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Subject: Analysis of Sub. H.B. 458 (I_134_3036-2)

Below is an analysis of Sub. H.B. 458 (I_134_3036-2), as adopted in the Senate Local Government and Elections Committee on Tuesday, December 6. The version of the bill As Passed by the House contains only provisions that eliminate August special elections. Compared to the bill As Passed by the House, the substitute bill changes those provisions to eliminate an exception that allowed a local government to hold an August special election if a special congressional election was being held on that day in the local government's territory. Under the substitute bill, as described below in more detail, a local government may hold an August special election only if it is in a state of fiscal emergency. All other provisions described below are added by the substitute bill and are not present in the bill As Passed by the House.

SUMMARY

Voter identification

- Defines photo ID as an unexpired Ohio driver's license, state ID card, or military ID card that includes the individual's name and photograph.
- Generally requires an elector to have photo ID to vote by any method.
- Allows an elector who does not have or cannot provide photo ID because the elector has a religious objection to being photographed to sign an affidavit to that effect and to vote absentee by mail or by provisional ballot using the last four digits of the elector's Social Security number (SSN).
- Requires a person who registers to vote or updates the person's voter registration using a paper form to provide the person's Ohio DL/ID number or the last four digits of the person's SSN.
- Requires an elector to show photo ID in order to cast a regular ballot on Election Day.
- Clarifies that an Election Day voter must sign the voter's name in the pollbook, as opposed to writing the voter's name and address in the pollbook.

- Requires a person who casts absent voter's ballots in person at the board of elections to provide photo ID in the same manner as an elector voting on Election Day.
- Clarifies that an in-person absent voter is not required to complete a written application for absent voter's ballots.
- Requires an elector who is applying to vote absentee by mail, or who is returning absent voter's ballots to provide two forms of ID: (1) an Ohio DL/ID number, a copy of the front and back of a photo ID, or an affidavit of religious objection, and (2) the last four digits of the elector's SSN.
- Allows an elector who appears to vote in person, either on Election Day or during in-person absent voting, and who does not have or cannot provide photo ID, to cast a provisional ballot.
- Requires the elector to appear at the office of the board of elections by the seventh day after Election Day to show photo ID in order for the ballot to be counted.
- Specifies that, if the elector has a religious objection to being photographed, the elector may execute an affidavit of religious objection when casting the provisional ballot or at the office of the board by the seventh day after Election Day.
- Authorizes any person 17 and over who applies for and receives a state ID card or a replacement state ID card from the Bureau of Motor Vehicles to receive it for free.
- Establishes a process for the Registrar of Motor Vehicles to reimburse a deputy registrar for the fees that a deputy registrar would have charged for the free state ID card.
- 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.

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.
- Prohibits the Secretary of State from mailing unsolicited applications for absent voter's ballots.
- 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 all absent voter's ballots to arrive at the board of elections by the close of the polls (7:30 p.m.) on Election Day, instead of allowing mailed ballots to arrive at the board by the tenth day after Election Day as under existing law.

- Requires the boards of elections to begin counting cured absent voter's and provisional ballots on the eighth day after Election Day, instead of the eleventh day.
- 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 not more than one secure outdoor drop box on the premises of the office of the board.
- Specifies administrative requirements concerning those 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, and 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 – days available

- 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.

August special elections

- Eliminates local special elections held in August, with one exception.
- Allows a political subdivision or school district that is in a state of fiscal emergency to hold an August special election.

Election administration

- Specifies that a board of elections must permit an elector with a disability who is physically unable to enter a polling place to vote in the elector's vehicle or at the door of the polling place with the assistance of a bipartisan team of election officials.
- Prohibits an elector from being permitted to vote curbside under any other circumstance.
- 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.

Technical changes

- Updates several references in Ohio law to federal election laws to refer to those laws' current locations in the U.S. Code.

DETAILED ANALYSIS

Voter identification

The bill changes the types of identification (ID) that are acceptable for purposes of voter registration and voting, and generally requires an elector to have photo ID to vote by any method. The following table summarizes these changes, which are discussed below in more detail.

