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Bill Analysis
Legislative Service Commission

Sub. H.B. 5*
124th General Assembly
(As Reported by H. State Government)

Rep. Lendrum

BILL SUMMARY

- Requires boards of elections, in counties where punch card ballots are used, to instruct voters to remove any partially attached chads from their ballots before returning those ballots to election officials.
- Requires boards of elections, in counties where punch card ballots are used, to designate two-person teams, one person from each major political party, to take all reasonable steps to inspect those ballots prior to their counting, to take all reasonable steps to remove from those ballots chads attached by two or fewer corners, and to remake and count ballots that clearly appear to have been voted backwards.
- Specifies that, if a chad remains attached to a punch card ballot by three or four corners, it must be deemed that the voter did not record a candidate, question, or issue choice at the particular position on the ballot, and a vote must not be counted at that particular position.
- Requires a person who will be outside of the United States on the day of an election and who is voting an armed service absent voter's ballot to mail that ballot to the director of the board of elections prior to the close of the polls on election day.
- Specifies that, if an armed service absent voter's ballot is received from a voter who will be outside of the United States on election day, the ballot generally must be counted if it is received within the required period, whether or not the ballot is postmarked or contains an illegible postmark.

* *This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Specifies that a voter who declares to a presiding judge of elections that the voter is unable to mark a ballot because of blindness, disability, or illiteracy may be assisted by any person of the voter's choice, other than the voter's employer, an agent of that employer, an officer or agent of the voter's union, or a candidate whose name appears on the ballot.
- Prohibits any person providing assistance to a voter in the marking of the voter's ballot from providing any information afterwards regarding the marking of that ballot.
- Requires the Secretary of State to establish 35 days prior to the date of an election a date by which the canvass of election returns must be completed, and specifies that, 60 days after that established date, no amendments may be made to that canvass.
- Creates the Election System Study Committee, which must, by October 1, 2001, make recommendations for improving the current election process and estimate the potential costs associated with its recommended changes.
- Requires the Secretary of State to issue directives and advisories to members of boards of elections regarding the proper methods of conducting elections.
- Specifies that an absent voter's ballot must not be accepted or counted if Stub A has been removed from the ballot.
- Corrects statutory forms in the Elections Law and other parts of the Revised Code that specify an incorrect penalty for election falsification (which currently is a felony of the fifth degree).
- Modifies Elections Law provisions governing the period for retaining ballots following an election.

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CONTENT AND OPERATION

Voting machines, marking devices, and automatic tabulating equipment, including "punch card ballots"

Existing law

Existing law permits a board of elections, a board of county commissioners upon the recommendation of the board of elections, or the majority of voters of a county voting on the question, to adopt voting machines, marking devices, and automatic tabulating equipment for use in the county (sec. 3506.02--not in the bill). In order for voting machines, marking devices, and automatic tabulating equipment to be used, they must first be examined and approved by the Board of Voting Machine Examiners (secs. 3506.05, 3506.06, 3506.07, and 3506.10--not in the bill).

The Elections Law currently does not establish individual standards for the various types of voting machines, marking devices, and automatic tabulating equipment. Instead, once voting equipment is approved for use in a county, the Secretary of State is required to provide each board of elections with *rules and instructions* regarding the examination, testing, and use of that equipment. In those rules and instructions, the Secretary of State is required, for each type of voting machine or automatic tabulating equipment, to determine the procedure for casting a vote and how the vote must be tallied and reported. The Secretary of State also must adopt other rules and instructions necessary to ensure the adequate care and custody of voting equipment. The board of elections in a county using that equipment then is required to provide adequate instruction to voters and

election officials regarding the proper use of voting machines and marking devices. (Sec. 3506.15.)

Changes proposed by the bill

New definitions. The bill generally retains the provisions of existing law regarding voting machines, marking devices, and automatic tabulating equipment, while establishing voter instruction requirements and counting standards for one specific type of voting machine ballot. The bill defines a "punch card ballot" as a ballot card that contains small perforated designated positions that a marking device must pierce to form a hole that records a voter's candidate, question, or issue choice. A "chad" is the small piece of paper or cardboard produced from a punch card ballot when a voter pierces a hole in a perforated, designated position on the ballot with a marking device to record the voter's candidate, question, or issue choice. (Sec. 3506.16(A).)

Voter instructions. In addition to any instructions provided to voters under existing law, the bill requires boards of elections, in counties where punch card ballots are used, to instruct voters regarding those ballots. The instructions must require each voter to examine the voter's marked ballot card and remove any chads that remain partially attached to it before returning the ballot card to election officials. The instructions must be provided to voters who are voting at their respective precincts as well as to voters who are voting absent voter's ballots. (Secs. 3506.15 and 3509.01.)

