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H.B. 680
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Abrams

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SUMMARY

All-mail election in a public health emergency

- Creates in permanent law a contingency procedure that may be used to conduct an election entirely by mail during a public health emergency.
- Allows, in the case of a public health emergency, the Governor and the Director of Health to jointly recommend to the General Assembly, not later than 60 days before an election, that the contingency procedure be used for the election.
- Specifies that the recommendation is valid only if, within three days, the General Assembly adopts a joint resolution approving the recommendation.
- Specifies that, if the contingency procedure is used, then all polling places must be closed on Election Day, and electors generally may cast absentee ballots and provisional ballots only by mail.
- Requires the Secretary of State to send a postcard to each registered elector, notifying them of the procedures and deadlines to apply for and return ballots.
- Requires that, if a board of elections determines that an application for absentee ballots under the contingency procedure is invalid, the board must allow the applicant to cast a provisional ballot by mail.
- Requires the board to provide a secure receptacle outside the office of the board for the return of ballots.
- Allows only an elector who has a disability, who is unable to receive mail, or whose absentee ballots are lost or destroyed to vote in person at the office of the board not later than 7:30 p.m. on Election Day.
- Prohibits the Ohio Department of Health and any local board of health from issuing an order, making a rule, or otherwise taking any action affecting the conduct of an election.

General changes to absent voting

- Shortens the deadline by a week, for all elections, to apply to receive absentee ballots by mail.
- Clarifies in statute that the end of in-person absent voting for uniformed services and overseas absent voters is 6:00 p.m. on the Friday before Election Day, the same as for other voters.
- Clarifies that the Secretary of State may not prepay the return postage on any applications for absentee ballots or on any absentee ballots themselves.

Use of federal CARES Act funds

- Directs the Secretary of State to use any funds received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act through June 30, 2021, for certain purposes, including additional equipment, supplies, and election official pay for the November 2020 general election.

Absentee ballot applications for November 2020

- Prohibits the Secretary of State from mailing unsolicited applications for absentee ballots to any electors for the November 2020 general election.

DETAILED ANALYSIS

All-mail election in a public health emergency

The bill creates in permanent law a contingency procedure that may be used to conduct an election entirely by mail during a public health emergency. The contingency procedure is similar, but not identical, to the procedure that was used for the 2020 primary election under H.B. 197 of the 133rd General Assembly.

Trigger

In the case of a public health emergency, not later than 60 days before an election, the bill allows the Governor and the Director of Health to jointly recommend to the General Assembly that the contingency procedure be used for the election. The recommendation is valid only if, within three days, the General Assembly adopts a joint resolution approving the recommendation (see **COMMENT**).¹

Voting by mail

Absent voting

If the recommendation is approved as described above, then all polling places must be closed on Election Day, and electors generally may cast absentee ballots and provisional ballots

¹ R.C. 3501.19(A).

only by mail. As soon as possible after the joint resolution is adopted and filed with the Secretary of State, the Secretary must send a postcard to each registered elector in Ohio, notifying the elector of the procedures and deadlines to apply for and return ballots under the contingency procedure.

Under the contingency procedure, electors may apply to receive absentee ballots by mail in the same manner as for any other election. (See “**General changes to absent voting,**” below.) The board of elections may deliver absentee ballots in person only in the case of an elector who requests voting help from a bipartisan team of election officials because of a disability or confinement, as under continuing law.²

Provisional voting

If the board determines that an application for absent voter’s ballots is invalid for any reason, the board instead must send the applicant a provisional ballot by mail or, in the case of a disability or confinement, have a bipartisan team of election officials deliver a provisional ballot to the applicant. The board must include all of the following with the ballot:

- The reason the applicant has received a provisional ballot;
- Instructions for the applicant to complete the affirmation printed on the provisional ballot envelope, including an option to submit a copy of a form of voter identification that a provisional voter normally would show to an election official in person;
- Instructions for the applicant to return the provisional ballot to the board in the same manner as an absentee ballot, and a return envelope for that purpose;
- Instructions for the applicant to call a toll-free number to ascertain the status of the applicant’s ballot, as provided under continuing law.

Continuing law procedures for a typical election do not allow persons to cast provisional ballots by mail. If a person appears to vote in person on Election Day and the election officials determine that the person is not eligible to vote there for any reason, the person may cast a provisional ballot. Common reasons for voting provisionally include the person having moved or changed the person’s name without updating the person’s voter registration; the person not being registered to vote; or the person not having an acceptable form of identification.³

Ballot return

Under the contingency procedure, the board of elections must place a secure receptacle outside the office of the board for the return of absentee and provisional ballots. Currently, a board may have such a receptacle, but it is not required to. The bill does not otherwise change the procedures or deadlines for returning voted ballots to the board.⁴

² R.C. 3501.19(B) and 3509.08.

³ R.C. 3501.19(B)(3)(c). See also R.C. 3505.181 through 3505.183, not in the bill.

⁴ R.C. 3501.19(B)(7). See also R.C. 3509.04, not in the bill, and 3511.04.

Limited in-person voting

If the contingency procedure is used for an election, the bill allows only the following categories of electors to vote in person at the office of the board not later than 7:30 p.m. on Election Day:

- An elector who has a disability and who wishes to cast ballots using a voting machine or marking device that is accessible for voters with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. Each board must have at least one such machine or device available.
- An elector who is unable to receive mail at the place where the elector resides or at another location;
- An elector who applied for absentee ballots by the applicable deadline but who has not received the elector's ballots or whose ballots are lost, stolen, destroyed, or defaced.

