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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 129**

126th General Assembly  
(As Introduced)

**Reps. Ujvagi, Beatty, Boccieri, Book, Brown, Carano, Cassell, Chandler, DeBose, DeGeeter, Distel, Domenick, Driehaus, Fende, Garrison, Hartnett, Harwood, Healy, Key, Koziura, Mason, Miller, Mitchell, Otterman, S. Patton, Perry, Redfern, Sayre, Skindell, S. Smith, D. Stewart, Strahorn, Sykes, Williams, Woodard, Yates, Yuko**

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### **BILL SUMMARY**

#### **Voter registration**

- Prohibits a person who registers a voter from failing to submit a completed voter registration application within five days after the person seeking to register to vote completes that application, and specifies that violating this prohibition is a minor misdemeanor for each late application.
- Prohibits a person who registers a vote from purposefully failing to submit a completed voter registration form, and specifies that violating this prohibition is a felony of the fourth degree.
- Requires a board of elections that receives an incomplete voter registration application to make, within 30 days, all reasonable efforts to contact the applicant and request the applicant provide the necessary information to complete the application.
- Specifies that the name and address of any registered elector whose voter registration is canceled, and the reason for the cancellation, is a public record.

#### **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.

### **Provisional ballots**

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

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

- Eliminates all provisions of law by which the right to vote of a registered elector may be challenged, both on the day of an election and at any time during the year.

- Eliminates the appointment and duties of election day challengers.

#### **Spoiled ballots**

- Prohibits a ballot from being rejected in its entirety on the basis that the ballot is spoiled, if the voter's choice may be determined for one or more offices, questions, or issues, and requires the ballot to be counted for those offices, questions, or issues for which the voter's choice can be determined.

#### **Non-automatic recounts**

- Revises the process for conducting recounts by requiring a hand recount of a random sample of 10% of the ballots, after which the board of elections must determine whether there is a potential for the recount to change the result of the election, and, if so, the recount must be completed.
- Requires the office of the Secretary of State to pay the costs of a recount if a board of elections determines, following the 10% random hand recount, that a full recount of the ballots has the potential to change the result of the election.
- Increases from \$10 to \$20 the maximum per precinct charge for conducting a recount.

#### **Campaign activities of Secretary of State or the state's Chief Election Officer**

- Prohibits the Secretary of State from being a member of or a deputy campaign treasurer of a campaign committee, other than the Secretary of State's own campaign committee.
- Prohibits the Secretary of State from soliciting or accepting a contribution, making a contribution or expenditure, making a public speech or endorsement, or appearing in joint campaign advertisements or conducting joint fundraising activities in support of or in opposition to a candidate.
- Prohibits the Secretary of State from being a member or a treasurer or deputy treasurer of a committee supporting or opposing a ballot issue or question.

- Prohibits the Secretary of State from soliciting or accepting a contribution, making a contribution or expenditure, making a public speech or endorsement, or appearing in joint campaign advertisements or conducting joint fundraising activities in support of or in opposition to a ballot issue or question.
- Specifies that a Secretary of State who engages in any prohibited political activities in support of or in opposition to a candidate or in support of or in opposition to a ballot issue or question is guilty of a misdemeanor of the first degree.
- Generally applies the restrictions and penalties applicable to the Secretary of State engaging in political activities to the Chief Election Officer of the state, if other than the Secretary of State.

**False statements regarding elections**

- Prohibits a person before, during, or after any primary, convention, or election, from knowingly making a false statement to affect the outcome of the primary, convention, or election, including any false statement regarding the date of the primary, convention, or election, and specifies that a violation of this prohibition is a fourth degree felony.

**Election instructions**

- Establishes procedures the Secretary of State must follow when issuing instructions by directives and advisories to the boards of elections regarding the proper methods of conducting elections.

**Election report to the General Assembly**

- Requires the Secretary of State or the Chief Election Officer if other than the Secretary of State to submit a report containing specified election information to both houses of the General Assembly within two months after the completion of the canvass of the returns for each election.

