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***Bill Analysis***  
*Legislative Service Commission*

**Am. Sub. H.B. 3**  
126th General Assembly  
(As Passed by the House)

**Reps. DeWine, Trakas, White, Brown, Law, Uecker, Aslanides, Carmichael, Collier, C. Evans, D. Evans, Faber, Flowers, Gibbs, Hagan, Kearns, McGregor, Peterson, Reidelbach, Schaffer, Schlichter, Seaver, Setzer, G. Smith, Widowfield, Willamowski, Wolpert**

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## **BILL SUMMARY**

### **Overview**

The bill makes numerous modifications and additions to the statutes contained in the Election Law (Revised Code Title XXXV) and changes to certain other election-related statutes dealing with the following topics: voter registration; the statewide voter registration database; notification of elections; precinct identification web sites; voter identification; challenges of registered voters; provisional ballots; absent voter's ballots; recounts; election calendars; the nomination and election of municipal court candidates (judges and certain clerks); Secretary of State election instructions and publications; voting machines, marking devices, and automatic tabulating equipment; duplicate candidacy prohibitions; interference with elections; campaigning near the line of waiting voters; private causes of action for certain Election Law violations; petition circulator residency requirements; the notice of intent to retire for candidates; publication of notice of elections; federal election contests; completion of the canvass; and Campaign Finance Law matters. It also makes miscellaneous modifications or additions in the Election Law related to voting information posting at polling places, the form of statewide initiative and referendum petitions, inappropriate references to the declaration of intent to be a write-in candidate, the names of certain offenses, and other matters. Each of the topics mentioned above is summarized in this analysis in a detailed "dot point" fashion along with citations to the relevant codified or uncodified statutes.

### **Voter registration**

- Requires the Secretary of State, by administrative rule, to prescribe the form and content of voter registration, change of residence, change of name, and political party designation forms, requires those forms to meet the requirements of federal law, and requires those forms to include spaces for certain information (R.C. 3503.11 and 3503.14(A)).
- Permits an elector to designate the political party with which the elector desires to be affiliated (1) on the elector's voter registration form, (2) by completing and returning a political party designation form to a specified office, or (3) by voting a political party's ballot in a primary election (R.C. 3501.05(R), 3503.11, 3503.14, 3503.19(A), 3503.20, 3503.23, 3513.05, and 3513.19).
- Specifies the locations to which, and the times within which, persons who help applicants register to vote outside an official registration place

must return completed voter registration forms, and specifies that violating these provisions is a felony of the fifth degree (R.C. 3503.19(B) and 3599.11(B), (C), and (D)).

- Requires a board of elections that receives a valid voter registration application to register that applicant within 15 business days, unless the application is received during the 30 days immediately preceding the day of an election (R.C. 3503.19(C)(1)).
- Requires a board of elections, if it is unable to verify a registered voter's correct address after investigating a returned registration notification, to mark the voter's name in the pollbook, and requires a voter whose name has been so marked to provide identification and vote by provisional ballot at the first election at which the voter appears to vote (R.C. 3503.19(C)(2)).
- Requires the official registration list for each precinct to be prepared in either paper or electronic form from the statewide voter registration database (see below) 14 days before the day of each election, and requires the names in that list to be in alphabetical order (R.C. 3503.23(A)).
- Establishes additional requirements for the availability and public posting of the official registration list for a precinct, and permits any person to enter the polling place for the sole purpose of reviewing that list (R.C. 3503.23(B)(1) and (C)).
- Specifies the circumstances under which the registration of a registered elector can be cancelled (R.C. 3501.05(Q), 3503.19(C)(2), 3503.21, and 3503.24(C)).
- Requires the Secretary of State to adopt administrative rules requiring each board of elections to remove ineligible voters from the statewide voter registration database and, if already prepared for a particular election, from precinct poll lists or signature pollbooks (R.C. 3501.05(Q)).
- Establishes a deadline for boards of elections to cancel the registration of an elector who fails to respond to a confirmation notice and fails to vote in the two subsequent federal general elections (R.C. 3503.21(E)).

- Requires the Secretary of State to develop an informational brochure on voter registration, generally requires boards of elections and other entities to distribute it to any person who requests two or more voter registration forms at one time, and requires the same information to be made available to anyone who prints a registration form from the Secretary of State's or a board of elections' web site (R.C. 3503.28).
- Generally, requires a person who is compensated for registering voters to annually complete an Internet-based training program developed by the Secretary of State; to register, annually and in advance, with the board of elections of each county in which the person will register voters; and to submit documentation that the person has completed the training and is so registered with each registration form that the person returns (R.C. 3503.29).

