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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Lear and Lorenz

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### SUMMARY

- Changes Ohio's primary elections to a closed primary system in which an elector must be registered as affiliated with a political party in order to vote that party's ballot at a primary.

#### Political party registration

- Specifies that an elector who is registered in Ohio before the bill takes effect keeps the elector's current party affiliation as of the bill's effective date based on the elector's recent voting history, unless and until the elector submits a voter registration update with a different party affiliation.
- Allows a new registrant or a currently registered elector who wishes to change affiliation to indicate a party affiliation on the person's voter registration or update form or to register as unaffiliated.
- Requires a newly registered elector to register as affiliated with a party by the 30<sup>th</sup> day before the day of the primary in order to vote that party's ballot at the primary.
- Requires a registered elector who wishes to change the elector's party affiliation to submit a registration update form no later than 90 days before the primary election in order to vote that party's ballot at the primary.
- Makes electors' party affiliations available to the public online through the Statewide Voter Registration Database, the same as their primary voting histories currently are available.
- Requires a voter registration acknowledgment notice to show the elector's current party affiliation, if any, and the date of the next primary election at which the elector is eligible to cast that party's ballot.

- Adds information about party registration to the required contents of the Secretary of State's brochure about voter registration and to the disclosures that must be included when a voter registration activity is part of a public school program.

## **Primary election voting procedures**

- Requires an elector to be registered as affiliated with a political party in order to vote that party's ballot at the primary.
- Specifies that if the elector has changed affiliations, the elector must have submitted that change no later than 90 days before the primary.
- Allows an elector who believes they are affiliated with a party, but is not recorded as affiliated with a party by the applicable deadline, to cast a provisional ballot in that party's primary.
- Continues to allow any elector, regardless of affiliation, to cast an issues-only ballot on the day of a primary election.

## **Candidacy requirements**

- Permits a candidate to appear on a party's primary ballot only if the candidate voted in that party's most recent primary held in an even-numbered year and the person has not affiliated with another party since that primary election, with the exception of office-holders switching parties who have filed a declaration of intent.
- Requires a person who signs or circulates a primary candidate's petition to be registered as affiliated with that party as of the time the petition is verified and, if the person is changing affiliation, as of the 90<sup>th</sup> day before the primary.
- Requires a person who files a protest against a primary candidate's candidacy to be registered as affiliated with that party and, if the person is changing affiliation, to be so registered as of 90 days before the primary.
- Requires an independent candidate to be registered as unaffiliated by the independent filing deadline in order to run as an independent candidate.
- Allows any elector to sign an independent candidate's nominating petition, as under current law.

## **Newly formed political parties**

- Permits any elector to sign a party formation petition to allow a new political party to be recognized by the state, as under current law.
- Requires candidates of a newly formed political party who are to be nominated by petition to be registered as affiliated with the new party.
- Requires an elector to be either registered as affiliated with the new party or registered as unaffiliated in order to sign such a nominating petition.

## Technical changes

- Reorganizes provisions of law regarding voter registration to consolidate repetitive language and eliminate obsolete provisions, without making substantive changes.

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## DETAILED ANALYSIS

The bill changes Ohio's primary elections to a closed primary system, meaning that a person must be registered as affiliated with a political party in order to vote in that party's primary. Ohio's current system is essentially an open primary system, in which a person may request any party's ballot at a primary so long as the person claims to be a member of that party, and there is no mechanism to change party affiliations between primary elections.

### Political party registration

#### Currently registered electors

An elector who is registered in Ohio before the bill takes effect keeps the elector's current party affiliation as of the bill's effective date, unless and until the elector submits a voter registration update with a different party affiliation. Under existing law, an elector is considered to be affiliated with the party whose ballot the elector most recently cast at a primary election held during the current calendar year or the previous two calendar years. If the elector did not cast any party's primary ballot during that time period, the elector is considered unaffiliated.<sup>1</sup>

#### Method of party registration

For new registrants, and for currently registered electors who wish to change affiliation after the bill takes effect, the bill allows a person to indicate a party affiliation on the person's voter registration or update form. The Secretary of State must add all of the following to Ohio's voter registration forms:

- A list of the political parties that are currently recognized in Ohio, along with checkboxes to select one;
- A space to write the name of a recognized party that is not listed on the form (for instance, a newly formed party);
- A box for the person to check to indicate that the person does not wish to be affiliated with any party;
- A notice that the person may choose only one recognized party and that the person is not required to choose any party;
- A notice of the deadline to submit a change of party affiliation, which is 90 days before the date of the primary election (see "**Deadline to change affiliation**," below).