Counting chads. In counties where punch card ballots are used, the bill requires the board of elections to designate two-person teams consisting of employees of the board, one from each major political party, to take all reasonable steps, in a manner prescribed by the Secretary of State, to inspect those ballots *at the board of elections* prior to their counting at one or more "counting stations" at that location by automatic tabulating equipment. The board may designate as many teams as the board considers necessary to efficiently inspect the ballots prior to the counting. The board also may designate two-person teams, consisting of employees of the board, one from each major political party, to monitor the teams conducting the inspection of the ballots. (Secs. 3506.12(B) and 3506.16(B)(1) and (C).)

The teams that are designated to inspect the ballots are required to take all reasonable steps, in a manner prescribed by the Secretary of State, to remove from a punch card ballot chads attached by two or fewer corners; they must not remove any chad attached by three or four corners. If a chad remains attached to a punch card ballot by three or four corners, it must be deemed that a voter did not record a candidate, question, or issue choice at that particular position on the ballot, and a vote must not be counted at that particular position on the ballot. (Sec.

3506.16(B)(1) and (2).) Similarly, in any recount of punch card ballots, if a chad is attached to a ballot by three or four corners, it must be deemed that a voter did not record a candidate, question, or issue choice at that particular position on the ballot, and a vote must not be counted at that particular position on the ballot (sec. 3515.04).

Ballots voted backwards. The teams of employees designated by the board of elections of a county where punch card ballots are used, in addition to removing chads attached by two or fewer corners, also must *remake and count as valid* any punch card ballot that clearly appears to have been voted backwards. If the pattern of holes punched in areas of a punch card ballot *other than the designated positions assigned to candidates, questions, or issues* makes it clear to a team that the voter inserted the ballot card with its back side facing up, then the team must remake that ballot and count it as a valid ballot. Only holes that are clearly pierced through the ballot must be remade and counted. Ballots must be remade and counted whether the voter voted for one candidate, question, or issue, more than one but not all candidates, questions, or issues, or all candidates, questions, and issues. (Sec. 3506.16(B)(3)(a).)

If the pattern of holes pierced through a punch card ballot indicates that the ballot card was inserted into the voting machine with its back side facing up, partially voted, then removed from the machine, reinserted properly, and voted correctly, the teams shall remake and count as valid only those votes represented by the *properly punched side of the original punch card ballot* (sec. 3506.16(B)(3)(b)).

Postmark requirements for armed service absent voter's ballots

Existing law

Existing law requires a voter who receives an armed service absent voter's ballot (1) to answer certain questions on, and to write the voter's signature in a designated place on, the face of an identification envelope into which the ballot must be deposited upon its being marked and (2) to then cause the identification envelope to be placed into the return envelope, sealed in the return envelope, and mailed to the director of the board of elections to whom it is addressed. If the voter will be *outside of the United States* on the day of the election, the voter is required to check a box on the return envelope indicating that fact. To be counted as a valid ballot, a board of elections must receive such a return envelope prior to the 21st day after a presidential primary election or prior to the 11th day after the day of any other election. (Secs. 3511.09 and 3511.11.)

There is no *explicit* statutory requirement, under existing law, that an armed service absent voter's ballot must be postmarked in order to be counted as a valid

ballot. Section 3511.11 of the Revised Code, however, specifies that an armed service absent voter's ballot received from a voter who will be outside of the United States on election day that is "postmarked or signed after the close of the polls on election day" must not be counted. The Secretary of State has interpreted this to create an implied postmarking requirement, specifying, in Advisory 2000-03, issued on September 15, 2000, that "[a]bsentee ballots voted by military personnel living outside the U.S. must be postmarked by the date of the election"

Changes proposed by the bill

In addition to the existing requirements to which a person voting an armed service absent voter's ballot from outside of the United States must adhere, the bill requires such a voter to mail the return envelope to the director of the board of elections *prior to the close of the polls on election day* (sec. 3511.09). A return envelope that indicates that the voter will be outside of the United States on election day is not required to be postmarked for the ballot contained in it to be valid. If an armed service absent voter's ballot is mailed in a return envelope that indicates that the voter will be outside of the United States on election day, the ballot generally must be counted if it is received prior to the 21st day after a presidential primary election or prior to the 11th day after any other election, *whether or not it is postmarked or contains an illegible postmark*. If, however, as under existing law, the return envelope is postmarked, or the identification envelope in it is signed, after the close of the polls on election day, then the armed service absent voter's ballot must not be counted. (Sec. 3511.11.)

