

Advisory No. 2010-05

June 16, 2010

To: All County Boards of Elections

Re: Am. Sub. H.B. 48 (128th General Assembly) – Incorporating the Federal MOVE Act into Ohio Law

Amended Substitute House Bill No. 48, signed by the Governor on April 2, 2010, incorporates into Ohio law the provisions of the federal Military and Overseas Voter Empowerment (MOVE) Act. Some portions of the new law became effective immediately upon being signed by the Governor. However, the portions of the law relating to elections administration become effective on July 2, 2010. An electronic version of the enrolled act may be reviewed at: http://www.legislature.state.oh.us/BillText128/128_HB_48_EN_N.html

The purpose of this Advisory is to provide boards of elections a brief overview of the changes enacted in Am. Sub. H.B. 48 that will affect the administration of elections beginning with the November 2, 2010 General Election.

Boards are advised that Am. Sub. H.B. 48 renames "armed service absent voter's ballots." These ballots will now be referred to in the new law as "uniformed services or overseas absent voter's (USOAV) ballots." The act requires overseas voters who wish to vote absent voter's ballots to vote according to the provisions of Chapter 3511, as amended.

Am. Sub. H.B. 48's implementation of the MOVE Act changes Ohio law to require:

- that absent voter's ballots for certain elections be available earlier for uniformed services and overseas voters (R.C. 3509.01(B));
- that a uniformed services or overseas absent voter (USOAV) be permitted: (a) to request voter registration applications electronically from the office of the Secretary of State or the board of elections of the county in which the person's voting residence is located, and (b) to receive the applications through electronic means (R.C. 3503.191) ;
- that a USOAV be permitted: (a) to apply electronically to the office of the Secretary of State or the board of elections of the county in which the voter's voting residence is located for a uniformed service or overseas absent voter's ballot, and (b) to express a preference for the manner in which the voter will receive the unvoted ballot, whether by U.S. mail or electronically (R.C. 3511.021(A)); and
- that a USOAV be able to determine via a free access system established by the Secretary of State, in coordination with the boards of elections:
 - whether the voter's application for an absent voter's ballot was received and processed,
 - whether the ballot was issued and, if so, when,

- whether election officials received the voter's voted ballot,
- whether there was any error on the ID envelope containing the voter's marked ballot and, if so, how the voter may correct the error, and
- whether the voted ballot was counted. (R.C. 3511.021(B).)

New division (B) of R.C. 3509.01 requires that absent voter's ballots for uniformed services or overseas voters must be ready for use on the 45th day (rather than the 35th day as is currently in law) before a primary or general election. Ballots for all other absentee voters continue to be required to be ready for use on the 35th day before a primary or general election.

New division (D) of R.C. 3509.01 governs the availability of absent voter ballots to be used at a special election to be held on the day other than a primary or general election:

If the laws governing the holding of a special election on a day other than the day on which a primary or general election is held make it impossible for absent voter's ballots to be printed and ready for use by the deadlines established in division (B) of this section, the absent voter's ballots for those special elections shall be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of that special election.

The new requirement to have certain absent voter's ballots ready for use no later than 45 days before an election necessitated moving up various statutory deadlines affecting candidates, questions, and issues to be placed on the ballot. Consequently, Am. Sub. H.B. 48 makes the following changes:

- Generally changes filing deadlines for candidate, question and issue petitions from the 75th day to the 90th day before the election (R.C. 3501.02).
- Generally changes the certification deadline for a question or issue submitted by a governmental entity or taxing authority from the 75th day to the 90th day before the election. The changes are found throughout the Revised Code, amending statutes that give specific authority to governmental entities to certify questions or issues to the ballot.

(Note: Am. Sub. H.B. 48 does not change certification deadlines specified in the Ohio Constitution or in county or municipal charters.)

- Generally increases by 10 days other associated election deadlines; examples include (but are not limited to) the following:
 - the write-in candidate filing deadline changes from the 62nd day to the 72nd day before the election (R.C. 3513.041);
 - the deadline to protest write-in candidate changes from 57th day to 67th day before the election (R.C. 3513.041);
 - the deadline to protest the candidacy of any person who filed a declaration of candidacy and petition changes from the 64th day to the 74th day before the primary election (R.C. 3513.05);
 - the date on which the board of elections of the most populous county in a district must certify to the board of elections of each county in the district the candidates to be printed on the primary election ballot changes from the 60th day to the 70th day before the primary election (R.C. 3513.05).

- the deadline to protest the candidacy of any person who filed a nominating petition for nonpartisan office changes from the 64th day to the 74th day before the general election (R.C. 3513.263);
- the date after which a candidate cannot be removed from the ballot, absent a timely filed protest, changes from the 50th day to the 60th day before the election (R.C. 3501.39(B)).

Board of elections members, directors, deputy directors and staff are advised to examine the revised *2010 Ohio Election Calendar* (issued under separate cover on May 28, 2010) to become familiar with the new deadlines enacted in Am. Sub. H.B. 48.

Other significant changes of Am. Sub. H.B. 48 that are relevant to election administration include the following:

- Keeps the March presidential primary, but eliminates the different deadlines currently associated with the presidential primary election (e.g., for filing candidate petitions and protests, certifying the official form of the ballot, and having absent voter's ballots available), providing more consistency for deadlines regardless of the primary election.
- Permits the Secretary of State to delegate responsibilities for implementing the MOVE Act to the boards of elections and requires the boards to perform any duties so delegated (R.C. 3501.05 and 3501.11).
- Requires a board of elections to accept and process federal write-in absentee ballots as required under federal law (R.C. 3511.14).
- Prohibits the Secretary of State or a board of elections from refusing to accept and process a voter registration application, absent voter's ballot application, returned absent voter's ballot, or federal write-in absentee ballot from an individual who is eligible to vote as a uniformed services or overseas absent voter under federal law because of any state or local requirements regarding notarization, paper type, paper weight and size, envelope type, or envelope weight and size (R.C. 3501.012).
- Increases from 40 days to 56 days before an election the time in which an election must be held to fill a vacancy in an elected office, and requires candidates to fill vacancies to be named not later than the 50th day before the day of the election (R.C. 3.02, 1901.10, and 3513.31).

The Secretary of State's office is developing the forms, free access system, procedures and rules necessary to fully implement the provisions of Am. Sub. H.B. 48. Information about these aspects of implementation will be provided to boards of elections under separate cover.

If you have any questions concerning this Advisory, please contact the elections attorney assigned to your county.

Sincerely,

Jennifer Brunner