



Lynda J. Jacobsen

*Bill Analysis*  
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**BILL SUMMARY**

**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.
- 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.
- Specifies the locations to which, and 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.
- 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.
- Requires a board of elections, 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.

- Requires the official registration list for each precinct to be prepared in either paper or electronic form from the statewide voter registration database 14 days before the day of each election, and requires the names in that list to be in alphabetical order.
- 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.
- Requires the Secretary of State to adopt administrative rules requiring each board of elections to remove ineligible voters from the official registration lists.
- 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.
- Requires the Secretary of State to develop, and the boards of elections and other entities to distribute, informational brochures on voter registration 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's or a board of elections web site.
- Requires a person who is compensated for registering voters annually to complete an Internet-based training program, to register, 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.

### **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.
- Requires the statewide voter registration database to be the official list of registered voters for all elections conducted in Ohio.

- Requires the Secretary of State to develop rules regarding the process for updating the database and identifying persons authorized to update the database.

### **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.
- 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.

### **Precinct identification web site**

- 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.

### **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.
- 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.

### **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.
- Permits pre-election challenges to be decided from the records of the board without a hearing under certain circumstances.

- Generally requires pre-election challenge hearings, where required, to be conducted, and the challenge decided, within ten days after the board receives the challenge, and permits, in certain circumstances, those challenges to be resolved after the day of the election.
- 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.
- Replaces election "challengers" and "witnesses" with election "observers," and 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.

### **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.
- 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.
- 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 that ballot.
- 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.

### **Absent voter's ballots**

- Permits any qualified elector to vote by absent voter's ballots at an election.
- Eliminates the qualifications that electors are required to meet under current law in order to vote by absent voter's ballots.

- Requires additional information, including the voter's date of birth and identification, to be included in an absent voter's ballot application, and requires the director of the board of elections to notify a voter who submits an incomplete application.
- Requires additional information, including the voter's date of birth and identification, to be included with an absent voter's ballot, and specifies that, if the required identification is not provided, the ballot must not be counted.
- 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).
- 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.

### **Recounts**

- Increases from \$10 to \$50 the maximum per precinct charge that may be imposed for conducting a non-automatic recount and the amount that must be deposited with a board of elections at the time of the recount application, and provides for the periodic indexing of that amount for inflation.
- 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.

### **Election calendar changes**

- Makes changes to the times at which certain election activities are required to take place.

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

- Requires 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.

- 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.

### **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.
- Requires the Secretary of State to ensure that scheduled conference calls with the boards of elections must be subject to 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.
- Requires the Secretary of State to adopt administrative rules to allow boards of elections to appoint judges of elections in such a manner that those judges may serve in split shifts on the day of an election.
- 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.

### **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.
- 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.
- Requires the Secretary of State's rules for direct recording electronic voting machines with a voter verified paper audit trail to include

specified information about the content of the voter verified paper audit trail.

- Permits a county to use a marking device that is accessible to individuals with disabilities to meet the existing 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.

### **Duplicate candidacy prohibition**

- Prohibits a person from being a candidate for federal office and a state or county office at the same election.
- 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.

### **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.
- 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.

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

- Prohibits a person from loitering, congregating, engaging in election campaigning, or giving or exhibiting any ballot or ticket within ten feet of any elector waiting to vote, if the line of waiting electors extends past the small flags placed 100 feet from the polling place.

### **Private cause 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 Elections Law.

- Generally permits an elector to seek relief in the form of three times the elector's actual damages or \$1,000, whichever amount is greater, in addition to attorney's fees, in either an individual or class action suit.
- Permits an elector to seek additional types of relief for violations involving the failure of election officials to stop improper practices or attempts to obstruct, intimidate, or interfere with electors registering or voting or violations involves persons campaigning near the line of waiting voters, hindering or delaying electors in reaching or leaving the polling place, or engaging in certain other prohibited activities.

### **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.

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

- Specifies that a candidate who intends to retire and receive 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).
- Requires the director of a board of elections who receives a written declaration of intent to retire to provide a copy of that intent to retire to each member of the board of elections.

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

- Reduces to two 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.

### **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.

### **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 may be made to the canvass after the 81st day after the day of an election.

### **Campaign Finance Law changes**

- Makes changes to the definitions of "campaign committee" for the purpose of the Campaign Finance Law and the definition of "candidate" for the purpose of the law governing electioneering communications.
- Changes the exceptions under which certain entities are not required to file mid-year campaign finance statements, and specifies that the only campaign committees required to file those statements are the campaign committees of candidates for statewide or county office.
- 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.

### **Miscellaneous changes**

- Changes the form for statewide initiative and referendum petitions to comply with existing requirements.
- Renames penalties applicable to improperly compensating petition circulators and persons who register applicants to vote.
- Eliminates the declaration of intent to be a write-in candidate from the law governing election petitions.
- Creates an exception to the general prohibition against entering a polling place: entering a polling place to assist a blind, disabled, or illiterate voter to vote.

### **Severability**

- Specifies that, if any of the provisions of the bill are held to be invalid, that invalidity does not affect any provisions of the bill that can be given effect without the invalid provision.

**Effective date**

- Specifies that the bill takes effect on January 1, 2006.

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## CONTENT AND OPERATION

### Voter registration

#### Forms

The Secretary of State, under existing law, must prescribe the form and content of the voter registration and change of residence and change of name form used in this state. The form is required to set forth the eligibility requirements needed to qualify as an elector and must meet the requirements of the National Voter Registration Act of 1993.<sup>1</sup> The bill continues to require the Secretary of State to prescribe the form and content of these forms, but requires them to be prescribed by rule adopted pursuant to the Administrative Procedure Act. The bill also establishes an additional type of form--the political party designation form--for which the Secretary of State also must prescribe the form and content (see "Voter registration: Political party designation," below). The forms must meet the requirements of the National Voter Registration Act of 1993, but are not required to set forth the eligibility requirements needed to qualify an elector to vote. (R.C. 3503.14(A).)

In addition to the items required for the forms to comply with federal law, the bill requires the forms to include spaces for all of the following (R.C. 3503.14(A)):

- The voter's name;
- The voter's address;
- The current date;
- The voter's date of birth;
- The voter to provide one or more of the following: (1) the voter's driver's license number, if any, (2) the last four digits of the voter's Social Security Number, if any, or (3) a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address;
- The political party with which the voter desires to be affiliated;

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<sup>1</sup> 107 Stat. 77, 42 U.S.C.A. 1973gg.

- The voter's signature.

The registration form also must include a space on which a person registering an applicant must provide the person's address. Existing law already requires the form to include a space on which a person registering an applicant generally must sign the person's name and name the employer who is employing that person to register applicants. (R.C. 3503.14.)

Existing law exempts election officials and employees of designated agencies from having to sign their names and identify their employers on registration forms of voters they register. The bill expands this list, and specifies that these persons must not provide this information.<sup>2</sup> Under the bill, none of the following officials or employees who are registering an applicant in the course of their normal duties are permitted to sign their names or identify their employers on those applications (R.C. 3503.14(A)):

- An election official;
- A county treasurer;
- A deputy registrar of motor vehicles;
- An employee of a designated agency;
- An employee of a public high school;
- An employee of a public vocational school;
- An employee of a public library;
- An employee of the office of a county treasurer;
- An employee of the bureau of motor vehicles;
- An employee of a deputy registrar of motor vehicles;
- An employee of an election official.

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<sup>2</sup> *The National Voter Registration Act requires each state to ensure that the identity of the voter registration agency through which a particular voter is registered is not disclosed to the public (42 U.S.C.A. 1973gg-6(a)(6)).*

### *Political party designation*

Under existing law, a person's political party affiliation is determined for primary election voting purposes by examining the elector's voting record for the current year and the immediately preceding two calendar years as shown on the voter's registration card and by using the "standards of affiliation" mentioned in the next sentence. For the purposes of signing or circulating a petition of candidacy for party nomination or election, existing law considers an elector to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years. Voting in a different political party at a primary election, thus, has the effect of changing a person's party affiliation, such that, if one were then to sign a petition of candidacy of a person affiliated with another party, it would seem that that signature would not be valid if the voter's registration card shows a vote for a different party within the prescribed period. (R.C. 3513.05 (seventh paragraph) and 3513.19.)

In addition to determining party affiliation by the political party's ballot a voter chooses to vote in a primary election, the bill permits a voter to select, at any time, a political party with which to be affiliated. The bill requires the Secretary of State to prescribe the form and content for new political party designation forms, and requires currently authorized voter registration forms to include a space on which a person registering to vote may designate the political party with which the person desires to be affiliated. A registered elector may change the elector's registration because of a desire to designate a political party affiliation; this is in addition to a change in registration authorized by existing law because of a change of address or change of name. (R.C. 3501.05(R), 3503.14, 3503.19, and 3503.20.)

In completing either a voter registration form or a political party designation form, an elector is required to be registered as an unaffiliated elector if the elector selects either (1) a political party not officially recognized in Ohio, or (2) a political party barred from the ballot because it engages in a program of sedition or treason or advocates the overthrow by force or violence of the federal government, the Ohio state government, or an Ohio local government. This unaffiliated status continues until the person designates a recognized political party by use of a political party designation form (R.C. 3503.14(C) and 3503.20(B)).

A registered elector who desires to designate a political party affiliation or to change the political party with which the elector is affiliated may designate the political party with which the elector desires to be affiliated by completing a political party designation form and delivering it in any of the following ways (R.C. 3503.20(A)):

- In person at any state or local office of a designated agency;
- In person at the office of the registrar of motor vehicles or any deputy registrar of motor vehicles;
- In person at a public high school or vocational school;
- In person at a public library;
- In person at the office of a county treasurer;
- In person at a branch office established by a board of elections;
- In person, through another person, or by mail at the office of the Secretary of State;
- In person, through another person, or by mail at the office of a board of elections of the county in which the elector is registered to vote.

Each of the locations at which a registered elector may deliver a political party designation form is required to follow certain procedures used under existing law upon the receipt of voter registration, change of name, and change of address forms (R.C. 3503.11 and 3503.19). Additionally, the registrar of motor vehicles or a deputy registrar is required to make political party designation forms available to all customers, but is not required to offer assistance in completing the forms. The Secretary of State must prescribe the form for political party designation forms to be used by the Bureau of Motor Vehicles, and the Bureau of Motor Vehicles is required to supply all of its deputy registrars with a sufficient number of those forms. (R.C. 3503.11.)

#### **Submission of registration applications**

Under existing law, a person may return a completed voter registration form in person, through another person, or by mail to any state or local office of a designated agency, a public high school or vocational school, a public library, the office of a county treasurer, the office of the Secretary of State, or the office of a board of elections. The bill permits an applicant to return a completed voter registration form to any of these locations only if it is returned in person or by mail. (R.C. 3503.19(B).)

Under the bill, an applicant may return a completed voter registration through another person only to the board of elections of the county in which the applicant is seeking to vote or to an office of a designated agency in that county. (R.C. 3503.19(B).) Similarly, a person who helps another person register outside an official registration place is prohibited from knowingly returning any

registration form entrusted to that person to any location other than the board of elections of the county in which the applicant is seeking to register to vote or to a designated agency in that county. A person who violates this prohibition is guilty of a felony of the fifth degree.<sup>3</sup> The bill also increases to a felony of the fifth degree, from a misdemeanor of the first degree, the penalty applicable to the existing prohibition against helping another person register outside an official registration place and then (1) failing to return a completed application by the registration deadline (30 days before the day of the election), or (2) knowingly destroying, or knowingly helping another person to destroy, any completed registration form. (R.C. 3599.11(B).)

The bill further restricts the time and location to which a person who receives compensation for registering voters may return a voter registration application.<sup>4</sup> Such a person is prohibited from doing either of the following (R.C. 3599.11(C)): (1) knowingly failing to return any registration form entrusted to that person to the board of elections of the county in which the applicant is seeking to register to vote within ten days after that voter registration form is completed or on or before the 30th day before the election, whichever is earlier, or (2) knowingly returning any registration form entrusted to that person to any location other than the board of elections of the county in which the applicant is seeking to register to vote. Violating either of these prohibitions is a felony of the fifth degree (R.C. 3599.11(C)).

### **Verification of registration applications**

The bill requires a board of elections that receives a voter registration application and is satisfied as to the truth of the statements made in the registration form to register the applicant not later than 15 business days after receiving the application, unless the application is received during the 30 days immediately preceding the day of an election. The board must promptly notify the applicant of the applicant's registration and the precinct in which the applicant is to vote. The notification must be by nonforwardable mail. If the mail is returned to the board, it must investigate and cause the notification to be delivered to the correct address. (R.C. 3503.19(C).)

