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ADVISORY 2007-02

March 14, 2007

To: All Ohio Board of Elections
Members, Directors, and Deputy Directors

Sub. H.B. 9, signed by the Governor on December 27, 2006, revises public records laws, creates a library records commission in each public library, creates special taxing districts, and revises laws regarding the Sheriff's concealed handgun licensure records. Please be advised that parts of this new law will impact Boards of Elections.

Impact on the Boards of Elections

First and foremost, the bill's effective date of March 29, 2007 applies only to sections of the bill that will have no effect on Boards of Elections. However, there are sections of the bill that will significantly change public records law for public offices (as outlined in the General Provisions below) that will affect Boards of Elections, and these sections are effective September 29, 2007.

When the general provisions below become effective September 29, 2007, Boards of Elections must comply with them.

General Provisions in Sub. H.B. 9

Sub. H.B. 9 specifically requires and provides:

- The Attorney General must develop and provide to all public offices a model public records policy, and requires all public offices to adopt a public records policy for responding to public records requests in compliance with the Public Records Law.
- The Auditor of State, in the course of an audit of a public office must audit for compliance with the act's training and public records policy provisions.
- If a public records request includes information exempt from public inspection or copying, a public office is required to notify the person seeking to inspect or copy the record regarding any redaction or to make the redaction plainly visible. The bill further specifies that a redaction is a denial of a request to inspect or copy the redacted information except if federal or state law authorizes or requires the redaction.

- A public office may deny a request for public records when the requesting party makes an ambiguous or overly broad request. A public office may also deny a public records request if it cannot reasonably identify the public records being requested. However, the public office must provide the requester an opportunity to revise the request.
- If a request for public records is ultimately denied, the new law requires a public office to provide the requester an explanation of the reasons for the denial, including legal authority.
- A public office is generally precluded from conditioning the availability of public records upon disclosure of the requesting party's identity or the intended use of the requested record.
- A public office may ask that a public records request be made in writing, ask for the requester's identity, and ask about the intended use of the requested information only if two conditions are met: a) the public office discloses to the requester that compliance is not required and, b) when a written request or disclosure of the identity or intended use would enhance the ability to comply with the request.
- A public office may require advance payment of the cost of providing a copy of the requested public records in accordance with the requesting party's choice of the medium in which the copy is made.
- The transmission of copies of requested public records may be by mail (current law) or by any other means of delivery or transmission.
- An aggrieved person who files a mandamus action against a public office may recover statutory damages and court cost, upon certain findings made by the court for failure to comply with the Public Records Law.

Other provisions in Sub. H.B. 9

Sub. H.B. 9 also addresses library records commissions, special taxing district records commissions, school district records commissions, and journalists' access to Sheriffs' concealed handgun licensure records. Since these provisions do not affect the Secretary of State's office or Boards of Elections, their details have been omitted from this advisory.

General Information For Boards of Elections Regarding Sub. H.B. 9

The Attorney General will furnish the Secretary of State's office with a model public records policy which will be distributed via an explanatory advisory to Boards of Elections. As noted, portions of the bill affecting Boards of Elections take effect September 29, 2007. Closer to the effective date of the bill, our office will provide information to Boards of Elections to assist them in adopting their own policies for responding to public records requests in compliance with the Public Records Law.

This summary serves as a general overview of how this legislation (126th G.A., Sub. H.B. 9) will affect Boards of Elections. A copy of the bill as adopted by the Ohio General Assembly can be obtained online at: <http://www.lsc.state.oh.us/>.

If you have any questions or need additional information please contact the Elections Division legal staff assigned to your region.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Brunner".

Jennifer L. Brunner
Secretary of State