



ADVISORY 2020-01

January 24, 2020

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

Re: Am. Sub. S.B. 52, Post-Election Audits and Cyber Reserve (133rd General Assembly)

BACKGROUND

Amended Substitute Senate Bill 52, which was championed by this office and sponsored by Ohio Association of Election Officials (“OAEO”) Legislator of the Year, Senator Theresa Gavarone, passed the General Assembly on October 9, 2019 and was signed into law by Governor Mike DeWine a few weeks later. This Advisory alerts boards of elections to changes in the administration of elections resulting from the passage of this legislation, including new cyber security support and post-election audits. The bill is effective on Friday, January 24, 2020.

SUMMARY

S.B. 52 does four things: (1) requires post-election audits; (2) makes the Secretary of State a permanent member of the Ohio Homeland Security Advisory Council; (3) creates the position of Chief Information Security Office (“CISO”) within the Ohio Secretary of State’s Office; and (4) creates the Cyber Reserve within the Ohio National Guard.

Post-election audits

- Requires a board of elections to audit the official results of every general election (odd and even years) and of every primary election held in an even-numbered year.
- Requires the Secretary to either (1) determine the type of audit boards will use; or (2) allow boards to choose from a list of options for their audits, including risk-limiting audits and percentage-based audits.
- Prohibits any person other than a board member or a designated board employee from handling a ballot.
- Requires the Secretary to publicly display the results of each county’s election audit results on the Secretary of State’s web site.
- Provides up to \$75,000 to the Secretary of State for the purpose of reimbursing boards for costs incurred to conduct their audits.
- Clarifies a provision in existing law that election observers may be present at any time when election officials count and tally ballots, make the official canvass of election returns, or conduct an audit of the official results of an election.

Creation of the Chief Information Security Officer in the Secretary of State's Office

Requires the Secretary of State to appoint a CISO to advise the Secretary and assist county boards of elections on matters of information security.

Ohio Cyber Reserve

- Creates the state civilian cyber security reserve force to protect government, critical infrastructure (including election systems), businesses, and citizens from cyber attacks.
- Permits the Governor to order individuals or units of the Cyber Reserve to state active duty to protect a business or citizen in the event of a cyber attack.
- Permits the Governor, without prior request, to order individuals or units of the Cyber Reserve to state active duty to protect state, county, and local government bodies and critical infrastructure, *including election systems*, as the governor determines necessary.
- Permits the Reserve to become a civilian component of the Ohio National Guard but does not authorize the Reserve to be called into national military service.

Homeland Security Advisory Council

Makes the Secretary of State a member of the Homeland Security Advisory Council in the Department of Public Safety.

EXPLANATION

Post-election audits

The legislature enacted a requirement that a board audit the results for:

- (1) Every general election; and
- (2) A primary election held in an even-numbered year.

The new law requires the Secretary to decide what post-election audit protocols boards will follow. The statute codified two currently used audit protocols but also allows the Secretary to adopt other practices should best practices evolve. Directives will be issued that provide boards instructions on compliance. What follows in this Advisory is an overview of the new audit requirements.

What may be audited.

Except when there is a county-wide recount, a board will audit at least three contested races, questions, or issues. If fewer than three are available, the board must audit the one or two matters that were on the ballot. In any election, every contested race, question, or issue may be

audited.¹ Similarly, every ballot that was included in the canvass is eligible to be audited, including regular ballots cast on election day, absentee ballots, and provisional ballots.²

Types of audits.

The act provides options for a risk-limiting hand-count audit protocol,³ a percentage-based hand-count audit protocol,⁴ or other audit protocols approved by the Secretary.⁵ The act also requires the Secretary to decide whether a board may choose which protocol it will follow.⁶

Boards on oversight.

The Secretary may have more discretion over the type of audits done by a board on administrative oversight.

Audit timeline.