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<sup>3</sup> *A felony of the fifth degree has a presumption against a prison term and is punishable by a prison term of 6, 7, 8, 9, 10, 11, or 12 months, community control sanctions, and financial sanctions, including a fine of not more than \$2,500 (R.C. 2929.14 and 2929.18).*

<sup>4</sup> *"Registering a voter" includes any effort, for compensation, to provide voter registration forms or to assist persons in completing or returning those forms.*

Under existing law, if the board determines that the voter is not eligible to vote for residency reasons, the board must cancel the registration and notify the registrant, at the last known address, of a need to reregister. If the board does not accept the application for registration, it must immediately notify the applicant of the reasons for rejecting the application and request the applicant to provide whatever information or verification is necessary to complete the application. (R.C. 3503.19(C)(1).) The bill eliminates these provisions and, instead, requires the board to cause the voter's name in the official registration list and in the poll list or signature pollbook to be marked to indicate that the voter's notification was returned to the board. At the first election at which a voter whose name has been so marked appears to vote, the voter must (1) provide identification to the election officials and (2) vote by provisional ballot (see "*Provisional ballots*," below). If the provisional ballot is counted, the board must correct that voter's registration, if needed, and remove the indication that the voter's notification was returned from that voter's name on the official registration list and on the poll list or signature pollbook. If the provisional ballot is not counted, the voter's registration must be canceled. (R.C. 3503.19(C)(2).)

### **Statewide voter registration database**

The Help America Vote Act of 2002 (HAVA), Public Law 107-252, 116 Stat. 1666, among other provisions, 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 (R.C. 3501.05(V)).

The bill establishes specific requirements with which the database must comply. For example, it must be continuously available to each board of elections and to other agencies as authorized by law (R.C. 3503.15(A)). It must be the official list of registered voters for all elections conducted in Ohio and must be open to public inspection at all times when the office of the board of elections is open for business, under such regulations as the board adopts (R.C. 3503.13 and 3503.15(B)). At a minimum, the statewide voter registration database must include all of the following (R.C. 3503.15(C)):

- An electronic network that connects all board of election offices with the office of the Secretary of State and with the offices of all other boards of elections;

- A computer program that harmonizes the records contained in the database with records maintained by each county board of elections;
- An interactive computer program that allows access to the records contained in the database by each board of elections and by any persons authorized by the Secretary of State to add, delete, modify, or print database records, and to conduct updates of the database;
- A search program capable of verifying registered voters and their registration information by name, driver's license number, birth date, Social Security Number, or current address;
- Safeguards and components to ensure that the integrity, security, and confidentiality of the voter registration information is maintained.

In addition to establishing requirements that the database must meet, the bill requires the Secretary of State to adopt rules under the Administrative Procedures Act regarding the database. The rules are required to do all of the following (R.C. 3503.15(D)):

- Specifying the manner in which existing voter registration records maintained by boards of elections must be converted to electronic files for inclusion in the statewide voter registration database;
- Establishing a uniform method for entering voter registration records into the statewide voter registration database on an expedited basis, but not less than once per day, if new registration information is received;
- Establishing a uniform method for purging canceled voter registration records from the statewide voter registration database;
- Specifying the persons authorized to add, delete, modify, or print records contained in the statewide voter registration database and to make updates of that database.

A board of elections generally must promptly purge a voter's name and voter registration information from the voter registration database in accordance with the rules adopted by the Secretary of State after the cancellation of a voter's registration (R.C. 3503.15(E)).

The bill also contains provisions regarding the maintenance of the database. Under the bill, the Secretary of State must provide training in the operation of the statewide voter registration database to each board of elections and to any persons

authorized to add, delete, modify, or print database records, and to conduct updates of the database (R.C. 3501.05(V) and 3503.15(F)). Because the boards of elections must update the database regularly, the bill eliminates the requirement that the boards semiannually submit to the Secretary of State an accurate and current list of all registered voters in the county (R.C. 3501.11(V) and 3503.21(D)).

Finally, the bill eliminates existing law requirements that voter registration forms consist of original and duplicate cards, which are required, under existing law, to constitute the official registration list. Similarly, registration provisions applicable to counties that opt to use electronic data processing for voter registration records are eliminated, since counties are required to use the statewide voter registration database under the bill. However, boards of elections may continue to use a digitized signature list of voter signatures that are copied from the registration forms, as long as the board includes the required information from the statewide database and prepares the official registration list for the precinct from that statewide database. (R.C. 3503.13(A), (C), and (D).)

### **Official precinct registration list**

**Preparation of the list.** At least 15 days before an election, existing law requires a board of elections to prepare a complete and official registration list for each precinct, containing the names, addresses, and political party whose ballot the elector voted in the most recent primary election within the current year and the immediately preceding two calendar years, of all qualified registered voters in the precinct. The registration list is required to be prepared from the registration cards, and it must be arranged either in alphabetical order or in geographical order according to the streets in the precinct. (R.C. 3503.23(A).)

Under existing law, the list also must include the following statement (R.C. 3503.23(A)): "Any voter of the county on or before the seventh day prior to the election may file with the board of elections at the board's offices located at ..... objections to the registration of any person on this list who, he has reason to believe, is not eligible to vote, or a request for the addition to the list of registered voters whose names have been omitted or who have been erroneously dropped from the registration list of the precinct."

The bill continues to require a board of elections to prepare a complete and official registration list for each precinct, containing the names, addresses, and political party whose ballot the elector voted in the most recent primary election within the current year and the immediately preceding two calendar years, of all qualified registered voters in the precinct. Under the bill, the list also must identify the political party that the elector designated on the elector's voter registration form or political party designation form (see "**Voter registration:**

**Political party designation,**" above). Additionally, the date on which the list must be prepared, the manner in which it must be organized, and the information from which it must be prepared, are all changed. The bill requires the list to be prepared from the statewide voter registration database either in sheet form on one side of the paper or in electronic form, at the discretion of the board, on the 14th day before the election. It must be arranged alphabetically, and the statement permitting voters to object to the list is eliminated. (R.C. 3503.23(A).)

**Availability and posting of the list.** Existing law permits, but does not require, a board of elections to provide a sufficient number of the lists for distribution to the candidates, political parties, or organized groups that apply for them. The board is required to have each precinct list available at the board for viewing by the public during normal business hours, and the board must ensure that, by the opening of the polls on the day of a general or primary election, each precinct has a paper copy of the registration list of voters in that precinct. (R.C. 3503.23(A).) On the day of a general or primary election, by the time the polls open, the precinct election officials must conspicuously post and display at the polling place one copy of the registration list of voters in that precinct. At 11 a.m. and 4 p.m. on that day, they must place a mark on the official registration list before the name of those registered voters who have voted. (R.C. 3503.23(B).)

Under the bill, a board of elections is required to provide a sufficient number of the lists for distribution to the candidates, political parties, or organized groups that apply for them. The board continues to be required to make the list available for inspection at the office of the board and to ensure that each precinct has a copy of the list of voters in that precinct before the opening of the polls. (R.C. 3503.23(A).) The precinct election officials, as under existing law, must conspicuously post and display a copy of the registration list of voters in that precinct. Under the bill, the list must be posted in an area of the polling place that is easily accessible, but apart from any areas where voters will be casting their ballots or waiting in line to vote. (R.C. 3503.23(B).) For the purpose of viewing the posted list, the bill establishes an exception to the general prohibition against persons entering a polling place for a purpose other than voting. Under the bill, any person is permitted to enter a polling place for the sole purpose of reviewing the posted registration list. (R.C. 3503.23(C).)

The bill specifies that all persons whose names appear on the official registration list for a precinct must be permitted to cast a ballot in the manner provided by law at the polling place for the precinct in which they are registered (R.C. 3503.23(D)).

### *Cancellation of registration*

Continuing law requires the registration of a registered elector to be canceled under certain circumstances. For example, if a board of elections receives official notice that the person has died or been imprisoned for a felony conviction, the board must cancel that person's registration. Additionally, the Secretary of State must prescribe procedures to identify and cancel the registration in a prior county of residence of any registrant who changes his voting residence to a location outside his current county of registration. Any procedures so prescribed must be uniform and nondiscriminatory, and must comply with the Voting Rights Act of 1965<sup>5</sup> and the National Voter Registration Act of 1993. (R.C. 3501.05(Q) and 3503.21--not in the bill.)

The bill adds to these existing law requirements by requiring 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 the poll list or signature pollbook used in each precinct. The rules are required to provide for all of the following (R.C. 3501.05(Q)):

- A process for the removal of voters who have changed residence, which must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 and the National Voter Registration Act of 1993, including a program that uses the national change of address service provided by the United States postal system through its licensees;
- A process for the removal of voters who are ineligible in accordance with the provisions of existing law;
- A uniform system for marking or removing the name of an ineligible voter from the statewide voter registration database and, if already prepared for a particular election, from the poll list or signature pollbook used in each precinct and noting the reason for that mark or removal.

If a voter's registration is to be canceled because the voter fails to respond to a confirmation mailing, as provided for under existing law, the bill requires that registration to be canceled not later than 120 days after the date of the second general federal election in which the elector fails to vote or not later than 120 days

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<sup>5</sup> 79 Stat. 437, 42 U.S.C.A. 1973, as amended.

after the expiration of the four-year period in which the elector fails to vote or respond to a confirmation notice, whichever is later. (R.C. 3503.21(E).)

### **Informational brochure**

The bill requires the Secretary of State to develop an informational brochure regarding voter registration. The brochure must include, but is not limited to, all of the following information (R.C. 3503.28(A)):

- The applicable deadlines for registering to vote or for returning an applicant's completed registration form;
- The applicable deadline for returning an applicant's completed registration form if the person returning the form is being compensated for registering voters;
- The locations to which a person may return an applicant's completed registration form;
- The location to which a person who is compensated for registering voters may return an applicant's completed registration form;
- The registration and affirmation requirements applicable to persons who are compensated for registering voters (see "**Training and registration of persons compensated to register voters**," below).

A board of elections, designated agency, public high school, public vocational school, public library, office of a county treasurer, or deputy registrar of motor vehicles generally must distribute a copy of the brochure developed by the Secretary of State to any person who requests more than two voter registration forms at one time (R.C. 3503.28(B)). However, a board of elections is not required to distribute a copy of the brochure to any of the following officials or employees who are requesting more than two voter registration forms at one time in the course of their normal duties (R.C. 3503.28(D)): an election official, a county treasurer, a deputy registrar of motor vehicles, an employee of a designated agency, an employee of a public high school, an employee of a public vocational school, an employee of a public library, an employee of the office of a county treasurer, an employee of the bureau of motor vehicles, an employee of a deputy registrar of motor vehicles, or an employee of an election official.

The Secretary of State also must provide the information required to be included in the brochure to any person who prints a voter registration form that is made available on a web site of the office of the Secretary of State, and a board of elections must provide that information to any person who prints a voter

registration form that is made available on a web site of the board (R.C. 3503.28(C)).

**Training and registration of persons compensated to register voters**

The bill requires the Secretary of State to develop and make available through the Secretary of State's web site a training program for any person who receives or expects to receive compensation for registering a voter. The secretary of state must specify, by administrative rule, the information to be included in the online training program. (R.C. 3503.29(A).) Also by administrative rule, the Secretary of State is required to prescribe a program under which each board of elections must register any person who receives or expects to receive compensation for registering a voter in the county (R.C. 3503.29(B)).

Under the bill, in each year in which a person receives or expects to receive compensation for registering a voter, prior to registering a voter, that person is generally required to do all of the following (R.C. 3503.29(C)):

- Register with the board of elections of each county in which the person intends to register a voter in accordance with the program prescribed by the Secretary of State;
- Complete the Internet-based training program established by the Secretary of State;
- Sign an affirmation that includes all of the following: (1) the person's name, (2) the person's date of birth, (3) the person's permanent address, (4) a statement that the person has registered with the board of elections of the county in which the person intends to register voters, (5) a statement that the person has completed the required Internet-based training program, and (6) A statement that the person will follow all applicable Ohio laws while registering voters.

Each time a person who receives or expects to receive compensation for registering a voter submits a completed registration form that has been entrusted to that person to a board of elections, the person also must submit, with that voter registration form, a copy of the signed affirmation. A single copy of the signed affirmation may be submitted with all voter registration forms that are returned by that person at one time. (R.C. 3503.29(D).)

None of the following officials or employees who receive compensation for registering voters in the course of their normal duties is required to meet any of these training, registration, or affirmation requirements (R.C. 3503.29(E)): an

election official, a county treasurer, a deputy registrar of motor vehicles, an employee of a designated agency, an employee of a public high school, an employee of a public vocational school, an employee of a public library, an employee of the office of a county treasurer, an employee of the bureau of motor vehicles, an employee of a deputy registrar of motor vehicles, or an employee of an election official.