Acceptable form of voter ID	Register to vote		Election Day voting		In-person absent voting		Absent voting by mail		Provisional ballot	
	Now	H.B. 458	Now	H.B. 458	Now	H.B. 458	Now	H.B. 458	Now	H.B. 458
								Must give 2		
Unexpired Ohio DL/ID with current address	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
Unexpired Ohio DL/ID with former address	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
Military ID	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
Utility bill, bank statement, government check, paycheck, or other government document with current address	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗
Ohio DL/ID number	✓	✓	✗	✗	✓	✗	✓	✓	✓	✗
Last four digits of SSN	✓	✓	✗	✗	✓	✗	✓	Required	✓	✗

Photo ID definition

The bill defines photo ID as one of the following documents that includes the individual's name and photograph and is not expired:

- An Ohio driver's license, commercial driver's license, or state ID card issued by the Bureau of Motor Vehicles – this analysis refers to this type of ID as an Ohio DL/ID.
- A U.S. military ID card, Ohio National Guard ID card, or U.S. Department of Veterans Affairs ID card – this analysis refers to this type of ID as a military ID.

Because the bill does not require a photo ID to include the individual's current address, an unexpired Ohio DL/ID with the individual's previous address is acceptable, as under existing law.

Current law defines photo ID as an unexpired document that is issued by Ohio or the U.S. government and that shows the person's name, photograph, and current address, except that an Ohio DL/ID may include the person's former address. It appears that an Ohio DL/ID is

the only commonly issued form of ID that meets that description. As is explained below, however, a person who does not have photo ID currently may provide an alternative form of ID.¹

Exemption for religious objectors

The bill allows an elector who does not have or cannot provide photo ID because the elector has a religious objection to being photographed to sign an affidavit to that effect and to vote absentee by mail or by provisional ballot using the last four digits of the elector's Social Security number (SSN), as described below. The Secretary of State must prescribe the form of the affidavit, which must be substantially as follows:

Affidavit of Religious Objection

I, _____ (first and last name of elector), declare under penalty of election falsification that I do not have or cannot provide photo identification because I have a religious objection to being photographed.

The last four digits of my Social Security number are: _____

(Signature of individual)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.²

ID for voter registration

The bill requires a person who registers to vote or updates the person's voter registration using a paper form to provide the person's Ohio DL/ID number or the last four digits of the person's SSN. The bill eliminates the current option to provide a copy of a current and valid photo ID or 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 person's name and address. This requirement applies prospectively; persons who have already registered to vote using an alternate form of ID before the bill takes effect would not be required to reregister.

Under continuing law, to register or perform an update online, a person must provide *both* an Ohio DL/ID number and the last four digits of the person's SSN.³

ID for Election Day voting

For purposes of voting on Election Day, the bill requires an elector to show photo ID (an Ohio DL/ID or a military ID) in order to cast a regular ballot. A person who does not provide photo ID may cast a provisional ballot, as described below. The bill eliminates the option to

¹ R.C. 3501.01(AA).

² R.C. 3505.19.

³ R.C. 3503.14 and 3503.20.

provide 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 person's name and address.

The bill also clarifies that a voter must sign the voter's name in the pollbook, as opposed to writing the voter's name and address in the pollbook. This change is consistent with long-standing procedures and with the continuing law that requires the election officials to compare the voter's signature with the signature on file.⁴

ID for in-person absent voting

The bill requires a person who casts absent voter's ballots in person at the board of elections to provide photo ID in the same manner as an elector voting on Election Day. If the person does not provide photo ID, the person may cast a provisional ballot, as described below.

Under current law, an in-person absent voter instead may provide the person's Ohio DL/ID number, the last four digits of the person's SSN, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that includes the person's name and current address. Current law does not contemplate a person casting a provisional ballot during in-person absent voting.

