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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 466\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Sweeney

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CORRECTED VERSION

### SUMMARY

#### Automated Voter Registration System

- Creates an automated, electronic process called the Automated Voter Registration System to register or preregister eligible persons to vote or update their voter registrations or preregistrations through the Bureau of Motor Vehicles (BMV) and public and private secondary schools.
- Requires the Secretary of State to adopt rules to develop, implement, and administer the system.
- Requires the BMV to provide electronic records to the Secretary concerning each person in the BMV's database who appears to be eligible to register or preregister to vote or to update the person's registration or preregistration.
- Requires each public or private secondary school to provide, unless prohibited by federal law, electronic records to the Secretary concerning each person who reaches age 16, 17, or 18 and who appears to be eligible to register or preregister to vote or to update the person's registration or preregistration.
- Requires a board of elections, if it determines that a person is eligible, to send the person a notice by nonforwardable mail that the person will be registered or preregistered to vote or have the person's registration or preregistration updated unless the person declines to do so.

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\* Updates criminal prohibitions and confirmation notices section and corrects grammatical errors in "**Technical changes**" section.

- Specifies procedures for the board to follow if the person declines or if the notice is undeliverable.
- Specifies that a person is considered to be registered to vote upon submitting that information to the BMV or upon the public or private secondary school transmitting that information and may vote at the next election that occurs within the time period required that a person be registered to vote.
- Specifies procedures to cancel any previous registration of a person who is automatically registered to vote or who has the person's registration automatically updated.
- Prohibits any election official, person assisting in the registration of electors, or police officer from knowingly refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration or preregistration of a person who should be registered or preregistered automatically under the bill.
- Changes the information that must be included in the Secretary's informational brochure about voter registration to accommodate the changes made by the bill.
- Removes existing requirements that the BMV share information in its database with the Secretary for the purpose of maintaining the Statewide Voter Registration Database.
- Requires the BMV to provide to the Secretary the electronic records of the previous four-years from the bill's effective date concerning each person who appears to be eligible to register or preregister to vote or to update the person's registration or preregistration and about whom the BMV possesses all of the required information.

### **Erroneous voter registration updates**

- Requires the board of elections to correct an elector's registration if it is updated in error under the Automated Voter Registration System and there is proof of the elector's true name and address.
- Allows an elector whose registration has been updated in error under the system to cast a provisional ballot, provide ID showing the elector's true name and address, and have the ballot counted.

### **Criminal prohibitions involving voter registration**

- Modifies the continuing-law prohibitions against false voter registration to avoid penalizing a person who is registered, preregistered, or has the person's registration or preregistration updated under the Automated Voter Registration System, if the person did not intend to trigger a false registration or update.
- Prohibits any election official, person assisting in the registration of electors, or police officer from refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration or preregistration of a person who should be registered, preregistered, or have the person's registration or preregistration updated under the system.

## **Implementation of Automated Voter Registration System**

- Requires the Secretary of State to implement the Automated Voter Registration System not later than August 1, 2020, if the bill takes effect by April 1, 2020, or, if after April 1, 2020, not later than nine months after the bill takes effect.

## **Expansion of Automated Voter Registration System**

- Requires the Secretary of State, by rule, to evaluate other state agencies that could feasibly participate in the Automated Voter Registration System.
- Requires the Secretary to submit that information in a report to the General Assembly, and publish the report on the Secretary's official website, not later than one year after implementation of the system.

## **Confirmation notices**

- Allows an elector who has been sent a confirmation notice to avoid cancellation of the elector's registration if the elector signs an election petition or communicates to a board of elections or the Secretary of State that the elector is still eligible to vote.
- Eliminates the requirement that an elector's registration must be canceled not later than 120 days after the second federal general election occurring after the elector is mailed a confirmation notice and takes no action or not later than 120 days after the expiration of the four-year response period, whichever is later.
- Eliminates the law authorizing the Secretary to prescribe additional voter roll maintenance procedures to identify and send confirmation notices to electors who appear to have moved or had a change of name, such as the Supplemental Process.

