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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 71  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Gavarone

Emily E. Wendel, Attorney

### SUMMARY

- Enacts the Data Analysis Transparency Archive (DATA) Act to create a new office within the Office of the Secretary of State and to modify the ways in which the boards of elections must retain election data, enter it into the Statewide Voter Registration Database (SWVRD), and make it available to the public.

#### Office of Data Analytics and Archives

- Creates the Office of Data Analytics and Archives in the Office of the Secretary of State, which must retain, analyze, and publish election data and business services data.

#### Statewide Voter Registration Database

- Codifies the data fields that must be included in the SWVRD for each registered elector and institutes uniform requirements for related recordkeeping.
- Provides uniform methods for determining an elector's voter registration date and voting history for inclusion in the SWVRD.
- Requires the SWVRD to include each elector's last activity date, as defined by the Secretary of State by rule, along with any other information required by rule.
- Requires the boards to create daily archives of their voter registration databases and send them to the Secretary during the period beginning on the 46<sup>th</sup> day before an election and ending on the 81<sup>st</sup> day after an election.

#### Public access to voter registration records

- Specifies that voter registration forms and the SWVRD are public records subject to disclosure under the Public Records Law in the same manner as records of other public offices, instead of requiring those records to be open to public inspection under a separate provision of law.

- Clarifies which pieces of information contained in a voter registration record are subject to disclosure and prohibits the disclosure of an elector's telephone number or email address.
- Adds to the information that must be available about each elector on the public website version of the SWVRD.
- Requires that website to show an elector's birth date, voter registration date, and last activity date, in addition to other information that is included under continuing law.
- Prohibits any of the information that is exempt from disclosure as a public record from being made available on the website.

### **Retention of ballots after an election**

- Requires the boards of elections to preserve all used and unused ballots from a nonfederal election for at least 81 days after the day of the election, instead of 60 days as required under current law.

### **Intended appropriation**

- States that the General Assembly intends to appropriate funds to the Secretary of State to pay the costs incurred by the Secretary and the boards of elections in meeting the bill's requirements.

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## **DETAILED ANALYSIS**

The bill, called the Data Analysis Transparency Archive (DATA) Act, creates a new office within the Office of the Secretary of State and makes changes to the ways in which the boards of elections must retain election data, enter it into the Statewide Voter Registration Database (SWVRD), and make it available to the public.<sup>1</sup>

### **Office of Data Analytics and Archives**

The bill creates the Office of Data Analytics and Archives in the Office of the Secretary of State. Under the direction of the Secretary, the new office must do both of the following:

- Retain voter registration and other election related data, including administering the SWVRD; analyze those data for purposes of maintaining accurate election data; and publish those data;
- Retain, analyze, and publish business services data.

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<sup>1</sup> Section 4 of the bill.

The Secretary's office already generally performs those functions, but the law does not specify which of the Secretary's staff are responsible for doing so. The bill makes additional changes regarding the collection and retention of election data, as described below.<sup>2</sup>

## **Statewide Voter Registration Database**

### **Background on the SWVRD**

The federal Help America Vote Act of 2002 (HAVA) requires each state to maintain a computerized statewide voter registration list that is administered at the state level.<sup>3</sup> Historically, each county in Ohio maintained its own voter registration records in a variety of paper or electronic formats. In order to comply with HAVA, the Revised Code was amended to create the SWVRD and to require each county to submit its voter registration records to the Secretary of State on a daily basis for inclusion in the database. Under continuing law, the Secretary must adopt rules under the Administrative Procedure Act concerning the format and method of data entry and various other procedures related to the SWVRD.<sup>4</sup>

### **Uniform data entry**

The bill codifies the data fields that must be included in the SWVRD for each registered elector and institutes uniform requirements for related recordkeeping. And, the bill requires the Secretary of State to prescribe rules under the Administrative Procedure Act, specifying the manner in which any voter registration records the boards maintain in other data formats must be converted for inclusion in the SWVRD and establishing a method for transmitting information securely to the Secretary. A board of elections and any vendor with which it contracts to provide voter registration software or related services must ensure that the board's voter registration system and practices comply with the bill and related rules.

Currently, the SWVRD generally includes all of the information listed below, but the manner of data entry is not standardized, which can result in discrepancies when comparing data across counties. For example, when an elector requests an absentee ballot but does not return it, or casts an absentee or provisional ballot that is not counted, some counties might record the elector as having voted in the election, but other counties might not. As a result, it might be difficult to collect statewide data about the number of ballots cast and counted in a given election.<sup>5</sup>

### **Personal information**

For each elector, the SWVRD must include all of the following personal information:<sup>6</sup>

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<sup>2</sup> R.C. 111.11 and conforming changes in R.C. 3503.15 and 3505.151(A).

