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# OHIO LEGISLATIVE SERVICE COMMISSION

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Legislative Budget  
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H.B. 294\*  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 294's Fiscal Note](#)

**Version:** As Reported by House Government Oversight

**Primary Sponsors:** Reps. Seitz and Ray

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## SUMMARY

### Absent voting by mail

- Shortens the deadline to apply to cast absent voter's ballots by mail from noon on the third day before Election Day to the close of business on the seventh day before Election Day.
- Requires a person who applies to cast absent voter's ballots by mail to do so on a form prescribed by the Secretary of State or on an appropriate federal form for uniformed services and overseas absent voters.
- Requires the Secretary of State, not later than one year after the bill takes effect, to establish a secure online system for electors to apply to receive absent voter's ballots by mail, and provides requirements for the system.
- Changes the language of the identification envelope statement of voter (the absentee ballot envelope form) in order to express a preference for the type of ID the voter provides.
- Requires absent voter's ballots that are returned by mail to arrive at the board of elections by the seventh day after Election Day, instead of the tenth day as required under existing law.
- Requires the boards of elections to begin counting late-arriving and cured absent voter's ballots, along with cured provisional ballots, on the eighth day after Election Day, instead of the eleventh day.

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\* This analysis was prepared before the report of the House Government Oversight Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Specifies that absent voter's ballots that are not returned to the board by mail must be returned to the office of the board, and not to any other location, such as to a drop box elsewhere in the county.
- Permits the board, if it maintains multiple offices in the county, to designate any of its offices for the return of absent voter's ballots, but allows the board to designate only one office for that purpose.
- Allows the board, during the absent voting period, to provide a not more than one secure outdoor drop box on the premises of the office of the board.
- Specifies administrative requirements concerning drop boxes.
- Emphasizes the continuing-law principle that absent voter's ballots that are personally returned to the board must be delivered by the elector or a listed relative, and not by any other person.
- Adds language to a related criminal prohibition to specifically prohibit any person from returning the absent voter's ballot of another, unless the person is a listed relative or is acting as an employee or contractor of the U.S. Postal Service or a private carrier.
- Requires, instead of allows, the boards of elections to process absent voter's ballots before the close of the polls on Election Day.
- Eliminates a provision of law that requires the board of elections, upon receiving uniformed services or overseas absent voter's ballots, to check for ballots that are enclosed in the return envelope but not inside the identification envelope, and to put them inside the identification envelope without looking at the markings on the ballots.
- Leaves the Revised Code silent on the issue of whether absent voter's ballots can be counted if they are returned to the board inside the return envelope but not inside the identification envelope.
- Prohibits any public office, and any public official or employee who is acting in an official capacity, from prepaying the return postage on an application for absent voter's ballots or on an absent voter's ballot return envelope.
- Changes numerous references in the law governing absent voting to refer to a board of elections receiving, sending, and processing applications and ballots, rather than the *director* of the board performing those functions.

### **In-person absent voting**

- Requires in-person absent voting to be permitted for all voters beginning on the day after the close of voter registration before an election and ending on the Sunday before the election.
- Codifies the current schedule instituted by Secretary of State directive, but redistributes the current six hours of in-person absent voting on the day before Election Day

(Monday) by requiring the boards of elections instead to open earlier and close later Monday through Friday of the preceding week.

- Clarifies that an in-person absent voter is not required to complete a written application for absent voter's ballots.
- Adds a requirement that, if the voter provides a driver's license or state ID card number or the last four digits of the voter's Social Security number as identification, the election officials must verify that the number or digits are not different from the number or digits in the voter's registration record.

## **August special elections**

- Eliminates local special elections held in August, with certain exceptions.
- Allows a political subdivision or school district that is in a state of fiscal emergency to hold an August special election.
- Permits certain local offices, questions, or issues to be placed on the ballot on the same day as an August special election held to nominate or elect a member of the U.S. House of Representatives.

## **Election administration**

- Codifies a requirement currently found in Secretary of State directives that each board of elections prepare an Election Administration Plan (EAP) before each presidential primary election and each general election held in an even-numbered year.
- Removes the requirement that a 17-year-old high school student be a senior in order to serve as a precinct election official through the Youth at the Booth program.
- Prohibits a voter registration system or piece of voting equipment from being used in Ohio if an elected official or the official's spouse is a partner, owner, or member of the manufacturer or distributor.
- Updates the law requiring pre-election testing of voting equipment to more closely match existing Secretary of State directives.
- Prohibits any voting machine, marking device, or piece of automatic tabulating equipment from being used in an election without undergoing successful testing.
- Appropriates \$7.5 million in FY 2023-2024 to the Office of Procurement Services in the Department of Administrative Services to pay 85% of the cost of electronic pollbooks and ancillary equipment for boards of elections.
- Changes the process by which a board of elections must award any ballot printing contract worth more than \$25,000.
- Allows the board to award the contract to an out-of-state vendor.
- Requires the board to allow a request for proposals period of at least 15 days, and allows the board to post electronic notices in addition to newspaper and mailed notices.

