



## *Bill Analysis*

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### **Sub. H.B. 234**

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(As Reported by S. State and Local Government and Veterans Affairs)

**Reps. Wolpert, Kearns, C. Evans, D. Evans, Beatty, Miller, Brown, Distel, S. Smith, Widowfield, Trakas, Boccieri, Hood, Allen, D. Stewart, Law, Uecker, Barrett, Book, Calvert, Carano, Cassell, Chandler, Combs, DeBose, Dolan, Domenick, Flowers, Hartnett, Harwood, Healy, Hoops, Hughes, Key, Koziura, Mason, McGregor, Otterman, T. Patton, Perry, Schneider, Seaver, G. Smith, J. Stewart, Ujvagi, White, Williams, Yuko**

**Sens. Cates, Niehaus, Mumper**

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### **BILL SUMMARY**

- Authorizes a board of elections, in conjunction with a board of education of a city, local, or exempted village school district, the governing authority of a community school, or the chief administrator of a nonpublic school, to establish a program to allow certain students to serve as election officials.
- Establishes eligibility criteria for students to participate in and serve as election officials in such a program.
- Authorizes a board of education, governing authority, or chief administrator to establish additional criteria for students to participate in and serve as election officials in such a program.
- Specifies that not more than one precinct officer in any given precinct may be an individual under 18 years of age.
- Permits all necessary and proper expenses of a board of elections pertaining to the conduct of elections, including any employee compensation and benefit expenses, to be considered by a court of common pleas in a mandamus action in determining the amount necessary to be appropriated by a board of county commissioners to the county's board of elections.

- Makes numerous revisions to the Absent Voter's Ballots Law, the Armed Service Absent Voter's Ballots Law, and two related laws, including permitting any qualified elector to vote by absent voter's ballots at an election and eliminating the qualifications that electors are required to meet under current law in order to vote by absent voter's ballots.

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## CONTENT AND OPERATION

### *Program to allow students to serve as election officials*

#### *Existing law: appointment of precinct officers*

Existing law requires a board of elections, on or before the 15th day of September in each year, to appoint for each election precinct four competent electors, who are residents of the county in which the precinct is located, as judges of election for that precinct. Not more than one-half of the judges may be members of the same political party. The board may appoint additional election officers, if necessary to expedite voting; those precinct officers also must be equally divided between the two major political parties. (R.C. 3501.22(A) and 3501.27.)

If the board determines that an insufficient number of qualified electors is available in a precinct to serve as precinct officers, the board may appoint persons to serve as precinct officers who are at least 17 years of age and are registered to

vote.<sup>1</sup> No more than two precinct officers in any precinct may be under 18 years of age. (R.C. 3501.22(B).)

**Changes made by the bill**

**Program to allow certain students to serve as precinct officers.** The bill generally retains the existing processes and requirements for appointing precinct officers, but provides an additional process by which certain students who are *not* registered electors also may serve as precinct officers (R.C. 3501.22 and 3501.27). Under the bill, a board of elections may establish a program, in conjunction with any of the following, to allow certain high school students to apply and, if appointed by the board of elections, to serve as precinct officers at a primary, special, or general election (R.C. 3501.22(C)(1)):

- A board of education of a city, local, or exempted village school district;
- The governing authority of a community school;
- The chief administrator of a nonpublic school.

The bill does not allow any student appointed as a precinct officer through any program mentioned above to be designated as a presiding judge at a precinct (R.C. 3501.22(C)(3)).

**Qualifications for participation.** A student must meet all of the following qualifications to be eligible to participate in a program authorized by the bill (R.C. 3501.22(C)(2)(a)):

- Be a United States citizen;
- Be a resident of the county;
- Be at least 17 years of age;
- Be enrolled in the senior year of high school.

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<sup>1</sup> A person who will be 18 years of age at the next ensuing November election, who is a United States citizen, and who, if the person continues to reside in the precinct until the next election, will have fulfilled all of the residence requirements to qualify as an elector, is permitted to register as an elector in that precinct (R.C. 3503.07--not in the bill).

