

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 419**

Citations Affected: IC 3-7-32-4; IC 3-11-4; IC 3-11-10; IC 3-11.5-5-14; IC 3-12-3-5.

Synopsis: Military and overseas voters. Conference committee report for ESB 419. Permits the use of electronic mail to transmit and receive ballots from military voters and overseas voters through a program authorized and administered by the United States Department of Defense. Provides that the federal form serving as both a registration application and absentee ballot application for military and overseas voters may be submitted by facsimile (fax) transmission. Specifies which types of overseas voters are subject to the provision entitling the voter to cast a ballot for federal offices only. Removes obsolete provisions concerning the printing of certain ballots by the election division. Requires the documentation of certain information concerning absentee applications and ballots cast by military and overseas voters. Conforms state law to 2004 federal legislation requiring the counting of ballots only for federal offices cast by military voters present within the United States, and permitting state law to authorize the counting of these ballots regardless of when a county election board might receive an application for a regular absentee ballot from a military voter or overseas voter. **(This conference committee report removes provisions relating to reemployment rights of individuals serving in the Indiana National Guard, income tax deductions for individuals serving in the Indiana National Guard, and certain provisions relating to student assistance furnished to individuals serving in the Indiana National Guard. This conference committee report also reconciles differences between the bill and SEA 15 and ESB 480.)**

Effective: Upon passage; July 1, 2005.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 419 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 elections.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 3-7-32-4 IS AMENDED TO READ AS FOLLOWS
- 6 [EFFECTIVE UPON PASSAGE]: Sec. 4. A voter may not submit a
- 7 registration application by **fax or an** electronic transmission except as
- 8 provided in:
- 9 (1) IC 3-11-4 concerning an absent uniformed services voter or
- 10 overseas voter submitting a registration application on the
- 11 standard form approved under 42 U.S.C. 1973ff(b); or
- 12 (2) after December 31, 2005, IC 3-7-26.3.
- 13 SECTION 2. IC 3-11-4-6 IS AMENDED TO READ AS FOLLOWS
- 14 [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) This section applies,
- 15 notwithstanding any other provision of this title, to absentee ballot
- 16 applications for the following:
- 17 (1) An absent uniformed services voter.
- 18 (2) An address confidentiality program participant (as defined in
- 19 IC 5-26.5-1-6).
- 20 (3) An overseas voter.
- 21 (b) A county election board shall make blank absentee ballot
- 22 applications available for persons covered by this section after
- 23 November 20 preceding the election to which the application applies.

1 Except as provided in subsection (c), the person may apply for an
2 absentee ballot at any time after the applications are made available.

3 (c) A person covered by this section may apply for an absentee ballot
4 for the next scheduled primary, general, or special election at any time
5 by filing a standard form approved under 42 U.S.C. 1973ff(b).

6 (d) If the county election board receives an absentee ballot
7 application from a person described by this section, the circuit court
8 clerk shall mail to the person, free of postage as provided by 39 U.S.C.
9 3406, all ballots for the election immediately upon receipt of the ballots
10 under sections 13 and 15 of this chapter.

11 (e) In accordance with 42 U.S.C. 1973ff-3, whenever a voter files an
12 application for an absentee ballot and indicates on the application that
13 the voter:

14 (1) is an absent uniformed services voter or an overseas voter; and

15 (2) does not expect to be in the county on the next general election
16 day following the date the application is filed and expects to remain
17 absent from the county until at least the date of the second general
18 election following the date the application is filed;

19 the application is an adequate application for an absentee ballot for both
20 subsequent general elections and any municipal or special election
21 conducted during that period. The circuit court clerk and county
22 election board shall process this application and send general election
23 absentee ballots to the voter in the same manner as other general
24 election and special election absentee ballot applications and ballots are
25 processed and sent under this chapter.

