

Advisory 2024-01

February 6, 2024

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

Re: House Bill 33 ("H.B. 33") and the Data Analysis Transparency Archive Act ("DATA Act") Implementation

BACKGROUND

Prior to July of 2023, Ohio law lacked a formal, statutory requirement for the retention of digital election records (or data). The 1960 Civil Rights Act requires federal election records, including electronic data, to be kept for a short period of time, but Ohio had not applied that requirement to state and local records, defined what constitutes an election record, or specified how or how long those records should be archived.

In recent years, election technology has advanced, with the adoption of online voter registration and the use of new electronic voting systems, from pollbooks to voting machines. Simply put, the law did not adequately keep up with these advancements, and the lack of regulations surrounding election data led Ohio's 88 county boards of elections to adopt disparate and often conflicting protocols for defining and managing election-related data files.

The 2020 presidential election brought this reality to the forefront, as the scrutiny of results nationwide led to unprecedented requests for election records. These requests inundated boards of elections, which in many cases no longer had the digital files being sought because the law didn't consistently require their retention. The desire to analyze and audit digital election records is not unique to 2020. These requests will only intensify moving forward, as election integrity continues to be a top priority for the public, political parties, and candidate campaigns. Without clear guidelines for retaining this data, boards will continue to be pressed with demands for public records immediately after an election to prevent these digital files from being discarded.

To address this emerging challenge, my office worked with the General Assembly to develop legislation entitled the DATA Act, which now serves as model legislation in the effort to modernize election administration. Here's what it does:

- **Data:** States have generally failed to adopt consistent definitions of digital election data, leading to confusing and often conflicting auditing outcomes. The DATA Act codifies standard definitions of key election data points so post-election results can be analyzed more effectively and accurately.
- **Analysis:** The lack of clear election data definitions often complicates the process of auditing and analyzing results, therefore, leading to confusion from anyone looking to analyze or audit the information. The objective of this legislation is not only to define the data points but also to create a centralized Office of Data Analytics and Archives within the Office of the Secretary of State that can serve as a clearinghouse for the retention and review of electronic election records.
- **Transparency:** Building trust in democracy begins with election transparency, and the DATA Act will make that goal more achievable by crowdsourcing and platforming election data for public scrutiny. The ultimate objective of the DATA Act is to use the newly created Office of Data Analytics and Archives to publish election data and results online, allowing for full transparency of results, both immediately following an election for auditing purposes and over time for comparative analysis year-over-year.
- **Archive:** Counties not only lack consistent standards for defining election data, but they also lack clear methods and timelines for retaining such data. The DATA Act seeks to codify a process by which election data – local, state, and federal – must be transferred to the Secretary of State’s Office of Data Analytics and Archives for public disclosure.

On July 4, 2023, Governor Mike DeWine signed H.B. 33, which contained the DATA Act, into law. This landmark legislation represents the first-ever substantive effort by any state in more than 60 years to address the antiquated, disjointed methods of election data retention. How will the DATA Act directly benefit Ohio’s 88 county boards of elections?

1. **Public Records.** The DATA Act requires the development of a statewide system of data retention that will be managed and maintained by the Ohio Secretary of State’s Office. Election data pertaining to a specific election will begin to be published on the Secretary of State’s website the 46th day before that election and will continue to be provided through the 81st day after the election. The

Secretary of State's Office will then archive this data. This will help to alleviate the burden of post-election records requests currently being managed by the boards.

2. **Surveys.** The Secretary of State currently requires boards to provide election-related data through the collection of surveys, an archaic, spreadsheet-driven process that costs board employees valuable time. These requirements intensified with the passage of House Bill 458 in the last General Assembly, which ordered boards to provide more frequent uploads of absentee voting statistics and other data points. The DATA Act will help streamline the collection of this information.
3. **Uniformity.** As has already been established, state law lacked election data definitions and did not set forth a clear standard for the retention of digital election records. This led to public confusion and an inability to reconcile specific election data during an election and after an election. While election outcomes remained highly accurate, the lack of key election definitions, such as "voting history" for example, across all 88 counties created made reconciling statewide election data difficult, which then required deeper explanation or evidence. The DATA Act provides standard definitions and protocols for archiving digital data.

