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H.B. 93
134th General Assembly

Final Analysis

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Primary Sponsors: Reps. Abrams and LaRe

Effective date: Emergency: Sections 3 and 4, pertaining to the 2022 primary election, effective January 28, 2022; remainder of the act effective April 29, 2022

Emily E. Wendel, Attorney

SUMMARY

2022 primary election

- Delays certain election deadlines for the May 3, 2022, primary election to account for delays in Ohio's redistricting processes.
- Modifies certain petition requirements for candidates for the U.S. House, the General Assembly, and party central committees in order to allow filings to be considered valid if the petitions were circulated or even filed before the new district plans were known.
- Relaxes requirements regarding the district number and the candidate's residence address indicated on the filing; the board of elections with which the documents are filed; the date of the petition signatures; and where the signers reside.

Address Confidentiality Program changes

- Requires the Secretary of State to process applications to participate in the Address Confidentiality Program (also known as the Safe at Home Program) within ten business days.
- Requires a program participant who requests a government entity to use the participant's substitute address to provide the person's program authorization card as proof of the person's status.
- Eliminates a requirement that an applicant for the program be changing residence in order to be eligible.
- Allows a program participant who purchases real property after becoming a program participant, and after April 29, 2022, to file a real property confidentiality notice with the county recorder to prevent local officials from disclosing the participant's property records to the public.

- Permits the disclosure of the participant's property records only under certain circumstances, such as to carry out governmental duties or to allow a title examination.
- Limits the liability of certain real estate professionals and county officials for damages resulting from their failure to discover, index, or record certain information as a result of an individual's participation in the program, unless the person acted negligently.
- Permits a program participant to authorize the Secretary of State to disclose the participant's confidential information to certain persons.
- Gives a program participant who is a party to a child custody or child support proceeding the right to notice and a hearing before the court may disclose the participant's confidential information to another party.
- Requires the Secretary to forward to a program participant any periodicals to which the participant subscribes.
- Requires the Secretary to notify new program participants about their ability to file a real property confidentiality notice and to authorize the Secretary to disclose their confidential information, as permitted under the act.
- Prescribes the penalties that apply to a person who obtains a program participant's confidential information from a government office and rediscloses the information without authorization.

County recorder fees

- Allows a county recorder to charge fees for certifying electronic records or other copies of documents, in addition to photocopies of records.
- Permits a county recorder to charge a fee for entering or indexing any reference by a separate recorded instrument.
- Allows a county recorder to accept electronic payment of fees for electronic recording.
- Limits a recording fee exemption for a wholly owned subsidiary of a land bank or for a county that has a land bank to instances where the documents being recorded pertain to the land bank's operations.

Technical corrections

- Corrects incorrect cross-references to law related to the Address Confidentiality Program and to county recorders.

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DETAILED ANALYSIS

2022 primary election

Background

Under procedures outlined in the Ohio Constitution, in the fall of 2021, the Ohio Redistricting Commission and the General Assembly approved new General Assembly and congressional district plans. The Ohio Supreme Court ruled both district plans unconstitutional and ordered the respective authorities to adopt new plans. As of this writing, the cases have

not reached a final resolution, and Ohio does not yet have final General Assembly or congressional district plans to be used in the May 3, 2022, primary election.¹ The extended redistricting timeline poses practical issues for candidates and election officials in conducting the primary election. To address those issues, the act modifies certain deadlines and candidate petition requirements for the 2022 primary election.