**Duties of ADA Coordinator**

- Requires the Americans with Disabilities Act Coordinator within the office of the Secretary of State to inspect all polling places annually to ensure their compliance with the Americans with Disabilities Act and, if necessary, to relocate polling places that cannot be made compliant.

**Standardized curriculum**

- Requires boards of elections, in training precinct polling place judges and clerks, to use a standardized curriculum that the Secretary of State is required to prepare.

**Ratio of voting machines to registered voters**

- Requires, in a county in which voting machines, marking devices, or automatic tabulating equipment are used as the primary voting system, each precinct to have at least one voting machine, marking device, or automatic tabulating equipment for every 200 registered voters.

**Board of elections web sites**

- Requires each board of elections to maintain a web site during the 21 days preceding an election at which county residents may enter their address and promptly receive notification of their correct precinct and polling place.

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## CONTENT AND OPERATION

### Voter registration

#### Submission of voter registration applications

The bill prohibits a person who registers a voter from failing to submit a completed voter registration form to the board of elections, the office of the Secretary of State, or other appropriate public office within five days after the form is completed by the person seeking to register to vote (R.C. 3599.111(E)). "Registering a voter" includes any effort, for compensation, to provide voter registration forms or to assist persons in completing those forms or returning them to the board of elections, the office of the Secretary of State, or other appropriate public office (R.C. 3599.111(A)). A person who violates this prohibition is guilty of a minor misdemeanor for each voter registration application that the person fails to submit within five days after the application is completed (R.C. 3599.111(G)(3)).<sup>1</sup>

The bill also prohibits a person who registers a voter from purposefully failing to submit a completed voter registration form to the board of elections, the office of the Secretary of State, or other appropriate public office. A person who violates this prohibition is guilty of a felony of the fourth degree.<sup>2</sup> (R.C. 3599.111(F) and (G)(4).)

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<sup>1</sup> A minor misdemeanor is punishable by a fine of not more than \$150 (R.C. 2929.28).

<sup>2</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 \$5,000 (R.C. 2929.14 and 2929.18).

### **Incomplete voter registration applications**

A board of elections that receives a voter registration application and is satisfied as to the truth of the statements made in the registration must register the applicant and promptly notify the applicant of that registration and the precinct in which the applicant is to vote. If the board of elections does not accept the application for registration, the board 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).)

The bill does not change the process for accepting or rejecting a voter registration application. However, the bill establishes a new procedure for boards of elections that receive an incomplete voter registration application. If a board of elections receives a voter registration application that is incomplete, other than incomplete with respect to a question as to whether the applicant would like to register to vote,<sup>3</sup> the board must make all reasonable efforts to contact the applicant and request the applicant to provide whatever information is necessary to complete the application. Under the bill, a board may not retain an incomplete voter registration application for more than 30 days after receipt of that application without making all reasonable efforts to contact the applicant. (R.C. 3503.19(C)(2).)

### **Cancellation of voter registration as a public record**

Existing law provides certain circumstances under which a registered elector's voter registration must be canceled. For example, a registered elector's voter registration is required to be canceled upon the filing of a notice of the elector's death or upon the elector's conviction of a felony. (R.C. 3503.21(A).)

The bill specifies that the name and address of any registered elector whose registration is canceled, and the reason that the elector's registration was canceled, is a public record (R.C. 3503.21(E)).

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<sup>3</sup> *The National Voter Registration Act of 1993, 107 Stat. 77, 42 U.S.C. 1973gg, requires voter registration application forms to contain the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" Failure to select either "yes" or "no" in response to this question is deemed, under that law, to constitute the person declining to register to vote. (42 U.S.C. 1973gg-5.)*

*Elimination of qualifications to vote by absent voter's ballots*

*General procedure for voting by absent voter's ballots*

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)):

- 62 years of age or older;
- Employment as a full-time firefighter, 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;
- Membership in the organized militia serving on active duty within Ohio and being 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).