If a person leaves the party affiliation section of the form blank, then the person's previous affiliation status is retained. That is, if the person is not currently registered as affiliated

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<sup>1</sup> R.C. 3503.071(A)(2), 3513.05, and 3513.19(A)(3).

with any party, does not select or write the name of a party, and does not indicate that the person does not wish to be affiliated with any party, the person remains unaffiliated. If the person *is* currently affiliated with a party, does not select or write the name of a party, and does not indicate that the person does not wish to be affiliated with any party, the person remains affiliated with the person’s current party.

The new party affiliation fields must appear on all types of voter registration forms, including the online form. But, the bill does not add those fields to the provisional ballot affirmation form, which operates as a voter registration form if the provisional voter is not registered under the voter’s current information. A provisional voter who wishes to establish or change party affiliation must submit a separate form. (Including those fields on the provisional ballot envelope would result in ballots being identifiable by party affiliation before the board of elections determines whether they should be counted.)<sup>2</sup>

Party Affiliation and Voter Registration Forms		
Action	Outcome if the voter is already Affiliated	Outcome if the voter is Unaffiliated
Affiliates with the same or different party.	Stays affiliated or changes affiliation.	Becomes affiliated with the party.
Checks the “does not wish to be affiliated” box.	Becomes unaffiliated.	Remains unaffiliated.
Leaves the affiliation section blank.	Stays affiliated with previous party.	Remains unaffiliated.

### Deadline to change affiliation

Under the bill, a person who has not previously been registered to vote in Ohio must register as affiliated with a party by the 30<sup>th</sup> day before the day of the primary in order to vote that party’s ballot at the primary. (This is the same as the deadline to register to vote in any election.)

However, a registered elector who wishes to change the elector’s party affiliation must submit a registration update form by the 90<sup>th</sup> day before the day of the primary (see “**Federal and constitutional law,**” below). This deadline also applies when an elector’s registration is canceled and the elector reregisters, if the elector changes party affiliations when reregistering.

<sup>2</sup> R.C. 3503.071(A) and (B), 3503.14, 3503.20, and 3503.23 and conforming changes in R.C. 3503.09, 3503.10, 3503.11, 3503.15, 3503.16, and 3503.19. See also R.C. 3505.182, not in the bill.

This provision prevents a person from canceling the person's registration and reregistering in order to avoid complying with the affiliation change deadline.

When an elector changes affiliation, the board of elections must record the elector's date of affiliation change, which is the date the elector submits the update form. If an elector submits an affiliation change from party A to party B after the deadline, the elector cannot vote in party A or party B's primary. The elector still may vote on any questions and issues appearing on the ballot on the day of the primary, the same as an unaffiliated elector may do under continuing law.<sup>3</sup>

### **Acknowledgment notices**

Under the bill, when a board of elections processes a voter registration or update, the acknowledgment notice the board sends to the elector must include the elector's party affiliation, if any. If the elector has had a change of affiliation, the notice also must include the date of the next primary election at which the elector is eligible to cast that party's ballot. (As is described above, that date might not be the next primary election.)<sup>4</sup>

### **Public records**

The bill requires that an elector's current party affiliation, if any, and the elector's date of affiliation change, if any, appear in the online version of the Statewide Voter Registration Database that is available to the public. Currently, an elector's party affiliation is available to the public through that same database as part of the elector's voting history.<sup>5</sup>

### **Voter information**

The bill requires the Secretary of State's information brochure about voter registration to include information about the manner in which a person may establish or change the person's political party affiliation.

Additionally, the bill requires that, if a voter registration activity is part of a public high school or vocational school program, the district board of education must notify students that registering as affiliated with a party, or registering and remaining unaffiliated, will not affect or be a condition of receiving a particular grade in or credit for a school course or class, participating in a curricular or extracurricular activity, receiving a benefit or privilege, or participating in a program or activity otherwise available to other students. This is the same as the notice that currently must be given to students regarding their decision to register or decline to register to vote as part of a school program.<sup>6</sup>

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<sup>3</sup> R.C. 3503.071(C) and (D), 3503.16(A)(2), 3503.23, and 3513.18.

<sup>4</sup> R.C. 3503.19(C).

<sup>5</sup> R.C. 3503.15(G); conforming changes in R.C. 3503.151, 3503.152, and 3503.153.

<sup>6</sup> R.C. 3503.10(G)(4) and 3503.28.

