



2009 Indiana Election Legislation Summary

Prepared by the Indiana Election Division

This document summarizes the election-related legislation that passed the Indiana General Assembly and became law in 2009. Bills may be obtained by contacting the Legislative Information Center at 200 West Washington Street, Room 230, Indianapolis, Indiana 46204-2731; (317) 232-9856, or by downloading documents from the General Assembly's website at www.in.gov/legislative.

This document is intended to serve as an overview of information concerning Indiana election laws. Although the Election Division takes every effort to ensure the accuracy of the information in this document, **where your legal rights are involved, do not rely on this document. Instead, review the law yourself or consult with your attorney.**

The 2009 Regular Session of the Indiana General Assembly enacted the following election-related bills:

Public Law 53-2009 (House Enrolled Act 1326): Precinct Election Officer and Proof of Identification
Public Law 120-2009 (House Enrolled Act 1346): Miscellaneous Election Provisions

The following bills made technical (or non-election related) amendments to Indiana election statutes:

Public Law 1-2009 (House Enrolled Act 1198): Technical Corrections
Public Law 16-2009 (Senate Enrolled Act 346): Codification of Uniform County Office Terms
Public Law 44-2009 (Senate Enrolled Act 344): Name Change of Office of Family Resources
Public Law 61-2009 (Senate Enrolled Act 481): Department of Health death registration system
Public Law 106-2009 (Senate Enrolled Act 530): Indiana-Michigan Boundary Line Commission

The 2009 Special Session of the Indiana General Assembly enacted the following election-related bills:

Public Law 182-2009 (House Enrolled Act 1001(ss)): State Budget (and election-related provisions)

POLLING PLACES, POLL WORKERS and PARTISAN WORKERS

Proof of Identification

Any precinct election officer (an inspector, a judge, a poll clerk, and assistant poll clerk, or an election sheriff) may ask a voter to provide proof of identification at the polls. Former law only permitted a member of the precinct election board (an inspector or a judge) to ask a voter for proof of identification.

(HEA 1326 §§ 1 and 2; Effective date: July 1, 2009. Citations affected: IC 3-10-1-7.2; 3-11-8-25.1)

Military Voters and Public Safety Officer Voters; Returning to Polls

A voter who is a member of the military or a public safety officer (*see definition under “Absentee Voting”*) who signs the voter’s name on the poll list and either: (1) writes the voter’s address; or (2) checks the “Address Unchanged” box, and then leaves the polls without casting a ballot or after casting a provisional ballot may reenter the polls to cast a ballot under certain circumstances.

A voter described above who leaves the polls to respond to an emergency as a military member or public safety officer must notify the inspector, a judge, a poll clerk, an assistant poll clerk, or an election sheriff that the voter is leaving the polls for this reason. The poll clerk or assistant poll clerk shall make a notation on the poll list with the voter’s name indicating that the voter has left the polls under this provision, and the time when the voter left the polls.

If the voter returns to the polls, the voter shall be permitted to vote if the voter executes an affidavit in the form prescribed by the Indiana Election Commission. The affidavit must state: (1) the name of the voter; (2) that the voter is a member of the military or a public safety office; (3) the military or public safety position held by the voter; (4) that after the voter signed the poll list, but before the voter voted, the voter was called to respond to an emergency as a military member or public safety office; (5) a brief description of the emergency to which the voter responded; and (6) the time when the voter returned to the polls.

(HEA 1346 §§ 1 and 7; Effective date: July 1, 2009. Citations affected: IC 3-5-2-31.5 [new]; 3-11-8-25.7 [new])

VOTER REGISTRATION

Online Voter Registration

After June 30, 2010, an individual who is eligible to vote and possesses a current and valid Indiana driver’s license or Indiana identification card for non-drivers may submit a voter registration application to a county voter registration office by following procedures for online voter registration.

The secretary of state, with the consent of the election division co-directors, is to establish a secure Internet website to permit these individuals to submit voter registration applications, or an application for a change of name, change of address, or change of other information in the voter’s

existing voter registration record, along with information to establish that the individual is eligible to register online.

When an individual submits an application by using the website, the bureau of motor vehicles must compare the information submitted by the applicant with the information in the bureau's data base listing the individuals who have a current and valid Indiana driver's license or identification card.

If the bureau confirms that the applicant does possess the license or identification card, the completed application and digital signature of the applicant shall be submitted by the bureau to the county voter registration office where the applicant resides, according to the information in the statewide voter registration system.