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.)

**Additional procedures for certain disabled or confined electors**

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 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 in the manner provided under existing law. In addition to these procedures, however, such a voter who needs no assistance to vote or to return absent voter's ballots to the board of elections also may apply for absent voter's ballots under the procedures as modified by the bill instead of applying for them under the applicable additional procedure. (R.C. 3509.08(C).)

### **Provisional ballots**

#### **Provisional ballots for federal elections**

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

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

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

computerized statewide voter registration list,<sup>4</sup> that the individual is eligible to vote, the individual's provisional ballot must be counted as a vote in the election.

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

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

**Process for casting.** In addition to generally mirroring the HAVA provisions for casting provisional ballots in federal elections, the bill permits certain electors to cast provisional ballots in elections for statewide office, for county elective office, or for any office other than a statewide office or county elective office, or for state or local questions and issues. The bill establishes processes identical to those established for federal elections for casting provisional ballots in those state and local elections. (R.C. 3505.181(B)(1) to (3).)

**Process for counting.** The process for counting nonfederal provisional ballots, however, varies from the counting process under federal law. If the appropriate state or local election official to whom the ballot or voter information is transmitted determines, by accessing the computerized statewide voter registration list, that the individual is eligible to vote in that jurisdiction, the individual's provisional ballot must be counted as follow (R.C. 3505.181(B)(4)):

- With regard to a vote in an election for statewide office, for county elective office, or for a state or county question or issue, the

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<sup>4</sup> *The Help America Vote Act of 2002, among other provisions, requires each state to implement and maintain a single computerized statewide voter registration list that contains the name and registration information of every legally registered voter in the state. (42 U.S.C. 15483.)*

individual's provisional ballot must be counted as a vote in that election.

- With regard to a vote in an election for an office in the state other than a statewide office or a county elective office or an election for a local question or issue other than a county question or issue, the individual's provisional ballot must be counted as a vote in that election if the individual is eligible to vote in that election for the applicable office, question, or issue.

**Verification of counting and appeal.** The process for nonfederal provisional ballots also differs from federal law regarding the verification of counting. As with provisional ballots cast under federal law, the appropriate state or local election official must provide the individual casting the ballot written information that states that any individual who casts a provisional ballot will be able to ascertain whether the vote was counted and, if it was not counted, the reason that it was not counted (R.C. 3505.181(B)(5)(a)(i)). The election official is required to establish a free access system, such as a toll-free telephone number or an Internet web site, that any individual who casts a provisional ballot may access to discover whether the individual's vote was counted and, if it was not counted, the reason it was not counted. The election official must establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual ballot must be restricted to the individual who cast it. (R.C. 3505.181(B)(5)(b).)

The appropriate state or local election official also must provide to an individual who casts a nonfederal provisional ballot written information that states that the individual may appeal a decision not to count the provisional ballot (R.C. 3505.181(B)(5)(a)(ii)). If the individual's vote is not counted, the individual may appeal the decision not to count the individual's provisional ballot under a process the bill requires the Secretary of State to establish (R.C. 3501.05(W) and 3505.181(C)).

**Provisional ballots for certain voters who request absent voter's ballots**

The bill also creates an additional category of electors who may vote by provisional ballot on the day of an election. Any elector who applies to vote by absent voter's ballots or by armed service absent voter's ballots at an election is permitted to vote by provisional ballot on the day of the election if the elector signs an affidavit at the precinct in which the elector appears to vote stating that the elector did not receive the absent voter's ballots or armed service absent voter's ballots for which the elector applied. (R.C. 3509.20 and 3511.20.)

### **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 county in which a person is a legally qualified elector. Thus, an individual who is registered to vote in a county and whose name does not appear on the official list of eligible voters for the polling place at which the individual appears to vote may cast a provisional ballot in that polling place or in any other polling place within that county. (R.C. 3505.181(E)(3).)