### **Notification of elections**

On the 45th day before the day of each general election in an even-numbered year, the bill generally requires the board of elections to send by nonforwardable mail to each elector who is registered to vote in a precinct in which an election will be conducted a notice identifying (1) the day of the election and (2) the location of the polling place for the precinct in which the elector is registered to vote (R.C. 3501.19(A)). This notice is not required to be mailed to any elector who registered to vote within 30 days prior to the date for mailing the notice (R.C. 3501.19(C)).

If the notice is returned undelivered to the board, the board must cause the elector's name in the official registration list and in the poll list or signature pollbook for that elector's precinct to be marked to indicate that the notice was returned to the board. At the first election at which an elector whose name has been so marked appears to vote, the elector must provide identification to the election officials and vote by provisional ballot (see "**Provisional ballots**," below). If the provisional ballot is counted, the board must correct that elector's registration, if needed, and remove the indication that the elector's notice was returned from that elector's name on the official registration list and on the poll list or signature pollbook. (R.C. 3501.19(B).)

### **Voter identification**

When an elector appears in a polling place to vote, the elector, under existing law, must announce the elector's name to the precinct election officials and write the elector's name and address in the poll list or signature pollbook (R.C. 3505.18(A)(1) and (B)). In addition, under the bill, if the elector has not previously voted in an election in this state, and if the elector registered to vote by mail without providing the last four digits of the elector's Social Security Number, the elector's driver's license number, a copy 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, the elector also must provide to the election officials proof of the elector's 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 name and address of the elector. If such an elector does not provide to

the precinct election officials any of those forms of identification, the elector may cast a provisional ballot (see "Provisional ballots," below). (R.C. 3505.18(A)(2).)

### **Precinct identification web site**

The bill permits each 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 and polling place. Any web site so established must permit a person to enter an address and determine the correct precinct and polling place for that address regardless of whether the person is listed on the statewide voter registration database as being registered to vote in that county. (R.C. 3501.24.)

### **Challenges to a person's right to vote**

#### **Challenges in person or by mail**

Any qualified elector may challenge a person registered to vote as to the person's right to vote at any election. At any time during the year, a qualified elector may challenge the person's right to vote either by appearing in person at the office of the board of elections or by letter addressed to the board. The challenge must state the ground upon which the challenge is made and the challenger must sign the challenge and provide the challenger's address and voting precinct. If, after public hearing, of which both the challenger and challenged person must be notified, the board is satisfied with the challenge, the director of the board must so indicate that on the registration cards and notify in writing the judges and clerks of the precinct. If the challenged person offers to vote at that election, the person must be examined as in the case of an original challenge. If the person establishes, to the satisfaction of the judges and clerks of elections, that the person's disabilities have been removed and that the person has a right to vote, the person then must be permitted to vote at that election. (R.C. 3505.19.)

The bill limits the time within which a person may be challenged in person or by mail. Any such challenge must be made prior to the 19th day before the day of an election. The bill also changes the process for determining pre-election challenges. Instead of requiring a hearing for each challenge, challenges must be determined in the manner detailed under "Challenges at the board of elections," below. (R.C. 3505.19.)

#### **Challenges at the board of elections**

**Existing law.** Under existing law, any qualified elector may challenge the right to vote of any registered elector at the office of the board of elections not later than 11 days prior to the election. The challenge, and the reasons for it, must

be filed with the board on a form prescribed by the Secretary of State, and it must be signed under penalty of election falsification.<sup>6</sup> Upon receiving a challenge, the director of the board of elections must promptly set a time and date for a hearing, which must be no later than two days prior to any election. The director must send written notice to the challenged elector, informing the person of the time and date of the hearing and of the person's right to appear and testify, call witnesses, and be represented by counsel. The notice must be sent by first class mail no later than three days before the date of the scheduled hearing. (R.C. 3503.24(A) and (B).)

At the request of a party or a member of the board of elections, the board must issue subpoenas to witnesses to appear and testify before the board at a challenge hearing. Witnesses are required to testify under oath. Immediately after the hearing, the board is required to reach a decision on the challenge. If the board decides that the challenged person is not entitled to have the person's name on the registration list, the person's name must be removed from the list and the person's registration forms must be canceled. (R.C. 3503.24(C).)

**Changes proposed by the bill.** The bill changes the time in which a challenge must be made, as well as the process for determining a challenge. Under the bill, any qualified elector may challenge the right of any registered elector, or make application for a change to the list of registered voters, not later than 20 days before the day of an election. As under existing law, the application or challenge, and the reasons for it, must be filed with the board on a form prescribed by the Secretary of State under penalty of election falsification. However, an application or challenge will not necessarily receive a hearing under the bill. Instead, upon receiving an application or challenge, the board of elections promptly must review the board's records. If the board is able to determine that an application or challenge should be granted or denied solely on the basis of the records maintained by the board, the board immediately must vote to grant or deny that application or challenge. (R.C. 3503.24(A) and (B).)

If the board is not able to determine whether an application or challenge should be granted or denied solely on the basis of the records maintained by the board, the director must promptly set a time and date for a hearing before the board. If a hearing is required, it generally must be conducted as under existing law. However, instead of hearing and resolving an application or challenge not later than two days before an election, the bill generally requires applications or challenges to be heard and determined not later than ten days after they are received. (R.C. 3503.24(B).) The bill provides an exception to this ten-day time period for applications or challenges filed within 30 days before an election.

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<sup>6</sup> *Election falsification is a felony of the fifth degree.*

If an application or challenge is filed during the 30 days before an election, and if a hearing is required for that application or challenge, the board, in its discretion, is permitted to postpone the hearing and any notifications of that hearing, until after the day of the election. Any hearing so postponed must be conducted not later than ten days after the election. The name of any registered elector whose registration is challenged and whose challenge hearing is postponed must be marked in the official registration list and in the poll list or signature pollbook for the precinct to indicate that the elector's registration is subject to challenge. Any elector whose registration is subject to a postponed hearing is permitted to vote a provisional ballot under the bill. (See "*Provisional ballots*," below.) If such an elector casts a provisional ballot, the validity of that ballot must be determined in the same manner as for other provisional ballots, except that no such ballot may be counted unless the hearing held after the day of the election results in the elector's inclusion in the official registration list. (R.C. 3503.24(D).)

### *Challenges made on the day of an election*

*Election day challengers.* Under existing law, any person offering to vote may be challenged at the polling place by any challenger, any elector then lawfully in the polling place, or by any judge or clerk of elections (R.C. 3505.20).

For the purpose of making such challenges, any political party supporting candidates to be voted upon at the election and any group of five or more candidates may appoint to any of the polling places one qualified elector who will serve as a challenger for the party or group of candidates. Similarly, any committee that in good faith advocates or opposes a measure may file a petition asking to be recognized for the purpose of appointing witnesses and challengers at that election. If recognized by the board, that committee may appoint a challenger in each precinct. Challengers so appointed, once they take an oath to faithfully and impartially discharge the duties of an official challenger, are permitted to be inside the precinct during the casting of the ballots and permitted to watch every proceeding of the judges and clerks of elections from the time of the opening until the time of the closing of the polls. Challengers are permitted to remain in the polling place after the polls close and may observe the processing of the ballots and the sealing and signing of the envelopes or containers containing the voted ballots. (R.C. 3505.21 and 3506.13.)

While the bill permits the right of a person to vote to be challenged on the day of an election, it restricts the persons who may challenge a voter on that day. Under the bill, only election officials may challenge the right of a person to vote on the day of an election. (R.C. 3505.20, 3505.21, 3505.22, 3509.06, and 3513.19.)

Since the bill eliminates the authority of persons other than precinct election officials to challenge the right to vote of a registered elector, the bill also eliminates the provisions of law establishing election challengers that are appointed to precincts for the express purpose of challenging a registered elector's qualifications. Instead, the bill creates a new category of persons entitled to be in the precinct during the casting of the ballots and to observe the processing of the ballots after the polls close. Under the bill, election observers may perform all of the duties currently performed by precinct challengers, except challenging electors. Additionally, persons designated as "witnesses" to the counting of the ballots under existing law also are renamed as election observers, although their duties generally are unchanged. The only changes relate to the appointment of the observers. Under the bill, observers who are appointed to the board of elections are permitted to observe at the board of elections and may observe at any precinct in the county. And, observers who are appointed to serve a precinct during the counting of the ballots only must file their certificates of appointment at the precinct before the polls close. (R.C. 3501.26, 3501.30, 3501.33, 3501.35, 3505.16, 3505.21, 3505.22, 3505.25, 3505.26, 3505.27, 3505.32, 3506.12, 3506.13, 3509.06, 3513.22, 3515.03, 3515.04, 3515.13, 3523.05, and 3599.38.)

**Election day challenge process.** If a person is challenged on the day of an election, and if the board of elections has previously ruled on the question presented by the challenge, the decision of the board is final and the presiding judge must be notified in writing. If the board has not previously ruled, however, an election day challenge must be determined according to the following process. If the person is challenged on the basis that the person is unqualified to vote, the presiding judge must ask the person to swear an oath. After the oath, the judge then must ask several questions of the challenged elector. The questions asked depend upon the reason that the person was challenged. (R.C. 3505.20.)

**Questions asked for challenges based on citizenship.** If a person is challenged as being unqualified on the ground that the person is not a citizen, existing law requires the judge to ask the following questions (R.C. 3505.20(A)):

- (1) Are you a citizen of the United States?
- (2) Are you a native or naturalized citizen?
- (3) Where were you born?

The bill requires the following additional question to be asked of a person who is challenged as being unqualified on the ground that the person is not a citizen: What official documentation do you possess to prove your citizenship? The bill also requires such a person to provide the necessary documentation to prove the person's citizenship. (R.C. 3505.20(A).)

**Questions asked for challenges based on 30-day residency.** If a person is challenged as being unqualified on the ground that the person has not resided in this state for 30 days immediately preceding the election, existing law requires the judge to ask the following questions (R.C. 3505.20(B)):

(1) Have you resided in this state for 30 days immediately preceding this election? If so, where have you resided? Name two persons who know of your place of residence.

(2) Have you been absent from this state within the 30 days immediately preceding this election? If the answer to this question is yes, then the following questions also must be asked:

(a) Have you continuously resided outside this state for a period of four years or more?

(b) Did you, while absent, look upon and regard this state as your home?

(c) Did you, while absent, vote in any other state?

The bill changes and, in some cases, replaces the questions that must be asked of a person who is challenged on the basis that the person has not resided in this state for 30 days immediately preceding the election. Under the bill, the following questions must be asked (R.C. 3505.20(B)):

(1) Have you resided in this state for 30 days immediately preceding this election? If so, where have you resided?

(2) Did you properly register to vote?

(3) Can you provide some form of identification containing your current mailing address in this precinct? Please provide that identification.

(4) Have you voted or attempted to vote at any other location in this or in any other state at this election?

(5) Have you applied for an absent voter's ballot in any state for this election?

**Questions asked for challenges based on precinct residency.** If a person is challenged as unqualified on the ground that the person is not a resident of the precinct where the person offers to vote, existing law requires the judge to ask the following questions (R.C. 3505.20(C)):

(1) Do you now reside in this county?

(2) Do you now reside in this precinct?

(3) When you came into this precinct, did you come for a temporary purpose merely or for the purpose of making it your home?

The bill changes and, in some cases, replaces the questions that must be asked of a person who is challenged on the basis that the person is not a resident of the precinct in which the person is offering to vote. Under the bill, the following questions must be asked (R.C. 3505.20(C)):

(1) Do you reside in this precinct?

(2) When did you move into this precinct?

(3) When you came into this precinct, did you come for a temporary purpose merely or for the purpose of making it your home?

(4) What is your current mailing address?

(5) Do you have some official identification containing your current address in this precinct? Please provide that identification.

(6) Have you voted or attempted to vote at any other location in this or in any other state at this election?

(7) Have you applied for any absent voter's ballot in any state for this election?

**Questions asked for challenges based on age.** If a person is challenged as unqualified on the ground that the person is not of legal voting age, existing law requires the judge to ask the following question (R.C. 3505.20(D)): Are you 18 years of age or more to the best of your knowledge and belief?

The bill changes and adds to the question that must be asked of a person who is challenged on the basis that the person is not of legal voting age. Under the bill, the following questions must be asked (R.C. 3505.20(D)):

(1) Are you 18 years of age or more?

(2) What is your date of birth?

(3) Do you have some official identification verifying your age? Please provide that identification.

**Resolution of election day challenges.** If a challenged person refuses to fully answer any of the questions put to the person, is unable to answer the

questions as they were answered on the person's registration form, refuses to sign the person's name, or, if for any other reason a majority of the judges believe the person is not entitled to vote, the judges, under existing law, must refuse the person a ballot. Under existing law, the decision of the judges is final as to the right of the challenged person to vote at that election. (R.C. 3505.20.)