Voter assistance

Existing law

Ohio law. Existing law permits a voter, who declares to the presiding judge of elections that the voter is unable to mark the voter's ballot by reason of illiteracy or physical infirmity, to receive the assistance of two election officials of different political parties. Also, if it is apparent to the election judges that a voter has a physical infirmity sufficient to incapacitate the voter from properly marking the voter's ballot, the voter is permitted to request to be aided by a "near relative," who must be admitted to the voting booth with the voter, or the voter is permitted to receive assistance in marking the voter's ballot by two election officials belonging to different political parties. Finally, a blind voter may be accompanied in the voting booth and assisted by any person of the voter's choice. (Sec. 3505.24.)

Election officials who provide assistance to a voter under the latter circumstances and possibly other persons who provide that assistance are



prohibited from revealing information regarding the voter's ballot. No assistance may be given for reasons other than those listed above, and no candidate whose name appears on the ballot is permitted to assist any person in marking that person's ballot. (Sec. 3505.24.)

Federal law. Existing federal law creates a different standard for voter assistance in federal elections. In federal elections, any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write is permitted to have a person of the voter's choice assist the voter. The voter's employer, an agent of that employer, or an officer or agent of the voter's union, however, may not provide assistance. (42 U.S.C. 1973aa-6.) Thus under existing law, depending on whether an election includes federal offices or issues, different standards must be adhered to in Ohio regarding the type of assistance available to disabled or illiterate voters.

Changes proposed by the bill

Under the bill, any voter who declares to the presiding judge of elections that the voter is unable to mark the voter's ballot by reason of (1) blindness, (2) disability, or (3) illiteracy may be accompanied in the voting booth and aided generally *by any person of the voter's choice*. The voter also may request and receive assistance from two election officials of different political parties. Anyone providing assistance must thereafter provide no information in regard to the marking of the voter's ballot. (Sec. 3505.24.)

The voter may not be assisted, as under existing federal law, by the voter's employer, an agent of that employer, or an officer or agent of the voter's union (if any). The bill also continues the provision of existing law that prohibits a candidate whose name appears on the ballot from assisting any voter in marking that voter's ballot. (Sec. 3505.24.)

Canvass of election returns

Existing law

Boards of elections generally are required to begin to canvass precinct election returns not earlier than the 11th day and not later than the 15th day after a primary, general, or special election. But, if a special election is held on the day of a presidential primary election, boards are required to begin to canvass precinct election returns not earlier than the 21st day and not later than the 25th day after that special election. Existing law does not specify a date by which the canvass of election returns must be completed. Similarly, there is no provision in existing law specifying when the canvass of election returns may be amended, and no deadline after which amendments may not be made. (Secs. 3505.32 and 3513.22.)

Changes proposed by the bill

No later than 35 days prior to the date of an election, the bill requires the Secretary of State to issue a directive specifying the date by which boards of elections must complete the canvass of election returns (sec. 3501.05(U)). The boards then must complete the canvass by that date. Sixty days after the date the Secretary of State specifies for the completion of the canvass, the canvass must be deemed final, and no amendments to the canvass may be made after that 60-day period. If required by federal law, the Secretary of State is permitted to specify an earlier date upon which the canvass will be deemed final, and after which amendments to the final canvass may not be made. (Secs. 3505.32(A) and 3513.22(A).)

Election System Study Committee

The bill creates the Election System Study Committee, the purpose of which is to study the election process in this state. Based upon the testimony of public and private election experts, the Committee is required to make recommendations for improving the current election process and to estimate the potential costs associated with any changes it recommends. (Section 3(A).)

The Committee consists of eleven members, who must be appointed as follows (Section 3(B)):

- Two members of the House of Representatives of the same political party as the Speaker of the House of Representatives, to be appointed by the Speaker;
- One member of the House of Representatives of the major political party of which the Speaker is not a member, to be appointed by the Speaker;
- Two members of the Senate of the same political party as the President of the Senate, to be appointed by the President;
- One member of the Senate of the major political party of which the President is not a member, to be appointed by the President;
- One member of the public, to be appointed by the Speaker of the House of Representatives;
- One member of the public, to be appointed by the President of the Senate;

- One member of a board of county commissioners, to be appointed by the Speaker of the House of Representatives;
- One member of a county board of elections, to be appointed by the President of the Senate;
- The Secretary of State, or the Secretary of State's designee.

Within seven days after the bill's effective date, the Secretary of State or the Secretary of State's designee is required to convene the first meeting of the Committee. The Committee then must elect a chairperson from among its members who are elected officials. After the initial meeting, the chairperson is required to convene Committee meetings as the chairperson considers necessary to carry out the Committee's purpose. (Section 3(E).)