Repeal of S.B. 258 provisions

The act repeals provisions of S.B. 258 of the 134th General Assembly regarding the conduct of the May 3, 2022, primary election. S.B. 258 delayed the filing deadlines for U.S. House of Representatives candidates; allowed the Secretary of State to adjust certain election administration deadlines; and specified that any U.S. House candidate filings submitted before February 19, 2022, are null and void, requiring those candidates to refile. However, H.B. 93 restates and retains most of those provisions, as described below. Only the provisions nullifying filings submitted before February 19, 2022, are eliminated.²

Deadlines

For the May 3, 2022, primary election, the act delays certain deadlines to account for delays in Ohio's redistricting processes. In summary, the filing deadline for U.S. House candidates remains delayed to March 4, the same as under S.B. 258, but filing deadlines for all other candidates remain the same as under existing law. With certain exceptions, the Secretary of State may adjust deadlines pertaining to the administration of the election as the Secretary determines necessary. However, the Secretary is prohibited from changing candidate filing deadlines; deadlines to place issues on the ballot; and any deadline that, under the Revised Code, falls on or after April 3.

The following table describes the new election calendar under the act. Please note that the table does not include every applicable deadline for the election, but attempts to include the most prominent deadlines.³

¹ *League of Women Voters of Ohio v. Ohio Redistricting Commission*, Slip Opinion No. 2022-Ohio-65 and Slip Opinion No. 2022-Ohio-342 (Ohio 2022) and *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89 (Ohio 2022). See also Ohio Redistricting Commission, [Commission Meetings](#), posted on the Commission's website, redistricting.ohio.gov, under "Meetings."

² Repeal of Section 4 of S.B. 258 of the 134th General Assembly.

³ Sections 3 and 4 of the act. See also R.C. Chapter 3513 and Ohio Secretary of State, [2022 Elections Calendar](#), posted on the Secretary of State's website, ohiosos.gov, under "Elections & Voting," "Election Calendar."

Action	Original deadline	New deadline
Candidate, other than a U.S. House candidate, files a declaration of candidacy and petition to appear on the ballot at the primary election	February 2, 2022	February 2, 2022 (no change)
Government entity certifies a ballot issue or question to the election officials; electors file a petition to place a question or issue on the ballot at the primary election	February 2, 2022	February 2, 2022 (no change)
U.S. House candidate files a declaration of candidacy and petition to appear on the ballot at the primary election	February 2, 2022	March 4, 2022 (same as under S.B. 258)
Elector files a protest against a candidate's declaration of candidacy and petition	February 18, 2022	To be determined by the Secretary of State
Secretary of State certifies the forms of the official ballots	February 22, 2022	To be determined by the Secretary of State (same as under S.B. 258)
Candidate, other than a U.S. House candidate, files a declaration of intent to be a write-in candidate at the primary election	February 22, 2022	February 22, 2022 (no change)
U.S. House candidate files a declaration of intent to be a write-in candidate at the primary election	February 22, 2022	March 4, 2022 (same as under S.B. 258)
Elector files a protest against a declaration of intent to be a write-in candidate at the primary election	February 25, 2022	To be determined by the Secretary of State
Boards of elections have uniformed services and overseas absent voter's ballots printed and ready for use	March 18, 2022	To be determined by the Secretary of State, if the Secretary also obtains a waiver from federal authorities No later than April 5, 2022

All deadlines that fall on or after April 3, 2022, remain the same, including deadlines for voter registration, absent voting, and the Election Day schedule.

Candidate filings

Instead of delaying filing deadlines for most candidates, the act modifies certain petition requirements for candidates for the U.S. House, the General Assembly, and party central committees in order to allow filings to be considered valid if the petitions were circulated or even filed before the new district plans were known. Specifically, the act relaxes requirements regarding the district number and the candidate's residence address indicated on the filing; the board of elections with which the documents are filed; the date of the petition signatures; and where the signers reside.

District number and candidate's address

A filing must not be considered invalid on the basis that it does not include the number of the district the filer seeks to represent, or that it includes an incorrect district number. In the case of a General Assembly or party central committee candidate, the filing must be deemed to include the number of the applicable district in which the filer resides. In the case of a U.S. House candidate (who is not legally required to reside in the district), the filer must notify the election officials in writing of the district the filer seeks to represent.

