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**FISCAL IMPACT STATEMENT**

**LS 7073**

**BILL NUMBER:** HB 1365

**NOTE PREPARED:** Mar 23, 2021

**BILL AMENDED:** Mar 23, 2021

**SUBJECT:** Various Elections Matters.

**FIRST AUTHOR:** Rep. Wesco

**FIRST SPONSOR:** Sen. Ford Jon

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Definitions*– The bill defines "anomaly" and amends the definitions of "ballot label," "de minimis change," "electronic poll book," and "state office".

*Entry of Candidate Information*– The bill requires the entry of filing information concerning all candidates into the statewide voter registration system.

*Candidate Names*– The bill requires, for voting systems initially certified for marketing and use in Indiana after January 1, 2022, certain universally recognized symbols of a candidate's legal name to be displayed.

*Filing of Election Certification Documents*– The bill requires election certification documents to be filed only through the statewide voter registration system.

*Precinct Judges*– The bill provides that the precinct judge performs the duties of a precinct election sheriff under certain circumstances.

*Registration of Deceased Persons*– The bill allows the cancellation of the registration of a deceased person based on a notice published by a funeral director or embalmer on the Internet web site of the funeral director or embalmer.

*Felony Convictions and Voter Registration Cancellation*– The bill describes the process by which the name of an Indiana resident who has been imprisoned for conviction of a crime in another state is removed from the voter registration list.

*Nonjudicial Court Employees*– The bill provides that a person is disqualified from assuming or being a candidate for an elected office if the person is a nonjudicial court employee who would violate Rule 4.6 of the Indiana Code of Judicial Conduct by being the candidate of a political party for nomination or election to an elected office or a political party office.

*Other Formatting Changes*– The bill makes changes to the formatting of nonpartisan judicial offices on the ballot.

*Candidate Party Affiliation*– The bill provides that a candidate is considered affiliated with a particular political party for purposes of determining whether the candidate is qualified to be on that party's primary election ballot if the two most recent primary elections in which the candidate voted were primary elections held by the political party with which the candidate claims affiliation. (Under current law, only the most recent primary election that the candidate voted in must have been held by the political party with which the candidate claims affiliation.)

*Precinct Numbers on Ballots*– The bill requires ballots to have precinct numbers or designations.

*E-Pollbook Information Retention*– The bill requires retention of electronic poll book information for the same retention period as other election records.

*Inspection of Ballot Proofs*– The bill provides that ballot proofs be made available for inspection 67 days before the date of the election.

*Change of Authorization Authority*– The bill permits a county election board to authorize the use of absentee ballots by voters when a state disaster emergency is declared or a county disaster emergency is declared within 11 days of an election.

*Absentee Ballot Applications*– The bill requires that an absentee ballot application requesting that an absentee ballot be sent by mail or by traveling board submitted to a county using the statewide voter registration system must include a telephone number to contact the applicant; permits the applicant to include the applicant's electronic mail address.

*Absentee Ballot Application Procedures*– The bill provides that if an application for an absentee ballot is denied, the county election board must provide the voter in writing with the reasons for the denial of the application. (Under current law, only absent uniformed services voters or overseas voters are required to be provided with notice of denial of an absentee ballot application.)

*Persons Permitted in Polls*– It provides that, with certain exceptions, an individual must be a citizen of the United States to be permitted in the polls during an election and authorizes the Secretary of State to grant exceptions.

*Use of Electronic Poll Book by Voter Board*– The bill authorizes a voter board visiting a voter with an illness or injury or a voter who is caring for a confined person at a private residence to use an electronic poll book.

*Procedure to Cast an Un-Cast Absentee Ballot*– It specifies the procedure when a voter leaves the clerk's office or satellite office without casting the voter's absentee ballot for the vote to be cast by the absentee voter board.

*Absentee Ballot Initialing Security*– The bill specifies the requirements for the timing and security of the bipartisan initialing of absentee ballots.

*Time in the Booth*– The bill increases the amount of time a voter has to vote in a primary election from three minutes to five minutes and the amount of time to vote in a general, municipal, or special election from two minutes to four minutes.