- Reduces the amount of the bond that must be included with each proposal.
- Requires the Secretary of State to adopt rules establishing printing, mailing, and security standards for ballot printing vendors.

### **Citizenship notation on driver’s licenses and state ID cards**

- Requires any commercial driver’s license (CDL), driver’s license, or state ID card that is issued to a person who is not a U.S. citizen to include a notation that the person is a noncitizen.
- Authorizes a noncitizen who becomes a U.S. citizen in-between renewals of the person’s current CDL, driver’s license, or state ID card to obtain a free replacement license or card that removes the notation of noncitizenship.

### **Alternative forms of county government**

- Increases, from 3% to 10% of the electors of a county, the signature requirement for a petition to place an issue on the ballot to adopt an alternative form of county government.

### **Technical changes**

- Makes a clarifying change to the law governing in-person voting on Election Day to specify that a voter must sign the pollbook, instead of requiring the voter to write the voter’s name and address.
- Updates several references in Ohio law to federal election laws to refer to those laws’ current locations in the U.S. Code.

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## DETAILED ANALYSIS

### Absent voting by mail

#### Application deadline

The bill shortens the deadline to apply to cast absent voter’s ballots by mail from noon on the third day before Election Day to the close of business on the seventh day before Election Day. That deadline applies to applications delivered to the office of the board in person or by mail or submitted online.

However, the bill retains a provision of current law that allows an elector to submit an application not later than 3:00 p.m. on Election Day if the elector or the elector’s minor child has been unexpectedly hospitalized.<sup>1</sup>

#### Unsolicited applications

The bill relocates, but does not substantively change, language in continuing law that generally prohibits a board of elections or any other public office or public official or employee from mailing or otherwise delivering unsolicited applications for absent voter’s ballots. However, under continuing law, unchanged by the bill, the Secretary of State may mail those

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<sup>1</sup> R.C. 3503.16(E), 3509.03(D), 3509.031(A)(2), 3509.08, 3511.02, and 3511.04.

applications for a general election, so long as the General Assembly has made an appropriation for that particular mailing.<sup>2</sup>

### **Form of application**

The bill requires a person who applies to cast absent voter's ballots by mail to do so on a form prescribed by the Secretary of State, except that, under continuing law, a uniformed services or overseas absent voter still may apply on the Federal Post Card Application or submit a Federal Write-in Absentee Ballot. (The Federal Voting Assistance Program prescribes those forms under federal law, and the states are required to accept them.)

If a board of elections receives an application that is not submitted on an appropriate form, the bill requires the board promptly to direct the applicant to use an appropriate form.

Current law specifies that an application for absent voter's ballots need not be in any particular form, but that it must contain all of the required information. The Secretary of State has prescribed forms for this purpose, but applicants also may use a form provided by their local board of elections or another entity, or may begin with a blank sheet of paper and create their own form, so long as it includes the required information.<sup>3</sup>

### **Online applications**

Under the bill, not later than one year after the bill takes effect, the Secretary of State must establish a secure online system for electors to apply to receive absent voter's ballots by mail. (The online system is in addition to the continuing-law procedures that allow a uniformed services or overseas absent voter to submit an application electronically.)

The online application must require an applicant to provide all of the following and to check a box affirming under penalty of election falsification that the applicant is a qualified elector:

- The elector's name;
- The address at which the elector is registered to vote, or, if the elector is a participant in the Address Confidentiality Program, the elector's program participant ID number;
- The elector's date of birth;
- The elector's driver's license or state ID card number;
- The last four digits of the elector's Social Security number;
- An indication of the election for which the absent voter's ballots are requested;

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<sup>2</sup> R.C. 3501.05, 3509.03(E), and 3511.02(E) and R.C. 111.31 not in the bill.

<sup>3</sup> R.C. 3503.16(E), 3509.03, 3509.04, 3511.02, and 3511.04. See also 52 United States Code (U.S.C.) 20302(a); Ohio Secretary of State, [Forms 11-A through 11-I-2](#), available at [ohiosecretaryofstate.gov](http://ohiosecretaryofstate.gov) under "Elections and Voting," "Elections Officials," "Forms and Petitions"; and [Federal Voting Assistance Program](#), available at [fvap.gov](http://fvap.gov).

- If the request is for primary election ballots, the political party whose ballots the elector wishes to cast;
- The address to which the ballots should be mailed, if different from the elector's registration address.