If the bureau is unable to confirm that the applicant possesses the license or identification card, the bureau must send a notice to the appropriate county voter registration office, advising that the bureau cannot confirm that the applicant possesses the license or identification card. The county voter registration office must send a notice to the applicant that the individual's online application could not be processed for this reason. The county voter registration office must send this notice to the applicant: (1) at the email address from which the applicant submitted the application; and (2) by mail to the mailing address provided in the application.

The county voter registration office must process an online registration application in the same manner as any other voter registration application, unless state law specifies otherwise.

An online voter registration application must be "signed" with an electronic signature in the manner prescribed by the online voter registration chapter. The bureau is not required to send a paper copy of the online voter registration application to the county voter registration office.

An eligible individual must submit a complete application online no later than midnight 29 days before an election to be registered to vote in that election.

(HEA 1346 §§ 3, 4, 5, 12 and 13; Effective date: July 1, 2009; Citations affected IC 3-7-26.7 [new]; 3-7-32-2; 3-7-33-3.5 [new]; 9-24-2.5-1; 9-24-2.5-4)

Department of Health Death Registration System

Beginning January 1, 2011, the state department of health shall establish an electronic system of recording deaths (the Indiana death registration system [IDRS]).

The local health officer shall submit reports to the state department of health concerning deaths within the health officer's jurisdiction electronically by using the IDRS.

(SEA 481 §§ 2, 5, and 6 ; Effective date: July 1, 2009; Citations affected IC 16-18-2-187.6 [new]; 16-37-1-3.1; 16-37-1-5.

ABSENTEE VOTING

Overseas Voters

An overseas voter (a military voter who, because of active duty, is outside the U.S. on election day; or a civilian voter who resides outside of the U.S.) may file an absentee ballot application by email if the email includes a scanned image of the application and the signature of the applicant.

The county election board shall send a blank absentee ballot application to an overseas voter who requests the application by sending an email to the voter with a scanned image of the application.

A county election board shall accept an emailed absentee ballot application from an overseas voter if the county election board has access to email. When a county election board receives an emailed absentee application from an overseas voter, the clerk's office, Lake County Board of Elections and Registration, or Tippecanoe County Board of Elections and Registration shall send an "automatic" email receipt acknowledging that the office has received the voter's application.

(HEA 1346 § 6; Effective Date: July 1, 2009; Citation affected: IC 3-11-4-4)

Faxed Applications

A county election board shall accept a faxed absentee ballot application from a voter if the county has access to a fax machine.

(HEA 1346 § 6; Effective Date: July 1, 2009; Citation affected: IC 3-11-4-4)

Military Voters and Public Safety Officer Voters

A voter who is a member of the military or public safety officer (meaning an individual who is one of the following):

- (1) A member of a fire department (as defined in IC 36-8-1-8).
- (2) An emergency medical service provider (as defined in IC 16-41-10-1).
- (3) A member of a police department (as defined in IC 36-8-1-9).
- (4) A correctional officer (as defined in IC 5-10-10-1.5).
- (5) A state police officer.
- (6) A county police officer.
- (7) A police reserve officer.

- (8) A county sheriff.
- (9) A deputy sheriff.
- (10) An excise police officer.
- (11) A conservation enforcement officer.
- (12) A town marshal.
- (13) A deputy town marshal.
- (14) A postsecondary educational institution police officer appointed under IC 21-17-5 or IC 21-39-4.
- (15) A probation officer.
- (16) A paramedic.
- (17) A volunteer firefighter (as defined in IC 36-8-12-2).
- (18) An emergency medical technician or a paramedic working in a volunteer capacity.
- (19) A member of the armed forces of the United States.
- (20) A member of the Indiana Air National Guard.
- (21) A member of the Indiana Army National Guard.
- (22) A member of a state or local emergency management agency.
- (23) A member of a consolidated law enforcement department established under IC 36-3-1-5.1.

is entitled to vote absentee by mail.

(HEA 1346 §§ 1 and 8; Effective Date: July 1, 2009; Citations affected: IC 3-5-2-31.5 [new]; 3-11-10-24)

Absentee Application Forms and County Party Central Committees

A county election board must furnish a party central committee absentee application forms *at the request* of a county party central committee. Former law required that the county election furnish these application forms no later than June 15 before a general election or January 15 before a primary election, whether or not requested to do so by the party.

(HEA 1346 § 6; Effective Date: July 1, 2009; Citation affected: IC 3-11-4-4)

VOTING SYSTEMS

Using “Grandfathered” Voting Systems

A county may continue to use an optical scan ballot card system or an electronic voting system whose state certification expired on or before October 1, 2009 if the voting system:

- (1) was approved by the Indiana Election Commission before October 1, 2009;
- (2) was purchased by the county before October 1, 2009; and
- (3) otherwise complies with the federal Help America Vote Act of 2002 (HAVA) and state law.

