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Advisory 2011-09
November 10, 2011

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

Re: **Sub. H.B. 318 (129th General Assembly)**

SUMMARY

This Advisory alerts boards of elections to changes in law that will affect the administration of elections due to the passage of Substitute House Bill 318 (Sub. H.B. 318), including the addition of a June 12, 2012 primary election for nominating partisan candidates for Representative to Congress, and electing presidential delegates and alternates to a party nominating convention. This Advisory provides information about handling the December 7, 2011 candidate filing deadline (in current law) in light of the March 14, 2012 filing deadline for the June 12, 2012 primary election.

Note that Advisories, like Directives, are issued to provide instruction as to the proper method of conducting elections and both should be followed as such. R.C. 3501.05(B).

DISCUSSION

The following changes were enacted in Sub. H.B. 318, which does not become law until January 20, 2012.

A. Two Primary Elections

If Sub.H.B. 318 becomes law, Ohio will have two primary elections – one on March 6, 2012 and another one on June 12, 2012.

1. March 6, 2012 Primary Offices on the Ballot

- Federal Offices:
 - Member of the United States Senate
- State Offices:
 - Member of the Ohio General Assembly (Ohio House of Representatives and Ohio Senate)
- County Offices:
 - County Commissioner
 - County Coroner
 - County Engineer

- County Prosecutor
- County Recorder
- County Sheriff
- County Treasurer
- County Auditor (unexpired term, if applicable)
- Judicial Offices:
 - Supreme Court Justice
 - Court of Appeals Judge
 - Court of Common Pleas Judge
- Other Offices:
 - Clerk of Courts
 - State Central Committee Member for major political party
 - County Central Committee Member for major political party

2. June 12, 2012 Primary Offices on the Ballot

- Delegates and alternate delegates to the national convention of a political party (only the name of the presidential candidate to whom the delegate is pledged will appear on the ballot, not the individual names of the delegates and alternate delegates).
- Member of the United States House of Representatives

B. Filings

Because Sub.H.B. 318 does not take effect until January 20, 2012, the candidate filing deadlines in current law will remain in effect through 2011.

1. Filing deadlines

Under current law, declarations of candidacy for partisan candidates must be filed by 4:00 p.m. on December 7, 2011 and declarations of intent for write-in candidates must be filed by 4:00 p.m. on December 27, 2011. As with any law enacted by the General Assembly, Sub.H.B. 318 could be repealed or subject to a stay as a result of a referendum petition. **Accordingly, this office recommends that all candidates, regardless of whether they will run in the March 6 or June 12 primary election, file on or before the December 7, 2011 filing deadline.**

For those offices that ultimately appear on the ballot for the March 6, 2012 primary, only the December 2011 filing will be necessary.

For those offices that ultimately appear on the June 12, 2012 ballot, Sub.H.B. 318 renders the December filings null and void on the effective date of Sub.H.B. 318. Those candidates will have to file new declarations of candidacy for partisan candidates by 4:00 p.m. on March 14, 2012 and new declarations of intent for write-in candidates by 4:00 p.m. on April 2, 2012. The normal restrictions on seeking multiple offices under R.C.

3513.052 will not apply to those candidates who filed in December 2011 and must re-file in 2012.

2. Congressional districts

Sub.H.B. 318 provides that the General Assembly intends to allow candidates for United States House of Representatives, and district delegates and district alternate delegates to the national convention of a political party to file based on the sixteen-district congressional map then-enacted. Because Ohio has lost two congressional seats, candidates cannot file under the 18-district map in current law. To date, the only 16-district map enacted is the map in Sub.H.B. 319¹. Under R.C. 3513.05, candidates should file in the county with the board of elections of the county within which the major portion of the district population is located. A list of the most populous counties based on the 16-district map is attached.

3. Filing Fees

Filing fees must be collected for candidates (and questions, issues, and local options) filing for any election pursuant to R.C. 3513.10.

If a candidate files for United States House of Representatives, delegate, or alternate delegate to the national convention of a political party on December 7 or 27, 2011 and that any declaration of candidacy and petition or declaration of intent to be a write-in candidate is declared “null and void” by operation of Sub. H.B. 318 on January 20, 2012, unless Sub. H.B. 318 is repealed or is subject to referendum, the board must refund the filing fee to the person who paid the fees no later than January 27, 2012.

C. Certifying Candidates

All candidate petitions filed by the applicable December 2011 deadlines that are determined by the board to be valid and sufficient must be certified to the March 6, 2012 primary election ballot not later than December 19, 2011. R.C. 3513.05. If a candidate for United States House of Representatives, delegate, or alternate delegate to the national convention of a political party is certified to the March 6, 2012 primary election ballot, that candidacy will be declared “null and void” by operation of Sub. H.B. 318 on January 20, 2012, unless Sub. H.B. 318 is repealed or is subject to referendum.

D. Funding for two Primary dates

Sub.H.B. 318 appropriated funds in order to reimburse each county for the certified costs of the election. Following the June 12, 2012 primary election, the secretary of state will provide counties with a spreadsheet by which county boards of elections will account, by category

¹ The effective date of H.B. 319 is December 26, 2011. Petitioners supporting a referendum of H.B. 319 have until December 25, 2011 to submit petitions purporting to contain sufficient number of valid signatures to stay H.B. 319, including the 16-district congressional district map, pending petition signature verification and a statewide vote at the 2012 general election.

(e.g., poll worker pay, poll worker training fees, poll worker training materials, ballot printing, absentee ballot postage, machine delivery, voting location rental, etc.), for their local costs exclusively associated with that election. Reimbursement will be made from the Office of Management & Budget once all counties have submitted complete accountings to the secretary of state and transmitted to OMB. It is very important for counties to keep a strict accounting of costs associated with the June 12, 2012 in order to document and receive reimbursement.

E. Retention of materials from the March 6 Primary Election in light of preparations for the June 12 Primary Election

Because the June 12, 2012 primary election is not being held within 60 days of the March 6, 2012 primary election, the special canvassing procedures discussed in the 3rd paragraph of R.C. 3505.31 do not apply. However, because party nominations for candidate for United States Senator appear on the March 6 primary election ballot, it is considered a federal election and the board shall carefully preserve all ballots prepared and provided by it for use in that election, whether used or unused, for twenty-two months after the day of the election.

F. Special Elections

If Sub. H.B. 318 goes into effect in 2012, Ohio will only have special elections on March 6, 2012, June 12, 2012, and November 6, 2012 unless authorized by a municipal or county charter. This means that local questions and issues that are otherwise not required to be voted on at a general election and local options may appear on the March and/or June primary election ballots.

Sub.H.B. 318 will eliminate the August 2012 special election and will authorize a special election on June 12, 2012. Sub.H.B. 318 will not change the current prohibition on February and May special elections in R.C. 3501.01(D) in a year in which a presidential primary election is held, except as authorized by a municipal or county charter. Sub.H.B. 318 also will not change the authorization for a special election on the March primary in a presidential primary year.

Not later than 90 days before the day of the special election, the political subdivision or taxing authority must follow the procedures under the Ohio Revised Code in order to place a question or issue on the ballot.

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

Sincerely,



Jon Husted