## **Cancellation of registration in former county of residence**

- Eliminates a requirement in law that when an elector moves and registers to vote or updates the elector's registration, the elector must submit an authorization to cancel the elector's previous registration, and instead requires the elector's new registration form to operate as that authorization.
- Requires a board of elections that updates an elector's registration under the Automated Voter Registration System to notify the board of elections of the elector's previous county to cancel the elector's previous registration.
- Requires that, if the elector later declines, the board that receives the declination notice must notify the board responsible for the elector's previous registration to restore it.

## **Preregistration to vote of 16 and 17 year olds**

- Allows 16 and 17 year-olds to preregister to vote if, except for age, they are otherwise eligible to register to vote.
- Requires the board of elections to maintain a preregistration application separately from the county voter registration records.

- Requires the board to register a preregistered person as of the 90<sup>th</sup> day before the date of the first election in which the preregistered person becomes eligible to vote.
- Reduces the age from 18 to 16 for persons that have died, for whom the Director of Health must share the person’s name, Social Security number, date of birth, date of death, and residence with the Secretary of State.
- Provides that a person’s preregistration will be canceled in the same manner as a voter registration will be canceled, as applicable.
- Requires the voter registration brochure to include the manner in which an eligible 16 or 17 year-old can preregister to vote.

### **Confidentiality for designated public service workers**

- Establishes a formal procedure for an elector to notify a board of elections that the elector’s residence address is exempt from disclosure under the Public Records Law because the elector or the elector’s family member is a designated public service worker.
- Requires the Secretary of State to prescribe methods for the Secretary and the boards of elections to note on the elector’s registration record that the elector has submitted the notice and to maintain the note whenever the elector’s registration is updated.
- Requires the Secretary and the boards of elections to remove the elector’s registration information from all records that are available to the public, both online and on paper, and to follow special confidentiality procedures if the elector’s right to vote is challenged.
- Requires the Secretary to include information about the notice procedure in the voter registration brochure the Secretary must distribute under continuing law.
- Requires that, if a BMV customer indicates that the person’s address is subject to that public records exemption, the BMV must inform the person of the process to notify the board of elections.

### **Voter registration workers**

- Eliminates several provisions of law that applied to compensated voter registration workers because the law has been ruled unconstitutional and is not being enforced.

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## **TABLE OF CONTENTS**

Automated Voter Registration System .....	5
BMV customers .....	5
Public or private secondary school students .....	6
Required information .....	6
Secretary of State processing .....	7
Board of elections processing .....	7

Notice and opportunity to decline .....	7
Erroneous voter registration updates.....	8
Criminal prohibitions involving voter registration .....	9
Implementation of Automated Voter Registration System .....	10
BMV records at the time of bill’s effective date .....	10
Expansion of Automated Voter Registration System.....	10
Conforming changes.....	11
Confirmation notices .....	11
Supplemental process using confirmation notices .....	12
Cancellation of registration in former county of residence .....	12
Preregistration to vote of 16 and 17 year olds.....	13
Preregistration process .....	13
Cancellation of preregistration .....	13
Voter registration brochure .....	14
Confidentiality for designated public service workers .....	14
Voter registration workers.....	15
Consolidation of voter registration statutes.....	16
Technical changes .....	16

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## DETAILED ANALYSIS

### Automated Voter Registration System

The bill creates an automated, electronic process called the Automated Voter Registration System to register or preregister eligible persons to vote or update their voter registrations or preregistrations through the Bureau of Motor Vehicles (BMV), unless those persons later opt out. The Secretary of State must adopt rules under the Administrative Procedure Act to develop, implement, and administer the system, including rules prescribing procedures for the Secretary and the BMV to follow to ensure that only U.S. citizens who are eligible electors are registered or preregistered to vote through the system and rules governing the removal of ineligible voters through the system (see **COMMENT 1**).<sup>1</sup>

#### **BMV customers**

The bill requires the BMV to electronically provide to the Secretary all of the required information (see “**Required information**” below) about a person in the BMV’s database who appears to be eligible to register or preregister to vote or to update the person’s

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<sup>1</sup> New R.C. 3503.11; R.C. 3501.05(R)(2) and (Q).

registration or preregistration and about whom the agency possesses that information. The customer may opt out of the automated registration by mail (see **COMMENT 2**).<sup>2</sup>

