



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 92

128th General Assembly  
(As Introduced)

**Reps.** Mecklenborg, R. Adams, Amstutz, Blair, Bubp, Combs, Grossman, Hackett, Hall, Huffman, Martin, Stebelton, Wachtmann, Zehringer

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## BILL SUMMARY

- Specifies the times at which absent voter's ballots must be printed and ready for use: (1) 35 days before the election, for overseas and military voters (continuing law), (2) 28 days before the election, for other absent voters who are not voting in person, (3) 20 days before the election, for absent voters who are voting in person, and (4) 25 days before the day of a presidential primary election, for other absent voters who are not voting in person (continuing law).
- Increases from one to three the possible number of locations within a county at which a board of elections may permit voters to cast absent voter's ballots in person prior to the day of an election, and specifies that the locations must be geographically diverse.
- Requires a board of elections that wishes to increase the number of locations for casting absent voter's ballots in person to vote on those additional locations; if at least three board members do not agree on the locations, the only location for in person absentee voting must be the office of the board of elections.
- Requires the "Statement of Voter" that appears on an absent voter's ballot identification envelope or an armed service absent voter's ballot identification envelope to match the statement as it appears in the Revised Code.
- Prohibits an absent voter's ballot or armed service absent voter's ballot from being counted unless the Statement of Voter on the identification envelope within which that ballot is contained is completed.
- Generally requires boards of elections to notify absent voters who have not completely filled out the Statement of Voter that their ballots will be rejected if they do not complete the Statement of Voter prior to the close of the polls on the day of an election.

- Specifies that boards of elections are not required to notify voters whose absent voter's ballots are received after the eighth day before the election if the Statement of Voter is incomplete, but requires a board that notifies any such voter to notify all voters of incomplete statements.
- Permits election observers to be appointed to serve at the board of elections or at another designated site during the time absent voter's ballots may be cast in person.
- Permits election observers only to watch and listen to election officials engaging in their duties and to interactions between voters and election officials and to take notes on their observations.
- Prohibits election observers from interacting with election officials and voters, other than in an incidental interaction, and permits a voter to bring a civil suit for harassment in violation of the election laws against an observer who interferes with the voter casting the person's ballot.
- Requires the Secretary of State and the Registrar of Motor Vehicles to enter into an agreement to match voter registration information with motor vehicle records, as required under federal law.
- Requires the Secretary of State to notify the applicable board of elections of mismatches between voter registration information and motor vehicle records that the Secretary of State receives through the matching agreement regarding persons registered to vote in the applicable county.
- Defines a "mismatch" as any of the following data fields that are not identical to one another when the statewide voter registration database is compared to motor vehicle records: driver's license number, Social Security number, or date of birth.
- Requires boards of elections to notify affected voters of a mismatch and provide those voters with the opportunity to verify and correct the mismatched information.
- Requires the Secretary of State to establish, by rule, procedures for boards of elections to notify voters of mismatches and provide voters with the chance to verify and correct mismatched information, which rules must conform to the voluntary guidelines for implementing statewide voter registration lists adopted by the United States Election Assistance Commission.
- Revises the process by which boards of elections members are appointed by requiring the Secretary of State to appoint recommended electors, unless the Secretary of State determines that they have been adjudicated incompetent or been convicted of or plead guilty to a felony.

- Requires the Secretary of State to prove, by clear and convincing evidence, that a recommended elector is incompetent to serve on a board of elections in any mandamus action related to the appointment.
- Requires the appointment process to be repeated after each refusal of the Secretary of State, with the county executive committee of the applicable political party having an opportunity to make a recommendation, until an elector is appointed.

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## CONTENT AND OPERATION

### Availability of absent voter's ballots

Continuing law requires a person to be registered to vote for 30 days before an election to be eligible to vote in that election (Article V, Section 1, Ohio Constitution and R.C. 3503.01). Continuing law also permits any qualified elector to vote an absent voter's ballot at an election (R.C. 3509.02(A)).

Under current law, absent voter's ballots must be printed and ready for use 35 days before the day of an election or, if the election is a presidential primary election, on the 25th day before the day of the election. The bill revises the time at which absent voter's ballots must be printed and ready for use, depending on the type of voter seeking the absent voter's ballot and the location at which that ballot will be voted (R.C. 3509.01(B)):

- For overseas voters and absent uniformed services voters eligible to vote under the Uniformed and Overseas Citizens Absentee Voting Act, 100 Stat. 924, 42 U.S.C. 1973ff *et seq.*, ballots must be printed and ready for use 35 days before the day of any election other than a presidential primary election;
- For all voters, other than overseas voters and absent uniformed services voters, who are applying to vote absent voter's ballots other than in person, ballots must be printed and ready for use on the 28th day before the day of any election other than a presidential primary election;
- For all voters, other than overseas voters and absent uniformed services voters, who are applying to vote absent voter's ballots in person, ballots must be printed and ready for use beginning on the 20th day before the day of the election and must continue to be available for use through 5 p.m. on the day before the day of the election;
- For all voters who are applying to vote absent voter's ballots other than in person, ballots must be printed and ready for use on the 25th day before the day of a presidential primary election.

