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ADVISORY 2014-04

June 2, 2014

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

Re: Sub. S.B. No. 205, Sub. S.B. No. 216, and Am. S.B. No. 238 (130th General Assembly)

SUMMARY

This Advisory alerts boards of elections to changes in the administration of elections resulting from the passage of three bills: [Substitute Senate Bill 205](#), [Substitute Senate Bill 216](#), and [Amended Senate Bill 238](#).

BACKGROUND

Substitute Senate Bill 205 makes changes to the mailing of absentee ballot applications and ballots, the information required on an absentee ballot identification envelope, and the procedures for assisting electors.

Substitute Senate Bill 216 makes changes to the procedures for casting a provisional ballot, the written affirmation on the provisional ballot envelope, and other provisions as outlined below.

Amended Senate Bill 238 changes the number of days available for absentee voting.

EXPLANATION

Substitute Senate Bill 205 and Substitute Senate Bill 216

Polling Places

- If three or more members of the board of elections decide to have a single polling place for more than one precinct, the Board may:
 - Designate a single presiding judge for the voting location,¹ and
 - Combine the pollbooks for those precincts to create a single pollbook for the voting location.²

¹ The presiding judge (also known as the voting location manager) must be a member of the political party whose candidate received the highest number of votes for governor at the most recent general election for that office in the precincts whose polling places are located at the applicable voting location, when tallying the combined vote for governor in those precincts. R.C. 3501.22(A)(2).

² R.C. 3501.22(A)(2).

Legal Name Change

- If a registered elector provides proof of a legal name change to a precinct election official—such as a marriage license or a court order that includes the elector’s current and prior names—the elector may complete and sign a notice of change of name and cast a regular ballot, so long as the elector is registered to vote in that precinct.³
 - Precinct Election Officials should use [Secretary of State Form 10-L](#) to document a change of name on Election Day.
- A registered elector who moves from one precinct to another *and* changes his or her name on or prior to the day of the election must cast a provisional ballot. The registered elector must complete and sign, under penalty of election falsification, the written affirmation on the provisional ballot envelope to update his or her name and residence. If the registered elector properly completes the affirmation, the board of elections must update the elector’s name and address based on the information provided by the voter.⁴

Identification

- A precinct election official is no longer required to mark the pollbook to indicate that an elector appeared to vote and presented as identification a driver’s license or state identification that did not contain the elector’s current address. A precinct election official is also no longer required to record the last four digits of the elector’s driver’s license or state identification card number in this instance.⁵

Note: It is imperative that each board of elections train its precinct election officials to understand that an Ohio driver’s license or state identification card with the elector’s former address is a valid form of identification necessary to cast a regular ballot if the elector’s current residential address is printed in the pollbook.⁶

- If an elector does not have or is unable to provide to the precinct election officials any of the valid forms of identification⁷, the elector may cast a provisional ballot and either:
 - Write the elector’s driver’s license or state identification card number or the last four digits of the elector’s Social Security Number on the provisional ballot envelope, or
 - Appear at the office of the board of elections no later than the seventh day after Election Day and provide a valid form of identification, the elector’s driver’s

³ R.C. 3503.16(B)(1)(b).

⁴ R.C. 3503.16(B)(2)(b).

⁵ R.C. 3503.16(B)(1)(a).

⁶ R.C. 3501.01(AA); *See also*, Section 5, Sub. S.B. 216.

⁷ The valid forms of identification are: a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections under R.C. 3503.19, that shows the name and current address of the elector. R.C. 3505.18(A)(1).

license or state identification card number, or the last four digits of the elector's Social Security Number.⁸

Who Casts a Provisional Ballot

- The following individuals are permitted to cast a provisional ballot at an election:
 - An individual who declares that he or she is a registered voter in the precinct in which the individual desires to vote and that the individual is eligible to vote in an election, but the name of the individual does not appear on the official list of eligible voters for the precinct or an election official asserts that the individual is ineligible to vote;
 - An individual who does not have or is unable to provide to the election officials a valid form of identification;
 - An individual whose name in the poll list or signature pollbook has been marked as having requested an absentee ballot or a UOCAVA absentee ballot for that election and who appears to vote in-person at the polling place;
 - An individual whose notification of registration has been returned undelivered to the board of elections and whose name in the official registration list and in the poll list or signature pollbook has been marked as provided for in R.C. 3503.19(C)(2);
 - An individual who has been successfully challenged under R.C. 3505.20 or 3513.20 or whose application or challenge hearing has been postponed until after the day of the election pursuant to R.C. 3503.24(D)(1);
 - An individual who changes his or her name and remains within the precinct but does not provide proof of the change of name or who moves from one precinct to another within a county, moves from one precinct to another and changes his or her name, or moves from one county to another within the state, and completes and signs the required forms and statements; or
 - An individual whose signature, in the opinion of the precinct officers under R.C. 3505.22, is not that of the person who signed that name on the voter registration form.⁹

- An elector who moves from one precinct to another within a county or from one county to another county within the state on or prior to the day of the election may complete and sign, under penalty of election falsification, the written affirmation on the provisional ballot envelope to update his or her residence. If the registered elector properly completes the affirmation, the board of elections must update the elector's address based on the information provided by the voter.¹⁰

⁸ R.C. 3505.18(A)(2).

