



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Sen. Seitz

BILL SUMMARY

Categories of individuals who may cast a provisional ballot

- Consolidates several categories of individuals described in the statute who may cast a provisional ballot, but permits any person who currently may cast a provisional ballot to do so under the bill.
- Eliminates language enumerating several types of individuals who do not have or are unable to provide the required identification (ID).
- Combines multiple references to individuals who may cast a provisional ballot because their right to vote has been challenged.

Provisional ballot affirmation form

- Adds a provisional voter's current address and date of birth as required fields on the provisional ballot affirmation form.
- Makes a provisional voter responsible to complete all parts of the provisional ballot affirmation form except for the portion in which an election official signs and dates the form.
- Requires a board of elections to treat a provisional voter's completed ballot affirmation as an application to register to vote or to update the person's registration for the purpose of future elections if the person is not registered to vote or must update the person's registration, as long as the person provided the required information.
- Eliminates the need for an elector who has moved or had a change of name to submit a separate registration update form when casting a provisional ballot.

Provisional ballot counting requirements

- Requires a provisional voter to provide the voter's date of birth and current address on the provisional ballot affirmation in order for the ballot to be eligible to be counted, and specifies generally that the date of birth and address must not be different from the information in the statewide voter registration database.
- Removes an exception to the affirmation requirement that specified that if the provisional voter declined to execute the provisional ballot affirmation, the affirmation must include only the voter's name, written either by the voter or by an election official, in order for the ballot to be eligible to be counted.
- Allows an elector who does not have or is unable to provide the required ID to cast a provisional ballot by writing the last four digits of the elector's Social Security number on the provisional ballot envelope or providing the required ID or the last four digits of the elector's Social Security number to the board of elections not later than the Friday after the election.
- Eliminates a procedure that allowed an elector who has neither the required ID nor a Social Security number to execute an affirmation to that effect and to have that affirmation satisfy the requirement that the elector provide ID in order for the provisional ballot to be counted.
- Shortens, from the ten days after the election to the Friday after the election, the period of time for a provisional voter who has not provided ID or who has been challenged to provide additional information to the board of elections in order to have the ballot counted.

Provisional ballots cast in the wrong precinct

- Requires an election official, if an individual insists on casting a ballot in the wrong precinct but the correct polling location, to complete a form showing the individual's correct precinct and stating that the election official directed the individual to the correct precinct.
- Specifies that if an individual cast a provisional ballot in the wrong precinct but in the correct polling location, and the election official failed to direct the individual to the correct precinct, the individual's ballot must be remade and counted for each office, question, and issue for which the individual was eligible and attempted to vote.
- Requires the board of elections to examine all available evidence to determine whether the election official failed to direct the individual to the correct precinct.



- Specifies that the election official must be presumed to have directed the individual to the correct precinct if the election official correctly completed the form described above.
- Prohibits a provisional ballot cast in the wrong precinct and the incorrect polling location from being counted.

Voting locations that serve more than one precinct

- Requires a vote of three of the four members of a board of elections for the board to choose to have a single voting location serve more than one precinct.
- Allows a board that does so to designate a single presiding judge for the voting location who is a member of the dominant political party in the combined precincts.
- Permits the board to combine the pollbooks for precincts that share a voting location to create a single pollbook for the location.

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CONTENT AND OPERATION

Categories of individuals who may cast a provisional ballot

The bill consolidates several categories of individuals described in the statute who may cast a provisional ballot. However, any person who currently may cast a



provisional ballot still may do so under the bill. The bill specifies that the following individuals may cast a provisional ballot:¹

- A person who declares that the person is registered and eligible to vote in the precinct, if the person's name does not appear in the pollbook or if an election official asserts that the person is not eligible to vote;
- A person who does not have or is unable to provide any of the following required forms of identification (ID), which the bill does not change:
 - A current and valid photo ID;
 - A military ID; or
 - A copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections, that shows the person's name and current address.
- A person whose name in the pollbook has been marked as having requested an absent voter's ballot for that election and who appears to vote at the polling place;
- A person whose name in the pollbook has been marked because the person's notification of registration has been returned undelivered to the board of elections;
- A person whose right to vote has been successfully challenged by an election official or whose application or challenge hearing has been postponed until after the day of the election;
- A person who is registered to vote but who has changed the person's name, moved within the state, or changed the person's name and moved within the county; or
- A person whose signature, in the opinion of the precinct election officials, is not that of the person who signed that name in the registration forms.

