



Lynda Jacobsen

*Bill Analysis*  
Legislative Service Commission

## **Sub. H.B. 566\***

124th General Assembly  
(As Reported by H. State Government)

**Rep. Lendrum**

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### **BILL SUMMARY**

- Defines "optical scan ballots" and specifies the types of marks on those ballots that constitute valid votes.
- Creates specific procedures for counting optical scan ballots.
- Specifies that teams of employees of a board of elections must remake and count as valid ballots, optical scan ballots that were improperly marked and rejected as blank ballots, if the teams are able to determine that a consistent pattern of specified marks demonstrates the intent of the voter.
- Specifies circumstances under which armed service absent voter's ballots will not be counted.
- Creates additional procedures applicable to recounts generally, as well as specific recount procedures applicable to various types of ballots and voting machines.
- Prohibits any petition filed under the Election Law from being withdrawn after it is filed in a public office.
- Removes from the "declaration of candidacy" and the "petition of candidate" forms statements requiring the candidate and electors signing petitions to certify the political party of which the candidate is a member.

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\* *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 the legislative history may be incomplete.*

- Removes ward and precinct designation from the types of information that electors signing petitions are required to provide.
- Changes the form and associated instructions for gubernatorial primary election ballots to clarify that a single vote is for the nomination of both joint candidates for Governor and Lieutenant Governor.
- Requires the Secretary of State to instruct all designated agencies regarding the manner in which those agencies must conduct voter registration activities and functions, and requires those agencies to comply with the instructions issued by the Secretary of State.
- Changes from annually to weekly the frequency with which boards of elections must submit to the Secretary of State an accurate and current list of all registered voters in their respective counties, for the purpose of assisting the Secretary of State in maintaining a master list of registered voters.
- Creates the Election System Study Committee to be convened every five years to make recommendations for improving the election process and to estimate the potential costs associated with its recommended changes.
- Eliminates the \$25 filing fee for petitions proposing ballot questions and issues to be submitted to electors throughout the entire state.
- Specifies that protests for all initiative and referendum petitions other than those to be voted on by electors throughout the entire state must be filed not later than 4 p.m. of the 64th day before the election.
- Requires each board of elections to arrange the polling facilities within a polling place in such a manner that they are accessible to handicapped electors through the use of thoughtful layout and reasonable accommodation.
- Requires each board of elections to annually report to the Secretary of State the handicapped-accessibility status of each polling place and each type of voting machine used by the board, including all complaints relating to accessibility and any subsequent response to those complaints.

- Incorporates by reference into the sections of the Elections Law dealing with accessibility the requirements of the Americans with Disabilities Act of 1990.
- Specifies procedures for a board of elections to submit a disputed matter to the Secretary of State for determination if the board is unable to arrive at a decision, and specifies the topics on which the Secretary of State has no authority to decide a dispute of a board of elections.
- Changes from the 30th day to the 15th day before a presidential election the deadline by which a former resident who wishes to vote for the offices of President and Vice President must complete a certificate of intent to so vote in Ohio.
- Includes members of a board of elections within the definition of "election officer" or "election official."
- Inserts cross-references to the Emergency Medical Services Law and to the Organized Militia Law into the Absent Voter's Ballots Law to clarify which providers of emergency medical services and which members of the organized militia are eligible to vote by absent voter's ballots.
- Corrects terminology in the counting procedures for certain punch card ballots so that ballots with over votes are not required to be remade and counted.
- Eliminates the requirement that boards of elections submit the certified results of the ballots to the Secretary of State by certified mail.
- Removes the terms "registrar of elections" and "indelible pencil" from the Elections Law.

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## CONTENT AND OPERATION

### Ballot standards

#### Optical scan ballots

**Existing law and overview.** 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 contains counting standards for only one type of ballot and its associated automatic tabulating equipment--punch card ballots (sec. 3506.16). For all other types of voting machines, marking devices, and automatic tabulating equipment, the Secretary of State is required to provide each board of elections with rules, instructions, directives, and advisories regarding their examination, testing, and use. In those rules, instructions, directives, and advisories, 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, instructions, directives, and advisories necessary to ensure the adequate care and custody of voting equipment. The board of elections in a county using voting machines is required to provide adequate instruction to voters and election officials regarding the proper use of those machines and marking devices. (Sec. 3506.15--not in the bill.)

The bill generally retains these provisions regarding voting machines, marking devices, and automatic tabulating equipment, while establishing counting standards for an additional type of automatic tabulating equipment ballot--the optical scan ballot. It is defined as a ballot that is marked by using a specified writing instrument to fill in a designated position to record a voter's candidate, question, or issue choice and that can be scanned and electronically read in order to tabulate the vote (sec. 3506.17(A)).