With respect to General Assembly candidates, a filing also must not be considered invalid on the basis that it contains the filer's former residence address that is not located in the district the filer seeks to represent. The filer must move to the new district, file an addendum with the board of elections, and update the filer's voter registration by the constitutional deadline to establish a residence in the new district. (In general, the Ohio Constitution requires a member of the General Assembly to have lived in the member's district for a year before being elected – that is, by November 8, 2021. But, when a district plan is invalidated in court and must be redrawn, the new plan must give candidates 30 days to move to their new districts.)⁴

Transfer to another board of elections

If, after receiving a candidate filing, the board of elections becomes aware that the filer is seeking to represent a district for which a different board of elections is the appropriate office to process the filing, the board that originally received the filing promptly must transfer the filing to the appropriate board of elections. Under continuing law, candidacy papers for multi-county districts must be filed with the board of elections of the county that has the most population in the district. The act allows for a situation in which a candidate filed in one county under an earlier district map, but under the new district map, the papers should be processed in a different county.⁵

⁴ Section 4(B) and (C) of the act.

⁵ Section 4(E) of the act. See also R.C. 3513.05, not in the act.

Validating petition signatures

A petition signature must not be considered invalid on the ground that it was signed before a district plan was adopted or enacted or took effect. However, under continuing law, signatures on an independent candidate's nominating petition expire after one year.

A petition signature also must not be considered invalid on the ground that the signer does not reside in the district the filer seeks to represent, as long as (1) the signer lives in a county in which the filer's district had territory under the district plans adopted in the fall of 2021 and (2) the signer lives in a county in which the district the filer currently seeks to represent has territory. If the filer is a General Assembly candidate who moved after filing the petition, the petition must be verified based on the filer's new residence address and district as reported to the board of elections.

That is, if the filer gathered signatures from residents of a county the filer would have at least partially represented under the applicable fall 2021 district plan, and the filer still would represent at least a part of that county under the new plan, the signatures are eligible to be counted. This holds true even if the signers do not actually live in the filer's district under the previous or current map. In the case of a General Assembly or party central committee candidate, the filer's district under the applicable 2021 plan is determined based on the filer's residence. In the case of a U.S. House candidate, the filer must notify the election officials in writing of the district the filer sought to represent under the 2021 plan.⁶

Address Confidentiality Program changes

Background

The Address Confidentiality Program, also called Safe at Home, allows victims of domestic violence, stalking, human trafficking, rape, or sexual battery who fear for their safety to keep their addresses confidential and out of the public record. The Secretary of State assigns participants a substitute post office box address that they may use in place of their actual addresses and forwards their mail to their actual addresses. In general, a government entity must accept and use a program participant's substitute address, while private employers, private schools, and other nongovernmental entities may, but are not required to, accept that address. The law also includes methods for program participants to have confidential voter registration records and for the Secretary to receive legal service of process on their behalf.⁷

Application processing time

The act requires the Secretary of State to process applications to participate in the program within ten business days, including validating the application, certifying the

⁶ Section 4(D) and (F) of the act. See also Ohio Constitution, Article II, Section 3 and Article XI, Section 9(C).

⁷ R.C. 111.42 and 111.43; see also R.C. 111.44, not in the act.

participant, and issuing the participant a program authorization card. Prior law did not include a time limit for the Secretary to process applications.⁸

Program authorization card

Under the act, a program participant who requests a government entity to use the program participant's substitute address must provide the person's program authorization card as proof of the person's status. Prior law allowed, but did not require, a program participant to do so.⁹

Change of residence

The act eliminates a requirement that an applicant for the Address Confidentiality Program be changing residences at the time of applying, which allows applicants to participate in the program without moving. However, as is discussed below, a participant's real property records are confidential under the act only if the participant acquires the property *after* becoming a participant. Presumably, many applicants still will move when entering the program as part of a larger safety plan because their current addresses are known to their abusers.¹⁰

Real property

Real property confidentiality notice

The act allows a program participant who purchases real property after becoming a program participant, and after April 29, 2022, to prevent the participant's property records from being disclosed to the public. Continuing law requires a government entity to use a program participant's substitute address in lieu of the participant's real address if the participant so requests. The act adds a method for a government office that needs to maintain records about a program participant's actual residence, such as a county auditor, to keep the participant's property records confidential.

