

IC 3-12-8

Chapter 8. Contest Procedures for Nomination for or Election to Local or School Board Offices

IC 3-12-8-1

Persons entitled to contest

Sec. 1. (a) This section does not apply to a challenge filed before an election to the eligibility of a candidate nominated by petition for election to an office. The challenge described by this subsection must be conducted in accordance with IC 3-8-1-2.

(b) Any candidate for nomination or election to a local or school board office may contest the nomination or election of a candidate who is declared nominated or elected to the office, except a candidate who:

- (1) receives the most votes in a primary election; and
- (2) is certified as deceased under IC 3-8-7-1.

(c) If a candidate who is entitled to contest the nomination or election of a candidate under this chapter does not file a petition within the period established by section 5 of this chapter, the county chairman of a political party of which the candidate entitled to file a petition under this chapter was a member may file a petition to contest the nomination or election of a candidate. A county chairman is entitled to contest an election under this chapter only in a partisan race.

As added by P.L.5-1986, SEC.8. Amended by P.L.10-1988, SEC.152; P.L.4-1996, SEC.79; P.L.176-1999, SEC.99; P.L.14-2000, SEC.7; P.L.194-2013, SEC.79.

IC 3-12-8-2

Grounds for contest

Sec. 2. An election may be contested under section 1 of this chapter if a petitioner alleges that one (1) of the following circumstances existed:

- (1) The contestee was ineligible (other than a candidate in a primary election certified as deceased under IC 3-8-7-1).
- (2) A mistake occurred in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes.
- (3) A mistake occurred in the programming of an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.
- (4) An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.
- (5) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

As added by P.L.5-1986, SEC.8. Amended by P.L.10-1988, SEC.153; P.L.10-1989, SEC.12; P.L.4-1991, SEC.117; P.L.176-1999, SEC.100; P.L.221-2005, SEC.118; P.L.194-2013, SEC.80.

IC 3-12-8-2.5

Chapter establishes standards to define vote; exception

Sec. 2.5. (a) This section does not apply to a contest concerning whether a contestee was ineligible as alleged under section 2(1) of this chapter.

(b) This chapter is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what will be counted as a vote on a paper ballot, an optical scan voting system, or an electronic voting system in a contest conducted under this chapter.

As added by P.L.209-2003, SEC.189.

IC 3-12-8-3

Repealed

(Repealed by P.L.10-1988, SEC.238.)

IC 3-12-8-4

Repealed

(Repealed by P.L.10-1988, SEC.238.)

IC 3-12-8-5

Contest of election or nomination; filing of verified petition; elections in different municipalities

Sec. 5. (a) A candidate who desires to contest an election or a nomination under this chapter must file a verified petition with the circuit court clerk of the county that contains the greatest percentage of the population of the election district no later than noon fourteen (14) days after election day.

(b) A county chairman who is entitled to and desires to contest an election or a nomination under this chapter must file a verified petition with the circuit court clerk of the county that contains the greatest percentage of the population of the election district not later than noon seventeen (17) days after election day.

(c) A petition for a contest of an election in different municipalities, whether in the same court of the county or not, may not be consolidated.

As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.382; P.L.10-1988, SEC.154; P.L.8-1992, SEC.33; P.L.4-1996, SEC.80; P.L.221-2005, SEC.119.

IC 3-12-8-5.5

Verified petition; filing fee; cause number

Sec. 5.5. Upon the filing of a petition under section 5 of this chapter, the circuit court clerk shall:

- (1) require payment of the filing fee under IC 33-37; and
- (2) assign the petition a cause number as a miscellaneous civil action.

As added by P.L.3-1997, SEC.365. Amended by P.L.98-2004, SEC.40.

IC 3-12-8-6

Contest of election; content of verified petition

Sec. 6. (a) A petition filed under section 5 of this chapter must state the following:

- (1) That the petitioner desires to contest the nomination or election to an office.
- (2) The name of each candidate as set forth on the ballot for the election and address of each candidate as set forth in the records of the county election board or election division.
- (3) That the petitioner in good faith believes that one (1) or more of the following occurred:
 - (A) The person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.
 - (B) A mistake was made in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes cast in the election.
 - (C) A mistake occurred in the programming of an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.
 - (D) An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.
 - (E) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

(b) A petition stating that the petitioner believes that it is impossible to determine the candidate that received the highest number of votes for one (1) of the reasons described in subsection (a)(3)(B), (a)(3)(C), or (a)(3)(D) must identify each precinct in which:

- (1) ballots:
 - (A) containing the printing mistake; or
 - (B) distributed by mistake;were cast;
- (2) a mistake occurred in the programming of an electronic voting system; or
- (3) an electronic voting system malfunctioned.

