



Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

- Requires the Secretary of State to prescribe uniform standards for absent voter's ballot materials, forms, and contents, and requires boards of elections to adhere to those standards in preparing absent voter's ballots.
- Requires rotation of candidate names and issues to be substantially complied with on absent voter's ballots, regardless of time limitations.
- Establishes different categories of absent voter's ballots and specifies when those ballots must be printed and available for use.
- Permits the Secretary of State, by directive, to change any of the processes or timelines for sending, casting, or returning an absent voter's ballot to a member of the organized militia or to an overseas or uniformed services voter when the Secretary determines that the change is necessary due to a local or national emergency or other situation, including military mobilization.
- Establishes a new category of absent voter's ballots, write-in absent voter's ballots, which must be available 90 days before an election, for use by overseas and armed services voters who will be out of communication or otherwise unavailable to vote absent voter's ballots during the normal absent voting period before an election.
- Specifies the process for persons to apply, vote, and return write-in absent voter's ballots and the process for boards of elections to process and count write-in absent voter's ballots.

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CONTENT AND OPERATION

Form and content of absent voter's ballots

Continuing law generally required absent voter's ballots to be the same size, printed on the same kind of paper, and in the same form as has been approved for use at the election at which the ballots are to be voted. Current law, however, specifies different standards for counties in which marking devices or punch card ballots are used. In counties using marking devices, current law permits ballot cards to be used for absent voter's ballots. Absent voters who are using ballot cards must be instructed to record their votes in the manner provided on the ballot card. In counties where punch card ballots are used, absent voters must be instructed to examine their marked ballot cards and to remove any chads that remain partially attached before returning the ballot cards to the election officials.

The bill eliminates the special provisions applicable to counties in which marking devices or punch card ballots are used. Instead, the bill requires the Secretary of State to prescribe uniform standards for absent voter's ballot materials, forms, and content. Boards of elections must adhere to those standards in preparing absent voter's ballots. (R.C. 3509.01(A).)

Continuing law also requires the rotation of names of candidates and questions and issues to be substantially complied with on absent voter's ballots. Under current law, however, rotation only must be complied with "within the limitation of time allotted." The bill eliminates this qualification. Thus, under the bill, the rotation of



names and questions and issues on absent voter's ballots must be substantially complied with, regardless of time limitations. (R.C. 3509.01(B).)

Availability of absent voter's ballots

Current law requires absent voter's ballots to be printed and ready for use on the 35th day before the day of an election. The bill establishes different categories of absent voter's ballots and when those ballots must be available, as follows (R.C. 3509.01(B), 3511.04, and 3511.10):

- For overseas voters and absent uniformed services voters eligible to vote under the federal "Uniformed and Overseas Citizens Absentee Voting Act," and for all other voters who are applying to vote absent voter's ballots other than in person, ballots must be printed and ready for use on the 45th day before the day of any election other than a presidential primary election;
- For all voters, other than overseas voters and absent uniformed services voters, who are applying to vote absent voter's ballots in person, ballots must be printed and ready for use on the 21st day before the day of the election and must continued to be available for use through 5 p.m. on the last Saturday before the day of the election;
- For all voters who are applying to vote absent voter's ballots other than in person, ballots must be printed and ready for use on the 35th day before the day of a presidential primary election.

Existing law requires a copy of the absent voter's ballots to be forwarded by the director of the board to the Secretary of State at least 25 days before the election. The bill increases this to 35 days before the election. (R.C. 3509.01(E).)

Secretary of State's authority to revise the absent voting ballot provisions for members of the organized militia

Notwithstanding any provision of the Revised Code to the contrary, the bill permits the Secretary of State, by directive, to change any of the processes or timelines for sending, casting, or returning an absent voter's ballot to a member of the organized militia and the processes or timelines for sending, casting, or returning an armed service absent voter's ballot when the Secretary of State determines that the change is necessary due to a national or local emergency or other situation, including the mobilization of the organized militia or the mobilization of United States Armed Forces (R.C. 3509.032 and 3511.14).

Establishment of write-in absent voter's ballots for overseas and military voters out of communication

In addition to absent voter's ballots and armed service absent voter's ballots established under continuing law, the bill establishes a new type of absent voter's ballots, which may be used by overseas and armed services voters who will be out of communication or otherwise unavailable to vote absent voter's ballots during the normal absent voting period before an election.

