



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. S.B. 216\***

130th General Assembly

(As Reported by S. State Government Oversight and Reform)

Sen. Seitz

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## **BILL SUMMARY**

### **Individuals who may cast a provisional ballot**

- Consolidates several categories of individuals described in the statute who may cast a provisional ballot.
- Permits an elector who has had a change of name but has not updated the elector's registration to cast a regular ballot if the elector completes a change of name form and provides proof of a legal name change to the precinct election officials.
- Eliminates a current procedure that allows an individual who refuses to execute a provisional ballot affirmation still to cast a provisional ballot.
- 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**

- Makes several changes to the provisional ballot affirmation form, and prevents the Secretary of State or a board of elections from producing a form that deviates from the exact language set out in the bill.

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\* This analysis was prepared before the report of the Senate State Government Oversight and Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- 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.
- 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 elector's driver's license or state identification card number or the last four digits of the elector's Social Security number on the provisional ballot envelope or providing the required ID or one of those numbers to the board of elections not later than the seventh day 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 to seven days 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.



## **Free access system for provisional ballot information**

- Clarifies that an individual may use the state's free access toll-free telephone number for provisional voters only to gain access to information about the individual's own provisional ballot.

## **Records concerning rejected provisional ballots**

- Specifies that a board of elections need not make a separate record of certain information concerning rejected provisional ballots if the board has already recorded that information in another database.

## **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.
- Specifies that the election official must be deemed 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.



## References to precincts, jurisdictions, and polling places

- Changes several references to eligibility to vote in a "jurisdiction" to eligibility to vote in a precinct.
- Amends certain references to polling places to refer instead to precincts, in order to reflect the practice of having a single polling place serve multiple precincts.

## Driver's licenses or state identification cards with a former address

- Eliminates the requirement that, if an elector appears to vote and provides a driver's license or state identification card that contains a former address, the precinct election official must record that fact, along with the last four digits of the elector's driver's license or state identification card number.

## Incomplete or defective absent voter's ballot identification envelopes

- Allows a person's right to vote to be challenged on the ground that the identification statement of voter is incomplete, and specifies that, if the election officials find that the statement accompanying an absent voter's ballot is *incomplete* or insufficient, the vote must not be accepted or counted.
- Specifies the circumstances under which an absent voter's ballot identification envelope must be considered incomplete.
- Requires a board of elections to contact an absent voter whose identification envelope is incomplete or does not match the information in the statewide voter registration database by mail to inform the voter of the defect.
- Permits such an absent voter to deliver a written form to the office of the board, in person or by mail, not later than the seventh day after the day of the election in order to cure the defect.

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## CONTENT AND OPERATION

### Individuals who may cast a provisional ballot

The bill consolidates several categories of individuals described in the statute who may cast a provisional ballot and removes two types of individuals from those categories.

#### **Electors who have had a change of name**

Under the bill, a registered elector who has had a change of name but has not updated the elector's registration may cast a regular ballot if the elector completes a change of name form and provides to the precinct election officials proof of a legal name change, such as a marriage license or court order that includes the elector's current and prior names. If the elector cannot provide that proof, the elector may cast a provisional ballot and provide notice of that name change, as under current law. Continuing law permits an elector who has had a change of name and also moved to a different precinct to cast a provisional ballot.<sup>1</sup>

#### **Individuals who decline to execute a provisional ballot affirmation**

The bill also eliminates a current procedure that allows an individual who refuses to execute a provisional ballot affirmation still to cast a provisional ballot. Under existing law, the individual or a precinct election official must write the individual's name on the affirmation, and the election official must submit the ballot to the board of elections.<sup>2</sup>

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<sup>1</sup> R.C. 3503.16(B)(1)(b) and 3505.181(A)(6).

<sup>2</sup> R.C. 3505.181(B)(3) and (6) and 3505.183(B)(1).



## Categories of provisional voters

The bill specifies that the following individuals may cast a provisional ballot:<sup>3</sup>

- 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 and has not provided proof of a legal name change, who has moved within the state, or who has 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

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<sup>3</sup> 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.<sup>4</sup>

## **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 name, signature, and date of birth. The bill clarifies that the voter must provide both the voter's *printed* name and the voter's signature. If the voter has not shown ID to an election official, continuing law requires the voter also to provide a form of ID. Under the bill, such a voter may provide the voter's driver's license or state identification card number or the last four digits of the voter's Social Security number. Existing law does not permit a provisional voter to use the voter's driver's license or state identification card number to satisfy the ID requirement. (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.)<sup>5</sup>

### **Completing a provisional ballot affirmation form**

The bill makes several changes to the provisional ballot affirmation form and makes a provisional voter responsible to complete all parts of the form. The bill also prevents the Secretary of State or a board of elections from producing a form that deviates from the exact language set out in the bill. Under the bill, the provisional voter must complete all of the following fields:<sup>6</sup>

- The voter's full printed name (current law requires the form to include the voter's name);

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<sup>4</sup> R.C. 3505.18(A); 3505.181(A); and 3505.182.