**Marks to be counted as valid votes.** In addition to the marks made on an optical scan ballot that are able to be scanned and electronically read by automatic tabulating equipment, the bill specifies that any of the following marks, if made on an optical scan ballot, must be counted as a valid vote (sec. 3506.17(B)(1)):

- A candidate, question, or issue choice that has been underlined by the voter;
- A candidate, question, or issue choice that has been circled by the voter;
- An arrow or oval beside the candidate, question, or issue choice that has been circled by the voter;
- An arrow or oval beside the candidate, question, or issue choice that has been marked by the voter with an "x," a check mark, or other recognizable mark;
- A candidate, question, or issue choice that has been marked with a writing instrument that cannot be recognized by automatic tabulating equipment.

In addition to the types of marks specified above, the bill permits the Secretary of State to adopt rules under the Administrative Procedure Act to authorize additional types of optical scan ballots and to specify the types of marks on those ballots that must be counted as valid votes to ensure consistency in the counting of ballots throughout the state (sec. 3506.17(B)(2)).

**Counting procedures.** In counties where optical scan ballots are used, for the initial count of voted ballots that is conducted on Election Day after the polls close, the board of elections or teams of employees of the board of elections (see "**Ballot inspection teams**," below) must either (1) visually inspect the voted ballots for blank ballots before counting the voted ballots with automatic tabulating equipment or (2) set the automatic tabulating equipment to reject blank ballots (sec. 3506.17(C)(1)). The bill defines a "blank ballot" as a ballot on which no vote is marked for any candidate, question, or issue choice, or a ballot that is improperly marked so that automatic tabulating equipment is unable to detect or record a vote for any candidate, question, or issue choice (sec. 3506.01(G)).

Optical scan ballots that are identified as blank ballots by a visual inspection or rejected as blank ballots by the automatic tabulating equipment during the initial count are required to be inspected by teams of employees of the board of elections. Those employees must determine whether the intent of the voter can be determined under the criteria for a valid vote (see "**Marks to be counted as valid votes**," above), if a ballot has been improperly marked in such a manner that the equipment cannot or would not be able to detect or record a vote for any candidate, question, or issue choice. If it is clear to those employees that the intent of the voter can be so determined and that the ballot has been so improperly marked, they must remake and count as a valid ballot that optical scan ballot. Ballots must be remade and counted whether the voter voted for one office, question, or issue, more than one but not all offices, questions, and issues, or all offices, questions, and issues. (Sec. 3506.17(C)(2).)

For the official canvass of election returns, automatic tabulating equipment counting optical scan ballots must to be set to reject blank ballots and over votes (sec. 3506.17(D)). The bill defines an "over vote" as a ballot that automatic tabulating equipment detects as having been marked for more than the allowable number of votes for a particular office, question, or issue choice (sec. 3506.01(I)).

**Ballot inspection teams.** In counties where optical scan 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 inspect for the purposes described above those ballots that (1) are identified as blank ballots by a visual inspection made by the board or such a team of board employees or (2) are rejected as blank ballots by automatic tabulating equipment. The board may

designate as many teams as it considers necessary to efficiently inspect the rejected blank ballots. (Sec. 3506.17(C)(2) and (E).)

**Armed service absent voter's ballots**

Existing law does not specify the circumstances under which an armed service absent voter's ballot will not be counted, although it does state that, if a voter is challenged and that challenge is sustained, the identification envelope that contains the voter's ballot must not be opened and must be endorsed "Not Counted" with the reasons it was not counted (sec. 3511.12).

The bill relocates, but generally retains, the provision specifying that the identification envelope of an armed service absent voter's ballot that is successfully challenged must not be opened and must be endorsed "Not Counted" with the reasons it was not counted (sec. 3511.12(A) and (B)). The vote of any armed service absent voter may be challenged for cause in the same manner as other votes are challenged. Additionally, the bill specifies the following circumstances under which armed service absent voter's ballots must not be counted (sec. 3511.12(B)):

- If the required statement accompanying the ballot is insufficient;
- If the signature does not correspond with the person's registration signature;
- If the voter is not a qualified elector in the precinct;
- If the ballot envelope contains more than one ballot of any kind;
- If the ballot envelope contains any voted ballot that the elector is not entitled to vote;
- If the bottom stub is detached from the ballot;
- If it appears to the election officials by sufficient proof that the elector who marked and mailed or delivered the ballot has died.<sup>1</sup>

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<sup>1</sup> *These changes make these provisions of the Armed Service Absent Voter's Ballots Law similar to the provisions of the Absent Voter's Ballots Law that pertain to the circumstances under which an absent voter's ballot must not be counted. The bill also makes some technical (parallel language) revisions in the relevant section of the Absent Voter's Ballots Law (sec. 3509.07).*

## **Recount procedures**

### **General procedures applicable to all types of ballots and voting machines**

**Existing law and overview.** Currently, at the time and place fixed for making a recount, the board of elections, in the presence of all witnesses, must open the sealed containers containing the ballots to be recounted and recount them. The ballots only may be handled by board members or the board's director or other employees. Witnesses are not permitted to touch the ballots, although they must be permitted to see them. The board may not permit the counting or tabulation of votes on the ballots for any office, question, or issue that is not the subject of the recount. (Sec. 3515.04.)