Under the act, a program participant who acquires an ownership interest in real property may submit a real property confidentiality notice to the county recorder of the county where the real property is located. The notice must be on a form prescribed by the Secretary of State and must include all of the following:

- The participant's full name;
- The last four digits of the participant's Social Security number;
- The date the participant's program certification expires;
- The participant's program participant identification number;
- The address at which the participant may receive mail through the Secretary's office;

⁸ R.C. 111.42(C).

⁹ R.C. 111.43(A).

¹⁰ R.C. 111.42.

- The legal description and street address of the real property, which must be the same as the legal description and street address included on any instrument, such as a deed, concerning the real property that includes the participant's name and that has been presented to the county recorder for recording;
- A fictitious name, chosen by the Secretary, which may be used by county officials for internal indexing and recordkeeping purposes;
- The participant's signature.

The county recorder must transmit copies of the notice to the Secretary of State and to the county auditor, treasurer, and engineer in the county where the real property is located. Additionally, the program participant may deliver a real property confidentiality notice to the court of common pleas if the participant is a party to a proceeding there. The clerk must notify the Secretary that the clerk received the notice. If the participant's program certification is canceled, the Secretary must notify those local authorities within ten business days.

When real property is subject to a confidentiality notice under the act, the government offices that have received the notice are prohibited from disclosing the program participant's name or contact information in conjunction with the property's address, legal description, or parcel number. For example, the program participant's name and contact information must be redacted from the property's listing in the publicly available version of the county auditor's property tax database or the county recorder's database of property ownership records. If a member of the public requests a copy of a property record, the property's address, legal description, or parcel number or the program participant's name, as applicable, must be redacted. Upon receiving the notice, the officers must remove any confidential information from publicly available records within five business days of receipt. County recorders must include a copy of the real property confidentiality notice with any subsequent recordings of the property – "recordings" being mortgages, liens, easements, and other types of property records.

A local official may disclose a participant's complete property record only under the following circumstances:

- The record is disclosed to the staff of the office in order to carry out the duties of the office.
- The program participant is the person requesting the record.
- The program participant has authorized the disclosure to the person requesting the record by submitting a notarized statement to the Secretary of State. Upon receiving that statement from the participant, the Secretary must issue a written authorization to the local official to make the disclosure.
- The Secretary has authorized the person to perform a title examination on the property (see "**Title examinations**," below).
- A court of competent jurisdiction has ordered the disclosure.

If the participant ceases to own the property, submits a notarized revocation of the confidentiality notice to the county recorder, or has the participant's certification canceled, then the information concerning the participant's interest in the property is no longer confidential. If the certification is canceled, the Secretary or the county recorder, as applicable, must notify the relevant officials.¹¹

Title examinations

If a person wishes to perform a title examination on property that is subject to a confidentiality notice, such as when the program participant is selling the property, the act requires the person to apply to the Secretary of State for authorization. The application must include the purpose for which the person is applying, the applicant's relationship to the participant, a legal description of the property, the applicant's signature, and a statement that the applicant will treat the information as confidential, along with any other information the Secretary requires.

The Secretary must approve the application within ten business days if it is properly completed and the Secretary determines that the applicant is seeking the information only for the purpose of performing a bona fide title examination. If the property is not subject to a confidentiality notice, the Secretary instead must notify the applicant of that fact within ten business days and, if applicable, notify local officials of that fact.¹²

Liability of real estate professionals

Under the act, a real estate broker, real estate salesperson, oil and gas land professional, title examiner, attorney, or county official is not liable for damages resulting from the person's failure to discover a defect in title, failure to properly index or record a person's interest in property, or failure to alert a professional to rely on confidential information, when that failure was the proximate result of an individual's participation in the Address Confidentiality Program, unless the person was negligent.

