



## *Bill Analysis*

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### **Sub. H.B. 445\***

124th General Assembly

(As Reported by S. State & Local Government & Veterans Affairs)

**Reps. Kearns, Trakas, Clancy, Buehrer, Fessler, Cates, Sulzer, Lendrum, Flowers, McGregor, Otterman, Distel, Coates, Hollister, Latell, Carano, Niehaus, Britton, Carmichael, Roman, Hagan, Sullivan, Hoops**

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### **BILL SUMMARY**

- Requires the Ohio Ballot Board or persons designated by the Board to prepare and file arguments or explanations in support of or in opposition to (1) each constitutional amendment proposed by the General Assembly, (2) each constitutional amendment or state law proposed by initiative petition, and (3) each state law, or section or item of state law, subject to a referendum petition, if the persons otherwise designated to prepare the arguments or explanations fail to timely prepare and file the arguments or explanations.
- Requires the Secretary of State to notify the Board if required arguments or explanations have not been prepared and filed by the 75th day before the date of an election.
- Specifies that the positions of the four appointed members of the Board must be considered vacant if the Board fails to have the missing arguments or explanations prepared and filed after the notification from the Secretary of State.
- Changes from 75 to 80 days before an election the deadline by which the Board must certify ballot language and explanations to the Secretary of State for constitutional amendments proposed by the General Assembly.

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

- Requires the designation of "Independent" to be printed on a ballot under the name of each nonjudicial candidate who files a nominating petition and requests that designation.
- Includes members of a board of elections within the definition of "election officer" or "election official."
- Prohibits any petition filed under the Election Law from being withdrawn after it is filed in a public office.
- Specifies that a write-in candidate for committee person of a political party controlling committee is not required to receive as many votes as the number of petition signatures that would have been required to print the candidate's name on the primary election ballot, in order for that person to win election, if the person receives the greatest number of votes for that office.
- Modifies state law to comply with an aspect of a requirement in the Ohio Constitution by specifying that an election to fill an unexpired term in certain judicial offices must be held at the first general election for the office that occurs more than 40 days after the Governor's appointment to fill the vacant office.
- Prohibits a person from seeking nomination or election to two or more state offices, two or more county offices, a state office and a county office, or two or more other local offices at the same election.
- Specifies that the Secretary of State or a board of elections must not accept for filing a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition of a person, if that person has already filed another petition or otherwise become a candidate for a prohibited office for the same election.
- Requires the Secretary of State or a board of elections to disqualify a candidate for all prohibited offices for which the person subsequently sought to become a candidate, if (1) prohibited candidacies are discovered before the day of the primary election and (2) the person sought to become a candidate for those prohibited offices on different dates.
- Requires the Secretary of State or a board of elections to disqualify a candidate for all prohibited offices below the highest office for which the

person seeks to become a candidate, if (1) the prohibited candidacies are discovered before the day of the primary election and (2) the person sought to become a candidate for those prohibited offices on the same date.

- Requires the Secretary of State or a board of elections to disqualify a person as a candidate for all prohibited offices below the highest office for which the person seeks election, if prohibited candidacies are discovered after the primary election and before the general election.
- Requires a board of elections to remove the name of a disqualified candidate from the ballots to the extent practicable before the election, and prohibits the counting of votes cast for a disqualified candidate.
- Specifies that any person who knowingly seeks nomination or election to more than one prohibited office is guilty of "seeking nomination or election to more than one prohibited office at the same election" and must be fined not more than \$500.
- Permits a vacancy created on a ballot by the disqualification of a candidate seeking nomination or election to more than one prohibited office at the same election to be filled in the same manner as vacancies caused by the death or withdrawal of a candidate.
- Permits a person to become a candidate for an otherwise prohibited office if the person timely withdraws as a candidate from all other prohibited offices for which the person first sought to become a candidate.
- Specifies that the prohibition against seeking nomination or election to more than one prohibited office at the same election does not apply to elections to fill a vacant office.