At any time before the recount is completed, the person who applied for the recount or the declared losing candidate may file a written request to stop the recount. If the votes that have been recounted up to that point would not cause the declared losing candidate to be declared the winning candidate, the board must grant the request and cease the recount. If, however, the ballots recounted up to that point indicate that the declared losing candidate should be declared the winning candidate, the board must deny the request and continue the recount. (Sec. 3515.04.)

The bill generally retains each of these recount provisions and adds several new general recount provisions.<sup>2</sup> It also creates recount provisions specifically tailored to the various types of ballots and voting machines.

**Ballot recount teams.** The bill permits a board of elections to designate teams of employees to recount ballots. The teams must consist of board employees, with an equal number on each team from each major political party. The board is permitted to designate as many teams as it considers necessary to efficiently recount the ballots. The board, or a majority of the employees on teams it so designates, must determine the validity of disputed ballots in accordance with directives issued by the Secretary of State. (Sec. 3515.04(B) and (E).)

**Pollbooks, poll lists, signature pollbooks, and other documents.** Under the bill, a board of elections, or the teams of employees it designates to recount ballots, must compare the total number of ballots cast to the number of voters listed in the pollbook, poll list, or signature pollbook. The witnesses may visually inspect the pollbook, poll list, or signature pollbook in the presence of at least two

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<sup>2</sup> *The bill specifies that the board employees, other than the board's director, who may handle ballots to be recounted are other "designated" employees (sec. 3515.04(D)).*

election officials of different political parties, but they may not touch it. (Sec. 3515.04(C).)

Witnesses also must be able to see the sealed ballot envelopes of absent voter's ballots that were signed or returned to the board after the applicable deadline. But, they cannot see the actual absent voter's ballots, which the bill requires to remain sealed in their identification envelopes. (Sec. 3515.04(D).)

### **Paper ballot recount procedures**

The bill requires a board of elections, or the teams of employees it designates to recount ballots, in a county that uses paper ballots to recount those ballots either (1) in the same manner as the board counted them on election night or (2) by sorting the ballots using the stack method and then counting each stack (sec. 3515.041). "Stack" refers to a group of ballots or ballot cards that have been sorted by candidate, question, or issue according to whether those ballots have been marked as "for," "against," "yes," or "no," or are over votes or blank ballots (sec. 3506.01(L)).

### **Voting machine recount procedures**

The bill requires a board of elections, or the teams of employees it designates to recount ballots, in a county that uses voting machines, to do all of the following in conducting a recount of ballots voted on those machines (sec. 3515.042):

(1) Check the public counters and protective counters on those machines to verify that the numbers on the counters correspond with the pollbook, poll list, or signature pollbook records. A "public counter" is a tabulating device that indicates the total number of ballots that have been cast on a particular voting machine on a particular voting day. A "protective counter" is a tabulating device that indicates the total number of ballots that have been cast on a particular voting machine. (Sec. 3506.01(J) and (K).)

(2) Check the counters and rotation on those machines to verify that they match the proper candidates, questions, or issues;

(3) Record the votes cast for each candidate, question, or issue as recounted.

### **Automatic tabulating equipment recount procedures**

**Procedures before conducting a recount.** The bill requires a board of elections, or the teams of employees it designates to recount ballots, in a county

that uses automatic tabulating equipment, to do all of the following before conducting a recount of ballots tabulated by that equipment (sec. 3515.043(A)):

(1) Prepare and mark a new test deck of ballots. "Test deck" refers to a number of ballots determined to be sufficient by election officials to verify that automatic tabulating equipment is accurately tallying and recording votes (sec. 3506.01(M)). The new test deck must not be the same test deck used for the official canvass of election returns.

(2) Manually count that new test deck;

(3) Process that new test deck through the equipment;

(4) Compare the results of the manual count of that new test deck to the results of the equipment's count of it.

**Recount itself.** If the manual count of the new test deck does not match its automatic tabulating equipment count, the board of elections or its designated teams of employees must manually recount all of the valid ballots for the recount in that county (sec. 3515.043(C)). But, if the manual count of the new test deck matches its automatic tabulating equipment count, the board or the designated teams must inspect and recount the ballots as follows, except as otherwise provided by directive or advisory of the Secretary of State (sec. 3515.043(B)):

(1) If a county uses punch card ballots, the board or the designated teams must inspect them for chads attached by two or fewer corners. The bill relocates, but otherwise does not change, a provision of existing law specifying that, if a chad is attached to a punch card ballot by three or four corners, the voter must be deemed not to have recorded a vote for a candidate, question, or issue choice at the particular position on the ballot (secs. 3515.04 and 3515.043(D) and (E)).