<sup>3</sup> 52 United States Code (U.S.C.) 21083.

<sup>4</sup> R.C. 3503.15.

<sup>5</sup> R.C. 3503.15(C), (E), and (H).

<sup>6</sup> R.C. 3503.15(C)(1) through (8).

- The elector's name;
- The elector's birth date;
- The elector's current residence address;
- The elector's precinct number;
- The elector's Ohio driver's license or state identification card number, if available;
- The last four digits of the elector's Social Security number, if available;
- The elector's telephone number and email address, if available. This information is not required to register or to vote, but the boards of elections do sometimes collect it from electors.<sup>7</sup>

### **Voter registration date**

The SWVRD must include an elector's voter registration date, based on the elector's most recent application to register to vote in Ohio. For purposes of this field, a change of address or change of name is not considered a new voter registration, and a person who is already registered but submits a new voter registration form is not considered to have registered again. That is, once an elector is registered anywhere in Ohio, the elector remains registered under the same record if the elector moves within the state, changes the elector's name, or submits a duplicate registration form.

The voter registration date must be determined as follows:

- In the case of an application delivered in person to a board of elections, the Secretary of State, or another government office, such as the Bureau of Motor Vehicles, the date is the date stamped on the application upon receipt by the government office.
- In the case of an application delivered by mail to a board of elections or the Secretary, the date is the date the application is postmarked.
- In the case of an application submitted online, the date is the date of the online submission.
- In the case of an application submitted to a board of elections by fax or email, as is permitted for uniformed services and overseas absent voters, the date is the date of the receipt of the fax or email.
- In the case of a provisional voter whose ballot is not counted because the person is not registered to vote, but who has provided enough information on the provisional ballot affirmation for it to serve as a voter registration application for future elections, the date is the date the board of elections determines that the provisional ballot is invalid.

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<sup>7</sup> R.C. 3503.14 and 3503.20, not in the bill.

However, an elector's voter registration date must not be during the period beginning on the day after the close of voter registration before an election (generally, the 29<sup>th</sup> day before Election Day) and ending on the day of the election. If the date determined above would be during that period, the voter registration date instead must be the date on which the board processes the application after the election.<sup>8</sup>

### **Voting history**

The SWVRD must include all of the following for each election in which an elector cast a ballot that was counted:

- The date of the election;
- If the election was a primary election, one of the following:
  - The political party whose ballot the elector cast;
  - An indication that the elector voted only on the questions and issues appearing on the ballot at a special election held on the day of the primary election. (An elector is considered unaffiliated if the elector casts an issues-only ballot at a primary.)
- The type of ballot the elector cast.

If an elector cast a ballot that was not counted, or applied for an absent voter's ballot but did not return it, the bill prevents that activity from being listed as part of the elector's voting history.<sup>9</sup>

### **Last activity date**

The SWVRD must include each elector's last activity date, as determined in accordance with rules adopted by the Secretary of State under the Administrative Procedure Act. This information is relevant to continuing-law list maintenance procedures. For example, under continuing law, after an elector has been mailed a confirmation notice, the elector must respond to the notice, vote in an election, or update the elector's registration within a four-year period in order to avoid having the elector's registration canceled.<sup>10</sup>

### **Other information required by rule**

Finally, the bill allows the Secretary of State to require the boards to include other information in the SWVRD by rules adopted under the Administrative Procedure Act.

### **Daily archives**

Under the bill, during the period beginning on the 46<sup>th</sup> day before an election and ending on the 81<sup>st</sup> day after the election, each board of elections must create a daily record of its voter registration database as of 4:00 p.m. (That time period represents the start of voting

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<sup>8</sup> R.C. 3503.15(C)(9).

<sup>9</sup> R.C. 3503.15(C)(10).

<sup>10</sup> R.C. 3503.15(C)(11). See also R.C. 3503.21(A)(7), not in the bill.

before an election through the date the official election results must be finalized.) The board must transmit the daily record to the Secretary of State in a manner prescribed by the Secretary. The Secretary must archive the daily record and retain it for at least 22 months after the election (see “**Retention of ballots after an election,**” below).<sup>11</sup>

### Relocated provisions

In reorganizing the statute governing the SWVRD, the bill relocates several provisions of law, largely unchanged. The following table shows those provisions and their new locations under the bill:

Provision	Current location	Location under the bill
Requires the Secretary of State to obtain information from other state agencies and to share information with other states or groups of states for the purpose of maintaining the SWVRD. (The bill requires the new Office of Data Analytics and Archives to perform these functions.)	R.C. 3503.15(A)(2) to (5) and (D)(6) to (7)	R.C. 3503.151
Requires the Secretary of State to conduct an annual review of the SWVRD to identify persons who appear not to be U.S. citizens. (The bill makes no changes to this provision.)	R.C. 3503.15(H)	R.C. 3503.152
Requires the Secretary of State to make the SWVRD available online. (The bill makes a few changes to these provisions, described below under “ <b>Public website of the SWVRD.</b> ”)	R.C. 3503.15(G)	R.C. 3503.153

## Public access to voter registration records

### Public records requests

The bill changes the process for the boards of elections to make registration records available to the public and clarifies which pieces of information contained in a voter registration record are subject to disclosure.