The bill eliminates the ability of a judge of elections to refuse a person a ballot. If a challenged person refuses to fully answer any of the questions put to the person, is unable to answer the questions as they were answered on the person's registration form, refuses to sign the person's name, or, if for any other reason a majority of the judges believe the person is not entitled to vote, the judges, must provide to the person, and the person may vote, a provisional ballot (see "**Provisional ballots**," below). The provisional ballot must not be counted unless it is properly completed and the board of elections determines that the voter is properly registered and eligible to vote in the election. (R.C. 3505.20(D).)

**Challenges based on party affiliation.** In addition to the reasons for which an elector generally may be challenged, a person appearing to vote at a primary election may be challenged on the basis that the person is not affiliated with or not a member of the political party whose ballot the person desires to vote. The person's party affiliation is determined by examining the person's voting record for the current year and the immediately preceding two calendar years as shown on the person's voter's registration card and by examining any political party designation form submitted by that elector (see "**Voter registration: Political party designation**," above). If the voter is challenged based on party affiliation, the person's membership in or political affiliation with a political party then must be determined by the person's statement, made under penalty of election falsification, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote. If the challenged person refuses to make such a statement, under existing law that person must be refused a ballot. (R.C. 3513.19 and 3513.20.)

The bill eliminates the ability of a judge of elections to refuse a person a ballot. Under the bill, if a challenged person refuses to make the required statement regarding the person's desire to be affiliated with the political party whose ballot the person desires to vote, the person must be permitted to vote a provisional ballot (see "**Provisional ballots**," below). (R.C. 3513.20.)

**Challenges for the impersonation of electors.** Under existing law, if any precinct officer, challenger, or other elector has reason to believe that a person is impersonating an elector, then that person, before being given a ballot, must be questioned as to the person's right to vote and must be required to sign the person's name or make the person's mark in ink on a card to be provided for that purpose. If, in the opinion of a majority of the precinct officers, the signature is not the

signature of the person who signed that name in the voter registration forms, then, under existing law, the person may be refused a ballot. The person may appeal to the board of elections, and if the board finds that the person is eligible to vote, the person must be given an order instructing the precinct officers to permit the person to vote. The precinct officers are required to recognize that order when it is presented and signed, and the person then must be permitted to vote. (R.C. 3505.22.)

Since the bill eliminates the ability of anyone, other than precinct officers, to challenge a person's right to vote on the day of an election, only precinct officers may challenge a person for impersonating an elector. If the precinct officers make such a challenge, it generally proceeds as under existing law. However, if a majority of the precinct officers believe that person's signature is not the signature of the person who signed that name in the voter registration forms, the person cannot be refused a ballot. Instead, the person must be permitted to vote a provisional ballot (see "*Provisional ballots*," below). (R.C. 3505.22.)

### *Provisional ballots*

#### *Overview*

HAVA, among other provisions, requires states to allow certain persons to cast "provisional ballots" in elections for federal office. The bill creates a process for casting provisional ballots under state law and expands the list of persons eligible to cast those ballots. (R.C. 3505.181, 3505.182, and 3505.183.)

#### *Eligible persons*

The bill permits all of the following persons to cast provisional ballots at an election (R.C. 3505.181(A)):

- An individual who declares that the individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an 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;
- An individual required to provide identification when casting a ballot (see "*Voter identification*," above) who does not provide to the election officials any of the specified forms of identification;
- An individual whose name in the poll list or signature pollbook has been marked as having requested or returned an absent voter's ballot

or an armed services absent voter's ballot for that election who appears to vote at the polling place;

- An individual whose notification of registration has been returned undelivered to the board of elections and whose name in the official registration list and in the poll list or signature pollbook has been marked for that reason;
- An individual who is challenged by the election officials on the day of an election (see "*Challenges made on the day of an election,*" above) and the election officials determine that the person is ineligible to vote or are unable to determine the person's eligibility to vote;
- An individual whose application or challenge hearing has been postponed until after the day of the election;
- An individual whose notice of election has been returned undelivered to the board of elections and whose name in the official registration list and poll list or signature pollbook has been marked for that reason;
- An individual who moves within the state or changes the individual's name, and completes and signs the required change of address or change of name form;
- An individual whose signature, in the opinion of the precinct officers, is not that of the person who signed that name in the registration forms;
- An individual who is challenged as not being affiliated with the political party whose primary election ballot the individual desires to vote and who refuses to make the required statement, who a majority of the precinct officials find lacks any of the qualifications to make the individual a qualified elector, or who a majority of the precinct officials find is not affiliated with or a member of the political party whose ballot the individual desires to vote.

### *Process for casting*

An individual who is eligible to cast a provisional ballot must be permitted to cast a provisional ballot as follows (R.C. 3505.181(B)):

(1) An election official at the polling place must notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual must be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is both a registered voter in the jurisdiction in which the individual desires to vote and eligible to vote in that election.

(3) An election official at the polling place must transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual to an appropriate local election official for verification.

(4) If the appropriate local election official to whom the ballot or voter information is transmitted determines that the individual is eligible to vote (see "*Provisional ballots: processing and counting*," below), the individual's provisional ballot must be counted as a vote in that election.

(5) At the time that an individual casts a provisional ballot, the appropriate local election official must give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under a free access system whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted. The appropriate state or local election official must establish a free access system, in the form of a toll-free telephone number, that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted. The free access system also must provide to an individual whose provisional ballot was not counted information explaining how that individual may contact the board of elections to register to vote or to resolve problems with the individual's voter registration. The appropriate state or local 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 the ballot.

(6) If, at the time that an individual casts a provisional ballot, the individual provides identification in the form of a current valid photo identification with the individual's current address, a current valid photo identification with the individual's former address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the individual's name and current address, the appropriate local election official must record the type of identification provided and include that information with the transmission of the ballot or voter information.

(7) If an individual casts a provisional ballot because the individual does not have the required identification, is unable to provide the required documentation to resolve an election day challenge, or is the subject of a postponed application or challenge hearing, the election official must indicate, on the provisional ballot verification statement (see "*Affirmation statement and verification form*," below), that the individual is required to provide additional information to the board of elections or that an application or challenge hearing has been postponed with respect to the individual, such that additional information is required for the board of elections to determine the eligibility of the individual who cast the provisional ballot.

(8) During the ten days after the day of an election, an individual who casts a provisional ballot because the individual does not have the required identification or is unable to provide the required documentation to resolve an election day challenge may appear at the office of the board of elections and provide to the board any additional information necessary to determine the eligibility of the individual who cast the provisional ballot.

If the individual casts a provisional ballot because the individual does not have the required information, the individual who casts that ballot, within ten days after the day of the election, must provide to the board of elections proof of the individual's identity in the form of the individual's driver's license number, the last four digits of the individual's Social Security Number, a copy of a current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the individual's name and address for that ballot to be counted. If the individual casts a provisional ballot because the individual is unable to provide the required documentation to resolve an election day challenge, the individual who casts that ballot, within ten days after the day of that election, must provide to the board of elections any identification or other documentation required to be provided by the applicable challenge questions asked of that individual for that ballot to be counted. (R.C. 3505.181(B)(8).)

#### *Notification of eligibility to vote in another jurisdiction*

If an individual declares that the individual is eligible to vote in a jurisdiction other than the jurisdiction in which the individual desires to vote, or if an election official at the polling place at which the individual desires to vote determines that the individual is not eligible to vote in that jurisdiction but the individual appears to be eligible to vote in another jurisdiction, the election official is required to do all of the following (R.C. 3505.181(C)(1)):

- Direct the individual to a paper precinct finder located at that polling location that lists all of the addresses, precincts, and polling locations in the county;
- Explain that the individual may cast a provisional ballot at the current location but the ballot will not be counted if it is cast in the wrong precinct;
- Provide the telephone number of the board of elections in case the individual has additional questions.

If the individual refuses to travel to the polling location for the correct jurisdiction or to the office of the board of elections to cast a ballot, the individual must be permitted to vote a provisional ballot at that jurisdiction (R.C. 3505.181(C)(2)). If any of the following apply, the provisional ballot cast by that individual must not be opened or counted:

- The individual is not properly registered in that jurisdiction.
- The individual is not eligible to vote in that election in that jurisdiction.
- The individual's eligibility to vote in that jurisdiction in that election cannot be established upon examination of the records on file with the board of elections.

**The "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. (R.C. 3505.181(E)(1).)

**Public posting of voting information**

The bill requires the appropriate local election official to cause voting information to be publicly posted at each polling place on the day of each election (R.C. 3505.181(D)). "Voting information" means all of the following (R.C. 3505.181(E)(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., type of identification to be provided and the circumstances under which it is required;
- 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 against acts of fraud and misrepresentation.

#### **Affirmation statement and verification form**

In addition to establishing procedures for casting a provisional ballot, the bill also establishes the affirmation form that the provisional voter is required to complete (see **COMMENT** for an example of the provisional ballot affirmation). In addition to information required to be provided by the provisional voter, the form includes space for the voter to provide additional information to aid in the verification of the voter's ballot. (R.C. 3505.182.)

The form also contains a verification statement, which must be completed by the election official. On that statement, the election official must identify the type of identification, if any, provided by the provisional voter, and whether additional information is required to determine the validity of the provisional ballot. (R.C. 3505.182.)

#### **Processing and counting**

The bill also provides a process for determining the validity of provisional ballots, and for the counting of those ballots. When the ballot boxes are delivered to the board of elections from the precincts, the board must separate the provisional ballot envelopes from the rest of the ballots. Teams of employees of the board consisting of one member of each major political party are required to photocopy each provisional ballot envelope, which photocopy is used by the board to determine the eligibility of the individual who cast the provisional ballot in the photocopied envelope. After photocopying, the team of employees must place the sealed provisional ballot envelopes in a sealed container. The sealed provisional

ballot envelopes are required to remain in that sealed container until the validity of those ballots is determined. (R.C. 3505.183(A).)

The bill generally permits a board of elections to determine the validity of provisional ballots during the ten days after the day of the election. However, a board of elections is not permitted to examine the provisional ballot affirmation and additional information for any provisional ballot for which an election official has indicated on the verification statement that additional information is required for the board of elections to determine the eligibility of the individual who cast that provisional ballot until (1) the individual provides any required information, (2) until any application or challenge hearing with regard to the provisional voter is held, or (3) until the 11th day after the day of the election, whichever is earlier. (R.C. 3505.183(E).)

**Eligibility for counting.** To determine whether a provisional ballot is valid and entitled to be counted, the board must examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election. The board also must examine the information contained in the written affirmation executed by the individual who cast the provisional. The following information must be included in the written affirmation in order for the provisional ballot to be eligible to be counted: (1) the individual's name and signature, (2) a statement that the individual is a registered voter in the jurisdiction in which the provisional ballot is being voted, and (3) a statement that the individual is eligible to vote in the election in which the provisional ballot is being voted (R.C. 3505.183(B)).

In determining whether a provisional ballot is valid and entitled to be counted, the board, in addition to examining the information required to be included in the written affirmation, also must examine any additional information for determining ballot validity provided by the provisional voter on the written affirmation, provided by the provisional voter to an election official, or provided to the board of elections during the ten days after the day of the election, to assist the board in determining the individual's eligibility to vote. (R.C. 3505.183(B)(2).)

**Valid provisional ballots.** If, in examining a provisional ballot affirmation and additional information, the board determines that all of the following apply, the provisional ballot envelope must be opened and the ballot placed in a ballot box to be counted (R.C. 3505.183(B)(3)):

- The individual named on the written affirmation is properly registered to vote;

- The individual named on the written affirmation is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot;
- The individual provided all of the information required in the written affirmation that the individual executed at the time the individual cast the provisional ballot;
- If applicable, the individual provided any required additional information within ten days after the day of the election;
- If applicable, the application or challenge hearing conducted after the day of the election resulted in the individual's inclusion in the official registration list.

Provisional ballots that the board determines are eligible to be counted must be counted in the same manner as provided for other ballots. No provisional ballots may be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county for that election. Under the bill, observers may be present at all times that the teams are photocopying provisional ballot envelopes and at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible. The bill prohibits any person from recklessly disclosing the count or any portion of the count of provisional ballots in such a manner as to jeopardize the secrecy of any individual ballot. (R.C. 3505.183(D).)

**Invalid provisional ballots.** If, in examining a provisional ballot affirmation and additional information, the board determines that any of the following apply, the provisional ballot envelope must not be opened and the ballot not counted (R.C. 3505.183(B)(4)(a)):

- The individual named on the written affirmation is not qualified or is not properly registered to vote;
- The individual named on the written affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot;
- The individual did not provide all of the information required in the written affirmation that the individual executed at the time the individual cast the provisional ballot;

- The individual has already cast a ballot for the election in which the individual cast the provisional ballot;
- If applicable, the individual did not provide any required additional information within ten days after the day of the election;
- If applicable, the application or challenge hearing conducted after the day of the election did not result in the individual's inclusion in the official registration list.