(2) All ballots must be inspected for mutilations and other invalidities in accordance with directives of the Secretary of State.<sup>3</sup>

(3) The board must randomly select as many whole precincts as necessary in order to equal at least 3% of the total vote cast for the office, question, or issue being recounted. The board then must manually recount the ballots for the selected precincts.

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<sup>3</sup> *The bill does not describe what constitutes a mutilation or other invalidity of a ballot. However, the Secretary of State could provide directives or advisories describing a mutilated or invalid ballot; possibly, the directives governing "inspections" for mutilations or other invalidities that the bill refers to may include those descriptions.*

(a) Punch card ballot over votes and blank ballots must be separated and placed at the top of the stack after the header cards. A "header card" is a card that identifies the precinct in which the ballots were cast (sec. 3506.01(H)).

(b) Ballots or ballot page assemblies and rotation header cards must be checked for each precinct to confirm candidate, question, and issue positions to verify that each candidate, question, or issue has been properly identified. A "ballot page assembly" is a device that lists the candidates, questions, and issues for a ballot card (sec. 3506.01(F)).

(4) The board or the designated teams must recount the ballots from the randomly selected precincts using automatic tabulating equipment.

(5) If the automatic tabulating equipment count of the ballots from the randomly selected precincts does not match their manual count, a second manual count of those ballots must be conducted. If the automatic tabulating equipment count does not match the second manual count, all the ballots for the county must be manually recounted. But, if, the automatic tabulating equipment count matches the second manual count, the remainder of the ballots for the county must be recounted and tallied using the automatic tabulating equipment.<sup>4</sup>

(6) After the recount is concluded, the automatic tabulating equipment must be retested using the same pre-audited test deck.

#### **Direct recording electronic voting machine recount procedures**

The bill requires a board of elections, or the teams of employees it designates to recount ballots, in a county that uses direct recording electronic voting machines, to do all of the following in conducting a recount of the ballots voted on those machines (sec. 3515.044):<sup>5</sup>

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<sup>4</sup> *The bill does not specify how ballots should be recounted if the first manual count matches the automatic tabulating equipment count. Presumably, if those counts match, the ballots must be recounted in the same manner as when a second manual count matches the automatic tabulating equipment count--by automatic tabulating equipment.*

<sup>5</sup> *The bill does not define "direct recording electronic voting machines," such that it is unclear which particular types of voting machines would require recounts to be conducted under the procedures established in section 3515.042 for voting machines generally, and which types of voting machines would require recounts to be conducted under the procedures of section 3515.044 for direct recording electronic voting machines.*

(1) Check the public counters and protective counters to verify that the numbers on those counters correspond with the pollbook, poll list, or signature pollbook records;

(2) Check the rotation on those machines to verify that they match the proper candidates, questions, or issues;

(3) Process cartridges through the tabulator;

(4) Compare cartridge totals against the paper audit trail report, if the tabulator totals for the recount differ from the totals of the official count.

### **Write-in ballot recount procedures**

The bill requires a board of elections, or the teams of employees it designates to recount ballots, to inspect each write-in ballot envelope and its affiliated ballot for over votes before recounting each valid write-in ballot (sec. 3515.045).

### **Petition and other form requirements**

#### **Petition withdrawal**

Existing law specifies which electors are eligible to sign petitions, that their signatures must be affixed in ink (see "Deletion of terms," below), and what details, other than a person's signature, are required to be on a petition. Existing law also prescribes requirements to which the 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 both the 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 it prohibits a petition from being so withdrawn, the bill does not prohibit a person from withdrawing as a candidate as otherwise provided by the Elections Law. (Sec. 3501.38(I)(2).)

#### **Political party designation in the declaration of candidacy form**

Under existing law, the form of the "declaration of candidacy" for a person desiring to be a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election requires the person to specify the political party that the person is a member of, as well as the political

party that the person seeks to represent. Similarly, the associated "petition of candidate" requires signers of the petition to certify the political party of which the potential candidate is a member. (Sec. 3513.07.)

The bill removes from the "declaration of candidacy" form the requirement that the candidate specify the political party of which the candidate is a member. The form continues to require the candidate to identify the political party that the candidate seeks to represent, as well as to declare that, if elected, the candidate will support and abide by the principles enunciated by that party. The bill similarly removes from the associated "petition of candidate" the statement in which signers of the petition certify the political party of which the potential candidate is a member. (Sec. 3513.07.)