For instance, if a property record was redacted because of a confidentiality notice and that redaction prevented a title examiner from discovering a lien on the property, the title examiner would not be liable for the mistake, unless the title examiner acted negligently.¹³

City law director access

The act allows a city law director or similar chief legal officer to petition the Franklin County Court of Common Pleas or the court of common pleas of the county in which a parcel of real property is located for access to information that is subject to a real property confidentiality notice. The court must hold a hearing and, if necessary, notify the county

¹¹ R.C. 111.42(C)(5), 111.43(B), 111.431, 111.432, 111.45, 111.99, 149.43, 315.25, 317.13, 319.28, 321.25, and 2303.12.

¹² R.C. 111.431(E).

¹³ R.C. 111.431(H).

recorder, auditor, treasurer, engineer, or clerk of the court of common pleas of the county in which the real property is located. The law director must prove that the law director has a legitimate governmental purpose to receive the information. Continuing law allows a city law director or similar chief legal officer to obtain a program participant's confidential address or telephone number from the Secretary using a similar process.

A law director or similar chief legal officer who intends to petition a court for access to information about a program participant that is kept by the Secretary or contained in a confidential property record may request the Secretary to confirm whether the person is a program participant. The act requires the Secretary to provide that confirmation within ten business days after receiving the request.¹⁴

Authorized disclosure of other confidential information

The act also creates a process by which a participant may submit a form authorizing the Secretary of State to disclose the participant's information to certain persons, including a judge or magistrate, an official or employee of the Bureau of Motor Vehicles, a school administrator, an administrator of a public assistance program, an administrator of a food pantry, an official or employee of the U.S. Postal Service, or any other person identified on the form with a proper purpose. Within ten business days after receiving the form, the Secretary must determine whether the authorization is adequate, then disclose the information if appropriate.

For example, if a school district needs to confirm that a program participant lives in the district for enrollment purposes, the participant may authorize the Secretary to confirm to a district official that the participant lives in the district, without exposing the family's actual address.

The act specifies that a person authorized to receive confidential information may request only the information that is required under normal circumstances. A person may not require a program participant to authorize a disclosure as a condition of receiving any services to which the participant is otherwise entitled.

Finally, when the Secretary discloses information to a person as authorized by a program participant, the disclosure must be accompanied by the following statement: "You are not permitted to redisclose the following information for any reason. Failure to protect the confidentiality of this information is a violation of state law."¹⁵

Child custody and child support proceedings

Under the act, a program participant who is a parent, guardian, or legal custodian and is a party to a child custody or child support proceeding is entitled to notice and an opportunity for a hearing before the participant's confidential address or telephone number may be disclosed. This requirement applies when another party to the proceeding requests that

¹⁴ R.C. 111.46(B).

¹⁵ R.C. 111.42(C)(5) and 111.43(E).

information or when the court seeks to disclose the information on its own, without being asked to do so.

If another party to the proceeding requests the information, the court must direct the requesting party to file a pleading explaining why the disclosure is necessary. Before allowing the disclosure, the court must schedule a hearing, provide a copy of the pleading to the program participant, and give the parties adequate notice of the hearing. The party requesting the disclosure then must show, by clear and convincing evidence, that the disclosure is necessary and does not pose a risk of harm to the participant or the child. If the party requesting the disclosure meets this burden and the court grants the request, the court must document its findings of fact and may either disclose the information or direct the program participant to do so.