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

The bill requires the appropriate state or local election official to cause voting information to be publicly posted at each polling place on the day of each election for (1) federal office, (2) statewide office, (3) county elective office, and (4) an office in Ohio other than a statewide office or a county elective office, and the day of each election for state or local questions and issues (R.C. 3505.181(D)). "Voting information" means all of the following (R.C. 3505.181(E)(5)):

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

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

#### **In general**

Under existing law, there are several processes by which the right to vote of a registered elector may be challenged. These challenges may be made prior to an

election or on election day, depending upon the type of challenge being made. The bill eliminates all provisions of law by which the right to vote of a registered elector may be challenged. (R.C. 3501.05, 3501.30, 3501.33, 3501.35, 3503.24, 3505.16, 3505.18, 3505.19 (repealed), 3505.20 (repealed), 3505.21, 3505.22 (repealed), 3505.25, 3506.13, 3509.06, 3509.07, 3511.12, 3513.19 (repealed), 3513.20 (repealed), 3517.014 (repealed), 3517.015, 3517.016, 3523.05, and 3599.38.)

**Challenges made prior to election day**

Existing law contains two separate provisions regarding the ability of a qualified elector to challenge the right to vote of a registered elector prior to election day. Under each provision, any qualified elector may challenge a person registered to vote as to the person's right to vote at an election.

**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. 3501.05 and 3505.19.)

The bill eliminates the ability of a qualified elector to challenge the right to vote of an elector at any time during the year. By repealing the applicable section, the bill also eliminates the procedures for conducting such a challenge, including the examination conducted on the day of an election if a previously challenged person appears to vote. (R.C. 3501.05 and R.C. 3505.19 (repealed).)

**Challenges at the board of elections.** 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>5</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 election, 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).)

The bill eliminates the ability of a qualified elector to challenge the right to vote of any elector prior to the date of an election and the associated notice and hearing procedures for such a challenge. Since the process for challenging a registered elector's right to vote prior to election day is eliminated by the bill, the bill also eliminates the authority of a board of elections to remove a person from the voter registration list and cancel the person's voter registration forms. (R.C. 3503.24.)

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

**In general.** 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. 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 is required to be notified in writing. If the board has not previously ruled, however, the challenge must be determined according to the following process. (R.C. 3505.20.)

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. For example, if a

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<sup>5</sup> *Election falsification is a felony of the fifth degree (R.C. 3599.36). 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, 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).*

person is challenged as being unqualified on the ground that the person is a citizen, the judge must ask the following questions: (1) Are you a citizen of the United States? (2) Are you a native or naturalized citizen? (3) Where were you born? (R.C. 3505.20.)

If a challenged person refuses to fully answer any questions, 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 refuse the person a ballot. 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 authority of any person, including judges and clerks of elections, to challenge the right to vote of a registered elector on election day. Since the ability to challenge is eliminated, the bill also eliminates the process by which challenges are conducted, including the list of questions that judges of elections are required to ask of challenged electors. (R.C. 3505.18 and R.C. 3505.20 (repealed).)

**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. 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, that person must be refused a ballot. (R.C. 3513.19 and 3513.20.)

The bill eliminates the ability to challenge the right to vote of a registered elector for any reason, including party affiliation. Thus, a person appearing to vote at a primary election who requests the ballot of a political party with which the person is not affiliated would be permitted to vote the ballot of that political party (R.C. 3513.19 and 3513.20 (both repealed).) Because the bill eliminates challenges on this basis, it also eliminates various cross-references to the standards for determining whether a person is eligible to vote a particular political party's primary election ballot (R.C. 3517.014 (repealed) and R.C. 3517.015 and 3517.016).