A board of education, governing authority, or chief administrator that establishes a program authorized by the bill may establish additional eligibility criteria for student participation in that program (R.C. 3501.22(C)(1)).

In order to participate, a student must declare a political party affiliation with the board of elections when applying (R.C. 3501.22(C)(2)(b)).

**School attendance while working at the polls.** The bill provides that a student's absence from school to serve as a precinct officer on the day of an election must be excused by the school district, community school, or nonpublic school offering a program authorized by the bill (R.C. 3501.22(C)(4)).

**Exemption from Ohio child labor laws.** The bill provides that Ohio's Child Labor Law (R.C. Chapter 4109.) does not apply to students serving as a precinct officer on the day of an election under a program authorized by the bill (R.C. 4109.06(A)(11)).

**Minors serving as precinct officers--in general.** The bill specifies that not more than *one* precinct officer in any given precinct may be an individual under 18 years of age. This limitation applies not only to students serving as a precinct officer on the day of an election under a program authorized by the bill but also to individuals who are 17 years old, who are registered to vote, and who, under current law, a board of elections may appoint to serve as a precinct officer under certain circumstances. The bill correspondingly repeals current law's limitation that no more than two precinct officers in any precinct may be individuals who are at least 17 years old and who are registered to vote. (R.C. 3501.22(B) and (D).)

### **Funding for a board of elections: mandamus action**

#### **Existing law**

Under existing law, the expenses of a board of elections are paid from the county treasury in pursuance of appropriations made by the board of county commissioners. If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections pertaining to the conduct of elections, *other than expenses for employee compensation and benefits incurred in the conduct of elections*, the board of elections may commence a mandamus action in the court of common pleas to secure necessary funding. The court must determine the amount necessary to be appropriated, and the board of county commissioners then must appropriate that amount to the board of elections. (R.C. 3501.17(A).)

### **Changes made by the bill**

The bill removes the exception for employee compensation and benefit expenses. As a result, *all* necessary and proper expenses of a board of elections pertaining to the conduct of elections, including any employee compensation and benefit expenses, may be considered by the court of common pleas in a mandamus action in determining the amount necessary to be appropriated by the board of county commissioners to the board of elections. (R.C. 3501.17(A).)

### **Absent voter's ballots and armed service absent voter's ballots**

#### **Overview**

This portion of the analysis discusses, in a detailed dot-point format, the majority of the bill's provisions. They either continue or modify aspects of or enact statutes in the law governing "regular" absent voter's ballots or the distinct law governing armed service absent voter's ballots. These continuations, modifications, and enactments occur chiefly, then, in R.C. Chapter 3509. (absent voter's ballots) and R.C. Chapter 3511. (armed service absent voter's ballots). But, the bill also amends two related laws: the Voter Qualifications and Registration Law (R.C. 3503.16) and the Election Code's Criminal Penalties Law (R.C. 3599.12 and 3599.21).

#### **Qualifications for a "regular" absent voter's ballot**

- Permits any qualified elector to vote by absent voter's ballots at an election (R.C. 3509.02(A)).
- Eliminates the qualifications that electors are required to meet under current law in order to vote by absent voter's ballots (R.C. 3509.02(A) and (C), 3509.03, and 3509.04(B)). (See detail in **COMMENT 1**.)
- Specifies in the Absent Voter's Ballots Law that *overseas voters* (see **COMMENT 2**) covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act," 100 Stat. 924, 42 U.S.C. 1973ff (1986), *other than absent uniformed services voters* (see **COMMENT 2**), may apply for an absent voter's ballot as provided in the Absent Voter's Ballots Law (R.C. 3509.022).

#### **Required information and identification**

- Removes certain information from having to be included in an absent voter's ballot *application* or armed service absent voter's ballot *application* consistent with the changes mentioned above, but specifies

certain other information and one of the following forms of supporting documentation that must be included in or accompany an application (R.C. 3503.16(G)(1), 3509.02(B), 3509.03, 3509.031(A) and (B), 3509.08(A) and (B)(1), and 3511.02(A) and (C)):

--The elector's driver's license number;

--The last four digits of the elector's Social Security number;

--A copy of the elector's current and valid photo identification or a copy of a current (a) utility bill, (b) bank statement, (c) government check, (d) paycheck, or (e) other government document *that shows the elector's name and address*.

