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Final Analysis

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SUMMARY

Voter identification

- Defines photo ID as an unexpired Ohio driver's license or state ID card (Ohio DL/ID), U.S. passport or passport card, or military ID card that includes the individual's name and photograph.
- Generally requires an elector to have photo ID to vote in person, unless the elector has a religious objection to being photographed.
- 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 Social Security number (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 an Ohio DL/ID number, the last four digits of the elector's SSN, or a copy of the elector's photo ID.
- 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 and show photo ID to the board after Election Day.

- Allows an elector who does not have photo ID because the elector has a religious objection to being photographed to sign an affidavit to that effect and to cast a provisional ballot using the last four digits of the elector's SSN.
- Shortens the cure period to correct a provisional ballot to four days after Election Day instead of seven.
- 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 Ohio DL/ID 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 Ohio DL/ID to obtain a free replacement 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.
- Allows the Secretary of State to continue to mail unsolicited applications for absent voter's ballots, so long as the Secretary submits a report to the Controlling Board with certain information about the most recent mailing.
- 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 that are returned by mail to arrive at the board of elections by the fourth day after Election Day, instead of the tenth day after Election Day.
- Shortens the cure period to correct an absent voter's ballot to four days after Election Day instead of seven.
- Requires the boards of elections to begin counting late-arriving and cured absent voter's ballots on the fifth day after Election Day, and cured provisional ballots on the eighth day after Election Day, instead of the eleventh day after Election 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 law that required the board of elections, upon receiving uniformed services or overseas absent voter's ballots, to check for ballots that were 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.
- Expresses the General Assembly's intention to enact legislation that specifies the days and hours for in-person absent voting.
- Requires the Secretary of State to prescribe a new, uniform schedule that reallocates the six hours of in-person absent voting previously available on the Monday before Election Day by adding hours on Monday through Friday of the preceding week.

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 curbside.
- 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.
- Eliminates the fee that a newly elected state or county officer or judge must pay to the Secretary of State in order to receive a commission from the Governor.

Technical changes

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

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DETAILED ANALYSIS

Voter identification

The act changes the types of identification (ID) that are acceptable for purposes of voter registration and voting. In general, an elector must have photo ID to vote in person, unless the elector has a religious objection to being photographed. 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	
	Prior law	H.B. 458	Prior law	H.B. 458	Prior law	H.B. 458	Prior law	H.B. 458	Prior law	H.B. 458
Ohio DL/ID with current address	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
Ohio DL/ID with former address	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
Military ID	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
U.S. passport or passport card	✗	✗	✗	✓	✗	✓	✗	✓	✗	✓
Utility bill, bank statement, government check, paycheck, or other government document with current address	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗
Ohio DL/ID number	✓	✓	✗	✗	✓	✗	✓	✓	✓	✗
Last four digits of SSN	✓	✓	✗	✗	✓	✗	✓	✓	✓	✗

Photo ID definition

The act 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 or state ID card issued by the Bureau of Motor Vehicles (BMV) – this analysis refers to this type of ID as an Ohio DL/ID. These documents include a commercial driver's license, motorcycle operator's license, probationary or restricted license, or temporary instruction permit. And, they include an interim identification form, which is a document the BMV issues to a person who has just applied for a driver's license or state ID card to use until the permanent card arrives in the mail.
- A U.S. passport or passport card;
- 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 act 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 prior law.

Previous law defined photo ID as an unexpired document that was issued by Ohio or the U.S. government and that showed the person's name, photograph, and current address, except that an Ohio DL/ID could include the person's former address. It appears that an Ohio DL/ID is the only commonly issued form of ID that met that description. As is explained below, however, prior law allowed an in-person voter who did not have photo ID to provide an alternative form of ID, such as a utility bill or paycheck.¹

ID for voter registration

The act 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 Social Security number (SSN). The act eliminates the 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. The act's registration ID requirement applies prospectively; persons who have already registered to vote using an alternate form of ID before the act took effect are not 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.²

ID for Election Day voting

For purposes of voting on Election Day, the act requires an elector to show photo 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 act eliminates the option to 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 act 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.³

ID for in-person absent voting

The act 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 prior law, an in-person absent voter instead could 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 included the

¹ R.C. 3501.01(AA), (BB), (CC), and (DD).

