



**ADVISORY 2019-06**

August 7, 2019

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

Re: Am. Sub. H.B. 166, State Operating Budget (133rd General Assembly)

**BACKGROUND**

The Ohio General Assembly passed the new State Operating Budget, Amended Substitute House Bill 166, on July 17, 2019. Governor Mike DeWine signed the bill into law on July 18, 2019. This Advisory alerts boards of elections to changes in the administration of elections resulting from the passage of this legislation.

**SUMMARY**

The act has several provisions that relate to different facets of elections. The provisions of the budget that appropriate funding went into immediate effect.<sup>1</sup> Other provisions, unless otherwise specified in the act, take effect on October 17, 2019.<sup>2</sup>

*Moves the Date of the 2020 Primary Election from March 10, 2020 to March 17, 2020*

Moves the day for holding a primary election, in a year when a presidential primary election is held, from the second Tuesday after the first Monday in March to the third Tuesday after the first Monday in March (March 17, 2020).

*Petitions dated March 10, 2020 for the 2020 Primary are acceptable*

Aligning with the new primary date, prohibits a declaration of candidacy, nominating petition, or other petition filed with the Secretary of State or a Board of Elections for the 2020 Primary or Special Election from being declared invalid because it identifies the date of the 2020 primary election as March 10, 2020. Therefore, candidates who have already pulled petitions and circulated them with the March 10 date do not need to circulate new petitions or alter the existing forms.

*Delayed certification for Presidential and Vice-Presidential candidates*

Delays the deadline for major political parties to certify presidential and vice-presidential candidates to the Secretary of State for the 2020 general election by moving the deadline from 90 days (August 5) before the day of the general election to 60 days (September 4) beforehand.

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<sup>1</sup> Art. 2 §1(d) of the Ohio Constitution.

<sup>2</sup> Art. 2 §(c) of the Ohio Constitution.

### *Delayed certification of forms for the 2020 general*

Delays the deadline for the Secretary of State to certify the forms of the official ballots to be used at the 2020 general election from the 70th day (August 25) to the 50th day (September 14) before the 2020 general election.

### *Pay Increase*

Increases by 1.75 percent annually, through 2028, the statutory \$6,000 minimum amount paid to some members of boards of elections, providing the same annual raise given to other board of elections members and other local elected officials under current law.

### *Fewer required poll workers for multi-precinct locations*

A long-sought Ohio Association of Elections Officials change reduces the minimum number of precinct election officials per precinct in a multi-precinct voting location in which electronic pollbooks are used from four to two. Any reduction in poll workers requires a super majority vote of at least three members of that county's board of elections.

### *School district territory transfer*

- Permits electors residing in school district territory located within a township that is split between two or more school districts to petition for the transfer of territory to another adjacent school district.
- Requires the proposal to be placed on the ballot at the next general, primary, or special election within 90 days after the board of elections certifies that the petition is signed by at least 10 percent of electors within the territory proposed to be transferred and voting in the last general election.

### *Ohio political party fund is eliminated*

Repeals (and dissolves by January 1, 2020) the Ohio Political Party Fund, where income tax filers could credit \$1, or \$2 for married couples filing joint returns, of their income tax liability to the fund.

## **EXPLANATION**

### *Date of 2020 Presidential Primary*

The act moves the date of a presidential primary election from the second Tuesday after the first Monday in March to the third Tuesday after the first Monday in March. This effectively moves the 2020 primary to March 17 from March 10. Under continuing law, all other primary elections in Ohio that are not a presidential primary election are held on the first Tuesday after the first Monday in May.<sup>3</sup>

### *Grandfathering petitions for the 2020 Primary*

In consultation with the Secretary of State's Office, the legislature enacted a petition grandfathering provision to avoid problems from the new presidential primary election date. This provision prohibits finding any of the following invalid because it identifies the date of the 2020 primary as March 10, 2020, instead of March 17, 2020:

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<sup>3</sup> R.C. 3501.01, 3513.01, and 3513.12.

1. A declaration of candidacy;
2. A nominating petition; or
3. Another petition filed with the Secretary of State or a Board of Elections for the 2020 primary election or a special election on the day of that election.

#### *Delayed certification of Presidential and Vice-Presidential candidates and forms for 2020*

The act delays the deadline for major political parties to certify presidential and vice-presidential candidates to the Secretary of State for the 2020 general election. Like a few other provisions in the budget, this is a provision that applies only to 2020. For the 2020 general election, presidential and vice-presidential candidates must be certified to the Secretary no later than the 60th day (September 4) before the 2020 general election. Under continuing law, major political parties must certify the names of the presidential and vice-presidential candidates to the Secretary for placement on the ballot on or before the 90th day (August 5) before the day of the general election in future years.