Those fields match the information that must be included on a paper application for absent voter's ballots, except that the bill requires two forms of ID (both a driver's license or state ID card number and the last four digits of a Social Security number) in order to apply online.

Under continuing law, an elector who submits a paper application may provide just one of those numbers or a copy of the elector's current and valid photo ID, a copy of a military ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows the elector's name and address. On a paper application, the elector also must provide the elector's signature, which serves as a second form of ID.

The bill requires the Secretary to transmit each completed online application to the appropriate board of elections. The Secretary also must employ security measures necessary to ensure the integrity and accuracy of information submitted through the system. Errors in processing applications through the system must not prevent an elector from receiving absent voter's ballots.<sup>4</sup>

### **Identification envelope statement of voter**

The bill changes the language of the identification envelope statement of voter (the absentee ballot envelope form) in order to express a preference for the type of ID the voter provides. The voter's driver's license or state ID card number is the most preferred, followed by the last four digits of the voter's Social Security number, followed by the other forms of acceptable ID under continuing law.

Currently, the form instructs the voter to provide a type of ID from among a list of options. The bill requires the relevant portion of the form to read substantially as follows:

"You must provide one of the following:

Your driver's license or state identification card number:

\_\_\_\_\_

If you do not have or cannot provide a driver's license or state identification card number, the last four digits of your Social Security number: \_\_\_\_\_

If you do not have or cannot provide a driver's license or state identification card number or the last four digits of your

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<sup>4</sup> R.C. 3509.031 and Section 4 of the bill.

Social Security number, a copy of a current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows your name and address. If you provide a copy of one of those documents, enclose it in the return envelope along with the identification envelope.”

However, under the bill, the ballot is eligible to be counted if the voter provides any of the acceptable forms of ID, just as under current law. A voter is not penalized for providing a less-preferred form of ID, even if the voter could have provided a more-preferred form of ID.<sup>5</sup>

## **Return procedures**

### **Ballot return deadline**

The bill requires absent voter’s ballots that are returned by mail to arrive at the board of elections by the seventh day after Election Day, instead of the tenth day as required under existing law. Under continuing law, absent voter’s ballots that arrive after the close of the polls must be postmarked by the day before Election Day, and uniformed services and overseas absent voter’s ballots are not required to be postmarked, but must be signed by the close of the polls.

Based on those deadline changes, the bill requires the boards of elections to begin counting late-arriving and cured absent voter’s ballots, along with cured provisional ballots, on the eighth day after Election Day, instead of the eleventh day as required under current law. (Continuing law allows seven days for a voter to cure a deficient absentee or provisional ballot.) That is, under the bill, all ballot-counting determinations are made by the seventh day after Election Day instead of the tenth day, allowing the final count to begin earlier.<sup>6</sup>

## **Drop boxes**

### ***Background on drop boxes***

Current law allows a voter to return an absentee ballot by mailing it “to the director” of the board of elections, personally delivering it “to the director,” or having a listed relative deliver it “to the director.” The law does not mention the idea of ballot drop boxes at the office of the board or anywhere else.<sup>7</sup>

In 2020, an Ohio appeals court ruled that the statute allows, but does not require, a board of elections to place one or more ballot drop boxes at the office of the board or in other locations. The court also ruled that the Secretary of State has the authority under existing law to regulate the boards’ use and placement of drop boxes, including requiring them to have a

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<sup>5</sup> R.C. 3509.04 and 3511.05. See also R.C. 3509.05(B) and 3509.06.

<sup>6</sup> R.C. 3505.183, 3509.05, 3509.06, and 3511.11.

<sup>7</sup> R.C. 3509.05.



drop box at the board's office and prohibiting them from placing drop boxes in locations other than the board's office.<sup>8</sup>

### ***Drop boxes under the bill***

The bill specifies that absent voter's ballots that are not returned to the board by mail must be personally returned to the office of the board, and not to any other location, such as to a drop box elsewhere in the county. If the board maintains multiple offices in the county, the board may designate any of its offices for the return of absent voter's ballots, but it may designate only one office for that purpose.

The bill allows the board of elections to provide not more than one secure receptacle outside of the office of the board, on the property on which the office is located, for the purpose of receiving absent voter's ballots. Any drop box the board provides must be open to receive ballots only during the period beginning on the first day after the close of voter registration before the election (the first day of the absent voting period) and ending at 7:30 p.m. on Election Day (the close of the polls). The drop box must be open to receive ballots at all times during that period.

A drop box must be monitored by video surveillance at all times. The video recordings are a public record, and the board must make them available for inspection immediately upon request.