## Primary election voting procedures

### Party voters

Under the bill, an elector must be registered as affiliated with a political party in order to vote that party's ballot at the primary. If the elector has changed affiliations, the elector must have submitted that change as of the 90<sup>th</sup> day before the primary.

The pollbooks for a primary election must include each elector's registered affiliation, if any, and any date of affiliation change. If an elector requests a party's ballot and the election officials find that the elector is not registered as affiliated with that party or changed affiliation within 90 days of the primary, the elector may cast a provisional ballot in that party's primary. If the board of elections ultimately determines that the elector is not registered as affiliated with that party or missed the deadline to change affiliation, the provisional ballot must not be counted.

Current law allows an elector to request the ballot of any political party at a primary election. If the elector voted another party's ballot at the last primary election, the Revised Code permits the election officials to challenge the elector on the ground that the elector is not actually affiliated with that party. The Secretary of State instructs election officials not to bring such a challenge unless they have personal knowledge that the elector is not affiliated with that party, based on more than the elector's voting history as shown in the pollbook.

Upon being challenged, the elector may sign a statement under penalty of election falsification that the elector desires to be affiliated with and supports the principles of the party whose ballot the elector has requested. After signing the statement, the elector may cast a regular ballot for that party. If the elector refuses to sign the statement, the elector instead must cast a provisional ballot.<sup>7</sup>

### Issues-only voters

Under continuing law, any elector may choose to vote only on the questions or issues appearing on the ballot at a special election held on the day of a primary election. The bill specifies that an elector who is registered as unaffiliated, or who changed affiliation after the 90<sup>th</sup> day before the primary election, may vote on those questions or issues but may not cast a party ballot.<sup>8</sup>

## Candidacy requirements

### Party candidates

The bill also requires a candidate, in order to appear on a party's primary ballot, to meet the following requirements: the person voted that party's ballot at the most recent primary

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<sup>7</sup> R.C. 3513.18 and 3513.19; repeal of R.C. 3513.20; and conforming changes in R.C. 3505.181 and 3509.07. See also Ohio Secretary of State, [Precinct Election Official Training Manual \(PDF\)](#), p. 46 (March 20, 2023), available at [ohiosecretaryofstate.gov](http://ohiosecretaryofstate.gov) under "Elections & Voting," "Elections Officials," "Election Officials' Resources."

<sup>8</sup> R.C. 3513.18(B).

election held in an even-numbered year, the person has not been registered as affiliated with a different political party since that primary election and, if applicable, the person has filed a declaration of intent to change affiliation (permissible only once every ten years under continuing law). Regarding possible application to federal officeholders, see “**Federal and constitutional law**,” below.

Current law generally does not require a candidate to be affiliated with a political party, based on the candidate’s primary voting history, in order to appear on the ballot at that party’s primary election. A candidate may vote in party A’s primary and then, two years later, seek party B’s nomination for an office. No procedure currently exists to declare a change of party affiliation between primary elections.

A continuing law exception exists for a current officeholder who was nominated for the person’s office by one party and later wishes to run for another party’s nomination – for example, a person who was elected to the House of Representatives as party A’s candidate in 2022, and wishes to run for reelection in 2024 as a candidate for party B. The law allows the person to change affiliation in that manner only once every ten years. (Under continuing law, this restriction does not apply to a candidate who becomes a member of a newly recognized political party.) The bill retains the ten-year restriction.

Finally, the bill eliminates a provision of current law that states that, if a candidate who appears on a party’s ballot at a primary election and wins the nomination votes in another party’s primary at that same election, the candidate must forfeit the nomination. This scenario is no longer possible under the bill because the candidate would not be allowed to vote in a different party’s primary.<sup>9</sup>

### **Petition signers and circulators**

The bill requires a person who signs or circulates a primary candidate’s petition to be registered as affiliated with that party as of the time the petition is verified. If the person has changed affiliation, the person must have been registered as affiliated with the person’s new party as of 90 days before the primary. A person who submits a change of affiliation after the 90<sup>th</sup> day before the primary election is ineligible to sign or circulate any party candidate’s petition for purposes of that primary election.

Under current law, a person must be affiliated with a party in order to sign or circulate a primary candidate’s petition, based on the party whose primary ballot the person most recently cast during the current and last two calendar years. An exception exists to allow a candidate who is changing parties to circulate the candidate’s own petition.<sup>10</sup>

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<sup>9</sup> R.C. 3501.01(K), 3503.071(D), 3513.041, 3513.07, 3513.19(A)(3), 3513.191, and 3517.013 and repeal of R.C. 3513.192.