Persons eligible to vote write-in absent voter's ballots

The bill permits an elector who will be outside the United States on the day of an election to vote write-in absent voter's ballots if the elector's employment, volunteer, or other activities will cause the elector to be out of communication or otherwise unavailable to vote absent voter's ballots during the usual absent voting period.

An elector who is eligible to vote armed service absent voter's ballots is permitted to vote write-in absent voter's ballots if the elector's service in the armed forces of the United States will cause the elector to be out of communication or otherwise unavailable to vote armed service absent voter's ballots during the usual absent voting period. (R.C. 3512.01.)

Applications for write-in absent voter's ballots

An elector who is eligible to vote write-in absent voter's ballots may make written application for those ballots to the director of elections for the county in which the elector's voting residence is located. The application is substantially similar to applications for other absent voter's ballots, except that the elector must specify, on the application, that the elector will be out of communication or otherwise unavailable to vote absent voter's ballots during the regular absent voting period. The elector may personally deliver the application to the director or may mail it, send it by facsimile machine, send it by electronic mail, send it by other electronic means via the internet, or otherwise send it to the director.

Each application for write-in absent voter's ballots must be delivered to the director not earlier than January 1 of the year of the election for which the write-in absent voter's ballots are requested or not earlier than 120 days before the day of the election at which the ballots are to be voted, whichever is earlier, and not later than the 35th day before the day of the election at which the ballots are to be voted. (R.C. 3512.02.)

Notification of incomplete application

If a director of a board of elections receives an application for write-in absent voter's ballots that does not contain all of the required information, the director promptly must notify the applicant, by whatever means of contact the applicant has provided on the application, of the additional information required to be provided by the applicant to complete that application. The applicant may provide the required information by mail, electronic mail, telephone, or facsimile transmission, through the Internet, or in person at the office of the board of elections. If the application is missing a signature, the applicant may provide a signed statement that the applicant submitted the application. A signature provided on such a signed statement must be considered the applicant's signature on the application for the purposes of processing an otherwise valid application for write-in absent voter's ballots. The bill requires the Secretary of State to prescribe uniform standards for processing additional information by mail, electronic mail, telephone, facsimile transmission, through the internet, or in person at the office of the board of elections. If the applicant provides the required information, the board must promptly process the application and deliver write-in absent voter's ballots to the applicant. (R.C. 3512.03(A).)

Form of write-in absent voter's ballots

The bill requires the Secretary of State to prescribe the form of write-in absent voter's ballots. The ballots must identify each office for which the absent voter is eligible to vote at that election and must permit the voter to mark the ballot by writing in the name of a candidate for each office appearing on the write-in absent voter's ballot. The ballots also must permit the voter to vote on each issue that was certified to appear on the ballot prior to the date on which the write-in absent voter's ballots were prepared. (R.C. 3512.03(B).) Write-in absent voter's ballots must be printed and ready for use on the 90th day before the day of any election. (R.C. 3509.01(D)(2).)

Delivery of absent voter's ballots

Upon receipt by the director of elections of an application for write-in absent voter's ballots that contains all of the required information, the director, if the director finds that the applicant is a qualified elector, must deliver to the applicant in person or mail directly to the applicant by special delivery mail, air mail, or regular mail, postage prepaid, write-in absent voter's ballots. If the address to which the ballots are to be sent is located outside of the United States, the board may deliver the write-in absent voter's ballots to the applicant using a method other than United States mail. The director shall deliver or send with the ballots an unsealed identification envelope that substantially matches identification envelopes required to appear on other absent voter's ballot envelopes. However, the voter identification language listed on the write-in absent

voter's ballot identification envelope does not match the voter identification requirements for other absent voter's ballots. The bill permits a write-in absent voter to use as identification two current and valid items that list the voter's name in a manner that substantially conforms to the voter's name on the statewide voter registration database and that are from a nonprofit organization, an institution, a business, or a government entity. (R.C. 3512.03(C).)

Before delivering or sending the ballots, the director is required to record the unique identification number located on the stub of the voter's ballot, the voter's name, and the voter's address, and must cause the unique identification number to be copied on the outside of the voter's identification envelope. The director also must send an unsealed return envelope, which must be of such size that the identification envelope can be conveniently placed within it for returning the identification envelope to the director. (R.C. 3512.03(C).)