Under the bill, only a bipartisan team of election officials may open a drop box or handle its contents. A bipartisan team must collect the contents of each drop box and deliver them to the board for processing at least once each day and at 7:30 p.m. on Election Day. If, at the close of the polls, there are persons waiting in line to deposit ballots in a drop box, those persons must be permitted to do so.<sup>9</sup>

### **Who may deliver ballots**

Further, the bill's language emphasizes the continuing-law principle that absent voter's ballots that are personally returned to the board must be delivered by the elector or a listed relative, and not by any other person. Under continuing law, those relatives are:

- The elector's spouse;
- The elector's parent, including an adopting parent or stepparent;
- The elector's parent-in-law;
- The elector's grandparent;
- The elector's sibling, including a half sibling;
- The elector's child, including an adopted child or stepchild;

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<sup>8</sup> *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778 (10<sup>th</sup> Dist. Ct. App. 2020).

<sup>9</sup> R.C. 3509.05(C) and 3511.09(E).

- The elector’s aunt or uncle;
- The elector’s niece or nephew.

Continuing law prohibits any person from possessing the absent voter’s ballot of another, except as authorized under the Election Law. Whoever violates that prohibition is guilty of a fourth degree felony. The bill adds to that prohibition by specifically prohibiting any person from returning the absent voter’s ballot of another to the office of a board of elections, unless the person is a relative listed above or the person is acting as an employee or contractor of the U.S. Postal Service or a private carrier.<sup>10</sup>

### **Processing ballots before the close of the polls**

The bill requires, instead of allows, the boards of elections to process absent voter’s ballots before the close of the polls on Election Day. Continuing law prohibits the boards from tabulating or counting the votes on the ballots before the close of the polls. Under continuing law, processing an absent voter’s ballot means all of the following:<sup>11</sup>

- Examining the identification envelope in order to verify that the ballot is eligible to be counted;
- Opening the identification envelope, if the ballot is eligible to be counted;
- Determining whether the ballot is valid;
- Preparing and sorting the ballot for scanning by automatic tabulating equipment;
- Scanning the ballot by automatic tabulating equipment, if the equipment permits the ballot to be scanned without tabulating or counting the votes on the ballots scanned.

### **Ballots not enclosed in the identification envelope**

The bill eliminates a provision of law that requires the board of elections, upon receiving uniformed services or overseas absent voter’s ballots, to check for ballots that are enclosed in the return envelope but not inside the identification envelope, and to put them inside the identification envelope without looking at the markings on the ballots. Existing law does not include a similar provision for other absent voter’s ballots, but the Secretary of State directs the boards to follow that same procedure for all absent voter’s ballots.

The bill leaves the Revised Code silent on the issue of whether absent voter’s ballots can be counted if they are returned to the board inside the return envelope but not inside the identification envelope. As a result, the election officials would make that determination in accordance with any guidance from the Secretary of State.<sup>12</sup>

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<sup>10</sup> R.C. 3509.05, 3511.09(E), and 3599.21.

<sup>11</sup> R.C. 3509.06.

<sup>12</sup> R.C. 3511.11. See also Ohio Secretary of State, [Election Official Manual](#), ch. 7.06, p. 227, available on the Secretary’s website under “Directives, Advisories, Memos & Tie Votes” at [ohiosecretaryofstate.gov](http://ohiosecretaryofstate.gov).

## Postage

The bill prohibits any public office, and any public official or employee who is acting in an official capacity, from prepaying the return postage on an application for absent voter's ballots or on an absent voter's ballot return envelope. Existing law prohibits a board of elections from prepaying that postage, but does not explicitly prohibit the Secretary of State or another official from doing so.

Continuing law requires an absent voter who returns the voter's ballots by mail to mail them "postage prepaid," meaning that the voter must attach sufficient postage to the ballots before mailing them. The bill adds an exception to that requirement for uniformed services and overseas absent voter's ballots delivered by the U.S. Postal Service because federal law requires the U.S. Postal Service to deliver those materials free of charge.<sup>13</sup>

### Change from "director" to "board"

The bill changes numerous references in the law governing absent voting to refer to a board of elections receiving, sending, and processing applications and ballots, rather than the *director* of the board performing those functions. These changes do not affect the substance of the law, but they clarify that the director is not required to personally carry out all of those duties. Under continuing law and practice, the board delegates its many duties under the Election Law to the director and deputy director and to other employees.<sup>14</sup>

## In-person absent voting

### Days and hours

Under the bill, in-person absent voting must be permitted for all voters beginning on the day after the close of voter registration before an election and ending on the Sunday before the election. The bill codifies the current schedule instituted by Secretary of State directive, except that the bill redistributes the current six hours of in-person absent voting on the day before Election Day (Monday) by requiring the boards of elections instead to open earlier and close later Monday through Friday of the preceding week. Additionally, under the bill, the boards are not open for in-person absent voting on any legal holiday.