If the laws governing the holding of a special election on a day other than the day on which a primary or general election is held make it impossible for absent voter's ballots to be printed and ready for use by the previously described deadlines, absent voter's ballots for those special elections must be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of the special election (R.C. 3509.01(D)).

## **Time and location for casting absent voter's ballots in person**

Continuing law permits a board of elections to maintain permanent or temporary branch offices at any place within the county. Existing law specifies that, if the board of elections permits electors to vote at a branch office, electors must not be permitted to vote at any other branch office or any other office of the board of elections (R.C. 3501.10(C)). Since absent voters are permitted to vote in person at the board of elections, this provision limits to one the number of locations in a particular county at which absent voters may cast their ballots in person prior to the election.

The bill increases from one to three the possible number of locations at which a board of elections may permit absent voter's ballots to be cast in person before the day of the election. Under the bill, a board of elections must not employ more than three such locations, including the office of the board of elections and all branch offices of the board of elections, for the purpose of allowing voters to cast absent voter's ballots in person at an election.

A majority vote of the members of the board is required to establish more than one location at which voters may cast absent voter's ballots in person at an election. If the board votes to establish more than one location at which voters may cast absent voter's ballots in person, the board is required to select locations in the county that are geographically diverse. If at least three members of the board do not agree to establish additional locations or do not agree on the geographic locations within the county, the board may only permit absent voter's ballots to be voted in person at the office of the board of elections for that election. (R.C. 3501.10(C).)

## **Absent voter's ballot identification envelopes**

### **Statement of voter form and requirements**

After an absent voter finishes marking the person's ballot, the absent voter is required to seal the ballot in an identification envelope and complete the "Statement of Voter" on the outside of the envelope. The voter also must sign the statement. (R.C. 3509.05.) The form of the statement must be *substantially* the same as the form specified in the Revised Code (R.C. 3509.04 and 3511.05).

The bill retains the provisions requiring absent voters to complete and sign the Statement of Voter. However, instead of requiring the form of the statement to be *substantially* the same as the form presented in the Revised Code, the bill requires the Statement of Voter appearing on the envelope to match the statement as it appears in the Revised Code. (R.C. 3509.04 and 3511.05.)

Under current law, if the Statement of Voter on an absent voter's ballot envelope completed by an absent voter is insufficient, the absent voter's ballots contained in that envelope must not be counted. The bill expands this prohibition to apply to incomplete statements. Under the bill, if the Statement of Voter completed by an absent voter is incomplete or insufficient, the ballots contained within that identification envelope must not be counted. (R.C. 3509.06(D) and 3509.07.)

### **Notification of incomplete Statement of Voter**

Under the bill, if a board of elections determines, prior to the close of the polls on the day of the election, that the Statement of Voter on a voter's absent voter's ballot identification envelope is incomplete, the board is required to notify the absent voter by mail or by telephone that the voter's absent ballot will be rejected unless the voter completes the statement prior to the close of the polls on the day of the election.

A board of elections is not required to notify voters of their incomplete Statements of Voter for any absent voter's ballots that the board receives after the eighth day before the day of the election. However, if a board of elections chooses to notify voters of incomplete absent voter's ballot envelope statements for absent voter's ballots received after the eighth day before the day of the election, the board must notify all voters whose absent voter's ballot envelope statements are incomplete that their absent voter's ballot envelopes will be rejected unless the voter completes the statement prior to the close of the polls on the day of the election. (R.C. 3509.05(D) and 3511.11(B).)

### **Election observers during the time absent voter's ballots may be cast in person**

Continuing law permits any political party supporting candidates to be voted on at an election and any group of five or more candidates to appoint a qualified elector to serve as an observer for the party or candidates during the casting of the ballots and during the counting of the ballots. The political party or group of candidates must notify the board of elections of the names and addresses of the observers and the locations at which they will serve. (R.C. 3505.21.)

The bill expands the times and locations for which observers may be appointed by permitting a political party or group of five or more candidates to also appoint an observer for any time during which a board of elections permits an elector to vote an

absent voter's ballot in person at the office of the board or at another site designated by the board. The political party or group of candidates must notify the board of elections of observers appointed to serve during the time absent voter's ballots may be cast in person not less than 11 days before those ballots are required to be printed and available for use. The notification must be made on forms prescribed by the Secretary of State and may be amended by filing an amendment with the board of elections at any time until 4 p.m. of the day before the observer is appointed to serve. Observers may file certificates of their appointment with the director of the board of elections the day before or on the day that the observers are scheduled to observe the casting of absent voter's ballots. (R.C. 3505.21.)