**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 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.)

The bill eliminates the ability of a precinct officer, challenger, or other elector to question whether a person is impersonating an elector and repeals the process by which the signature of a person believed to be impersonating an elector is checked against the elector's signature on the registration card (R.C. 3505.22(repealed)). It remains illegal under existing law unchanged by the bill, however, for a person to impersonate or sign the name of another person, real or fictitious, living or dead, and vote or attempt to vote as that other person in an election (R.C. 3599.12--not in the bill).

**Challenges to absent voter's ballots.** The vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the election officials must determine the legality of that ballot (R.C. 3509.07). At the time of counting, the signature of the elector on the outside of the absent voter's ballot identification envelope must be compared to the elector's signature on the elector's voter registration form. Any appointed challenger or any of the precinct officials is permitted to challenge the right of the named elector to vote absent voter's ballots. If no challenge is made, or if the challenge is made and not sustained, the presiding judge must open the envelope, remove the ballots, and proceed to count them. If, however, a challenge is made and sustained, the identification envelope must not be opened; it must be endorsed "not counted" with the reasons the ballots within that envelope were not counted. (R.C. 3509.06 and 3511.12.)

The bill eliminates all challenges to a person's right to vote at an election. Thus, under the bill, no absent voter's ballot may be challenged. (R.C. 3509.06(D), 3509.07, and 3511.12.)

### **Appointment of precinct challengers**

For the purpose of making challenges on the day of an election, 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.)

Since the bill eliminates the authority of all persons 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. Under the bill, no challengers may be appointed, be in the precinct during the casting of the ballots, challenge a person's right to vote at an election, or observe the processing of the ballots after the polls close. (R.C. 3501.30, 3501.33, 3501.35, 3505.16, 3505.21, 3505.25, 3506.13, 3523.05, and 3599.38 and R.C. 3505.20 and 3505.22 (both repealed).)

### **Counting of ballots that are marked contrary to law**

Existing law generally prohibits ballots from being counted that are marked contrary to law. However, no ballot may be rejected for any technical error unless it is impossible to determine the voter's choice. The bill retains these provisions and also specifies that no ballot may be rejected in its entirety on the basis that the ballot is spoiled, if the voter's choice may be determined for one or more offices, issues, or questions on the unspoiled portion of that ballot. The unspoiled portion of that ballot must be counted with respect to any offices, issues, or questions for which the voter's choice may be determined. (R.C. 3505.28(A).)

### **Non-automatic recounts**

#### **Procedures**

Continuing law permits any of the following to file a written application for a non-automatic recount (R.C. 3515.01): (1) a person for whom votes were cast in a primary election for nomination as a candidate and who was not declared nominated, (2) a person who was a candidate at a general, special, or primary election for election to an office or position and who was not declared elected, (3)

any group of five or more qualified electors who voted for any question or issue that was declared defeated, (4) any group of five or more qualified electors who voted against any question or issue that was declared adopted. The application must list each precinct for which a recount of the votes is requested, and the person filing the application must, at the same time, deposit with the board of elections \$10 for each precinct listed in the application as security for the payment of the charges of making the recount (R.C. 3515.03).

Upon filing of an application, the board must promptly fix the time, method, and the place at which the recount will be made, which time must be not later than ten days after the application is filed. Notice of the time and place of the recount must be mailed to any applicant and to each person for whom votes were cast for the nomination or election. At the specified time and place, and in the presence of all witnesses in attendance, the board must open the sealed container containing the ballots and recount them. At any time before all of the ballots have been recounted, the applicant or the declared defeated nominee or candidate may file a written request to stop the recount. If the board determines that the recounted ballots, if substituted for the original results of the vote counts, would not change the declared results of the election, the board must grant the request and not recount the remaining ballots. If the board finds otherwise, it must continue the recount. (R.C. 3515.03 and 3515.04.)