Voting and return of write-in absent voter's ballots

When an elector receives a write-in absent voter's ballot, the elector must, before placing any marks on the ballot, note whether there are any voting marks on it. If there are any voting marks, the ballot must be returned immediately to the board of elections. If there are no voting marks on the ballot, the elector must write in the names of the candidates for which the elector wishes to vote, mark the elector's choices on the issues appearing on the ballot, fold the ballot in a manner that the stub on it is visible, and place and seal the ballot within the identification envelope. Then, the elector must complete the statement of voter on the outside of the identification envelope and provide the required identification.

The bill permits the elector to mail the identification envelope to the director from whom it was received in the return envelope or personally deliver it to the director. Alternatively, the elector's spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece may deliver it to the director. If the elector is returning the write-in absent voter's ballots from outside the United States, the elector may return those ballots by mail, commercial delivery service, personal delivery, or delivery by a family member. (R.C. 3512.04(A).)

When write-in absent voter's ballots are delivered to an elector at the office of the board, the bill permits the elector to use a voting compartment provided by the board and there mark the ballots. After marking the ballots, the elector is required to fold them, place them in the identification envelope, seal the envelope, fill in and sign the

statement on the envelope under penalty of election falsification, and deliver the envelope to the director of the board.

Envelopes containing marked write-in absent voter's ballots generally must be delivered to the director not later than the close of the polls on the day of an election. However, a return envelope that indicates that the voter will be outside the United States on the day of the election must be delivered to the director prior to the 11th day after the election (or prior to the 21st day after a presidential primary election). Such ballots that are received after the close of the polls on election day through the 10th day thereafter (or through the 20th day after a presidential primary election) must be processed and counted at the board of elections. Any such ballots that are signed or postmarked after the close of the polls on the day of the election or that are received by the director later than the 10th day following the election (or later than the 20th day following a presidential primary election) must not be counted, but shall be kept by the board in the sealed identification envelopes.

Any return envelope that is postmarked within the United States prior to the day of the election must be delivered to the director prior to the 11th day after the election. Ballots delivered in envelopes postmarked prior to the day of the election that are received after the close of the polls on election day through the 10th day thereafter must be processed and counted on or after the 11th day at the board of elections. This provision does not apply, however, to any mail that is postmarked using a postage evidencing system, including a postage meter.

Write-in absent voter's ballots delivered to the director later than the times specified must not be counted, but must be kept by the board in the sealed identification envelopes in which they are delivered to the director, until the time provided by existing law 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. 3512.04.)

Receipt of voted write-in absent voter's ballots

Upon receipt of a return envelope purporting to contain voted write-in absent voter's ballots prior to the 11th day after the day of an election, a bipartisan team¹ consisting of employees of the board of elections is required to inspect the postmark and verify the date the board received the write-in absent voter's ballots. If either the postmark or the date of receipt does not meet the applicable deadlines, the ballots must not be counted. The identification envelope must not be opened, and it must be endorsed "Not Counted" with the reasons the ballots were not counted.

¹ "Bipartisan team" means a team consisting of two employees of a board of elections who are from different political parties (R.C. 3512.05(I)(1)).

If the postmark and date of receipt meet the applicable deadlines for that election, the bill requires the bipartisan team to open that return envelope but not open the identification envelope contained in it. If, upon opening the return envelope, the bipartisan team finds ballots in it that are not enclosed in and properly sealed in the identification envelope, the bipartisan team is not permitted to look at the markings upon the ballots and must promptly place them in the identification envelope and promptly seal it. If the bipartisan team finds that the ballots are enclosed in the identification envelope but that it is not properly sealed, the bipartisan team is not permitted to look at the markings upon the ballots and must promptly seal the identification envelope. The bipartisan team must cause the identification envelopes, any associated identification, and the ballots in the identification envelopes to be properly secured until such time as they are processed and counted.

Processing and counting write-in absent voter's ballots

The bill requires write-in absent voter's ballots to be processed² and counted at the office of the board or at some other location designated by the board. The board of elections is required to appoint special election judges for the purpose of processing and counting write-in absent voter's ballots. The write-in absent voter's ballots shall be preserved separately by the board, in the same manner and for the same length of time as other ballots must be preserved under existing law.