Currently, the BMV must offer customers the opportunity to register to vote or to update their voter registrations, but the registration or update occurs only if the customer opts in and completes the necessary form.<sup>3</sup>

### **Public or private secondary school students**

The bill requires each public or private secondary school to provide to the Secretary, unless prohibited by federal law and no written consent has been provided by the student, electronic records of the required information for each person who reaches age 16, 17, or 18, who appears to be eligible to register or preregister to vote or to update the person's registration or preregistration, and about whom the school possesses that information (see **COMMENT 3**). The school must share the required information in accordance with a schedule established by the Secretary by rule.<sup>4</sup>

### **Required information**

Under the bill, the BMV or school must transmit all of the following from a person in the BMV database or student at a school in order to register or preregister the person to vote or update the person's registration or preregistration:

- The person's legal name;
- The person's residence address;
- The person's date of birth;
- The person's driver's license or state identification (ID) card number or last four digits of the person's Social Security number;
- Whether the person is a U.S. citizen;
- An electronic image of the person's signature.

Continuing Ohio law requires a person to provide all of that information in order to register to vote or update the person's registration on paper or online, except that a person can provide other forms of ID when submitting a paper registration form (a driver's license or state ID card number, the last four digits of the person's Social Security number, or a copy of a current and valid photo ID, military ID, or current utility bill, bank statement, government check, paycheck,

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<sup>2</sup> New R.C. 3503.11(A)(1)(a).

<sup>3</sup> Repeal of R.C. 3503.11.

<sup>4</sup> New R.C. 3503.11(A)(1)(b).

or other government document, other than a notice of voter registration, that shows the person's name and address).<sup>5</sup>

### **Secretary of State processing**

Under the bill, when the Secretary receives information concerning a person from the BMV or school, the Secretary must transmit the person's information electronically to the appropriate board of elections.<sup>6</sup>

### **Board of elections processing**

If the board of elections determines that the person is eligible to register or preregister to vote or to update the person's registration or preregistration, the board must send the person a notice by nonforwardable mail.

At least 21 days after the board sends the notice, the board must register or preregister the person to vote or update the person's registration or preregistration. The electronic records transmitted to the board are considered to be the person's registration or preregistration form.

The bill specifies that a person whose information has been transmitted through the Automated Voter Registration System is considered to be registered to vote upon submitting that information to the BMV or upon the information being transmitted by the school and may vote at the next election that occurs within the time required that a person be registered to vote. Under continuing law, a person is required to submit a voter registration form not later than the 30<sup>th</sup> day before an election in order to vote in that election. A person who is registered to vote in Ohio but has moved within Ohio and has not updated the person's voter registration by that deadline still may vote in the election, either by casting a regular or provisional ballot depending on the circumstances.<sup>7</sup>

### **Notice and opportunity to decline**

The notice sent by the board after determining that a person is eligible to register or preregister to vote or update the person's registration or preregistration must contain all of the following:

- The fact that the person will be registered or preregistered to vote or have the person's registration or preregistration updated unless the person declines;
- The procedure to decline to be registered or preregistered to vote or to have the person's registration or preregistration updated;
- The BMV or school that provided the information that will be used to register or preregister the person to vote or update the person's registration or preregistration;

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<sup>5</sup> New R.C. 3503.11(A)(2); R.C. 3503.14 and 3503.20.

<sup>6</sup> New R.C. 3503.11(B).

<sup>7</sup> New R.C. 3503.11; R.C. 3503.16 and 3503.19(A)(3); Ohio Constitution, Article V, Section 1; and R.C. 3503.01, not in the bill.

- The precinct in which the person will be registered or preregistered to vote;
- A statement informing the person of the acceptable forms of ID required to vote at the polls and that a voter who does not provide ID at the polls will still be able to vote with a provisional ballot.<sup>8</sup>

If the person declines to register or preregister to vote after the board has already registered or preregistered the person, the board must treat the declination as a request to cancel the person's registration or preregistration. Similarly, if the board receives a declination notice after the board has already updated the person's registration or preregistration, the board must correct the person's registration or preregistration to reflect the name, address, and signature that it contained before the board conducted the update.