Additionally, 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 ID envelope statement of voter (the form on the ballot envelope). Instead, the voter must show ID and sign a pollbook, similar to the procedures on Election Day.⁵

ID for absent voting by mail

Under the bill, an elector who is applying to vote absentee by mail, or who is returning absent voter's ballots, must provide two forms of ID:

1. One of the following: an Ohio DL/ID number, a copy of the front and back of a photo ID (an Ohio DL/ID or a military ID), or a completed affidavit of religious objection, as described above;
2. The last four digits of the elector's SSN.

Current law requires only one form of ID, which may be an Ohio DL/ID number, the last four digits of the elector's SSN, a copy of the elector's photo ID or 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 person's name and address.

⁴ R.C. 3505.18 and conforming changes in R.C. 3503.16, 3503.19, and 3503.28.

⁵ R.C. 3509.051, 3509.09, 3509.10, 3511.10, and 3511.13.

The bill clarifies that a voter who receives assistance from visiting election officials to complete absent voter's ballots must provide ID as described above, instead of providing photo ID as an in-person voter.⁶

ID for provisional voting

The bill allows an elector who appears to vote in person, and who does not have or cannot provide photo ID, to cast a provisional ballot. In general, in order for the ballot to be counted, the elector must appear at the office of the board of elections by the seventh day after Election Day to show photo ID. However, if the elector has a religious objection to being photographed, the elector may execute an affidavit of religious objection, as described above, and provide the last four digits of the elector's SSN. The elector may do so when casting the provisional ballot or at the office of the board by the seventh day after Election Day.

Existing law permits an elector who cannot provide the required ID to have the elector's provisional ballot counted by providing an Ohio DL/ID number or the last four digits of the elector's SSN. The bill eliminates this possibility.

If a person has photo ID but casts a provisional ballot for another reason (for example, if the person has moved without updating the person's voter registration), the bill requires a precinct election official to certify on the provisional ballot affirmation that the person showed photo ID. The bill also adds an option on the form for the person to provide an Ohio DL/ID number or the last four digits of the elector's SSN. These numbers are not to be used for ballot counting purposes – photo ID or an affidavit of religious objection is required to have the ballot counted. But, if the provisional voter is not registered to vote or needs to update the person's registration, continuing law requires the board to use any provided Ohio DL/ID number or partial SSN to register the person or make the update.⁷

Free state ID cards

The bill authorizes any person 17 and over who applies for and receives a state ID card from the Bureau of Motor Vehicles (BMV) to receive it for free. As such, the bill waives (for those 17 and over) the typical fees associated with the initial issuance or renewal of the state ID card (\$10 for a 4-year state ID card; \$19 for an 8-year state ID card) and the fees associated with receiving a replacement state ID card (\$7.50). A replacement state ID card is issued if the cardholder's name changes (e.g., on getting married) between ID card renewals.

Under the bill, an ID cardholder over 17 would still need to pay the typical fees for a duplicate or reprint ID card. A duplicate or reprint ID card is issued if the original ID card is lost, stolen, or damaged.⁸ A state ID card is a primary form of photo ID for a person who does not hold any type of driver's license or whose driver's license is currently suspended.

⁶ R.C. 3509.03, 3509.04, 3509.05, 3509.06, 3509.07, 3509.08, 3511.02, 3511.05, and 3511.09.

⁷ R.C. 3505.181, 3505.182, 3505.183, and 3505.19.

⁸ R.C. 4507.50, 4507.501, and 4507.52.