<sup>5</sup> R.C. 3505.182.

<sup>6</sup> R.C. 3505.181(B)(2), (6), and (7) and 3505.182.



- The voter's date of birth (continuing law);
- The voter's current address (current law allows, but does not require, the voter to provide this information);
- Whether the voter is casting a provisional ballot because the voter is registered to vote but moved and has not filed a notice of change of address with the board of elections, and if so, the voter's former address (current law permits the voter to provide a former address);
- One of the following forms of identification:
  - The voter's driver's license or state identification card number (current law allows the voter to provide a driver's license number, but that number does not satisfy the ID requirement);
  - The last four digits of the voter's Social Security number (continuing law); or
  - An indication of the type of identification the voter showed to an election official (currently, an election official must record this information).
- The voter's signature (continuing law); and
- The date (currently, an election official must date the form).

The bill removes the fields for an election official to check to indicate that the provisional voter must provide additional information to the board of elections. Instead, under the bill, the form includes statements informing the voter that if the voter fails to provide identification or if the voter's right to vote has been challenged, the voter must provide the required information to the board of elections on or before the seventh day following the election.

Additionally, the bill eliminates the options that the provisional voter currently must check to indicate whether the voter is casting a provisional ballot because the voter requested, but did not receive, an absent voter's ballot or whether the voter is casting a provisional ballot for another reason.

Finally, the bill removes the option for a provisional voter to attach a copy of the voter's ID documents. Under continuing law, however, the voter may provide

additional information to an election official to assist the board of elections in determining the individual's eligibility to vote in the election.<sup>7</sup>

### **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.<sup>8</sup>

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:<sup>9</sup>

- 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

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<sup>7</sup> R.C. 3505.182.

<sup>8</sup> R.C. 3503.16 and 3505.182.

<sup>9</sup> R.C. 3505.182.



voter registration mailed by a board of elections, that shows the person's name and address.<sup>10</sup>

## **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 printed name (current law requires the ballot to include the person's name);
- 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
- 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, such a person may not cast a provisional ballot.

The bill requires the date of birth and address provided on the affirmation not to be different from the date of birth or address contained in the statewide voter registration database. However, if a registered elector indicates that the elector is casting a provisional ballot because the elector moved, the current address listed on the affirmation need not match the address in the database.<sup>11</sup>

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<sup>10</sup> R.C. 3503.14, not in the bill.

<sup>11</sup> R.C. 3505.183.



## 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 voter's driver's license or state identification card number or 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 seventh day after the day of the election and provide the required ID, the voter's driver's license or state identification card number, or the last four digits of the voter's Social Security number.

Existing law does not permit a provisional voter to use the voter's driver's license or state identification card number to satisfy the ID requirement. If the 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 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.<sup>12</sup>

### **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 voter's driver's license or state identification card number or 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 seven days, instead of ten days, after the day of the election to provide ID or one of those numbers.

Similarly, the bill requires a provisional voter who has been successfully challenged by an election official to provide any identification or other required

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<sup>12</sup> R.C. 3505.18(A); 3505.181(A) and (B)(6) and (8); and 3505.183.



documentation to the board of elections not later than seven days, instead of ten days, after the day of the election.<sup>13</sup>

### **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:<sup>14</sup>

- 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.

### **Free access system for provisional ballot information**

The bill clarifies the permitted use of the free access toll-free telephone number that continuing law requires the state to maintain to allow provisional voters to learn the status of their ballots. Under the bill, the system must allow an individual only to gain access to information about the individual's own provisional ballot. Current law, which mirrors federal law, states that access to information about an individual ballot must be restricted to the individual who cast the ballot.<sup>15</sup>

### **Records concerning rejected provisional ballots**

Continuing law requires a board of elections to keep certain records concerning rejected provisional ballots. Those records must include the name of the provisional voter, the identification number of the provisional ballot envelope, the names of the election officials who determined the validity of the ballot, the date and time that the determination was made, and the reason that the ballot was not counted. Under the bill,

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<sup>13</sup> R.C. 3505.181(B)(8); 3505.182; and 3505.183(B)(2), (3), and (4).

<sup>14</sup> R.C. 3505.183(B).

