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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 74
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Financial Institutions and Technology

Primary Sponsors: Reps. Hall and Lightbody

Logan Briggs and Emily E. Wendel, Attorneys

SUMMARY

Cybersecurity and Fraud Advisory Board

- Creates the Cybersecurity and Fraud Advisory Board, which must examine and develop recommendations with regard to best practices in, shared experiences regarding, and future efforts to improve cybersecurity and fraud prevention with respect to the information technology (IT) systems and shared services used across state agencies.

Prefilled elections forms

- Prohibits a person from preprinting or filling out any portion of a voter registration form or an application for absent voter's ballots on behalf of an applicant.
- Includes exceptions for applicants who require assistance by reason of blindness, disability, or illiteracy.
- Allows election officials to continue preprinting names and addresses on absentee ballot applications.
- Allows a uniformed services or overseas absent voter's relative to complete a form on the voter's behalf, as under current law.

Voter registration through the Bureau of Motor Vehicles

- Requires all voter registrations and updates completed at the Bureau of Motor Vehicles (BMV) as part of a customer's transaction to be sent electronically to the Secretary of State within 24 hours, with no paper form sent to a board of elections.
- Clarifies that when a customer submits a notice of change of address to the BMV, the BMV must offer the applicant the opportunity to submit a change of address for voter registration purposes electronically in conjunction with the BMV transaction.
- Requires BMV deputy registrars to continue to send any paper voter registration forms that are returned to a deputy registrar to the local board of elections within five days.

Statewide election petitions

- Requires the Attorney General to certify the title of any statewide initiative or referendum petition, in addition to its summary, as a fair and truthful statement of the proposal before the petitioners may begin collecting signatures.
- Applies certain requirements related to paid petition circulators to the circulators of a political party formation petition.

Audits of election results

- Requires the boards of elections to conduct post-election audits after every election, instead of only a general election or a primary election held in an even-numbered year.

Approval of voting systems

- Renames the Board of Voting Machine Examiners as the Board of Voting Systems Examiners.
- Adds a cybersecurity expert appointed by the Secretary of State as a nonvoting member of the Board.
- Requires the Board to examine, test, and approve voter registration systems and ballots on demand voting systems, and requires the Secretary to certify those systems, in the same manner as the Board and the Secretary currently do for voting equipment.
- Requires the Secretary to adopt standards for the security and integrity of voter registration systems and ballots on demand voting systems.
- Requires those systems to meet any applicable standards adopted by the federal Election Assistance Commission in order to be certified.
- Prohibits the Secretary or a board of elections from acquiring a voter registration system or a ballots on demand voting system that has not been certified under the bill.
- Allows a board of elections that is using a system before the bill takes effect to continue using that system until the county acquires a new system.

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DETAILED ANALYSIS

Cybersecurity and Fraud Advisory Board

Report

The bill creates the Cybersecurity and Fraud Advisory Board. The Board must examine and develop recommendations with regard to best practices in, shared experiences regarding, and future efforts to improve cybersecurity and fraud prevention with respect to the information technology (IT) systems and shared services used across state agencies. The Board cannot examine open vulnerabilities, security protocols, or legal issues with respect to the state’s cybersecurity and fraud prevention measures.

The Board must submit a report of its findings and recommendations concerning the topics the Board examines to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives not later than 12 months after the Board’s first meeting. The Board is abolished after it delivers its report.¹

Membership and meetings

The Board consists of the Chief Information Security Officer of the Department of Administrative Services, who serves as the Board’s Chairperson, and one employee of each of the offices of the Governor, the Attorney General, the Auditor of State, the Secretary of State, and the Treasurer of State, appointed by the respective officers. Those officers must make their appointments within 90 days after the bill takes effect.

¹ R.C. 126.41(A) and (B).

To be eligible for appointment, a person must have a background and expertise in cybersecurity or fraud prevention.

The members serve without compensation and are not reimbursed for expenses. They serve at the pleasure of the appointing authority. Vacancies are filled in the same manner as original appointments.