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## CONTENT AND OPERATION

### Ohio Ballot Board provisions

#### Preparation of ballot arguments and explanations

**Existing law.** Article II, Section 1g of the Ohio Constitution requires an argument, explanation, or both, to be prepared in favor of and in opposition to each initiative, supplementary, or referendum petition. That constitutional section and section 3519.03 of the Revised Code specify that the person or persons ("committee") who prepare an argument or explanation against any law, section of law, or item of law submitted to the electors by referendum petition may be, but are not required to be, named in that petition. Similarly, those sections provide that an initiative petition may name, but is not required to name, a committee to prepare an argument or explanation in favor of the measure proposed. Under existing law, there is no provision specifying who, if anyone, prepares these arguments or explanations if the committee named in a referendum or initiative petition declines or fails to prepare them or if no committee is named by the petitioners. Thus, even though constitutionally required to be prepared, these arguments or explanations may not actually be prepared under those circumstances.

The General Assembly, if in session, and the Governor, if the General Assembly is not in session, is required to name the persons who are to prepare the argument, explanation, or both in opposition to a measure proposed by an initiative petition or in favor of a law, section, or item to be referred (Article II, Section 1g, Ohio Constitution; sec. 3519.03). The General Assembly also is permitted, when it adopts a resolution proposing a constitutional amendment, to designate a group of members who voted in support of the resolution to prepare arguments for the proposed amendment and a group of members who voted in opposition to the resolution to prepare arguments against the proposed amendment. If no members voted in opposition, or if the General Assembly chooses not to designate members to prepare either type or both types of arguments, the Ohio Ballot Board is permitted, but not required, to prepare the



relevant arguments or to designate a group of persons to prepare them. (Sec. 3505.063.) Existing law does not provide a penalty if the arguments or explanations described in this paragraph are not prepared, and does not specify who, if anyone, prepares them if the named persons fail to do so.

**Changes proposed by the bill.** The bill requires the Ohio Ballot Board to prepare, or to designate a group of persons to prepare, arguments or explanations in support of or in opposition to all of the following, if the persons otherwise responsible for their preparation fail to timely prepare and file them (secs. 3505.062(D), 3505.063(B), and 3519.03(B)):

- (1) A constitutional amendment proposed by a resolution of the General Assembly;
- (2) A constitutional amendment or state law proposed by initiative petition;
- (3) A state law, or section or item of state law, subject to a referendum petition.

Specifically, if the committee named in an initiative or referendum petition, a designated group of General Assembly members, or other designated persons fail to prepare and file their arguments or explanations by the 75th day before the day of an election, the Secretary of State is required to notify the Board that the arguments or explanations have not been prepared and filed. The Board then must prepare the missing arguments or explanations or designate a group of persons to do so; they cannot exceed 300 words. All prepared arguments or explanations must be filed with the Secretary of State no later than 70 days before the date of the election. (Secs. 3505.063(B)(1) and 3519.03(B)(1).)

If the Board fails to provide for the preparation of missing arguments or explanations after being notified by the Secretary of State, the positions of the four appointed members of the Board must be considered vacant, and new members must be appointed in the manner provided for original appointments (secs. 3505.061(B), 3505.063(B)(2), and 3519.03(B)(2)).

### **Certification of ballot language and explanation**

Existing law requires the Ohio Ballot Board to prescribe the ballot language for constitutional amendments proposed by the General Assembly to be printed on the questions and issues ballot and to prepare an explanation of each constitutional amendment (sec. 3505.062(A) and (B))--unchanged by the bill). The ballot language and explanation must be certified to the Secretary of State no later than 75 days before the election at which the proposed question or issue is to be submitted to the voters. The bill changes the time for that certification to no later than 80 days before that election. (Sec. 3505.062(C).)

## **"Independent" ballot designation**

### **Statutory requirements for ballot designation**

Current law specifies the form that must be substantially followed in the printing of ballots for various offices in Ohio. The law prescribes the order in which the various offices are to be placed on a ballot, and other requirements, such as the rotation of candidate names from precinct to precinct and the manner in which a candidate's party affiliation is to be printed. (Sec. 3505.03.)

The name of the political party by which a candidate was nominated or certified must be printed under the name of each candidate who was nominated at a primary election or certified by a political party committee to fill a vacancy in a party nomination. The name of the political party must be in less prominent type face than that in which the candidate's name is printed. Current law prohibits any other words, designations, or emblems descriptive of a candidate, a candidate's political affiliation, or the manner in which a candidate was nominated or certified from appearing on the ballot. (Sec. 3505.03.)