### **Removal of "ward" and "precinct" requirements**

Existing law requires electors who sign petitions under the Elections Law to provide specified information. In addition to one's signature, each signer generally is required to provide the following information: the elector's address on file with the board of elections, including number, street, and city, village, or township; the ward, precinct, and county in which the elector is registered to vote; and the date that the elector signs the petition. The bill removes the requirements that signers identify the ward and precinct in which they are registered to vote, and deletes the "ward" and "precinct" columns from the affiliated petition forms they complete. (Secs. 3513.07, 3513.261, and 3519.05.)

### **Identification envelope form**

Existing law requires the identification envelope into which armed service absent voter's ballots must be placed and sealed before they are returned to the appropriate board of elections, to have printed or written on its face a statutorily prescribed form that the voter must complete. The bill does not change the types of information that the form requires the voter to provide, although it (1) changes the location in which certain information must be inserted and (2) specifies that the identification envelope must have printed or written on its face a form *substantially* as set forth in statute. The latter change seems to permit a form that requests the same types of information but whose format may vary in some respects from the statutorily prescribed form. (Sec. 3511.05.)

### **Gubernatorial primary ballot form**

Existing law specifies required forms for various types of ballots, including primary election ballots for nomination for the joint offices of Governor and Lieutenant Governor. Ballots prepared by county boards of elections must be substantially in the form specified. The existing form for gubernatorial primary

election ballots lists a candidate for Governor, with that candidate's running mate for Lieutenant Governor listed below. The ballot form also includes instructions that specify, "To vote for a candidate record your vote in the manner provided next to the name of such candidate." (Sec. 3513.14.)

The bill changes the form for gubernatorial primary election ballots as well as the associated ballot instructions. Since candidates for primary nomination for the offices of Governor and Lieutenant Governor are nominated as a single unit, the bill's ballot form lists the joint candidates for nomination for Governor and Lieutenant Governor beside one another, and clarifies that a single vote is for the nomination of both candidates. Similarly, under the bill, the ballot instructions specify that a voter should "vote for a pair of candidates" in the appropriate manner next to the names of those candidates. (Sec. 3513.14.)

### **Voter registration**

#### **Instruction of "designated agencies"**

The National Voter Registration Act of 1993 generally requires designated agencies to implement a program designed and administered by the Secretary of State for registering voters.<sup>6</sup> "Designated agency" generally means an office or agency in Ohio that provides public assistance or that provides state-funded programs primarily engaged in providing services to persons with disabilities, or any other public or government office or agency that implements such a voter registration program. All of the following are specifically included as designated agencies: the Department of Job and Family Services; the special supplemental nutrition program for women, infants, and children established by the Child Nutrition Act of 1966 and administered by the Department of Health; the Department of Mental Health; the Department of Mental Retardation and Developmental Disabilities; the Rehabilitation Services Commission; and any other agency designated by the Secretary of State. (Sec. 3501.01(X).)

The bill adds to the list of specific duties that the Secretary of State must perform the duty to instruct all designated agencies regarding the manner in which they must conduct all voter registration activities and functions (sec. 3501.05(V)). Designated agencies, in turn, are required to comply with all instructions issued by the Secretary of State regarding the manner of conducting those activities and functions (sec. 3503.10(L)).

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<sup>6</sup> 107 Stat. 77, 42 U.S.C.A. 1973gg.

### **Maintenance of master list of registered voters**

Existing law requires each board of elections to submit to the Secretary of State, at least annually and in a format prescribed by the Secretary of State, an accurate and current list of all registered voters in the county, for the purpose of assisting the Secretary of State to maintain a master list of registered voters. The bill changes the frequency with which boards of elections must submit a list of all county registered voters from annually to weekly. But, the Secretary of State is permitted, under the bill, to waive this weekly list requirement in writing, unless federal law otherwise provides. (Sec. 3501.11(V).)

### **Election System Study Committee**

The bill creates the Election System Study Committee to study the election process in Ohio. Based upon the testimony of public and private election experts, the Committee is required to make recommendations for improving the election process and to estimate the potential costs of the recommended changes. (Sec. 3501.052(A).)