The Board meets at the Chairperson's call and must meet at least twice, with the first meeting occurring within 90 days after the final appointment to the Board has been made. The Board cannot hold an executive session pursuant to the Open Meetings Law, meaning that all meetings of the Board must be open to the public.²

Prefilled elections forms

With certain exceptions, the bill prohibits a person from preprinting or filling out any portion of a voter registration form or an application for absent voter's ballots on behalf of an applicant. If a form or application is completed by any person other than the applicant in violation of the bill, the form or application is invalid. For example, the bill would prohibit an organization from mailing prefilled voter registration forms to eligible but unregistered individuals or mailing prefilled absentee ballot applications to electors.

Voter registration forms

The bill allows a person to preprint or fill out a voter registration or update form on behalf of an applicant only if the applicant declares that the applicant needs that assistance by reason of blindness, disability, or illiteracy. In that case, the assistant may be any person of the applicant's choice, other than the applicant's employer, an agent of the applicant's employer, or an officer or agent of the applicant's union. The assistant must check a box on the registration form to indicate that the applicant declares that the applicant needs assistance by reason of blindness, disability, or illiteracy.³

Absentee ballot applications

Regarding an application for absent voter's ballots, the bill allows a person other than the applicant to preprint or fill out the application form only under the following circumstances:

- The Secretary of State or a board of elections may preprint the applicant's name and address on the application, as permitted under continuing law, provided that the Secretary or a board must not preprint the address on an application sent to a participant in the Address Confidentiality Program.
- If the applicant declares that the applicant requires assistance by reason of blindness, disability, or illiteracy, the applicant may be assisted by any person of the applicant's choice, other than the applicant's employer, an agent of the applicant's employer, an

² R.C. 126.441(C) to (G), by reference to R.C. 121.22, not in the bill.

³ R.C. 3503.14 and 3505.24.

officer or agent of the applicant's union, or a candidate whose name appears on the ballot. (This is the same as the list of persons who, under continuing law, may not assist an elector in the voting booth.)

- A bipartisan team of election officials may assist a disabled or confined elector in casting absent voter's ballots, as permitted under continuing law.
- If the applicant is a uniformed services or overseas absent voter, the applicant's relative may complete and submit the form on the applicant's behalf, as permitted under continuing law.

Current law prohibits an election official from filling out an absentee ballot application on an elector's behalf, except in the circumstances described above. But, the law does not prohibit any other person from doing so.⁴

Voter registration through the Bureau of Motor Vehicles

The bill changes the internal procedures the Bureau of Motor Vehicles (BMV) and its deputy registrars must follow when processing voter registrations and updates as part of customer transactions.

Electronic registrations and updates

First, the bill eliminates a requirement that when a BMV customer registers to vote as part of a transaction with the BMV, the deputy registrar must generate both an electronic and a paper voter registration form and send them both to the board of elections of the county where the deputy registrar is located. Instead, under the bill, the deputy registrar must send an electronic record of the voter registration, along with an electronic copy of the customer's signature, to the Secretary of State within 24 hours. No paper form is required. This procedure is similar to the current procedure for updating an elector's name or address in voter registration records. Under the bill, the deputy registrar likewise must transmit electronic voter registration updates to the Secretary of State within 24 hours instead of within five days.

The bill also clarifies that when a customer submits a notice of change of address to the BMV, the BMV must offer the applicant the opportunity to submit a change of address for voter registration purposes electronically in conjunction with the BMV transaction, in a manner prescribed by the Secretary of State. The BMV currently does so, but the Revised Code does not explicitly require it.

Finally, the bill relocates, but does not substantively change, language requiring the Secretary to adopt rules governing the electronic transmission of voter registration information from the BMV. Under continuing law, those rules must do all of the following:⁵

⁴ R.C. 3505.24, 3509.03, and 3511.02. See also R.C. 111.44 and 3509.08, not in the bill.

⁵ R.C. 3503.11 and 4507.09 and conforming changes in R.C. 3501.05, 3503.09, 3503.14, and 3503.19.

- Prohibit any direct electronic connection between the BMV and the Statewide Voter Registration Database;
- Require any voter registration information to be verified by the Secretary or a board of elections before the information is added to the Statewide Voter Registration Database;
- Require the BMV to electronically date stamp each electronic record in a manner that does not disclose the identity of the office that receives the voter registration or update.