### **Constitutionality of existing law's ballot designation provisions**

Existing section 3505.03 has been held to be in violation of the First and Fourteenth Amendments to the United States Constitution insofar as it prohibits a candidate who files a nominating petition from being identified as unaffiliated with a political party, or "Independent." In *Rosen v. Brown*, 970 F.2d 169 (6th Cir. 1992), the United States Court of Appeals for the Sixth Circuit held that prohibiting a candidate from being identified as an "Independent" unconstitutionally burdened the right of individuals to associate for the advancement of political beliefs and of qualified voters to cast their votes effectively. A subsequent case by the same court held that the ballot designation provisions of this section are constitutional as applied to minor political parties. *Schrader v. Blackwell*, 241 F.3d 783 (6th Cir. 2001).

### **Changes proposed by the bill**

The bill generally retains the provisions of current law regarding the ballot designations of candidates as they apply to major and minor political parties. For nonjudicial candidates who file nominating petitions, however, a new ballot designation is provided if requested by the candidate.

Any nonjudicial candidate who files a nominating petition may request, at the time of filing, that the candidate be designated as an "Independent" on the ballot (sec. 3513.257). The designation of "Independent" must be printed under the name of each nonjudicial candidate appearing on the ballot who filed a nominating petition and requested the designation. The designation of

"Independent" must be in less prominent type face than that in which the candidate's name is printed. (Sec. 3505.03.)

**Inclusion of board of elections members in definition of "election official"**

Existing law defines the following persons as an "election officer" or "election official" for the purposes of the Elections Law: the Secretary of State; employees of the Secretary of State serving the Division of Elections in the capacity of attorney, administrative officer, administrative assistant, elections administrator, office manager, or clerical supervisor; a director, deputy director, or employee of a board of elections; precinct polling place judges and clerks; and employees appointed by the board of elections on a temporary or part-time basis (sec. 3501.01(U)). The bill retains each of these persons in the definition of "election officer" or "election official," and adds members of a board of elections to the definition (sec. 3501.01(U)(5)).

**Petition withdrawal**

Existing law specifies which electors are eligible to sign petitions, that their signatures must be affixed in ink or indelible pencil, and what additional details are required to be included on a petition. Existing law also prescribes requirements to which circulators of petitions must adhere, including one regarding the removal of a signer's signature. Once a petition has been filed in a public office, no alterations, corrections, or additions to it may be made. (Sec. 3501.38.)

The bill retains the existing requirements for signers and circulators of petitions, including the provision that no alterations, corrections, or additions may be made to a petition once it has been filed in a public office. The bill adds that no petition may be withdrawn after it is filed in a public office. Although the bill prohibits a petition from being withdrawn, it does not prohibit a person from withdrawing as a candidate as otherwise provided by the Election Law. (Sec. 3501.38(I)(2).)

**Election of write-in candidates to political party controlling committees**

Existing law requires candidates for committee persons of political party controlling committees to be elected at primaries in the same manner as candidates are nominated for office in a county (sec. 3517.03). A conflict appears to exist, however, between the existing provisions for determining a winning candidate for member of a political party controlling committee and those for determining nominations of write-in candidates.

The Primary Election Law specifies that no write-in candidate can be nominated unless the person receives a number of write-in votes equal to the



number of petition signatures that the person would have been required to obtain in order to place the person's name on the primary election ballot (sec. 3513.23). The law dealing with the election of members of a political party controlling committee, however, specifies that the persons receiving the greatest number of votes for committeepersons are elected to that committee (sec. 3517.02). It is possible, then, for a write-in candidate to receive the greatest number of votes for a committeeperson position but fewer votes than the necessary number of petition signatures to place that person's name on the primary election ballot. In such a case, it is unclear which section of the Revised Code would control in determining whether a write-in candidate is elected to a political party controlling committee.

The bill specifies that, for elections for committeepersons of a political party controlling committee, the persons receiving the highest number of votes are elected to the committee notwithstanding the requirement that a write-in candidate receive at least the same number of votes as signatures necessary to place that person's name on a primary election ballot. Thus, a write-in candidate receiving the highest number of votes will be elected to the controlling committee of a political party, even though the number of votes is fewer than the number of petition signatures necessary to place that candidate's name on the primary election ballot. (Secs. 3513.23(B), 3517.02, and 3517.03.)

