS

Generally, each precinct can have up to nine (9) precinct election officers appointed to administer the election at the polling location. These positions, by rank, are the following:

1) One inspector.
2) Two judges of opposite political parties.
3) Two poll clerks of opposite political parties.
4) Two assistant poll clerks of opposite political parties, if needed.
5) Two election sheriffs of opposite political parties.

***NOTE:*** *Indiana Code 3-6-6-38 states that the county election board may adopt a resolution providing that other election officials of each precinct shall perform the duties of the election poll clerks or sheriffs. This resolution, if adopted, would apply to each voting precinct named in the resolution (or to all precincts in the county if so provided in the resolution). This resolution expires December 31 of each year and must be readopted to remain effective. Currently, most Indiana counties have eliminated the election sheriff positions.*

A polling place may employ assistant poll clerks, if needed. The county election board may appoint two assistant poll clerks who must be registered voters of the county and of opposite political parties. A person may serve as an assistant poll clerk and not be a registered voter of the county if the person is between 16 and 17 years of age and a resident of the county. (IC 3-6-6-3) If assistant poll clerks are to be appointed, the county election board must designate, in writing, which precinct will have assistant poll clerks. A copy of this notice must be filed with the circuit court clerk. Copies must be mailed to the county chairmen of each major political party. (IC 3-6-6-4)

**A person is not eligible to serve as a precinct election officer unless the person meets all of the following requirements**, (IC 3-6-6-7):

1) Is able to read, write and speak the English language.
2) Does not have any property bet or wagered on the result of the election.
3) Is not a candidate to be voted for at the election in that precinct, except as an unopposed candidate for a precinct committeeman or state convention delegate.
4) Is not the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew or niece of a candidate who is a candidate to be voted for in that precinct.
5) Is the chairman or treasurer of the committee of a candidate whose name appears on the ballot.
6) Has attended the training required by state law to serve as an inspector, and, if a county requires training for other precinct election officers, has attended the training required by the county.

**A relationship that results from birth, marriage, or adoption disqualifies a person who is the relative of an opposed candidate from working as a precinct election officer.**

However, this restriction on relatives **DOES NOT APPLY** if the candidate is **UNOPPOSED.** (IC 3-6-6-7) In a primary election, a candidate is considered "unopposed" if no other candidate is running for nomination to the same office within the same party's primary, **even if another person is running for nomination to the same office, but in the other party's primary.**

**EXAMPLES:**

EXAMPLE ONE: Bob Williams is a candidate in the general election for the office of Rural Township Trustee, and is opposed by Jim Miller. Bob cannot serve as a precinct election officer in Rural Township. However, since his name is not on the ballot in nearby Urban Township, and if he is otherwise qualified to do so, Bob Williams can serve as an inspector in a precinct in Urban Township.

EXAMPLE TWO: Trevor Trent is an unopposed candidate in the general election for the office of County Assessor. Even though he is unopposed, his name will be on the ballot everywhere in the county, and so he cannot serve as a precinct election officer anywhere in the county.

EXAMPLE THREE: Geraldine Adams is an unopposed candidate for Republican Party precinct committeeman in Rural Township Precinct 2. If otherwise qualified, Geraldine may serve as a precinct inspector in Rural Township Precinct 2.

EXAMPLE FOUR: Charlie Adams is the husband of Geraldine Adams. If otherwise qualified, he can serve as a judge in Rural Township Precinct 2.

EXAMPLE FIVE:
Mary Jones is the only candidate for County Coroner running in the Democratic Party primary. Susan Miller is the only candidate running for County Coroner in the Republican Party primary. In this case, both Mary Jones and Susan Miller are "unopposed candidates" at the May primary election. An otherwise qualified relative of Mary Jones or Susan Miller may serve as a precinct election officer at the primary election in the county.

However, in the General Election in November, Mary Jones and Susan Miller are now opposing each other for election to the office of County Coroner. As a result, a relative who was eligible, and served as a precinct election officer at the primary may not be eligible to serve as a precinct election officer at the general election.

While judges, poll clerks, assistant poll clerks and sheriffs may be represented in each precinct by both political parties, each precinct inspector will be a member of the same political party throughout the county. Each inspector is nominated by the political party whose candidate received the most votes in the county at the last election held for secretary of state. (IC 3-6-6-8)

The county chairmen of both major political parties nominate registered voters of the county for each of the remaining precinct election offices. (IC 3-6-6-9) The county chairmen make these nominations, including inspector, by filing written notice with the circuit court clerk **no later than noon twenty one (21) days** before each election. (IC 3-6-6-10)

The county election board **must** appoint those voters who are nominated by the county chairmen. (IC 3-6-6-11)

Before Election Day, the county election board may fill vacancies in any precinct election office upon nomination by the appropriate county chairman. If a county chairman fails to make any nominations by noon, 14 days before the election, for the appropriate number of precinct officials, the county election board, by majority vote of the board, may fill the office by appointing an individual who would be eligible to serve in the office if nominated by the county chairman. (IC 3-6-6-13)

## COLLEGE STUDENTS AND HIGH SCHOOL/HOME SCHOOLED STUDENTS AS POLL WORKERS

If the appropriate county chairman makes no nomination for a precinct election office by the deadline for doing so, the county election board may, by unanimous vote of its entire membership, appoint a college student who is a registered voter of the county to serve as a nonpartisan precinct election officer. (IC 3-6-6-13(c))

The county election board, by unanimous vote of its entire membership, may permit an individual who is 16 or 17 years of age to serve as any precinct election officer other than inspector, or to assist any precinct election officer, including the inspector, if the individual: (1) is a U.S. citizen; (2) is a resident of the county; (3) is a student with a grade point average of at least 3.0 out of 4.0; (4) has the approval of the principal of the school the student attends, or the approval of the individual responsible for the student's education if the student is home schooled; (5) has the approval of the student's parent or guardian; (6) has satisfactorily completed any training required by the board; and (7) would otherwise be eligible to serve as a precinct election worker under Indiana law. (IC 3-6-6-39)

## COMPENSATION AND MEALS

Except as provided below, each precinct election officer is entitled to compensation. All precinct election officers are to be paid a per diem fixed by the county executive (county commissioners). (IC 3-6-6-25) In addition, the inspector may be paid an additional amount for the inspector's services in picking up election supplies at the circuit court clerk's office. Inspectors and judges may be paid an additional amount for their duties in returning the precinct election supplies to the clerk's office. (IC 3-6-6-26)

Each inspector must make arrangements to provide meals for all precinct election officers throughout the day. The county council may adopt an ordinance providing for a meal allowance rather than an actual meal. Any such ordinance must state the amount of the meal allowance. (IC 3-6-6-31)

Each precinct election officer has unique duties to perform on Election Day. The precinct election board (consisting of one inspector and the two judges) manages the precinct and determines all questions of challenge and other matters that come before the board, subject to state law. When necessary, the precinct election board assists the poll clerks and sheriffs in the performance of their duties. In general, the following list contains the duties of each precinct election official (IC 3-6-6-30; 3-6-6-32; 3-6-6-33; 3-6-6-34; 3-6-6-35):

| PRECINCT OFFICER | DUTIES |
|---|---|
| INSPECTOR | Overall, in charge of the precinct.<br>Receives election materials from the county election board.<br>Sets up the polling place.<br>Inspects the ballots.<br>Performs initial processing of absentee ballots.<br>Tabulates ballots and returns election materials to the county election board.<br>Requests Photo Identification from voters. |
| JUDGES | Judge of opposite political party to the inspector acts as check and balance to the inspector.<br>Assists inspection of the ballots.<br>Oversees deposit of ballots into the ballot boxes.<br>Assists in the tabulation of the votes.<br>Judge of opposite party accompanies precinct inspector when returning election materials.<br>Requests Photo Identification from voters. |
| POLL CLERKS | Verifies the registration status of voters.<br>Oversees poll lists or books.<br>Requests and explains voter identification number to voters.<br>Assists in vote tabulation.<br>Compares voter's signature on poll list with registration signature, if available at polls. |
| SHERIFFS | Monitors the polling location.<br>Assists others in their duties.<br>Maintains order at the polls.<br>May leave polls to request assistance from a law enforcement officer if violation of law occurs or appears imminent. |

## PRECINCT ELECTION OFFICIAL TRAINING

The county election board must conduct a training and educational meeting for precinct election officers. The county election board must require inspectors to attend this meeting, and may require other precinct election officers to do so. The meeting must include information relating to the voting systems used in the county, and to making polling places and voting systems accessible to elderly voters and disabled voters.

The county election board must maintain a record of the attendance of each individual at the county training meeting.

If an individual is appointed to a precinct election office after the required instructional meeting, or was appointed before the meeting was held, but can demonstrate to the county election board that the individual could not attend the meeting due to good cause, then the county election board can authorize that individual to serve as a precinct election officer if the county election board determines that there is not enough time to conduct the required training. (IC 3-6-6-40)

## POLLING PLACES AND ELECTIONEERING

It is a Class A misdemeanor for any person to knowingly engage in electioneering within the polls or within the chute.