26 (f) Whenever a voter described in subsection (a)(2) files an
27 application for a primary election absentee ballot and indicates on the
28 application that the voter is an address confidentiality program
29 participant, the application is an adequate application for a general
30 election absentee ballot under this chapter and an absentee ballot for a
31 special election conducted during the twelve (12) months following the
32 date of the application. The circuit court clerk and county election
33 board shall process this application and send general election and
34 special election absentee ballots to the voter in the same manner as
35 other general election and special election absentee ballot applications
36 and ballots are processed and sent under this chapter.

37 (g) The name, address, telephone number, and any other identifying
38 information relating to a program participant (as defined in
39 IC 5-26.5-1-6) in the address confidentiality program, as contained in
40 a voting registration record, is declared confidential for purposes of
41 IC 5-14-3-4(a)(1). The county voter registration office may not disclose
42 for public inspection or copying a name, an address, a telephone
43 number, or any other information described in this subsection, as
44 contained in a voting registration record, except as follows:

45 (1) To a law enforcement agency, upon request.

46 (2) As directed by a court order.

47 (h) The county election board shall by fax **(or electronic mail when**
48 **authorized under this section)** transmit an absentee ballot to and
49 receive an absentee ballot from an absent uniformed services voter or
50 an overseas voter at the request of the voter. If the voter wants to
51 submit absentee ballots by fax **or electronic mail**, the voter must

1 separately sign and date a statement on the cover of the fax
 2 transmission that states substantively the following: "I understand that
 3 by faxing **or e-mailing** my voted ballot I am voluntarily waiving my
 4 right to a secret ballot."

5 (i) The county election board shall send confirmation to a voter
 6 described in subsection (h) that the voter's absentee ballot has been
 7 received as follows:

8 (1) If the voter provides a fax number to which a confirmation may
 9 be sent, the county election board shall send the confirmation to the
 10 voter at the fax number provided by the voter.

11 (2) If the voter provides an electronic mail address to which a
 12 confirmation may be sent, the county election board shall send the
 13 confirmation to the voter at the electronic mail address provided by
 14 the voter.

15 (3) If:

16 (A) the voter does not provide a fax number or an electronic mail
 17 address; or

18 (B) the number or address provided does not permit the board to
 19 send the confirmation not later than the end of the first business
 20 day after the board receives the voter's absentee ballot;
 21 the county election board shall send the confirmation by United
 22 States mail.

23 The county election board shall send the confirmation required by this
 24 subsection not later than the end of the first business day after the
 25 county election board receives the voter's absentee ballot.

26 **(j) A county election board may transmit an absentee ballot to an**
 27 **absent uniformed services voter or an overseas voter by electronic**
 28 **mail under a program authorized and administered by the Federal**
 29 **Voting Assistance Program of the United States Department of**
 30 **Defense. A voter described by this section may transmit the voted**
 31 **absentee ballot to a county election board by electronic mail in**
 32 **accordance with the procedures established under this program.**
 33 **An electronic mail message transmitting a voted absentee ballot**
 34 **under this subsection must include an optically scanned image of**
 35 **the voter's signature on the statement required under subsection**
 36 **(h).**

37 SECTION 3. IC 3-11-4-8 IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2005]: Sec. 8. **(a) This section applies to an**
 39 **overseas voter described in IC 3-5-2-34.5(3).**

40 ~~(a)~~ **(b)** An overseas voter who resides outside the United States and
 41 who is no longer a resident of a precinct in Indiana is only entitled to
 42 receive absentee ballots for a federal office under this chapter.

43 ~~(b)~~ **(c)** A voter described in subsection (a) is considered to be a voter
 44 of the Indiana precinct where the voter registration office **of the county**
 45 **where the person was domiciled before leaving the United States** is
 46 located.

47 SECTION 4. IC 3-11-4-12 IS AMENDED TO READ AS
 48 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. ~~(a)~~ **The absentee**
 49 **ballots for:**

50 **(1) President and Vice President of the United States;**

51 **(2) United States Senator;**

1 ~~(3)~~ all state offices; and
 2 ~~(4)~~ the ratification or rejection of a public question to be voted for
 3 by the electorate of the entire state or for the retention of a judge of
 4 the Indiana court of appeals;

5 shall be prepared and printed under the direction of the election
 6 division:

7 ~~(b)~~ The election division shall have the ballots printed upon
 8 certification of the political party tickets and independent candidates:

9 ~~(c)~~ Except as provided in subsection ~~(f)~~; ballots prepared under this
 10 section must provide space for the voter to cast a write-in ballot:

11 ~~(d)~~ **(a)** The election division shall prepare a special absentee ballot for
 12 use by:

13 (1) absent uniformed services voters; and

14 (2) overseas voters;

15 who will be outside of the United States on general election day.

