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Bill Analysis

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Primary Sponsors: Reps. Lear and Wiggam

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SUMMARY

- Creates a process in law for the Secretary of State and boards of elections to identify and send confirmation notices to electors who, based on Bureau of Motor Vehicles and Social Security Administration records, appear to have missing or incorrect identification information or outdated residence addresses.
- Requires an elector, if the elector's information is not corrected before the next election at which the elector votes, to cast a provisional ballot and confirm the elector's information.
- Requires the elector's registration to be canceled if the elector's provisional ballot is not counted because of failure to confirm the information or because the elector is ineligible to vote.

DETAILED ANALYSIS

Voter roll maintenance using BMV and SSA records

The bill requires the Secretary of State, on a weekly basis, to compare the information in the Statewide Voter Registration Database (SWVRD), the database of the Bureau of Motor Vehicles (BMV), and the Social Security Administration's (SSA's) database to identify each voter registration record that appears to have a missing or incorrect Ohio driver's license or state identification card number (Ohio DL/ID number) or last four digits of the elector's Social Security number (SSN-4), or that has an outdated residence address, and send a report to each board of elections. As is discussed below in more detail, the board must send each elector a confirmation notice and require the elector to vote provisionally at the next election unless the elector's information is corrected first.

For each county, the Secretary's weekly report must contain each voter registration record to which one of the following applies and that has not been included in a previous report:

- The record contains neither an Ohio DL/ID number nor an SSN-4. Until 2023, an applicant was allowed to provide an alternative form of ID, such as a copy of a utility bill, when registering to vote on a paper form. As a result, some voter registration records do not include an Ohio DL/ID number or SSN-4.1
- The record contains an Ohio DL/ID number, but the number does not exist in the BMV's records or is not associated with the first name, last name, and date of birth that appear in the voter registration record.
- The record contains the elector's Ohio DL/ID number, but the residence address in the BMV's records does not match the residence address in the voter registration record. If the Secretary of State later learns that the elector's residence address has been updated so that the BMV and voting records match, the Secretary must notify the board of elections to remove the indication that the elector must vote provisionally at the next election.
- The record contains an SSN-4, but the number does not exist in the SSA's records, or is not associated with the first name, last name, and date of birth that appear in the voter registration record.2

The report must exclude any elector who is participating in the Address Confidentiality Program or whom the Secretary knows is a designated public service worker. (These individuals are permitted under continuing law to provide an alternative address to the BMV in order to shield their residence addresses from the public record.)³

The Secretary must make the information in each report available to the public on the Secretary's website, except that the Secretary must redact all information that, under continuing law, is not a public record (an elector's Ohio DL/ID number, SSN or SSN-4, telephone number, or email address; the address of a designated public service worker; and any information concerning a participant in the Address Confidentiality Program).⁴

Confirmation notices, currently

Generally

Under continuing law, a confirmation notice is a notice mailed to an elector, requesting the elector to confirm the elector's information. The bill specifies that a confirmation notice may be used to confirm an elector's name and other information required for registration, in addition to the elector's address. The National Voter Registration Act of 1993 (NVRA) created the confirmation notice and specifies the procedures for the states to use it. A confirmation notice must be accompanied by a postage prepaid, preaddressed return envelope, containing a form on

¹ R.C. 3503.14, as amended by H.B. 458 of the 134th General Assembly, effective April 7, 2023.

² R.C. 3503.151(E)(1).

³ R.C. 3503.151(E)(2). See also R.C. 111.41 to 111.99, 149.43, and 149.45, not in the bill.

⁴ R.C. 3503.151(E). See also R.C. 3503.13, not in the bill.

which the elector may verify or correct the elector's registration, and must meet all other requirements of the NVRA.