"Electioneering" includes expressing support or opposition to any candidate or political party, or expressing approval or disapproval of a public question in any manner that could reasonably be expected to convey that support or opposition to another individual. (IC 3-14-3-16)

State law authorizes a poll clerk to record the names of individuals who have signed the poll list and to make that record available to a political party watcher or pollbook holder who requests the information. The poll clerk must ensure that: (1) no voter is delayed in casting a vote as a result of the poll clerk preparing this record or providing the information; and (2) that the poll clerk does not engage in "electioneering" when providing this information. (IC 3-11-8-29)

## UNAUTHORIZED PERSONS INSIDE POLLING PLACES

Only the following individuals are allowed inside a polling place: (1) the inspector, judges, poll clerks, assistant poll clerks; or a student assistant to a precinct election officer; (2) deputy election commissioners; (3) challengers and pollbook holders; (4) watchers; (5) minor children accompanying voters; (6) a voter, for the purpose of voting; (7) a person assisting a voter under IC 3-11-9; (8) a member of a county election board, acting on behalf of the board; (9) a mechanic authorized to act on behalf of the county election board to repair a voting system; (10) a county chairman or a county vice-chairman of a political party, if bearing credentials signed by the members of the county election board; and (11) the secretary of state of Indiana, in some cases. (IC 3-11-8-15)

A "service animal", such as a seeing-eye dog, is allowed inside a polling place and the voting booth if the voter needs the assistance of the animal. (IC 3-11-9-5)

A person is not authorized to be inside the polling place merely because they are a precinct committeeman or other political party official, unless the person has been issued challenger, watcher or pollbook holder credentials. It is a Class A misdemeanor for a person to recklessly enter the polls without authority to do so. (IC 3-14-3-15) See the *Election Day Handbook*, published by the Indiana Election Division, for more information regarding poll worker rights and duties.

## PARTISAN PRECINCT WORKERS

In addition to the precinct election officers, political parties often employ workers to assist the party on Election Day. These partisan workers include challengers, pollbook holders and watchers. Although these partisan workers are not a part of the precinct election board or official precinct election officers, they provide a valuable service to political parties. **Each of these partisan workers has different rights and responsibilities but all must have credentials to confirm their status at the request of the precinct election board.** Challengers act to ensure that only registered voters of the precinct vote at each polling place. Pollbook holders monitor which registered voters voted and which did not. Watchers act as a check to the precinct election officials to ensure that they are properly carrying out their duties. A watcher may be affiliated with a political party, a candidate or the media.

## CHALLENGERS AND POLLBOOK HOLDERS

A county election board may also appoint challengers and pollbook holders to represent one or both sides in a vote on a public question. A challenger must be a registered voter of the county to serve in that capacity and must be at least eighteen (18) years of age. (IC 3-6-7-1.7; IC 3-6-7-1) ***No candidate (except an unopposed candidate for precinct committeeman or state convention delegate) may be appointed as a challenger or as a pollbook holder for any election.*** (IC 3-6-7-1.5) A pollbook holder is not required to be a voter of the county or to be of any specific minimum age.

Each county chairman (or independent candidate), must designate, in writing, and issue the proper identification card for each challenger and pollbook holder appointed. There is no state prescribed form that the county chairman must use for this purpose, and the county chairman is not required to file a list of challengers or pollbook holders with the county election board. The challenger or pollbook holder must keep their identification card on their person whenever they are near a polling place and must produce their identification card whenever asked by a member of a precinct election board. The identification card must state the following information: (1) the status of the individual as a challenger or pollbook holder; (2) the name of the individual serving as a challenger or pollbook holder; (3) the name of the person who appointed the challenger or pollbook holder, and whether the person is a political party, an independent candidate, or a county election board; and (4) if the challenger or pollbook holder has been appointed by a political party, the name of that political party. (IC 3-6-7-1)

Only one challenger or pollbook holder for each political party or independent candidate may be in a polling place at any one time during Election Day. (IC 3-6-7)

**A voter must provide the voter's true and full name when requested by a challenger. (IC 3-11-8-19)**

A challenger or pollbook holder can be assigned to multiple precincts. If two or more challengers or pollbook holders of the same political party are assigned to the same precinct, both could not be in the same polling place at the same time. (IC 3-6-7-1)

**A challenger or a pollbook holder are permitted inside of the polling place where the voters are voting. A challenger or pollbook holder may enter and leave the polls throughout the day. (IC 3-6-7-5)**

## POLITICAL PARTY WATCHERS

All bona fide political parties or independent candidates for federal or statewide office are entitled to have "political party" watchers at a polling place. A county election board may also appoint watchers to represent one or both sides in a vote on a public question. (IC 3-6-8-1) ***A watcher must be a registered voter of the county. (IC 3-6-8-2.5) No candidate (except as an unopposed candidate for precinct committeeman or state convention delegate) may be appointed as a watcher at any election. (IC 3-6-8-2)***

A watcher must possess an identification card. The county chairman (or chairman of the independent candidate's committee) appoints each watcher in writing and provides an identification card. The card must be signed by the chairman and must be presented upon request by a member of the precinct election board. (IC 3-6-8-3) The identification card must state the following information: (1) the status of the individual as a watcher; (2) the name of the individual serving as a watcher; (3) the name of the person who appointed the watcher; and (4) if the watcher has been appointed by a political party, the name of that political party.

Only one (1) watcher for each party may be present in a polling place at any one time on Election Day. (IC 3-6-8-1)

A party watcher has clearly defined responsibilities. (IC 3-6-8-4) A party watcher is entitled to do the following:

1) Enter the polling place thirty minutes before it opens and remain there until after the votes have been tabulated.
2) Inspect ballot boxes and any of the voting equipment used in the precinct before any 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 systems or any other proceedings of the precinct election officials in the performance of their official duties.
6) Receive a copy of the summary of the vote prepared under IC 3-12 and signed by the precinct election board.

7) Accompany the precinct inspector and judge of the opposite political party in delivering the tabulation and 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 election returns delivered to the county election board.
9) Call upon the election sheriffs to make arrests.

## CANDIDATE WATCHERS

While candidates may not be watchers for themselves, a group of candidates may appoint watchers to act on the candidate's behalf in a ***primary election.*** Watchers for candidates are appointed under the following conditions ***in primaries only:*** twenty-six percent (26%) or more of all candidates of a political party who are seeking nomination at a county or municipal election make the request to have watchers appointed in writing to the county election board. (IC 3-6-9-1) **Any candidate or group of candidates for school board offices is entitled to candidate watchers.**

A watcher for a candidate or group of candidates must be a registered voter of the county and may not be a candidate at the election, except as an unopposed candidate for precinct committeeman or state convention delegate. (IC 3-6-9-4) The written statement requesting candidate watchers must name a person to act as attorney-in-fact for the group of candidates and the precincts where the watchers will serve. (IC 3-6-9-2) The attorney-in-fact then performs the duties on behalf of the group of candidates. The attorney-in-fact will file with the circuit court clerk the names of the appointed watchers. Individuals appointed as watchers for a group of candidates must be registered voters of the county. (IC 3-6-9-4) The circuit court clerk must then issue identification cards to the watchers. (IC 3-6-9-5) Only one (1) watcher representing a candidate or group of candidates may be present in the polling place at any one time during Election Day, but watchers representing different groups may be present in the polling place at the same time. (IC 3-6-9-12) A watcher appointed for a group of primary candidates, or for a school board candidate, has the same rights and responsibilities as a watcher appointed by a political party chairman. (IC 3-6-9-13)

## MEDIA WATCHERS

The media may also appoint watchers to each precinct on Election Day. (IC 3-6-10-1)
Media entitled to name watchers include:

1) each daily, weekly, semiweekly or triweekly newspaper of general circulation in the county.
2) each news service operating in the county (e.g. Associated Press, Network Indiana).
3) each radio or television station operating in the county.

On the day before Election Day each corporation owning a news organization listed above must provide the circuit court clerk, the county election board and the county chairmen of each political party (or independent candidate's committee), which has appointed watchers with a list of persons appointed to serve as media watchers for the news organizations. An officer of the corporation that owns the news organization must sign this list. A person appointed to act as a media watcher does not have to be a regular employee of the news organization. (IC 3-6-10-2; IC 3-6-10-4)

The county election board must issue identification cards to media watchers. If an individual is named to act as a media watcher in more than one (1) county, the identification card must be obtained from the Election Division. [Form IEC 5(b)] (IC 3-6-10-6)

Generally, a media watcher has the same rights and responsibilities as a watcher appointed by a political party chairman. However, a media watcher may not call upon the election sheriffs to make arrests. (IC 3-6-10-5.5)

**NOTE: A media watcher may not photograph a voter if the voter objects or in a manner that would divulge how a voter cast their ballot. (IC 3-6-10-5)**

## VOTER IDENTIFICATION NUMBER

Federal law and state law require an individual applying to register to vote to provide a "voter identification number." This number is an Indiana driver's license number as issued by the Indiana Bureau of Motor Vehicles (BMV). If an individual does not have a BMV-issued drivers license, the individual must provide the last four digits of his or her social security number as a voter identification number. (IC 3-7-13-13) If an individual does not have either a BMV driver's license number, or a social security number, the state will assign a voter identification number to this individual as part of the statewide voter registration system.