The following table shows the current statewide in-person absent voting schedule and the changes made by the bill (shown in red). Under continuing law, a voter who is waiting in line when in-person absent voting ends on a particular day must be permitted to vote.<sup>15</sup>

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<sup>13</sup> R.C. 3509.03(E), 3509.04, 3509.05, 3511.02, 3511.04, and 3511.09(E).

<sup>14</sup> R.C. 3509.03, 3509.04, 3509.05, 3509.06, 3509.08, 3509.09, 3511.02, 3511.04, 3511.05, 3511.06, 3511.07, 3511.08, 3511.09, 3511.10, 3511.11, and 3511.13.

<sup>15</sup> R.C. 3509.03, 3509.051(A), 3511.02, and 3511.10 and conforming changes in R.C. 3509.01. See also Ohio Secretary of State, [Election Official Manual](#), ch. 7, p. 199, available on the Secretary's website under "Directives, Advisories, Memos & Tie Votes" at [ohiosecretaryofstate.gov](http://ohiosecretaryofstate.gov).

Statewide in-person absent voting schedule							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	Closed	Closed
2	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	8:00 a.m.- 5:00 p.m.	Closed	Closed
3	<u>Presidential general</u> 8:00 a.m.- 6:00 p.m.	<u>Presidential general</u> 8:00 a.m.- 6:00 p.m.	<u>Presidential general</u> 8:00 a.m.- 6:00 p.m.	<u>Presidential general</u> 8:00 a.m.- 6:00 p.m.	<u>Presidential general</u> 8:00 a.m.- 6:00 p.m.	<u>Presidential general</u> 8:00 a.m.- 4:00 p.m.	<u>Presidential general</u> 1:00 p.m.- 5:00 p.m.
	<u>Presidential primary or gubernatorial general</u> 8:00 a.m.- 5:00 p.m.	<u>Presidential primary or gubernatorial general</u> 8:00 a.m.- 5:00 p.m.	<u>Presidential primary or gubernatorial general</u> 8:00 a.m.- 5:00 p.m.	<u>Presidential primary or gubernatorial general</u> 8:00 a.m.- 5:00 p.m.	<u>Presidential primary or gubernatorial general</u> 8:00 a.m.- 5:00 p.m.	<u>Presidential primary or gubernatorial general</u> 8:00 a.m.- 4:00 p.m.	<u>Presidential primary or gubernatorial general</u> Closed
	<u>Other elections</u> 8:00 a.m.- 5:00 p.m.	<u>Other elections</u> 8:00 a.m.- 5:00 p.m.	<u>Other elections</u> 8:00 a.m.- 5:00 p.m.	<u>Other elections</u> 8:00 a.m.- 5:00 p.m.	<u>Other elections</u> 8:00 a.m.- 5:00 p.m.	<u>Other elections</u> Closed	<u>Other elections</u> Closed
4	<del>8:00 a.m.- 7:00 p.m.</del> <u>7:00 a.m.- 8:00 p.m.</u>	<del>8:00 a.m.- 7:00 p.m.</del> <u>7:30 a.m.- 7:30 p.m.</u>	<del>8:00 a.m.- 7:00 p.m.</del> <u>7:30 a.m.- 7:30 p.m.</u>	<del>8:00 a.m.- 7:00 p.m.</del> <u>7:30 a.m.- 7:30 p.m.</u>	<del>8:00 a.m.- 7:00 p.m.</del> <u>7:30 a.m.- 7:30 p.m.</u>	8:00 a.m.- 4:00 p.m.	1:00 p.m.- 5:00 p.m.
5	<del>8:00 a.m.- 2:00 p.m.</del> <u>Closed</u>	<b>Election Day</b>					

The current statute provides that in-person absent voting ends at 6:00 p.m. on the Friday before Election Day, except that uniformed services and overseas absent voters may cast absent voter's ballots at the office of the board through the close of the polls on Election Day. However, a federal court has ruled that this disparity violates the Equal Protection Clause of the 14<sup>th</sup> Amendment. In 2014, the court issued a permanent injunction requiring Ohio to allow in-person absent voting for all voters on the Saturday, Sunday, and Monday before Election Day. Because the bill establishes the same in-person absent voting deadline for all voters, it appears

that the bill eliminates the disparity that was the basis of the court's decision, meaning that the court's order would no longer apply.<sup>16</sup>

## Procedure

The bill clarifies that an in-person absent voter is not required to complete a written application for absent voter's ballots. Under continuing law, such a voter also is not required to fill out an identification envelope statement of voter (the form on the ballot envelope). Instead, the voter must provide ID and sign a pollbook, similar to the procedures on Election Day.