² R.C. 3503.14 and 3503.20.

³ R.C. 3505.18 and conforming changes in R.C. 3503.16, 3503.19, and 3503.28.

person's name and current address. The law did not contemplate a person casting a provisional ballot during in-person absent voting.

Additionally, the act 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.⁴

ID for absent voting by mail

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

1. An Ohio DL/ID number;
2. The last four digits of the elector's SSN;
3. A copy of the elector's photo ID. A "copy" of a photo ID means images of both the front and back of the document, except that in the case of a U.S. passport, a "copy" means a copy of the ID page of the passport that includes the elector's name, photograph, and other identifying information and the passport's expiration date.

Compared to prior law, the act eliminates the option for the elector to 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 elector's name and address.

The act also 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.⁵

ID for provisional voting

Electors who cannot provide photo ID

The act allows an elector who appears to vote in person, and who does not have or cannot provide photo ID, to cast a provisional ballot. Except in the case of religious objector, as described below, in order for the ballot to be counted, the elector must appear at the office of the board of elections by the fourth day after Election Day to show photo ID.

Prior law permitted an elector who could not 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 act eliminates this possibility.⁶

⁴ R.C. 3509.051, 3509.09, 3509.10, 3511.10, and 3511.13.

⁵ R.C. 3501.01(AA)(2), 3509.03, 3509.04, 3509.05, 3509.06, 3509.07, 3509.08, 3511.02, 3511.05, and 3511.09.

⁶ R.C. 3505.18, 3505.181, 3505.182, and 3505.183.

Religious objectors

The act allows an elector who does not have photo ID because the elector has a religious objection to being photographed to have the elector's provisional ballot counted by signing an affidavit to that effect and providing 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 fourth day after Election Day.

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 photo identification because I have a sincere 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.

Upon receiving the completed affidavit, the board must transmit the information in it to the Secretary of State. The Secretary must consult the BMV database to determine whether the BMV has issued a currently unexpired Ohio DL/ID to the elector, and must notify the board of the result. The affidavit is not valid if the BMV has issued the elector a currently unexpired Ohio DL/ID or if the last four digits of the elector's SSN provided on the affidavit do not match those digits in the Statewide Voter Registration Database.⁷

Other provisional voters

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 act requires the person to check on the provisional ballot affirmation which form of photo ID the person showed. If the person showed an Ohio DL/ID, the person also must write the number on the affirmation.

The act also adds a separate option on the form for the person to provide an Ohio DL/ID number or the last four digits of the elector's SSN for registration purposes. These numbers are not to be used for ballot counting— 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

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

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.⁸

Cure period for provisional ballots

The act shortens the period after Election Day during which a provisional voter may go to the board of elections and provide photo ID, sign an affidavit of religious objection, or provide other information needed to count the person's ballot. Under the act, a provisional voter has until the fourth day after Election Day to do so, instead of the seventh day after Election Day.⁹

Free state ID cards

The act 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. (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.) As such, the act 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 act, 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.¹⁰

In order to continue to compensate BMV deputy registrars for their services in issuing state ID cards, the act 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.¹¹ 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

⁸ R.C. 3505.181, 3505.182, and 3505.183.

⁹ R.C. 3505.181, 3505.182, and 3505.183.

¹⁰ R.C. 4507.50, 4507.51, and 4507.52.

¹¹ R.C. 4507.49(A).

