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Bill Analysis

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Primary Sponsor: Sen. M. Huffman

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SUMMARY

Extension of absent voting in 2020 primary election

- Voids Secretary of State directive 2020-06, issued on March 16, 2020.
- Extends absent voting in the March 17, 2020, primary election through April 28, 2020.
- Allows an elector who has not already cast a ballot in the election, and who was registered to vote in Ohio as of the February 18, 2020, deadline, to cast absent voter's ballots in the election through 7:30 p.m. on April 28.
- Requires ballots already cast in the election before or after the bill's effective date also to be counted after 7:30 p.m. on April 28.
- Requires the Secretary of State to mail a postcard to each elector in Ohio with information about voting under the bill.
- Requires generally that an elector apply for absent voter's ballots by mail to the board of elections by noon on April 25.
- Requires the board daily to compile a list of the applications received and to transmit the list to the Secretary, who must make it available to the public upon request.
- Requires the board to prepay the return postage on absent voter's ballots sent to electors under the bill.
- Requires the board to provide assistance in casting absent voter's ballots and, as applicable, an extended application deadline for electors who are ill, have disabilities, or are confined, in the same manner as under current law.
- Permits an elector instead to cast absent voter's ballots in person at the office of the board by 7:30 p.m. on April 28 if (1) the elector has a disability and wishes to use an accessible voting machine, or (2) the elector is unable to receive mail.

- Allows a person who applies for absent voter's ballots under the bill by the applicable deadline, and whose application is denied, to cast a provisional ballot in person at the office of the board by 7:30 p.m. on April 28.
- Specifies that, if a provisional voter is unable to appear at the office of the board because of personal illness, physical disability, or infirmity, the board must assist the voter in casting a provisional ballot in the same manner as an absent voter who needs that assistance.
- Requires the board to place a secure receptacle outside the office of the board for the return of absent voter's ballots under the bill.
- Requires all absent voter's ballots to be received at the office of the board not later than 7:30 p.m. on April 28 in order to be counted, but includes a ten-day grace period for ballots to arrive by mail after that time, the same as under the statute.
- Allows an absent voter or provisional voter to cure an incomplete ballot statement or provide additional information, if required, not later than May 5.
- Requires the Secretary of State and the boards of elections to conduct all post-election procedures by adding 42 days to the statutory deadlines (the number of days between March 17 and April 28).
- Requires candidates and political entities to file their post-primary campaign finance statements using March 17 as the date of the primary, but extends the filing deadline to 4:00 p.m. on June 5, 2020.
- Specifies that for the purpose of contribution limits that apply during a primary election period, the primary election period ended on March 17.
- Creates a new, interim election period between March 18 and April 28, during which candidates and political entities may accept contributions that do not exceed the limit that applies in a primary election period.
- Requires candidates and political entities to file reports of contributions and expenditures for the interim election period by 4:00 p.m. on June 5, 2020.

Suspension of purchasing and contracting requirements

- Suspends the state purchasing and contracting requirements, such as competitive bidding, that otherwise would apply to the Secretary of State for the purpose of implementing the bill.
- Requires the Secretary to file a report with the President of the Controlling Board describing all purchases the Secretary made for which the Secretary did not follow the state purchasing and contracting requirements.

Appropriation

- Appropriates \$5 million to the Secretary of State, which the Secretary must use to pay for expenses incurred for the purpose of implementing the bill.

Effective date

- Declares an emergency, meaning that the bill takes immediate effect and is not subject to the referendum.

