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S.B. 194*
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate General Government and Agency Review

Primary Sponsor: Sen. Rulli

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SUMMARY

Board of Voting Systems Examiners

- Renames the Board of Voting Machine Examiners as the Board of Voting Systems Examiners.
- Adds a cybersecurity expert appointed by the Secretary of State as a nonvoting member of the Board.

Voter registration systems

- Requires the Secretary, in consultation with the Board, to adopt rules establishing guidelines for the approval, certification, and continued certification of voter registration systems.
- Requires the Secretary also to adopt standards for the security and integrity of voter registration systems to be used in that process.
- Requires a voter registration system to meet any standards adopted by the federal Election Assistance Commission in order to be certified.
- Requires the Board and the Secretary to apply the same process to voter registration systems that the Board and the Secretary currently use to examine, test, approve, and certify voting equipment.
- Prohibits the Secretary or a board of elections from acquiring a voter registration system that has not been certified under the bill.

* This analysis was prepared before the report of the Senate General Government and Agency Review Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Allows a board of elections that is using a voter registration system before the bill takes effect to continue using that system until the county acquires a new system.
- Requires the Board or the Secretary periodically to examine, test, and inspect certified voter registration systems to determine their continued compliance.
- Requires a vendor to notify the Secretary and provide an updated operations manual if any significant enhancement or adjustment is made to a certified voter registration system.
- Specifies a process to withdraw certification for a voter registration system.

Protests against candidate filings

- Requires a board of elections or the Secretary, as applicable, to decide a protest against a person's candidacy not later than ten days after the deadline to file the protest.

DETAILED ANALYSIS

Board of Voting Systems Examiners

The bill renames the Board of Voting Machine Examiners as the Board of Voting Systems Examiners, in recognition of the Board's expanded role under the bill in examining and approving voter registration systems, as discussed below. Currently, the Board is responsible for examining and approving voting machines, marking devices, automatic tabulating equipment, voting and tabulation software, and electronic pollbooks.

The bill also adds a cybersecurity expert appointed by the Secretary of State as a nonvoting member of the Board. Under continuing law, the voting members of the Board include two members appointed by the Secretary, one member appointed by the House of Representatives leader who is of the opposite political party from the Secretary, and one member appointed by the Senate leader who is of the opposite political party from the Secretary. (For example, currently, the Board consists of two members appointed by the Secretary, one member appointed by the House Minority Leader, and one member appointed by the Senate Minority Leader.) In the case of a tie vote, the Secretary casts the deciding vote.

Each member of the Board must be a competent and experienced election officer or a person who is knowledgeable about the operation of voting equipment. Members receive \$300 per day for each combination of systems or pieces of equipment examined and reported on, provided that a member must not receive more than \$600 to examine and report on any one system or piece of equipment. Members also must be reimbursed for expenses incurred in performing their official duties.¹

¹ R.C. 3506.05 and conforming changes in R.C. 3506.04, 3506.06, 3506.07, and 3506.10.

Voter registration systems

Approval and certification required

The bill requires the Secretary of State, in consultation with the Board of Voting Systems Examiners, to adopt rules establishing guidelines for the approval, certification, and continued certification of voter registration systems. The Secretary also must adopt standards for the security and integrity of voter registration systems to be used in that process. “Voter registration system” means software and any related equipment used by a board of elections or the Secretary to process, store, organize, maintain, or retrieve voter registration records.

If the federal Election Assistance Commission (EAC) certifies voter registration systems as part of its Testing and Certification Program, the bill requires a voter registration system to meet the EAC’s standards in addition to those adopted by the Secretary and to have the most recent federal certification number issued by the EAC. Currently, the EAC tests and certifies voting systems but not voter registration systems.

Under the bill, the Board and the Secretary must apply the same process to voter registration systems that the Board and the Secretary currently use to examine, test, approve, and certify voting machines, marking devices, automatic tabulating equipment, voting and tabulation software, and electronic pollbooks.

The bill prohibits the Secretary or a board of elections from acquiring a voter registration system that has not been certified under the bill. However, a board of elections that is using a voter registration system before the bill takes effect may continue using that system until the county acquires a new system.²

Process for approval and certification

Vendor submission

A vendor who wishes to have a voter registration system certified for use in Ohio first must submit all of the following to the Board:

- The voter registration system;
- All current related procedural manuals;
- A current description of all related support arrangements;
- A detailed explanation of the construction and method of operation of the system;
- A full statement of the system’s advantages;

² R.C. 3506.01(I), 3506.05, and 3506.16. See also U.S. Election Assistance Commission, *Fact Sheet: The U.S. Election Assistance Commission’s Voting System Testing and Certification Program*, available at eac.gov/news/2017/03/07/fact-sheet-the-us-election-assistance-commissions-voting-system-testing-and-certification-program-voting-systems-certification-communications-fact-sheet/.

- A list of the patents and copyrights used in the crucial operations of the system, as determined by the Board;
- A \$2,400 fee, to be deposited in the Board’s fund to pay for the services and expenses of Board members and any other expenses incurred in fulfilling the Board’s duties;
- An additional fee, at the option of the Board and in an amount set by the Board by rule, to pay the costs of alternative testing or testing by persons other than Board members, record keeping, and other extraordinary costs incurred in the examination process. Any unused moneys from the additional fee must be returned to the vendor.