**Statewide voter registration database**

- Requires the Secretary of State to establish a statewide voter registration database that meets the requirements of federal law, and specifies certain additional requirements with which that database must comply (R.C. 3501.05(V), 3503.13, and 3503.15(A), (C), and (D)).
- Requires the Secretary of State to provide training in the operation of the statewide voter registration database to each board of elections and to individuals authorized to update or modify the database (R.C. 3503.15(E)).
- Requires the statewide voter registration database to be the official list of registered voters for all elections conducted in Ohio (R.C. 3503.15(B)).
- Requires the Secretary of State to develop rules regarding the process for updating and identifying the persons authorized to update the statewide voter registration database (R.C. 3503.13(B) and 3503.15(D)).
- Correspondingly outright repeals an existing statute that requires the Secretary of State to maintain "a master file of all registered voters" in Ohio and to prescribe, by directive, a schedule for boards of elections to submit current lists of registered voters in their counties to the Secretary of State for purposes of the master file (R.C. 3501.11(V) and R.C. 3503.27 (repealed)).

### **Notification of elections**

- Generally requires a board of elections to send a mailing to each registered elector 45 days before the general election in an even-numbered year notifying the elector of the day of the election and of the location of the elector's polling place (R.C. 3501.19(A) and (C)).
- Requires a board of elections, if such a notice is returned, to mark the voter's name in the pollbook, and requires a voter whose name has been so marked to provide identification and vote by provisional ballot at the first election at which the voter appears to vote (R.C. 3501.19(B)).

### **Precinct identification web sites**

- Permits a board of elections to operate and maintain a web site at which any person in that county may enter the person's address and promptly receive notification of the person's correct precinct number and polling place (R.C. 3501.24).

### **Voter identification**

- Requires a first-time voter who registered to vote by mail and who did not provide a specified form of identification with that registration to provide that identification to the election officials at the polls on the day of the election (R.C. 3505.18(A)(2)).
- Permits a first-time voter who registered to vote by mail and who does not provide the required identification either with that registration or at the polls to vote a provisional ballot (R.C. 3505.18(A)(2) and 3505.181(A)(2)).

### **Challenges of registered voters**

- Changes from 11 days prior to an election to 20 days prior to an election the deadline after which persons may not challenge the right to vote of a registered elector (R.C. 3503.24(A), 3505.19, and 3505.20).
- Permits pre-election challenges to be decided from the records of the board of elections without a hearing under certain circumstances (R.C. 3503.24(B) and 3505.19).

- Generally requires pre-election challenge hearings, when required, to be conducted, and the challenge decided, within ten days after the board of elections receives the challenge, but permits, in certain circumstances, those challenges to be resolved after the day of the election (R.C. 3503.24(B) and (D)).
- Eliminates the ability of any person, other than an election official, to challenge an elector's right to vote on the day of an election (R.C. 3505.20, 3505.21, 3505.22, 3505.25, 3509.06, and 3513.19(A)).
- Replaces election "challengers" and "witnesses" with election "observers"; permits those observers to perform the duties currently performed by election challengers and witnesses, except that observers are not permitted to challenge an elector's right to vote on election day; and confers new authority on observers with respect to provisional ballots (R.C. 3501.26, 3501.30(A)(4), 3501.33, 3501.35(B), 3505.16, 3505.183, 3505.21, 3505.22, 3505.25, 3505.26, 3505.27(A), 3505.32(B), 3506.12(B), 3506.13, 3509.06(E) and (F), 3513.22(B), 3515.03, 3515.04, 3515.13, 3523.05, and 3599.38(A)).

### **Provisional ballots**

- Establishes provisional ballots for the purposes of all elections conducted in this state, and specifies the voters eligible to cast a provisional ballot (R.C. 3501.19(B), 3503.16(B) and (C), 3503.19(C)(2) and (3), 3503.24(D)(3), 3505.18(A), 3505.181(A) and (C), 3505.20(A), (B), (C), and (D), 3505.22, 3509.09(B), 3511.13(B), and 3513.20).
- Establishes a process for casting provisional ballots, which includes requiring the provisional voter to execute a written affirmation, and a process for that voter to determine, after the election, whether the provisional ballot was counted (R.C. 3505.181(B)).
- Specifies the form of the affirmation that a provisional voter is required to execute, and allows a provisional voter to provide on that form additional information that will be used to determine the validity of the ballot (R.C. 3505.182).
- Specifies the process a board of elections must follow to determine whether a provisional ballot is eligible to be counted, and specifies the

record-keeping requirements for both eligible and ineligible provisional ballots (R.C. 3505.183).