If the court seeks to disclose the information on its own motion, the court still must schedule a hearing and give the parties adequate notice of the hearing. If the court determines by clear and convincing evidence that the disclosure is necessary and does not pose a risk of harm to the participant or the child, the court must document its findings of fact and may either disclose the information or direct the participant to do so.¹⁶

Forwarding periodicals

The act requires the Secretary of State to forward to a program participant any periodicals to which the participant subscribes, in addition to periodicals that are clearly identifiable as being sent by a governmental entity, as under continuing law. Under prior law, any periodicals not sent by a governmental entity required prior authorization for forwarding from the Secretary.¹⁷

Notice to program participants

The act requires the Secretary of State to notify new program participants about their ability to file a real property confidentiality notice and to authorize the Secretary to disclose their confidential information under certain circumstances, as permitted under the act.¹⁸

Penalty for disclosing confidential information

The act adds to the prohibitions against disclosing a program participant's confidential information. Under the act:

- No public official who has access to a confidential address or telephone number, or to information that is subject to a real property confidentiality notice, because of the person's status as a public official may knowingly disclose that information to any person, except as required or permitted by law. A "public official" is any officer, employee, or duly authorized representative or agent of a public office. A "public office"

¹⁶ R.C. 111.46(D).

¹⁷ R.C. 111.43(D).

¹⁸ R.C. 111.42(C)(5).

is any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of Ohio for the exercise of any function of government.

- No person who obtains a confidential address or telephone number from the Secretary of State pursuant to a disclosure authorized by the program participant, as described above, may knowingly disclose that information to any person, except for the purpose for which the disclosure was authorized.
- No person who obtains information that is subject to a real property confidentiality notice for the purpose of conducting a title examination may knowingly disclose that information to any person, except for the purpose identified in the application to conduct a title examination.

As under prior law, whoever knowingly discloses confidential information in violation of those prohibitions is guilty of a first degree misdemeanor.¹⁹

Essentially, the act prohibits a person who obtains a program participant's confidential information from a government office from redisclosing the information. But, under continuing law, no criminal penalty applies to a private party who discloses a program participant's confidential information after receiving it directly from the program participant. For example, if a program participant buys a house and files a real property confidentiality notice with the county recorder, the act would penalize county officials and staff if they disclosed certain information. But, the act would not penalize the program participant's real estate agent or banker for disclosing that information. (Other privacy laws still require those persons to keep clients' information confidential.)²⁰

County recorder fees

Electronic records and payments

The act makes several changes to the law governing county recorder fees in order to account for electronic recordkeeping practices. First, the act allows a county recorder to charge fees for certifying electronic records or other copies of documents, in addition to photocopies of records, as under continuing law. Additionally, under the act, a county recorder may charge a fee for entering or indexing any reference by a separate recorded instrument, instead of only for entering marginal references. Finally, the act allows a county recorder to accept electronic payment of fees for electronic recording by electronic funds transfer, automated clearing house (ACH), or other electronic means.

County land banks

The act creates an exception to a law that exempts a wholly owned subsidiary of a county land reutilization corporation (land bank), or the county that created the land bank,

¹⁹ R.C. 111.99.

²⁰ See, for example, R.C. 4735.54, not in the act, and 15 United States Code 6802.

from the requirement to pay county recorder fees for recording, indexing, copying, or filing. The act specifies that the fee exemption applies to such a subsidiary or county only if the subsidiary or county is acting in a capacity consistent with the purpose of the land bank program.

For example, while continuing law exempts a county land bank from those county recorder fees, under the act, the county that created the land bank may take advantage of the exemption only when it is acting in relation to the land bank program. The county is not exempt from the fees while it is engaged in other county business.²¹

Technical corrections

Finally, the act corrects incorrect cross-references to provisions of law that (1) allow a court to impose fines on certain felony offenders to benefit the Address Confidentiality Program Fund, and (2) govern the recording of a memorandum of trust.²²

HISTORY

Action	Date
Introduced	02-09-21
Reported, H. Civil Justice	02-24-21
Passed House (95-0)	02-25-21
Reported, S. Local Gov't and Elections	01-26-22
Passed Senate (33-0)	01-26-22
House concurred in Senate amendments (74-19)	01-26-22

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²¹ R.C. 317.32 and 5301.255.

²² R.C. 111.48 and 5301.255. See also R.C. 317.08 and 2929.18, not in the act.