⁹ R.C. 3505.181(A).

¹⁰ R.C. 3503.16(B)(2)(b); 3503.16(C)(2).

Procedure for Casting a Provisional Ballot

- An individual must complete and execute a written affirmation stating that he or she is a registered voter in the precinct in which the individual is voting and is eligible to vote in that election prior to casting a provisional ballot.¹¹
- If an individual casting a provisional ballot provides a valid form of identification¹² or provides the individual's driver's license or state identification card number or the last four digits of the individual's Social Security Number, the individual must record the type of identification provided or the driver's license, state identification card, or Social Security Number information on the provisional ballot or affirmation.¹³
- For a provisional ballot cast by an individual who did not have or was unable to provide to the election officials a valid form of identification necessary to complete the provisional ballot affirmation statement, the individual must appear during the seven day period after Election Day and do one of the following to have the provisional ballot eligible to be counted:
 - Provide to the board of elections proof of the individual's identity in the form of a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of a voter registration mailed by a board of elections under R.C. 3503.19, that shows the individual's name and current address; or
 - Provide to the board of elections the individual's driver's license or state identification card number or the last four digits of the individual's Social Security Number.¹⁴
- If an individual declares that he or she is eligible to vote in a precinct other than the one in which the individual desires to vote, or if, upon review of the precinct voting location guide using the residential street address provided by the individual, an election official at the precinct at which the individual desires to vote determines that the individual is not eligible to vote in that precinct, the election official shall direct the individual to the precinct and polling place in which the individual appears to be eligible to vote, explain that the individual may cast a provisional ballot at the current location but the ballot or a portion of the ballot will not be counted if it is cast in the wrong precinct, and provide the telephone number of the board of elections in case the individual has additional questions.¹⁵

¹¹ This requirement, however, is not to be read in such a way to prevent a blind, disabled, or illiterate elector from receiving assistance in the marking of the elector's ballot by two precinct election officials from different political parties. A blind, disabled, or illiterate elector is able to receive assistance in marking his or her provisional ballot and in completing the requirement affirmation. R.C. 3505.181(B)(2); R.C. 3505.181(F).

¹² The valid forms of identification are a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections under R.C. 3503.19, that shows the name and current address of the elector. R.C. 3505.181(B)(6).

¹³ R.C. 3505.181(B)(6).

¹⁴ R.C. 3505.181(B)(7).

¹⁵ R.C. 3505.181(C)(1).

If an individual refuses to travel to his or her correct precinct or to the board of elections to cast a ballot, the individual may cast a provisional ballot at that precinct.¹⁶ If the individual is in the correct polling location for the precinct in which he or she is registered and eligible to vote, the election official shall complete and sign, under penalty of election falsification, a form that includes:

- The name or number of the individual's correct precinct;
 - A statement that the election official instructed the individual to travel to the correct precinct to vote;
 - A statement that the election official informed the individual that casting a provisional ballot in the wrong precinct would result in all or a portion of the votes on the ballot being rejected;
 - The name or number of the precinct in which the individual is casting a provisional ballot; and
 - The name of the polling location in which the individual is casting a provisional ballot.¹⁷
- Precinct Election Officials should continue to use [Secretary of State Form 12-D](#) to document whenever a voter's name does not appear in the signature poll book or poll list, the voter is in the wrong precinct of the correct multiple-precinct polling place and the voter insists on casting a provisional ballot in the wrong precinct.

Counting Provisional Ballots

- In order to be eligible to be counted,¹⁸ a provisional ballot affirmation must include the voter's:
 - Printed name;
 - Signature;¹⁹
 - Date of birth;²⁰ and
 - Current address.²¹
- A provisional ballot envelope shall not be opened, and the ballot shall not be counted:
 - If the individual casting a provisional ballot failed to provide the individual's driver's license number or state identification card number, or the last four digits of the individual's Social Security Number, or a current and valid photo

¹⁶ R.C. 3505.181(C)(2).