Paper forms

Under continuing law, deputy registrars also must make paper voter registration and update forms available to any person. The bill retains the existing requirement that, if a person fills out a paper form and turns it in to a deputy registrar, separate from a customer transaction, the deputy registrar must send the form to the board of elections within five days.⁶

Statewide election petitions

Title and summary of initiative and referendum petitions

The bill requires the Attorney General to certify the title of any statewide initiative or referendum petition, in addition to its summary, as a fair and truthful statement of the proposal before the petitioners may begin collecting signatures.

Continuing law requires a statewide initiative petition to include a title, which must be “briefly expressed,” and requires a statewide referendum petition to include a title that contains “a brief legislative history of the law, section, or item of law to be referred.” However, the law currently does not allow the Attorney General to evaluate the title along with the summary.⁷

Political party formation petitions

The bill modifies the requirements for a petition to form a new minor political party. Under continuing law, to be recognized as a political party in Ohio and have its candidates appear on the ballot with the party’s name, a party must either receive at least 3% of the vote for its candidate for Governor or President, whichever is most recent, or circulate and submit a party formation petition. Once a minor party reaches the 3% vote threshold or submits a valid petition, it retains ballot access for four years.

The bill applies certain requirements related to paid petition circulators to a party formation petition. Currently, these requirements apply to all other election petitions that are circulated statewide – that is, initiative and referendum petitions and candidate petitions for statewide candidates.

⁶ R.C. 3503.11 and 3503.19.

⁷ R.C. 3519.01 and conforming changes in R.C. 3505.062 and 3519.07. See also R.C. 3519.05, not in the bill, and *State ex rel. Dudley v. Yost*, Slip Op. No. 2024-Ohio-5166 (Ohio 2024).

First, under the bill, each part petition of a party formation petition must include the circulator's name and residence address and, if the circulator is being paid to gather signatures, the name and address of the circulator's employer.

Second, the bill requires that (1) any person who will receive compensation for supervising, managing, or otherwise organizing any effort to obtain signatures for a party formation petition and (2) any person who will compensate that person file statements to that effect with the Secretary of State before any signatures are obtained or before the person is engaged to obtain signatures, whichever is later. A person who fails to file a required statement is guilty of a first degree misdemeanor, and the petition is deemed invalid.

The new requirements described above do not apply to any party formation petition that has received at least one signature before the bill takes effect.⁸

Audits of election results

The bill requires the boards of elections to conduct post-election audits after every election, instead of only a general election or a primary election held in an even-numbered year. In a post-election audit, election officials hand count a sample of the ballots cast in the election in order to verify the accuracy of the official machine counts. Continuing law specifies the procedure for those audits, which must include at least three contested races, questions, or issues per election.⁹

Approval of voting systems

Board of Voting Systems Examiners

The bill renames the Board of Voting Machine Examiners as the Board of Voting Systems Examiners, in recognition of the Board's expanded role under the bill in examining and approving voter registration systems and ballots on demand voting systems, as discussed below. Currently, the Board is responsible for examining and approving voting machines, marking devices, automatic tabulating equipment, voting and tabulation software, and electronic pollbooks.

The bill also adds a cybersecurity expert appointed by the Secretary of State as a nonvoting member of the Board. Under continuing law, the voting members of the Board include two members appointed by the Secretary, one member appointed by the House of Representatives leader who is of the opposite political party from the Secretary, and one member appointed by the Senate leader who is of the opposite political party from the Secretary. (For example, currently, the Board consists of two members appointed by the Secretary, one member appointed by the House Minority Leader, and one member appointed by the Senate Minority Leader.) In the case of a tie vote, the Secretary casts the deciding vote.

⁸ R.C. 3501.38 and 3501.381 and Section 3 of the bill. See also R.C. 3517.01(A), not in the bill.

⁹ R.C. 3505.331.

Under continuing law, each member of the Board must be a competent and experienced election officer or a person who is knowledgeable about the operation of voting equipment. Members receive \$300 per day for each combination of systems or pieces of equipment examined and reported on, provided that a member must not receive more than \$600 to examine and report on any one system or piece of equipment. Members also must be reimbursed for expenses incurred in performing their official duties.¹⁰

Voter registration systems

The bill requires the Secretary of State, in consultation with the Board of Voting Systems Examiners, to adopt rules establishing guidelines for the approval, initial certification, and continued certification of voter registration systems. The Secretary also must adopt standards for the security and integrity of voter registration systems to be used in that process. “Voter registration system” means software and any related equipment used by a board of elections or the Secretary to process, store, organize, maintain, or retrieve voter registration records.