The bill rewords, but does not substantively change, the list of forms of ID that are acceptable for in-person absent voting. Continuing law allows the voter to provide any of the following:

- A current and valid photo ID;
- A military ID;
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration, that shows the voter's name and current address;
- The voter's driver's license or state ID card number (as discussed above, the bill adds a reference to the state ID card number);
- The last four digits of the voter's Social Security number.

The bill adds a requirement that, if the voter provides a driver's license or state ID card number or the last four digits of the voter's Social Security number, the election officials must verify that the number or digits are not different from the number or digits in the voter's registration record.<sup>17</sup>

## August special elections

With two exceptions discussed below, the bill eliminates local special elections held in August. Existing law allows political subdivisions and other local taxing authorities to place offices, questions, and issues on the ballot on three days each year:

- At a special election held on the day of the primary election – typically in May, but in March in a presidential election year;
- At an August special election;
- At the general election in November.

A municipal or county charter also may authorize additional days for a special election.

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<sup>16</sup> R.C. 3509.03, 3511.02, and 3511.10 and *Obama for America v. Husted*, 2014 U.S. Dist. LEXIS 79409, Case No. 2:12-CV-00636 (S.D. Ohio June 11, 2014).

<sup>17</sup> R.C. 3509.051 and conforming changes in R.C. 3509.05.

Under continuing law, a political subdivision must pay a share of the cost of conducting any election at which it has an item on the ballot. Costs are shared among the entities placing items on the ballot, based on a statutory formula that varies based on the timing of the election. However, if a political subdivision holds an August special election, the subdivision must pay the entire cost of the election.<sup>18</sup>

### **Fiscal emergency exception**

First, the bill permits a political subdivision or school district to hold a special election in August if the subdivision or district is in a state of fiscal emergency, as determined by the Auditor of State, at the time the board of elections certifies the office, question, or issue for placement on the ballot. Continuing law prescribes procedures for the Auditor to determine that a political subdivision or school district is in a state of fiscal emergency, either on the Auditor's own initiative or upon the request of certain other officials.<sup>19</sup>

Under the bill, the deadlines to place an office, question, or issue on the ballot at an August special election remain the same as the deadlines for other elections. And, under continuing law, the political subdivision or school district is responsible for paying the entire cost of an August special election.<sup>20</sup>

### **Special congressional election exception**

The bill also includes an exception for situations in which the Governor orders that an August special election be held at the state's expense to nominate or elect a member of the U.S. House of Representatives in order to fill a vacancy. In that case, a political subdivision or taxing authority whose territory is entirely located within the relevant congressional district may hold a special election on that day. However, this exception does not apply to certain questions and issues that, under continuing law, cannot be placed on the ballot in August – for example, a county sales tax levy to provide additional revenue for the county's general fund.

The deadlines to place an office, question, or issue on the ballot for the above described special election remain the same as the deadlines for other elections. If one or more political subdivisions or taxing authorities places an office, question, or issue on the ballot, the entire cost of the special election must be divided proportionally between the state and each political subdivision or taxing authority based upon a ratio determined by the number of offices, questions, or issues placed on the ballot in each precinct by the state and each political subdivision or taxing authority.<sup>21</sup>

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<sup>18</sup> R.C. 323.17, 3501.01(D), and 3505.19(A). See also R.C. 3501.17, not in the bill.

<sup>19</sup> R.C. 118.03, 118.04, and 3316.03, not in the bill.

<sup>20</sup> R.C. 3505.19(B) and (C). See also R.C. 3501.17(D), not in the bill.

<sup>21</sup> R.C. 3521.031, with conforming changes in R.C. 3513.301, 3513.312, and 3521.03. See also R.C. 5739.026, not in the bill.

## Election administration

### Election Administration Plans

The bill codifies a requirement currently found in Secretary of State directives that each board of elections prepare an Election Administration Plan (EAP) before each presidential primary election and each general election held in an even-numbered year. Under the bill, the board must submit its EAP not later than 75 days before the election. The existing directives place that deadline at 60 days before a presidential primary election and 120 days before a general election.

Under the bill, the EAP must be on a template prescribed by the Secretary and must include all of the following:

- Precinct election official recruitment, training, and accountability;
- Resource allocation;
- Communication before and on the day of the election;
- Materials;
- Contingencies and continuity planning;
- Security;
- Voter registration;
- Absent voting;
- Polling places and accessibility;
- Ballot preparation;
- Pre-election testing;
- Reconciliation and audits;
- A master calendar;
- Any other topic prescribed by the Secretary.

