



ADVISORY 2022-02

March 11, 2022

To: All County Boards of Elections
Board Members, Directors, and Deputy Directors

Re: Substitute Senate Bill 102 and Changes to Local Option Elections Law

BACKGROUND

This Advisory alerts boards of elections to changes in the administration of elections resulting from the passage of [Substitute Senate Bill 102](#) ("S.B. 102"). More specifically, S.B. 102 changes Ohio's liquor law and local option elections. The bill takes effect on March 23, 2022.¹

SUMMARY

I. SPECIAL ELECTIONS FOR LOCAL OPTION ISSUES

With two exceptions, S.B. 102 allows a local option election to be held on a day on which a primary election may be held, even if no primary election is held that day.² Under prior law, a local option election could only be held on a primary election day if there were actually candidate offices on the ballot for that precinct.³ Under continuing law, a local option election can be held on the day of a general election as well.

In the following circumstances, a local option election may not occur on the date of a primary election if there are no candidate offices on the ballot for that precinct:

1. If the question is whether to permit the sale of beer pursuant to R.C. 4305.14(B), the election may only be held on the date of a general or primary election.⁴

Note: Governor DeWine signed Amended Substitute Senate Bill 9 into law on March 9, 2022. The bill allows the category of local option election described directly above to occur on a day on which a primary election may be held, even if no primary election is held that day. This change in law takes effect on June 8, 2022.

¹ [Article II, Section 1\(c\)](#) of the Ohio Constitution.

² [R.C. 4301.33\(B\)](#), [4301.331\(B\)](#), [4301.332\(B\)](#), [4301.333\(A\)](#), [4301.334\(A\)](#), and [4301.356](#).

³ See [R.C. 3501.01](#) (defining primary election).

⁴ See [R.C. 4305.14](#), unchanged by S.B. 102.

2. If the question is whether to permit the sale of spirituous liquor by the glass in precincts in which the electors voted against the repeal of Article XV, Section 9 of the Ohio Constitution (Prohibition) in 1933, the election may only be held on the date of a general election.⁵

II. SALES OF ALCOHOL ON SUNDAYS

A. HOURS OF OPERATION FOR SUNDAY SALES AND BALLOT LANGUAGE

S.B. 102 authorizes a retail liquor permit holder or a liquor agency store to sell alcohol on Sundays during the same hours as on Monday through Saturday.⁶ Under prior law, Sunday sales hours were restricted to begin at 10:00 a.m. or 11:00 a.m., based upon the local option that passed within the jurisdiction, and end at midnight.

As a result of this change, the ballot language for local option elections that authorizes Sunday sales will no longer reference the above hours of operation.⁷ Our Office has revised the following forms to reflect the change in law:

- Local Option Petition Forms: [Forms 5-D](#), [5-R](#), [5-S](#), and [5-Q](#);⁸
- Notice to liquor permit holder: [Forms 5-H](#) and [5-M](#);
- Notice of election to be held on local option questions: [Form 126-A](#); and
- Certificate of official result of election form: [Form 126-B](#) (Excel format).

A local option petition filed for the November 8, 2022 General Election on an outdated petition form (prior versions of Forms 5-D, 5-E, 5-R, 5-S, 5-Q, and 5-T) must not be invalidated solely on that basis.⁹ If the local option petition otherwise satisfies all legal requirements for certification, the Sunday sales question may be certified and appear on the ballot without reference to hours of operation.

B. SUNDAY SALES QUESTIONS FOR THE 2022 PRIMARY ELECTION

S.B. 102 includes temporary law that governs how boards should handle Sunday sales questions for the May 3, 2022 Primary Election.¹⁰ In such an instance, boards must do the following:

1. If the ballots have not been printed as of March 23, 2022 (the effective date of the bill), revise the question(s) to authorize sales of beer, wine, mixed beverages, or spirituous liquor on Sunday during the same hours those products may be sold on Monday through Saturday.

2. If the ballots have been printed, post a notice at each polling place on Election Day and enclose with each absentee ballot a notice stating: “Due to a recent change in law, votes for limited

⁵ See [R.C. 4303.29\(C\)\(1\)](#), unchanged by S.B. 102.

⁶ [R.C. 4301.172](#) and [4303.182](#).

⁷ [R.C. 4301.351\(B\) and \(C\)](#), [4301.354\(B\) and \(C\)](#), and [4301.356](#).

⁸ Forms 5-E and 5-T have been consolidated with Forms 5-D and 5-Q.

⁹ See [R.C. 3501.38\(L\)](#).

¹⁰ S.B. 102, Section 3.

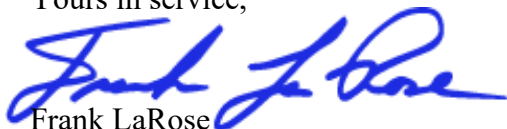
Sunday sales hours will be counted as approval for sales on Sunday during the same hours as on Monday through Saturday.”

C. SIGNATURES REQUIRED FOR SUNDAY SALES LOCAL OPTION

S.B. 102 revises the number of signatures needed to place a Sunday sales question on the ballot. As a result of the bill, the required number of signatures varies based on whether the petition is solely for a Sunday sales question. If the petition is solely for one or more Sunday sales questions, the petition only needs the signatures of 50 electors.¹¹ If the petition is for a question that is not specific to Sunday sales, or the petition is for a combination of questions for Sunday sales and questions not specific to Sunday sales, the signature requirement remains 35% of the total number of votes cast in the precinct for Governor at the preceding general election for that office.¹²

A revised version of the Guide to Local Liquor Options Elections will soon be available. Until then, boards must share a copy of this Advisory whenever a petitioner requests information and petition forms for a local option election. If you have any questions regarding this Advisory, please contact the Secretary of State’s elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State

¹¹ [R.C. 4301.33\(C\)\(3\)](#), [4301.332\(E\)\(3\)](#), and [4301.333\(B\)](#).

¹² [R.C. 4301.33\(C\)\(1\) and \(2\)](#), [4301.332\(E\)\(1\) and \(2\)](#), and [4301.333\(B\)](#).