If the federal Election Assistance Commission (EAC) certifies voter registration systems as part of its Testing and Certification Program, the bill requires a voter registration system to meet the EAC’s standards in addition to those adopted by the Secretary and to have the most recent federal certification number issued by the EAC. The EAC does not currently certify voter registration systems, but it is in the process of developing certification guidelines for voter registration systems through its Election Supporting Technology Evaluation Program, established in 2022.

The bill prohibits the Secretary or a board of elections from acquiring a voter registration system that has not been certified under the bill. However, a board of elections that is using a voter registration system before the bill takes effect may continue using that system until the county acquires a new system.¹¹

Ballots on demand voting systems

Similarly, the bill requires the Secretary of State, in consultation with the Board of Voting Systems Examiners, to adopt rules establishing guidelines for the approval, initial certification, and continued certification of ballots on demand voting systems, and requires the Secretary to adopt standards for the security and integrity of ballots on demand voting systems.

A “ballots on demand voting system” is a system that utilizes paper ballots printed as needed by election officials at the board of elections for distribution to electors, either in person or by mail, instead of printing all the ballots for the election before voting begins. Printing ballots on demand can help a board of elections to avoid printing significantly more ballots than are needed for an election.

¹⁰ R.C. 3506.05 and conforming changes in R.C. 3506.04, 3506.06, 3506.07, and 3506.10.

¹¹ R.C. 3506.01(I), 3506.05, and 3506.16. See also U.S. Election Assistance Commission, [Election Supporting Technology Evaluation Program \(ESTEP\)](#), available at eac.gov under “Election Technology.”

Continuing law ballot printing minimums		
Type of election	Ballots on demand	All ballots printed before voting begins
Primary election	105% of the precinct turnout at the primary election held four years ago	101% of the total registration in the precinct, minus those who have not responded to a confirmation notice within 30 days
General election	105% of the precinct turnout at the general election held four years ago	101% of the total registration in the precinct, minus those who have not responded to a confirmation notice within 30 days
Special election, other than on the day of a primary or general election	105% of the precinct turnout at the most recent primary or general election	101% of the total registration in the precinct, minus those who have not responded to a confirmation notice within 30 days

Currently, the only statutory requirements for a ballots on demand voting system are that the board of elections meet the printing minimums described above and include a tracking number on each ballot. The bill requires the Secretary's standards to include those same requirements.

If the EAC certifies ballots on demand voting systems as part of its Testing and Certification Program, the bill requires a ballots on demand voting system to meet the EAC's standards in addition to those adopted by the Secretary and to have the most recent federal certification number issued by the EAC. The EAC does not currently certify ballots on demand voting systems.

The bill prohibits the Secretary or a board of elections from acquiring a ballots on demand voting system that has not been certified under the bill. But, a board of elections that is using a ballots on demand system before the bill takes effect may continue using that system until the county acquires a new system.¹²

Voting system approval and certification under continuing law

Under the bill, the Board and the Secretary must apply the same process to voter registration systems and ballots on demand voting systems that the Board and the Secretary currently use to examine, test, approve, and certify voting machines, marking devices, automatic tabulating equipment, voting and tabulation software, and electronic pollbooks, as described below.

¹² R.C. 3505.11 and 3506.20.

Vendor submission

A vendor who wishes to have a voting system certified for use in Ohio first must submit all of the following to the Board:

- The system;
- All current related procedural manuals;
- A current description of all related support arrangements;
- A detailed explanation of the construction and method of operation of the system;
- A full statement of the system's advantages;
- A list of the patents and copyrights used in the crucial operations of the system, as determined by the Board;
- A \$2,400 fee, to be deposited in the Board's fund to pay for the services and expenses of Board members and any other expenses incurred in fulfilling the Board's duties;
- An additional fee, at the option of the Board and in an amount set by the Board by rule, to pay the costs of alternative testing or testing by persons other than Board members, record keeping, and other extraordinary costs incurred in the examination process. Any unused moneys from the additional fee must be returned to the vendor.