- Defines "jurisdiction" for purposes of the provisional ballots provisions as the precinct in which a person is a legally qualified elector (R.C. 3505.181(E)(1)).

### *Absent voter's ballots*

- Permits any qualified elector to vote by absent voter's ballots at an election (R.C. 3509.02(A)).
- Eliminates the qualifications that electors are required to meet under current law in order to vote by absent voter's ballots (R.C. 3509.02(A) and (C), 3509.03, 3509.04, and 3509.08).
- Removes certain information from having to be included in an absent voter's ballot application consistent with the changes mentioned above, but (1) requires certain other information or supporting documentation, including the voter's date of birth and identification, to be included in or with an absent voter's ballot application and (2) requires the director of the board of elections to notify a voter who submits an incomplete application (R.C. 3503.16(G)(1), 3509.02(B), 3509.03, 3509.031, 3509.04, 3509.08, 3511.02, and 3511.04).
- Removes certain information from having to be included with an absent voter's ballot consistent with the changes mentioned above, but (1) requires certain other information or supporting documentation, including the voter's date of birth and identification, to be included with an absent voter's ballot and (2) specifies that, if the required identification is not provided, the ballot must not be counted (R.C. 3509.04, 3509.05, 3509.07, and 3511.09).
- Permits a registered elector who has requested or returned absent voter's ballots to vote by provisional ballot on the day of an election, and, if both ballots are voted, specifies which ballot will be counted (although other law makes voting or attempting to vote twice a felony of the fourth degree) (R.C. 3509.09, 3511.13, and 3599.12).
- Establishes additional prohibitions and penalties applicable to the failure to return an absent voter's ballot application on behalf of another person

and to the unauthorized possession of another person's absent voter's ballot (R.C. 3599.21(A)(8) and (9) and (B)).

### **Recounts**

- Increases from \$10 to \$50 (a) the maximum per precinct charge that may be imposed for conducting a non-automatic recount and (b) the amount per precinct involved that must be deposited with a board of elections at the time of the recount application, and provides for the periodic indexing of the amounts for inflation (R.C. 3515.03, 3515.07, and 3515.072).
- Requires any recount of votes for the election of presidential electors to be completed not later than six days before the time fixed under federal law for the meeting of those presidential electors (R.C. 3515.041).

### **Election calendars**

- Makes changes to the times at which certain election-related activities are required to take place, such as a board of elections' returning a petition to an official with an attestation of the number of relevant electors who signed it, the filing of a declaration of intent to be a write-in candidate, or the certification of the sufficiency of the signatures on and the validity of a local option (liquor) election petition (R.C. 305.31, 731.28, 731.29, 3501.39(C), 3503.24(A), 3513.041, 3513.052, 3513.30(C) and (E), 4301.33(B)(1), 4301.331(E), 4301.332(B)(1), 4301.333(D), 4301.334(C), and 4305.14(B)(4)).

### **Nomination and election of municipal court candidates**

- Requires, as a general rule, the declaration of candidacy and petition or the nominating petition for a candidate for municipal court judge or for an elected municipal court clerk to contain the signatures of 50 qualified electors of the territory of the court (R.C. 1901.07(B) and (C), 1901.10(A)(1)(c) and (d), 1901.31(A)(1) and (2)(b), and 1901.33(D)).
- Eliminates the specific signature and filing requirements applicable to candidates for municipal court judge or for an elected municipal court clerk in certain municipal courts (R.C. 1901.07(C) and 1901.31(A)(1)(a), (d), (f), (g), and (h)).

### Secretary of State election instructions and publications

- Requires directives and advisories issued by the Secretary of State regarding the proper methods of conducting elections to be published on the Secretary of State's web site within 24 hours after they are issued and to be maintained on that site while in effect and in an archive format thereafter (R.C. 3501.05(B)).
- Requires the Secretary of State to ensure that scheduled conference calls with the boards of elections (1) to discuss the proper methods and procedures for conducting elections, (2) to answer questions regarding elections, or (3) to discuss the interpretation of directives, advisories, or other instructions issued by the Secretary of State, comply with the Open Meetings Law, and also requires the Secretary of State to post transcripts and audio files of those calls on the Secretary of State's web site within 24 hours (R.C. 3501.05(W)).
- Requires the Secretary of State to adopt administrative rules to allow boards of elections to appoint judges of elections in such a manner that they may serve in split shifts on the day of an election (R.C. 3501.05(X)).
- Requires the Secretary of State to publish a report on the Secretary of State's web site following each primary and general election identifying, by county, the number of absent voter's ballots and provisional ballots that were cast and the number of each of those ballots that were counted (R.C. 3501.05(Y)).