The Committee is required to be convened every five years, with members being appointed to it not later than January 31 in every fifth year. The first appointments to the Committee must be made not later than January 31, 2007. (Sec. 3501.052(B).) The Committee will consist of 11 members, who must be appointed as follows (sec. 3501.052(C)):

- Two members of the House of Representatives of the same political party as the House Speaker, to be appointed by the House Speaker;
- One member of the House of Representatives of the major political party of which the House Speaker is not a member, to be appointed by the House Speaker;
- Two members of the Senate of the same political party as the Senate President, to be appointed by the Senate President;
- One member of the Senate of the major political party of which the Senate President is not a member, to be appointed by the Senate President;
- One member of the public, to be appointed by the House Speaker;
- One member of the public, to be appointed by the Senate President;
- One member of a county board of elections of a county with less than 100,000 registered voters, to be appointed by the House

Speaker from among three members of county boards of elections of counties with less than 100,000 registered voters nominated by the Ohio Association of Election Officials;

- One member of a county board of elections of a county with 100,000 or more registered voters, to be appointed by the Senate President from among three members of county boards of elections of counties with 100,000 or more registered voters nominated by the Ohio Association of Election Officials;
- The Secretary of State, or the Secretary of State's designee.

Every five years, within seven days after the appointment of all members of the Committee, the Secretary of State or the Secretary of State's designee must 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 must convene Committee meetings as the chairperson considers necessary to carry out the Committee's purposes. (Sec. 3501.052(F).)

Not later than December 31 of each year in which it convenes, the Committee must prepare its recommendations and associated cost estimates, and file a written copy of them with the House Speaker, the Senate President, and the Secretary of State. Once the Committee files its recommendations and associated cost estimates, it is dissolved until the next date specified for it to be convened. (Sec. 3501.052(G).)

Committee members will not be compensated, but may be reimbursed for necessary expenses incurred in the performance of their official duties (sec. 3501.052(D)).

### **Elimination of filing fee for statewide issues**

The Elections Law generally requires anyone seeking to propose a ballot question or issue to pay a fee at the time the petition proposing the question or issue is filed. The fee varies, depending on whether the question or issue is to be submitted to electors (1) of the entire state (see below), (2) of a county or a district that consists of two or more counties but less than the entire state, (3) of a city, or (4) of a village, a township, a local, city, or exempted village school district, a precinct, or another district consisting of less than an entire county. (Sec. 3513.10(B)(2).)

Currently, anyone seeking to propose a ballot question or issue to be submitted to electors of the entire state must pay a filing fee of \$25. The bill

eliminates this filing fee. Filing fees for all other questions and issues are unchanged by the bill. (Sec. 3513.10(B)(2)(a) and (C)(2).)

### **Protests against initiative and referendum petitions**

Whenever an initiative or referendum petition is filed with the Secretary of State, the Secretary of State must separate the part-petitions by county and transmit them to the respective boards of elections. The boards then must ascertain whether the part-petitions are properly verified and determine the sufficiency or insufficiency of the signatures on them. (Sec. 3519.15--not in the bill.)

The circulator of a part-petition, the committee interested in the petition, or any elector may file a protest against a board's findings regarding the sufficiency or insufficiency of the signatures on a petition and the verification of the petition (sec. 3519.16). Article II, Section 1g of the Ohio Constitution specifies the deadline by which the sufficiency of all petitions for *statewide initiative or referendum petitions* must be determined. Unless proven otherwise not later than 40 days before an election, the petition and the signatures upon it must be presumed to be sufficient. If proven otherwise, ten additional days are permitted for the filing of additional signatures. Once the deadline has passed, however, no additional protests may be made against a petition for a statewide initiative or referendum.

Existing law does not restrict the period of time during which a protest against an initiative or referendum petition may be filed regarding an issue to be voted on by less than the population of the entire state. Thus, under existing law, a protest against a non-statewide initiative or referendum petition potentially could be filed at any time prior to the election, possibly conflicting with ballot printing and other election preparations.

The bill requires protests against initiative or referendum petitions to be in writing and to specify the reasons for the protest. It also establishes a deadline by which all protests must be filed against initiative and referendum petitions for issues to be voted on by *less than the population of the entire state*. Protests must be filed for all such petitions not later than 4p.m. on the 64th day before the election. (Sec. 3519.16.) The constitutional deadline for determining the sufficiency of petitions by the 40th day prior to an election continues to apply to all initiative and referendum petitions to be voted on throughout the entire state.

## **Handicapped accessibility**

### **Layout of polling facilities within a polling place**

Existing law requires each board of elections to ensure that polling places are free of barriers that would impede the entrance and exit of handicapped persons, that the entrances of polling places are level or are provided with a nonskid ramp with a maximum incline of 8%, and that doors are a minimum of 32 inches wide. All polling places were required to meet these standards not later than November 1, 1982, unless specifically exempted by the Secretary of State. (Sec. 3501.29(B).)

In addition to these specifications, all of which are retained by the bill, the bill requires each board of elections to arrange the *polling facilities within a polling place* in such a manner that those facilities are accessible to handicapped electors through the use of thoughtful layout and reasonable accommodation (sec. 3501.29(B)(2)).<sup>7</sup>

The bill also requires boards of elections, insofar as is practicable, to utilize rooms "that are accessible to persons with disabilities" and located in public schools and other public buildings for *polling places*. Existing law requires the boards to utilize rooms in public buildings for polling places insofar as is practicable. (Sec. 3501.29(A).) See also "**Incorporation by reference of the Americans with Disabilities Act**," below.