During an election, a precinct election poll clerk shall explain the voter identification number to each voter and request that each voter provide (or update) the voter's identification number on the poll book. However, the poll clerk must also explain that a voter is ***not required*** to provide a voter identification number at the polls in order to vote. (IC 3-11-8-25.1) If a voter does give a voter's identification number, then the county voter registration office shall update the voter's registration to include that information. (IC 3-7-13-13)

## PHOTO IDENTIFICATION

State law requires that voters casting a vote in person (or an absentee ballot in person at the county election office) must provide government-issued photo ID before signing the poll list or casting the absentee ballot. Some voters are exempted from this requirement: (1) voters who cast an absentee ballot by mail or before a traveling board; and (2) voters who reside in a state licensed facility (such as a nursing home), and the polling place for their precinct is located at that facility.

To qualify as "proof of identification" that meets this requirement, a photo ID must meet each of the following requirements:

1. The ID must display the voter's photo.
2. The voter's name on the ID must conform to the name on the voter registration record.
3. The voter's ID must contain an expiration date, and either still be current or have expired sometime after the date of the most recent General Election (November 2, 2004 for the 2006 General Election).
4. The voter's ID must be issued by the State of Indiana or the U.S. government

In most cases, an Indiana driver's license, Indiana photo ID card, Military ID, or US passport is sufficient.

NOTE: The address on the voter's photo ID does not need to match the address on the voter registration record. However, certain "first time" voters who registered by mail will be required to provide additional documentation that DOES match their address on the voter registration record.

If a voter is unable or unwilling to present ID that meets these requirements, the voter may cast a provisional ballot after completing and signing a form requesting this ballot. NO VOTER SHOULD BE TURNED AWAY FROM THE POLLS FOR FAILING TO PROVIDE PHOTO ID.

If the voter is unable to obtain an ID because the voter is indigent or has a religious objection to being photographed, the voter may claim this exemption from the ID requirement by appearing in person before county election board and affirming under penalties of perjury that the exemption applies.

If the voter does not already have a valid photo ID, the voter can obtain an Indiana photo ID card free of charge from any Bureau of Motor Vehicles license branch. BMV branches will be open extended hours on Election Day and the day before Election Day. For more information, please contact the BMV at (317) 233-6000 or visit their website http://www.bmv.in.gov.

## PROVISIONAL VOTING

Provisional voting is an additional fail-safe method of voting for certain people. A provisional ballot is kept separate from all other ballots and submitted to a separate verification process before it may be counted. (IC 3-11.7-2)

Provisional ballots will be prepared upon the certification of candidates to the counties and delivered to each circuit court clerk (or the Lake County Director of Elections) separate from other paper ballots and not later than 45 days before a primary, general or municipal election (or 32 days before a special election). (IC 3-11.7-1-6)

The county election board shall prepare provisional ballots for all offices on the ballot in the county in the number it considers necessary. The circuit court clerk shall estimate the number of provisional ballots that will be required in the county for the election not less than 60 days before an election (or more than 3 days after the date a special election is ordered). (IC 3-11.7-1-4)

The county election board shall print the provisional ballots immediately after the estimate is performed and the ballots shall be delivered to the circuit court clerk not later than 45 days before a primary, general or municipal election (or 32 days before a special election) in a package plainly marked or labeled with the words: "This package contains _____ (giving the number of ballots) provisional ballots." Each provisional ballot shall bear the clerk's signature and seal. The county election board shall provide each precinct election board with envelopes marked "Provisional Ballot" in which a provisional voter places the voter's provisional ballot and an outer envelope marked "Provisional Ballots" in which the provisional ballots with the attached affidavit of the voter (and any challenge affidavit) shall be placed. (IC 3-11.7-1-6; 3-11.7-1-7; 3-11.7-1-8; 3-11.7-1-9)

The county election board will deliver provisional ballots to the inspector in a tightly closed, securely fastened, strong and stout paper envelope or bag separate from the other ballots. The envelope or bag containing the provisional ballots shall be attested by the initials of the clerk or clerk's designee in the presence of the inspector or inspector's representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not then be opened until they have been delivered to the precinct election board to which they are directed and the precinct election board is fully organized and ready to receive votes. (IC 3-11.7-1)

A provisional ballot must be in the same form as an absentee ballot, containing the offices appropriate for the election and precinct to which the ballot pertains, but must indicate that the ballot is a provisional ballot and not an absentee ballot. (IC 3-11.7-1-2)

## WHEN DOES A VOTER CAST A PROVISIONAL BALLOT AND

## WHEN DOES A VOTER CAST A REGULAR OFFICIAL BALLOT?

Whether a provisional ballot or a regular official ballot is issued to a voter depends upon whether the voter's name does or does not appear on the poll list, and depends on whether the voter has been challenged as not eligible to vote in the precinct.

The following examples describe the situations that may arise and the law that applies to each situation:

1. A person whose name *does not* appear on the poll list, but is issued a certificate of error, votes a regular official ballot. However, if the person is then challenged (State Form PRE-4), the person votes a provisional ballot.

2. A person whose name *does not* appear on the poll list, but who affirms that the person has continuously resided in the precinct, votes a regular official ballot. However, if the person is then challenged (State Form PRE-4), the person votes a provisional ballot.

3. A person whose name *does not* appear on the poll list, but who produces a registration receipt from a license branch or full service agency executed during the open registration period, votes a regular official ballot. However, if the person is then challenged (State Form PRE-4), the person votes a provisional ballot.

4. A person whose name *does not* appear on the poll list, who is not described in (1) through (3) above, and is challenged as ineligible to vote in the precinct (State Form PRE-4), votes a provisional ballot.

5. A person whose name *does* appear on the poll list, no longer resides in the precinct, but claims the right to vote in the precinct where they formerly resided under a fail-safe provision in current law (VRG-4/12 or VRG-15), votes a regular official ballot. However, if the person is then challenged as ineligible to vote in the precinct (State Form PRE-4), the person votes a provisional ballot.

6. A person whose name *does* appear on the poll list, and is not entitled to vote in their former precinct of residence under a fail-safe provision under current law, and is challenged as ineligible to vote in the precinct (State Form PRE-4), votes a provisional ballot.

The voter must complete and sign the "Affidavit of a Challenged Voter" portion of State Form PRE-4 to vote a provisional ballot, except as specifically set forth in the next paragraph. (IC 3-11-8-22.1; 3-11.7-2-1)

If a person has already made an affirmation or executed an affidavit permitted under current law to vote pursuant to a fail-safe procedure, or a person has voted by absentee ballot and completed the affidavit on the outside of the absentee ballot envelope, and is then challenged, then the person is not required to complete and sign the "Affidavit of a Challenged Voter" portion of State Form PRE-4. (IC 3-11-8-23, 3-11.5-4-16)

The following describes the situations where this may arise:

1. To vote a regular official ballot, a person who is not on the poll list may make an oral or written affirmation to a precinct election board that the person either: (1) has continuously resided in the precinct, and the voter's name has been removed from the registration list by mistake; or (2) produces a receipt indicating that the person applied to register to vote at a license branch or other "full service" voter registration agency while registration was open and signs a voter registration application. If the eligibility of a person to vote in either of these situations is challenged before the voter votes a regular official ballot, the person is provided with a provisional ballot (rather than a regular official ballot). The person challenged in this situation is not required to execute the "Affidavit of a Challenged Voter" portion of State Form PRE-4 if the person has already satisfied the requirements set forth in (1) and (2) above. (IC 3-7-48-7.5)

2. To vote a regular official ballot, a person who is on the poll list but who has moved out of the precinct may execute an affidavit under the current law permitting the person to return their former precinct to vote either: (1) for president only in a presidential election because the person moved out of Indiana during the final 30 days before an election (State Form VRG-15); or (2) because the person moved to another precinct within Indiana during the final 30 days before an election (state form VRG- 4/12). If the eligibility of the person to vote is challenged before the voter votes a regular official ballot, the person is provided with a provisional ballot. The person challenged in this situation is not required to execute the "Affidavit of a Challenged Voter" portion of State Form PRE-4 if the person has already satisfied the requirements set forth in (1) or (2) above. (IC 3-10-10-9, 3-10-11-4.5)

3. To vote a regular official ballot, a person who is on the poll list but who has moved to another precinct within the same county and the same congressional district may make an oral or written affirmation (State Form VRG-4/12) under the current law permitting a person who formerly resided in a precinct, but no longer resides there, to return their former precinct to vote. If the eligibility of the person to vote is challenged before the voter votes a regular official ballot, the person is provided with a provisional ballot. The person challenged in this situation is not required to execute the "Affidavit of a Challenged Voter" portion of State Form PRE-4 if the person has already made the oral or written affirmation required under current law. (IC 3-10-12-5)

If a person is challenged at a primary election on the basis of <u>party affiliation</u>, the person is allowed to vote a regular official ballot listing candidates of that party upon completion of an affidavit stating that the person is affiliated with the political party whose ballot the person is requesting. The voter is then allowed to cast that party's primary ballot, and is not required to cast a provisional ballot. (IC 3-10-1-10.5)

A person who:

(1) is one of certain voters who register by mail who is required to provide certain additional identification documents to the county voter registration office, but has not yet done do when the voter appears at the polls to cast a ballot, and does not do so while at the polls; or

(2) votes under a court order extending the hours that the polls are open on election day;

must cast a provisional ballot, but is not required to execute the separate affidavit described above. (IC 3-11-8-27.5)