### Voting machines, marking devices, and automatic tabulating equipment

- Defines "optical scan ballots" and specifies the types of marks on those ballots that constitute valid votes (R.C. 3506.21).
- Expands the definition of "automatic tabulating equipment" to include, in addition to machines and interconnected or interrelated machines, *electronic devices and interconnected or interrelated electronic devices* that automatically examine and count votes recorded on ballots (R.C. 3506.01(C)).
- Requires each board of elections to conduct a full vote of the board during a public meeting of the board on the allocation and distribution of

voting machines, marking devices, and automatic tabulating equipment for each precinct in the county (R.C. 3501.11(I)).

- Requires the Secretary of State's standards, adopted by rule, for the certification of direct recording electronic voting machines with a voter verified paper audit trail to include specified requirements regarding "content" information about a voter verified paper audit trail--the information varying on whether office-type ballots (the name of each candidate selected by the voter) or questions and issues ballots (among other information, the voter's ballot selection on a question or issue) are involved (R.C. 3506.05(H)(3)(a)(vi) and (vii)).
- Permits a county to use a marking device that is accessible to individuals with disabilities to meet a requirement that each polling location have a voting system that is accessible to individuals with disabilities on and after the first federal election that occurs after January 1, 2006 (existing law refers only to "at least one direct recording electronic voting machine" in this context) (R.C. 3506.19).
- Requires a county that uses direct recording electronic voting machines with a voter verified paper audit trail as its primary voting system, within two months after each general election in which a county office or county question or issue is on the ballot, to conduct a random recount of any one of the offices, questions, or issues using the voter verified paper audit trail, to verify the accuracy of the machines (R.C. 3506.20).

#### **Duplicate candidacy prohibitions**

- Prohibits a person from being a candidate for federal office and a state or county office at the same election (R.C. 3513.04, 3513.041, 3513.05, 3513.052, 3513.257, 3513.259, and 3513.261).
- Specifies that a person who seeks nomination or election to a federal office and a state or county office at the same election must be disqualified as a candidate for each office that is not a federal office (R.C. 3513.052(C), (D), and (E)).

#### **Interference with elections**

- Increases from a minor misdemeanor to a misdemeanor of the first degree the penalty for loitering in or about a registration or polling place during the registration or the casting and counting of ballots so as to

hinder, delay, or interfere with the conduct of the registration or election (R.C. 3599.24(A)(5) and (B)).

- Increases from a minor misdemeanor to a misdemeanor of the first degree the penalty for removing pencils, cards of instruction, supplies, or other conveniences furnished to enable a voter to mark the voter's ballot (R.C. 3599.24(A)(6) and (B)).

#### **Campaigning near the line of waiting voters**

- Prohibits a person from loitering, congregating, or engaging in election campaigning, or giving, tendering, or exhibiting any ballot or ticket to any person, within ten feet of any elector waiting to vote, if the line of waiting electors extends past the small United States flags placed 100 feet from the polling place. The prohibitions also apply to similar conduct within the area between the polling place and those small flags placed on the thoroughfares and walkways leading to the polling place. (R.C. 3501.35(A)(1) and (3).)

#### **Private causes of action for certain Election Law violations**

- Establishes a private cause of action permitting electors to bring suit against any person or organization that violates certain provisions of the Election Law--violations of R.C. Chapter 3501. provisions, and allows the elector to seek a declaratory judgment, an injunction, or other appropriate *equitable relief* (R.C. 3501.90(A)).
- When the violation is of R.C. 3501.33 (peace and good order in a place of registration or election, improper practices tending to obstruct, intimidate, or interfere with any elector in registering or voting, etc.) or of R.C. 3501.35 (hindering or delaying electors in reaching or leaving a polling place, prohibited loitering, congregating, or engaging in election campaigning in certain areas, etc.), and when the violation in any way interfered with, obstructed, intimidated, or intentionally or recklessly threatened or caused bodily harm to an elector while attempting to register to vote, to obtain an absent voter's ballot, or to vote, permits an elector to seek relief in the form of *monetary damages*--three times the elector's actual damages or \$1,000, whichever amount is greater--and an award of attorney's fees, in either an individual or class action suit (R.C. 3501.90(B)).