Implementing the DATA Act will significantly modernize Ohio's process of retaining digital election records, but a collaborative partnership with boards of elections is needed to ensure success. Most importantly, the legislation established a timeline for the development of these new protocols, with the effective date of full implementation set for January 1, 2025. This advisory alerts boards to the work that needs to be completed between now and that implementation deadline.

IMPLEMENTATION

I. NEW STANDARD DEFINITIONS

The Act defines critical election data points through both the Ohio Revised Code and administrative rules. Boards will be tasked with documenting these data points and submitting them to the Secretary of State's office. Specifically, with new definitions for "registration date," "last activity date," "last activity type," and "type of ballot cast." "Registration date" was codified through the DATA Act and is defined in R.C. 3503.15(C)(9)(a). The definitions of "last activity date" and "last activity type" will be promulgated through the Ohio Joint Committee on Agency Rule Review ("JCARR") rulemaking process. "Type of ballot cast" will also be promulgated through rules and

require boards to keep track of absent voters' ballots, ballots cast on Election Day, and provisional ballots. Finally, the data category of "county of ballot cast" is already collected by the Secretary of State's office and will now be published in the Statewide Voter Registration Database.

Type and County of ballot cast are both elements of a new standard definition for voting history. As part of that new standard definition, only voters who cast a ballot that is counted will receive voting history for that election.

II. ADDITIONAL DATA REQUIREMENTS

Continuing data element requirements for boards are listed in R.C. 3503.15(C). For each registered elector, the Statewide Voter Registration Database must include the elector's name, birth date, current address, precinct number, driver's license or state identification card number (if available), the last four digits of the elector's social security number (if available) the elector's telephone number, and email address (if available). Boards will continue to need to document these data sets and prepare them for transfer to the Secretary of State's office. Finally, the law gives the Secretary of State authority to add additional data requirements through directives or the rulemaking process. Any such additional information will be communicated to boards in future rules and directive(s).

III. DATA SNAPSHOT REQUIREMENTS

In addition to new data definitions and requirements, boards are required to generate daily snapshots of their county voter registration database and provide those snapshots to the Secretary of State's office. Beginning on the 46th day before an election and ending on the 81st day after an election the snapshots must be recorded and provided to the Secretary of State's office. Boards must take a snapshot of their public voter registration database at 4:00 p.m. each day throughout the aforementioned time period and then securely transmit the snapshot to the Secretary of State. The Secretary of State will archive and retain the information for 22 months after an election and make the snapshots available on the Secretary of State's website. The manner in which the boards must transmit daily snapshot records will be provided by the Secretary of State in future rules and directive(s).

IV. PUBLIC RECORDS

The DATA Act makes several changes to public records law relating to election data. Voter telephone numbers and email addresses are no longer public information. The retention period for ballots for non-federal election is extended from 60 to 81 days after

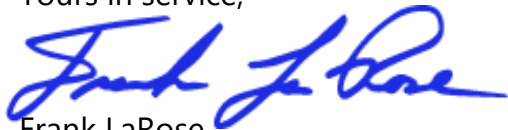
the election in which they were cast, and electronic images of ballots are included in that retention requirement.

V. OTHER UPDATES

To accommodate the additional information required by the DATA Act, technical updates to the Statewide Voter Registration Database will be necessary. Updated packet types and structures will enable the transmission of new voter information. Finally, adjustments to the required data sets within the existing tables will be necessary. Specific details regarding technical updates and adjustments to the required data sets will be prescribed by the Secretary of State via Directives, Advisories, Technical Documentation, and Administrative Rules.

If you have questions regarding this Advisory, please contact the Secretary of State's Elections Counsel at (614) 466-2585.

Yours in service,



Frank LaRose

Ohio Secretary of State