- Specifies that the director of the board of elections must promptly notify a voter who submits an *incomplete* absent voter's ballot application or armed service absent voter's ballot application about the information required to be provided to complete that application (R.C. 3509.04(A) and 3511.04(A)).
- Removes certain information from having to be included with a *returned absent voter's ballot or armed service absent voter's ballot* consistent with the changes mentioned above, but specifies certain other information (including date of birth) and one of the following forms of supporting documentation that must be included in or accompany the returned ballot (R.C. 3509.04(B), 3509.05(A), 3509.07, and 3511.09):
  - The elector's driver's license number;
  - The last four digits of the elector's Social Security number;
  - A copy of the elector's current and valid photo identification or a copy of a current (a) utility bill, (b) bank statement, (c) government check, (d) paycheck, or (e) other government document *that shows the elector's name and address*.
- Specifies that, if the identification required to be included in or accompany a returned absent voter's ballot or armed service absent voter's ballot is not provided, the ballot must not be counted (R.C. 3509.06(D) and 3509.07).

**Casting a ballot in the precinct on the day of an election when an absentee ballot has been previously requested**

- Permits a registered elector who has requested an absent voter's ballot or armed service absent voter's ballot that the director of the board of elections purportedly has received or has not received to cast another ballot (sometimes commonly referred to (but not statutorily referred to) as a provisional ballot) in the precinct on the day of an election, and, if both an absent voter's ballot or armed service absent voter's ballot and another ballot are received by the board of elections under these circumstances, specifies which of them will be counted (R.C. 3503.16(B), 3509.09(B) and (C), and 3511.13(B) and (C)).<sup>2</sup>
- Relatedly requires the poll list or signature pollbook for each precinct to identify each registered elector in that precinct who *requested* either an absent voter's ballot or an armed service absent voter's ballot for the given election (R.C. 3509.09(A) and 3511.13(A)).

**New prohibitions**

- Establishes additional prohibitions applicable to the failure to return an absent voter's ballot application on behalf of another person and to the unauthorized possession of another person's absent voter's ballot (R.C. 3599.21(A)(8) and (9), (B), and (D)). Violations of these prohibitions are a felony of the fourth degree (R.C. 3599.21(C)).
- Prohibits the reckless disclosure of the count or any portion of the count of absent voter's ballots in such a manner as to jeopardize the secrecy of any individual ballot (R.C. 3509.06(E)). A violation of this prohibition apparently is a misdemeanor of the first degree (R.C. 3599.40--not in the bill).

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**COMMENT**

1. (A) **General procedure.** Under existing law, any qualified elector who meets any of the following qualifications is permitted to vote by absent voter's ballots (R.C. 3509.02(A) and 3509.08(A) and (B)(1)):

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<sup>2</sup> Continuing law generally makes voting or attempting to vote more than once in an election by any means a felony of the fourth degree, but, due to the bill's amendments in lines 1418 and 1421, a court might construe this prohibition to no longer be applicable when another ballot is permitted to be cast in accordance with R.C. 3509.09(B) or 3511.13(B) (R.C. 3599.12(A)(2)).

- 62 years of age or older;
- Employment as a full-time fire-fighter, full-time peace officer, or full-time provider of emergency medical services, that may prevent the elector from voting at the elector's polling place on the day of an election;
- A member of the organized militia serving on active duty within Ohio and unable to vote on election day due to that active duty;
- Absence from the polling place on the day of an election because of the entry of the elector or a member of the elector's family into a hospital for surgical or medical treatment;
- Confinement in a jail or workhouse under sentence for a misdemeanor or while awaiting trial on a felony or misdemeanor charge;
- Unable to vote on election day due to observance of the elector's religious belief;
- Absence from the county in which the elector's voting residence is located on the day of an election;
- Physical disability, illness, or infirmity.