The bill generally retains the recount application process, as well as the process for setting the time and place of the recount. However, under the bill, instead of recounting all of the requested ballots, the board of elections must begin the recount by hand recounting a random sampling of 10% of the ballots (R.C. 3515.04(A)(1)). After recounting the random 10% sample, the board then must determine whether the recount of the random sampling indicates the potential that, if the board completes the recount of all of the relevant ballots, the applicant or the declared defeated nominee or candidate would be declared nominated or elected. Or, if the election is upon a question or issue, if the results would be contrary to the result as originally declared. If the board determines that there is such a potential, the board must complete the recount of all of the relevant ballots with the cost of that recount charged to the office of the Secretary of State. But, if the board determines otherwise, the board must not recount the remainder of the relevant ballots. (R.C. 3515.04(B).) (See **COMMENT 1**.)

### **Costs**

As previously mentioned, under existing law a recount application must be accompanied by a deposit of \$10 for each precinct to be recounted as security for the payment of charges for making the recount (R.C. 3515.03). The charges for making the recount must be fixed by the board of elections and must include all expenses incurred by the board because of the application, other than the regular

operating expenses that the board would have incurred if the application had not been filed. The total amount of those fixed charges, divided by the number of precincts that were recounted, is the charge per precinct for the recount of the votes of the precincts listed in the application. The charge must not be more than \$10 nor less than \$5 for each recounted precinct. (R.C. 3515.07.)

The board must deduct the charge per precinct from the money deposited by the applicant, and the balance must be returned to the applicant. However, no charge per precinct may be deducted if the total number of votes cast in the precinct for the applicant, as recorded by the recount, is more than 4% larger than the number recorded in the original certified abstract. If the recount is for a question or issue, no charge per precinct may be deducted if the total number of votes cast on the same side of the question or issue as represented by the applicant is more than 4% larger than the number recorded in the original certified abstract. Finally, no charge per precinct may be deducted if the result of the election is declared to be opposite of the original declaration of the result of that election. (R.C. 3515.07.)

The bill increases from \$10 to \$20 the amount per precinct requested to be recounted that an applicant for a recount must deposit with the board of elections (R.C. 3515.03). The board must fix the charges for making the recount as under existing law. The total amount of those fixed charges, divided by the number of precincts that were recounted, is the charge per precinct for the recount of the votes of the precincts listed in the application. The bill increases from \$10 to \$20 the maximum charge for each recounted precinct. (R.C. 3515.07.)

Under the bill, the board of elections must begin the recount by hand recounting a random sampling of 10% of the ballots. If the board of elections determines, after recounting that 10% sample, that a complete recount has the potential to change the declared result of the election, the recount must be completed with the costs charged to the office of the Secretary of State. In that case, no charge per precinct may be deducted. If the board determines that there is no potential to change the declared result, the board must not recount the remainder of the ballots. For those precincts that have already been recounted, the charge per precinct must be deducted from the money deposited with the board at the time the application was filed. (R.C. 3515.04 and 3515.07.)

### **Campaign activities of the Secretary of State or the state's Chief Election Officer**

Under existing law, the Secretary of State is the "chief election officer" of the state. The duties of the Secretary of State in this capacity include appointing members of boards of elections, certifying the forms of ballots and ballot language, receiving and examining campaign finance statements, and investigating

the administration of the Elections Law, including alleged fraud and irregularities. (R.C. 3501.04 and 3501.05.)

The bill prohibits the Secretary of State, or the Chief Election Officer of the state if other than the Secretary of State, from engaging in specified political activities. Under the bill, the Secretary of State cannot be a member of, or a deputy campaign treasurer of, any campaign committee other than the Secretary of State's own campaign committee. Because the bill prohibits the Secretary of State from serving on another candidate's campaign committee, the bill has the effect of also prohibiting the Secretary of State from being another candidate's campaign treasurer.<sup>6</sup> (R.C. 3517.081(E).) If the Chief Election Officer of the state is other than the Secretary of State, that person must not be a member of or a deputy campaign treasurer of a campaign committee. As with the Secretary of State, because the Chief Election Officer cannot be a member of a campaign committee, the Chief Election Officer also cannot be a candidate's campaign treasurer. (R.C. 3517.081(F).)