If, in examining a provisional ballot affirmation and additional information, the board is unable to determine whether the individual named on the written affirmation is qualified or properly registered to vote or whether the individual named on the written affirmation is eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot, then the provisional ballot envelope must not be opened and the ballot not counted (R.C. 3505.183(B)(4)(b)).

For each rejected provisional ballot, the board is required to record the name of the provisional voter who cast the ballot and the identification number of the provisional ballot envelope and denote that the ballot within that envelope was rejected. The board must retain the photocopy of the provisional ballot envelope for that ballot for record-keeping purposes and must note the following information on that photocopy: (1) the names of the board members who determined the validity of that ballot, (2) the date and time that the determination was made, and (3) the reason that the ballot was not counted. Rejected provisional ballots must not be counted but must be preserved in their provisional ballot envelopes unopened until the time for the destruction of all other ballots used at the election for which ballots were provided, at which time they must be destroyed. (R.C. 3505.183(C).)

### **Absent voter's ballots**

#### **Any elector vote by absent voter's ballots without providing a reason**

Under existing law, any qualified elector who meets any of the following qualifications is permitted to vote by absent voter's ballots (R.C. 3509.02(A) and 3509.08(A) and (B)(1)):

- 62 years of age or older;
- Employment as a full-time fire fighter, full-time peace officer, or full-time provider of emergency medical services, that may prevent

the elector from voting at the elector's polling place on the day of an election;

- A member of the organized militia serving on active duty within Ohio and unable to vote on election day due to that active duty;
- Absence from the polling place on the day of an election because of the entry of the elector or a member of the elector's family into a hospital for surgical or medical treatment;
- Confinement in a jail or workhouse under sentence for a misdemeanor or while awaiting trial on a felony or misdemeanor charge;
- Inability to vote on election day due to observance of the elector's religious belief;
- Absence from the county in which the elector's voting residence is located on the day of an election;
- Physical disability, illness, or infirmity.

Existing law also provides that the Secretary of State, an employee of the Secretary of State, a member or employee of a board of elections, a person hired by a board of elections to work at the board's office temporarily for a specific election, or a polling place official, who is a qualified elector is permitted to vote by absent voter's ballots (R.C. 3509.02(C)).

When applying in writing to the director of elections of the elector's county of residence to vote by absent voter's ballots, an elector is required, among other things, to state the reason for the elector's absence from the polls on election day (R.C. 3509.03, first paragraph). The director of elections is required to provide to the elector an identification envelope with the requested absent voter's ballots, which the elector must complete and sign. The identification statement on the envelope also lists the previously described qualifications under which an elector may vote absent voter's ballots and requires the elector to identify which qualification applies (R.C. 3509.04). Under this general procedure, the director of elections must deliver absent voter's ballots to qualified electors in person or by special delivery mail, air mail, or regular mail (R.C. 3509.04).

Existing law provides two additional procedures for voting by absent voter's ballots for certain voters. One additional procedure applies to voters who will be unable to travel to the voting booth in their precinct on election day on account of personal illness, physical disability, or infirmity, or on account of

confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor. Generally, upon application, an absent voter's ballot may be mailed to such an elector at the person's voting residence or place of confinement, or the board of elections may designate two board employees, one from each major political party, for the purpose of delivering the ballot to the elector and returning it to the board. Disabled or confined electors who are unable to mark a ballot due to physical infirmity also may receive assistance in marking the ballot from those board employees. (R.C. 3509.08(A).)

The second additional procedure applies to qualified electors who are unable to travel to the voting booth in their precinct on election day because of being confined in a hospital as a result of an accident or unforeseeable medical emergency. An absent voter's ballot generally must be delivered to such an applicant via a family member (if requested), or by two board employees as described above, or by mail. (R.C. 3509.08(B)(1).)

The bill eliminates the categories of electors permitted by existing law to vote by absent voter's ballots, instead permitting any qualified elector to vote by absent voter's ballots (R.C. 3509.02(A) and (C)). Additionally, since the bill eliminates the previously listed qualifications for voting by absent voter's ballots, the existing requirement that the application for voting by absent voter's ballots include a statement of the reason for the elector's absence from the polls on election day is also repealed by the bill (R.C. 3509.03, first paragraph). Although an elector will continue to be required to complete and sign an identification statement on the identification envelope provided with the absent voter's ballots, under the bill, the identification statement no longer includes the list of the categories of electors currently permitted to vote by those ballots. Electors voting by absent voter's ballots under the bill are not required to identify any qualification to vote by those ballots. (R.C. 3509.04.)

The bill generally retains the additional procedures for voting by absent voter's ballots available to electors who will be unable to travel to the voting booth in their precinct on election day on account of personal illness, physical disability, or infirmity, on account of confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor, or on account of being confined in a hospital as a result of an accident or unforeseeable medical emergency. A ballot may be delivered to such a voter as described above, with assistance being provided to the voter who is unable to mark the ballot due to physical infirmity. But, under the bill, in addition to these procedures, such a voter who needs no assistance to vote or to return absent voter's ballots to the board of elections may apply for absent voter's ballots under the general procedure as modified by the bill instead of applying for them under the applicable additional procedure. (R.C. 3509.08(C).)

**Additional information on absent voter's ballot application**

Existing law permits any qualified elector desiring to vote by absent voter's ballots to make written application for those ballots to the director of elections of the county in which the elector's voting residence is located. The application does not need to be in any particular form, but it is required to contain words which, liberally construed, indicate the request for ballots, the election for which the ballots are requested, and, if the request is for primary election ballots, the person's party affiliation. The application also must state that the person requesting the ballots is a qualified elector, and the reason for the person's absence from the polls on election day (see "**Absent voter's ballots: Any elector vote by absent voter's ballots without providing a reason,**" above). The application must include sufficient information to enable the director to determine the precinct in which the applicant's voting residence is located, and the applicant must sign it. If the applicant desires to have the ballots mailed to the applicant, the application also must state the mailing address. (R.C. 3509.03.)

The bill eliminates this provision as well as the requirement that the words of the application be "liberally construed." Although the bill does not require an application for absent voter's ballots to be in a particular form, it does require the application to include all of the following (R.C. 3503.16(G), 3509.03, 3509.031, 3509.04, 3509.08, and 3511.02):

- The elector's name;
- The elector's signature;
- The address at which the elector is registered to vote;
- The elector's date of birth;
- One of the following: (1) the elector's driver's license number, (2) the last four digits of the elector's Social Security Number, or (3) a copy of the elector's current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;
- A statement identifying the election for which absent voter's ballots are requested;
- A statement that the person requesting the ballots is a qualified elector;

- If the request is for primary election ballots, the elector's party affiliation;
- If the elector desires ballots to be mailed to the elector, the address to which those ballots should be mailed.

If the elector is requesting armed service absent voter's ballots, the application must contain the following additional information (R.C. 3511.02):

- A statement that the elector is serving in the armed forces of the United States or is the spouse or dependent of a person serving in the armed forces of the United States;
- A statement of the elector's length of residence in the state immediately preceding the commencement of service of immediately preceding the date of leaving to be with or near the service member, whichever is applicable.

Under existing law, if the elector is a member of the organized militia called to duty in Ohio on the day of an election or if the elector is requesting armed service absent voter's ballots, the elector may request the ballots to be sent to the elector by facsimile machine. If such an elector desires those ballots to be faxed, the elector must, under the bill, also provide the telephone number to which they should be sent. (R.C. 3509.031 and 3511.02.)

The spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, sister, half-brother, half-sister, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of such an elector also may apply for absent voter's ballots on the elector's behalf. In that case, the application must include all of the previous information as well as a statement that the applicant bears one of the described relationships to the elector, the address to which the ballots should be mailed or the telephone number to which they should be sent by facsimile machine, and the signature and address of the person making the application on the elector's behalf. (R.C. 3509.031 and 3511.02(C).)

If a director of a board of elections receives an application for absent voter's ballots or armed service absent voter's ballots that does not contain all of the required information, the director is required to promptly notify the applicant of the additional information required to be provided by the applicant to complete the application (R.C. 3509.04 and 3511.04).

### **Additional information on absent voter's ballot identification envelope**

Existing law specifies the form for the "Statement of Voter" that must be printed on the identification envelope that accompanies an absent voter's ballot. In addition to removing from the statement the reasons that a person may vote by absent voter's ballots (see "**Absent voter's ballots: Any elector vote by absent voter's ballots without providing a reason,**" above), the bill also changes that statement by requiring the absent voter to provide additional information. In addition to the information that must be included under existing law, the bill requires an absent voter to provide that voter's date of birth. The voter also must provide either the voter's driver's license number or the last four digits of the voter's Social Security Number, or, in lieu of providing either of those numbers, the voter may enclose in the return envelope a copy of a current and valid photo identification or a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address. (R.C. 3509.04, 3509.05, and 3511.09.) If the absent voter does not provide the required identification, the absent voter's ballot must not be counted (R.C. 3509.07).

### **Casting provisional ballots if absent voter's ballots have been requested**

The bill requires the poll list or signature pollbook for each precinct to identify both of the following (R.C. 3509.09(A) and 3511.13(A)):

- Each registered elector in that precinct who has requested an absent voter's ballot for that election;
- Each registered elector in that precinct who has returned a sealed identification envelope purporting to contain the elector's voted absent voter's ballots for that election to the director of the board of elections of that county.

If a registered elector appears to vote in that precinct and that elector has requested an absent voter's ballot for that election, but the director *has not received* a sealed identification envelope purporting to contain that elector's voted absent voter's ballots for that election, the elector must be permitted to cast a provisional ballot (see "**Provisional ballots,**" above) in that precinct on the day of that election (R.C. 3509.09(B)(1) and 3511.13(B)(1)). If a registered elector appears to vote in that precinct and that elector has requested an absent voter's ballot for that election and *the director has received* a sealed identification envelope purporting to contain that elector's voted absent voter's ballots for that election, the elector also must be permitted to cast a provisional ballot in that precinct on the day of that election (R.C. 3509.09(B)(2) and 3511.13(B)(2)). However, continuing law

makes it a felony of the fourth degree to vote or attempt to vote more than once at the same election by any means (R.C. 3599.12(A)(2) and (B)).<sup>7</sup>

In counting absent voter's ballots, the board of elections or the precinct election officials must compare the poll list or the signature pollbook for each precinct with the name of each elector in that precinct from whom the director has received a sealed identification envelope purporting to contain that elector's voted absent voter's ballots for that election. If the board of elections determines that an elector who cast a provisional ballot in the precinct on the day of the election also returned a sealed identification envelope for that election, the absent voter's ballot in the sealed identification envelope generally must be counted, and the provisional ballot cast in the precinct on the day of the election must not be counted. (R.C. 3509.09(C)(1) and 3511.13(C)(1).) However, the board of elections must count the provisional ballot, instead of the absent voter's ballot, if both of the following apply (R.C. 3509.09(C)(2) and 3511.13(C)(2)): (1) the board of elections determines that the signature of the elector on the outside of the envelope in which the absent voter's ballots are enclosed does not match the signature of the elector on the elector's registration form, and (2) the elector cast a provisional ballot in the precinct on the day of the election. If the board of elections counts a provisional ballot under this provision, the identification envelope of that elector must not be opened and the ballots within that envelope must not be counted. The identification envelope must be endorsed "Not Counted" with the reason the ballot was not counted. (R.C. 3509.09(C) and 3511.13(C).)

### **Submission of absent voter's ballot applications**

Under existing law, it is a felony of the fourth degree to fail to forward to the appropriate election official an absent voter's ballot application entrusted to that person to so forward (R.C. 3599.21(A)(7)). The bill retains this prohibition and penalty and establishes additional prohibitions and penalties related to the submission of absent voter's ballots on behalf of another. Under the bill, it is a felony of the fourth degree to do any of the following (R.C. 3599.21(A)(8) and (B)):

- Fail to forward to the appropriate election official an absent voter's ballot application entrusted to that person to so forward within such a time period that the failure to so forward the application disenfranchises the voter with respect to a particular election;

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<sup>7</sup> A felony of the fourth degree has a presumption against a prison term and is punishable by a prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months, community control sanctions, and financial sanctions, including a fine of not more than \$5,000 (R.C. 2929.14 and 2929.18).

- Fail to forward to the appropriate election official an absent voter's ballot application entrusted to that person to so forward within ten days after that application is completed, if the person receives compensation for soliciting persons to apply to vote by absent voter's ballots<sup>8</sup>;
- Fail to forward to the appropriate election official an absent voter's ballot application entrusted to that person to so forward within such a time period that the failure to so forward the application disenfranchises the voter with respect to a particular election, if the person receives compensation for soliciting persons to apply to vote by absent voter's ballots.