16 ~~(e)~~ **(b)** The ballot described by subsection ~~(d)~~: **subsection (a):**

17 (1) must indicate each state office to be elected by the voters at the
 18 general election;

19 (2) must set forth each public question to be voted for at the general
 20 election by the electorate of the entire state;

21 (3) may not state the name of any political party or candidate for
 22 election;

23 (4) must permit the voter to write in the name of a political party or
 24 a candidate for election to each office; and

25 (5) must include a notice stating that regular absentee ballots will
 26 be mailed to the voter by the county election board as soon as the
 27 ballots are available.

28 ~~(f)~~ **(c)** Space for write-in voting for an office is not required if there
 29 are no declared write-in candidates for that office. However, procedures
 30 must be implemented to permit write-in voting for candidates for
 31 federal offices.

32 SECTION 5. IC 3-11-4-13 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) Except as
 34 provided in subsections (b) and (c), the absentee ballots that are
 35 prepared and printed under the direction of the election division shall
 36 be delivered to the circuit court clerk or the clerk's authorized deputy
 37 not less than forty-five (45) days before a general election or
 38 twenty-nine (29) days before a special election. The absentee ballots
 39 shall be delivered in the same manner that other official ballots are
 40 delivered.

41 (b) This subsection applies to the printing of absentee ballots for a
 42 general election in which the names of nominees for President and Vice
 43 President of the United States are to be printed on the ballot. The
 44 absentee ballots that are prepared and printed under the direction of the
 45 election division shall be delivered to the circuit court clerk not later
 46 than thirty-eight (38) days before the general election.

47 (c) An absentee ballot described by ~~section 12(d)~~ **section 12(a)** of this
 48 chapter shall be delivered by the election division to the circuit court
 49 clerk or the clerk's authorized deputy not later than the first Monday in
 50 June before a general election.

51 SECTION 6. IC 3-11-4-17 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. Upon receipt of an
 2 application for an absentee ballot, a circuit court clerk shall file the
 3 application in the clerk's office and record all of the following:

- 4 (1) The voter's name.
- 5 (2) The date the application is received.
- 6 (3) The date the ballot is sent to the voter.
- 7 (4) If mailed, the address to which the ballot is sent.
- 8 (5) If transmitted by fax, the fax number to which the ballot is
 9 faxed.
- 10 (6) The date the ballot is marked before the clerk or otherwise
 11 received from the voter.
- 12 **(7) The combined total number of absentee ballots sent by the**
 13 **county to absent uniformed services voters and overseas voters.**
- 14 **(8) The total number of absentee ballots returned by voters**
 15 **described in subdivision (7) in time to be counted.**
- 16 **(9) The total number of absentee ballots described in**
 17 **subdivision (7) that were counted in whole or in part.**
- 18 ~~(7)~~ **(10)** Any other information that is necessary or advisable.

19 SECTION 7. IC 3-11-10-1, AS AMENDED BY SEA 15-2005,
 20 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2005]: Sec. 1. (a) A voter voting by absentee ballot shall make
 22 and subscribe to the affidavit prescribed by IC 3-11-4-21. The voter
 23 then shall, except as provided in subsection (b), do the following:

- 24 (1) Mark the ballot in the presence of no other person.
- 25 (2) Fold each ballot separately.
- 26 (3) Fold each ballot so as to conceal the marking.
- 27 (4) Enclose each ballot, with the seal and signature of the circuit
 28 court clerk on the outside, together with any unused ballot, in the
 29 envelope provided.
- 30 (5) Securely seal the envelope.
- 31 (6) Do one (1) of the following:
 32 (A) Mail the envelope to the county election board, with not
 33 more than one (1) ballot per envelope.
 34 (B) Deliver the envelope to the county election board in person.
 35 (C) Deliver the envelope to a member of the voter's household or
 36 a person designated as the attorney in fact for the voter under
 37 IC 30-5 for delivery to the county election board:
 38 (i) in person;
 39 (ii) by United States mail; or
 40 (iii) by a bonded courier company.