If a board sends a notice of automated voter registration and the notice is returned to the board, the board must investigate and send the notice to the correct address. If the board cannot verify the person's correct address, the board must register the person and also mark the person's name in the official registration list and in the pollbook to indicate that the person must vote by provisional ballot. At the first election at which the person appears to vote, the person must provide ID to the election officials and cast a provisional ballot. If the person's ballot is counted, the board must correct the person's registration, if needed, and remove the marking from the person's name. If the ballot is not counted, the board must cancel the person's registration and notify the person of the cancellation by U.S. mail.

If the notice is returned as undeliverable, the person must be registered or preregistered to vote and sent a confirmation notice by forwardable mail. The person's registration or preregistration will be canceled if the person's fails to respond to the confirmation notice, update the person's registration or preregistration, or vote by provisional ballot in any election during the next four-year period, which includes two federal general elections after the mailing of a confirmation notice.<sup>9</sup>

### **Erroneous voter registration updates**

Under the bill, if an elector's name or address is updated in error under the Automated Voter Registration System, and upon proof of the elector's true name or address, the board of elections must correct the elector's registration. Further, if the error is not corrected before Election Day, the elector may cast a provisional ballot using the elector's true name and address and have the ballot counted. If the elector casts the provisional ballot in the precinct in which the elector is erroneously registered, and not in the precinct in which the elector resides, the board must remake the provisional ballot to reflect the offices, questions, and issues for which the individual was eligible to vote and count each vote the elector was eligible to cast.

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<sup>8</sup> New R.C. 3503.11(B).

<sup>9</sup> New R.C. 3503.11(C); R.C. 3503.21(A)(8).



For example, if an elector submitted a permanent address change to the National Change of Address Service in order to receive mail at a relative's house, the elector's voter registration was updated to show the relative's address, and the elector's relative lost the notice that was sent to the elector at the relative's address, the elector might not realize that the elector's registration had been updated incorrectly. If the elector or board discovered the error before Election Day, the elector or board could request to correct the elector's registration. Or, if the elector did not discover the error until the elector appeared to vote on Election Day, the elector could cast a provisional ballot, provide the required ID showing the elector's true residence address, and have that ballot counted. The provisional ballot affirmation also would be treated as a voter registration update form, causing the elector's address to be corrected after the election.<sup>10</sup>

### **Criminal prohibitions involving voter registration**

The bill modifies the continuing-law prohibitions against false voter registration as they apply to persons who are registered or have their registrations updated under the Automated Voter Registration System to avoid penalizing a person who does not intend to trigger a false registration or update. In general, a person who knowingly registers or attempts to register in a precinct in which the person is not a qualified voter, or who knowingly aids, abets, induces, or attempts to induce another person to do so, is guilty of a fifth degree felony.

Under the bill, if a person's voter registration or preregistration or update is processed through the system and the person is not a qualified voter or eligible person to preregister in the precinct or under the name indicated, the person commits a crime only if the person knowingly provides or attempts to provide false information with the intention of registering or preregistering to vote or submitting a registration or preregistration update using that information.

For example, the bill would not penalize an elector who submitted a relative's address to the National Change of Address Service in order to receive mail there if the elector did not knowingly submit the relative's address with the intention of triggering a voter registration update to that address, even if the elector did not return the declination notice.

Similarly, a person who aids, abets, induces, or attempts to induce another person to have the other person's voter registration or preregistration or voter registration or preregistration update processed through the automated system when the other person is not a qualified voter or eligible person to preregister in the precinct or under the name indicated commits a crime only if the person knowingly causes or attempts to cause the other person to be registered or preregistered to vote or to have the other person's registration or preregistration updated using information the person knows is false. For instance, the bill would not penalize a BMV employee who entered false information provided by a customer into the BMV's database, causing the customer to be registered incorrectly, unless the

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<sup>10</sup> R.C. 3503.30 and 3505.183.

employee knew the information was false and knowingly caused the customer to be registered under that false information.