DETAILED ANALYSIS

Background

In a presidential election year, continuing Ohio law requires the primary election to be held on the third Tuesday after the first Monday in March; for 2020, that date is March 17.¹ However, on March 16, 2020, the Director of the Ohio Department of Health issued an order that all polling places be closed on March 17 because of the threat of widespread exposure to COVID-19.² Immediately thereafter, the Secretary of State issued a directive rescheduling in-person voting for June 2, 2020, extending absent voting until that date, and prohibiting the boards of elections from counting any ballots until then.³

Extension of absent voting in 2020 primary election

The bill voids the Secretary of State directive and extends absent voting for the March 17, 2020, primary election to April 28, instead of June 2, 2020.⁴ The bill also extends voting in any special election held on the day of the primary election in the same manner, such as for a local ballot issue. (For the sake of brevity, this analysis refers to both the primary election and any simultaneous special election as the primary election.) However, the bill does not allow in-person voting at polling places for the election, as the directive does.

Eligibility to vote in the 2020 primary

Under the bill, an elector who has not already cast a ballot in the primary election and who was registered to vote in Ohio as of February 18, 2020 – the continuing-law registration deadline for the March 17 election – may vote absentee in the election under the bill. Any elector who has already cast a ballot in the election, either before the original March 17 deadline or later, under the Secretary of State’s directive, will have the elector’s ballot counted

¹ R.C. 3501.01(E), not in the bill.

² Ohio Department of Health, *Director’s Order In re: Closure of the Polling Locations in the State of Ohio on Tuesday March 17, 2020* (March 16, 2020), available at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/order-to-close-polling-locations-3-16-2020>. COVID-19 is a respiratory disease caused by a strain of the coronavirus that can result in serious illness or death. The Director of Health confirmed the first cases of COVID-19 in Ohio on March 9, 2020, leading the Governor and the Director to issue a series of emergency public health orders aimed at slowing the spread of the disease. The World Health Organization declared COVID-19 a pandemic on March 11, 2020.

³ Ohio Secretary of State, Directive 2020-06 (March 16, 2020), available at <https://www.ohiosecretaryofstate.gov/globalassets/elections/directives/2020/dir2020-06am.pdf>.

⁴ Section 1(A).

if it is received by the board of elections by the extended deadline specified in the bill and is otherwise eligible to be counted.⁵ These eligibility requirements are the same as under the Secretary of State's directive.

Suspension of election procedures

During the period beginning on the bill's effective date and ending at 7:30 p.m. on April 28, 2020, the bill prohibits a board of elections or any election official from counting any ballots cast in the 2020 primary, releasing the count or any portion of the count of any ballots cast in the election, or processing any voter registration application submitted after February 18, 2020. The Secretary of State's directive includes similar provisions.⁶

Absentee ballot applications

The bill requires the Secretary of State to mail a postcard to each elector in Ohio, telling the elector how to obtain an application for absent voter's ballots, the procedures and deadlines to apply to vote under the bill, and the procedures and deadline to return voted ballots to the board under the bill.

In general, the bill allows an elector to apply for absentee ballots for the 2020 primary only by mail to the appropriate board of elections. If the elector is eligible under continuing law to cast absent voter's ballots with the assistance of a bipartisan team of election officials because of a disability or confinement, the elector may include with the application a request to cast ballots in that manner.

At the end of each day, the board of elections must compile a list of all of the applications received that day, excluding any information that is not a public record, and transmit it to the Secretary. The Secretary must make the list available to the public upon request.

All applications for absentee ballots under the bill must be received at the office of the Secretary or the office of the board of elections not later than noon on April 25, except that an elector who would qualify under continuing law to apply by 3:00 p.m. on Election Day because of an unforeseeable hospitalization may apply by 3:00 p.m. on April 28.

This deadline is similar to the deadline in the Revised Code, which requires applications for absentee ballots mailed to the office of the board to be received by the board by noon on the third day before Election Day, except for those applications that may be received by 3:00 p.m. on Election Day. The Secretary of State's directive requires the boards to accept applications delivered to the board by mail if they are postmarked on or before May 26, seven days before the end of voting on June 2, except for those applications that may be received by 3:00 p.m. on the last day of voting.⁷

⁵ Section 1(C)(1). See also R.C. 3503.01, not in the bill.

⁶ Section 1(B).