3. \$5 for each replacement state ID card (deputy registrar fee).¹²

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. Those rules are exempt from continuing law requirements concerning reductions in regulatory restrictions.¹³

Citizenship notation on driver's licenses and state ID cards

The act requires any Ohio DL/ID that is issued to a person who is not a U.S. citizen to include a notation designating that the person is a noncitizen.¹⁴

Under continuing law, the BMV may issue a driver's license or state ID card to a noncitizen who is legally present in the U.S. *Temporary* Ohio residents, including noncitizens who are legally present on a temporary visa, 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. However, *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. Previously, there were no markings or notations designating that the person was not a U.S. citizen.¹⁵

The act also authorizes a noncitizen who becomes a U.S. citizen before an Ohio DL/ID is eligible for renewal (i.e., more than 90 days before expiration) to obtain a free replacement that excludes the notation designating the person as a noncitizen. The Registrar must adopt rules to administer and implement the process of obtaining the replacement, including any documentary evidence the person must show proving the person's new citizenship status. Those rules are exempt from continuing law requirements concerning reductions in regulatory restrictions.¹⁶

Clarification regarding state ID card numbers

The act clarifies that in every context where an elector may provide the elector's driver's license number as ID, the elector instead may provide the elector's state ID card number. Prior law explicitly allowed 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

¹² R.C. 4507.49(B).

¹³ R.C. 4507.233 and 4507.49(A)(2) and (C). See also R.C. 121.95 to 121.953, not in the act, which require agencies such as the BMV to reduce the number of regulatory restrictions included in their administrative rules.

¹⁴ R.C. 4506.11(A)(13), 4507.13(A)(2)(j), 4507.51, and 4507.52(A)(2).

¹⁵ Ohio Administrative Code 4501:1-1-21 and 4501:1-1-37.

¹⁶ R.C. 4507.233.

applying for or casting absent voter's ballots. And, the law did not require the Statewide Voter Registration Database to record electors' state ID card numbers.¹⁷

Absent voting by mail

Application deadline

The act 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 act retains 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.¹⁸

Unsolicited applications

The act modifies the law that allows the Secretary of State to mail unsolicited applications for absent voter's ballots. Under continuing law, the Secretary may do so for a general election, so long as the General Assembly has made an appropriation to the Controlling Board for that particular mailing and the Controlling Board approves the transfer of funds to the Secretary. The act adds a requirement that the Secretary's request to the Controlling Board be accompanied by a report that includes all of the following concerning the last mailing of that kind:

- The number of applications mailed;
- The number of those applications that were returned to the sender as undeliverable or otherwise were determined to be undeliverable;
- The number of those applications that were completed and returned to the Secretary or a board of elections;
- The number of absent voter's ballots cast by mail in the election.

Continuing law 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.¹⁹

Form of application

The act 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. But, 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.)

¹⁷ 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.

¹⁸ R.C. 3503.16(E), 3509.03(D), 3509.031(A)(2), 3509.08, 3511.02, and 3511.04.

¹⁹ R.C. 111.31, 3501.05, 3509.03(E), and 3511.02(E).

If a board of elections receives an application that is not submitted on an appropriate form, the act requires the board promptly to direct the applicant to use an appropriate form.

Previous law specified that an application for absent voter's ballots did not need to be in any particular form, but that it had to contain all of the required information. The Secretary of State prescribed forms for this purpose, but applicants also could use a form provided by their local board of elections or another entity, or could begin with a blank sheet of paper and create their own form, so long as it included the required information.²⁰

Return procedures

Ballot return deadline

The act requires all absent voter's ballots to arrive at the office of the board of elections by the fourth day after Election Day, instead of the tenth day, to be eligible to be counted.

Under continuing law, ballots that arrive after the close of the polls must be postmarked by the day before Election Day, except that uniformed services and overseas absent voter's ballots must be signed by the close of the polls, regardless of whether they are postmarked. The act makes changes to the statute to clarify that uniformed services and overseas absent voter's ballots must be signed by that time, regardless of where the voter is located.

Cure period for absentee ballots

The act shortens the period after Election Day during which a voter who casts absentee ballots by mail may provide the board of elections with additional or corrected information needed to count the person's ballot. Under the act, an absent voter has until the fourth day after Election Day to do so, instead of the seventh day after Election Day, similar to the changes the act makes concerning the cure period for provisional ballots, described above.²¹

Final ballot counting

Based on those deadline changes, the boards of elections must begin counting late-arriving and cured absent voter's ballots on the fifth day after Election Day, instead of the eleventh day as required under prior law.²² And, the boards must begin counting cured provisional ballots on the eighth day after Election Day, instead of the eleventh day.²³ That is,

²⁰ 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.