The bill eliminates language enumerating several types of individuals who do not have or are unable to provide the required ID. And, the bill combines multiple

¹ R.C. 3505.18(A), 3505.181(A), and 3505.182.



references to individuals who may cast a provisional ballot because their right to vote has been challenged.

The bill also removes a provision of law that stated that an elector who has but declines to provide the required ID, or has a Social Security number but declines to provide the last four digits, may cast a provisional ballot. Under continuing law, such a person would be permitted to cast a provisional ballot on either the basis that the person declared that the person was eligible to vote in the precinct, but an election official asserted that the person was not eligible or on the basis that the person is unable to provide ID to the election officials.²

Provisional ballot affirmation form

Required information on a provisional ballot affirmation

The bill adds a provisional voter's current address as a required field on the provisional ballot affirmation. Under continuing law, the voter must provide the voter's signature and date of birth, as well as the last four digits of the voter's Social Security number if the voter has not provided another form of ID. (While the existing form shows the voter's date of birth as a required field, the date of birth currently is not required to count the provisional ballot. Under the bill, the date of birth is required to count the ballot.)³

Responsibility for completing a provisional ballot affirmation

The bill makes a provisional voter responsible to complete all parts of the provisional ballot affirmation form except for the portion in which an election official signs and dates the form. Under the bill, the provisional voter, instead of the election official, must check the appropriate options on the affirmation form to indicate the following:⁴

- Whether the person is required to provide additional information to the board of elections;
- Whether an application or challenge hearing regarding the person's registration has been postponed until after the election; and

² R.C. 3505.18(A); 3505.181(A); and 3505.182.

³ R.C. 3505.182.

⁴ R.C. 3505.181(B)(2), (6), and (7) and 3505.182.



- Whether the person provided ID, and if so, the form of ID the person provided.

Under continuing law, the provisional voter also is responsible to complete the following fields, some of which are optional:⁵

- The voter's signature;
- The voter's date of birth;
- The voter's current address;
- The voter's former address, if applicable;
- The last four digits of the voter's Social Security number, if applicable;
- The voter's driver's license number, if applicable;
- A copy of the voter's ID, if applicable;
- Whether the voter is casting a provisional ballot because the voter requested, but did not receive, an absent voter's ballot; and
- Whether the voter is casting a provisional ballot for another reason.

Provisional ballot affirmation as voter registration form

If a provisional voter is not registered to vote or must update the person's name or address for the purpose of voter registration, the bill requires the board of elections to treat the person's completed provisional ballot affirmation as an application to register to vote or to update the person's registration for future elections, as long as the person provided the required information. Consequently, the bill eliminates the need for an elector who has moved or had a change of name to submit a separate registration update form when casting a provisional ballot.⁶

The bill adds the following registration-related statements to the provisional ballot affirmation, to which the provisional voter must swear or affirm under penalty of election falsification:⁷

⁵ R.C. 3505.182.

⁶ R.C. 3503.16 and 3505.182.

⁷ R.C. 3505.182.



- That the person is a U.S. citizen;
- That the person will be at least 18 years of age at the time of the general election;
- That the person has lived in Ohio for 30 days immediately preceding the election; and
- That the person understands that, if the person is not currently registered to vote or is not registered at the person's current address or under the person's current name, the affirmation form will serve as an application to register to vote or update the person's registration, as long as the person provides all of the information required to do so.