#### **Election to fill unexpired term for the office of judge**

Article IV, Section 13 of the Ohio Constitution generally provides that if the office of any judge becomes vacant before the end of the regular term for which the judge was elected, the vacancy must be filled by appointment by the Governor, until a successor is elected and has qualified. The successor must be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than 40 days "after the vacancy occurs."

A provision of statutory law provides that if no person has been elected as a judge's successor, the judge's office is vacant at the expiration of the judge's term, and the Governor must fill the vacancy by appointment. If the appointment is to a court of appeals, court of common pleas, or municipal court, the clerk of the court must give written notice of the appointee's name to the board of elections responsible for conducting elections for the office. The provision also states that the judge's successor must be elected for the unexpired term at the first general election for the office that occurs more than *30 days* after the "appointment" by the Governor. The bill changes the reference from 30 days to 40 days to comport with

the number of days aspect of the requirement of the Ohio Constitution.<sup>1</sup> (Sec. 107.08.)

### **Multiple candidacy provisions**

#### **Prohibiting specified multiple candidacies for the same election**

Provisions of existing statutory law as well as common law prohibit a person from holding certain offices at the same time. For example, section 319.07 of the Revised Code prohibits a judge or clerk of a court, county commissioner, county recorder, county engineer, county treasurer, or sheriff from being eligible for the office of county auditor. Courts also have held that certain offices, such as the office of deputy county auditor and township clerk, are incompatible and cannot be held simultaneously.<sup>2</sup> Nothing in existing law, however, prohibits a person from being a candidate for two or more offices at the same election even though, if elected, the person will not be eligible to hold those offices simultaneously.

The bill prohibits a person from seeking nomination or election to any of the following offices or positions at the same election (sec. 3513.052(A)):<sup>3</sup>

- Two or more state offices;
- Two or more county offices;
- A state office and a county office;

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<sup>1</sup> *There remains one difference between Article IV, Section 13 of the Ohio Constitution and the bill's change in section 107.08. The constitutional provision refers to the first general election that occurs more than 40 days "after the vacancy occurs," whereas the bill's change in section 107.08 refers to the first general election that occurs more than 40 days "after the Governor's appointment" to fill a vacancy.*

<sup>2</sup> *Chronister v. Trumbull County Prosecuting Attorney* (1988), 39 Ohio Misc.2d 10.

<sup>3</sup> *A person may seek nomination or election to an office or position by filing a declaration of candidacy for nomination for an office to be voted on at a primary election, by filing a declaration of intent to be a write-in candidate, by filing a nominating petition to run as an independent candidate, or by becoming a candidate through party nomination at a primary election or by the filling of a vacancy on a ballot caused by the death or withdrawal of a candidate. The bill prohibits a person from seeking nomination or election to two or more prohibited offices or positions at the same election by any combination of these means.*

*For simplicity purposes, this analysis includes the positions mentioned above within the term "prohibited offices."*

- Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.

For the purpose of this prohibition, the bill defines "state office" as the offices of Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, member of the State Board of Education, member of the General Assembly, Chief Justice of the Supreme Court, and Justice of the Supreme Court (sec. 3513.052(I)(1)).

The bill does not prohibit a person from seeking nomination or election to a state or county office and a municipal, township, or other local office. (See **COMMENT 1**.) For example, although the positions of county auditor and township clerk are incompatible under common law, the bill does not prohibit a person from simultaneously seeking nomination or election to both of those offices. If a person is a candidate for, and wins election to, two incompatible offices not covered by the bill's prohibition, one of the offices would be deemed vacant after the election since the person could not hold both offices simultaneously. Thus, either an appointment or a special election to fill the vacant office would be necessary.

#### **Penalties for seeking multiple prohibited offices**

If it is determined that a person is seeking nomination or election to two or more prohibited offices, the bill specifies the manner in which that person will be disqualified from being a candidate for one or more of those offices.

**Rejection of filings.** The Secretary of State or a board of elections must not accept for filing a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition of a person, if that person, for the same election, has already done any of the following to seek nomination or election for a prohibited office (secs. 3513.04, 3513.041, 3513.05, 3513.052(B), 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, 3513.259, and 3513.261):

- Filed a declaration of candidacy;
- Filed a declaration of intent to be a write-in candidate;
- Filed a nominating petition;
- Become a candidate by receiving a party's nomination at a primary election;



- Become a candidate through the filling of a vacancy caused by the death or withdrawal of a candidate.