In order to continue to compensate deputy registrars for their services in issuing state ID cards, the bill establishes a process for the deputy registrars to seek reimbursement through the Registrar of Motor Vehicles. To be reimbursed, deputy registrars must submit a monthly verification form to the Registrar that specifies the number of free state ID cards issued and renewed and the number of free replacement state ID cards issued during the course of the past month.⁹ The Registrar then must reimburse each deputy registrar the amount that the deputy registrar would have received for each free state ID card without the fee waiver. Those amounts are:

1. \$6.50 for each 4-year state ID card issued or renewed (\$5 deputy registrar fee and \$1.50 document authentication fee);
2. \$13 for each 8-year state ID card issued or renewed (\$10 deputy registrar fee and \$3 document authentication fee); and
3. \$5 for each replacement state ID card (deputy registrar fee).¹⁰

The Registrar must establish the verification form and the method of submission and may adopt any rules that are necessary to implement and administer the reimbursements to deputy registrars.¹¹

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.¹² 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.¹³

The bill also authorizes a noncitizen who becomes a U.S. citizen before a CDL, driver's 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 noncitizen. The Registrar must adopt rules to administer and implement the process of obtaining the replacement

⁹ R.C. 4507.502(A).

¹⁰ R.C. 4507.502(B).

¹¹ R.C. 4507.502(A)(2) and (C).

¹² R.C. 4506.11(A)(13), 4507.13(A)(2)(j), 4507.51, and 4507.52(A)(2).

¹³ Ohio Administrative Code 4501:1-1-21 and 4501:1-1-37.

licenses and cards, including any documentary evidence the person must show proving the person's new citizenship status.¹⁴

Regulatory restriction reduction requirement exemption

The bill exempts rules adopted by the Registrar of Motor Vehicles governing the reimbursement of deputy registrars for the free state ID cards and the replacement driver's licenses and state ID cards for new U.S. citizens from the continuing law requirements concerning reductions in regulatory restrictions. Currently, the Registrar and BMV must take actions to reduce regulatory restrictions, including, by June 30, 2025, reducing the amount of regulatory restrictions contained in an inventory created in 2019 in accordance with a statutory schedule. A "regulatory restriction" is any part of an administrative rule that requires or prohibits an action.

Without that exemption, the Registrar must do all of the following with respect to any regulatory restrictions contained in rules adopted under the bill:

- Until June 30, 2025, and for so long as the Registrar and BMV fails to reach the reductions required under the statutory schedule, remove two or more existing regulatory restrictions for each new restriction adopted (referred to as the "two-for-one rule");
- Refrain from adopting a regulatory restriction when doing so would negate a previous reduction;
- Beginning July 1, 2025, refrain from adopting a regulatory restriction when doing so would cause the total number of regulatory restrictions in effect to exceed a statewide cap calculated by the Joint Committee on Agency Rule Review.¹⁵

Clarification regarding state ID card numbers

The bill clarifies that in every context where an elector currently may provide the elector's driver's license number as ID, the elector instead may provide the elector's state ID card number. Current law explicitly allows an elector to provide a state ID card number when registering to vote online or casting a provisional ballot, but not when submitting a paper registration form or applying for or casting absent voter's ballots. And, the law currently does not require the Statewide Voter Registration Database to record electors' state ID card numbers.¹⁶

¹⁴ R.C. 4507.233.

¹⁵ R.C. 4507.233 and 4507.502, by reference to R.C. 121.95 to 121.953.

¹⁶ R.C. 3503.14, 3509.03, 3509.04, 3509.06, 3511.02, and 3511.05. See also R.C. 3503.20, 3505.181, and 3505.182.

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. 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.¹⁷

Unsolicited applications

The bill prohibits the Secretary of State from mailing unsolicited applications for absent voter's ballots. Continuing law 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, current law allows the Secretary of State to mail those applications for a general election, so long as the General Assembly has made an appropriation for that particular mailing.¹⁸

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.¹⁹

Return procedures

Ballot return deadline

The bill requires all absent voter's ballots to arrive at the office of the board of elections by the close of the polls (7:30 p.m.) on Election Day. Under existing law, regular absent voter's

¹⁷ R.C. 3503.16(E), 3509.03(D), 3509.031(A)(2), 3509.08, 3511.02, and 3511.04.

¹⁸ R.C. 3501.05, 3509.03(E), and 3511.02(E) and repeal of R.C. 111.31.