However, a vendor may not market, sell, lease, or install a “grandfathered” voting system as described above. Under former law, this “grandfathering” provision only applies to voting systems whose state certification expired on or before October 1, 2005, if the system was approved by the Commission before October 1, 2005, was purchased by the county before October 1, 2005, and otherwise complied with HAVA and state law.

(HEA 1346 § 10; Effective date: May 11, 2009; Citation affected IC 3-11-15-13.3)

Voting System Certification Standards

To be approved by the Indiana Election Commission, a voting system must meet either: (1) the 2002 Voting System Standards adopted by the Federal Election Commission; or (2) the 2005 Voluntary Voting System Guidelines adopted by the U.S. Election Assistance Commission. Under former law, the Commission was only authorized to approve voting systems that met the 2002 Standards.

(HEA 1346 § 10; Effective date: May 11, 2009; Citation affected IC 3-11-15-13.3)

Voting System Technical Oversight Program (VSTOP)

The fee submitted by a voting system vendor with an application for certification of a voting system is to be deposited in the voting system technical oversight program (VSTOP) account, rather than in the state general fund.

The VSTOP account also includes contributions made to the account under a settlement agreement executed with a voting system vendor. The money in the account does not revert to the state general fund at the end of the state fiscal year.

(HEA 1346 §§ 9 and 11; Effective date: July 1, 2009; Citation affected IC 3-11-15-4; 3-11-17-6)

Voting Equipment Damaged by Flood; Loan to County from State Rainy Day Fund

If a county receives a loan from the state counter-cyclical revenue and economic stabilization fund (rainy day fund), the money must be used to replace voting equipment damaged by a flood and may not be used to equip any vote centers.

(HEA 1001(ss) §§ 516; Effective date: June 30, 2009; Citation affected IC 6-1.1-20.2-14 [new])

LOCAL PUBLIC QUESTIONS

“Controlled Project” Public Questions

To determine if a petition or remonstrance signer is a “registered voter”, the county voter registration office makes that determination when the office processes the petition or remonstrance (and does not determine if a signer was registered as of the date of a notice published by the political subdivision of the signer, or 30 days after the publication of a notice).

A person is an “eligible voter” for purposes of voting on a controlled project public question if the individual: (1) is eligible to vote in the political subdivision in which the election on the public question will be held; and (2) resides within the boundaries of the political subdivision for which the public question is being considered. The former law requiring that the person be registered to vote in the political subdivision on the date that is 30 days before the election is repealed.

If a petition is presented to a county voter registration office within 45 days before an election (rather than within 35 days under former law), the voter registration office may defer acting on the petition until after the election. The time requirements for action by a county voter registration office do not begin to run in that case until 5 days after the election.

The text of the public question to be placed on the ballot for a controlled project public question is

“Shall _____ (insert the name of the political subdivision) issue bonds or enter into a lease to finance _____ (insert a brief description of the controlled project) which is estimated to cost not more than _____ (insert the total cost of the project) and is estimated to increase the property tax rate for debt service by _____ (insert increase in tax rate as determined by the department of local government finance)?”.

The public question must appear on the ballot in the form approved by the county election board. If a political subdivision is located in more than one county, the county election board of each county must jointly approve the form of the public question that will appear on the ballot. The form approved by the county election board may differ from the language certified to the board by the county auditor.

The county auditor must certify the public question to the county election board of each county in which the political subdivision is located not later than noon: (1) 60 days before a primary election, if the public question will be placed on the primary or municipal primary ballot; or (2) August 1, if the public question is to be placed on the general or municipal election ballot.

If a primary election, general election, or municipal election will not be held during the first year in which the public question can be placed on the ballot (rather than during the 6 month period after the county auditor certified the question under former law), and if the political subdivision requests that the public question be placed on the ballot at a special election, then a special election shall be held.

The special election must be conducted on the first Tuesday after the first Monday in May or on the first Tuesday after the first Monday in November (rather than not earlier than 90 days and not later than 120 days under former law). The certification must occur not later than noon 60 days before a special election is to be held in May, or by noon August 1 for a special election to be held in November.

A temporary provision concerning the scheduling of special elections before July 1, 2009 specified that if the required notice of a special election had been filed with the election division before July 1, 2009, then the special election was not required to be held on the specified dates in May or November 2009.

The fiscal body of the political subdivision that requests a special election shall pay the costs of the special election. (The former law which provided that if a special election is held in a year in which a general election is not held or a municipal election is not held, such as 2009, that the political subdivision was not required to pay the cost of holding the special election, was repealed.)