### **Additional prohibitions and penalties**

The bill establishes two additional prohibitions and penalties related to absent voter's ballots. Under the bill, it is a felony of the fourth degree to possess the absent voter's ballot of another, except as authorized under the Election Law (R.C. 3599.21(A)(9)). And, no person is permitted to recklessly disclose the count or any portion of the count of absent voter's ballots in such a manner as to jeopardize the secrecy of any individual ballot (R.C. 3509.06(E)). Violating this prohibition is a misdemeanor of the first degree (R.C. 3599.40).

### **Recounts**

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

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 (R.C. 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

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<sup>8</sup> A "person who receives compensation for soliciting persons to apply to vote by absent voter's ballots" includes any effort, for compensation, to provide absent voter's ballot applications or to assist persons in completing those applications or returning them to the director of the board of elections of the county in which the applicant's voting residence is located (R.C. 3599.21(C)).

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. (R.C. 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 (R.C. 3515.07). However, no charge per precinct can be deducted from the deposited money in any of the following circumstances (R.C. 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. (R.C. 3515.07.)

The bill generally retains the existing law process for determining and paying the cost of a non-automatic recount. However, it increases from \$10 to \$50 the maximum per precinct charge that may be imposed for such a recount, as well as the amount per precinct that must be deposited with a board of elections at the time a recount is requested (R.C. 3515.03 and 3515.07).

### **Automatic adjustments to the per precinct charge for recounts**

The bill also establishes a process by which the per precinct charge, and the amount required to be deposited with a board of elections, will be adjusted in the future. Under the bill, the Secretary of State is required, in January of each odd-numbered year, to adjust those amounts based on the yearly average of the previous two years of the Consumer Price Index for All Urban Consumers, as determined by the United States Department of Labor, Bureau of Labor Statistics. The Secretary of State must determine the percentage increase or decrease and multiply that by the per precinct charge and required deposit amounts. If the result is less than \$5, the Secretary of State must retain a record of the calculation, but not make an adjustment unless the resulting amount, when added to the resulting amount calculated in prior odd-numbered years since the last adjustment was made, equals or exceeds \$5. (R.C. 3515.072(A)).

The Secretary of State is required to report the adjustment calculations to the State Auditor by January 31, in each odd-numbered year. By February 15 in each odd-numbered year, the Auditor of State must certify those calculations. On or before February 25 in each odd-numbered year, the Secretary of State must prepare a report setting forth the amount required to be deposited with a board of elections upon the request of a non-automatic recount and the minimum and maximum per precinct charge. The report must contain all of the following: (1) an indication of the period in which the deposit amount and the minimum and maximum per precinct charges apply, (2) a summary of how the deposit amounts and the minimum and maximum per precinct charges were calculated, and (3) a statement that the report and all related documents are available for inspection and copying at the office of the Secretary of State. (R.C. 3515.072(B)).

On or before February 25 in each odd-numbered year, the Secretary of State must transmit the report to the General Assembly and send the report by electronic mail or other form of electronic communication to the board of elections of each county. The report and all documents relating to the calculations contained in the report are public records. (R.C. 3515.072(B)(3) and (4)).

### **Completion of the recount of a presidential election**

Existing state law does not provide any deadline by which a recount must be completed. The United States Code, however, requires any recount of a presidential election to be completed not less than six days prior to the date on which the Electoral College is scheduled to meet and vote (3 U.S.C.A. 5). The bill establishes, in state law, the same deadline applicable to presidential recounts. Thus, under the bill, both state and federal law require recounts of presidential elections to be completed not later than six days before the time that the Electoral College is scheduled to meet. (R.C. 3515.041.)

### *Election calendar changes*

Existing law specifies the time at which certain election activities are required to take place. For example, existing law generally requires an issue to be certified to the board of elections for placement on the ballot, or a partisan candidate to file a declaration of candidacy and petition, 75 days before the day of an election. Similar provisions establish deadlines for boards of elections to verify the validity of petitions, certify the form of the ballot that will be used at an election, and perform other election-related duties. The bill changes these deadlines as follows:

- Permits a petition that is filed for the nomination or election of a candidate in a charter municipal corporation after the 75th day before the day of the election to be invalidated within 15 days after the petition is filed, and specifies that, if a petition is so invalidated, the person's name must not appear on the ballots, if the person's name is not removed from the ballots before the day of the election, votes for that person are void and must not be counted (R.C. 3501.39(C));
- Changes from 50 to 62 days before the day of the election the deadline by which a declaration of intent to be a write-in candidate must be filed (R.C. 3513.041);
- Changes from 45 to 57 days before the day of the election the deadline by which a protest against a declaration of intent to be a write-in candidate must be filed (R.C. 3513.041);
- Specifies that, if a person withdraws or is disqualified as a candidate on or before the 60th day before the day of an election, or, if the election is a presidential primary election, on or before the 45th day before the day of the presidential primary election, the board of elections must remove the person's name from the ballot (R.C. 3511.052 and 3513.30);
- Specifies that, if a person withdraws or is disqualified as a candidate after the 60th day before the day of an election, or, if the election is a presidential primary election, after the 45th day before the day of the presidential primary election, the board of election must not remove the person's name from the ballot, but notification must be posted at each polling location and made with each absent voter's ballot that votes for the withdrawn or disqualified candidate will be void and not counted (R.C. 3513.052 and 3513.30);

- Revises the time period within which boards of elections must determine the validity of local option election petitions and county and municipal referendum petitions to match the time period for within which the boards must determine the validity of other election petitions (e.g., seven days after the petitions are filed) (R.C. 305.31, 731.29, 4301.33, 4301.331, 4301.332, 4301.333, 4301.334, and 4305.14).

### **Nomination and election of municipal court judges and clerks**

#### **Petition signatures required for candidates for municipal court**

**In general.** All municipal court judges are elected on the nonpartisan ballot for terms of six years. Those judges may be nominated either by nominating petition or by primary election. (R.C. 1901.07.) Candidates that are nominated by primary election must file a declaration of candidacy and petition; the petition must be signed by not less than 50 qualified electors of the same political party as the political party of which the candidate is a member (R.C. 3513.05). Candidates that are nominated by nominating petition must file that petition; under existing law, the number of signatures required on that petition varies depending upon the municipal court to which the candidate is seeking election. For example, a nominating petition for the office of judge of the Akron municipal court currently must be signed by 250 electors of the territory of the court. A similar petition filed for the office of judge of the Hamilton county municipal court must be signed by 1,000 electors of the territory of the court. (R.C. 1901.07(B).)

The bill eliminates the varying number of signatures required on nominating petitions filed for different municipal courts, and instead requires 50 signatures for either a declaration of candidacy and petition or for a nominating petition for a person seeking to become a candidate for the office of municipal court judge. (R.C. 1901.07.)

**Election for an unexpired term.** If a vacancy occurs in the office of municipal court judge or in the office of an elected municipal court clerk after the 100th day before the primary election and before the 40th day before the general election, a person seeking election to the unexpired term of that municipal court judge or clerk must file a nominating petition to become a candidate for that election. Existing law generally requires nominating petitions, in such a case, to be signed by qualified electors of the territory of the court not less in number than 1% of the number of electors who voted for governor at the most recent regular state election in that territory, or by 2,500 electors, whichever is less. For municipal courts in which specific numbers of signatures are required for nominating petitions (see "**Petition signatures required for candidates for municipal**

**court: In general,**" above), existing law requires the nominating petitions to be signed by qualified electors of the territory of the court not less in number than 1% of the number of electors who voted for governor at the most recent regular state election in that territory, or by the number of electors generally needed for a nominating petition for that court, whichever is less. (R.C. 1901.07(B) and 1901.10(A)(1).)

The bill eliminates the varying number of signatures required on nominating petitions filed for unexpired terms for different municipal courts, and instead requires a person seeking to become a candidate for an unexpired term as a municipal court judge or an elected municipal court clerk to file a nominating petition signed by at least 50 qualified electors of the territory of the court. (R.C. 1901.10(A)(1)(c).)

#### **Filing deadline for candidates for municipal court judge**

Under existing law, unless charter provisions of a particular municipal corporation apply, nonpartisan candidates for the office of municipal court judge generally must file their nominating petitions not later than 4 p.m. of the day before the day of the primary election, and candidates for party nomination to the office of municipal court judge generally must file their statements of candidacy and petitions not later than 4 p.m. of the 75th day before the day of the primary election (or the 60th day before the day of a presidential primary election). However, existing law also contains specific exceptions to this general rule. For example, nominating petitions for the Cleveland Municipal Court are required to be filed in the manner and within the time prescribed by the charter of the city of Cleveland for filing petitions of candidates for municipal offices. (R.C. 1901.07(B) and (C).)

The bill eliminates the different filing deadlines applicable to specific municipal courts and instead establishes a general rule that applies to all municipal courts (1) whose jurisdiction extends beyond the corporation limits of the municipal corporation in which it is located or (2) whose jurisdiction does not extend beyond the corporation limits of the municipal corporation in which it is located and to which no municipal charter provisions apply. For those courts, all nonpartisan candidates for the office of municipal court judge must file their nominating petitions not later than 4 p.m. of the day before the day of the primary election, and candidates for party nomination to that office must file their declarations of candidacy and petitions not later than 4 p.m. of the 90th day before the day of the primary election. Applicable municipal charter provisions governing the nomination and election of candidates for the office of municipal court judge will still apply, under the bill, to any municipal court whose jurisdiction does not extend beyond the corporation limits of the municipal corporation in which the court is located.

Also, existing law requires all candidates for certain municipal courts to be nominated by nominating petition only. The bill eliminates this requirement. The significance of this change will vary depending on whether a charter is involved and the provisions of that charter. (R.C. 1901.07(B).)

### **Filing requirements for candidates for municipal court clerk**

Under existing law, candidates for the office of municipal court clerk generally are nominated and elected in the manner provided for the nomination and election of municipal court judges (R.C. 1901.31(A)(1)(a)). For certain municipal courts, existing law provides specific procedures for the nomination and election or for the appointment of municipal court clerks. For example, in the Barberton Municipal Court candidates for election to the office of municipal court clerk must be nominated by a primary election held on the day specified in the charter of the city of Barberton for the nomination of municipal officers. Nominating petitions for independent candidates for that office must be signed by at least 250 qualified electors of the territory of the court. (R.C. 1901.31(A)(1)(f).)

The bill retains the general requirement that candidates for municipal court clerk be nominated and elected in the same manner as candidates are nominated and elected for the office of municipal court judge. It also eliminates the specific nomination and election procedures applicable to the *election* of clerks of the Akron, Barberton, Cuyahoga Falls, and Toledo municipal courts. Thus, candidates for the office of clerk of those four municipal courts must, under the bill, be nominated and elected in the same manner as candidates are nominated and elected for judge of those municipal courts. However, the specific procedures for the *appointment* of a municipal court clerk for the Medina County, Hamilton County, Portage County, and Wayne County municipal courts remains unchanged by the bill. (R.C. 1901.31(A)(1) and 1901.33(D).)

### **Secretary of State election instructions and publications**

#### **Web site publication of directives and advisories**

Existing law requires the Secretary of State to issue instructions by directives and advisories to the members of the boards of elections as to the proper methods of conducting elections (R.C. 3501.05(B)). Boards of elections, in addition to the duties set forth in the Elections Law, must perform other duties as prescribed by the rules, directives, or advisories of the Secretary of State (R.C. 3501.11(P)). Under existing law, there are no statutory procedures or requirements for publishing those directives and advisories.

The bill requires the Secretary of State, in addition to any other publication of those directives and advisories, to publish them on a web site of the Secretary of

State's office within 24 hours after they are issued. The Secretary of State is not permitted to remove from the web site any directives and advisories that are so posted, and the Secretary of State must provide access to all directives and advisories that are currently in effect and to an archive of all directives and advisories that were previously published on that web site. (R.C. 3501.05(B).)

### **Scheduled conference calls with a board of elections**

The bill requires the Secretary of State, among other duties, to ensure that scheduled conference calls with boards of elections (1) to discuss the proper methods and procedures for conducting elections, (2) to answer questions regarding elections, or (3) to discuss interpretations of directives, advisories, or other instructions issued by the Secretary of State comply with the Open Meetings Law (R.C. 3501.05(W)).

The Open Meetings Law provides that (R.C. 121.22(C)): (1) all meetings<sup>9</sup> of any public body<sup>10</sup> are declared to be public meetings open to the public at all times, (2) a member of a public body must be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting, and (3) the minutes of a regular or special meeting of any public body must be promptly prepared, filed, and maintained and be open to public inspection. The Law requires every public body, by rule, to establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body cannot hold a special meeting unless it gives at least 24 hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting must notify the news media that have requested notification immediately of the time, place, and purpose of the meeting. (R.C. 121.22--unchanged by the bill.)

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<sup>9</sup> "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members (R.C. 121.22(B)).

<sup>10</sup> "Public body" means: (1) any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution, (2) any committee or subcommittee of any such body, or (3) a court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for specified purposes (R.C. 121.22(B)).