*Testing Voting Equipment*– The bill adds requirements for testing of voting systems before an election.

*Reporting Problems with Voting Systems or E-Pollbooks*– The bill specifies the procedure requiring the reporting of problems experienced with voting systems or electronic poll books.

*Disposal of Voting Systems*– The bill adds requirements for disposing of voting system units.

*Unauthorized Software in Voting Systems*– The bill requires a voting system to contain features to ensure that unauthorized software has not been installed on the equipment, and to permit the electronic adjudication of voter intent on ballots cast using the voting system.

*Election Management Software and the Internet*– The bill provides that any electronic device used to create a ballot file or program a voting system, or used with election management software, may not be connected to the Internet.

*VSTOP Audits*– The bill requires the Voting System Technical Oversight Program (VSTOP) to conduct random audits of voting systems and electronic poll books in odd-numbered years.

*Counting of Provisional Ballot Explanation to Voter*– The bill requires a precinct election officer, in the case of a voter who casts a provisional ballot, or an absentee voter board, in the case of a voter who casts an absentee ballot that is treated as a provisional ballot, to provide both orally and in writing an explanation of the steps the voter must take in order to have the voter's ballot counted. The bill requires the Election Division to prescribe the form of the explanation.

*Notification of Ballot Treated as Provisional*– The bill requires the circuit court clerk to notify a voter who casts a provisional ballot not later than three days after election day concerning: (1) the reasons that the voter's ballot is being treated as a provisional ballot; (2) what actions, if any, that the voter must take in order to have the voter's ballot counted; (3) the deadline by which the voter must act to have the voter's ballot counted; and (4) certain contact information that the provisional voter may use to find out about the provisional voter's ballot. The bill requires that the notice must be in a form prescribed by the Election Division.

*Return of E-Pollbooks and Voting Systems After Close of Polls*– The bill specifies procedures for the return of an electronic poll book or a voting system from the polls of the precinct or from the vote centers after the close of the polls on election day.

*Deadline Extension*– The bill extends the deadline for filling a post-primary candidate vacancy from noon on June 30 to noon on July 3 and after July 3 in case of certain successful challenges to a candidate.

*Ballot Vacancy Procedures*– The bill amends procedures for candidate filings to fill ballot vacancies in certain cases.

*Schedule Updates*– The bill updates statutes setting schedules for upcoming elections.

*Repealer*– The bill repeals the current statute concerning the referral of a disputed ballot to a judge when a recount or contest has not been filed.

*Miscellaneous*– The bill makes technical changes, makes conforming amendments, and repeals obsolete provisions.

**Effective Date:** Upon passage; July 1, 2021; October 1, 2021.

**Explanation of State Expenditures:** *Anomaly in Voting Systems or E-Pollbooks*– Election Division would likely modify its *Election Administrators Manual* publication in order to provide the required information necessary for the anomaly reporting required by the bill.

Unless the Secretary of State already possesses an anomaly detection software platform or can acquire one at no cost, there would be additional expenditure of an unknown amount. However, the cost is not likely to be significant to provide to the few vendors that have voting systems approved for use in Indiana.

*(Revised) Reporting of Election Data to Law Enforcement*– The bill would require the Election Division to provide confidence reporting of registration and voter histories to law enforcement, when requested for assistance in a criminal investigation. The Election Division reports that this provision can be accomplished within the Division’s existing level of staff and resources.

*VSTOP Audits*– Auditing only in odd years would allow expenditure savings to VSTOP.

*Procedure to Cast Un-Cast Absentee Ballot*– This provision would introduce a new perjury reference. Specifically, when a ballot is left un-voted by a voter that has left the early voting location, the absentee voting board member would have to fill out a form after voting the ballot under penalty of perjury. It is very unlikely the Department of Correction population in state correctional facilities would change much as a result of new perjury convictions under this provision.