After a petition requesting a public question on a controlled project under IC 6-1.1-20-3.5 has been submitted, a legislative body of a political subdivision may adopt a resolution to withdraw the proposed project from consideration in a public question. The legislative body must provide a certified copy of the resolution to the county auditor and the county election board not later than 49 days before the election at which the public question would be on the ballot. A public question on the controlled project withdrawn in accordance with this procedure shall not be placed on the ballot regardless of whether the county auditor had previously certified the public question to the county election board. If the withdrawal requires a county election board to reprint ballots, including a case where the county election board has printed ballots before the political subdivision provided a certified copy of the withdrawal resolution to the county auditor and county election board, the political subdivision is required to pay the costs of reprinting the ballots.

If a public question on a controlled project is withdrawn, a public question under IC 6-1.1-20-3.6 on the same controlled project or a substantially similar controlled project may not be submitted to the voters earlier than 1 year after the date the resolution withdrawing the public question is adopted by the political subdivision.

A political subdivision which makes a preliminary determination to issue bonds or enter into a lease for a controlled project or a capital project which would otherwise not be subject to the petition and public question process may adopt a resolution specifying that the local public question process applies to the issuance of the bonds or the entering into the lease. If a resolution for a local public question is adopted in this situation concerning a controlled project for which a sufficient petition requesting the application of the public question process has not been filed with the county voter registration office not more than 30 days after publication of the notice of the preliminary

determination for the controlled project, then the fiscal body of the political subdivision must adopt a resolution for the public question process not more than 60 days after the publication of the preliminary determination to issue the bonds or enter into the lease. If a resolution for a local public question is adopted in this situation concerning a controlled project and a petition has been determined to have an insufficient number of signatures to require application of the local public question process, then the fiscal body of the political subdivision must adopt a resolution for the public question process not more than 30 days after the county voter registration office determines that an insufficient number of persons have signed the petition. If the issuance of bonds or the entering into a lease for a capital project in this situation is not a controlled project subject to the public question process, but would be subject to the public question process but for the fact that the project is in response to a natural disaster, an accident, or an emergency in the political subdivision that makes a building or facility unavailable for its intended use, and is approved by the county council of each county in which the political subdivision is located, then the fiscal body of the political subdivision must adopt a resolution for the public question process not more than 30 days after publication of the notice of the preliminary determination to issue the bonds or enter into the lease. If acting under this provision, fiscal body must certify the resolution for the public question process to each county election board in which the political subdivision is located. The county election board shall then place the local public question on the ballot in accordance with IC 6-1.1-20-3.6.

(HEA 1001(ss) §§ 142, 143, 144, 145, 146, and 147; Citations affected: IC 6-1.1-20-1.9 [effective July 1, 2009]; 6-1.1-20-3.1 [effective June 30, 2009]; 6-1.1-20-3.2 [effective January 1, 2009 (retroactive)]; 6-1.1-20-3.5 [effective June 30, 2009]; 6-1.1-20-3.6 [effective January 1, 2009 (retroactive)]; 6-1.1-20-3.7 [new, effective June 30, 2009]; SECTION 481 [noncode, effective June 30, 2009]).

Northern Indiana Regional Transportation District Public Question

A local public question on the creation of the northern Indiana regional transportation district and whether a county should be included as a member shall be submitted to the registered voters of Lake County, LaPorte County, Porter County, and St. Joseph County at a special election held on November 3, 2009.

The public question on the creation of the district must state the following:

"Shall there be created the northern Indiana regional transportation district under IC 8-24 to provide a regional rail system serving Lake, Porter, LaPorte, and St. Joseph counties and regional bus public transportation system serving Lake and Porter counties with (insert name of county) County becoming a member of the district?"

If a majority of those voting on the public question in at least 2 counties vote in favor of the creation of the district, the northern Indiana regional transportation district with a rail service division and a bus service division is established.

The district consists of all the incorporated and unincorporated territory in those counties where the majority of those voting on the public question vote in favor of the creation of the district. Each of these counties is a member of the district.

If a majority of those voting on the public question in a county do not approve the creation of the district, the incorporated and unincorporated territory in the county is not part of the district and the county is not a member of the district.

If a majority of those voting on the public question in fewer than 2 counties approve the creation of the district, the district is not created and the law creating the district has no effect.

(HEA 1001(ss) §§ 282; Effective date: July 1, 2009; Citations affected: IC 8-24-2-1 [new]).