In addition to the general Open Meetings Law requirements, the bill also requires the Secretary of State to provide all of the following for all such conference calls (R.C. 3501.05(W)):

- A method for the public to listen to the conference call at the time the call is made;
- The posting of complete audio recordings of the conference call on a web site of the office of the Secretary of State within 24 hours after the completion of the call;
- The posting of a complete transcript of the conference call on a web site of the office of the Secretary of State within 24 hours after the completion of the call.

#### **Rules for split shifts for judges of elections**

Existing law provides for the appointment of judges of election to work at the polling places on the day of an election. Those judges are required to work from 6 a.m. (one half hour before the polls open) until their duties are completed following the closing of the polls (R.C. 3501.26, 3501.31, and 3501.32). The bill requires the Secretary of State to adopt administrative rules to permit boards of elections to appoint election judges in such a manner that those judges may serve in split shifts on the day of an election (R.C. 3501.05(X)).

#### **Report on absent voter and provisional ballots cast and counted**

The bill requires the Secretary of State to publish a report on a web site of the office of the Secretary of State not later than one month after the completion of the canvass of the election returns for each primary and general election. The report must identify, by county, the number of absent voter's ballots cast and the number of those ballots that were counted. The report also must identify, by county, the number of provisional ballots cast and the number of those ballots that were counted. The Secretary of State must maintain the information on the web site in an archive format for each subsequent election. (R.C. 3501.05(Y).)

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

##### **Ballot standards for optical scan ballots**

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 (R.C. 3506.02). 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 (R.C. 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 (R.C. 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. (R.C. 3506.15--not in the bill.)

The bill does not change these provisions regarding voting machines, marking devices, and automatic tabulating equipment, while defining and establishing counting standards for an additional type of automatic tabulating equipment ballot. An optical scan ballot 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 (R.C. 3506.21(A)).

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 a majority of those marks are made in a consistent manner throughout an optical scan ballot, must be counted as a valid vote (R.C. 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.

These marks must be counted as valid votes only if the optical scan ballot contains no marks that can be scanned and electronically read by automatic tabulating equipment (R.C. 3506.21(B)(2)).

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 (R.C. 3506.21(C)).

### **Allocation and distribution of voting machines**

Under existing law, boards of elections, among other duties, must cause the polling places to be suitably provided with stalls and other required supplies. In addition to these items, the bill requires a board of elections to cause the polling places to be suitably provided with voting machines, marking devices, and automatic tabulating equipment. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment must conduct a full vote of the board during a public session 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).)

### **Voter verified paper audit trail rule requirements**

Existing law specifies that, on and after the first federal election after January 1, 2006, direct recording electronic voting machines that are approved for use in Ohio must include a voter verified paper audit trail (R.C. 3506.10(P)). The Secretary of State, before the initial certification of any direct recording electronic voting machine with a voter verified paper audit trail, and as a condition for the continued certification of those machines, is required to establish, by rule, standards for the certification of those machines. Those standards are required to include, but are not limited to, all of the following (R.C. 3506.05(H)(3)(a)):

- A definition of a voter verified paper audit trail as a paper record of the voter's choices that is verified by the voter prior to the casting of the voter's ballot and that is securely retained by the board of elections;

- Requirements that the voter verified paper audit trail must not be retained by any voter and must not contain individual voter information;
- A prohibition against the production by any direct recording electronic voting machine of anything that legally could be removed by the voter from the polling place, such as a receipt or voter confirmation;
- A requirement that the paper used in producing a voter verified paper audit trail be sturdy, clean, and resistant to degradation;
- A requirement that the voter verified paper audit trail must be capable of being optically scanned for the purpose of conducting a recount or other audit of the voting machine and must be readable in a manner that makes the voter's ballot choices obvious to the voter without the use of a computer or electronic codes.

The bill retains these requirements and adds two additional requirements to the rules that the Secretary of State is required to issue (R.C. 3506.05(H)(3)(a)(vi) and (vii)):

- A requirement, for office-type ballots, that the voter verified paper audit trail include the name of each candidate selected by the voter;
- A requirement, for questions and issues ballots, that the voter verified paper audit trail include the title of the question or issue, the name of the entity that placed the question or issue on the ballot, and the voter's ballot selection on that question or issue, but not the entire text of the question or issue.

### **Accessible marking devices**

On and after the first federal election that occurs after January 1, 2006, each polling location is required to have available for use at all elections at least one direct recording electronic voting machine that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. The bill expands the type of equipment that may be used to meet this disability access requirement. Under the bill, a county must have available at least one direct recording electronic voting machine or marking device that is accessible. (R.C. 3506.19.)

## *Prohibitions on duplicate candidacy*

### *Nomination or election to a federal office and a state or county office*

Under existing law, a person is prohibited from seeking nomination or election to any of the following offices or positions at the same election (R.C. 3513.052(A)):

- Two or more state offices;
- Two or more county offices;
- A state office and a county office;
- Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.

The bill expands the prohibition against seeking nomination or election to two or more offices or positions at the same election. Under the bill, a person also is prohibited from seeking nomination or election to a federal office and a state or county office at the same election (R.C. 3513.052(A)(5)).

If it is determined that a person is seeking nomination or election to a federal office and a state or county office at the same election, the bill specifies the manner in which that person will be disqualified from being a candidate for one or more of those offices. The Secretary of State or a board of elections must not accept for filing a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition of a person, if that person, for the same election, has already done any of the following to seek nomination or election for a prohibited office (R.C. 3513.04, 3513.041, 3513.05, 3513.052(B), 3513.257, 3513.259, and 3513.261):

- Filed a declaration of candidacy;
- Filed a declaration of intent to be a write-in candidate;
- Filed a nominating petition;
- Become a candidate by receiving a party's nomination at a primary election;
- Become a candidate through the filling of a vacancy caused by the death or withdrawal of a candidate.

**Disqualification from the ballot before the primary election**

If the Secretary of State determines, before the day of the primary election, that a person is seeking nomination to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking nomination is wholly within a single county, the Secretary of State must notify the board of elections of that county. The board then must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. (R.C. 3513.052(C)(1)(c) and (d).)

If a board of elections determines, before the day of the primary election, that a person is seeking nomination to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking nomination is wholly within a single county, the board must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the board must notify the Secretary of State. The Secretary of State then must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. (R.C. 3513.052(C)(2)(c) and (d).)

**Disqualification from the ballot before the general election**

If the Secretary of State determines, after the day of the primary election and before the day of the general election, that a person is seeking election to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking election is wholly within a single county, the Secretary of State must notify the board of elections of that county. The board then must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office. If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is

seeking election is a federal office, the Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office. (R.C. 3513.052(D)(1)(c) and (d).)

If a board of elections determines, after the day of the primary election and before the day of the general election, that a person is seeking election to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking election is wholly within that county, the board must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office. If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the board must notify the Secretary of State. The Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office. (R.C. 3513.052(D)(2)(c) and (d).)

### **Penalty for interference with elections**

Existing law prohibits a person from loitering in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election. It also prohibits a person from removing from the voting place the pencils, cards of instruction, supplies, or other conveniences furnished to enable the voter to mark the voter's ballot. Under existing law, a person who violates either of these prohibitions is guilty of a minor misdemeanor.<sup>11</sup> The bill increases the penalty for

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<sup>11</sup> A minor misdemeanor is punishable by a fine of not more than \$150 (R.C. 2929.28).

violating either of these prohibitions to a misdemeanor of the first degree.<sup>12</sup> (R.C. 3599.24(B).)

### **Campaign activities near line of waiting voters**

Existing law prohibits a person from loitering, congregating, or engaging in any kind of election campaigning within the area between the polling place and the small flags of the United States that are required to be placed on the thoroughfares and walkways leading to the polling place. Within that same distance, no person may give, tender, or exhibit any ballot or ticket other than the person's own ballot to the judge of elections. (R.C. 3501.35.)

The bill expands these prohibitions beyond the small flags that must be placed 100 feet from the polling place. Under the bill, these same activities are prohibited within the flags and, if the line of electors waiting to vote extends beyond those small flags, within ten feet of any elector in that line. (R.C. 3501.35(A)(1) and (3).)

### **Creation of a private cause of action for certain Election Law violations**

The bill specifies that an elector has a cause of action for any violation of Chapter 3501. of the Revised Code. Chapter 3501. of the Revised Code generally establishes the procedures for conducting elections and specifies the duties of the Secretary of State, boards of elections, and other election officials in conducting elections. The chapter also includes prohibitions against persons campaigning near the line of waiting voters and against persons hindering or delaying electors in reaching or leaving the polling place. (R.C. 3501.05, 3501.11, 3501.33, and 3501.35.) Under the bill, an elector may seek a declaratory judgment, an injunction, or other appropriate equitable relief from any person or organization that violates these provisions (R.C. 3501.90).

If the violation involves a failure of the election officials to stop improper practices or attempts to obstruct, intimidate, or interfere with electors registering or voting (R.C. 3501.33), or if the violation involves persons campaigning near the line of waiting voters, hindering or delaying electors in reaching or leaving the polling place, or engaging in certain other prohibited activities (R.C. 3501.35), the elector is entitled to additional relief, as follows (R.C. 3501.90):

- If the violation in any way interfered with, obstructed, intimidated, or intentionally or recklessly threatened or caused bodily harm to the

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<sup>12</sup> A misdemeanor of the first degree generally is punishable by a definite term of imprisonment of not more than 180 days, community control sanctions, and financial sanctions, including a fine of not more than \$1,000 (R.C. 2929.24(A) and 2929.28(A)).

elector while the elector was attempting to register to vote, to obtain an absent voter's ballot, or to vote, the elector may recover three times the amount of the elector's actual damages or \$1,000, whichever amount is greater, in addition to attorney's fees and other appropriate legal relief, either individually or in a class action.

- If the defendant in the action is an organization and has previously been determined by an Ohio court to have violated either of the specified provisions, the elector may assert an additional claim for relief, either individually or in a class action, against that organization that may seek any of the following, upon proof of the elector's claim for relief by a preponderance of the evidence: (1) divestiture of the organization's interest in any enterprise or in any real property, (2) reasonable restrictions upon the future activities or investments of the organization including, but not limited to, prohibiting the organization from engaging in any further conduct that violates those provisions, (3) the dissolution or reorganization of the organization, (4) the suspension or revocation of any license, permit, or prior approval granted to the organization by any state agency, or (5) the revocation of the organization's authorization to do business in Ohio if the organization is a foreign corporation.

It is not a defense to any action brought under this provision that no criminal prosecution was commenced or conviction obtained in connection with the conduct alleged to be the basis of the elector's cause of action (R.C. 3501.90(C)). In bringing an action under this provision, the elector is entitled to name as defendants each person who violated the applicable Revised Code provisions, as well as any organization that employs, sponsors, or has agents any of those persons or that has organized a common scheme to cause those violations (R.C. 3501.90(D)).

### **Residency requirement for circulators and signers of initiative petitions**

Under existing law, no person is entitled to vote at an election, or to sign or circulate any declaration of candidacy or any nominating, initiative, referendum, or recall petition unless the person is (1) registered as an elector and (2) 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).

The bill generally retains this provision, except with respect to circulating initiative petitions. Under the bill, no person is entitled to circulate an initiative petition unless the person is a *resident* of the state (R.C. 3503.06(B)(1)). To sign an initiative petition, as under existing law, a person must be 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)(2)).

### **Notification of impending retirement for candidates**

With exceptions, a Public Employees Retirement System (PERS) member who retires while holding a state or local elective office and then is elected or appointed to the same office for the remainder of the term or the subsequent term is subject to a retirement allowance penalty. The penalty is forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion.<sup>13</sup> The penalty continues until the re-employment terminates. The retirement allowance resumes on the first day of the first month after re-employment terminates.

The bill changes one of the exceptions. Under existing law, an elected official may avoid the penalty by filing a written declaration of the person's intent to retire with the county board of elections not less than 90 days before the primary election or, if no primary is scheduled, 90 days before the date on which a primary would have been held. The bill requires the written declaration to be filed with the director of the board of elections. (R.C. 145.38.) Upon receipt of such a written declaration, the director must provide a copy of it to each member of the board (R.C. 3501.13).

### **Publication of notification of elections**

Existing law requires a board of elections, and, upon occasion, other public entities, to publish notices of elections in newspapers of general circulation in the area in which an election will be held. Depending upon the type of election, existing law requires a notice to be so published from zero to four times prior to the date of an election. The bill generally reduces to two the number of times public notices on specified elections must be published in newspapers of general circulation in the area in which the election will be held.<sup>14</sup> (R.C. 131.23, 306.70, 307.791, 322.021, 324.021, 503.162, 504.02, 504.03, 511.28, 511.34, 513.34,

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<sup>13</sup> A PERS retirement allowance consists of a pension and an annuity. The annuity portion is based on the member's contributions during employment. The pension portion is funded by the employer's contributions made on behalf of the member and PERS's investment earnings.