**Disqualification from the ballot before a primary election.** If it is determined, before the day of the primary election, that a person is seeking nomination to more than one prohibited office at that election, the person must be disqualified as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. If the person sought to become a candidate for more than one of those offices *on the same date*, the person must be disqualified as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination, according to the order in which those offices are printed on the ballot under existing law (sec. 3513.052(C)). Existing law, unchanged by the bill, specifies the order in which offices must be printed on the ballot.<sup>4</sup> The process for disqualifying a person from the ballot varies depending on (1) whether the Secretary of State or a board of elections determines that the person is seeking nomination for more than one prohibited office and (2) whether any of the offices is a state office or an office with a district larger than a single county (sec. 3513.052(C)).

#### **Offices wholly within a single county**

If the Secretary of State determines that a person is seeking nomination at a primary election to more than one prohibited office that is wholly within a single county, the Secretary of State must notify the board of elections of that county. If a board of elections receives that notice or determines on its own that a person is seeking nomination at the same primary election to more than one such prohibited office, the board must determine the date on which the person first sought to become a candidate for each of the prohibited offices. The board must vote promptly to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. But, if the board determines that the person sought to become a candidate for more than one of those offices on the same date, the board must vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination according to existing law's ballot order provisions. (Sec. 3513.052(C)(1)(a) and (C)(2)(a).)

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<sup>4</sup> For state, non-federal district, and county offices, the order in which offices are placed on the ballot, from top to bottom, is as follows: Governor and Lieutenant Governor, Attorney General, Auditor of State, Secretary of State, Treasurer of State, State Senator, State Representative, county commissioner, county auditor, prosecuting attorney, clerk of the court of common pleas, sheriff, county recorder, county treasurer, county engineer, and coroner (sec. 3505.03).

### **State offices and offices with districts larger than a single county**

If a board of elections determines that a person is seeking nomination at the same primary election to more than one prohibited office and at least one of those offices is a state office or an office with a district larger than a single county, the board must notify the Secretary of State. If the Secretary of State receives that notice or determines on his or her own that a person is seeking nomination at the same primary election to more than one such prohibited office, the Secretary of State must determine the date on which the person first sought to become a candidate for any of those offices. The Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office for which the person sought to become a candidate after the date on which the person first sought to become a candidate for any of those offices. But, if the Secretary of State determines that the person sought to become a candidate for more than one of those offices on the same date, the Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks nomination according to existing law's ballot order provisions. Each board of elections that is so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. (Sec. 3513.052(C)(1)(b) and (C)(2)(b).)

**Disqualification from the ballot before a general election.** If it is determined, after the day of the primary election and before the day of the general election, that a person is seeking election to more than one prohibited office at that election, the person must be disqualified as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election according to existing law's ballot order provisions (sec. 3513.052(D)). Thus, a person seeking election to more than one prohibited office will be permitted to remain a candidate for the highest office for which the person seeks election and will be disqualified from being a candidate for all lower prohibited offices. The actual process for disqualifying a person from the ballot varies depending on (1) whether the Secretary of State or a board of elections determines that the person is seeking election to more than one prohibited office and (2) whether any of the offices is a state office or an office with a district larger than a single county (sec. 3513.052(D)).

### **Offices wholly within a single county**

If the Secretary of State determines that a person is seeking election at the same general election to more than one prohibited office that is wholly within a single county, the Secretary of State must notify the board of elections of that county (sec. 3513.052(D)(1)(a)). If a board of elections receives that notice or



determines on its own that a person is seeking election at the same general election to more than one such prohibited office, the board must determine the offices for which the person seeks to appear as a candidate on the ballot. The board must vote promptly to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election according to existing law's ballot order provisions. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate to that person for any office that would be listed on the ballot below the highest office for which that person seeks election according to existing law's ballot order provisions. (Sec. 3513.052(D)(1)(a) and (D)(2)(a).)

**State offices and offices with districts larger than a single county**

If a board of elections determines that a person is seeking election at the same general election to more than one prohibited office and at least one of those offices is a state office or an office with a district larger than a single county, the board must notify the Secretary of State. If the Secretary of State receives that notice or determines on his or her own that a person is seeking election at the same general election to more than one such prohibited office, the Secretary of State must investigate and determine the offices for which the person seeks to appear as a candidate on the ballot. The Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that would be listed on the ballot below the highest office for which that person seeks election according to existing law's ballot order provisions. Each board of elections that is so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate to that person for any office that would be listed on the ballot below the highest office for which that person seeks election according to existing law's ballot order provisions. (Sec. 3513.052(D)(1)(b) and (D)(2)(b).)