¹⁷ R.C. 3505.181(C)(2).

¹⁸ R.C. 3505.183(B)(1).

¹⁹ An individual may not refuse to execute a provisional ballot affirmation. R.C. 3505.183(B)(1).

²⁰ The month and day of birth provided by the individual on his or her provisional ballot affirmation must generally match the month and day of birth in the statewide voter registration database. However, exceptions to this matching requirement are when the individual's date of birth in the statewide voter registration database is January 1, 1800 and when the board of elections has found, by a vote of at least three board members, that the elector has met all other requirements to have his or her ballot counted. R.C. 3505.183(B)(1)(e).

²¹ The current address provided by the individual on his or her provisional ballot affirmation must match the current address in the statewide voter registration database, unless the individual has indicated the he or she is casting a provisional ballot because he or she has moved and not submitted a change of address. R.C. 3505.183(B)(1)(f).

identification, a military identification, a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections under 3503.19 of the Revised Code, with the voter's name and current address,²² and the individual did not appear at the board of elections during the seven days following the election to provide an acceptable form of identification; or

- If the last four digits of the elector's Social Security Number or the elector's driver's license number or state identification card number are different from the last four digits of the elector's Social Security Number or the elector's driver's license number or state identification card number contained in the statewide voter registration database.²³
- If an individual cast a provisional ballot in a precinct in which the individual is not registered and eligible to vote, but in the correct polling location in which the individual is registered and eligible to vote, and the election official failed to direct the individual to the correct precinct, the individual's ballot must be remade by the board of elections to reflect the offices, questions, and issues for which the individual was eligible to cast a ballot and for which the individual attempted to cast a provisional ballot. The remade ballot is counted for each office, question, and issue for which the individual was eligible to vote. The election official is deemed to have directed the individual to the correct precinct if the election official correctly completed the form described in R.C. 3505.181(C)(2).²⁴
- If an individual cast a provisional ballot in a precinct in which the individual is not registered and eligible to vote and in the incorrect polling location for the precinct in which the individual is registered and eligible to vote, the provisional ballot envelope cannot be opened, and the ballot is not counted.²⁵

Assisting an Elector

- An elector may be accompanied in the voting booth and aided by any person of the elector's choice—except for the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union—if the elector:
 - Appears to vote on Election Day or appears at the office of the board of elections to cast an absentee ballot in person; and
 - Declares to the presiding judge of elections or to the election official who is accepting absentee ballot applications in person that the elector is unable to mark his or her ballot due to blindness, disability, or illiteracy.²⁶
- An election official may not fill out any portion of an absentee ballot application for the applicant unless permitted pursuant to Ohio Revised Code 3505.24 or 3509.08.²⁷

²² R.C. 3505.183(B)(4)(vii)

²³ R.C. 3505.183(B)(4)(viii)

²⁴ R.C. 3505.183(D)(1)-(2).

²⁵ R.C. 3505.183(D)(3).

²⁶ R.C. 3505.24.

²⁷ R.C. 3509.03.

- However, the Secretary of State or a board of elections may preprint an applicant's name and address on an absentee ballot application before mailing that application to the applicant.²⁸
- An election official may not fill out any portion of a voter's absentee ballot identification envelope statement or an absentee ballot for the elector unless permitted pursuant to Ohio Revised Code 3505.24 or 3509.08.²⁹
 - However, a board of elections may preprint an elector's name and address on the voter's absentee ballot identification envelope statement prior to mailing the ballot to the voter.³⁰

Mailing Absentee Ballot Applications

- If an elector requests an absentee ballot application from the board of elections, the Board must mail the application to the elector; but, the Board may not prepay the return postage for the application.³¹
- The Secretary of State is able to mail unsolicited absentee ballot applications only for general elections and only when the General Assembly has made an appropriation for the specific mailing.³²
- No other public office, or a public official or employee who is acting in an official capacity, may mail unsolicited absentee ballot applications.³³

Mailing Absentee Ballots

- When the board of elections receives a valid absentee ballot application, the Board is to mail the absentee ballot to the elector. The Board must not prepay the return postage for the absentee ballot.³⁴

Challenging an Absentee Ballot

- Any precinct election official may challenge the right of the elector named on the identification envelope to vote an absentee ballot upon the grounds that:
 - The signature on the envelope is not the same as the signature on the registration form;

²⁸ R.C. 3509.03.

²⁹ R.C. 3509.04.

³⁰ R.C. 3509.04.

³¹ R.C. 3509.03.

³² Section 3, Sub. S.B. 205: “[T]he Secretary of State may mail unsolicited applications for absent voter’s ballot to individuals [for the 2014 general election] regardless of whether the General Assembly has made an appropriation for that purpose.”