⁷ Section 1(C)(2), (3), and (4). See also R.C. 3509.03, 3509.08, and 3511.02, not in the bill.

Processing applications

If the board of elections receives an application for absent voter's ballots for the 2020 primary and determines that it is incomplete, the bill requires the board promptly to notify the applicant of the additional information the applicant must provide, the same as under continuing law. The bill specifies that in order for the application to be valid, the applicant must provide that information not later than the applicable deadline described above.

If the board determines that an application submitted under the bill is valid, the board promptly must mail absent voter's ballots to the elector, except in cases where election officials personally deliver ballots to an elector because of a disability or confinement. The board must prepay the return postage on those ballots.

The bill makes an exception to a continuing provision of law that prohibits the board of elections from prepaying the return postage on absent voter's ballots.⁸

In-person absent voting

The bill prohibits electors from casting absentee ballots in person for the 2020 primary, except for an eligible elector to whom one of the following applies:

- The elector has a disability and wishes to cast ballots using an accessible voting machine, which normally must be available at every polling place on Election Day;
- The elector is unable to receive mail where the elector lives or at another place.

Such an elector may appear at the office of the board of elections not later than 7:30 p.m. on April 28 to vote in person. If electors are waiting in line to cast ballots at that time, they must be permitted to cast their ballots.

The Revised Code generally allows any elector to vote absentee in person before an election. The Secretary of State sets the days and hours for in-person absent voting. The Secretary's directive does not appear to state whether in-person absent voting is permitted for the extended 2020 primary.⁹

Provisional voters

Under the bill, any person who applies for absentee ballots for the 2020 primary by the applicable deadline and has the person's application denied may vote in the election by casting a provisional ballot. Provisional voters include electors who have moved or changed their names without updating their voter registrations and any person the election officials determine is not eligible to vote in the election.

⁸ Section 1(C)(5) and (6). See also R.C. 3509.04 and 3511.04, not in the bill.

⁹ Section 1(D). See also R.C. 3506.10, 3509.05, 3509.051, and 3511.10, not in the bill, and Ohio Secretary of State, *Election Official Manual*, ch. 5, p. 10, available at ohiosecretaryofstate.gov/globalassets/elections/directives/2019/eom_12-2019/eom_ch5_2019-12-18.pdf.

In general, the bill allows a person to cast a provisional ballot at the office of the board of elections not later than 7:30 p.m. on April 28. Persons waiting in line to cast provisional ballots at that time must be permitted to cast their ballots. Alternatively, if the person is unable to appear at the office of the board because of personal illness, physical disability, or infirmity, the board must send a bipartisan team of election officials to help the person to cast a provisional ballot, in the same manner as for an absentee ballot.

The statute allows such persons to vote provisionally at a polling place on Election Day, except that an elector who has moved or had a change of name also may cast a provisional ballot at the office of the board of elections. Under the Secretary of State's directive, any provisional voting would occur at polling places on June 2.¹⁰

Returning absent voter's ballots

The board of elections must place a secure receptacle outside the office of the board for the return of absent voter's ballots under the bill. The bill requires all absent voter's ballots for the 2020 primary to be received at the office of the board of elections not later than 7:30 p.m. on April 28, except that regular absentee ballots received by mail by May 8 are eligible to be counted if they are postmarked on or before April 27 and are not postmarked using a postage evidencing system. Uniformed services and overseas absent voter's ballots received by mail by May 8 are eligible to be counted if they are submitted for mailing by 12:01 a.m. on April 28 at the place where they are cast, regardless of whether they are postmarked.

The Revised Code specifies that absentee ballots must be received at the office of the board by 7:30 p.m. on Election Day, except that ballots received by mail receive the same ten-day grace period. The Secretary of State's directive also includes that ten-day grace period.¹¹

Curing ballots

Under the bill, if the election officials find that an absent voter's ballot identification statement is incomplete or incorrect, the voter must provide the required information to the board not later than May 5. Similarly, a provisional voter who is required to provide identification or additional information to the board must do so by May 5.