The timeline for post-election audits depends on whether there is a recount, as explained below:

1. If there is no recount: The audit may start six days after the official results are declared and must be completed by the 21st day after that declaration.⁷ The board has five days after completion to certify those audit results to the Secretary.⁸ A form will be developed for certifying audit results.
2. If the board ordered a recount of a *county-wide* race, question or issue: No audit is necessary- the recount is sufficient.⁹
3. Any other recount: The audit must begin “immediately” after the board certifies the results of the recount and be complete within 14 days.¹⁰ The board has five days after completion to certify those audit results to the Secretary.¹¹

Publication of results.

The Secretary must publish board election audit results on the Secretary of State’s web site.¹²

¹ R.C. 3505.331(B)(1)(a)

² R.C. 3505.331(B)(2).

³ R.C. 3505.331(B)((3)(a).

⁴ R.C. 3505.331(B)((3)(b) and 3505.331(D)(2).

⁵ R.C. 3505.331(B)((3)(c).

⁶ R.C. 3505.331(B)(3).

⁷ R.C. 3505.331(A).

⁸ R.C. 3505.331(D)(1).

⁹ R.C. 3505.331(B)(1)(b).

¹⁰ R.C. 3505.331(A).

¹¹ R.C. 3505.331(D)(1).

¹² R.C. 3505.331(D)(1).

New prohibition on handling ballots.

No person other than a member of the board, or a designated employee of the board, may handle a ballot.¹³ This statute *does not automatically* grant any employees, such as the Director or Deputy Director, the lawful ability to help with a hand-count audit. This differs from the statute on recounts which *does* automatically grant the Director the ability to handle ballots.¹⁴ The act did not amend the general criminal penalty for violating any provision in Title 35 (election law).¹⁵

Boards should consider doing either of the following:

1. At a meeting before the election, designate any staff they would like to help handle ballots during the audit. This should be reflected in the board minutes.
2. Adopt an internal policy designating which employees may handle a ballot during an audit.

Reimbursement for audits

The legislature appropriated a total of \$150,000, \$75,000 for the 2020 presidential primary and \$75,000 for the 2020 general election, to defray counties' costs of audits.¹⁶ Future directives will provide boards guidance on requesting reimbursement for those costs.

Observers after the polls close

The act requires a board to give public notice of the times and places for preparing for and conducting the audit. It must also permit appointed observers at any time when the board is:

1. Counting and tallying ballots;
2. Making the official canvass of election returns; and
3. Preparing for and conducting the audit.¹⁷

New statutory officer on information security

The act creates a new officer within the Revised Code. The Secretary of State must appoint a CISO to advise him on matters of information security and to perform other duties as assigned by the Secretary.¹⁸

Ohio Cyber Reserve

The Ohio Cyber Reserve is a first of its kind force in the United States. The Cyber Reserve will respond to cyber attacks across Ohio, and must train, educate and protect state, county, and local government entities; critical infrastructure, including election systems; businesses; and Ohio citizens from cyber attacks. The Reserve will be activated by the Governor as needed in the case of either an emergency proclaimed by the Governor and prompted by illicit actors or imminent

¹³ R.C. 3505.331(C).

¹⁴ R.C. 3515.04.

¹⁵ R.C. 3599.40.

¹⁶ Section 3 of the Act.

¹⁷ R.C. 3505.331(C) and 3505.21.

¹⁸ RC. 111.09.

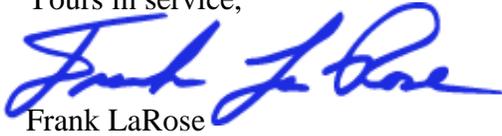
danger.¹⁹ The Reserve is part of the Ohio National Guard. The Cyber Reserve may become a civilian component of the Ohio National Guard, but it may not be called or ordered into the military service of the United States.²⁰

Homeland Security Advisory Council

By law, the Secretary of State is now a member of the Ohio Homeland Security Advisory Council. The Council advises the Director on Homeland Security, including Homeland Security funding efforts.²¹

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

¹⁹ R.C. 5922.01.

²⁰ R.C. 5922.01.

²¹ R.C. 5502.011(E).