Finally, the bill prohibits any election official, any person assisting in the registration of electors, or any police officer from refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration or preregistration of a person who should be registered, preregistered, or have the person's registration or preregistration updated under the Automated Voter Registration System. Continuing law prohibits those persons from refusing, neglecting, or unnecessarily delaying, hindering, or preventing the registration of a qualified elector who applies for registration in a lawful manner. Whoever violates that prohibition is guilty of a first degree misdemeanor.<sup>11</sup>

### **Implementation of Automated Voter Registration System**

The bill requires the Secretary of State to implement the Automated Voter Registration System not later than August 1, 2020, if the bill takes effect by April 1, 2020. If the bill takes effect after April 1, 2020, the Secretary must implement the system not later than nine months after the bill takes effect.<sup>12</sup>

### **BMV records at the time of bill's effective date**

The bill requires the BMV to provide to the Secretary the electronic records of the previous four years from the bill's effective date concerning each person who appears to be eligible to register or preregister to vote or to update the person's registration or preregistration and about whom the BMV possesses all of the required information. Each person will be automatically registered or preregistered to vote or have their registration or preregistration updated in accordance with the process for the Automated Voter Registration System.

The BMV cannot include in the transmission of records to the Secretary any information about a person who is a participant in the Address Confidentiality Program and has provided an address designated by the Secretary or otherwise indicated the person is a participant in that program.<sup>13</sup>

### **Expansion of Automated Voter Registration System**

Under the bill, the Secretary of State must, by rules adopted under the Administrative Procedure Act, evaluate the information maintained by state agencies other than the BMV, identify state agencies that feasibly could participate in the Automated Voter Registration System, and require those agencies to coordinate with the Secretary to establish participation by those agencies in the system. The Secretary must submit the information contained in the

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<sup>11</sup> R.C. 3599.11 and 3599.18.

<sup>12</sup> Section 4 of the bill.

<sup>13</sup> Section 5 of the bill. See also R.C. 111.42.

evaluation in a report to the General Assembly, and publish the report on the Secretary's official website, not later than one year after the implementation of the system.<sup>14</sup>

### **Conforming changes**

The bill makes numerous conforming changes to other sections of the Revised Code to acknowledge the Automated Voter Registration System, including updating the required contents of the Secretary of State's voter registration brochure to include references to the system and how to decline registration or updating under the system.<sup>15</sup>

### **Confirmation notices**

Under continuing law, if a registered elector fails to do one or more of the following after being mailed a confirmation notice, the elector's registration is subject to cancellation:

- Respond to a confirmation notice and vote at least once during a four-year period that includes two federal general elections;
- Update the elector's registration at least once during a four-year period that includes two federal general elections;
- Under the bill, an elector's registration also is subject to cancellation if the elector, after being mailed a confirmation notice, fails to do either of the following:
  - Sign an election petition;
  - Communicate in any way to a board of elections or the Secretary of State that the elector is still eligible to vote in Ohio.

Currently, the Revised Code specifies that the elector's registration is subject to cancellation if the elector does not, during a four-year period that includes two federal general elections, either (1) respond to the confirmation notice and vote, or (2) update the elector's registration and vote. However, federal law only requires an elector who has been mailed a confirmation notice to respond to the notice, update the elector's registration, or vote, not to *both* respond or update the elector's registration *and* vote. It appears that the existing language in Ohio law is an error, and federal law is the controlling authority in this situation.

Additionally, the bill eliminates a requirement that if an elector does not take the required action after being sent a confirmation notice, the elector's registration must be canceled not later than 120 days after the second federal general election occurring after the elector is mailed the notice or not later than 120 days after the expiration of the four-year

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<sup>14</sup> R.C. 3501.05(R)(3).

<sup>15</sup> R.C. 3503.09, 3503.12, 3503.13, 3503.14, 3503.15, 3503.16, 3503.19, 3503.28, 3505.18, 3505.181, 3505.183, 3509.03, 3509.05, 3511.02, 3511.09, 4506.07, 4507.06, and 4507.51.

response period, whichever is later. But, the registration must not be canceled during the 90 days immediately preceding a federal election.<sup>16</sup>

### **Supplemental process using confirmation notices**

The bill eliminates the state law authorizing the Secretary to prescribe additional voter roll maintenance procedures to identify and send confirmation notices to electors who appear to have moved or had a change of name, such as the Supplemental Process. Under continuing federal law, Ohio is required to conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters. A state is permitted, by federal law, to use the Supplemental Process in order to maintain its voter roll.<sup>17</sup>

### **Cancellation of registration in former county of residence**

The bill eliminates a requirement in law that when an elector moves and registers to vote or updates the elector's registration, the elector must submit an authorization to cancel the elector's previous registration. Instead, the bill specifies that the elector's new registration form operates as that authorization. And, in the case of an elector who is registered or has the elector's registration updated under the Automated Voter Registration System created by the bill, the board of elections that processes the elector's registration must create a notice to cancel the elector's previous registration.