Continuing law provides the same seven-day deadline to cure an absent voter's ballot or provisional ballot. The Secretary of State's directive also provides for that seven-day cure period and includes the hours during which the boards must be open during the cure period.¹²

Post-election procedures

Under the bill, the boards and the Secretary of State must complete the unofficial count, the canvass of the election returns, and all other post-election procedures with respect to the

¹⁰ Section 1(E). See also R.C. 3503.16 and 3505.181, not in the bill.

¹¹ Section 1(F). See also R.C. 3509.06 and 3511.11, not in the bill.

¹² Section 1(G). See also R.C. 3505.183 and 3509.06, not in the bill.

2020 primary by adding 42 days to each statutory deadline (the number of days between March 17 and April 28). The Secretary's directive similarly adjusts the dates for the official canvass.¹³

Campaign finance

The bill specifies that candidates and political entities still must file their post-primary statements of contributions and expenditures using March 17 as the date of the election, but they must file those statements by 4:00 p.m. on June 5, 2020 (38 days after April 28). Under the statute, those statements are due at 4:00 p.m. on the 38th day after Election Day (April 24). The Secretary of State's directive moves that filing deadline to July 10, 38 days after June 2.

Further, the bill specifies that for purposes of dollar limits on campaign contributions during a primary election period, the primary election period ended on March 17, as required under the Revised Code. Under the Revised Code, the general election period would have begun March 18. However, the bill creates a new "interim election period" between March 18 and April 28, and specifies that the contribution limits that apply during a primary election period apply during the interim election period. The general election period then begins on April 29, and statements of contributions and expenditures for the interim election period must be filed by 4:00 p.m. on June 5, 2020.

As a result, the bill allows candidates and political entities to accept more contributions than they normally would during an election cycle. For example, the Revised Code allows a statewide or General Assembly candidate to accept a maximum of \$13,292.35 in a primary election period and \$13,292.35 in a general election period from an individual, for a total of \$26,584.70 in an election cycle. Under the bill, such a candidate may accept an additional \$13,292.35 from the individual in the interim election period, for a total of \$39,877.05 in the 2020 election cycle.

The Secretary's directive does not make any changes to the election periods for purposes of contribution limits.¹⁴

Suspension of purchasing and contracting requirements

In implementing the bill, the Secretary of State must proceed as though the Department of Administrative Services has suspended the state purchasing and contracting requirements, such as competitive bidding, that otherwise would apply to the Secretary. Under continuing law, the Department may suspend those requirements for a state agency, upon request, during the period of an emergency declared by the President, Congress, or the Governor. The Governor has declared such an emergency because of the COVID-19 pandemic.

¹³ Section 1(H). See also R.C. 3505.32, not in the bill.

¹⁴ Section 1(I). See also R.C. 3517.10 and 3517.102, not in the bill, and Ohio Secretary of State, *Ohio Campaign Contribution Limits Effective 25 FEB 2019 through 24 FEB 2021*, available at ohiosecretaryofstate.gov/globalassets/candidates/limitchart2019.pdf.

The bill requires the Secretary to comply with a continuing provision of law that requires an agency that has been granted such a suspension to file a report with the President of the Controlling Board, within 90 days after the emergency declaration expires, describing all purchases the agency made during the emergency for which it did not follow the general purchasing and contracting requirements.¹⁵

Appropriation

The bill appropriates \$5 million to the Secretary of State, which the Secretary must use to pay for expenses incurred for the purpose of implementing the bill.¹⁶

Effective date

The bill declares an emergency, meaning that it takes immediate effect and is not subject to the referendum.¹⁷

HISTORY

Action	Date
Introduced	03-24-20

S0294-I-133/ts

¹⁵ Section 1(J). See also R.C. 125.061, not in the bill, and Executive Order 2020-01D, issued on March 9, 2020, available at coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/executive-order-2020-01d.

¹⁶ Section 2.

¹⁷ Section 3.