

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7417

BILL NUMBER: SB 518

NOTE PREPARED: Feb 7, 2013

BILL AMENDED: Feb 4, 2013

SUBJECT: Various Election Law Matters.

FIRST AUTHOR: Sen. Landske

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *References to "Pastors"* - The bill repeals obsolete references to "pastors" (formerly used as stickers to correct ballots), and changes the language of certain ballot instructions.

Definition of "Voting Mark" - The bill expands the definition of "voting mark" to refer to marks used in all types of voting systems.

Specifies Procedures - The bill specifies procedures for the approval of certain election forms and the voter's bill of rights and the nomination of poll workers.

Obsolete References - The bill corrects an obsolete reference to the Indiana Election Division co-directors.

Additional Procedures - The bill specifies procedures for candidate filings, the processing of candidate petitions, certification of school board candidates, and processing requests for transfers or cancellation of registration by voters.

Death of Primary Candidates - The bill sets forth procedures concerning the death of candidates appearing on the primary election ballot.

Selection of Polling Places - The bill makes changes concerning standards for the selection of polling places, and the procedures for providing proof of identification and the processing of absentee ballot applications.

Start of In Office Absentee Voting - The bill provides that in-office absentee voting, voting begins 28 days

(rather than 29 days) before the election and that a county resolution to establish satellite offices expires on the January 1 following its adoption.

Recounts- The bill makes changes concerning recounts and contests.

Vacancies & Certain Public Questions- The bill specifies the schedule for conducting special elections when a vacancy occurs in the office of U.S. Senator or circuit court judge and the procedures for filling other office vacancies and placing certain public questions on the ballot.

Penalty Provision- The bill establishes penalties for certain election law violations, and amends the definition of "electioneering" within the polling place and chute.

Effective Date: July 1, 2013.

Explanation of State Expenditures: *Additional Procedures-* This provision may require the Indiana Election Commission to revise or develop new petition of nomination forms, particularly for persons seeking a nomination to become school board members. The Commission would have to meet to discuss and decide to either produce new forms or revise existing forms. Any impact to state expenditures would depend on further Commission action.

Recounts- The bill would give the State Recount Commission (SRC) the authority to approve a request by local election officials to open envelopes containing absentee ballots, if the envelopes have not been opened prior to the close of the polls. Previously, only a court could order envelopes containing absentee ballots to be opened.

The SRC would no longer have to grant inspection of electronic voting systems, if requested by a county election board. A county election board would be able to conduct its own inspection, authorized by unanimous vote of the board. County election boards would be able to inspect the machines after filing a notice of the authorization order with the Secretary of State.

The SRC would be given the authority to issue a notice of filing and pendency of a petition for recount instead of the Secretary of State. The SRC would have to send a notice of a recount order to each candidate or party chairman named in the petition, or the candidate's or chair's attorney. The notice would be suitably sent by email if the email addresses of the persons named in the petition are available. Otherwise, the SRC would have to send notice by certified mail, which would slightly increase state expenditures to cover the postage and printing.

State Police Provision- The Indiana State Police (ISP) would, in addition to other duties in a recount as ordered by the SRC, serve subpoenas, impoundment orders, discovery orders, and protective orders if so ordered by the SRC. The ISP would be able to carry out this provision within existing resources, given the ISP is already required to serve notices and other papers as directed by the SRC during a recount.

Penalty Provision- The bill would expand a Class D felony to include additional types of election documents filled out fraudulently by one person in the name of another person. Additionally, the bill would create a new Class D felony against a person that knowingly makes a false statement concerning their name, address, or voter ID by falsely signing their name, makes a false vocal, or makes a false written affirmation on a poll list.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class

A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$18,582 in FY 2012. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$78,318 in FY 2012. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Additional Procedures-* If a complaint arises from one candidate against another candidate for school board office that the candidate no longer resides in the election district they would represent, has not filed a notice of withdrawal from candidacy, and no longer is an active candidate, the first candidate could file, as plaintiff, a complaint action in a circuit court with jurisdiction. The court would determine in fact that the above conditions exist and rule accordingly. If the plaintiff prevails, a candidate vacancy would occur.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision- If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Explanation of Local Expenditures: *General Postage Expenditures-* Certain provisions within the bill, would require a local election official, if no other communication means are possible to communicate or send a response to a person, to send the communication via U.S. Mail. As a result, postage expenditures for county election boards and/or clerks may increase slightly.

References to "Pasters"- This provision would reduce printing costs to county election boards for the production of "pasters". Whether this provision would affect reprinting ballots would depend on local action.

Additional Procedures- This provision makes changes to the procedures for the petition of nomination and declaration of intent to be a write candidate for school board. Additional administrative time may be needed for local election officials to file affidavits of assistance and to verify voter registration records of petitioners

under this provision.

(Revised) Additionally, county election boards would have to settle all questions of validity of petitions of nomination or denial of a certification for school board. Statements questioning validity or a petition or contesting the denial of a certification would have to be filed with the CEB by noon 67 days prior to the general election. All questions of validity or denial of certification would have to be determined by the CEB prior to noon on the 54th day prior to the general election.

Death of Primary Candidates- The bill would remove the option of replacing deceased or withdrawn candidates with pasters. Optical scan voting system counties would have to replace ballots with new ballots if a person has withdrawn or has died prior to five days before the election. The removal of pasters from use would forgo the cost to print them. Therefore, this provision may reduce overall the expenditure to change a ballot due to a candidate's death or withdrawal.

Selection of Polling Places- The bill would not allow polls to be located in a structure that displays political preferences or party allegiances, including pictures, photographs, or other likenesses of any currently elected federal, state, county, or local officials. It may be necessary for local election officials to either remove or have removed any of the above items in order to maintain a poll location. Otherwise, counties may have to seek alternative polling locales.

Recounts- The bill would set the limit on the maximum cash deposit or bond that must be made for a recount in an election for a local or school board office. Current law requires each petitioner in a recount to furnish a minimum amount of \$100. The bill would place the maximum as \$100 plus:

- 1) if the difference in total votes cast between two candidates is less than 1%, \$10 per each additional precinct past ten precincts, or
- 2) if the difference in total votes cast between two candidates is greater than 1%, \$100 per each additional precinct past ten precincts.

Penalty Provision- If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Additional Procedures-* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or

- certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

Penalty Provision- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: Indiana Election Division, Indiana Election Commission, State Recount Commission, Secretary of State, Indiana State Police.

Local Agencies Affected: Trial courts, local law enforcement agencies, local election officials.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

Fiscal Analyst: Chris Baker, 317-232-9851.