Additionally, the Secretary's rules must require vendors or software developers to place in escrow, with an independent escrow agent approved by the Secretary, a copy of all source code and related documentation, together with periodic updates as they become known or available. The Secretary must require that the documentation include a system configuration and that the source code include all relevant program statements in low- or high-level languages. "Source code" does not include variable codes created for specific elections.¹³

Board examination and report

When a vendor submits a voting system, the Board must examine the system and file a written report with the Secretary of State within 60 days after the vendor submits it or as soon thereafter as is reasonably practicable. The report must include (1) the Board's recommendations and, if applicable, its determination or condition of approval regarding whether the system, manual, and other related materials or arrangements meet the applicable criteria and can be safely used, or (2) a written statement of reasons the Board needs more time for testing. The Board may grant temporary approval to allow experimental use of the system.

¹³ R.C. 3506.05(D) and (I)(1).

If the Board finds that the voting system meets the applicable criteria, can be used safely, and has the capacity to be warranted, maintained, and serviced, the Board must approve the system and recommend that the Secretary certify it for use.¹⁴

Certification by Secretary of State

Upon receiving a favorable recommendation from the Board, the Secretary of State may, but is not required to, certify the voting system. If the Secretary does so, the Secretary must notify the boards of elections that they may adopt the system for use.¹⁵

Continuing certification

The Board or the Secretary of State periodically must examine, test, and inspect certified voting systems to determine their continued compliance with the statute and the Secretary's standards. If a significant problem is uncovered in a certified system, or if a record of continuing problems exists for the system, then the examination, testing, and inspection of the system for continuing certification must be conducted in the same manner as for the initial approval and certification.

If any enhancement or significant adjustment is made to a certified voting system's hardware or software that could result in a patent or copyright change or that significantly alters the crucial operations of the system, as determined by the Board, the vendor must notify the Secretary of State and provide an updated operations manual for the system. The Secretary then must notify the Board and forward the updated manual to it, and the Board may require the vendor to submit the system to an examination and test in order for the system to remain certified.¹⁶

Withdrawal of certification

The Secretary of State must begin the process of withdrawing certification for a voting system if any of the following occur:

- A board of elections notifies the Secretary or the Board of Voting Systems Examiners of any significant problem with the system;
- The Secretary or the Board determines that the system fails to meet the requirements necessary for approval or continued compliance with the statute and the Secretary's standards;
- The Board determines that there are significant enhancements or adjustments to the system's hardware or software;
- The vendor has failed to notify the Secretary of any significant enhancements or adjustments, as required by law.

¹⁴ R.C. 3506.05(E).

¹⁵ R.C. 3506.05(E).

¹⁶ R.C. 3506.05(F).

The Secretary first must send a written notice to the users and vendors of the voting system that the system's certification may be withdrawn. The notice must specify the reasons why the certification may be withdrawn and the date on which the certification will be withdrawn unless the vendor (1) takes satisfactory corrective measures, (2) explains why there are no problems with the system, or (3) explains why the enhancements or adjustments to the system are not significant.

Within 30 days after receiving the notice, the vendor must submit to the Board, in writing, (1) a description of the corrective measures taken and the date on which they were taken, (2) an explanation of why there are no problems with the system, or (3) an explanation of why the enhancements or adjustments to the system are not significant.

Then, not later than 15 days after receiving the vendor's submission, the Board must determine whether the submission is satisfactory to allow continued certification of the system. The Secretary must send the vendor a written notice of the Board's determination and its reasoning. If the Board determines that the submission is unsatisfactory, the Secretary's notice must include the effective date of withdrawal of the certification. That date is not required to be the same as the deadline included in the Secretary's initial notice to the vendor.

If the certification is scheduled to be withdrawn, the vendor may, within 30 days after receiving notice from the Secretary, submit a written request for the Board to hold a hearing to reconsider its decision. Any interested party must be given the opportunity to submit testimony or documentation in support of, or opposition to, the Board's recommendation.¹⁷

HISTORY

Action	Date
Introduced	02-27-23
Reported, H. State and Local Government	06-27-23
Passed House (80-0)	10-11-23
Reported, S. Financial Institutions and Technology	12-10-24

ANHB0074RS-135/ts

¹⁷ R.C. 3506.05(G) and (H).