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*Bill Analysis*  
Legislative Service Commission

## **H.B. 3**

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(As Introduced)

**Rep. DeWine**

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### **BILL SUMMARY**

- Permits an individual to cast a provisional ballot in an election for a federal office if the individual is a registered voter in the jurisdiction and eligible to vote in that election but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote.
- Permits an individual to cast a provisional ballot in an election for an office other than a federal office or for state or local questions and issues if the individual is a registered voter in the jurisdiction and eligible to vote in that election but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote.
- Defines a "jurisdiction" as the precinct in which a person is a legally qualified elector for the purpose of determining whether an individual is eligible to cast a provisional ballot.
- Establishes procedures for the casting and counting of provisional ballots.
- Requires the appropriate state or local election official to establish a free access system through which an individual who casts a provisional ballot may ascertain whether the individual's vote was counted and, if it was not counted, the reason.
- Requires certain voting information to be publicly posted at each polling place on the day of each election for federal office, the day of each election for an office other than a federal office, and the day of each election for state or local questions and issues.

- 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 specified types of marks demonstrate the intent of the voter.
- Requires first-time electors who registered to vote by mail to provide identification before being permitted to cast a ballot, and permits those electors to cast a provisional ballot if they do not provide the required identification.
- Requires the Secretary of State to establish a single computerized statewide voter registration list of all legally registered voters in Ohio that complies with the requirements of federal law.
- Requires the applicant for a non-automatic recount to pay the entire cost of the recount if its results do not change the result of the election, and modifies or repeals various provisions pertaining to applications for those recounts and the determination of the charges for them.

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## CONTENT AND OPERATION

### Provisional ballots

#### Provisional ballots for federal elections

**Overview.** The Help America Vote Act of 2002 (HAVA), Public Law 107-252, 116 Stat. 1666, among other provisions, permits certain electors to cast "provisional ballots" for elections for federal office. The bill generally mirrors those federal law provisions (sec. 3505.181(A)).

**Process for casting.** Under the bill, if an individual declares that the individual is a registered voter in the jurisdiction (see discussion below) in which the individual desires to vote and that the individual is eligible to vote in an election for federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, the individual must be permitted to cast a provisional ballot. The bill establishes the following process for casting and counting provisional ballots (sec. 3505.181(A)):

- An election official at the polling place must notify the individual that the individual may cast a provisional ballot in the election.
- The individual must be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation before an election official stating that the individual is (1) a registered voter in the jurisdiction in which the individual desires to vote and (2) eligible to vote in the election.
- An election official at the polling place must transmit the ballot cast or the voter information contained in the written affirmation to an appropriate state or local election official for prompt verification.
- If the appropriate state or local election official to whom the ballot or voter information is transmitted determines that the individual is eligible to vote, the individual's provisional ballot must be counted as a vote in the election.

**Verification of counting.** At the time that an individual casts a provisional ballot, the appropriate state or local election official must give the individual



written information that states that any individual who casts a provisional ballot will be able to ascertain whether the vote was counted and, if it was not counted, the reason (sec. 3505.181(A)(5)(a)). The election official is required to establish a free access system, such as a toll-free telephone number or an Internet web site, that any individual who casts a provisional ballot may access to discover whether the individual's vote was counted and, if it was not counted, the reason. The election official must establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual ballot must be restricted to the individual who cast it. (Sec. 3505.181(A)(5)(b).)

### **Provisional ballots for elections other than elections for federal office**

In addition to generally mirroring the HAVA provisions for casting provisional ballots in federal elections, the bill permits certain electors to cast provisional ballots in elections for an office other than a federal office or for state or local questions and issues. The bill establishes processes identical to those established for federal elections for (1) casting and counting provisional ballots in those state and local elections and (2) permitting voters who cast those ballots to determine whether their votes were counted and, if not counted, the reason. (Sec. 3505.181(B).)

### **Definition of a "jurisdiction" within which a voter may cast a provisional ballot**

For the purpose of determining whether an individual is eligible to cast a provisional ballot, the bill defines "jurisdiction" as the *precinct* in which a person is a legally qualified elector. Thus, an individual who is registered to vote in a precinct and whose name does not appear on the official list of eligible voters for the polling place at which the individual appears to vote in the precinct may cast a provisional ballot in that polling place. (Sec. 3505.181(D)(1).)

### **Public posting of voting information**

The bill requires the appropriate state or local election official to cause voting information to be publicly posted at each polling place on the day of each election for federal office, the day of each election for an office other than a federal office, and the day of each election for state or local questions and issues (sec. 3505.181(C)). "Voting information" means all of the following (sec. 3505.181(D)(2)):

- A sample version of the ballot that will be used for that election;

- Information regarding the date of the election and the hours during which polling places will be open;
- Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- Instructions for mail-in registrants and first-time voters under applicable federal and state laws--e.g., for those who are required to provide identification in order to vote;
- General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated;
- General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

**Ballot standards: optical scan 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 contains counting standards for only one type of ballot and its associated automatic tabulating equipment--punch card ballots (sec. 3506.16--not in the bill). 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.)

### **Definition**

The bill does not change 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. 3506.21(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. 3506.21(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. 3506.21(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. 3506.21(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(I)).

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. 3506.21(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. 3506.21(D)).