41 (b) A voter permitted to transmit the voter's absentee ballots by fax
 42 **or electronic mail** under IC 3-11-4-6 is not required to comply with
 43 subsection (a). The individual designated by the circuit court clerk to
 44 receive absentee ballots transmitted by fax **or electronic mail** shall do
 45 the following upon receipt of an absentee ballot transmitted by fax:

- 46 (1) Note the receipt of the absentee ballot in the records of the
 47 circuit court clerk as other absentee ballots received by the circuit
 48 court clerk are noted.
- 49 (2) Fold each ballot received from the voter separately so as to
 50 conceal the marking.
- 51 (3) Enclose each ballot in a blank absentee ballot envelope.

- 1 (4) Securely seal the envelope.
- 2 (5) Mark on the envelope: "Absentee Ballot Received by Fax **or**
- 3 **Electronic Mail**".
- 4 (6) Securely attach to the envelope the faxed affidavit received
- 5 with the voter's absentee ballots.
- 6 (c) Except as otherwise provided in this title, absentee ballots
- 7 received by fax **or electronic mail** shall be handled and processed as
- 8 other absentee ballots received by the circuit court clerk are handled
- 9 and processed.
- 10 SECTION 8. IC 3-11-10-4 IS AMENDED TO READ AS
- 11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Upon receipt of
- 12 an absentee ballot, a county election board (or the absentee voter board
- 13 in the office of the circuit court clerk) shall immediately examine the
- 14 signature of the absentee voter to determine its genuineness.
- 15 (b) This subsection does not apply to an absentee ballot cast by a
- 16 voter permitted to transmit the voter's absentee ballots by fax **or**
- 17 **electronic mail** under IC 3-11-4-6. The board shall compare the
- 18 signature as it appears upon the envelope containing the absentee ballot
- 19 with the signature of the voter as it appears upon the application for the
- 20 absentee ballot. The board may also compare the signature on the ballot
- 21 envelope with any other admittedly genuine signature of the voter.
- 22 (c) This subsection applies to an absentee ballot cast by a voter
- 23 permitted to transmit the voter's absentee ballots by fax **or electronic**
- 24 **mail** under IC 3-11-4-6. The board shall compare the signature as it
- 25 appears on the affidavit transmitted with the voter's absentee ballot to
- 26 the voter's signature as it appears on the application for the absentee
- 27 ballot. The board may also compare the signature on the affidavit with
- 28 any other admittedly genuine signature of the voter.
- 29 (d) If a member of the absentee voter board questions whether a
- 30 signature on a ballot envelope or transmitted affidavit is genuine, the
- 31 matter shall be referred to the county election board for consideration
- 32 under section 5 of this chapter.
- 33 SECTION 9. IC 3-11-10-12 IS AMENDED TO READ AS
- 34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) Each county
- 35 election board shall have all absentee ballots delivered to the precinct
- 36 election boards at their respective polls on election day.
- 37 (b) The absentee ballots shall be delivered during the hours that the
- 38 polls are open and in sufficient time to enable the precinct election
- 39 boards to vote the ballots during the time the polls are open.
- 40 (c) ~~This subsection applies after December 31, 2003.~~ Along with the
- 41 absentee ballots delivered to the precinct election boards under
- 42 subsection (a), each county election board shall provide a list certified
- 43 by the circuit court clerk. This list must state the name of each voter
- 44 subject to IC 3-7-33-4.5 who:
- 45 (1) filed the documentation required by IC 3-7-33-4.5 with the
- 46 county voter registration office after the printing of the certified list
- 47 under IC 3-7-29 or the poll list under IC 3-11-3-18; and
- 48 (2) as a result, is entitled to have the voter's absentee ballot counted
- 49 if the ballot otherwise complies with this title.
- 50 (d) ~~This subsection applies after December 31, 2003.~~ If the county
- 51 election board is notified not later than 3 p.m. on election day by the