Unless otherwise specified, the procedures that apply to paper ballots apply to provisional ballots. A provisional voter shall seal the ballot in an envelope marked "Provisional Ballot" supplied by the county election board. The affidavit executed by the provisional voter (and any affidavit by a challenger) shall be attached to the provisional ballot envelope. The provisional ballot with attached affidavit(s) shall then be placed in an outer envelope marked "Provisional Ballots." At the close of the polls, the precinct election board shall seal all the provisional ballots and any spoiled provisional ballots in the outer envelope and mark on the outer envelope the number of provisional ballots inside. The inspector shall return the outer envelope to the circuit court clerk. (IC 3-11.7-2-4)

Each county election board shall appoint teams of provisional ballot counters consisting of 2 voters of the county, one from each of the major political parties. A provisional ballot counter must have the same qualifications as a member of an absentee voter board. The county election board shall notify the major party county chairs of the need for appointments 10 days before Election Day. The county chair shall recommend provisional ballot counter appointees in writing no later than noon, 3 days before Election Day and the county election board shall appoint the provisional ballot counters recommended. If the county chairman fails to make any recommendations, the county election board may appoint any voters of the county. In a "central count" county, a person can serve as both an absentee ballot counter and a provisional ballot counter. (IC 3-11.7-3)

The location where provisional ballots are counted shall be treated the same as a precinct and the counters shall be treated the same as a precinct election official. Political parties and independent parties, candidates, and the media are entitled to watchers with the same rights, and are subject to the same requirements, as precinct watchers. (IC 3-11.7-4)

Provisional ballots shall be counted not later than noon 10 days after Election Day notwithstanding any state legal holiday that may fall on the final day. (IC 3-11.7-5-1)

## RULES FOR DECIDING WHETHER TO COUNT A PROVISIONAL BALLOT

State law sets forth rules that apply to the counting of provisional ballots cast under the following circumstances:

1. A provisional ballot was cast by a voter after the voter was challenged, but the voter does not: (1) appear before the county election board; and (2) either provide proof of identification or execute a Form PRO-10 affidavit to claim an exemption from this requirement as indigent or having a religious objection to being photographed. The county election board shall then find the voter's provisional ballot invalid, and the ballot shall not be counted. (IC 3-11.7-5-2.5(f).

2. A provisional ballot cast by a voter after the voter was challenged solely due to the voter being unable or declining to provide a photo ID. In this situation, the provisional ballot shall be counted if the voter complies with the specific requirements applicable to providing a photo ID to the county election board before the noon 10 day deadline after Election Day and executes the required affidavit (Form PRO-10) . (IC 3-11.7-5-1.5(e); 3-11.7-5-2.5(b))

3. A provisional ballot cast by a voter after the voter was challenged solely due to the voter being unable or declining to provide a photo ID. In this situation, the provisional ballot shall be counted if the voter complies with the specific requirements applicable to executing the required affidavit (Form PRO-10) before the noon 10 day deadline after Election Day and claims that the voter is indigent and unable to obtain proof of identification without the payment of a fee. (IC 3-11.7-5-2.5(c) and (d))

4. A provisional ballot cast by a voter after the voter was challenged solely due to the voter being unable or declining to provide a photo ID. In this situation, the provisional ballot shall be counted if the voter complies with the specific requirements applicable to executing the required affidavit (Form PRO-10) before the noon 10 day deadline after Election Day and claims that the voter has a religious objection to being photographed. (IC 3-11.7-5-2.5(c) and (d))

5. A provisional ballot cast by a voter whose name *does not* appear on the poll list but who indicates that the voter applied to register at the BMV or other full service voter registration agency while registration was open. The county election board shall accept or reject the provisional ballot as a result of information, or lack of information, about this registration application, provided by the full service voter registration agency by noon of the first Friday after the election. If the BMV or full service voter registration agency does not respond to the county election board's inquiry by the noon Friday deadline, or responds that the agency has no record of the alleged registration application, the board "rejects" the provisional ballot, and the ballot shall not be counted. (IC 3-11.7-5-2(b))

6. A provisional ballot cast by a voter after the voter was challenged solely due to the voter's failure to provide the additional identification documentation required because the voter was a first time voter in Indiana who registered by mail. If the county election board determines that the voter filed the documentation required with the county voter registration office not later than the closing of polls on Election Day, then the provisional ballot shall be counted. (IC 3-11.7-5-2(c))

7. A provisional ballot cast by a voter under a court order extending the hours that the polls are open. The court may provide guidance concerning how these provisional ballots shall be processed. The provisional ballots will be invalid and not counted if the court order extending polling place hours is overturned by another court.

In a situation other than those specified in paragraphs (1) through (7) above, the county election board must decide whether or not a provisional ballot is valid, based on the evidence presented to the board concerning that provisional ballot.

A provisional ballot is cast by a voter after the voter was challenged for a reason other than the voter's inability or declination to provide photo ID, and the only evidence before the county election board is the challenger's affidavit, and the challenged voter's response affidavit, then the provisional ballot shall be counted. (IC 3-11.7-5-1.5(f))

If a county election board determines, by majority vote of its members and in accordance with the election laws, that the provisional ballot was marked by the voter in compliance with election laws, but may not otherwise be counted solely as the result of an act or failure to act by an election officer, then the sealed envelope containing that provisional ballot shall then be opened and the provisional ballot counted unless there is evidence of fraud, tampering, or misconduct demonstrated regarding the integrity of this ballot. The act or failure to act by an election officer is not by itself evidence of fraud, tampering, or misconduct affecting the integrity of the ballot. (IC 3-11.7-5-1.5(a) and (c))

However, if the county election board, by a majority vote of its members, determines that evidence presented to the board demonstrates that the individual who cast the provisional ballot was ineligible to cast a regular ballot in that precinct or evidence demonstrates any other reason set forth in HAVA or Indiana election laws not to count that provisional ballot. In that case, the provisional ballot may not be counted. (IC 3-11.7-5-1.5(d))

The evidence presented to the county election board concerning fraud, tampering, or misconduct affecting the integrity of a provisional ballot will allow the board to determine whether or not to count a provisional ballot which does not comply with IC 3-11.7-5-5(a). This law states that "If any ballot cast by a provisional voter does not contain the initials of the poll clerks, the ballot shall, without being unfolded to disclose how the ballot is marked, be endorsed with the word 'Rejected'".

Unless a provisional ballot has been rejected based on evidence of fraud, tampering, or misconduct affecting the integrity of the ballot under this initialing requirement, the county election board shall count a provisional ballot if the board finds **all** of the following:

1) The provisional voter affidavit is properly executed;
2) The provisional voter is a qualified voter of the precinct and has provided photo ID, if required; and
3) if the provisional voter registered to vote at a voter registration agency, the provisional voter registered to vote at a registration agency on a date within the registration period. (IC 3-11.7-5-2(a))

If the board finds **each** of the three statements listed above regarding the provisional voter is correct, then the ballot envelope shall be opened, the outer envelope shall be marked to identify the precinct and the date of the election, and the ballot shall be counted.

In determining whether the provisional voter registered at a registration agency, the county election board shall consider all information available, including: 1) information provided by the provisional voter; 2) information contained in the county's voter registration records; and 3) information contained in the statewide voter registration file. (IC 3-11.7-5-2(a))

If the provisional voter provided information regarding the registration agency where the provisional voter claims to have registered, then the county election board must promptly make an inquiry to the agency regarding the alleged registration. The agency is required to respond to the county election board not later than noon, Friday after the election. If the agency does not respond, or responds that the agency has no record of the alleged registration, the county election board rejects the provisional ballot. (IC 3-11.7-5-2(b); Paragraph (5), above)

## PROCESSING AND SECURING PROVISIONAL BALLOTS

After being processed, all provisional ballots have been classified as either: (1) Valid; (2) Invalid; or (3) Rejected.

A county election board decides, based on the state laws discussed above, and the evidence presented to the board, whether a ballot is valid or invalid.

State law may require that a provisional ballot be "rejected" without any further determination by the county election board. For example, a provisional ballot is "rejected" as the result of a lack of any evidence of a registration application being submitted to a full service voter registration agency, or as the result of a court order extending polling place hours being overturned.

All rejected provisional ballots shall be enclosed and securely sealed in an envelope marked "Rejected Provisional Ballots." (IC 3-11.7-5-5(b))

If the board determines that:

1) the provisional voter affidavit has not been properly executed;
2) the provisional voter is not a qualified voter of the precinct;
3) the provisional voter failed to provide photo ID, if required; **or**
4) the provisional voter did not register to vote at a registration agency on a date within the registration period,

then the county election board must find that:

1) The provisional ballot is invalid and may not be counted; **and**
2) The envelope containing the provisional ballots may not be opened.