<sup>15</sup> R.C. 3505.181(B)(5). See also 42 U.S.C. 15482.



a board need not make such a record if it has already recorded that information in another database.<sup>16</sup>

## **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.<sup>17</sup> 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:<sup>18</sup>

- 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.<sup>19</sup>

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<sup>16</sup> R.C. 3505.183(C).

<sup>17</sup> R.C. 3505.181(C)(2)(a) and (b) and 3505.183(B)(4)(a)(ii).

<sup>18</sup> *Service Employees International Union v. Husted*, 2013 U.S. Dist. LEXIS 95385, Case No. 2:06-CV-00896 (S.D. Ohio July 9, 2013).

<sup>19</sup> *Service Employees International Union v. Husted*, 698 F.3d 341 (6th Cir. 2012).



## **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. The bill requires the election official to explain that the individual may cast a provisional ballot at the current location but that the ballot *or a portion of the ballot* will not be counted if it is cast in the wrong precinct, and provide the telephone number of the board of elections.

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:<sup>20</sup>

- 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 or a portion of the 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. Under the bill, the election official must be deemed to have directed the individual to the correct precinct if the election official correctly completed the form described above.

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<sup>20</sup> R.C. 3505.181(C)(2).



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.<sup>21</sup>

### **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 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.<sup>22</sup>

### **References to precincts, jurisdictions, and polling places**

The bill changes several references to eligibility to vote in a "jurisdiction" to eligibility to vote in a precinct. Existing law defines jurisdiction to mean precinct in these contexts.<sup>23</sup>

Further, the bill amends certain references to polling places to refer instead to precincts. These changes reflect the practice of having a single polling place serve multiple precincts, since the existing statute does not contemplate such an arrangement. For example, the bill alters references to the official list of eligible voters for a polling place to refer to the official list of eligible voters for a precinct. And, the bill requires an election official to direct an individual who appears to vote at the incorrect precinct to direct the individual to the *precinct and* polling place in which the individual appears to be eligible to vote.<sup>24</sup>

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<sup>21</sup> R.C. 3505.181(C)(2) and 3505.183(B)(4)(a) and (D).

<sup>22</sup> R.C. 3501.22.

<sup>23</sup> R.C. 3505.181, 3505.182, and 3505.183.

<sup>24</sup> R.C. 3505.181(C) and (E).



## **Driver's licenses or state identification cards with a former address**

The bill eliminates the requirement that, if an elector appears to vote and provides a driver's license or state identification card that does not contain the elector's current address, the precinct election official must mark the pollbook to indicate that fact and record the last four digits of the elector's driver's license or state identification card number.<sup>25</sup>

## **Incomplete or defective absent voter's ballot identification envelopes**

### **Challenging absent voter's ballots as incomplete**

The bill allows an absent voter's right to vote to be challenged on the ground that the identification statement of voter is incomplete. Under the bill, an absent voter's ballot identification envelope must be considered incomplete if it does not include all of the following:

- The voter's name;
- The voter's residence address;
- The voter's date of birth;
- The voter's signature; and
- One of the following forms of identification, which the bill does not change:
  - The voter's driver's license number;
  - The last four digits of the voter's Social Security number; or
  - A copy of a current and valid photo identification, a military identification, or 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 voter's name and address.

Continuing law permits an absent voter's right to vote to be challenged on the ground that the signature on the envelope is not the same as the signature on the

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<sup>25</sup> R.C. 3503.16(B)(1)(a) and 3505.18(A)(1).



registration form or upon any of the other grounds for which the right of persons to vote may be lawfully challenged.<sup>26</sup>

### **Cure period**

The bill requires a board of elections to contact an absent voter if the election officials find that the identification envelope statement of voter is incomplete or that the information contained in the statement does not conform to the information contained in the statewide voter registration database concerning the voter. The election officials must mail a written notice to the voter, informing the voter of the nature of the defect. The notice must inform the voter that in order for the voter's ballot to be counted, the voter must provide the necessary information to the board in writing and on a form prescribed by the Secretary of State not later than the seventh day after the day of the election.

The voter may deliver the form to the office of the board in person or by mail. If the voter provides the necessary information to the board not later than the seventh day after the day of the election and the ballot is not successfully challenged on another basis, the ballot must be counted. If the voter does not do so, and if the election officials find that the statement accompanying the ballot is incomplete or insufficient, the ballot must not be counted.

Current law specifies only that if the election officials find that the statement accompanying an absent voter's ballot is insufficient, the vote must not be accepted or counted. The existing statute does not provide an absent voter the opportunity to cure a defective identification statement.<sup>27</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-29-13
Reported, S. State Government Oversight and Reform	----

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<sup>26</sup> R.C. 3509.06(D) and 3509.07.

<sup>27</sup> R.C. 3509.06(D) and 3509.07.