When the elector's new registration is processed, the board of elections must send the authorization or notice, along with a copy of the elector's new registration form, to the board of elections of the county where the elector previously was registered or to the comparable agency in another state, if the elector has moved from another state. Under continuing law, the board that receives the authorization or notice must compare the signatures on the old and new registrations, cancel the elector's previous registration, and retain it along with the cancellation authorization in a separate file for two calendar years. The board also must notify the elector of the cancellation.

When an elector is registered or has the elector's registration updated under the Automated Voter Registration System and the elector later declines, the bill requires the board that receives the declination notice to notify the board of elections or out-of-state agency responsible for the elector's previous registration to restore the previous registration and treat it as though it were never canceled.<sup>18</sup>

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<sup>16</sup> R.C. 3501.01(W), not in the bill, 3503.19, and 3503.21. See also 52 United States Code (U.S.C.) 20507.

<sup>17</sup> 52 U.S.C. 20507 and R.C. 3503.21(B); See "Voter Registration List Maintenance (NCOA and Supplemental Process) Records," Election Official Manual, p. 3-55 to 3-56 and 3-63, available at: [https://www.sos.state.oh.us/globalassets/elections/directives/2019/eom\\_12-2019/eom\\_ch3\\_2019-12-18.pdf](https://www.sos.state.oh.us/globalassets/elections/directives/2019/eom_12-2019/eom_ch3_2019-12-18.pdf) (accessed January 30, 2020).

<sup>18</sup> R.C. 3503.33.

The bill specifies that a voter registration must be canceled upon a change of residence of a registered elector outside Ohio. Under continuing law, a voter registration also must be canceled upon the change of residence of a registered elector to a location in another state or outside the county of registration.<sup>19</sup>

## **Preregistration to vote of 16 and 17 year olds**

### **Preregistration process**

The bill allows 16 and 17 year-olds to preregister to vote if, except for age, they are otherwise eligible to register to vote. Under the bill, when a board of elections receives a completed application to register to vote from a person who is 16 or 17 years old, the board must retain the application and treat it as a preregistration application. The board must then send the applicant an acknowledgement notice of preregistration on a form prescribed by the Secretary of State. Under continuing law, a person is eligible to register to vote only if they are a U.S. citizen, at least age 18, and has been a resident of the state for 30 days immediately preceding the election.

The bill requires the board to maintain a preregistration application separately from the county voter registration records. Additionally, a preregistration record cannot be included in the Statewide Voter Registration Database until the person is eligible to register to vote. The information in a preregistration application is not considered a public record under the Public Records Law; however, the number of preregistered persons that live in a precinct in the county must be available to the public.

Under the bill, the board must register a preregistered person as of the 90<sup>th</sup> day before the date of the first election in which the preregistered person becomes eligible to vote. The board then must send the person a notification of registration. The person's preregistration form is considered to be the person's registration form.<sup>20</sup>

### **Cancellation of preregistration**

The bill requires that, at the end of each month, the Director of Health must share with the Secretary the names, Social Security numbers, dates of birth, dates of death, and residences of all persons age 16 or older that have died. Under current law, the Director must share the above information for any person age 18 or older that has died.

Additionally, the bill provides that a person's preregistration can be canceled in the same manner as a voter registration can be canceled, as applicable. The bill adds that a voter registration or preregistration, as applicable, can be canceled if there is a declination by an

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<sup>19</sup> R.C. 3503.21(A)(6); See also R.C. 3503.33.