The provisional ballot envelope shall be marked with the notation: "Provisional ballot determined invalid." (IC 3-11.7-5-3(b))

In counting the provisional ballots each ballot shall be laid upon a table in the order in which the ballots were opened and a provisional ballot counter shall read the name of the candidates voted from on the ballot while a member of the county election board (or the member's representative) that is not of the same party as the provisional ballot counter views the ballot as the names are read. During the counting of provisional ballots, a member of the county election board (or a member's representative) may protest the counting of any ballot or any part of a ballot. If the provisional ballot counters cannot agree on whether to count a ballot after this protest then the question shall be referred to the county election board for decision. Following the decision by the provisional ballot counters or the county election board the counters shall sign each protested ballot and mark on the back of the protested ballot the word "counted" or "not counted", as appropriate. (IC 3-11.7-5-6; 3-11.7-5-7; 3-11.7-5-8; 3-11.7-5-9; 3-11.7-5-10; 3-11.7-5-11; 3-11.7-5-12)

A provisional ballot counter may not count provisional ballots for one precinct while counting provisional ballots for another precinct. If a county has appointed more than one set of provisional ballot counters then a set of counters may count provisional ballots in one precinct while another set of counters count provisional ballots in another precinct. (IC 3-11.7-5-13; 3-11.7-5-14)

When the provisional ballots have been counted, the counters shall prepare a certificate stating the number of votes each candidate received for each office and cast on each public question, and deliver the certificates and tally papers to the county election board immediately upon the tabulation of the precinct's vote. The counters shall make and sign a similar certificate for the news media and deliver it to the circuit court clerk, who shall deliver it to any person designated to receive the certificate before the closing of the polls. The counters shall prepare a memorandum of the total votes cast for each candidate and on each public question and ensure that each member of the county election board receives a copy of the memorandum. The counters, in the presence of the county election board, shall: 1) place all provisional ballots whether voted, spoiled, determined invalid or rejected, including all executed affidavits related to the provisional ballots and all tally papers, in a strong paper envelope or bag; 2) securely seal the envelope or bag; 3) initial the envelope or bag; 4) mark on the outside of the envelope or bag in ink the precinct in which the provisional ballots were cast; 5) deliver the envelope or bag to the circuit court clerk and notify the clerk of the number of ballots placed in the envelope or bag. (IC 3-11.7-5-16; 3-11.7-5-17; 3-11.7-5-18; 3-11.7-5-19)

Upon delivery of the envelope or bag to the circuit court clerk, each counter shall sign an oath (Form PRO-8) before the clerk that the counter: 1) kept the ballots and papers in the envelope or bag secure; 2) did not permit any person to open the envelope or bag or otherwise touch or tamper with the ballots; and 3) has no knowledge of any other person opening the envelope or bag. The circuit court clerk shall then place the envelope or bag in a receptacle provided by the county executive with two different locks, lock the receptacle, retain one key to the lock, and give one key to the lock to the member of the county election board who is not a member of the same political party as the clerk. The receptacle shall be preserved and disposed in the same manner as other election materials kept under seal. (IC 3-11.7-5-20; 3-11.7-5-21; 3-11.7-5-22; 3-11.7-5-23; 3-11.7-5-24- 3-11.7-5-25)

A county election board must establish a toll-free telephone number or Internet web site to enable a voter who cast a provisional ballot to determine whether the provisional ballot was counted, and if, not, the reason why the ballot was not counted. (IC 3-11.7-6-3)

The board must establish reasonable procedures to protect the security, confidentiality, and integrity of the personal information collected, stored, or used to provide this information. The board must restrict access to the information available regarding the provisional ballot to the individual who cast the ballot. (IC 3-11.7-6-3)

The county election board must provide written instructions to inform the voter how the voter can determine whether the provisional ballot has been counted. (Form PRO-9) (IC 3-11.7-6-3)

The county election board shall make copies of each completed affidavit returned by the precinct election board. This would include challenge affidavits and the voter's response affidavit (the PRE-4 form) that may have led to the issuance of a provisional ballot. **The county election board is then required to send a copy of these affidavits to the Secretary of State.** (IC 3-14-5-2)

## POST-ELECTION PROCEDURES

After the ballots have been tabulated, election administrators must certify the results of the election. The Election Division or a county election board may need information concerning the election results to perform their duties.

Successful candidates will be administered oaths of office, election materials must be preserved, and election challenges will need to be resolved. An election challenge can be resolved through requesting a **recount** of the votes cast at the election; having a court rule on an election **contest** or by breaking a **tie vote** for an office.

## ELECTION RESULTS

After the polls have closed, the next step is to ascertain the results of the election. Some ballot counting procedures and rules apply uniformly to all elections, regardless of the type of voting equipment being utilized. First and foremost, and subject to some rules to prevent election fraud, **the intent of the voter is the primary factor in determining the validity of any vote**. (IC 3-12-1-1) However, if it is impossible to determine how a voter intended to vote for a particular office or on a particular question, then **only that office or question may not be counted.** The entire ballot is not invalidated if it is impossible to determine the intent of the voter on only a portion of the ballot.

***The entire ballot is void if a distinguishing or identifying mark of any kind appears on the ballot***. Anytime a voter has marked or mutilated their ballot in such a way as to enable a person to be able to determine who cast the ballot, then the entire ballot is voided. However, an erasure does not constitute a distinguishing mark, unless it is made with the intent of enabling a person to determine who cast the ballot. (IC 3-12-1-3; 3-12-1-4)

Each type of voting system must be able to distinguish between straight parties, individual, crossover votes, under votes and over-votes. A person who casts a **straight party vote** and votes for individual candidates of the **same** party ***has not*** over voted. The straight party votes must be counted and the individual votes are not counted. (IC 3-12-1-7(a)) If a voter has cast a **straight party vote and has also voted for the individual candidates of a *different* political party or individual independent candidates**, the individual candidate votes take precedence over the straight party votes and are counted. The straight party votes are counted for all **other** offices. This rule applies whenever only one (1) person may be elected to the office being voted upon. (IC 3-12-1-7(b))

**Indiana law specifies how votes are to be counted for candidates for multi-member offices,** if a voter has cast a straight party vote, and also cast individual votes for **some (or all) of another party's candidates** for that office. For the November 2006 general election, the straight party vote for the multi-member office **is not counted.** Only the votes cast individually are counted. For multi-member offices, if the total individual votes cast is greater than the number of openings for the office, then none of the votes concerning that office may be counted. (IC 3-12-1-7(c))

**NOTE:** The law for counting votes on straight ticket/multi-member office ballots (IC 3-12-1-7(c), (d), and (e)) has been changed for future elections, effective in January 2007. Contact the Indiana Election Division for further information.

If a voter casts a ballot for **more than one** straight party ticket, the whole ballot is void for candidates of a political party, but an otherwise valid vote for a nonpartisan school board candidate or on a public question is counted. (IC 3-12-1-7(f))

## CANVASSING PROCEDURES

On election night after the polls close, the county election board begins canvassing the vote and must certify the election results.

The county election board may employ clerical assistants, as needed, to assist in the tabulation of the vote. These clerical assistants **must** meet the same qualifications as the person serving as a precinct election official. (IC 3-6-6-7) The number of assistants employed **must** be equally represented by the two major political parties of the state. However, the county election board may, by unanimous vote of its entire membership, also employ a college student to assist the board in a nonpartisan manner, if the student is a registered voter of the county. (IC 3-12-4-4(d))

The canvassing must be performed in public pursuant to IC 5-14-1.5; however, the room where the canvassing is conducted may be organized in a way to prevent observers from physically handling any election materials or interfering with the canvassing process. (IC 3-12-4-6)

Counties that employ an optical scan ballot card voting system are required to appoint the bi-partisan "write-in" teams the county election board considers necessary to examine and count write-in votes. The county chairmen of each of the two major political parties must designate one (1) member for each write-in team appointed. Members of a write-in team are considered employees of the county election board and must meet the same qualifications as the clerical assistants. (IC 3-12-4-4) If an automatic tabulating machine breaks down during canvassing, the county election board may authorize emergency procedures to count the ballot cards. (IC 3-12-3-5(d))

The canvassing responsibilities of the county election board include the following (IC 3-12-4-8):

1) Careful examination and comparison of all certificates, poll lists and tally sheets.
2) Tabulation of all votes cast for all offices and on all public questions.

**NOTE: For all local offices and questions voted upon entirely within one county *other than an office for which a declaration of candidacy is filed with the election division (such as judge or prosecuting attorney),* after the county election board has tabulated the vote, the board certifies the candidate or question receiving the highest number of votes for each office or question on a statement prepared by the circuit court clerk. (IC 3-12-4-9)**

The circuit court clerk must prepare a statement identifying all votes cast at the election.

**There is <u>no requirement</u> for a circuit court clerk to certify results in a statewide, congressional, or state legislative race to <u>any other county</u>. These results are ONLY certified to the Election Division. (IC 3-12-5-1)**

The only case in which a circuit court clerk certifies election results to another county is after an election for a school board, city, or town office where the election district is located in more than one county. In that case, each clerk certifies the results to the clerk of the county in which the largest part of the population of the election district is located. That clerk (and county election board) conduct the canvass for that cross-county office. This procedure also applies to a local public question on the ballot in more than one county. (IC 3-12-5-2(b))

**<u>If a town election board is conducting an election in a small town under IC 3-10-7,</u>** the town election board shall, immediately upon completion of the canvass, file the poll lists, ballots, tally sheets, and other election forms with the circuit court clerk of the county containing the greatest percentage of population of the town for preservation and voter list maintenance. (IC 3-10-7-33(b))

## CERTIFICATION OF NOMINEES

The candidate of a political party who receives the highest number of votes for an office in a primary is the nominee of that party for that office. (IC 3-8-7-1) Unless a candidate withdraws or is removed from the ballot by the county election board or the Indiana Election Commission as a result of a candidate challenge, or is removed by a court order, the candidate's name will be placed on the ballot.