Under continuing law, in order to register to vote or update a person's registration, the person must provide the person's name, address, date of birth, and signature; the current date; and ID in the form of the person's driver's license number, the last four digits of the person's Social Security number, or a copy of a current and valid photo ID, a copy of a military ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections, that shows the person's name and address.⁸

Provisional ballot counting requirements

Affirmation

The bill adds a provisional voter's date of birth and current address to the information that must be provided in the provisional ballot affirmation in order for the ballot to be eligible to be counted. Under the bill, the affirmation must include all of the following:

- The person's name (continuing law);
- The person's signature (continuing law);
- The person's date of birth;
- The person's current address;
- A statement that the person is registered to vote in the precinct (continuing law); and

⁸ R.C. 3503.14, not in the bill.



- A statement that the person is eligible to vote in that election (continuing law).

The bill removes an exception to this requirement that specified that if the provisional voter declined to execute the provisional ballot affirmation, the affirmation must include only the voter's name, written either by the voter or by an election official, in order to be eligible to be counted.

Under the bill, the date of birth and address provided on the affirmation must not be different from the date of birth or address contained in the statewide voter registration database. However, if a registered elector casts a provisional ballot because the elector moved, the current address listed on the affirmation need not match the address in the database.⁹

Identification

Continuing law requires a provisional voter also to satisfy an ID requirement in order to have the voter's ballot counted. Under the bill, the voter may do any of the following:

- Provide the required ID to an election official on the day of the election;
- Write the last four digits of the voter's Social Security number on the affirmation; or
- Appear at the office of the board of elections not later than the Friday after the day of the election and provide either the required ID or the last four digits of the voter's Social Security number.

If the provisional voter provides the last four digits of the voter's Social Security number or the voter's driver's license or state ID card number, continuing law specifies that the number provided must not be different from the relevant number in the statewide voter registration database.

The bill eliminates a procedure that allowed an elector who has neither the required ID nor a Social Security number to execute an affirmation to that effect and to have that affirmation satisfy the requirement that the elector provide ID in order for the provisional ballot to be counted. Instead, under the bill, such an elector must provide ID

⁹ R.C. 3505.183.

to the board of elections in the same manner as any other provisional voter who does not have or is unable to provide the required ID.¹⁰

Time to provide additional information to the board of elections

The bill shortens the period of time for a provisional voter to provide additional information to the board of elections in order to have the voter's ballot counted. Under the bill, a provisional voter who did not either show the required ID to an election official or write the last four digits of the voter's Social Security number on the provisional ballot affirmation must appear at the office of the board not later than the Friday after the day of the election, instead of not later than ten days after the election, to provide ID or the last four digits of the voter's Social Security number.

Similarly, the bill requires a provisional voter who has been successfully challenged by an election official to provide any identification or other required documentation to the board of elections not later than the Friday after the day of the election, instead of not later than ten days after the election.¹¹

Other requirements

In order for a provisional ballot to be counted, in addition meeting the above requirements, continuing law requires the board of elections to determine that all of the following are true:¹²

- The provisional voter is properly registered to vote;
- With certain exceptions, the voter is eligible to cast a ballot in the precinct for that election (see "**Provisional ballots cast in the wrong precinct**");
- The voter has not already cast a ballot for that election;
- The voter provided any required additional information to the board; and
- Any challenge hearing conducted after the election was resolved in the voter's favor.

¹⁰ R.C. 3505.18(A); 3505.181(A) and (B)(6) and (8); and 3505.183.

¹¹ R.C. 3505.181(B)(8); 3505.182; and 3505.183(B)(2), (3), and (4).

¹² R.C. 3505.183(B).