Existing law also provides that the Secretary of State, an employee of the Secretary of State, a member or employee of a board of elections, a person hired by a board of elections to work at the board's office temporarily for a specific election, or a polling place official, who is a qualified elector is permitted to vote by absent voter's ballots (R.C. 3509.02(C)).

When applying in writing to the director of elections of the elector's county of residence to vote by absent voter's ballots, an elector is required, among other things, to *state the reason for the elector's absence from the polls* on election day (R.C. 3509.03, first paragraph). The director of elections is required to provide to the elector an identification envelope with the requested absent voter's ballots, which the elector must complete and sign. The *identification statement* on the envelope also lists the previously described qualifications under which an elector may vote absent voter's ballots and requires the elector to identify which qualification applies (R.C. 3509.04).

Under this general procedure, the director of elections must deliver absent voter's ballots to qualified electors in person or by special delivery mail, air mail, or regular mail (R.C. 3509.04).



(B) **Additional procedures.** Existing law provides two additional procedures for voting by absent voter's ballots for certain voters. One additional procedure applies to voters who will be unable to travel to the voting booth in their precinct on election day on account of personal illness, physical disability, or infirmity, or on account of confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor. Generally, upon application, an absent voter's ballot may be mailed to such an elector at the person's voting residence or place of confinement, or the board of elections may designate two board employees, one from each major political party, for the purpose of delivering the ballot to the elector and returning it to the board. Disabled or confined electors who are unable to mark a ballot due to physical infirmity also may receive assistance in marking the ballot from those board employees. (R.C. 3509.08(A).)

The second additional procedure applies to qualified electors who are unable to travel to the voting booth in their precinct on election day because of being confined in a hospital as a result of an accident or unforeseeable medical emergency. An absent voter's ballot generally must be delivered to such an applicant via a family member (if requested), or by two board employees as described above, or by mail. (R.C. 3509.08(B)(1).)

The bill retains the additional procedures for voting by absent voter's ballots available to electors who will be unable to travel to the voting booth in their precinct on election day on account of personal illness, physical disability, or infirmity, on account of confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor, or on account of being confined in a hospital as a result of an accident or unforeseeable medical emergency. A ballot may be delivered to such a voter as described above, with assistance being provided to the voter who is unable to mark the ballot due to physical infirmity. But, under the bill, in addition to these procedures, such a voter *who needs no assistance to vote or to return* absent voter's ballots to the board of elections may apply for absent voter's ballots under the "**General procedure**" as modified by the bill instead of applying for them under the applicable additional procedure. (R.C. 3509.08(C).)

2. (A) The federal Uniformed and Overseas Citizens Absentee Voting Act defines two terms relevant to the bill. An "absent uniformed services voter" is a member of a uniformed service (see below) on active duty who, by reason of that active duty, is absent from the place of residence where the member is otherwise qualified to vote; or a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or a spouse or dependent of a member of a uniformed service or of the merchant marine who, by reason of the member's active duty or



service, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote. These individuals are eligible under *current law* to vote an armed service absent voter's ballot under R.C. Chapter 5311. Federal law defines "uniformed services" as the Army, Navy, Air Force, Marine Corps, and Coast Guard, and the commissioned corps of the Public Health Service or of the National Oceanic and Atmospheric Administration. 42 U.S.C. 1973ff-6.

(B) The other relevant term defined in this federal law is "overseas voter" which includes any absent uniformed services voter mentioned in the previous paragraph who is absent from the United States on the date of an election *plus* (i) a person who resides outside the United States and is qualified to vote in the last place in which he or she was domiciled before leaving the country and (ii) a person who resides outside the United States and (but for that residence) would be qualified to vote in the last place in which he or she was domiciled before leaving the country. The individuals described in (i) and (ii) are those covered by R.C. 3509.022 in the bill and, thus, may vote a "regular" absent voter's ballot.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-03-05	p. 736
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