³³ R.C. 3501.05.

³⁴ R.C. 3509.04.

- The identification envelope statement of the voter is incomplete (see *Counting Absentee Ballots* below for when an identification envelope is incomplete); or
- One of the other grounds for which an elector may be challenged has been met.³⁵

Counting Absentee Ballots

- A voter's identification envelope statement is considered incomplete if it does not include all of the following:
 - The voter's name;
 - The voter's residence address;
 - The voter's date of birth;³⁶
 - The voter's signature; and
 - Either the voter's driver's license number, the last four digits of the voter's Social Security Number, or a copy of a current and valid photo identification, a military identification, or a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of voter registration mailed by a board of elections, that shows the voter's name and address.³⁷
- If the election officials determine that the voter's absentee identification envelope is incomplete or that the information on the identification envelope does not conform to the corresponding information in the statewide voter registration database, the election officials must mail a written notice to the voter informing him or her of the defect.

The notice must inform the voter that in order for his or her ballot to be counted, the voter must provide the required missing information to the board of elections in writing on a Secretary of State prescribed form no later than the seventh day after Election Day.

The voter may provide the missing information to the board either in person or by mail. In the event that the voter provides the missing information no later than the seventh day after Election Day, the voter's ballot will be counted provided that a successful challenge is not brought forward against it.³⁸

- An absentee ballot shall not be accepted or counted when an elections official finds that the individual casting an absentee ballot has done any of the following, and the individual does not cure the deficiency within the seven day period after Election Day:³⁹
 - Failed to properly complete the identification envelope statement;
 - Has a signature on the envelope statement that does not correspond with his or her registration signature;

³⁵ R.C. 3509.06.

³⁶ The voter satisfies the date of birth requirement if he or she provides a date of birth on the identification envelope and (i) the date of birth has a month and day identical to the month and day of birth contained in the statewide voter registration database, (ii) the voter's date of birth in the statewide voter registration database is January 1, 1800, or (iii) at least three members of the board of elections has determined that the voter has properly provided his or her name, residential address, signature, and identification. R.C. 3509.06(D)(3)(a)(iii).

³⁷ R.C. 3509.06(D)(3)(a).

³⁸ R.C. 3509.06(D)(3)(b).

³⁹ R.C. 3509.07.

- Is not a qualified elector in the precinct;
- Has a ballot envelope that contains more than one ballot or any voted ballot that the elector is not entitled to vote;
- Submitted a ballot that has Stub A detached; or
- Has not included with the ballot any identification as required under law.

UOCAVA – Mailing Absentee Applications & Ballots

- If a Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) voter requests a Federal Post Card Application (“FPCA”) or other absentee ballot application from the board of elections, the Board may mail the FPCA or other absentee ballot application to a UOCAVA voter; but, the Board must not prepay the return postage for the application.⁴⁰
- An election official may not fill out any portion of a FPCA or other absentee ballot application for the applicant unless permitted pursuant to Ohio Revised Code 3505.24 or 3509.08.⁴¹
- The Secretary of State or a board of elections may preprint only an applicant’s name and address on a FPCA or other absentee ballot application before mailing that application to the applicant.⁴²
- When the board of elections receives a valid FPCA or absentee ballot application, the Board is to mail the UOCAVA absentee ballot to the elector. The Board must not prepay the return postage for the absentee ballot.⁴³
- An election official may not fill out any portion of a UOCAVA voter’s absentee ballot identification envelope statement for the elector unless permitted pursuant to Ohio Revised Code 3505.24 or 3509.08.⁴⁴
- A board of elections may preprint only a UOCAVA voter’s name and address on a voter’s absentee ballot identification envelope statement prior to sending the ballot to the elector via mail or transmitting the ballot electronically to the elector.⁴⁵

Amended Senate Bill 238

Deadlines for Printing & Preparing Ballots

- Ballots for non-UOCAVA voters must be printed and ready for distribution beginning on the first day after the close of voter registration.⁴⁶

⁴⁰ R.C. 3511.02(E).

⁴¹ R.C. 3511.02(F).

⁴² R.C. 3511.02(F).

⁴³ R.C. 3511.04.

⁴⁴ R.C. 3511.05(E).

⁴⁵ R.C. 3511.05(E).

⁴⁶ R.C. 3509.01(B)(2).

- For all voters who are applying to vote an absentee ballot in person, ballots must be printed and ready for use beginning on the first day after the close of voter registration.⁴⁷

If you have any questions concerning this Advisory, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

⁴⁷ R.C. 3509.01(B)(3); R.C. 3511.10.