²¹ R.C. 3509.06 and 3509.07.

²² R.C. 3509.05, 3509.06, 3511.05, 3511.09, and 3511.11.

²³ H.B. 458 requires the boards of elections to begin counting cured provisional ballots on the fifth day after Election Day. However, the General Assembly separately amended that provision of law in H.B. 45 to require the boards to do so on the eighth day after Election Day. H.B. 45, which was enacted later, states its intention to supersede any conflicting provisions of H.B. 458. (R.C. 3505.183(G) and Section 735.10 of H.B. 45 of the 134th General Assembly.)

under the act, all ballot-counting determinations are made earlier, allowing the final count to begin earlier.

Drop boxes

Background on drop boxes

Prior law allowed 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 did not mention the idea of ballot drop boxes at the office of the board or anywhere else.²⁴

In 2020, an Ohio appeals court ruled that the statute allowed, but did 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 had 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.²⁵

Drop boxes under the act

The act 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 act 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 7:30 p.m. on Election Day (the close of the polls). The drop box must be open to receive ballots at all times during that period.²⁶

Each drop box must be monitored by video surveillance at all times. The video recordings are a public record. The board must either:

- Make the recordings available for inspection immediately upon request; or

²⁴ R.C. 3509.05.

²⁵ *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778 (10th Dist. Ct. App. 2020).

²⁶ H.B. 458 allows a drop box to be open to receive ballots only during the board’s hours of operation during that period. However, the General Assembly separately amended those provisions of law in H.B. 45 to require a drop box to be open at all times during that period. (R.C. 3509.05(C)(3)(b) and Section 735.10 of H.B. 45 of the 134th General Assembly.)

- Make each day's recording available online for free streaming or download within 24 hours after the recording ends, and otherwise make the recordings available to the public upon request in accordance with normal procedures under the Public Records Act, which does not require an immediate response.

Under the act, 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.

The act also specifies that, during the absent voting period, the board must send a daily report to the Secretary of State on each day the board is open for business. The report must include both of the following concerning the previous business day:

- The number of voted absent voter's ballots the board received by personal delivery, other than to a drop box;
- The number of voted absent voter's ballots the board received in a drop box, if the board has one.

As soon as practicable after receiving a report, the Secretary must make the information in it available to the public on the Secretary's official website.²⁷

Who may deliver ballots

Further, the act'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 act adds to that prohibition by specifically prohibiting any

²⁷ R.C. 3509.05(C) and 3511.09(E).

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.²⁸

Processing ballots before the close of the polls

The act 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 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:²⁹

- 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 act eliminates law that required the board of elections, upon receiving uniformed services or overseas absent voter's ballots, to check for ballots that were 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. Prior law did not include a similar provision for other absent voter's ballots, but the Secretary of State directed the boards to follow that same procedure for all absent voter's ballots.

The act 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 will make that determination in accordance with any guidance from the Secretary of State.³⁰

Postage

The act 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. Prior law prohibited a board of elections from prepaying that postage, but did not explicitly prohibit the Secretary of State or another official from doing so.

²⁸ R.C. 3509.05, 3511.09(E), and 3599.21.

²⁹ R.C. 3509.06.

³⁰ 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.

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 act 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.³¹

Change from "director" to "board"

The act 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.³²

In-person absent voting – days available

Under the act, 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 previous schedule instituted by Secretary of State directive, the act eliminates one day of in-person absent voting – the day before Election Day (Monday).