An elector in that third category must cast a provisional ballot. The board must process the provisional ballot in the same manner as under continuing law, but the ballot is not eligible to be counted if the board determines that the voter did not apply for absentee ballots by the applicable deadline.

The bill specifies that all persons waiting in line to cast ballots as of 7:30 p.m. on Election Day must be permitted to vote. The same requirement applies to polling places under continuing law.⁵

Public health orders

The bill prohibits the Ohio Department of Health and any local board of health from issuing an order, making a rule, or otherwise taking any action affecting the conduct of an election.⁶

General changes to absent voting

Deadline to request ballots by mail

For all elections, the bill shortens the deadline to apply to receive absentee ballots by mail. Under the bill, an elector's application must be received at the office of the board of elections by 12:00 p.m. on the tenth day before Election Day, instead of by 12:00 p.m. on the third day before Election Day, as under current law. By shortening that deadline by a week, the bill provides more time for the board to process the application and mail ballots to the elector, and for the elector to receive, mark, and return those ballots to the board.⁷

⁵ R.C. 3501.19(B)(4), (5), and (6). See also R.C. 3501.32, not in the bill.

⁶ R.C. 3701.02 and 3709.212.

⁷ R.C. 3509.03, 3509.08, 3511.02, and 3511.04.

In-person absent voting

The bill generally does not change the deadline to apply to cast absent voter's ballots in person. However, it clarifies in statute that the end of in-person absent voting for uniformed services and overseas absent voters is 6:00 p.m. on the Friday before Election Day, the same as for other voters. Currently, one section of law governing uniformed services and overseas absent voters sets the deadline at 6:00 p.m. on that Friday, but another sets the deadline at the close of the polls on Election Day.⁸

The statutory timeline for in-person absent voting has not been used in Ohio in several years because of litigation and a series of court orders. Currently, the Secretary of State prescribes a different schedule by directive.⁹

Postage

The bill clarifies that the Secretary of State may not prepay the return postage on any applications for absentee ballots or on any absentee ballots themselves. Continuing law prohibits the boards of elections from prepaying that return postage.¹⁰

Use of federal CARES Act funds

The bill directs the Secretary of State to use any funds received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act through June 30, 2021, for certain purposes. Ohio is eligible for about \$12.86 million in CARES Act grant funds through the U.S. Election Assistance Commission (EAC) to be used to cover additional costs associated with conducting the 2020 federal election cycle due to the COVID-19 pandemic. Under continuing law, any funds received from the EAC are deposited in Ohio's Help America Vote Act fund. Typically, the Controlling Board then authorizes the Secretary to spend those federal funds.

Under the bill, the Secretary must use any such funds for the following purposes:¹¹

- To pay all costs associated with the completion of the March 17, 2020, primary election in accordance with H.B. 197. (H.B. 197 appropriated \$7 million to the Secretary for that purpose, so some of the expenses will already have been paid.)
- To provide a one-time incentive bonus payment to precinct election officials and temporary employees of the boards of elections for the November 2020 general election, in a manner to be determined in conjunction with the boards of elections;

⁸ R.C. 3511.10. See also R.C. 3511.02.

⁹ Ohio Secretary of State, [Election Official Manual, Chapter 5, page 9](#).

¹⁰ R.C. 3509.03, 3509.04, 3511.02, and 3511.04.

¹¹ Section 3 of the bill. See also R.C. 111.28, not in the bill, and U.S. Election Assistance Commission, [2020 CARES Act Grants](#).

- To provide personal protective equipment for election officials, and to pay for cleaning and modifying the layout of polling places and the offices of the boards of elections to provide for adequate social distancing;
- To provide any additional electronics or related equipment needed to handle increased volumes of mail that may result during the November 2020 general election;
- To pay any costs associated with implementing the contingency procedure created by the bill, if that procedure is used.

Absentee ballot applications for November 2020

The bill prohibits the Secretary of State from mailing unsolicited applications for absentee ballots to any electors for the November 2020 general election.

Under continuing law, no public official other than the Secretary may mail unsolicited applications to electors. The Secretary may do so if the General Assembly has made an appropriation for that particular mailing, which it has done for November 2020. In H.B. 166 of the 133rd General Assembly (the most recent main operating budget act), the legislature specified that upon the Secretary's request, the Controlling Board may, but is not required to, release funds to the Secretary for that purpose. The bill overrides that authorization.¹²

COMMENT

The bill allows the General Assembly to require Ohio to follow an alternative election procedure by passing a joint resolution. A reviewing court might examine this provision of the bill because the Ohio Constitution specifies that, "The General Assembly shall enact no law except by bill," which must be presented to the Governor for approval and, unless an exception applies, is subject to the referendum. The Ohio Supreme Court has previously ruled that a joint resolution cannot have the effect of a law.¹³

HISTORY

Action	Date
Introduced	05-26-20

H0680-I-133/ts

¹² Section 4 of the bill. See also R.C. 3501.05 and Section 395.20 of H.B. 166 of the 133rd General Assembly, not in the bill.

¹³ Ohio Constitution Article II, Sections 1c, 1d, and 15 and *Cleveland Terminal and Valley Railroad Company v. State*, 85 Ohio St. 251, 294 (1912).