Existing law requires a board of elections to make voter registration forms and the SWVRD open to public inspection at all times when the office of the board is open for business, under such regulations as the board adopts, provided that no person may inspect voter registration forms outside the presence of a board employee. The statute does not provide a process for the board to redact any of an elector’s personal identifying information before

<sup>11</sup> R.C. 3503.15(D).

allowing public access to its records, although other provisions of state and federal law prohibit the disclosure of certain information.

The bill specifies instead that voter registration forms and the SWVRD are public records subject to disclosure under the Public Records Law in the same manner as records of other public offices. The Public Records Law, unchanged by the bill, includes procedures for the public to request records and for public offices to redact nonpublic information from records before providing them to requestors. For an overview, see LSC's Members Brief, [Ohio's Public Records Law \(PDF\)](#).

Additionally, the bill exempts all of the following from disclosure through voter registration records:<sup>12</sup>

- An elector's full or partial Social Security number. Federal law already prohibits a government agency from disclosing a person's Social Security number, and the current Public Records Law prohibits a public office from disclosing a Social Security number on the internet.<sup>13</sup>
- An elector's driver's license or state identification card number. The current Public Records Law prohibits a public office from disclosing a driver's license or state identification card number on the internet.<sup>14</sup>
- An elector's telephone number or email address. Current law generally does not prohibit the disclosure of this information.
- A confidential voter registration record of a participant in the Address Confidentiality Program, also known as Safe at Home, which is a program for victims of stalking, domestic violence, and certain other crimes. Continuing law prohibits the disclosure of any information from such a person's voter registration record.<sup>15</sup>
- The address of a designated public service worker, if the person has submitted a redaction request to the board of elections. Continuing law exempts from disclosure the address of a designated public service worker, such as a peace officer, prosecutor, correctional employee, or firefighter. A board of elections typically will not be aware that an elector qualifies for this exemption unless the elector submits a redaction request on a form prescribed by the Attorney General.<sup>16</sup>
- Any other information that is prohibited from being disclosed by state or federal law.

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<sup>12</sup> R.C. 3503.13.

<sup>13</sup> 42 U.S.C. 405(c)(2)(C)(viii) and R.C. 149.45(A)(1), not in the bill.

<sup>14</sup> R.C. 149.45(A)(1), not in the bill.

<sup>15</sup> R.C. 111.44 and 149.43(A)(1)(ee), not in the bill, and R.C. 3503.13(A).

<sup>16</sup> R.C. 149.45(D), not in the bill.

## Public website of the SWVRD

Correspondingly, the bill adds to the information that must be available on the public website version of the SWVRD. Under the bill, all of the following information must be available regarding a registered elector:

- The elector's name;
- The elector's birth date (added by the bill);
- The elector's current residence address;
- The elector's precinct number;
- The elector's polling place, during the 30 days before Election Day;
- The elector's voter registration date, as described above under **"Uniform data entry"** (added by the bill);
- The elector's voting history, as described above under **"Uniform data entry"** (current law requires the website to include the elector's voting history, but does not define that term);
- The elector's last activity date, as described above under **"Uniform data entry."**

The bill prohibits any of the information that is exempt from disclosure as a public record, as listed above, from being made available on the website, such as a Social Security number or information about an Address Confidentiality Program participant.<sup>17</sup>

## Retention of ballots after an election

The bill requires the boards of elections to preserve all used and unused ballots from a nonfederal election for at least 81 days after the day of the election, instead of 60 days as required under current law. The bill also specifies that the board must retain any electronic images of ballots in that manner. Continuing law requires that the canvass of election returns (the final count of the ballots) be deemed final as of 81 days after the election. By extending the retention period, the bill ensures that the boards do not destroy any ballots before the canvass is finalized.

Under continuing law, the boards must retain ballots from a federal election for at least 22 months after the election.<sup>18</sup>

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<sup>17</sup> R.C. 3503.153.

<sup>18</sup> R.C. 3505.31. See also R.C. 3505.32(A), not in the bill.

## Intended appropriation

Finally, the bill states that the General Assembly intends to appropriate funds to the Secretary of State to pay the costs incurred by the Secretary and the boards of elections in meeting the bill's requirements.<sup>19</sup>

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### HISTORY

Action	Date
Introduced	02-22-23

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<sup>19</sup> Section 3 of the bill.