Not later than October 1, 2001, the Committee is required to prepare its recommendations and associated cost estimates, and file a written copy of them with (1) the Speaker of the House of Representatives, (2) the President of the Senate, and (3) the Secretary of State. The Committee will cease to exist once it files its recommendations and associated cost estimates. (Section 3(F).)

Committee members will not be compensated, but may be reimbursed for necessary expenses they incur in the performance of their official duties (Section 3(C)).

Miscellaneous changes

Directives and advisories issued by the Secretary of State

Among the other duties of the Secretary of State, existing law requires the Secretary of State to *advise* members of the boards of elections as to the proper methods of conducting elections (sec. 3501.05(B)). Various sections of the Elections Law also require the Secretary of State to adopt rules and to provide *instructions* to those boards regarding such topics as voting machines and voter instructions. The Elections Law does not currently specify any particular form that that advice and those instructions must take. The Secretary of State, unless specifically required to adopt rules, frequently issues directives and advisories to fulfill the requirements that the Secretary provide that advice and those instructions.

The bill specifically requires the Secretary of State to *issue directives and advisories* to members of boards of elections as to the proper methods of conducting elections, thus codifying the process by which advice and instructions generally are given under existing law. The bill also requires each board of

elections to make and issue its own rules and instructions, and to perform other duties, consistent with the law and the rules, directives, and advisories issued by the Secretary of State; with respect to the "law" and the "rules," this is a continuation of existing law. (Secs. 3501.05(B), 3501.11(E) and (P), and 3506.15.)

Stub A

"Stub A" refers to one of two paper or cardboard stubs generally attached to a ballot or ballot card that identifies the individual number of that ballot or ballot card (sec. 3505.08--not in the bill). After marking a ballot, a voter is required to return it, with Stub A attached, to the precinct election officials. The election officials then must verify that the ballot number on Stub A corresponds to the number of the ballot issued to the voter. If there is no discrepancy, the election officials are required to deposit the marked ballot in the proper ballot box and place Stub A from the ballot in a container provided for that purpose. No ballot delivered by a voter to an election official with Stub A already detached may be deposited in a ballot box for counting. (Sec. 3505.23--not in the bill.)

Existing law does not specify, with respect to *absent voter's ballots*, however, that those ballots must not be accepted or counted if Stub A is detached. The bill specifies that an absent voter's ballot from which Stub A has been detached must not be accepted or counted, in addition to the other circumstances under which absent voter's ballots must not be accepted or counted. (Sec. 3509.07.)

Retention of election materials

Existing law. Existing Ohio law generally requires boards of elections to preserve election materials, other than ballots, for two years after the day of the election in which they were used. Boards generally are required to preserve all ballots, including absent voter's ballots, prepared and provided for use in an election for 60 days after the day of the election, whether or not those ballots were used in the election. (Sec. 3505.31; sec. 3509.05--not in the bill.) Armed service absent voter's ballots that are not counted, because they are received after the applicable deadline or because their identification envelope is signed or the return envelope is postmarked after the close of the polls on election day, only must be preserved for 40 days after the day of the election (sec. 3511.11).

For any election that includes nominations for or elections to the offices of President, Vice President, presidential elector, member of the United States Senate, or member of the United States House of Representatives, federal law requires election officers to retain election materials for 22 months after the day of the election (42 U.S.C. 1974).

Thus, under existing law, different standards apply in Ohio regarding the length of time ballots must be preserved depending on whether or not an election includes those specified national offices.

Changes proposed by the bill. The bill retains the 60-day preservation requirement for ballots that *do not include* the offices specified under federal law, and increases to 60 days the length of time that uncounted armed service absent voter's ballots must be retained after the day of an election. It also specifies, similar to federal law, that, if an election includes the nomination or election of candidates for any of the offices of President, Vice President, presidential elector, member of the United States Senate, or member of the United States House of Representatives, boards of elections must carefully preserve all ballots prepared and provided for that election for 22 months after the day of the election, whether or not those ballots were used in the election. (Secs. 3505.31 and 3511.11(D).)

Penalty for election falsification

Existing law makes election falsification a felony of the fifth degree (sec. 3599.36--not in the bill). But, various forms in the Elections Law, and in other parts of the Revised Code, that must be signed under "penalty of election falsification" incorrectly identify the penalty for the offense as imprisonment for not more than six months, a fine of not more than \$1,000, or both; these sanctions pertain to the time when the offense was a misdemeanor of the first degree. The bill changes these incorrect references to match existing law's "felony of the fifth degree" status of election falsification. (Secs. 303.12(H), 519.12(H), 3375.03, 3501.38(J), 3504.02, 3509.04, 3511.05(A), 3511.09, 3513.07, 3513.261, and 3519.05.)

HISTORY

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Introduced	01-30-01	pp. 92-93
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