These topics are the same as those found on the Secretary's current EAP template.<sup>22</sup>

### Youth at the Booth

The bill removes the requirement that a high school student be a senior in order to serve as a precinct election official through the Youth at the Booth program. Under continuing law, the student must be at least 17, a U.S. citizen, and a resident of the county, and must apply

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<sup>22</sup> R.C. 3501.10(BB). See also Ohio Secretary of State, [Election Official Manual](#), ch. 2, sec. 1.06 and ch. 15, sec. 1.08.

through a program at the student's school. Students recruited through the program may not be voting location managers, and continuing law also limits the number who may be assigned to any given precinct.<sup>23</sup>

## **Voting equipment**

### **Manufacturers and distributors**

Under the bill, no voter registration system, voting machine, marking device, or automatic tabulating equipment may be used in Ohio if an elected official or the official's spouse (1) is a partner, owner, or member of the person or entity that manufactured, assembled, or otherwise made the system, machine, device, or equipment, or (2) is a partner, owner, or member of the person or entity from which the system, machine, device, or equipment is acquired.

An elected official or the official's spouse is not considered an owner of a publicly traded person or entity if the official's and the spouse's combined ownership interest in the person or entity is less than 10%. A person is considered an elected official for this purpose if the person is an elected officer of the state, any political subdivision, or the U.S., other than a member of a central committee of a political party.

"Voter registration system" means software and any related equipment used by a board of elections or the Secretary of State to process, store, organize, maintain, or retrieve voter registration records. "Voting machine," "marking device," and "automatic tabulating equipment" have the same meanings as in the continuing law generally requiring voting equipment to be approved before being used in Ohio.<sup>24</sup>

### **Pre-election testing**

The bill updates the law requiring pre-election testing of voting equipment to more closely match existing Secretary of State directives. Under the bill, no voting machine, marking device, or piece of automatic tabulating equipment may be used in an election without undergoing successful testing.

First, under continuing law, the board must test and audit the variable codes applicable to the election to verify the accuracy of any computer program that will be used for counting votes in the election.

The board also must conduct systematic logic and accuracy testing of every component of every voting machine, marking device, or piece of automatic tabulating equipment with every ballot style to be used in the election to ascertain that the ballots are accurate and that the machines, devices, and equipment will accurately record, mark, or count all votes cast. The bill adds the references to testing marking devices.

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<sup>23</sup> R.C. 3501.22(C).

<sup>24</sup> R.C. 3506.24. See also R.C. 3506.01, not in the bill.



Under continuing law, the logic and accuracy testing must be conducted by processing a pre-audited group of ballots that are marked so as to record a predetermined number of valid votes. The ballots must include at least one over-voted ballot for each office. A different number of valid votes must be assigned to each candidate for an office, and for and against each question and issue. If an error is detected, the board must ascertain and correct the cause of the error and complete an errorless count. Automatic tabulating equipment must pass this test at the beginning and at the end of the Election Day count before the election results may be approved as official.

The bill requires the board to give public notice of the time and place of all testing. Currently, the board must give public notice of the logic and accuracy testing, but not the testing and auditing of software codes.

Finally, the bill adds a requirement that all testing be conducted by bipartisan teams of election officials.<sup>25</sup>

### **Electronic pollbooks appropriation**

The bill appropriates \$7.5 million in FY 2023-2024 to the Office of Procurement Services in the Department of Administrative Services to pay 85% of the cost of electronic pollbooks and ancillary equipment for boards of elections. The funding must be allocated to each county in proportion to the number of registered electors in the county as of July 1, 2022.

If a county already purchased electronic pollbooks or ancillary equipment between January 1, 2020, and the bill's effective date, the Office of Procurement Services must reimburse the county for 85% of that purchase, up to its allocated amount.

For purchases to be made after the bill takes effect, the bill requires each county to select electronic pollbooks from a list of vendors and equipment certified by the Board of Voting Machine Examiners under continuing law. The Office of Procurement Services must make the purchase and cover 85% of the cost on behalf of the county, up to its allocated amount.<sup>26</sup>

### **Ballot printing contracts**

The bill changes the process by which a board of elections must award any ballot printing contract worth more than \$25,000. (Under continuing law, the boards of elections may award contracts worth \$25,000 or less without competitive bidding.)

First, the bill allows the board to award the contract to an out-of-state vendor. Existing law requires all ballots to be printed in Ohio. Under the bill, the board must issue a request for proposals and allow a proposal period of at least 15 days. The board must publish a notice at least once in a newspaper of general circulation published in the county. The board also may post the notice electronically, mail notices to the responsible printing offices, or both. Existing

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<sup>25</sup> R.C. 3506.14.