¹⁹ 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 under "Elections and Voting," "Elections Officials," "Forms and Petitions"; and [Federal Voting Assistance Program](#), available at fvap.gov.

ballots that arrive at the office of the board by the tenth day after Election Day are eligible to be counted, so long as they are postmarked by the day before Election Day. Existing law allows uniformed services and overseas absent voter's ballots that arrive by the tenth day after Election Day to be counted so long as they are signed by the close of the polls, regardless of whether they are postmarked.

Based on those deadline changes, the bill requires the boards of elections to begin counting cured absent voter's and 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.²⁰

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.²¹

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 drop box at the board's office and prohibiting them from placing drop boxes in locations other than the board's office.²²

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

²⁰ R.C. 3505.183, 3509.05, 3509.06, 3511.05, 3511.09, and 3511.11.

²¹ R.C. 3509.05.

²² *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778 (10th Dist. Ct. App. 2020).

7:30 p.m. on Election Day (the close of the polls). The drop box must be open to receive ballots only during the board's hours of operation during that period.

Each 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.²³

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;
- 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, and is acting as, an employee or contractor of the U.S. Postal Service or a private carrier.²⁴

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

²³ R.C. 3509.05(C) and 3511.09(E).

²⁴ R.C. 3509.05, 3511.09(E), and 3599.21.

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:²⁵

- 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.²⁶

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.²⁷

²⁵ R.C. 3509.06.

²⁶ 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.

²⁷ R.C. 3509.03(E), 3509.04, 3509.05, 3511.02, 3511.04, and 3511.09(E).

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.²⁸

In-person absent voting – days available

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. Compared to the current schedule instituted by Secretary of State directive, the bill eliminates one day of in-person absent voting – the day before Election Day (Monday).²⁹

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 14th 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.³⁰

August special elections

With one exception, 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.

²⁸ 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.

²⁹ 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. 5, p. 9.

³⁰ 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).

However, 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.³¹

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.

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.³²

Election administration

Curbside voting

The bill specifies that a board of elections must permit an elector with a disability who is physically unable to enter a polling place to vote in the elector's vehicle or at the door of the polling place with the assistance of a bipartisan team of election officials. The bill prohibits an elector from being permitted to vote curbside under any other circumstance.

Under continuing law, boards of elections must ensure that polling places meet certain accessibility requirements. However, if the board has made a good faith effort to do so, but has been unsuccessful, the Secretary of State may exempt the polling place from the accessibility requirements. Existing law states that the board must permit curbside voting by a "handicapped elector" at an exempted polling place. The statute defines "handicapped" as having lost one or more limbs; being blind; or requiring the aid of crutches or a wheelchair to move about.

As a result, the bill expands the right to curbside voting to all polling places and to all types of disabilities, provided that the elector is physically unable to enter the polling place. This provision is consistent with current Secretary of State directives on the matter. (The directives treat an in-person absent voting location as a polling place for this purpose.) However, the bill prevents curbside voting from being expanded to other circumstances.³³

³¹ R.C. 118.03, 118.04, and 3316.03, not in the bill.

³² R.C. 323.17, 3501.01(D), and 3501.022. See also R.C. 3501.17, not in the bill.

³³ R.C. 3501.29. See also Ohio Secretary of State, [Election Official Manual](#) (PDF), ch. 9, p. 272 and ch. 7, p. 204, available at ohiosecretaryofstate.gov under "Elections & Voting," "Elections Officials," "Directives, Advisories, Memos, & Tie Votes."

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.³⁴

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 through a program at the student's school. Students recruited through the program may not be

³⁴ 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.

voting location managers, and continuing law also limits the number who may be assigned to any given precinct.³⁵

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.³⁶

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.

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

³⁵ R.C. 3501.22(C).

³⁶ R.C. 3506.24. See also R.C. 3506.01, not in the bill.

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.³⁷

Technical changes

The bill 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 2014.³⁸

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³⁷ R.C. 3506.14.

³⁸ R.C. 3501.01(Y) and (Z) and 3503.19(B)(1).