- Authorizes special remedies against organizations that are repeat violators of R.C. 3501.33 or 3501.35 (R.C. 3501.90(B)).

#### **Petition circulator residency requirements**

- Prohibits a person from circulating an initiative petition unless the person is a resident of Ohio, and prohibits a person from signing an initiative petition unless the person is a registered elector who will have resided in the county and precinct where the person is registered for at least 30 days at the time of the next election (R.C. 3503.06(B)).

#### **Notice of intent to retire for candidates**

- Specifies that a candidate who intends to retire and receive PERS retirement benefits while continuing to hold an elected office must file the required written declaration of intent to retire with the director of the board of elections (as opposed to the board of elections under current law) (R.C. 145.38(C)(3)(a)).
- Requires the director of a board of elections who receives a written declaration of intent to retire to provide a copy of that document to each member of the board of elections (R.C. 3501.13(D)).

#### **Publication of notice of elections**

- Reduces to two (from four or three) the number of times notices of specified elections must be published in newspapers of general circulation in the area in which the election will be conducted (R.C. 131.23(G), 306.70, 307.791, 322.021, 324.021, 503.162(B), 504.02(B), 504.03(A)(2), 511.28, 511.34(B), 513.34, 745.07, 747.11, 3311.21(A), 3311.50(C), 3311.73(B), 3349.29, 3354.12(A), 3355.09, 4504.021, 5705.191, 5705.194, 5705.196, 5705.21(B), 5705.218(C), 5705.25(A), 5705.251(A), 5705.261, 5705.71, 5739.022(A), 5748.02(C), 5748.04, 5748.08(C), and 6119.18).

#### **Federal election contests**

- Eliminates the ability to file contests of elections under state law for the nomination or election of a person to federal office, and requires contests for the nomination or election of persons to federal office to be resolved under federal law (R.C. 3515.08(A) and (B)).

### Completion of the canvass

- Generally requires the canvass of election returns to be completed by the 21st day after the day of an election, and specifies that no amendments generally may be made to the canvass after the 81st day after the day of an election (R.C. 3501.05(U), 3505.32(A), and 3513.22(A)).

### Campaign Finance Law matters

- Makes changes to the definitions of "campaign committee" for the purposes of the Campaign Finance Law (a "campaign committee" becomes a candidate or a combination of two or more persons authorized by a candidate to receive contributions and make expenditures) and to the definition of "candidate" for the purposes of the law governing electioneering communications (it acquires the same meaning as under the current Campaign Finance Law) (R.C. 3517.01(B)(1) and (3) and 3517.1011(A)(3)).
- Changes the exception under which certain entities are not required to file mid-year campaign finance statements, and specifies that the only campaign committees generally required to file those statements are the campaign committees of candidates for statewide or county office (R.C. 3517.10(A) and (F)(3)).
- Changes the type of document that must be filed by a candidate to indicate that the candidate's campaign committee intends to file its required campaign finance statements early on paper instead of electronically from an "affidavit" to a "notice" (R.C. 3517.106(L)(1)(d) and (f)).

### Miscellaneous changes

- Requires appropriate local election officials to cause defined "voting information" to be publicly posted at each polling place on the day of an election (R.C. 3505.181(D) and (E)(2)).
- Changes the form for statewide initiative and referendum petitions to comply with existing requirements (R.C. 3519.05).
- Renames offenses applicable to the receipt of improper compensation by petition circulators and by persons who register applicants to vote (R.C. 3599.111(B), (C), and (E)(1) and (2)).

- Names the offense committed by compensating those who collect petition signatures or who register voters on a basis other than time worked--"paying improper compensation for circulating a petition or registering a voter" (R.C. 3599.111(D) and (E)(3)).
- Eliminates the declaration of intent to be a write-in candidate from the law governing election petitions (R.C. 3501.38(E)(1) and (L)).
- Creates an exception to the general prohibition against entering a polling place unless one is an election official, employee, observer, or police officer or one enters to vote: entering a polling place to assist a blind, disabled, or illiterate voter to vote (R.C. 3501.35(B)).

**Effective date and severability provision**

- Specifies that the bill's operative provisions take effect on January 1, 2006 (Section 4).
- Contains severability provisions generally similar to those in R.C. 1.50--not in the bill (Section 3).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-24-05	p. 78
Reported, H. Elections & Ethics	05-12-05	p. 798
Passed House (70-29)	05-17-05	pp. 807-838

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