Continuing law requires that, once an elector has been sent a confirmation notice, the elector's registration must be canceled if the elector does not respond, update the elector's registration, or vote during a period of four years that includes two federal general elections.⁵

When sent

The bill's process described above is similar, but not identical, to the fourth of four current procedures Ohio uses to identify and send confirmation notices to electors. The first two such procedures are described in law and retained by the bill:

1. The Secretary of State annually compares the SWVRD against records from the National Change of Address Service provided by the U.S. Postal Service. If an elector is identified as having moved, the board of elections must send the elector a confirmation notice. However, the elector is not necessarily required to vote provisionally.
2. When a board of elections registers an elector to vote and sends the elector an acknowledgment notice, if the notice is returned to the board as undeliverable and the board cannot verify the elector's address, the board must send the elector a confirmation notice. The elector also must vote provisionally. (See "**Acknowledgment notices**," below.)

Additionally, the Secretary of State prescribes two confirmation notice processes by directive:

1. If an elector has not voted or updated the elector's registration in the past two years, the board must send the elector a confirmation notice. This process does not require the elector to vote provisionally.
2. The Secretary compares the information in the SWVRD against BMV and SSA records. The bill replaces this process and requires that the elector vote provisionally.

Under the current BMV/SSA procedure, the Secretary "regularly" compares the information in the SWVRD against BMV and SSA records and sends the boards electronic packets that notify them of each registration for which the Ohio DL/ID number, SSN-4, last name, first name, or date of birth could not be verified. The packets also include any electors who, according to BMV and SSA records, are deceased. (Additional procedures exist for identifying electors who have died.)

Within ten days of receiving a packet, the board must review all the information in the packet and send each elector a confirmation notice, unless the board determines that the data mismatch was a result of a data entry error by the election officials. However, unlike under the bill, an elector who is sent a confirmation notice under this directive is not required to vote provisionally.

⁵ R.C. 3501.01(W) and 3503.21(A)(7) and (D). See also 52 United States Code (U.S.C.) 20507(d)(2).

On a practical level, it appears that the bill would cause the boards to send confirmation notices to two groups of electors who would not necessarily receive those notices under current law or directive: (1) electors who registered without providing an Ohio DL/ID or SSN-4, as permitted until 2023, and (2) electors who have moved and have failed to notify either the BMV or the board of elections, and who have not used the National Change of Address Service. (See **“Federal voter roll maintenance requirements,”** below.)⁶

Acknowledgement notices – continuing law

The bill relocates provisions of continuing law that describe the procedures regarding voter registration acknowledgment notices. Under continuing law, when a board of elections registers an elector to vote, the board must send the elector an acknowledgment notice by nonforwardable mail that informs the elector that the elector is registered, shows the elector’s precinct, and describes the photo ID requirements to vote in person. If the notice is returned to the board as undeliverable, the board must investigate and attempt to deliver the notice to the correct address. If the board cannot verify the elector’s residence address, the board must send the elector a confirmation notice and mark the elector’s name in the registration list and in the poll list or signature pollbook to indicate that the elector must vote provisionally. If the elector votes provisionally and the ballot is not counted, the board must cancel the elector’s registration.

The bill moves the language that describes this process to a new section of law that sets out similar procedures for electors who are sent confirmation notices pursuant to the BMV and SSA checks conducted under the bill.⁷

Confirmation notice and provisional voting under the bill

Within two weeks of receiving a weekly report from the Secretary of State based on BMV and SSA records, the bill requires a board of elections to send each listed elector a confirmation notice and mark the elector’s name in the official registration list and in the poll list or signature pollbook to indicate that the elector must vote by provisional ballot, similar to an elector whose acknowledgment notice is returned to the board as undeliverable. This requirement does not apply if the board determines that the elector is an Address Confidentiality Program participant or a designated public service worker who should have been excluded from the report. (See **“Federal voter roll maintenance requirements,”** below.)⁸

Registration confirmed before an election

An elector who is sent a confirmation notice under the bill is not required to vote provisionally if the elector’s information is confirmed before the next election in which the

⁶ R.C. 3503.21 and Ohio Secretary of State, [Election Official Manual, ch. 4, sections 4.07 and 4.12 \(PDF\)](#), available at ohiosos.gov under “Elections & Voting,” “Elections Officials,” “Directives, Advisories, Memos & Tie Votes.”