<sup>14</sup> The bill does not change the number of times notices of statewide issues must be published in newspapers of general circulation, as those notices are governed by Article II, Section 1g of the Ohio Constitution. Under that constitutional provision, notices of statewide issues must be published three times in a newspaper of general circulation in the state.

745.07, 747.11, 3311.21, 3311.50, 3311.73, 3349.29, 3354.12, 3355.09, 4504.021, 5705.191, 5705.194, 5705.196, 5705.21, 5705.218, 5705.25, 5705.251, 5705.261, 5705.71, 5739.022, 5748.02, 5748.04, 5748.08, and 6119.18). The bill does not change the number of times notices of elections are required to be published if, under existing law, those elections must be published two times or less.

### **Elimination of election contests for federal office under state law**

Existing law permits contests of election to be filed under state law regarding the nomination or election of any person to any public office or party position or regarding the approval or rejection of any issue or question, submitted to the voters in this state. The bill eliminates the ability to file contests of elections under state law for the nomination or election of any person to any federal office, including the office of elector for President and Vice President and the office of member of Congress. Under the bill, contests of the nomination or election of any person to any federal office must be conducted in accordance with the applicable provisions of federal law. (R.C. 3515.08.)

### **Completion of the canvass**

Boards of elections generally are required to begin to canvass precinct election returns not earlier than the 11th day and not later than the 15th day after a primary, general, or special election or, if a special election is held on the day of a presidential primary election, not earlier than the 21st day or later than the 25th day after the special election.<sup>15</sup> Under existing law, the Secretary of State is required to specify, by a directive issued not later than 35 days prior to the date of an election, the date by which boards of elections must complete the canvass of the election returns. Sixty days after the date the Secretary of State specifies for the completion of the canvass, the canvass must be deemed final, and no amendments to the canvass may be made after that 60-day period. If required by federal law, the Secretary of State is permitted to specify an earlier date upon which the canvass will be deemed final, and after which amendments to the final canvass may not be made. (R.C. 3501.05(U), 3505.32(A), and 3513.22(A).)

The bill eliminates the Secretary of State's authority to specify a date by which the canvass of election returns must be completed. Instead, the bill requires the canvass of election returns to be completed not later than the 21st day after the day of the election, or if a special election is held on the day of a presidential

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<sup>15</sup> *Armed service absent voter's ballots and absent voter's ballots from voters who are outside the United States on the day of an election may be considered valid and be counted if they are received by the director of the board before the 21st day after the day of a presidential primary election (R.C. 3509.05 and 3511.11).*

primary election, not later than the 31st day after the day of the special election. Eighty-one days after the day of the election, or 91 days after the day of a special election held on the day of a presidential primary election, the canvass must be deemed final, and no amendments to the canvass may be made after that date. As under existing law, the bill permits the Secretary of State to specify an earlier date upon which the canvass will be deemed final, and after which amendments to the final canvass may not be made, if so required by federal law. (R.C. 3505.32(A) and 3513.22(A).)

### **Campaign Finance Law changes**

#### **Definition of "campaign committee"**

Prior to the enactment of Am. Sub. H.B. 1 of the 125th General Assembly Special Session, a "campaign committee" was defined for the purpose of the Campaign Finance Law as a candidate, or a combination of two or more persons authorized by a candidate to receive contributions and make expenditures. Am. Sub. H.B. 1 changed this definition in two ways. First, it required a campaign committee to be "an entity formed by" a candidate or two or more persons authorized by a candidate. Second, the entity had to be legally liable for any debts, contracts, or expenditures incurred or executed in its name. (R.C. 3517.01(B)(1).)

The bill re-establishes, for the purpose of the Campaign Finance Law, the definition of a campaign committee as it existed prior to Am. Sub. H.B. 1, but retains the requirement that a campaign committee must be legally liable for any debts, contracts, or expenditures incurred or executed in its name (R.C. 3517.01(A)(2) and (B)(1)).

#### **Mid-year campaign finance statements**

Under continuing law, campaign committees, political action committees, legislative campaign funds, and political parties that make or receive a contribution or make an expenditure in connection with the nomination or election of any candidate, or in connection with any ballot issue or question, must file campaign finance statements at specified times. One of those statements must be filed on the last business day of July of every year to reflect the contributions received and the expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the last day of June of that year. A mid-year statement is not required to be filed, under existing law, for any year in which a campaign committee, political action committee, legislative campaign fund, or political party is required to file a postgeneral election statement, although such a statement may be filed at the committee's, fund's, or party's option. (R.C. 3517.10(A).)

The bill eliminates the exception applicable to years in which a postgeneral election statement must be filed. The bill also establishes a different exception applicable to certain campaign committees. Under the bill, a political action committee, legislative campaign fund, and political party must file a mid-year campaign finance statement in a year in which the committee, fund, or party must file a postgeneral election statement. A campaign committee, under the bill, only must file a mid-year statement if the campaign committee is the campaign committee of a statewide candidate or the campaign committee of a candidate for county office.<sup>16</sup> Such a campaign committee is not required to file a mid-year statement for any year in which the campaign committee is required to file a postprimary statement, although the campaign committee may file a statement in that year, at the campaign committee's discretion. (R.C. 3517.10(A).)

**Document filed to indicate paper filing of campaign finance statements**

A campaign committee of a statewide candidate that receives contributions or makes expenditures exceeding \$10,000 during a reporting period, or a campaign committee for a candidate for the office of member of the General Assembly or the campaign committee of a candidate for the office of judge of a court of appeals that receives contributions of more than \$10,000 during a reporting period generally must file campaign finance statements by electronic means of transmission to the office of the Secretary of State (R.C. 3517.106(E) and (F)). However, existing law permits such a campaign committee to file early on paper, and to have that paper count as an electronic filing, under specified circumstances. Under existing law, the candidate of a campaign committee that intends to file early on paper must file an *affidavit* indicating that the candidate's campaign committee intends to file in that manner and stating that filing by electronic means of transmission would constitute a hardship for the candidate or campaign committee. If a campaign committee whose candidate has filed that *affidavit* subsequently fails to file by paper by the applicable deadline, penalties for the late filing of campaign finance statements must apply to that campaign committee for each day after the paper filing deadline. (R.C. 3517.106(L).)

The bill generally retains the provisions of existing law establishing a paper alternative for the filing of campaign finance statements for specified campaign committees, but requires the candidate to file a *notice* of that paper filing instead of an affidavit (R.C. 3517.106(L)).

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<sup>16</sup> "A candidate for county office" means a candidate for the office of county auditor, county treasurer, clerk of the court of common pleas, judge of the court of common pleas, sheriff, county recorder, county commissioner, prosecuting attorney, and coroner (R.C. 3517.10(F)(3)).

### **Definition of "candidate" for Electioneering Communications**

Under existing law, the definition of "candidate" as used in the Campaign Finance Law applies to the law governing electioneering communications. Under the Campaign Finance Law, a "candidate" means any qualified person certified under the Election Law for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at a primary, general, or special election to be held in Ohio, and also includes any person who, at any time before or after an election, receives contributions or makes expenditures or other use of contributions, has given consent for another to receive contributions or make expenditures or other use of contributions, or appoints a campaign treasurer, for the purpose of bringing about the person's nomination or election to public office. (R.C. 3501.01 and 3517.01.)

Instead of the Campaign Finance Law definition of candidate, the bill applies the Election Law definition of that term to electioneering communications. Under the bill, then, a "candidate," for the purpose of electioneering communications, means any qualified person certified under the Election Law for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who claims to be a write-in candidate, or who knowingly assents to being represented as a write-in candidate by another at a primary, general, or special election to be held in Ohio. (R.C. 3501.01 and 3517.1011(A)(3).)

### **Miscellaneous changes**

#### **Changes to the form for statewide initiative and referendum petitions**

Am. Sub. H.B. 1 of the 125th General Assembly Special Session included a provision requiring persons who are compensated for circulating statewide initiative and referendum petitions to identify, on the petition, the name and address of the person employing the circulator to circulate the petition (R.C. 3501.38). That act, however, did not amend the form of the petition to include a space for the required information. The bill amends the form of statewide initiative and referendum petitions to include a space for the circulator to identify the name and address of the person employing the circulator to circulate the petition. (R.C. 3519.05.)

#### **Renaming penalty applicable to compensating circulators**

Existing law prohibits a person from paying or receiving compensation on a fee per signature or fee per volume basis for circulating election-related petitions. Similarly, existing law prohibits a person from paying or receiving compensation

on a fee per registration or fee per volume basis for registering applicants to vote. Whoever violates these provisions, under existing law, is guilty of "election falsification," a felony of the fifth degree. The bill renames these offenses to be "receiving improper compensation for circulating a petition" or "paying improper compensation for circulating a petition," as applicable, but does not change the penalties applicable to these offenses. (R.C. 3599.111.)

**Elimination of declaration of intent to be a write-in candidate from petition law**

Under existing law, the declaration of intent to be a write-in candidate, which must be filed by a person seeking to become a write-in candidate in this state, is governed by the law generally governing the circulation of election petitions. However, the declaration is not a petition. For example, while petitions are circulated for additional signatures, the declaration is only required to be signed by the person seeking to become a candidate. The bill removes the declaration of intent to be a write-in candidate from the law governing the circulation of election petitions. (R.C. 3501.38.)

**Elimination of "clerks of elections"**

Existing law contains several references to "clerks of elections" working at the precinct on the day of an election. However, clerks of elections are no longer defined for the purpose of the Election Law. Generally, the law refers to election officials or judges of elections working in the precinct on the day of an election. The bill eliminates, for the portions of the Election Law contained within it, references to clerks of elections and replaces those references with election officials or election judges, as appropriate. (R.C. 3501.13, 3503.24, 3505.16, 3505.18, 3505.19, 3505.20, 3505.21, 3505.25, 3505.26, and 3509.08.)

**Polling place access for a person assisting another to vote**

Under existing law, any elector who declares to the presiding judge of elections that the elector is unable to mark the elector's ballot by reason of blindness, disability, or illiteracy may be accompanied in the voting booth and aided by a person of the elector's choice (R.C. 3505.24). Existing law also generally prohibits a person from being allowed to enter a polling place during an election, except for the purpose of voting (R.C. 3501.35). The bill amends the general prohibition to include an explicit exception for persons who are assisting another person to vote. Thus, under the bill, a person is generally prohibited from being allowed to enter a polling place during an election, except for the purpose of voting or assisting another person to vote. (R.C. 3501.35(B).)

**Severability clause**

The bill specifies that, if any item of law or any application of any item of law contained within it is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To that end, the bill specifies that the items of law contained within it, and their applications, are independent and severable. (Section 3.)

**Effective date**

The bill takes effect on January 1, 2006 (Section 4).

**COMMENT**

Provisional Ballot Affirmation

STATE OF OHIO

I, ..... (Name of provisional voter), solemnly swear or affirm that I am a registered voter in the jurisdiction in which I am voting this provisional ballot and that I am eligible to vote in the election in which I am voting this provisional ballot.

I understand that, if the above-provided information is not fully completed and correct, if the board of elections determines that I am not registered to vote, a resident of this precinct, or eligible to vote in this election, or if the board of elections determines that I have already voted in this election, my provisional ballot will not be counted. I further understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.

I hereby declare, under penalty of election falsification, that the above statements are true and correct to the best of my knowledge and belief.

.....  
(Signature of Voter)

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.**

Additional Information For Determining Ballot Validity  
(May be completed at voter's discretion)

Voter's current address: .....  
Voter's date of birth: .....  
Voter's driver's license number or last four digits of voter's social security number (Please circle number type) .....  
(Voter may attach a copy of any of the following for identification purposes: a current and valid photo identification or a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.)

Reason for voting provisional ballot (Check one):  
..... Requested, but did not receive, absent voter's ballot.  
..... Other

Verification Statement  
(To be completed by election official)

The Provisional Ballot Affirmation printed above was subscribed and affirmed before me this ..... day of ..... (Month), ..... (Year).

(If applicable, the election official must check the following true statement concerning additional information needed to determine the eligibility of the provisional voter.)

- ..... The provisional voter is required to provide additional information to the board of elections.
- ..... An application or challenge hearing regarding this voter has been postponed until after the election.

(The election official must check the following true statement concerning identification provided by the provisional voter, if any.)

- ..... The provisional voter provided a current valid photo identification with the voter's name and current address.
- ..... The provisional voter provided a current valid photo identification with the voter's name and former address.
- ..... The provisional voter provided a copy of a current utility bill, bank statement, government check, paycheck, or other government document with the voter's name and current address.
- ..... The provisional voter did not provide identification.

.....  
(Signature of Election Official)



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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-24-05	p. 78
Reported, H. Elections & Ethics	05-12-05	p. 798

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