### **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. 3506.21(C)(2) and (E).)

## **Identification requirements for first-time voters who register to vote by mail**

### **Existing Ohio law**

Existing Ohio law does not include any identification requirement specifically applicable to first-time voters or, for that matter, generally applicable to voters. Under that law, when any elector appears in a polling place to vote, the elector must announce the elector's full name and address to the precinct election officials and then generally write the elector's name and address at the proper place in the poll lists or signature pollbooks. The elector's signature in the poll lists or signature pollbooks must be compared by the precinct election officials with the elector's signature on the elector's registration form or a digitized signature list. If, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks of elections must enter the date of the election on the registration form or otherwise record the date. If the elector is not challenged, or if the elector is challenged and then establishes the elector's right to vote, the elector must be permitted to proceed to use the voting machine. (Sec. 3505.18.)

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

In addition to these Ohio law provisions, HAVA currently imposes specific identification requirements on *first-time* electors in an election for federal office *who registered to vote by mail*. The bill adds identification provisions to Ohio law that generally mirror the federal law identification requirements (sec. 3505.18(A)(2)(a)).

Specifically, if the election for which the elector appears in a polling place to vote is an *election for federal office*, if the elector registered to vote by mail, and if the elector has not previously voted in an election for federal office in Ohio, the elector must announce to the precinct election officials the elector's full name and address and provide to them proof of identity in the form of a current valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the elector's name and address. If the elector does not provide to the precinct election officials any of the specified forms of identification, the elector may cast a provisional ballot as previously described (see "**Provisional ballots for federal elections**," above). (Sec. 3505.18(A)(2)(a).)

Additionally, the bill establishes for *nonfederal elections* parallel voter identification requirements and provisional ballot casting authority for electors who registered to vote by mail and who (1) previously have not voted in an election for federal office or (2) previously have not voted in a nonfederal election (sec. 3505.18(A)(2)(b)).

Once a first-time elector who registered to vote by mail announces the elector's full name and address and provides the required identification, the voting process proceeds as under existing Ohio law (sec. 3505.18(B)).

The bill does not require identification from voters other than the first-time electors mentioned above.

### **Statewide voter registration database**

In addition to its other provisions, HAVA requires each state to establish a single computerized statewide voter registration list that contains the name and registration information of every legally registered voter in the state and that serves as the official voter registration list for all elections for federal office in the state (42 U.S.C. 15483).

The bill adds to the statutory list of the Secretary of State's duties the requirement that the Secretary of State establish a computerized statewide database of all legally registered voters in Ohio that complies with HAVA's requirements (sec. 3501.05(W)).

### **Costs of a non-automatic recount**

#### **Existing law**

Existing law requires each person applying for a non-automatic recount (1) to list on the application each precinct in which a recount of the votes is requested and (2) to deposit at the same time with the board of elections \$10 in currency, bank money order, bank cashier's check, or certified check for each precinct listed in the application *as security* for the payment of the charges for making the recount (sec. 3515.03). The board of elections with which the application is filed subsequently must determine the *charges* for making the recount. They must include all expenses the board incurred because of the application for the recount, other than the regular operating expenses that the board would have incurred if the application had not been filed. The total amount of the charges divided by the number of precincts in which votes were recounted constitutes the "charge per precinct" for the recount of votes of the precincts listed in the application; however, statutorily the charge per precinct is capped--it cannot be more than \$10 or less than \$5 for each precinct for which votes were recounted. (Sec. 3515.07.)

Once the charge per precinct has been determined, it *generally* must be *deducted* by the board of elections from the money deposited with the board at the time the application for the recount was filed, and the balance of the deposit (if any) must be returned to the applicant (sec. 3515.07). However, no charge per

precinct can be deducted from the deposited money in any of the following circumstances (sec. 3515.07):

- If the total number of votes cast for a nomination or for an election in the given precinct for the applicant, as recorded by the recount, is more than 4% larger than the number of votes recorded for the applicant in that precinct in the original certified abstract of the vote;
- If the total number of votes in the given precinct on the same side of a question or issue as the side represented by the applicant, as recorded by the recount, is more than 4% larger than the number of votes recorded in that precinct on the same side of the question or issue in the original certified abstract of the vote;
- If, upon completion of a recount concerning a nomination or election, the applicant is declared nominated or elected;
- If, upon completion of a recount concerning a question or issue, the result of the election is declared to be opposite the original declaration of the results of the election.

All moneys deposited with a board by an applicant for a recount must be deposited in a special depository fund with the county treasurer. The expenses of the recount and refunds must be paid from that fund upon the board's order. Any balance remaining in the fund must be paid into the county's general fund. (Sec. 3515.07.)

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

The bill eliminates existing law's procedures for determining the costs of and paying or not paying for a non-automatic recount. Under the bill, an application for a non-automatic recount is filed as under existing law but is not accompanied by a \$10 security for each precinct in which a recount is requested (secs. 3515.03 and 3515.06). The board of elections subsequently must determine the charges for making the recount, which (similar to existing law) must include all expenses the board incurs because of the application other than its regular operating expenses. But, the bill eliminates the provisions of existing law that require the fixing of a "charge per precinct" for the recount and set the range of a fixed charge per precinct at between \$5 and \$10. Instead, under the bill, the applicant for a recount is responsible for paying the *entire cost* (charges) of the recount as determined by the board, *unless* either of the following circumstances applies (sec. 3515.07):

- If, upon completion of a recount concerning a nomination or election, the board declares the applicant to be nominated or elected;
- If, upon completion of a recount concerning a question or issue, the board declares the result of the election to be the opposite of the original declaration of its result.

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## HISTORY

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