**No later than noon of the second Monday** following the primary election, the circuit court clerk must provide the Election Division with a list of all candidates nominated and elected (including convention delegates) in the primary along with the address of each candidate and delegate and the congressional district in which each candidate and delegate resides. (IC 3-8-7-5) The county election board must furnish each political party chairman a copy of the certified primary election results for candidates for local offices, school board candidates, political party candidates (precinct committeemen and state convention delegate), and public questions canvassed by the county election board by the deadline. (IC 3-12-4-12) The county election board doesn't issue certificates of nomination to candidates from a primary election. However, they may issue certificates of election to any school board candidate elected at the primary [Form CEB-20], and any precinct committeeman or state convention delegate elected at the primary [Forms CEB-14 or CEB-15]. The county political party organization may issue certificates of nomination to local candidates selected at the primary if the party wishes to do so.

Not later than noon on the second Wednesday after the primary (or 7 days after the completion of a primary recount), whichever occurs later, the Election Division canvasses and certifies the result of the canvass, including the names and addresses of candidates, to the state political party chairmen. (IC 3-10-1-34; IC 3-8-7-6) The Division sends each county election board a certification of nominees to be placed upon the General Election ballot that includes, (IC 3-8-7-16):

1) candidates who are required to file with the Election Division (federal, statewide, state legislative offices, judges and prosecuting attorneys);
2) any Indiana Supreme Court or Court of Appeals judicial retention questions;
3) any statewide public question; and
4) any political party device filed with the Election Division

The first general election ballot certification will be sent to the counties no later than August 21, 2006. In a presidential election year, a second ballot certification of Presidential and Vice-Presidential candidates (in a presidential election year) will be sent to the counties no later than the second Thursday in September before the General Election. A third certification of write-in candidates (if any) will be sent no later than noon August 1 before the General Election. (IC 3-8-7-30)

If a candidate challenge concerning a candidate nominated to fill a major party ballot vacancy is pending before the Election Commission at the time of any certification, the certification will indicate that the candidate's name shall not be printed on the ballot until the challenge is resolved by the Commission or a court with jurisdiction in the matter. (IC 3-13-1-16) The ruling of the Commission on any candidate challenge will be communicated to the counties immediately with further instructions about the placement of the challenged candidate on the ballot.

Many candidates are nominated for ballot placement through the primary process. However, some candidates are nominated by state or county conventions and a petition of nomination containing signatures of registered voters may nominate other candidates.

Candidates nominated at a state political party convention must be certified by the chairman and secretary of the state convention by noon, July 15, and candidates nominated by petition of nomination must file their petitions of nomination and candidate consent by noon, July 15 before the General Election. (IC 3-8-6-10; 3-8-7-8)

Candidates nominated by petition (except for school board candidates), must file their petitions of nomination with the appropriate county voter registration office for verification of signatures by noon, June 30, and must file the petitions accompanied by the candidate's consent to become a candidate form with either the Election Division or the county election board by noon, July 15 before the General Election. (IC 3-8-6-10(c))

The Libertarian Party may nominate many local candidates by county convention (county offices, township offices, city offices and towns with a population greater than 3,500). In addition, in towns smaller than 3,500 that have not opted to conduct a primary, Democratic, Libertarian and Republican Parties may nominate candidates by a town convention if there is a contest for nomination within that party. Please consult the ***2006 Indiana Election Calendar***, published by the Indiana Election Division, for the specific dates by which these nominated candidates must be certified.

## WITHDRAWAL OF NOMINEE

A nominee may withdraw from the general election ballot. The nominee **must** file a notice of withdrawal in writing. [Form CAN-24] The notice of withdrawal must be filed with the same person with whom a declaration of candidacy is filed. The notice of withdrawal must be filed **not later than noon:** (IC 3-8-7-28)

1) July 15 before a general or municipal election; or
2) forty-five (45) days before a special election.

A candidate nominated by petition may withdraw no later than noon, July 15 before a general election. (IC 3-8-6-13.5) A write-in candidate may withdraw no later than noon, July 15 before a general election. (IC 3-8-2-2.7)

Special procedures and restrictions apply to a candidate for legislative office or statewide office (other than a justice or judge) who attempts to withdraw after noon 30 days before the general election. (IC 3-8-8)

A candidate who has been disqualified by operation of law **must immediately** file a notice of withdrawal. (IC 3-8-1-5) A candidate who moves from the election district **must immediately** file a notice of withdrawal. The withdrawal deadlines do not apply to a candidate who has been automatically disqualified or who has moved from the election district. (IC 3-8-7-28) If a candidate does not file a notice of withdrawal but has been disqualified, has moved or is no longer an active candidate, it is still possible to remove the candidate from the ballot. To do so, the county chairman of the political party with a candidate on the ballot in the election district or another candidate for the same office may file an action in the county circuit court. The action must:

1) state that this provision applies to the candidate; and
2) name the affected candidate and public official responsible for placing names on the ballot as defendants.

After a complaint is filed, the circuit court must conduct a hearing within ten (10) days. A candidate vacancy occurs if the court finds in favor of the plaintiff. (IC 3-8-7-29) The resulting vacancy is filled in the same manner as any other early or late ballot vacancies. (IC 3-13-1; IC 3-13-2)

## CERTIFICATES OF ELECTION

The circuit court clerk must prepare a statement to be submitted to the Election Division. This statement must identify the number of votes received by each candidate for:

1) federal offices;
2) statewide offices and questions;
3) legislative offices;
4) judge of the circuit court, county court, superior court, probate court, or small claims court;
5) prosecuting attorney;
6) circuit court clerk;
7) county recorder;
8) county auditor;
9) county treasurer;
10) county sheriff;
11) county coroner; and
12) county surveyor.

This statement **may be sent to the Election Division in paperless form by using the statewide voter registration system. The statement, whether in electronic or paper form,** must be sent or hand-delivered to the election division not later than noon the second Monday after Election Day. (IC 3-12-5-1; 3-12-5-6) (Forms CEB-10, CEB-11, CEB-12, and CEB-13) After the election division tabulates the results, the secretary of state must certify to the governor the candidates receiving the highest number of votes. (IC 3-12-5-7) If no errors are found by the deadline for filing for an election recount or contest, the governor must prepare a commission to each candidate elected by noon, the first Tuesday of December. The election division, no later than the second Tuesday of December, mails a commission to the candidate at the most recent address provided to the election division. (IC 3-12-5-8) For all other local offices, the circuit court clerk issues a certificate of election to a candidate upon demand. (IC 3-12-5-2)

A certificate of election **may not be issued earlier than the deadline for filing for a recount or contest** after the election. (IC 3-12-5-16) This seventeen-day period allows the county election board to discover and correct errors in the tabulation of the vote. If an error is discovered within this period the **county election board** must correct this mistake. (IC 3-12-5-14)

The circuit court clerk then issues a certificate of election to any of the following local or political offices at the request of the successful candidate. (See Forms CEB-7 [County Commissioner]; CEB-8 [County Council]; CEB-14 [Precinct Committeemen]; CEB-15 [State Convention Delegate]; CEB-16 [County Assessor]; CEB-17 [Township Trustee]; CEB-18 [Township Board Member]; CEB-19 [Township Assessor]; CEB-20 [School Board Member-Primary Election]; CEB-21 [School Board Member-General Election]. For a local question, the circuit court clerk issues a certificate declaring the questions approved or rejected, upon demand of a voter entitled to ask for a recount of the public question.

If a local office has an election district in **more than one county, the circuit court clerk of the county with the greatest percentage of population of the election district issues a certificate of election at the request of the successful candidate. (IC 3-12-5-2(b))**

## ELECTION RECOUNT PROCEDURES

A candidate seeking nomination or election to a local, or school board office, or a candidate for election to the party office of precinct committeeman or state convention delegate may request that the votes cast for that office be recounted. (IC 3-12-6-1) A candidate requesting a recount **must** file a verified petition for recount in the circuit or superior court of the county ***no later than noon fourteen (14) days*** after the election. If the candidate does not do so, the candidate's political county chairman may file a recount petition **no later than noon seventeen (17) days after the primary. (**IC 3-12-6-2) A cross-petition for a recount may be filed ***no later than noon twenty-one (21) days*** after the election. (IC 3-12-6-4)

The recount petition must state the following: (IC 3-12-6-3)

1) the office for which the recount has been filed;
2) the precinct(s) in which the recount is desired;
3) that the petitioner was a candidate at the election for the office/ or the appropriate county chairman and that the office was voted upon in the precinct(s) specified;
4) the name and addresses of the petitioner's opposing candidate(s);
5) that the petitioner in good faith believes that the votes cast for the office at the election in the named precinct(s) were not correctly counted and returned; and
6) that the petitioner desires a recount of all the votes cast for the office in the named precinct(s).

If the county uses optical scan cards, a petitioner may request that the ballot cards cast in the specified precincts be recounted manually. (IC 3-12-6-21.5) A cross-petition contains virtually the same information. (IC 3-12-6-6)

A person who files a recount petition is responsible for all of the costs of the recount. The petitioner must pay the civil case-filing fee under IC 3-12-6-2.5 (also see IC 33-37), and also file a ***bond or cash deposit of at least $100*** with the court for payment of all costs of the recount. For every precinct over ten to be recounted, the bond or cash amount should be increased by $10 per precinct or $100 per precinct, depending upon whether the candidate lost by more or less than 1%. The court will establish the amount of the deposit. Any cash deposit is placed in the county general fund. (IC 3-12-6-10.5)

If the recount petition is successful, the petitioner's deposit or bond is refunded in full. Partial refunds may also be required, based on the outcome of the recount. (IC 3-12-6-10)

If a cross-petition is filed, the cross-petitioner must file a bond or cash deposit for the cross-petitioner's proportional share of the recount. If the recount petition is unsuccessful, a cash deposit was not made, and the costs of the recount exceed the bond amount, the petitioner or cross-petitioner must pay the difference. (IC 3-12-6-12) Any unexpended balance remaining after payment of all costs and any refund shall be deposited in the county general fund.