Each of the identification envelopes purporting to contain write-in absent voter's ballots must be delivered to the special judge appointed by the board of elections and must be processed and counted as follows:

- The election officials are required to inspect the statement accompanying the write-in absent voter's ballots to determine if the voter's signature has been provided.
- The election officials are required to compare the signature of the voter as provided on the statement accompanying the write-in absent voter's ballots with the signature contained in the voter registration records.

² "Processing" a write-in absent voter's ballot means any of the following:

(1) Examining the sufficiency of a write-in absent voter's ballot identification envelope by reviewing the postmark, the date of receipt by the board of elections, and the presence of the voter's valid signature on the identification envelope and, if the voter's name is signed on the envelope, opening the identification envelope;

(2) Determining the validity of write-in absent voter's ballots, including determining whether the proper ballots were delivered to the voter and whether the stub is attached to or enclosed with the ballots;

(3) Preparing a write-in absent voter's ballot for counting. (R.C. 3512.05(I)(2).)

- If the election officials find that the voter's signature has been provided and that the voter is registered and eligible to cast a ballot in the election, the election officials must open the envelope and determine if the stub is attached to or enclosed with the ballots. If the stub is attached to or enclosed with the ballots, the election officials must count those ballots not earlier than the day of the election. If the stub is not attached to or enclosed with the ballots, the write-in absent voter's ballots must not be counted. The ballots must be placed in their accompanying identification envelope, which must be endorsed "not counted" with the reasons the ballots were not counted.
- If the election officials find that the voter did not sign the statement of voter on the identification envelope or if the election officials are unable to determine the identity of the voter who returned the ballots, the election officials are required to use any information provided on the identification envelope or, if necessary, cross-reference the unique stub number placed on the identification envelope with the registration records to identify the voter for notification purposes (see "**Notification and correction of incomplete write-in absent voter's ballots**," below).
- If the voter did not sign the statement of voter on the identification envelope and if the voter fails to correct that defect within ten days after the day of the election, or if the election officials find that the voter is not registered or not eligible to cast a ballot in the election, the voter's write-in absent voter's ballots must not be counted. The identification envelope must not be opened, and it must be endorsed "Not Counted" with the reasons the ballots were not counted.

The bill permits the board of elections to process write-in absent voter's ballots during the ten days prior to the day of an election, but the board is not permitted to reveal or cause to be revealed the marks on any ballots. The board is not permitted to count any write-in absent voter's ballots prior to the day of the election. Similarly, special election judges, employees or members of the board of elections, or observers may not disclose the count or any portion of the count of write-in absent voter's ballots prior to the time of the closing of the polling places. No person is permitted to recklessly disclose the count or any portion of the count of write-in absent voter's ballots in such a manner as to jeopardize the secrecy of any individual ballot.

Any ballots that are not eligible to be counted are required to be preserved in their identification envelopes until the time provided 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. 3512.05(A), (B), (C), and (E).)

If, after processing the ballots, the bipartisan team determines that a voter's write-in absent voter's ballot is eligible to be counted, those ballots must be counted as valid votes for the candidates whose names are written on the ballots, regardless of whether those candidates are write-in candidates. The write-in votes must be counted and added to the totals calculated by the voting machines or automatic tabulating equipment. (R.C. 3512.05(H).)

Observers may be appointed to witness the processing of identification envelopes and the counting of write-in absent voter's ballots (R.C. 3512.05(F)).

Notification and correction of incomplete write-in absent voter's ballots

If the voter did not sign the statement of voter on the identification envelope or if the election officials are unable to determine the identity of the voter who returned the ballot, the bill requires the board of elections to notify the voter, by whatever means of contact the voter has provided on the identification envelope or using any available contact information in the voter's registration record, of the defect and request the voter to verify the voter's identity for the purpose of processing that write-in absent voter's ballot. The voter is permitted to verify that the voter was the person who returned the write-in absent voter's ballot in any of the following ways:

- By confirming by mail, electronic mail, telephone, or facsimile transmission, or through the Internet the voter's date of birth and residence address in a manner that substantially conforms with the records of the board of elections;
- By providing a statement by mail, electronic mail, or facsimile transmission, or through the Internet that the voter submitted the ballot and by attaching the voter's signature to that statement. A signature attached to such a statement must be considered the voter's signature on the identification envelope for the purposes of verifying the validity of that ballot.
- By appearing in person at the office of the board of elections and signing the identification envelope.