In addition to prohibiting the Secretary of State from serving in a formal role with respect to another candidate's campaign committee, the bill prohibits the Secretary of State from engaging in any of the following political activities in support of or in opposition to another candidate (R.C. 3517.093(A)):

- Soliciting or accepting a contribution;
- Making a contribution or expenditure, including an independent expenditure;
- Making a speech at a political meeting or publicly endorsing or opposing a candidate;
- Appearing in joint campaign advertisements or conducting joint fundraising activities in conjunction with the Secretary of State's own campaign.

The bill also prohibits the Secretary of State from engaging in the following political activities in support of or in opposition to a ballot issue or question (R.C. 3517.094(A)):

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<sup>6</sup> Under existing law, a candidate must designate the candidate, or a member of the candidate's campaign committee, as the candidate's campaign treasurer. Existing law does not specify, however, whether a deputy campaign treasurer is required to be a member of the candidate's campaign committee. (R.C. 3517.081(B).)

- Being a member or a treasurer or deputy treasurer of a committee supporting or opposing a ballot issue or question;
- Soliciting or accepting a contribution in support of or in opposition to a ballot issue or question;
- Making a contribution or expenditure, including an independent expenditure, in support of or in opposition to a ballot issue or question;
- Making a speech at a political meeting or publicly endorsing or opposing a ballot issue or question;
- In conjunction with the Secretary of State's own campaign, appearing in joint campaign advertisements or conducting joint fundraising activities in support of or in opposition to a ballot issue or question.

The bill establishes similar prohibitions applicable to the Chief Election Officer of the state, if that officer is someone other than the Secretary of State (R.C. 3517.093(B) and 3517.094(B)).

A Secretary of State or Chief Election Officer who violates any of the political activity prohibitions in the bill is guilty of a misdemeanor of the first degree<sup>7</sup> (R.C. 3517.992(F)). (See **COMMENT 2.**)

**False statements regarding elections**

The bill prohibits any person, before, during, or after a primary, convention, or election, from knowingly making any false statement to affect the outcome of the primary, convention, or election, including any false statement regarding the date on which the primary, convention, or election will be held. Any person who violates this prohibition is guilty of a felony of the fourth degree. If the offender is a candidate, the offender also must forfeit the nomination the offender received at the primary or convention with respect to which the offense was committed, or, if the offender was elected to any office, the offender also must forfeit the office to which the offender was elected at the election with respect to which the offense was committed. (R.C. 3599.07.)

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<sup>7</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)).

### **Election instructions issued by the Secretary of State**

Existing law requires the Secretary of State, among other duties, to issue instructions by directives and advisories to members of the boards of elections as to the proper methods of conducting elections. The bill retains this general requirement and establishes specific procedures that the Secretary of State must follow when issuing a directive or advisory. When issuing instructions by directive or advisory, the Secretary of State must post and maintain that directive or advisory on a web site of the office of the Secretary of State. A directive or advisory must be issued not later than the 30th day before the election to which the instruction applies, unless (1) extenuating circumstances exist and the Governor approves the later issuance of the directive or advisory, or (2) a state or federal court orders the later issuance of the directive or advisory. (R.C. 3501.05(B).)

### **Election report to the General Assembly**

Not later than two months after the completion of the canvass of the election returns for each primary, general, or special election, the bill requires the Secretary of State, or the Chief Election Officer of the state if other than the Secretary of State, to submit a report to each house of the General Assembly regarding that election. The report is required to include, but is not limited to, all of the following information regarding that election (R.C. 3501.40):

- The number of absent voter's ballots requested;
- The number of absent voter's ballots cast;
- The number of provisional ballots requested;
- The number of provisional ballots cast;
- The number of voter registration applications received;
- The number of voter registration applications that were not processed due to errors on the application;
- The number of ballots rejected as a result of overvotes or spoiling marks;
- The number of times the Secretary of State's or the Chief Election Officer's name, likeness, voice, or image was used on publicly distributed voter education documents and advertisements since the last required report.