Once the petition is filed, the county clerk assigns the petition a cause number as a miscellaneous civil action and issues a notice of the filing and pendency of the petition to the opposing candidate(s). (IC 3-12-6-2.5) The sheriff then delivers the notice to the opposing candidate(s), to the county election board, and to the election division (if the recount relates to the office of judge or prosecuting attorney). (IC 3-12-6-9)

Upon granting the petition or cross-petition for a recount, the court appoints a ***three member recount commission*** to perform the physical recounting of the votes. One member of the commission must be a Democrat and one member must be a Republican. See IC 36-1-8-10 to determine party membership for this purpose. Except as described below, each member of the commission must be a registered voter of the county qualified to vote at the election. (IC 3-12-6-16)

Where only traditional hand counted paper ballots were used in the election, the remaining member must be a Democrat or Republican qualified to vote in the district of the recount. (IC 3-12-6-16) If a voting method other than hand counted paper ballots was used in the election, one member of the commission must be a "competent mechanic" who is familiar with the voting system used in the election. This person does not need to be a voter of the district. (IC 3-12-6-16)

Each member of a recount commission is entitled to be compensated. Each member receives a per diem not to exceed $100 for each day actually engaged in conducting the recount. The judge of the court having jurisdiction over the recount must establish the compensation to be paid to each recount commissioner. (IC 3-12-6-17) If the deposit or bond is not sufficient to pay the compensation of the recount commission ***or any other recount expenses,*** the compensation or expenses are to be paid from the county general fund, without appropriation. (IC 3-12-6-17.5)

After the recount is ordered, the commission must immediately begin the recount. The court must fix the place and time for completing the recount. Each candidate may attend and may have a watcher attend the proceedings. The watcher has the same rights as a political party's polling place watcher. Members of the press may also attend and have the same rights as media watchers at precinct polling places. (IC 3-12-6-21)

The recount commission's proceedings must be performed in public under the Open Door Law, but the commission may restrict access to parts of the room where election materials are being handled or transported. The court, by order, impounds all traditional hand counted paper ballots, optical scan ballot cards, electronic voting systems, poll lists and tally sheets. These materials will be made available to the recount commission. However, a circuit court clerk or board of voter registration may copy any election materials other than the ballots under the supervision of a person designated by the court. (IC 3-12-6-19)

**NOTE: A recount conducted by a local recount commission must be completed no later than the last Friday in June after a primary election or December 20 after a general election, unless the court finds good cause to extend this deadline to another specific date!** When the recount is complete, the commission makes out a certificate verifying the totals and stating the candidate receiving the highest number of votes. The commission then files the certificate with the circuit court clerk, who adds this to the order book of the court and sends a certified copy by certified mail to each opposing candidate named in the petition (and to the Indiana election division if the local recount concerned an office where votes were cast in more than one county). (IC 3-12-6-18; IC 3-12-6-22; IC 3-12-6-28)

After the commission files the certificate, the court that appointed the local recount commission issues an order acknowledging the filing of the certificate, discharging the commission, and releasing election materials impounded during the recount. An appeal may be taken to the court that appointed the local recount commission, but must be filed no later than 30 days after the court issues the order described in this paragraph. (IC 3-12-6-22.5)

After a recount in an election for a public office has been completed, the circuit court clerk issues a certificate of election to the county election board if the candidate would receive a certificate of election or nomination from the board or to the Indiana election division and the governor, if the candidate would receive a commission from the governor. (IC 3-12-6-31) Candidates for precinct committeemen and state convention delegate are still selected after the recount by their political party's applicable rules. (IC 3-12-6-1.5)

## RECOUNT HELPFUL HINTS

1) The judge may request the two county political party chairmen to recommend nominees to the recount commission.
2) The judge and the recount commission should adopt ballot counting rules and any other rules needed to restrict access to the ballot counting areas to authorized individuals, including candidate and media watchers. These rules must conform as closely as possible to the Guidelines adopted by the State Recount Commission. These guidelines may be found at *www.in.gov/sos/elections/voters/recount.html.*

## STATE RECOUNT COMMISSION

**The state recount commission conducts recounts for Presidential primaries and nominations for a federal, statewide, or state legislative office, and conducts recounts of election for federal, statewide, or state legislative offices.** The state recount commission can issue orders to impound local election materials needed for state recount commission investigations and procedures. (IC 3-12-10-4; 3-12-11-16)

The orders issued by the State Recount Commission supersede any orders issued concerning a local recount conducted under IC 3-12-6.

## ELECTION CONTEST PROCEDURES

A person who was a candidate for nomination to office in the primary, a candidate in the general election, or the county chairman of the candidate is eligible to contest an election. (IC 3-12-8-1)

An election may be contested on any of the following grounds (IC 3-12-8-2):

1) A contestee (candidate) was ineligible.
2) A mistake occurred in the printing or distribution of the official ballots used in the election, making it impossible to determine which candidate received the highest number of votes.
3) A mistake occurred in the programming of a voting system making it impossible to determine which candidate received the highest number of votes.
4) A voting system malfunctioned, making it impossible to determine which candidate 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.

The candidate must file a contest petition with the county clerk no later than noon fourteen (14) days after the election. A county chairman wishing to contest a local election when a candidate has not filed a petition must do so ***no later than noon seventeen (17) days*** after the election. If an election district is contained within more than one county, the petition is filed with the circuit court clerk of the county that contains the greatest percentage of the population of the election district. (IC 3-12-8-5)

The contest petition must state the following (IC 3-12-8-6):

1) That the petitioner desires to contest the nomination or election to an office.
2) The name and address of each candidate for the office involved.
3) The grounds for the contest.

If a petition for a contest alleges that it is impossible to determine which candidate received the highest number of votes, the petition must identify each precinct in which:

1) ballots contained the printing or distribution mistake;
2) a mistake occurred in the programming of a voting system; or
3) a voting system malfunctioned.

After the contest petition is filed, the county clerk collects the required filing fee under IC 33-37, and assigns the petition a cause number as a miscellaneous civil action. (IC 3-12-8-5.5)

The county clerk issues a summons to the contestee and all other persons named in the petition, and to the county election board and to the election division (if the contest concerns the office of judge or prosecuting attorney). The persons named in the petition must appear and answer such petition on a day fixed by the court. (IC 3-12-8-8) The county sheriff serves summons on persons named in the petition in the same manner as in a civil action. (IC 3-12-8-9)

All contestees must appear to answer the petition. A contestee may present any defense or answer under a general denial, file a special answer, or both. The contest petition is heard and determined by a court without a jury, subject to the Indiana Rules of Trial Procedure. The court will determine the issues raised by the petition and answer to the petition. If the court determines that a candidate was ineligible, the court ***must*** declare as elected or nominated the ***qualified*** candidate who did receive the highest number of votes: in other words, the candidate who finished second. (IC 3-12-8-17)

Unless the judgment is appealed, the court's decision is final. The circuit court clerk certifies the new results as declared by the court to the county election board. (IC 3-12-8-19) This new certification takes the place of the original, if issued. (IC 3-12-8-18)

If the court finds that a mistake occurred in the printing or distribution of the ballots or in the programming of a voting system ***and it is impossible to determine which candidate received the most votes***, the court ***MUST*** order a special election. The special election will be conducted only in those precincts identified in the contest petition in which the court determines that a mistake occurred. (IC 3-12-8-17) After the special election, the county election board issues a corrected canvass showing the results in those precincts. A new certificate of election or commission is prepared if another candidate wins as a result of the special election. (IC 3-12-8-17.5)

## RESOLVING TIE VOTES

Whenever a tie vote occurs at a **primary election**, a "***CANDIDATE VACANCY***" results. (IC 3-12-9-1) The resulting vacancy is filled through a caucus of eligible precinct committeemen, the party chairman (if the chairman has received authority from the county committee to fill candidate vacancies), or a caucus of party officers. (IC 3-13-1-6)

In a **general election**, a tie vote occurring in a federal, state (other than governor and lieutenant governor), or legislative office requires a special election to break the tie. (IC 3-12-9-1) A tie vote for the office of governor and lieutenant governor is resolved at a joint session of the State Senate and House of Representatives. (IC 3-12-9-2)

Whenever a circuit court clerk receives certification that a tie vote at an election for a local office or school board office has occurred, the clerk shall immediately send written notice of the tie vote to the fiscal body of the affected political subdivision. (IC 3-12-9-3)

A fiscal body notified by the circuit court clerk of a tie vote resolves the tie by electing a person to fill the office no later than December 31 following the election at which the vote occurred. If the tie vote was for a school board office elected at the same time as the May primary, the fiscal body must break the tie not later than June 30 following the primary. If a tie vote occurred for the election for more than one at-large seat on a legislative or fiscal body, the fiscal body shall elect the number of individuals necessary to fill each of the at-large seats for which the tie vote occurred. If one of the candidates involved in the tie vote is also an incumbent officeholder, the candidate ***may not*** cast a vote.