1 county voter registration office that a voter subject to IC 3-7-33-4.5 and
 2 not identified in the list certified under subsection (c) has filed
 3 documentation with the office that complies with IC 3-7-33-4.5, the
 4 county election board shall transmit a supplemental certified list to the
 5 appropriate precinct election board. If the board determines that the
 6 supplemental list may not be received before the closing of the polls,
 7 the board shall:

8 (1) attempt to contact the precinct election board to inform the
 9 board regarding the content of the supplemental list; and

10 (2) file a copy of the supplemental list for that precinct as part of
 11 the permanent records of the board.

12 (e) This subsection applies to a special write-in absentee ballot
 13 described in:

14 (1) 42 U.S.C. 1973ff for federal offices; and

15 (2) ~~IC 3-11-4-12(d)~~ **IC 3-11-4-12(a)** for state offices.

16 If the county election board receives both a special write-in absentee
 17 ballot and the regular absentee ballot described by IC 3-11-4-12 from
 18 the same voter, the county election board shall reject the special
 19 write-in ballot and deliver only the regular absentee ballot to the
 20 precinct election board.

21 SECTION 10. IC 3-11-10-14 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. Subject to section
 23 11 of this chapter, absentee ballots received by mail (or **by fax or**
 24 **electronic mail under IC 3-11-4-6**) after the county election board has
 25 started the final delivery of the ballots to the precincts on election day
 26 are considered as arriving too late and need not be delivered to the
 27 polls.

28 SECTION 11. IC 3-11-10-17 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) If the inspector
 30 finds under section 15 of this chapter that any of the following applies,
 31 a ballot may not be accepted or counted:

32 (1) The affidavit is insufficient or the ballot has not been endorsed
 33 with the initials of:

34 (A) the two (2) members of the absentee voter board in the office
 35 of the circuit court clerk under IC 3-11-4-19 or section 27 of this
 36 chapter;

37 (B) the two (2) members of the absentee voter board visiting the
 38 voter under section 25(b) of the chapter; or

39 (C) the two (2) appointed members of the county election board
 40 or their designated representatives under IC 3-11-4-19.

41 (2) A copy of the voter's signature has been furnished to the
 42 precinct election board and that the signatures do not correspond or
 43 there is no signature.

44 (3) The absentee voter is not a qualified voter in the precinct.

45 (4) The absentee voter has voted in person at the election.

46 (5) The absentee voter has not registered.

47 (6) The ballot is open or has been opened and resealed. This
 48 subdivision does not permit an absentee ballot transmitted by fax
 49 **or electronic mail under IC 3-11-4-6** to be rejected because the
 50 ballot was sealed in the absentee ballot envelope by the individual
 51 designated by the circuit court to receive absentee ballots