The Secretary of State is required to prescribe uniform standards for processing additional information by mail, electronic mail, telephone, facsimile transmission, through the Internet, or in person at the office of the board of elections. If the voter provides the required information within ten days after the day of the election, the election officials must complete the processing of the write-in absent voter's ballot in the same manner as if that information had been included on the statement of voter at the time the ballot was returned.

Challenges of voters applying to vote by write-in absent voter's ballots

An elections official of the county in which an elector applies to vote by write-in absent voter's ballots may challenge the right of the elector named on the application to receive write-in absent voter's ballots only on the following grounds:

- That the person is not a resident of the precinct for which the person is applying to vote absent voter's ballots;
- That the person is not a citizen of the United States;
- That the person is not 18 years of age or older;
- That the person is not a qualified elector for that election.

Challenges may be made only if the election official knows or reasonably believes that the challenged elector is not qualified and entitled to vote.

If an elector's write-in absent voter's ballot application is challenged, the application must be kept with other challenged write-in absent voter's ballot applications. Upon receipt of a challenged write-in absent voter's ballot application, the bill requires the board of elections promptly to review the board's records. If the board is able to determine that a challenge should be denied solely on the basis of the records maintained by the board, the board immediately must vote to deny the challenge. If the board is unable to determine the outcome of the challenge solely on the basis of the records maintained by the board, the board must notify the elector of the challenge to the elector's write-in absent voter's ballot application and must provide an opportunity for the elector to respond to the challenge. The board of elections must use the challenge and notification process established in current law, except that the board must decide the challenge as expeditiously as possible.

If the challenge is denied, write-in absent voter's ballots must promptly be sent to the elector requesting those ballots. If the board of elections upholds the challenge, the write-in absent voter's ballot application must not be processed, no write-in absent voter's ballots may be sent to the elector, and the elector must be notified of the reason the elector will not receive write-in absent voter's ballots.

The bill prohibits an election official or other person from challenging the validity of write-in absent voter's ballots that have been completed and returned by the voter using this challenge process. The validity of those ballots must be determined under the processing and counting procedure. (R.C. 3512.06.)

Write-in absent voters who appear to vote at the polls

The bill requires the registration record of each person voting a write-in absent voter's ballot to be marked to indicate that the person has voted. The date of the election must also be entered on the elector's registration record. (R.C. 3512.05(D).)

The bill also requires the poll list or signature pollbook for each precinct to identify each registered elector in that precinct who has requested write-in absent voter's ballots for that election. If a registered elector appears to vote in that precinct and that elector has requested write-in absent voter's ballots for that election but the director has not received a sealed identification envelope purporting to contain that elector's voted write-in absent voter's ballots for that election, the elector must be permitted to cast a provisional ballot in that precinct on the day of that election. Similarly, if a registered elector appears to vote in that precinct and that elector has requested write-in absent voter's ballots for that election and the director has received a sealed identification envelope purporting to contain that elector's voted write-in absent voter's ballots for that election, the elector must be permitted to cast a provisional ballot in that precinct on the day of that election.

In processing and counting write-in absent voter's ballots, the board of elections is required to compare the signature of each elector from whom the director has received a sealed identification envelope purporting to contain that elector's voted write-in absent voter's ballots for that election to the signature on that elector's registration record. If the board of elections determines that the write-in absent voter's ballots in the sealed identification envelope are valid, they must be counted. If the board of elections determines that the signature on the sealed identification envelope purporting to contain the elector's voted write-in absent voter's ballots does not match the signature on the elector's registration record, the ballots must be set aside and the board is required to examine, during the time prior to the beginning of the official canvass, the poll list or signature pollbook from the precinct in which the elector is registered to vote to determine if the elector also cast a provisional ballot in that precinct on the day of the election.

The board of elections must count the provisional ballot, instead of the write-in absent voter's ballot, if both of the following apply: (1) the board determines that the signature of the elector on the outside of the identification envelope in which the write-in 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 does not receive the sealed identification envelope purporting to contain the elector's voted write-in absent voter's ballots by the applicable

deadline, the provisional ballot cast in that precinct on the day of the election must be counted as valid, if that provisional ballot is otherwise determined to be valid.

If the board of elections counts a provisional ballot, the returned identification envelope of that elector must not be opened, and the ballot within that envelope must not be counted. The identification envelope must be endorsed "Not Counted" with the reason the ballot was not counted.

HISTORY

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