<sup>26</sup> Sections 5 and 6 of the bill. See also R.C. 3506.05, not in the bill.

law requires the board either to give five days' newspaper notice or to mail notices to eligible printing offices before awarding the contract.

The bill also reduces the amount of the bond that must be included with each proposal. Under the bill, each proposal must be accompanied by a bid bond equal to 10% of the amount of the proposal. If a vendor's proposal is selected, the vendor then must post a performance bond equal to the full contract amount for a single election. If the contract is for more than one election, the performance bond must equal the full contract amount for the largest election included in the contract period. By contrast, current law requires each bid to include a surety bond in a sum double the amount of the bid.

Finally, the bill requires the Secretary of State to adopt rules under the Administrative Procedure Act establishing printing, mailing, and security standards for ballot printing vendors. The board must award the contract to the most qualified responsible proposer that meets those minimum standards. Existing law specifies that the board must award the contract to the lowest responsible bidder.<sup>27</sup>

### **Citizenship notation on driver's licenses and state ID cards**

The bill requires any Ohio commercial driver's license (CDL), driver's license, or state ID card that is issued to a person who is not a U.S. citizen to include a notation designating that the licensee or cardholder is a noncitizen.<sup>28</sup> Under current law, the BMV may issue a CDL, a driver's license, or a state ID card to noncitizens. *Temporary* Ohio residents (noncitizens who have legal presence, but who are in Ohio on a temporary basis) are issued a nonrenewable/nontransferable license or state ID card. These nonrenewable/nontransferable licenses and cards are clearly distinguished from the standard Ohio license or card. *Permanent* Ohio residents who are noncitizens, but have legal presence, are issued the same license or state ID card as U.S. citizens who are Ohio residents. There are no markings or notations designating that the person is not a U.S. citizen.<sup>29</sup>

The bill also authorizes a noncitizen who becomes a U.S. citizen before a license or state ID card is eligible for renewal (i.e., more than 90 days before expiration) to obtain a replacement CDL, driver's license, or state ID card without paying the typical fees for that license or card. The replacement license or state ID card is identical to the person's current license or card but without the notation designating the person as a non-citizen. The Registrar of Motor Vehicles must adopt rules to administer and implement the process of obtaining the replacement licenses and cards, including any documentary evidence the person must show proving the person's new citizenship status.<sup>30</sup>

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<sup>27</sup> R.C. 3503.13 and conforming change in R.C. 3513.14.

<sup>28</sup> R.C. 4506.11(A)(13), 4507.13(A)(2)(j), 4507.51, and 4507.52(A)(2).

<sup>29</sup> Ohio Administrative Code 4501:1-1-21 and 4501:1-1-37.

<sup>30</sup> R.C. 4507.233.

## Alternative forms of county government

The bill increases, from 3% to 10% of the electors of a county, the signature requirement for a petition to place an issue on the ballot to adopt an alternative form of county government. Under continuing law, the number of electors of a county for petition purposes is based on the total votes cast for Governor in the county in the most recent gubernatorial election.<sup>31</sup>

Continuing law allows a board of county commissioners or the electors, by petition, to propose the adoption of an alternative form of county government. The statute authorizes several options in designing an alternative form of government, including changing the number of county commissioners, electing commissioners at large or by district, electing or appointing a county executive, and establishing new county departments.<sup>32</sup>

Separately, the Ohio Constitution allows the electors of a county to propose the adoption of a county charter, through which the county may reorganize its government and exercise home rule powers in the same manner as a municipality. A petition to place a proposed county charter on the ballot requires the signatures of 10% of the electors of the county.<sup>33</sup>

## Technical changes

The bill makes a clarifying change to the law governing in-person voting on Election Day to specify that a voter must sign the pollbook, instead of requiring the voter to write the voter's name and address. This change is consistent with long-standing practice and with other continuing provisions of the Election Law that refer to the voter signing the pollbook.<sup>34</sup>

The bill also updates several references in Ohio law to the U.S. Code citations for the federal Voting Rights Act of 1965, National Voter Registration Act of 1993, and Uniformed and Overseas Citizens Absentee Voting Act to refer to those acts' current locations in the U.S. Code. The federal election laws were reorganized, but not substantively changed, in 2014.<sup>35</sup>

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## HISTORY

Action	Date
Introduced	05-06-21
Reported, H. Government Oversight	--

ANHB0294RH-A-134/tl

<sup>31</sup> R.C. 302.03.

<sup>32</sup> R.C. Chapter 302, not in the bill.

<sup>33</sup> Ohio Constitution, Article X, Sections 3 and 4.

<sup>34</sup> R.C. 3505.18(B).

<sup>35</sup> R.C. 3501.01(Y) and (Z) and 3503.19(B)(1).