### **Reports on accessibility; complaints by disabled persons**

The bill requires each board of elections, not later than the first day of March of each year, to report to the Secretary of State regarding the handicapped-accessibility status of each polling place and each type of voting machine used by that board during the prior calendar year. The report must include, but is not limited to, all complaints made by persons with disabilities regarding the

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<sup>7</sup> *The bill does not define what constitutes "thoughtful layout." The term "reasonable accommodation" is used in the Americans with Disabilities Act of 1990, 104 Stat. 327, 42 U.S.C.A. 12101, et seq. (ADA), and has been extensively interpreted by the federal courts. As used in the provisions of the ADA applicable to the employment of individuals with disabilities, "reasonable accommodation" may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. 42 U.S.C.A. 12111.*

accessibility of polling facilities and voting equipment, as well as any subsequent response to those complaints by the board. (Sec. 3501.29(D).)

### **Incorporation by reference of the Americans with Disabilities Act**

The Elections Law currently defines "handicapped" for the purposes of polling place accessibility and registration place accessibility as having lost the use of one or both legs, one or both arms, or any combination of legs and arms, or being blind or so severely disabled as to be unable to move about without the aid of crutches or a wheelchair. The bill retains that definition for the purposes of both of those types of accessibility, but also incorporates by reference the requirements of the federal Americans with Disabilities Act of 1990 into the Ohio statutes governing (1) both of those types of accessibility, (2) the provision of assistance to blind, disabled, or illiterate electors, and (3) the provision of assistance to certain disabled or confined electors voting by absent voter's ballots. (Secs. 3501.29(F) and (G), 3503.12, 3505.24, and 3509.08(A).)

Under the ADA, "disability" is defined, with respect to an individual, as meaning any of the following (42 U.S.C.A. 12102(2)):

- A physical or mental impairment that substantially limits one or more of the major life activities of the individual;
- A record of such of an impairment;
- Being regarded as having such an impairment.

Thus, under the bill, although the definition of "handicapped" is retained in the polling place accessibility and registration place accessibility provisions, the number of individuals who are considered to be "disabled" for the purposes of accommodation under the Elections Law is likely to be increased, due to the broader definition of a disability under the federal statute the bill incorporates by reference into the Elections Law.

### **Resolving tie votes and disputes of a board of elections**

Existing law provides that, in the case of an unresolved tie vote or disagreement of a board of elections, the director or chairperson of the board must submit the matter in controversy to the Secretary of State within 14 days after the tie vote or disagreement. The Secretary of State then is required to summarily decide the matter, with the decision being final. (Sec. 3501.11(X).)

The bill retains this provision in its current location and generally duplicates it in a new statute, while specifying particular tie votes which a board of elections must *not submit* to the Secretary of State and which the Secretary of

State has no authority to decide (secs. 3501.11(X) and 3501.111(A), (B), and (C)). Under the bill, a board must not submit for decision, and the Secretary of State must not decide, *tie votes* of a board on any of the following topics (sec. 3501.111(B)):<sup>8</sup>

- The compensation to be paid to the director, the deputy director, or any other employee of the board;
- The hiring of any employee of the board, other than the director or deputy director;
- The firing of any employee of the board, including the director or deputy director;
- Any administrative matter pertaining to the daily operations of the board.

In addition to the tie votes that the Secretary of State is prohibited from resolving, the bill establishes a topic of dispute that a board of elections may submit, and that the Secretary of State may, but is not required, to decide. A board may submit, and the Secretary of State, in the Secretary of State's discretion, may decide, a tie vote of the board regarding whether to select a particular person as deputy director of the board.<sup>9</sup> But, a board may not submit, and the Secretary of State may not decide, a tie vote of the board regarding whether any deputy director is necessary. (Sec. 3501.111(C).) Existing law, which remains unchanged by the bill, specifies the manner in which the Secretary of State and a board of elections must proceed to resolve a tie vote or a disagreement of the board on the question of whether to select a particular person as director of the board (sec. 3501.09--not in the bill, and sec. 3501.111(D)).

### **Presidential voting by former residents**

Under existing law, any elector (1) who has moved from Ohio within 90 days before a presidential election, (2) who has not yet registered to vote in any other state, and (3) who, because of that move, is not eligible to vote for President and Vice President or for presidential and vice presidential electors in the new state of residence may apply to vote in Ohio for those offices or electors (sec.