- 1 transmitted by fax **or electronic mail**.
- 2 (7) The ballot envelope contains more than one (1) ballot of any
- 3 kind for the same office or public question.
- 4 (8) In case of a primary election, if the absentee voter has not
- 5 previously voted, the voter failed to execute the proper declaration
- 6 relative to age and qualifications and the political party with which
- 7 the voter intends to affiliate.
- 8 (9) The ballot has been challenged and not supported.
- 9 (b) Subsection (c) applies whenever a voter with a disability is unable
- 10 to make a signature:
- 11 (1) on an absentee ballot application that corresponds to the voter's
- 12 signature in the records of the county voter registration office; or
- 13 (2) on an absentee ballot secrecy envelope that corresponds with
- 14 the voter's signature:
- 15 (A) in the records of the county voter registration office; or
- 16 (B) on the absentee ballot application.
- 17 (c) The voter may request that the voter's signature or mark be
- 18 attested to by:
- 19 (1) the absentee voter board under section 25(b) of this chapter;
- 20 (2) a member of the voter's household; or
- 21 (3) an individual serving as attorney in fact for the voter.
- 22 (d) An attestation under subsection (c) provides an adequate basis for
- 23 an inspector to determine that a signature or mark complies with
- 24 subsection (a)(2).
- 25 SECTION 12. IC 3-11.5-4-10 IS AMENDED TO READ AS
- 26 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. Subject to section
- 27 7 of this chapter, absentee ballots received by mail (or **by fax or**
- 28 **electronic mail under IC 3-11-4-6**) after noon on election day are
- 29 considered as arriving too late and may not be counted.
- 30 SECTION 13. IC 3-11.5-4-13 IS AMENDED TO READ AS
- 31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) If the absentee
- 32 ballot counters find under section 11 of this chapter that any of the
- 33 following applies, the ballots shall be rejected:
- 34 (1) The affidavit is insufficient or that the ballot has not been
- 35 endorsed with the initials of:
- 36 (A) the two (2) members of the absentee voter board in the office
- 37 of the clerk of the circuit court under IC 3-11-4-19 or
- 38 IC 3-11-10-27;
- 39 (B) the two (2) members of the absentee voter board visiting the
- 40 voter under IC 3-11-10-25; or
- 41 (C) the two (2) appointed members of the county election board
- 42 or their designated representatives under IC 3-11-4-19.
- 43 (2) The signatures do not correspond or there is no signature.
- 44 (3) The absentee voter is not a qualified voter in the precinct.
- 45 (4) The absentee voter has voted in person at the election.
- 46 (5) The absentee voter has not registered.
- 47 (6) The ballot is open or has been opened and resealed. This
- 48 subdivision does not permit an absentee ballot transmitted by fax
- 49 **or electronic mail under IC 3-11-4-6** to be rejected because the
- 50 ballot was sealed in the absentee ballot envelope by the individual
- 51 designated by the circuit court to receive absentee ballots

- 1 transmitted by fax **or electronic mail.**
- 2 (7) The ballot envelope contains more than one (1) ballot of any
- 3 kind for the same office or public question.
- 4 (8) In case of a primary election, if the absentee voter has not
- 5 previously voted, the voter failed to execute the proper declaration
- 6 relative to age and qualifications and the political party with which
- 7 the voter intends to affiliate.
- 8 (9) The ballot has been challenged and not supported.
- 9 (b) Subsection (c) applies whenever a voter with a disability is unable
- 10 to make a signature:
- 11 (1) on an absentee ballot application that corresponds to the voter's
- 12 signature in the records of the county voter registration office; or
- 13 (2) on an absentee ballot security envelope that corresponds with
- 14 the voter's signature:
- 15 (A) in the records of the county voter registration office; or
- 16 (B) on the absentee ballot application.
- 17 (c) The voter may request that the voter's signature or mark be
- 18 attested to by any of the following:
- 19 (1) The absentee voter board under section 22 of this chapter.
- 20 (2) A member of the voter's household.
- 21 (3) An individual serving as attorney in fact for the voter.
- 22 (d) An attestation under subsection (c) provides an adequate basis for
- 23 the absentee ballot counters to determine that a signature or mark
- 24 complies with subsection (a)(2).
- 25 (e) If the absentee ballot counters are unable to agree on a finding
- 26 described under this section or section 12 of this chapter, the county
- 27 election board shall make the finding.
- 28 (f) The absentee ballot counters or county election board shall issue
- 29 a certificate to a voter whose ballot has been rejected under this section
- 30 if the voter appears in person before the board not later than 5 p.m. on
- 31 election day. The certificate must state that the voter's absentee ballot
- 32 has been rejected and that the voter may vote in person under section
- 33 21 of this chapter if otherwise qualified to vote.
- 34 SECTION 14. IC 3-11.5-5-14 IS AMENDED TO READ AS
- 35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section
- 36 applies to the counting of write-in absentee ballots for:
- 37 (1) a federal office received under 42 U.S.C. 1973ff; and
- 38 (2) a federal office, state office, or public question under
- 39 ~~IC 3-11-4-12(d)~~ **IC 3-11-4-12(a).**
- 40 (b) If a voter writes an abbreviation, a misspelling, or other minor
- 41 variation instead of the correct name of a candidate or political party,
- 42 that vote shall be counted if the intent of the voter can be determined.
- 43 (c) If a voter casts a ballot under this section for President or Vice
- 44 President and writes in the name of a candidate or political party that
- 45 has not certified a list of electors under IC 3-10-4-5, the vote for
- 46 President or Vice President is void. The remaining votes on the ballot
- 47 may be counted.
- 48 (d) IC 3-12-1-7 applies to a ballot subject to this section.
- 49 (e) A ballot subject to this section may not be counted if:
- 50 (1) the ballot was submitted from within the United States;
- 51 (2) the voter's application for a regular absentee ballot was received