<sup>20</sup> R.C. 111.42, 111.44, 149.43(A)(1)(nn), 3503.10, 3503.11, 3503.192, and 3503.21; New R.C. 3503.011; Ohio Const., art. V, sec 1.

elector who has been registered or person who has been preregistered to vote under the Automated Voter Registration System.<sup>21</sup>

Under continuing law, a person's registration or preregistration can be canceled if any of the following occur:<sup>22</sup>

- Written request to cancel by the registered elector or preregistered person on a form prescribed by the Secretary;
- Filing a notice of death of the registered elector or preregistered person by the Director or filing a certificate of death by the deceased elector's spouse, parent, child, administrator of the estate, or executor of the will;
- Felony conviction of the registered elector or preregistered person;
- Receipt by a board of elections of a cancellation notice under the Address Confidentiality Program.

### **Voter registration brochure**

The bill requires the voter registration brochure, developed by the Secretary, to include the manner in which an eligible 16 or 17 year-old can preregister to vote. Under continuing law, the brochure must include the applicable deadlines for registering to vote or for returning an applicant's completed registration form, the locations where a person may return a completed registration form, and a notice regarding identification required to vote at the polls.<sup>23</sup>

### **Confidentiality for designated public service workers**

The bill establishes a formal procedure for an elector to notify a board of elections that the elector's residence address is exempt from disclosure under the Public Records Law because the elector or the elector's family member is a designated public service worker. Under the bill, such an elector may submit that notice on a form prescribed by the Secretary of State and signed under penalty of election falsification. The Secretary must include information about this process in the voter registration brochure the Secretary must distribute under continuing law.

The bill requires the Secretary to prescribe methods for the Secretary and the boards to note on the elector's registration record that the elector has submitted the notice and to maintain the note whenever the elector's registration is updated. The board must remove the elector's residence address and precinct information from the version of the Statewide Voter Registration Database that is available to the public and from any version of the official registration list or other list of electors that is available to the public. The board also must exclude the elector from any precinct registration list that is available to the public and prevent

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<sup>21</sup> R.C. 3503.18 and 3503.21(A)(6), (7), and (8).

<sup>22</sup> R.C. 3503.21.

<sup>23</sup> R.C. 3503.28.

any member of the public from inspecting the elector's registration form at the board's office. But, the elector's information still must appear in the pollbook, enabling the elector to cast a regular ballot, unlike with the continuing system used for Address Confidentiality Program participants.

If the elector's right to vote is challenged, the bill requires the board to apply the same procedure as it currently must apply for an Address Confidentiality Program participant. The person who filed the challenge must not receive notice of the date and time of any hearing held concerning the challenge, must not be permitted to attend the hearing, and must not receive notice of the disposition of the challenge. The hearing must not be open to the public, and any records created as a result of the challenge that include the elector's residence address or precinct must not be open to public inspection.

Under continuing law, a designated public service worker's personal residence address and the residence address of the spouse, former spouse, or child of a designated public service worker are exempt from disclosure as a public record. "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, State Board of Pharmacy employee, investigator of the Bureau of Criminal Identification and Investigation, judge, magistrate, or federal law enforcement officer.

However, existing law does not include a specific process for a person who is entitled to that public records exemption to notify a board of the person's status so that the board can keep the person's address confidential. The Attorney General prescribes a form for a designated public service worker to submit to any government office to request that the worker's address be redacted from publicly available online records, but the Election Law does not acknowledge that process or require paper records to be redacted. Currently, the Secretary instructs designated public service workers to submit the Attorney General's form to the board.<sup>24</sup>

## **Voter registration workers**

The bill eliminates several provisions of law that applied to compensated voter registration workers because the law was ruled unconstitutional in 2006 and is not being

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<sup>24</sup> R.C. 3503.13(A), 3503.15(D)(6) and (G), 3503.22, 3503.24, and 3503.26. See also R.C. 149.43(A)(1)(p), (A)(7), and (A)(8), and Ohio Secretary of State, *Shielding our Protectors*, available at [sos.state.oh.us/secretary-office/office-initiatives/shielding-our-protectors/](https://sos.state.oh.us/secretary-office/office-initiatives/shielding-our-protectors/).

enforced. Under that law, a compensated voter registration worker was required to do all of the following:<sup>25</sup>

- Preregister with the Secretary of State and complete an online training;
- Include the worker’s own name, address, and employer on each registration form;
- Personally deliver or mail the completed form to the Secretary or a board of elections;
- Sign and submit with each batch of voter registration forms an affirmation that the worker has completed the training and complied with all laws governing voter registration activities.

