

ADVISORY 2010-04

June 16, 2010

To: All County Boards of Elections

Re: Law Affecting Special Congressional Elections to Fill a Vacancy in Nomination Being Held Prior to August 14, 2010

On June 10, 2010, Governor Strickland signed House Bill 5 into law. This new law permits any Board of Elections that will conduct a special primary election on or before August 4, 2010 for the purpose of nominating a candidate for congressional office to conduct that election with a limited number of polling places. **The law expires on August 14, 2010.**

Under H.B 5, Boards may utilize up to four polling locations for the special primary election rather than opening all of the polling locations in the county. When determining which polling places will be used at the special primary election, Boards should take into consideration the geographic location of the proposed polling locations, the availability of parking, the availability of public transportation relative to the location, and ADA accessibility requirements. Because a special primary election for nomination of a candidate for the U.S. House of Representatives is a federal election, no waivers of ADA requirements will be granted.

In order to use a limited number of polling locations, Boards must assign each elector residing in the Congressional district in the county to one of the specific polling locations. As with typical precinct-based polling places, each elector will be permitted to vote *only* at the polling location to which he or she was assigned. If an elector attempts to vote at a polling location other than the polling location to which the elector was assigned, the elector must vote a provisional ballot. Additionally, individuals eligible to cast a provisional ballot may also cast a provisional ballot at the office of the Board of Elections prior to and on the date of the special election.

Boards must mail a notification to every address in the county at which an elector, who is eligible to vote in the special primary election, resides. Where multiple electors reside at the same address Boards *may* mail a notice to each elector, but the statute only requires a single notice to each affected address. The notice must inform the elector of the special election and his/her assigned polling location for the special election. The notification must clearly and conspicuously state:

If you are a member of the <political party conducting the primary election> or support the principles of the <political party conducting the primary election> and wish to vote in that party's congressional primary election, your voting location for that primary election will be <insert polling location>.¹

¹ Insert the name of the political party holding the special congressional primary election in the appropriate place.

In addition, the notice must include an absent voter's ballot application (**SOS Form 11-A**). Again, a Board may choose to send an absent voter's ballot application to every eligible elector in the county. If the Board chooses to include a single absentee ballot application, the notice must indicate that the absent voter's ballot application may be copied for other electors residing at the address to use to request an absent voter's ballot.

The statute provides that a board of elections holding a special election is not required to provide additional notice to the electors eligible to vote in the special election of the elector's polling location for the general election. However, it is recommended that Boards of Elections state in the notice that the assigned polling location is for the special election only and that electors will return to their regular polling location for the general election.

As with any primary election, in order to vote in the election, an elector must affiliate with the political party holding the special primary election. Moreover, electors who are not currently affiliated with the political party holding the special primary election and who are affiliated with a different political party are subject to being challenged as provided in R.C. 3513.19 and 3513.20. Under R.C. 3513.19, "party affiliation shall be determined by examining the elector's voting record for the current year and the immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of section 3513.05 of the Revised Code." The challenge requirement applies whether the elector votes an absent voter's ballot or in person on the day of the special election.

Other than the specific changes addressed in this advisory, all other election requirements must be followed in conducting a special congressional primary election.

If you have any questions regarding this Advisory, please feel free to contact the elections attorney in the Secretary of State's office assigned to assist your County Board of Elections.

Sincerely,

Jennifer Brunner