1 by the circuit court clerk or board of registration less than thirty
 2 (30) days before the election;
 3 (3) the voter's completed regular state absentee ballot was received
 4 by the circuit court clerk or board of registration by the deadline for
 5 receiving absentee ballots under IC 3-11.5-4-7; or
 6 (4) the ballot subject to this section was not received by the circuit
 7 court clerk or board of registration by the deadline for receiving
 8 absentee ballots under IC 3-11.5-4-7.

9 SECTION 15. IC 3-12-2-7.5 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) This
 11 section applies to the counting of write-in absentee ballots for:

12 (1) a federal office received under 42 U.S.C. 1973ff; and
 13 (2) a federal office, state office, or public question under
 14 ~~IC 3-11-4-12(d)~~; **IC 3-11-4-12.**

15 (b) If a voter writes an abbreviation, misspelling, or other minor
 16 variation instead of the correct name of a candidate or political party,
 17 that vote shall be counted if the intent of the voter can be determined.

18 (c) If a voter casts a ballot under this section for President or Vice
 19 President of the United States and writes in the name of a candidate or
 20 political party that has not:

21 (1) certified a list of electors under IC 3-10-4-5; or
 22 (2) included a list of electors on the declaration for candidacy filed
 23 by a write-in candidate under IC 3-8-2-2.5;

24 the vote for President or Vice President is void. The remaining votes on
 25 the ballot may be counted.

26 (d) IC 3-12-1-7 applies to a ballot subject to this section.

27 (e) A ballot subject to this section may not be counted if:

28 (1) the ballot was submitted:

29 **(A) by an overseas voter who is not an absent uniformed**
 30 **services voter; and**

31 **(B) from within the United States;**

32 ~~(2) the voter's application for a regular absentee ballot was received~~
 33 ~~by the circuit court clerk or board of registration less than thirty~~
 34 ~~(30) days before the election;~~

35 ~~(3) (2) the voter's completed regular state absentee ballot was~~
 36 ~~received by the circuit court clerk or county election board of~~
 37 ~~registration by the deadline for receiving absentee ballots under~~
 38 ~~IC 3-11-10-11; or~~

39 ~~(4) (3) the ballot subject to this section was not received by the~~
 40 ~~circuit court clerk or county election board of registration by the~~
 41 ~~deadline for receiving absentee ballots under IC 3-11-10-11.~~

42 SECTION 16. IC 3-12-3-5 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) If a ballot card
 44 is damaged or defective so that it cannot properly be counted by the
 45 automatic tabulating machines, then a remake team composed of one
 46 (1) person from each of the major political parties of the county shall
 47 have the card prepared for processing so as to record accurately the
 48 intention of the voter insofar as it can be ascertained.

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

1 which the ballot was cast.

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

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

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

- 26 (1) until the repair and retesting of the malfunctioning machine;
27 and
28 (2) whether or not the machine was tested under IC 3-11-13-22.

29 **SECTION 17. An emergency is declared for this act.**

(Reference is to ESB 419 as printed April 1, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 419

Signed by:

Senator Steele
Chairperson

Representative Koch

Senator Smith S

Representative Reske

Senate Conferees

House Conferees