## Consolidation of voter registration statutes

The bill consolidates several provisions of law that describe the methods for registering to vote or updating a voter registration and how the boards of elections must process voter registrations and updates. While the bill rearranges the statutes and eliminates redundant language, the bill does not substantively change them, other than to include references to the Automated Voter Registration System.<sup>26</sup>

## Technical changes

The bill updates references in Ohio law to the U.S. Code citation for the federal Uniformed and Overseas Citizens Absentee Voting Act to refer to the act’s current location in the U.S. Code. The federal election laws were reorganized, but not substantively changed, in 2014.<sup>27</sup>

The bill also removes obsolete language from the statute governing the online voter registration system that required the system to be operational not earlier than January 1, 2017.<sup>28</sup>

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## COMMENT

1. The bill might be vulnerable to a challenge on the ground that it violates the First Amendment to the U.S. Constitution. The U.S. Supreme Court has ruled that because “there are individuals for whom. . . the choice not to register implicates political thought and expression,” the First Amendment gives a person the right not to register to vote.<sup>29</sup> If a reviewing court

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<sup>25</sup> R.C. 3503.14, 3503.19(B)(2), 3503.28, 3599.11, and repeal of R.C. 3503.29. See also *Project Vote v. Blackwell*, 455 F.Supp.2d 694 (N.D. Ohio 2006) and *Project Vote v. Blackwell*, 2008 U.S. Dist. LEXIS 9878 (N.D. Ohio 2008).

<sup>26</sup> R.C. 3503.16 and 3503.19, repeal of R.C. 3503.111, and conforming changes in R.C. 3509.02, 3509.04, 3509.08, and 3599.12.

<sup>27</sup> R.C. 3501.05(CC), 3503.19(B)(1), and 3511.02.

<sup>28</sup> R.C. 3503.20(E).

<sup>29</sup> *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 195 (1999).



found that the bill impermissibly burdened that right by requiring a person who did not wish to register to vote to follow the procedure to decline to do so, the court might rule the bill unconstitutional. It appears that this particular issue has not been litigated.

2. A reviewing court might rule that the bill violates the National Voter Registration Act of 1993 (NVRA). Under the NVRA, the voter registration forms used by the BMV and designated agencies must include a space for the applicant to attest, under penalty of perjury, that the applicant is eligible to vote.<sup>30</sup> The bill requires applicants to be registered without signing such an attestation.

The NVRA also requires the registration forms used at the BMV to include language explaining that the applicant may decline to register to vote. And, the forms used by a designated agency that provides service or assistance in addition to conducting voter registration must include boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote. If the applicant does not check either box, the applicant is considered to have declined to register.<sup>31</sup> Under the bill, however, an applicant who declined to register, but did not do so during the specific time period described in the bill, could still be automatically registered.

3. It appears that the federal Family Educational Rights and Privacy Act (FERPA) would prevent a public high school or vocational school from releasing to the Secretary of State the information needed to register or preregister students who reach 16, 17, or 18 years of age to vote. Under FERPA, no school that receives federal funds may release a student's identifying information, including the student's Social Security number, country of citizenship, or signature, without written permission from the student's parents or, if the student is over 18, from the student. A school may release directory information, such as the student's name, address, and date of birth, but only if the school gives public notice of the disclosure and provides a reasonable period of time for parents to object. However, the bill specifies that a school can only transmit information under the Automated Voter Registration System if the transmission is not prohibited by federal law.<sup>32</sup>

Moreover, because Ohio law currently prohibits schools from collecting students' Social Security numbers, schools probably could not provide the necessary information to the Secretary of State to register current students to vote.<sup>33</sup>

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<sup>30</sup> 52 U.S.C. 20504(c)(2)(C) and 20506(a)(6)(A)(i).

<sup>31</sup> 52 U.S.C. 20504(c)(2)(D)(ii) and 20506(a)(6)(B)(iii).

<sup>32</sup> 20 U.S.C. 1232g(a)(5) and (b)(2).

<sup>33</sup> R.C. 3301.0714(D)(1), not in the bill.

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## HISTORY

Action	Date
Introduced	01-14-20

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