(c) A petition stating that the petitioner believes that an act or series of actions described in subsection (a)(3)(E) occurred must identify each precinct or other location in which the act or series of actions occurred to the extent known to the petitioner.

As added by P.L. 5-1986, SEC.8. Amended by P.L. 10-1988, SEC.155; P.L. 10-1989, SEC.13; P.L. 4-1991, SEC.118; P.L. 176-1999, SEC.101; P.L. 221-2005, SEC.120.

IC 3-12-8-6.5

Amendment of verified petition

Sec. 6.5. (a) Except as provided in subsection (b), the court in which a petition is filed may allow the petition or cross-petition to be amended at any time upon the terms and conditions that the court orders.

(b) The court may not allow a petition to be amended following the deadline for filing a petition under this chapter if the petition as originally filed:

(1) failed to comply with this chapter; or

(2) was not filed before the deadline specified in this chapter.

As added by P.L.176-1999, SEC.102.

IC 3-12-8-7

Repealed

(Repealed by P.L.10-1988, SEC.238.)

IC 3-12-8-8

Notice of contest; service of notice

Sec. 8. (a) Upon the filing of a petition for a contest, the circuit court clerk shall notify the circuit court judge. The judge shall issue a notice to the county sheriff directing the sheriff to serve notice upon the contestee and all other persons named in the petition as candidates for nomination or election to the office to appear and answer the petition in the circuit court on a day to be fixed in the notice.

(b) The county sheriff shall also serve a copy of the notice described in subsection (a) on:

(1) the county election board; and

(2) the election division if the petition relates to a contest for the office of judge or prosecuting attorney.

As added by P.L.5-1986, SEC.8. Amended by P.L.5-1988, SEC.11; P.L.10-1988, SEC.156; P.L.66-2003, SEC.47.

IC 3-12-8-9

Service of summons

Sec. 9. The sheriff shall serve the notice required by section 8 of this chapter upon the contestee and all other persons named in the petition as candidates for nomination or election to the office in the same manner as a summons is served in a civil action.

As added by P.L.5-1986, SEC.8. Amended by P.L.5-1988, SEC.12.

IC 3-12-8-10

Appearance and answer by contestee; time; defense, answer, or special answer

Sec. 10. The contestee shall appear and answer the petition by the day fixed in the notice issued under section 8 of this chapter unless the court extends the time for good cause. The contestee may:

(1) present any defense or answer that the contestee has to the allegations of the petition under an answer of general denial;

(2) file a special answer; or

(3) both.

As added by P.L.5-1986, SEC.8.

IC 3-12-8-11

Party to proceeding; stating right or claim by answer or counterclaim

Sec. 11. Any other person who was a candidate at the election for nomination or election to the office involved and upon whom notice was served under section 9 of this chapter is a party to the proceeding and may state any right or claim the person may have by an answer or counterclaim.

As added by P.L.5-1986, SEC.8. Amended by P.L.5-1988, SEC.13.

IC 3-12-8-12

Repealed

(Repealed by P.L.10-1988, SEC.238.)

IC 3-12-8-13

Repealed

(Repealed by P.L.10-1988, SEC.238.)

IC 3-12-8-14

Repealed

(Repealed by P.L.10-1988, SEC.238.)

IC 3-12-8-15

Venue of trial of contest for office

Sec. 15. A contest for an office for which the voters of only one (1) county cast votes shall be tried in that county. However, a change of venue from the judge is allowed under the Indiana rules of trial procedure. A contest for an office for which the voters of two (2) or more counties cast votes shall be tried in the county casting the highest number of votes for the office at the election.

As added by P.L.5-1986, SEC.8.

IC 3-12-8-16

Hearing; date

Sec. 16. The court shall fix a date within twenty (20) days after the return day fixed in the notice to the contestee for the hearing of a contest.

As added by P.L.5-1986, SEC.8. Amended by P.L.10-1988, SEC.157.

IC 3-12-8-17

Hearing and determination of contest; judgment declaring candidate elected or nominated; order for special election

Sec. 17. (a) A contest shall be heard and determined by the court without a jury subject to the Indiana Rules of Trial Procedure.