### **Duties of the Americans with Disabilities Act Coordinator**

Existing law requires the Secretary of State to establish the full time position of Americans with Disabilities Act (ADA) Coordinator within the office of the Secretary of State. Among other duties, the ADA Coordinator currently is required to assist the Secretary of State with ensuring that there is equal access to polling places for persons with disabilities (R.C. 3501.05(V)(1)).

The bill replaces this duty with a requirement that, prior to the 120th day before a general election, the ADA Coordinator inspect the interior and exterior premises of all polling places to ensure that they are in compliance with the requirements of the Americans with Disabilities Act of 1990.<sup>8</sup> If the coordinator determines that those premises of any polling place are not in compliance, either the premises must be brought into compliance or, with the advice of and input from the local board of elections, the polling place must be relocated to other premises that are in compliance with that law. The bill permits the ADA Coordinator to appoint one or more qualified designees to carry out the coordinator's duties regarding the inspection of polling places. (R.C. 3501.05(V)(1).)

### **Standardized curriculum for the instruction of polling place judges and clerks**

Existing law establishes various requirements that persons must meet in order to serve as judges of elections. For example, judges of elections are required to be qualified electors, and they cannot have been convicted of a felony. Among the other requirements, persons who serve as judges of elections must complete a program of instruction. (R.C. 3501.27(A).)

Each board of elections is required to establish a program as described by the Secretary of State for the instruction of election officers in the rules, procedures, and law relating to elections. Under existing law, the board must use training materials prepared by the Secretary of State and may use additional materials prepared by or on behalf of the board. (R.C. 3501.27(B).)

Instead of the training materials a board is required or permitted to use under existing law, the bill requires a board to use a standardized curriculum prepared by the Secretary of State (R.C. 3501.27(B)). The Secretary of State, in turn, is required to prepare the standardized curriculum that must be used for the training of all precinct polling place judges and clerks (R.C. 3501.05(X)).

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<sup>8</sup> 104 Stat. 327, 42 U.S.C. 12101, as amended.

### **Ratio of voting machines to registered voters**

In any county in which voting machines, marking devices, or automatic tabulating equipment are used as the county's primary voting system, the bill requires each precinct to have at least one voting machine, marking device, or automatic tabulating equipment available for use in an election for every 200 voters that are registered to vote in the precinct. This requirement does not apply to counties in which one direct recording electronic voting machine is provided for each polling location to allow access for individuals with disabilities. (R.C. 3506.20.)

### **Board of elections web sites for determining precinct and polling place**

Not later than 21 days before the date of each election and continuing through election day, the bill requires each board of elections to operate and maintain a web site at which electors in the county may enter their addresses and promptly receive notification of their correct precinct and polling place (R.C. 3501.19).

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## **COMMENT**

1. The bill requires a board of elections to determine, after recounting 10% of the ballots requested to be recounted, whether a complete recount of the requested ballots indicates the potential for the recounted result to be contrary to the original declared result of that election. The bill does not, however, provide standards by which the board should make such a determination. Thus, it appears that different boards of elections could come to different conclusions regarding whether a particular recount demonstrates the required potential to require a full recount of the ballots. The United States Supreme Court, in *Bush v. Gore*, 531 U.S. 98 (2000), determined that Florida's statewide court-ordered recount violated constitutional equal protection provisions because it allowed for different standards for different counties and different recounts. Pursuant to this decision, constitutional equal protection concerns could arise under the bill if different recount standards are used in different counties.

2. Sections 3517.093 and 3517.094 raise constitutional questions on the basis of the First Amendment to the United States Constitution. Any statute restricting the freedom of speech, and particularly political speech, is subject to strict scrutiny; a court will invalidate such a statute as an unconstitutional violation of the First Amendment unless the court finds that it is narrowly tailored to achieve a compelling state interest.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-15-05	p. 317

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