Wishard Hospital; Marion County Health and Hospital Corporation Public Question

A local public question shall be placed on the ballot at a special election to be held on November 3, 2009, in Marion County if: (1) The Marion County Health and Hospital Corporation Board adopts a resolution requesting the county auditor to certify the public question to the county election board and requesting the county election board to place the public question on the ballot at the special election; and (2) The Health and Hospital Corporation submits the resolution to the county auditor and the county election board before August 1, 2009.

The Marion County Health and Hospital Corporation shall, before October 1, 2009: (1) conduct a public hearing described in IC 6-1.1-20-3.5(b)(1) [the controlled project law]; (2) adopt a resolution making a preliminary determination to issue the bonds or enter into the lease referred to in the local public question; and (3) give notice of the preliminary determination in the manner described in IC 6-1.1-20-3.5(b)(2), with the notice containing the information required by IC 6-1.1-20-3.5(b)(3), except that with respect to the information required by IC 6-1.1-20-3.5(b)(3)(E), the notice need only state that the proposed debt service or lease payments must be approved in an election on the local public question to be held on November 3, 2009.

The local public question shall be printed on the ballot as follows:

"Shall the Health and Hospital Corporation of Marion County, Indiana, issue bonds or enter into a lease to finance (insert the description of the project)?".

(HEA 1001(ss) §§ 503; Effective date: June 30, 2009; Citations affected: [noncode].

Fort Wayne Gaming Referendum Study; Gaming Study Commission

The gaming study committee is established to conduct a comprehensive study of issues related to gaming in Indiana during the 2009 legislative interim, including a review of a referendum concerning gaming in the city of Fort Wayne.

(HEA 1001(ss) §§ 490; Effective date: June 30, 2009; Citations affected: [noncode].

CAMPAIGN FINANCE

Campaign Contributions by Riverboat Gaming Licensees; Gaming Study Commission

The gaming study committee is established to conduct a comprehensive study of issues related to gaming in Indiana during the 2009 legislative interim, including a review of the existing campaign contribution ban for riverboat gaming licensees.

(HEA 1001(ss) §§ 490; Effective date: June 30, 2009; Citations affected: [noncode]).

CANDIDATES AND OFFICEHOLDERS

Codification of Uniform County Office Terms

The legislation enacted in 2005 to eliminate “holdover terms” in certain county constitutional offices was added to the Indiana Code for easier reference. Formerly, the 2005 law had only been available by referring to the 2005 Acts of the General Assembly. The new Indiana Code provisions set forth the terms and schedules for electing auditors, circuit court clerks, coroners, recorders, and treasurers in certain counties and provide that eventually these officials in all counties will take office on the January 1 immediately following the election for the office.

(SEA 346 §§ 32 and 33; Effective date: July 1, 2009; Citations affected: IC 36-2-8.5 [new]; P.L. 88-2005, SECTIONS 19 through 93 [repealed])

MISCELLANEOUS TECHNICAL CHANGES

Election Division Annual Conference Reimbursement

Clarifies that a member of a county election board, a board of registration, a circuit court clerk, or an individual who has been elected or selected to serve as circuit court clerk is entitled to receive the following from the county general fund without appropriation: (1) a per diem of \$24 for attending the instructional meeting called by the election division; (2) mileage at the state rate to travel to and return from the instructional meeting; (3) reimbursement for the meeting registration fee; and (4) an allowance for lodging for each night before attending the meeting. Former law only referred to reimbursement for the meeting registration fee.

(HEA 1346 § 2; Effective date: July 1, 2009; Citation affected: IC 3-6-4.5-14)

Voter Registration Agencies

The name of the “local office of family resources” was changed to the “county office of family resources” in numerous provisions throughout the Indiana Code, including the list of “full-service” voter registration agencies.

(SEA 344 § 1; Effective date: April 30, 2009; Citation affected: IC 3-7-15-2)

Township Assessor Elections

Two laws passed during the 2008 legislative session amended the same Indiana Code provision concerning the election of township assessors. The language in these two laws was reconciled in the technical corrections bill passed in 2009.

(HEA 1198 § 164; Effective date: April 30, 2009; Citation affected: IC 36-6-5-1)

Indiana-Michigan Boundary Line Commission

The Indiana-Michigan Boundary Line Commission was created to conduct a new survey of the boundary between Michigan and the “boundary counties” of Elkhart, LaGrange, LaPorte, St. Joseph, and Steuben).

(SEA 530 § 1; Effective date: July 1, 2009; Citation affected: IC 1-3-2 [new])

Cross References

Three cross-references within the election code to other statutes were updated or corrected.

(HEA 1198 §§ 2, 3, and 4; Effective date: April 30, 2009; Citations affected: IC 3-10-1-19.5; 3-11-6.5-1; 3-11.5-4-21)