(b) The court shall determine the issues raised by the petition and answer to the petition.

(c) After hearing and determining a petition alleging that a candidate is ineligible, the court shall declare as elected or nominated

the qualified candidate who received the highest number of votes and render judgment accordingly.

(d) If the court finds that:

- (1) a mistake in the printing or distribution of the ballots used in the election;
- (2) a mistake in the programming of an electronic voting system;
- (3) a malfunction of an electronic voting system; or
- (4) the occurrence of a deliberate act or series of actions;

makes it impossible to determine which candidate received the highest number of votes, the court shall order that a special election be conducted under IC 3-10-8.

(e) The special election shall be conducted in the precincts identified in the petition in which the court determines that:

- (1) ballots containing the printing mistake or distributed by mistake were cast;
- (2) a mistake occurred in the programming of an electronic voting system;
- (3) an electronic voting system malfunctioned; or
- (4) the deliberate act or series of actions occurred.

As added by P.L.5-1986, SEC.8. Amended by P.L.10-1989, SEC.14; P.L.4-1991, SEC.119; P.L.14-2004, SEC.161; P.L.221-2005, SEC.121.

IC 3-12-8-17.5

Special election; corrected canvass of votes; certificate of election

Sec. 17.5. (a) After a special election ordered under section 17 of this chapter is conducted, the county election board shall issue a corrected canvass of the votes. The corrected canvass must substitute the votes cast in the special election in a precinct for each candidate for the votes cast for that candidate in that precinct during the contested election. The board shall add the substituted vote totals to the votes cast for each candidate in each precinct in which the special election was not conducted.

(b) The board or circuit court clerk shall then issue a certificate of election under IC 3-12-4-9 or IC 3-12-5-2 and file a copy of the certificate with the election division. If the contest was for an office commissioned by the governor, the election division shall forward a copy of the certificate to the governor for the issuance of a commission under IC 4-3-1-5.

(c) The election division shall provide a copy of the corrected canvass of the votes to the office.

As added by P.L.3-1997, SEC.366. Amended by P.L.212-2001, SEC.30.

IC 3-12-8-18

Hearing; circuit court clerk to certify determination

Sec. 18. A circuit court clerk shall certify the determination made concerning the election contest under section 17 of this chapter to the:

- (1) county election board;
- (2) election division, if the contest concerned an office for which a declaration of candidacy must be filed with the election division under IC 3-8-2; and
- (3) governor, if the contest concerned an office commissioned by the governor under IC 4-3-1-5.

As added by P.L.5-1986, SEC.8. Amended by P.L.38-1999, SEC.62.

IC 3-12-8-19

Hearing; judgment and determination of court final

Sec. 19. The judgment and determination of a court under section 17 of this chapter are final, although an appeal may be taken.

As added by P.L.5-1986, SEC.8.

IC 3-12-8-20

Disqualification of judge; certification; appointment of special judge

Sec. 20. If a contest involves the nomination or election of the judge of the court in which the petition of contest is filed, and the regular judge of the court is a party to the case, then the regular judge is disqualified to act in any way in the case. The judge shall, within three (3) days after the filing of the petition of contest, certify the fact of disqualification to the governor, who shall then appoint a special judge to try the case.

As added by P.L.5-1986, SEC.8. Amended by P.L.5-1988, SEC.14.

IC 3-12-8-21

Vacation of office by person in possession

Sec. 21. On demand of a person receiving a commission or certificate of election issued following the certification under section 18 of this chapter, a person in possession of the office in question shall vacate the office. If the person in possession fails to do so, the court may compel the vacation of the office upon the petition of the person holding the commission or certification.

As added by P.L.10-1988, SEC.158.

IC 3-12-8-22

Election contest; costs included

Sec. 22. (a) The costs of a contest may include the following:

- (1) Compensation of additional employees required to conduct the contest, including overtime payments to regular employees who are eligible to receive such payments.
- (2) Postage and telephone charges directly related to the contest.

(b) The costs of a contest may not include the following:

- (1) General administrative costs.
- (2) Security.
- (3) Allowances for meals or lodging.

(c) The costs of a contest shall be paid from the county general fund without appropriation.

*As added by P.L.8-1992, SEC.34. Amended by P.L.176-1999,
SEC.103.*