Additionally, the act requires the Secretary to certify to the boards of elections the forms of the official ballots to be used for the 2020 general election on or before the 50th day (September 14) before the 2020 general election. This provision also applies only to the 2020 general election. Under continuing law, the Secretary must certify the forms of the official ballots to be used at a general election on the 70th day (August 25) before a general election in future years.<sup>4</sup>

#### *Pay Increase*

The act increases the minimum compensation of a member of a board of elections by 1.75 percent annually through 2028. Under continuing law, a board member's annual compensation must be the greater of the following:<sup>5</sup>

1. The sum of the following:
  - \$102.41 for each full 1,000 of the first 100,000 in county population;
  - \$48.79 for each full 1,000 of the second 100,000 in county population;
  - \$26.50 for each full 1,000 of the third 100,000 in county population;
  - \$8.13 for each full 1,000 above 300,000 in county population; or
2. \$6,000.

Legislation enacted last year required the dollar amounts listed under (1) above to be increased by 1.75 percent annually from 2019 through 2028. However, it did not adjust the \$6,000 minimum for counties with smaller populations.<sup>6</sup> This act adjusts that \$6,000 minimum in the same way as the other figures, meaning that board members who qualify only for the minimum compensation also will receive the 1.75 percent annual increase.

#### *Fewer required poll workers for multi-precinct locations*

The act reduces the minimum number of precinct election officials who must be appointed, from four per precinct to two, in voting locations that serve more than one precinct and use electronic

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<sup>4</sup> Section 735.11 of the Act.

<sup>5</sup> R.C. 3501.12.

<sup>6</sup> Substitute Senate Bill 296 (132<sup>nd</sup> General Assembly). For discussion, see pages 4-5 <https://www.sos.state.oh.us/globalassets/elections/advisories/2019/adv2019-03.pdf>.

pollbooks. Under the act, a board of elections that wishes to make that reduction must approve the change by a vote of at least three of its members, thereby requiring the vote to be bipartisan.

Additionally, the act makes a technical correction to change the term “presiding judge” to “voting location manager,” which is the term used elsewhere in the Revised Code.

#### *School district territory transfer*

The act creates a new process for transferring territory between school districts in addition to the other processes prescribed under continuing law. Under the act, electors residing in a school district’s territory that is located within a township within two or more school districts may petition for the transfer of territory to another adjacent school district. The board of education that is losing territory must file the proposal, including a map of the territory’s boundaries, with the State Board of Education and certify the proposal to the county board of elections. The petition must be signed by at least 10 percent of electors residing within the territory that voted in the last general election.

Upon receiving a certified proposal, the board of elections must submit the proposal to electors within the territory to vote on in the next general or primary election, or in a special election specified in the certification. Any election must be at least 90 days after the date of the proposal’s certification. The election must be held in the same manner as a regular board of education election and the proposal must be approved by a majority vote of qualified electors voting.

If a proposal is approved by the electors, the district board losing territory must notify the State Board of Education of the election results, and the board of trustees of the eligible township must enter negotiations with the district board gaining territory regarding terms of the transfer. The board of trustees and the district board gaining territory must enter into a formal agreement regarding the transfer’s terms to execute the transfer, but the district board is not required to enter into any agreement. Upon entering into a formal agreement, the district board gaining territory must file the proposal and copy of the agreement with the State Board. The State Board must approve the filed proposal and provide written notification of that approval to both districts affected by the territory transfer. The act does not appear to give the State Board the discretion to reject the proposal.

The district board gaining territory, upon receiving notification of the State Board’s approval, must file a map showing the boundaries of the territory being transferred with the county auditor. Additionally, both district boards affected by the territory transfer, as well as the township board of trustees, must execute an equitable distribution of funds and indebtedness between the districts. The transfer shall then be complete, and legal title of the school property in the territory shall be vested in the district board of the district gaining territory.<sup>7</sup>

#### *Ohio political party fund is eliminated*

The act eliminates the Ohio political party fund income tax checkoff for taxable years beginning after 2018. Under current law, an individual may choose an option on their return to credit \$1, or \$2 for married couples filing joint returns, of their income tax liability to the fund. Money in the fund is divided among Ohio’s major political parties. The money cannot be used to further the election or defeat of any particular candidate or to influence the outcome of an issue election.

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<sup>7</sup> R.C. 3311.242.

Under the act, the fund will be dissolved on January 1, 2020 or earlier if the Commissioner determines that all or substantially all of the checkoff contributions for taxable years beginning before the termination date have been received by the fund. Amounts received by the fund before its dissolution would be distributed and utilized in the same manner prescribed by current law.

The act relieves the Auditor of State of a current duty to conduct annual audits of the use of money distributed from the fund. The audit requirement is eliminated after the fund is dissolved and all money is distributed.<sup>8</sup>

If you have any questions concerning this Advisory, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose  
Ohio Secretary of State

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<sup>8</sup> R.C. 3517.16, 5747.081, 3517.17, and 3517.18 (all repealed); R.C. 131.44, 3501.05, 3517.01, 3517.10, 3517.102, 3517.1012, 3517.11, 3517.12, 3517.153, 3517.23, 3517.99, 3517.992, 5703.05, 5747.03, and 5747.04 (conforming amendments); Sections 409.10 and 757.240 of the Act.