Additionally, the Secretary’s rules must require vendors or software developers to place in escrow, with an independent escrow agent approved by the Secretary, a copy of all source code and related documentation, together with periodic updates as they become known or available. The Secretary must require that the documentation include a system configuration and that the source code include all relevant program statements in low- or high-level languages. “Source code” does not include variable codes created for specific elections.³

Board examination and report

When a vendor submits a voter registration system, the bill requires the Board to examine the system and file a written report with the Secretary of State within 60 days after the vendor submits it or as soon thereafter as is reasonably practicable. The report must include (1) the Board’s recommendations and, if applicable, its determination or condition of approval regarding whether the system, manual, and other related materials or arrangements meet the applicable criteria and can be safely used, or (2) a written statement of reasons the Board needs more time for testing. The Board may grant temporary approval to allow experimental use of the system.

If the Board finds that the voter registration system meets the applicable criteria, can be used safely, and has the capacity to be warranted, maintained, and serviced, the Board must approve the system and recommend that the Secretary certify it for use.⁴

Certification by Secretary of State

Upon receiving a favorable recommendation from the Board, the Secretary of State may, but is not required to, certify the voter registration system. If the Secretary does so, the Secretary must notify the boards of elections that they may adopt the system for use.⁵

Continuing certification

The bill requires the Board or the Secretary of State periodically to examine, test, and inspect certified voter registration systems to determine their continued compliance with the

³ R.C. 3506.05(D) and (I)(1).

⁴ R.C. 3506.05(E).

⁵ R.C. 3506.05(E).

bill and the Secretary's standards, in the same manner as the Board and the Secretary currently review other certified equipment. If a significant problem is uncovered in a certified system, or if a record of continuing problems exists for the system, then the examination, testing, and inspection of the system for continuing certification must be conducted in the same manner as for the initial approval and certification.

If any enhancement or significant adjustment is made to a certified voter registration system's hardware or software that could result in a patent or copyright change or that significantly alters the crucial operations of the system, as determined by the Board, the vendor must notify the Secretary of State and provide an updated operations manual for the system. The Secretary then must notify the Board and forward the updated manual to it, and the Board may require the vendor to submit the system to an examination and test in order for the system to remain certified.⁶

Withdrawal of certification

The bill requires the Secretary of State to begin the process of withdrawing certification for a voter registration system if any of the following occur:

- A board of elections notifies the Secretary or the Board of Voting Systems Examiners of any significant problem with the system;
- The Secretary or the Board determines that the system fails to meet the requirements necessary for approval or continued compliance with the bill and the Secretary's standards;
- The Board determines that there are significant enhancements or adjustments to the system's hardware or software;
- The vendor has failed to notify the Secretary of any significant enhancements or adjustments, as required by the bill.

The Secretary first must send a written notice to the users and vendors of the voter registration system that the system's certification may be withdrawn. The notice must specify the reasons why the certification may be withdrawn and the date on which the certification will be withdrawn unless the vendor (1) takes satisfactory corrective measures, (2) explains why there are no problems with the system, or (3) explains why the enhancements or adjustments to the system are not significant.

Within 30 days after receiving the notice, the vendor must submit to the Board, in writing, (1) a description of the corrective measures taken and the date on which they were taken, (2) an explanation of why there are no problems with the system, or (3) an explanation of why the enhancements or adjustments to the system are not significant.

Then, not later than 15 days after receiving the vendor's submission, the Board must determine whether the submission is satisfactory to allow continued certification of the system.

⁶ R.C. 3506.05(F).

The Secretary must send the vendor a written notice of the Board's determination and its reasoning. If the Board determines that the submission is unsatisfactory, the Secretary's notice must include the effective date of withdrawal of the certification. That date is not required to be the same as the deadline included in the Secretary's initial notice to the vendor.

If the certification is scheduled to be withdrawn, the vendor may, within 30 days after receiving notice from the Secretary, submit a written request for the Board to hold a hearing to reconsider its decision. Any interested party must be given the opportunity to submit testimony or documentation in support of, or opposition to, the Board's recommendation.⁷

Protests against candidate filings

The bill requires a board of elections or the Secretary of State, as applicable, to decide a protest against a person's candidacy filing not later than ten days after the deadline to file the protest. This provision of the bill applies to a protest filed against a candidate's declaration of candidacy and petition (filed to appear on a primary ballot), against a nominating petition (filed to run as an independent candidate, as a candidate in a nonpartisan election, or as the nominee of a newly formed political party), or against a declaration of intent to be a write-in candidate at a primary or general election.

Under continuing law, when a person files those candidacy papers, any qualified elector who is eligible to vote in the election for that office may file a protest against the person's candidacy by a specified deadline, with the same officials with whom the candidacy papers were filed. The election officials promptly must schedule a hearing and mail a notice to the candidate and the elector who filed the protest. At the hearing, the election officials must hear the protest and must determine the validity or invalidity of the candidacy papers. That determination is final.

The Revised Code currently does not provide a deadline for election officials to resolve a protest, although as a practical matter, a protest against any candidate other than a write-in candidate would need to be decided in time to have uniformed services and overseas absent voter's ballots printed and ready to mail on the 46th day before the election.⁸

HISTORY

Action	Date
Introduced	09-09-19
Reported, S. General Government and Agency Review	---

S0194-RS-133/ec

⁷ R.C. 3506.05(G) and (H).

⁸ R.C. 3513.041, 3513.05, 3513.262, and 3513.263. See also R.C. 3509.01(B) and 3517.012(B)(3)(b), not in the bill.