Provisional ballots cast in the wrong precinct

Background

The Revised Code prohibits a provisional ballot from being counted if it was cast in a precinct other than the one in which the provisional voter is eligible to vote.¹³ However, a federal court has ruled that this requirement violates the Equal Protection and Due Process clauses of the Fourteenth Amendment when it is applied to provisional voters who cast their ballots in the wrong precinct because of poll worker error. Under the terms of a permanent court order, a provisional ballot that was cast in the wrong precinct but in the correct voting location must be counted for all races and issues for which the individual would have been eligible to vote, had the ballot been cast in the correct precinct, unless all of the following are true:¹⁴

- The poll worker determined the correct precinct, directed the individual to that precinct, and told the individual that a wrong-precinct ballot would not be counted;
- The individual refused to travel to the correct precinct and insisted on casting the invalid ballot; and
- The board of elections has verified that the poll worker directed the individual to the correct precinct.

Although the federal district court initially extended this ruling to require the counting of ballots cast in the wrong precinct and the wrong voting location because of poll worker error, a federal appeals court stayed that order. The courts have not made a final ruling concerning provisional ballots cast in the wrong precinct and the wrong voting location.¹⁵

Election official form

Under continuing law, if an individual appears to vote at the wrong precinct, an election official must direct the individual to the polling place for the correct precinct, explain that the individual may cast a provisional ballot at the current location but that the ballot will not be counted if it is cast in the wrong precinct, and provide the telephone number of the board of elections.

¹³ R.C. 3505.181(C)(2)(a) and (b) and 3505.183(B)(4)(a)(ii).

¹⁴ *Service Employees International Union v. Husted*, 2013 U.S. Dist. LEXIS 95385, Case No. 2:06-CV-00896 (S.D. Ohio July 9, 2013).

¹⁵ *Service Employees International Union v. Husted*, 698 F.3d 341 (6th Cir. 2012).



If the individual insists on casting a ballot in the wrong precinct and the individual is in the correct polling location, the bill requires the election official to complete and sign, under penalty of election falsification, a form that includes all of the following and attach it to the individual's provisional ballot affirmation:¹⁶

- The name or number of the individual's correct precinct;
- A statement that the election official instructed the individual to travel to the correct precinct to vote;
- A statement that the election official informed the individual that casting a provisional ballot in the wrong precinct would result in all votes on the ballot being rejected;
- The name or number of the precinct in which the individual is casting a provisional ballot; and
- The name of the polling location in which the individual is casting a provisional ballot.

Counting requirements

The bill specifies that if an individual cast a provisional ballot in the wrong precinct but in the correct polling location, and the election official failed to direct the individual to the correct precinct, the individual's ballot must be remade and counted for each office, question, and issue for which the individual was eligible to vote and for which the individual attempted to cast a provisional ballot. The board of elections must examine all available evidence to determine whether the election official failed to direct the individual to the correct precinct. Under the bill, the election official must be presumed to have directed the individual to the correct precinct if the election official correctly completed the form described above.

If an individual cast a provisional ballot in the wrong precinct and in the incorrect polling location, continuing law prohibits the provisional ballot from being counted.¹⁷

Voting locations that serve more than one precinct

The bill requires a vote of three of the four members of a board of elections for the board to choose to have a single voting location serve more than one precinct. If the

¹⁶ R.C. 3505.181(C)(2).

¹⁷ R.C. 3505.181(C)(2) and 3505.183(B)(4)(a) and (C).

board does so, the bill allows the board to designate a single presiding judge for the voting location. The presiding judge must be a member of the political party whose candidate received the highest number of votes for Governor at the most recent gubernatorial election in the precincts whose polling places are located at the voting location, when tallying the combined vote for Governor in all of those precincts. The bill also permits the board to combine the pollbooks for precincts that share a voting location to create a single pollbook for the location.

Under current law, each precinct must have its own pollbook and its own presiding judge who is a member of the dominant political party in that precinct, regardless of whether the precinct shares a voting location with another precinct.¹⁸

HISTORY

ACTION	DATE
Introduced	10-29-13

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¹⁸ R.C. 3501.22.