The act expresses the General Assembly's intention to enact legislation that specifies the days and hours for in-person absent voting. The act also requires the Secretary to prescribe a new, uniform schedule that reallocates the six hours of in-person absent voting previously available on the Monday before Election Day by adding hours on Monday through Friday of the preceding week.³³

Prior law specified that in-person absent voting ended at 6:00 p.m. on the Friday before Election Day, except that uniformed services and overseas absent voters could cast absent voter's ballots at the office of the board through the close of the polls on Election Day. However, a federal court ruled that this disparity violated 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 act establishes the same in-person absent voting deadline for all voters, it appears that the act eliminates the disparity that was the basis of the court's decision, meaning that the court's order no longer applies.³⁴

³¹ R.C. 3509.03(E), 3509.04, 3509.05, 3511.02, 3511.04, and 3511.09(E). See also 39 U.S.C. 3406.

³² 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.

³³ R.C. 3509.03, 3509.051(A), 3511.02, and 3511.10 and conforming changes in R.C. 3509.01 and Section 4 of the act. See also Ohio Secretary of State, [Election Official Manual](#), ch. 5, p. 9.

³⁴ 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).

August special elections

With one exception, the act eliminates local special elections held in August. Prior law allowed 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.

Continuing law allows a municipal or county charter to authorize additional days for a special election.

The act 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.³⁵

Under the act, 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.³⁶

Election administration

Curbside voting

The act 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 act 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

³⁵ R.C. 118.03, 118.04, and 3316.03, not in the act.

³⁶ R.C. 323.17, 3501.01(D), and 3501.022. See also R.C. 3501.17, not in the act.

requirements. Prior law stated that the board must permit curbside voting by a “handicapped elector” at an exempted polling place. The statute defined “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 act 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 previous 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 act prevents curbside voting from being expanded to other circumstances.³⁷

Election Administration Plans

The act codifies a requirement previously 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 act, the board must submit its EAP not later than 75 days before the election. The prior directives placed that deadline at 60 days before a presidential primary election and 120 days before a general election.

Under the act, 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;

³⁷ 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.”

- Any other topic prescribed by the Secretary.

These topics are the same as those found on the Secretary's current EAP template.³⁸

Youth at the Booth

The act 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 voting location managers, and continuing law also limits the number who may be assigned to any given precinct.³⁹

Voting equipment

Manufacturers and distributors

Under the act, 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.⁴⁰

Pre-election testing

The act updates the law requiring pre-election testing of voting equipment to more closely match existing Secretary of State directives. Under the act, no voting machine, marking device, or piece of automatic tabulating equipment may be used in an election without undergoing successful testing.

³⁸ 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.

³⁹ R.C. 3501.22(C).

⁴⁰ R.C. 3506.24. See also R.C. 3506.01, not in the act.

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 act 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 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 act requires the board to give public notice of the time and place of all testing. Under previous law, the board was required to give public notice of the logic and accuracy testing, but not the testing and auditing of software codes.

Finally, the act adds a requirement that all testing be conducted by bipartisan teams of election officials.⁴¹

Officer commission fees

The act eliminates the fee that a newly elected state or county officer or judge must pay to the Secretary of State in order to receive a commission from the Governor. Under continuing law, upon being elected, those officers must submit their certificates of election to the Governor and receive formal commissions from the Governor in order to take office. The fee for that commission is \$5, or \$2 for a judge of a county court. The act retains the requirement to receive a commission, but removes the fee.⁴²

Technical changes

The act updates a few references in Ohio law to the U.S. Code citations for the federal Uniformed and Overseas Citizens Absentee Voting Act to refer to the act's current location in the U.S. Code. The federal election laws were reorganized, but not substantively changed, in 2014.⁴³

⁴¹ R.C. 3506.14.

⁴² Repeal of R.C. 107.06 and conforming changes in R.C. 107.07, 111.16, 3505.34, and 3505.38. See also R.C. 107.05, not in the act.

⁴³ R.C. 3511.02.

HISTORY

Action	Date
Introduced	10-19-21
Reported, H. Ways & Means	12-08-21
Passed House (68-22)	12-09-21
Reported, S. Local Government & Elections	12-13-2022
Passed Senate (24-7)	12-13-2022
House concurred in Senate amendments (55-34)	12-14-2022