### **Activities of election observers who serve during the casting of the ballots**

Existing law permits observers to serve during the casting and during the counting of the ballots. Although existing law describes the process for appointing election observers, it does not currently specify what observers may and may not do while in a polling place. The bill specifies that observers who serve during the casting of the ballots are only permitted to do the following (R.C. 3505.21(G)(1)):

(1) Watch and listen to the activities conducted by the precinct election officials and the interactions between precinct election officials and voters, as long as the precinct election officials are not delayed in performing the officials' prescribed duties and voters are not delayed in casting their ballots;

(2) Make notes on the observer's observations other than by means of a photographic, video, or audio recording.

The bill prohibits an observer who serves during the casting of the ballots from interacting with any precinct election official or with any voter while the observer is inside the polling place, within the area between the polling place and the small United States flags placed on the thoroughfares and walkways leading to the polling place, or within ten feet of any elector in line waiting to vote, if the line of electors waiting to vote extends beyond those small flags (R.C. 3505.21(G)(2)(a)). An observer who violates this prohibition is subject to the default penalty applicable to a violation of the Election Law, a misdemeanor of the first degree (R.C. 3599.40--*not in the bill*). Additionally, the observer could be sued in a civil action for harassment in violation of the Election Law (R.C. 3501.90).

The bill specifies that no violation of the prohibition occurs as a result of an incidental interaction between an observer and a voter or a precinct election official, such as an exchange of greetings (R.C. 3505.21(G)(2)(b)).

## **Notification of mismatches between voter registration and motor vehicle records**

The bill defines a "mismatch" as any of the following data fields that are not identical to one another with respect to a particular individual when information in the statewide voter registration database is compared to motor vehicle records: driver's license number, Social Security number, or date of birth.

The Help America Vote Act of 2002 (HAVA), 116 Stat. 1666, requires, among other provisions, each state to maintain a single uniform statewide voter registration database that serves as the single system for storing and managing the official list of registered voters throughout the state. HAVA also requires the chief state election official and the official responsible for the state motor vehicle authority to enter into an agreement to match information in the statewide voter registration database with motor vehicle records for the purpose of verifying the accuracy of the information provided on voter registration applications. (42 U.S.C. 15483.)

The bill requires the Secretary of State and the Registrar of Motor Vehicles to enter into the required matching agreement. Additionally, the Secretary of State is required to notify the applicable board of elections of mismatches between voter registration information and motor vehicle records that the Secretary of State receives through the matching agreement regarding persons registered to vote in the applicable county.

Upon notification of mismatches by the Secretary of State, a board of elections is required to notify each affected voter of the mismatch regarding the voter's information. The board must provide the voter with the opportunity to verify and correct the mismatched information. The Secretary of State is required to establish, by rule adopted under the Administrative Procedure Act, procedures for boards of elections to notify affected voters of mismatches and to provide those voters with the opportunity to verify and correct the mismatched information. The Secretary of State's rules must conform to the Voluntary Guidelines for Implementing Statewide Voter Registration Lists adopted by the United States Election Assistance Commission. A mismatch must not be the sole reason for the removal of a voter from the statewide voter registration database. (R.C. 3503.15(H).)

## **Appointment of board of elections members**

When there is a vacancy on a board of elections, and prior to the expiration of the term of a member, continuing law permits the county executive committee of a political party to make and file a recommendation with the Secretary of State for the appointment of a qualified elector. Under existing law, the Secretary of State is required

to appoint the elector, unless the Secretary of State believes that the elector would not be a competent member of the board. If the Secretary of State believes the elector would not be a competent member, the Secretary of State must state that in writing, with the reasons for the Secretary of State's decision, to the county executive committee. The county executive committee may either recommend another elector or apply for a writ of mandamus to the Ohio Supreme Court to compel the Secretary of State to appoint the elector. In such an action, the burden of proof is on the county executive committee to show the elector's qualifications. If no recommendation is made, the Secretary of State is required to make the appointment.

Under the bill, the Secretary of State must appoint the recommended elector, unless the Secretary of State finds that the elector is not competent to serve on the board of elections as a result of (1) the elector's adjudication of incompetence by a court of competent jurisdiction or (2) the elector's prior conviction of or plea of guilty to a felony. As under existing law, if the Secretary of State refuses to appoint the elector, the Secretary of State must state the reasons for the refusal in writing to the chairperson of the county executive committee. The county executive committee may, with respect to each refusal of the Secretary of State, either recommend another elector or apply for a writ of mandamus. In these mandamus actions, the bill states that the Secretary of State must prove, by clear and convincing evidence, the lack of competence of the person recommended.

Upon dismissal of the mandamus action, the county executive committee has 15 days to make and file another recommendation with the Secretary of State. If no such recommendation is made within 15 days after either the Secretary of State refuses the appointment or the dismissal of the mandamus action, the Secretary of State must make the appointment. The process must be repeated, as needed, after each refusal of the Secretary of State, until the appointment is made. (R.C. 3501.07.)

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## HISTORY

ACTION	DATE
Introduced	03-19-09

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