<sup>10</sup> R.C. 3503.071(D), 3513.05, 3513.07, and 3513.19(A)(3).

## Protests against party candidates

Similarly, the bill requires an elector who files a protest against a primary candidate's candidacy to be registered as affiliated with that party and, if the person changed parties, to have been so registered by the 90-day deadline. Under existing law, the elector must have voted that party's ballot at the most recent primary election in the current year or the previous two calendar years.<sup>11</sup>

## Independent candidates

Under the bill, an independent candidate must be registered as unaffiliated in order to appear on the ballot as an independent. But, the 90-day deadline does not apply; the candidate must be registered as unaffiliated only as of filing the candidate's nominating petition, which is due on the day before the primary election.

Current law requires that an independent candidate "claim not to be affiliated" with a political party, but does not provide a way for the candidate to officially disaffiliate with the candidate's former party. The Ohio Supreme Court has ruled that an independent candidate can be disqualified if the candidate votes in a party primary after filing a nominating petition. The bill would prevent an independent candidate from doing so, since the candidate would need to be registered as unaffiliated by the day before the primary.

Under continuing law, any elector may sign an independent candidate's nominating petition, regardless of party affiliation.<sup>12</sup>

## Newly formed political parties

Continuing law allows any elector, regardless of party affiliation, to sign a party formation petition to allow a new political party to be recognized by the state and to have its candidates appear on the ballot with the party's label.

For the first general election after a new party is formed, the party nominates candidates by petition instead of at a primary election. The bill requires those candidates to register as affiliated with the new party. And, the bill requires an elector to be either registered as affiliated with the new party or registered as unaffiliated in order to sign a nominating petition for a candidate who seeks the new party's nomination. Currently, a signer must not have voted at a different party's primary during the current year or the past two calendar years. That is, the bill allows a person who was recently affiliated with another party to change the person's affiliation in order to sign a new party candidate's nominating petition.<sup>13</sup>

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<sup>11</sup> R.C. 3513.05.

<sup>12</sup> R.C. 3501.01(I), 3503.071(D)(2), and 3513.257. See also *State ex rel. Cunnane v. LaRose*, 2022-Ohio-2875 (2022).

<sup>13</sup> R.C. 3513.191(A)(2) and 3517.012. The substantive provisions of R.C. 3517.013 (repealed) were moved to R.C. 3513.191(D). See also R.C. 3517.01(A)(1), not in the bill.

## Technical changes

The bill reorganizes, but does not substantively change, provisions of law in two Revised Code sections regarding voter registration update forms in order to consolidate repetitive language.<sup>14</sup> The bill also eliminates an obsolete provision of law that required the Secretary of State to launch Ohio’s online voter registration system by January 1, 2017.<sup>15</sup>

## Federal and constitutional law

The Ohio Constitution specifies that an otherwise qualified person who has been registered to vote for 30 days “is entitled to vote at all elections.”<sup>16</sup> If the bill were challenged, a court might examine whether the bill’s 90-day deadline to change party affiliation before a primary election conforms with the Constitution’s directive.

Also, the bill might raise uncertainty with respect to candidates for federal office. In particular, the bill does not address the situation of candidates who could not have voted in the party’s last primary election because they did not live in Ohio or were not yet 18 or a U.S. citizen. The federal courts have ruled that a state cannot change or add to the qualifications for federal office, such as by requiring a congressional candidate to reside in the state before the general election. This residence requirement differs from the U.S. Constitution, which requires a member of Congress to be an inhabitant of the state when elected but not necessarily while running for office. Based on that precedent, a reviewing court might examine whether Ohio may require a congressional primary candidate to have voted in an Ohio primary two years earlier in order to appear on the ballot.<sup>17</sup>

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## HISTORY

Action	Date
Introduced	03-04-24

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<sup>14</sup> R.C. 3503.16 and 3503.19 and cross-reference changes in R.C. 3509.02, 3509.04, 3509.08, and 3599.12.

<sup>15</sup> R.C. 3503.20(E).

<sup>16</sup> Ohio Constitution, Article V, Section 1.

<sup>17</sup> U.S. Constitution, Article I, Sections 2 and 3; *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995); *Schaefer v. Townsend*, 215 F.3d 1031 (9<sup>th</sup> Cir. 2000); cert. denied by *Jones v. Schaefer*, 532 U.S. 904 (2001); and *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5<sup>th</sup> Cir. 2006).