**Monetary penalty.** In addition to requiring the rejection of filings and disqualifications from the ballot, the bill specifies that a person who knowingly seeks nomination or election to two or more prohibited offices at the same election is guilty of "seeking nomination or election to more than one prohibited office at the same election" and must be fined not more than \$500 (sec. 3599.09). (See COMMENT 2.)

**Circumstances to which disqualification provisions do not apply**

The bill establishes two circumstances in which the general prohibition against seeking nomination or election to two or more specified offices at the same

election does not apply. The Secretary of State or a board of elections must not disqualify a person from being a candidate for two or more prohibited offices under either of the following circumstances (sec. 3513.052(G) and (H)):

- The person is a candidate to fill a vacant office.
- The person timely withdraws as a candidate for any prohibited offices for which that person first sought to become a candidate.<sup>5</sup>

### **Removal of a disqualified candidate's name from the ballot**

When a person is disqualified as a candidate for seeking nomination or election to two or more prohibited offices at the same election, the person's name generally must not appear on the ballot for any office for which that person is disqualified as a candidate. If the ballots have already been prepared, the board of elections must remove the name of the disqualified candidate from the ballots to the extent practicable before the election and according to the directions of the Secretary of State. If the person's name is not removed before the day of the election, votes cast for the disqualified candidate are void and must not be counted. (Sec. 3513.052(E).)

### **Filling vacancies created by disqualified candidates**

Existing law establishes procedures for filling vacancies on a ballot in the case of a candidate's death or withdrawal. The bill permits these same methods of filling ballot vacancies to be used to fill vacancies resulting from the disqualification of a candidate who is seeking nomination or election to two or more prohibited offices at the same election (secs. 3513.052(F), 3513.30, and 3513.31).

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## **COMMENT**

1. Both statutory law and common law prohibit certain offices from being held simultaneously. However, the bill does not prohibit all circumstances in which a person may be a candidate for two or more such incompatible offices. Although a state or a county office may be incompatible with a specified local

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<sup>5</sup> *The bill defines the "timely withdrawal" of a candidate as either of the following: (1) withdrawing as a candidate before the applicable deadline for filing a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition for the subsequent office for which the person is seeking to become a candidate, or (2) withdrawing as a candidate before the applicable deadline for the filling of a vacancy, if the person is seeking to become a candidate for a subsequent office by the filling of a vacancy (sec. 3513.052(I)(2)).*

office, the bill does not prohibit a person from being a candidate for a state or county office and a candidate for a municipal or township office, member of a city, local, or exempted village board of education, or member of a governing board of an educational service center. If a person is a candidate for, and wins election to, two incompatible offices not covered by the bill's prohibition, one of the offices would be deemed vacant after the election since the person could not hold both of those offices simultaneously. Thus, either an appointment or a special election to fill the vacant office would be necessary.

2. The monetary penalty for seeking nomination or election to more than one prohibited office at the same election appears to be a criminal provision because of the requirement that a person "knowingly" violate the law, because the bill specifies that a person who knowingly violates the law is "guilty" of "seeking nomination or election to more than one prohibited office at the same election" (names are traditionally prescribed in the Criminal Code for criminal offenses), and because the bill codifies it in the Offenses and Penalties Law of the Elections Code. The felony or misdemeanor or status of the offense is unclear under section 2901.02 of the Revised Code.

The apparent criminal nature of the penalty embodies a potential conflict. A person who "knowingly" seeks two or more prohibited offices at the same election would be guilty of a criminal violation for which that person may be fined. However, the person is permitted to seek *one* of the offices for which the person is being prosecuted. Thus, although violating an apparent criminal statute by knowingly seeking multiple prohibited offices at the same election, the person remains eligible for election to one of the offices that the person is violating the law by seeking.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-04-01	p. 1098
Reported, H. State Gov't	02-27-02	p. 1472
Passed House (93-1)	04-23-02	pp. 1666-1686
Reported, S. State & Local Gov't & Veterans Affairs	---	---

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