Perjury is a Level 6 felony. A Level 6 felony is punishable by a prison term ranging from 6 to 30 months, with an advisory sentence of 1 year. The marginal cost for medical care, food, and clothing is approximately \$3,524 annually, or \$9.66 daily, per prisoner. However, any additional expenditures are likely to be negligible.

*Absentee Ballot Application Procedures*– It is possible that the application form may need to be updated to provide the email address. It is likely the Election Division would be able to update the form electronically within existing resources.

*Filing of Election Certification Documents*– This provision should not require modifications to the Statewide Voter Registration System (SVRS) for the documents to be sent electronically by counties to the state.

*Counting of Provisional Ballot Explanation to Voter*– The Election Division would likely be able to develop the explanation form within their existing level of resources.

*Notification of Ballot Treated as Provisional*– Similarly, the Election Division would be able to develop the explanation notification within their existing level of resources.

**Explanation of State Revenues:** *Procedure to Cast Un-Cast Absentee Ballot*– If additional court cases for the charge of perjury occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Level 6 felony is \$10,000. However, any additional revenues would likely be negligible.

**Explanation of Local Expenditures:** The bill would require additional administrative time of certain county election officials to accomplish. Notable administrative changes include:

1. County election boards must notify in writing that proofs of ballots are available for inspection to certain local officials and school boards prior to ballot printing.
2. Absentee voter boards at satellite offices or the circuit court clerk's office would have to follow the procedures in the bill to vote an absentee ballot left as un-voted by the voter.
3. Election judges would also serve as the election sheriffs.
4. Local election authorities would have to cancel voter registration records of voters that have been imprisoned following conviction of a felony in another state.
5. The circuit court clerk would be required to enter the name and other information provided by each candidate for an elected office or a political party office who files a document with the county election board and the text of certified public question language into the election management module of the statewide voter registration system (SVRS) not later than the deadline for estimating the number of ballots required to be printed.
6. Local election authorities would need to provide a written explanation with the reasons for the denial of an absentee ballot application to all. (Under current law, only absent uniformed services voters or overseas voters are required to be provided with notice of denial of an absentee ballot application.) This provision may increase county election board workload to accomplish.
7. Counties would spend more administrative time to test voting systems before an election and to come up with and carry out requirements for disposing of voting system units.
8. Counties may need to develop protocols for the conduct of elections without their election management software and hardware items to be separate from the internet if involved in conducting elections. This provision could increase the workload of county election authorities to accomplish.

Additional expenditures could be necessary to implement changes within the bill including:

1. The inclusion of absentee ballot applicants' telephone numbers in the statewide voter registration system, in order to contact applicants at a future date. This provision would depend on the cost to implement it as agreed between the Election Division and/or counties and their SVRS computer vendor.
2. Voting systems may need to be modified or replaced in order to keep unauthorized software from being installed on the equipment, and to permit the electronic adjudication of voter intent on ballots cast using the voting system. The expenditures required to fulfill this provision would depend on the contracted agreement reached between the county and their election system vendor to modify or

replace the voting systems.

*(Revised) Inspection of Ballot Proofs*– County election authorities would have to make the proofs of ballots available 67 days prior to the election. County election authorities would have an additional week of time to make the proofs available.

*Precinct Numbers on Ballots*– The impact of this provision would depend on the ability of existing voting systems to be able to print or electronically imprint the precinct number on the ballot. Any revisions needed would depend on the agreed to provisions within the contracts with the counties’ voting system vendors.

*Notification of Ballot Treated as Provisional*– Unless another means of notification is determined for use by the Election Division, county election authorities may incur additional expenditures for first class postage to send notifications to voters.

*Penalty Provision*– If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

*Disposal of Voting Systems*-- This provision would allow counties to sell back to the vendor their voting systems. The provision could allow counties to recoup their costs of purchase or be able to apply the resale proceeds to help purchase new voting systems from their vendor in future years.

**Explanation of Local Revenues:** *Penalty Provision*– If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

**State Agencies Affected:** Department of Correction; VSTOP, Election Division, Secretary of State.

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

**Information Sources:** Election Division.

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