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<sup>8</sup> *The bill does not specify how a tie vote of a board of elections on any of the prohibited topics will be resolved, if the Secretary of State lacks authority to make such a decision.*

<sup>9</sup> *The bill also does not specify how a tie vote of a board of elections on this topic will be resolved if the Secretary of State, in the Secretary of State's discretion, chooses not to resolve the matter.*

3504.01--not in the bill). Existing law requires an elector desiring to so vote to complete a "certificate of intent" to vote not later than the 30th day before the presidential election. The bill changes the date by which the certificate of intent must be completed to the 15th day before the presidential election. (Sec. 3504.02.)

### **Miscellaneous changes**

#### **Inclusion of board of elections members in definition of "election officials"**

Existing law defines the following persons as "election officers" or "election officials" 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 boards 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)).

#### **Insertion of cross-references in the Absent Voter's Ballots Law**

Existing law permits a person employed as a full-time fire fighter, a full-time peace officer, or full-time provider of emergency medical services to vote by absent voter's ballots, if the person's employment may prevent the person from voting at the person's polling place on the day of an election. Similarly, if a person is a member of the organized militia serving on active duty within Ohio and will be unable to vote on election day on account of that duty, the person may vote by absent voter's ballots. (Secs. 3509.02(A)(2) and (3) and 3509.04.) Existing law, however, does not specify the positions that constitute being a full-time provider of emergency medical services or what membership in or service on active duty in the organized militia means.

The bill inserts a cross-reference to the Emergency Medical Services Law in the provision permitting full-time providers of emergency medical services to vote by absent voter's ballots, thus clarifying which providers may vote those ballots. Under the bill, full-time first responders, emergency medical service technicians-basic, emergency medical service technicians-intermediate, emergency medical service technicians-paramedic, and persons who provide medical direction to those persons are eligible to vote by absent voter's ballots, if their employment may prevent them from voting at their polling places on the day

of the election. (Secs. 3509.02(A)(2) and 3509.04; sec. 4765.01(L)--not in the bill.)

The bill also cross-references the Organized Militia Law to specify which electors are eligible to vote absent voter's ballots as members of the organized militia, if they are serving on active duty within Ohio and will be unable to vote on election day because of that duty. Under the bill, the organized militia includes all citizens of the state who are not permanently handicapped, who are more than 17 years and not more than 67 years of age unless specially exempted, and who are members of the Ohio National Guard, the Ohio Naval Militia, or Ohio Military Reserve. (Sec. 3509.02(A)(3); sec. 5923.01--not in the bill.)

### **Correction of term in Punch Card Ballot Law**

Existing law requires designated employees of a board of elections to remake and count as a valid ballot any punch card ballot in which the pattern of holes punched in areas of the ballot card other than the designated positions assigned to candidates, questions, or issues makes it clear to the designees that the voter inserted the ballot card into the voting machine with the back side of the ballot card facing up. The designees must remake and count a punch card ballot 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).) However, if a voter votes for more than one candidate for a particular office, the ballot for that office is an over vote and thus invalid, since it cannot be determined which candidate the voter intended to vote for.

The bill changes the references in these punch card ballot provisions from "candidate" to "office." With this change, the designees must remake and count wrongly inserted punch card ballots whether the voter voted on one office, question, or issue, more than one but not all offices, questions, or issues, or all offices, questions, and issues. And, with this change, designees no longer would be required to remake and count as valid the parts of wrongly inserted punch card ballots that have over votes. (Sec. 3506.16(B)(3)(a).)

### **Elimination of certified mail requirement**

Existing law provides that, as soon as a board of elections has compiled the summary statements it receives from each polling place following an election and has prepared the unofficial count of the ballots, the board generally must immediately transmit the results of that unofficial count to the Secretary of State by telephone, facsimile machine, or other telecommunications device. At the same time, the board must certify the results to the Secretary of State by certified mail. (Sec. 3505.30.)

The bill removes the requirement that the certified results be sent to the Secretary of State by certified mail, thereby permitting those results to be sent by regular mail or via another method of transmission. A board of elections, under the bill, must continue to transmit the results of the unofficial count immediately to the Secretary of State by telephone, facsimile machine, or other telecommunications device. (Sec. 3505.30.)

**Deletion of terms**

The bill removes from the Elections Law the term "registrar of elections." Under the bill, sections of the Elections Law that currently refer to registrars of elections generally are changed to refer to either employees of a board of elections or election officials as discussed previously. (Secs. 3501.11(D), 3503.02, 3503.26, 3599.11(A)(1)(f), and 3599.17(A).)

Existing law requires petitions signed under the Elections Law to be signed in ink (sec. 3501.38(B)). Several of the petition forms in the Law, however, currently specify that petitions may be signed either in ink or "indelible pencil." The bill deletes the references to indelible pencil in those forms, so that they specify that signatures must be in ink. (Secs. 3513.261 and 3519.05.)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
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