A fiscal body is defined in IC 36-1-2-6 for the following political subdivisions:

1) County Council - for a county not having a consolidated city;
2) City-County Council - for a consolidated city or a county containing a consolidated city;
3) Common Council - for a second or third class city;
4) Town Council - for a town;
5) Township Board - for a township;
6) Governing Body or Budget-Approved Body - for any other political subdivision.

The executive of the political subdivision (other than a town council president or the president of a school board) may cast the deciding vote to break a tie in a fiscal body action on a tie vote. (IC 3-12-9-4) The town clerk-treasurer breaks a tie on the town council under this provision. Until a successor is elected, the incumbent officeholder remains in office. (IC 3-12-9-5)

If the tie vote occurs among the members of a school board when attempting to break a tie vote at an election, the judge of the circuit court selects one (1) of the candidates who is certified as elected. In a united school corporation (more than one (1) county), the judge of the circuit court of the county having the most pupils enrolled in the school corporation breaks the tie vote. (IC 20-23-4-31).

## RETENTION OF ELECTION RECORDS

The "general rule" for all election records is to retain the record for at least **twenty-two (22) months after the election for which the records were produced.** (IC 3-10-1-31; IC 3-10-1-31.1; IC 3-12-4-13) Federal law provides that materials utilized in elections for federal offices must be preserved by election administrators for 22 months from the date of the election. This includes **poll lists, applications for absentee ballot, ballot envelopes, tally sheets, ballots and the computer programs used to tabulate the votes**.

Circuit Court Clerks or boards of voter registration are directed to unseal election materials, if necessary, in order to use the poll lists to update the voter registration records, including the voter identification numbers obtained during each election.

NOTE: Beginning with elections held in 2004, all election material is available for copying and inspection under the Public Records Law, except for ballots, which remain confidential. (IC 3-10-1-31.1) Election material must remain sealed while a recount or contest is underway involving those materials. Materials from elections held in 2003, or before, are not available under the Public Records Law, and must remain sealed so long as the records are retained.(IC 3-10-1-31)

Before disposing of records, the circuit court clerk or board of voter registration must notify the county records commission or the State Public Records Commission at (317) 232-3380.

**UNUSED BALLOTS** may be destroyed after the deadline for filing a recount petition (except for one, which is retained for the election record), for local ballots. **NOTE: Any record concerning an issue in litigation must be retained until the controversy is resolved, subject to orders of the court.**

**NEVER DESTROY THE RECORDS AND MINUTES OF THE COUNTY ELECTION BOARD OR COUNTY ELECTION BOARD CERTIFIED PRECINCT ELECTION RESULTS!**

**Special procedures apply to the ballots, poll lists, and other documents or material produced for use at a convention of a political party to nominate candidates, or a caucus conduced by a political party to nominate candidates. These ballots, poll lists, and other documents or material are the property of the political party, and must be retained and preserved as specified by the rules of that political party. (IC 3-5-4-10)**

## RETENTION OF VOTER REGISTRATION RECORDS (IC 3-7-27-6(b))

1) **Canceled registration records** may be disposed of as follows:
   Determine the date of the next general election after the cancellation of each registration. If the general election is more than 24 months ago, the record may be disposed of.
2) **Voter declination records** must be retained for 24 months.
3) **Duplicate** registration records for a voter must be retained as long as the person remains a voter of the county.

## RETENTION OF CAMPAIGN FINANCE RECORDS

**Campaign finance reports and statements** are kept four years from December 1, following the election to which they pertain. (IC 3-9-4-6) Reports and statements from candidates for **judge** must be kept **six (6)** years from December 1 following the election to which they pertain.

# COUNTY ELECTION ADMINISTRATOR'S
# ELECTION CHECKLIST

## VOTER REGISTRATION

_____ voter registration acknowledgment cards have been sent

_____ all name and address changes have been completed

_____ all additional documentation required from certain mail-in voters has been processed

_____ press release to media concerning last day to register and first day to vote absentee

_____ updated registration lists for county chairmen

_____ check registration list; make sure all is in order

_____ run poll lists

_____ certify number of registered voters

_____ put certificates on cover of poll lists

## CANDIDATES

_____ prepare candidate kits (declarations, campaign finance forms and manuals, etc.)

_____ prepare candidate folders

_____ prepare candidate checklists (who has filed which forms?)

_____ send notice to any candidate who has not filed campaign finance reports if required to do so

## BALLOT PREPARATION

_____ estimate number of official, absentee, and provisional ballots

_____ prepare ballot worksheet for each precinct

_____ proofread worksheets

_____ make arrangements with printer; take worksheets to printer

_____ make corrections; have official, provisional, and sample ballots printed

_____ proofread finished official, provisional, and sample ballots

_____ have deputies, county election board members and county chairmen proof finished ballots

_____ deliver ballot strips to the mechanics (if necessary for model of DREs used)

_____ have sample ballots available for distribution

## ABSENTEE VOTING

_____ notify county chairmen of number of absentee boards to be appointed

_____ appoint absentee voting boards (including traveling boards)

_____ prepare absentee ballots (seal and signature stamp of clerk (using state prescribed seal if clerk is a candidate on the ballot; board member initials)

_____ process applications

_____ mail ballots (return postage prepaid)

_____ provide for bipartisan security of returned ballots in the clerk's office (ballot box with 2 locks)

_____ arrange for ballots to be delivered to the polls on Election Day (unless absentee ballot central count county)

## ELECTION WORKERS

_____ notify county chairmen to nominate workers

_____ prepare roster sheets of nominated workers (including alternates, if any)

_____ mail appointment letters to nominated workers

_____ prepare sign-in sheet for election school training

_____ prepare instructions for poll workers (opening/closing polls, counting ballots); review instructions; revise to reflect recent election law changes or other new county procedures

_____ prepare supply lists for inspectors

_____ purchase precinct boxes and clerk's box from printer; or prepare your own

_____ hire clerical assistants to help in canvassing of election results

_____ prepare canvassing sheets (if not included in the clerk's box of supplies)

## ELECTION WORKER TRAINING

_____ set date for training (county election board members should attend and assist)

_____ arrange for large meeting room (don't forget tables and chairs if needed)

_____ arrange for audio-visual aids as needed

_____ prepare training sign-in sheet for precinct officials

_____ prepare sample forms for use as training aids

_____ provide sample ballots

_____ prepare checklist of issues to cover at meeting

_____ arrange for voting system to be used as a training aid

_____ record training of inspectors (and other poll workers required to be trained by county)

## MISCELLANEOUS

_____ prepare watcher credentials for candidate and media watchers

_____ mail letters to polling places stating times for delivery and pick-up of voting equipment

_____ arrange to have keys to polling places or instruct the inspectors to do so

_____ publish legal notice of election and location of polling places in newspaper

_____ prepare telephone logs for Election Day telephone calls

_____ make election night drop-off arrangements for precinct inspectors

_____ review Election Day procedures with office staff. Advise courts, attorneys and public if office is closed for non-election business (case filings, child support for example)

_____ discuss election night security with sheriff's department. Make arrangements for at least one deputy to be available at courthouse or election central

_____ transmit election night results to the Indiana Election Division.

## POST ELECTION

_____ process any provisional ballots to determine validity

_____ certify local election results (all members of the county election board must sign certificate)

_____ certify results to the Indiana election division and return CEB-9 form

_____ tally election statistics

_____ review recount and contest procedures if necessary

_____ deliver copies of canvass sheets to county chairmen and election division

_____ prepare certificates of election, if requested by candidate or as courtesy

_____ arrange for long-term storage and security of election documents and voting systems

_____ process election claims (precinct statement of expenses, etc.)

_____ update registration record for each voter

# Appendix
## County Election Board Forms

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|---|---|
| CEB-1 | Certification of Delivery of Precinct Election Materials by Inspector and Judge |
| CEB-2 | Application for Assignment to a Polling Place |
| CEB-6 | Appointment and Oath of Office for County Election Board Member |
| CEB-9 | County Election Report |
| IEC-6 | Report of Polling Location Inaccessibility; Request for Designation of Special Polling Place |

# ***TELEPHONE LIST***

**STATE AGENCIES:**

**INDIANA ELECTION DIVISION**
Direct (317) 232-3939
Toll Free (800) 622-4941

**INDIANA SECRETARY OF STATE**
General Information (317) 232-6531

**INDIANA DEMOCRATIC STATE CENTRAL COMMITTEE**
Direct (317) 231-7100
Fax (317) 231-7129

**INDIANA LIBERTARIAN STATE PARTY**
Direct (317) 920-1994
Fax (317) 924-2920

**INDIANA REPUBLICAN STATE CENTRAL COMMITTEE**
Direct (317) 635-7561
Fax (317) 632-8510

**FEDERAL AGENCIES:**
**U.S. ELECTION ASSISTANCE COMMISSION**
General Information
Direct (202) 566-3100; Toll Free (866) 747-1471

Department of Justice, Civil Rights Division (202) 307-2767; (800) 253-3931
Department of Justice, Public Integrity Section, Election Crimes Branch (202) 514-1421
Department of Defense, Federal Voting Assistance Program (703) 588-1584; Toll Free (800) 438-8683

Federal Communications Commission (202) 418-1440

**COUNTY ELECTION BOARD MEMBERS:**

NAME: _____ NAME: _____

ADDRESS: _____ ADDRESS: _____

PHONE: _____ PHONE: _____