⁷ R.C. 3503.19(D), 3503.201, and 3503.21.

⁸ R.C. 3503.151(E)(4) and 3503.201.

elector votes. The board must remove the provisional ballot indication and correct the elector's registration, if needed, when the elector's information is confirmed as follows:⁹

- In the case of a mismatching or undeliverable residence address:
 - The board receives a subsequent report from the Secretary of State indicating that the residence address in the elector's voter registration matches the residence address in the BMV's records; or
 - The elector provides a valid residence address to the board before the elector next appears to vote.
- In the case of a missing or incorrect Ohio DL/ID number or SSN-4, the elector provides at least one of the following to the board before the elector next appears to vote:
 - An Ohio DL/ID number that exists in the BMV's records and is associated with the elector's first name, last name, and date of birth, as confirmed by the Secretary of State;
 - An SSN-4 that exists in the records of the SSA and is associated with the elector's first name, last name, and date of birth, as confirmed by the Secretary of State;
 - A correction to the elector's first name, last name, or date of birth in the elector's registration record such that they match the DL/ID number or SSN-4 in the elector's registration, as applicable, as confirmed by the Secretary of State.

Provisional voting

If the elector's information is not confirmed before the next election at which the elector votes, the elector must vote by provisional ballot. In order for the provisional ballot to be counted, the elector must provide the needed name, address, birthdate, Ohio DL/ID, or SSN-4, as applicable, on the ballot affirmation or within four days after the election at the board of elections. If the elector's ballot is counted, the board must correct the elector's registration, if applicable, and remove the provisional ballot indication.

If the provisional ballot is not counted because the elector fails to provide the needed information or is determined to be ineligible to vote, the board must cancel the elector's registration and notify the elector of the cancellation. The notice must inform the elector that the elector may again register to vote if the elector is eligible to do so.¹⁰

Federal voter roll maintenance requirements

The NVRA requires each state to follow a number of procedures when conducting routine voter roll maintenance, including a requirement that those procedures be uniform and nondiscriminatory. Because the bill applies the provisional voting requirement to only some electors who are sent confirmation notices, a court might examine whether the bill's procedures

⁹ R.C. 3503.201(A) and (B).

¹⁰ R.C. 3503.201(C), 3505.181(B)(9), 3505.182, and 3505.183(B)(3)(h) and (B)(4)(a)(xii).

are uniform if the bill were challenged. For instance, an elector who appears to have moved based on BMV records must vote provisionally, but an elector who appears to have moved based on a National Change of Address Service list is not required to do so.

Further, the NVRA prohibits a state, during the 90 days before a federal election, from conducting any program to systematically remove the names of ineligible voters from the rolls. During that 90-day period, a state may cancel an elector’s registration only because of death, a criminal conviction, an adjudication of incompetence, at the elector’s own request, or to correct errors in registration records.¹¹ A reviewing court might examine whether, during the 90 days before a federal election, the NVRA prohibits a board of elections from sending a confirmation notice and requiring an elector to vote provisionally based on some or all of the bill’s criteria. Adjusting transposed digits in an Ohio DL/ID number or SSN-4 might fall under the category of correcting an error in a registration record for purposes of the NVRA. But it might not be clear whether sending an elector a confirmation notice because the elector appears to have moved, or because the elector registered before Ohio law required the elector to provide an Ohio DL/ID number or SSN-4, would qualify as a correction as contemplated by the federal law.

HISTORY

Action	Date
Introduced	05-15-24

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¹¹ 52 U.S.C. 20507(c)(2) and (d)(1). See also *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019) and *Arcia v. Secretary of State of Florida*, 772 F.3d 1335, 1344 (11th Cir. 2014), in which the court held that under the NVRA, conducting “a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices” qualified as a program that could not be conducted during the 90 days before a federal election.