



**ADVISORY 2021-03**

August 31, 2021

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

Re: S.B. 80 and Am. Sub. H.B. 110 (134<sup>th</sup> General Assembly)

**BACKGROUND**

This Advisory alerts boards of elections to changes in the administration of elections resulting from the passage of two bills: [Senate Bill 80](#) (“S.B. 80”) and [Amended Substitute House Bill 110](#) (“H.B. 110”), which is the State Operating Budget for fiscal years 2022-2023. Governor Mike DeWine signed both bills into law on June 30, 2021. The provisions of the budget that appropriate funding are effective as of July 1, 2021.<sup>1</sup> Other provisions, unless otherwise specified below, take effect on September 30, 2021.<sup>2</sup>

**SUMMARY**

**SENATE BILL 80**

S.B. 80 requires candidates that were nominated at a primary election for Chief Justice or Justice of the Ohio Supreme Court or Judge of a Court of Appeals to appear on the general election ballot with a political party designation. Those offices will no longer appear nonpartisan.<sup>3</sup> As in the past, a judicial candidate that is not affiliated with a political party may file a nominating petition and appear on the general election ballot as an independent candidate.<sup>4</sup>

S.B. 80 changes the order in which the Ohio Supreme Court and Court of Appeals candidates appear on the ballot. Under continuing law, offices appear on the ballot in a prescribed order, with partisan offices appearing first, then nonpartisan offices, and finally ballot issues. In future elections, Chief Justice and Justice of the Ohio Supreme Court will appear after Treasurer of State, and Judge of a Court of Appeals will appear after state representative.<sup>5</sup>

S.B. 80 does not change the law regarding candidates for judge of a municipal court, county court, or court of common pleas. Those offices must continue to appear on the nonpartisan office ballot in a general election.<sup>6</sup>

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

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

<sup>3</sup> R.C. 3501.01(J), 3505.03, and 3505.04.

<sup>4</sup> R.C. 3513.257.

<sup>5</sup> R.C. 3505.03(C).

<sup>6</sup> R.C. 3501.01, 3505.03, 3505.04, and 3513.257.

## **AMENDED SUBSTITUTE HOUSE BILL 110**

### ***Bulk Purchasing Program***

H.B. 110 allows boards of elections to participate in Department of Administrative Services (“DAS”) contracts for the purchase of supplies and services if DAS has authorized their county to participate in those contracts. A board may participate under the same terms and conditions that apply to the county. Previously, a board of elections could participate by applying separately to DAS and paying a fee for its own membership, rather than participating through the county’s membership.<sup>7</sup> H.B. 110 also clarifies that a board of elections may choose to purchase election supplies through DAS, any bulk purchasing program administered by the Secretary of State, or by other means.<sup>8</sup>

### ***Emergency and Police Services Combined Levy***

H.B. 110 authorizes a municipal corporation or township to permanently impose, with voter approval, a combined levy for fire and emergency medical services (“EMS”) and police services.<sup>9</sup> This change applies to property tax questions considered at any election held on or after January 8, 2022 – the 100<sup>th</sup> day after the act’s 90-day effective date.<sup>10</sup> Previously, the combined levy was limited to a five-year term, but a levy for either fire and EMS or police services could be permanent (i.e., levied for a “continuing period of time”).

Under continuing law, a municipal corporation or township may adopt a resolution to terminate or decrease a fire and EMS or police services levy if the tax is no longer necessary or the amount levied is more than needed. H.B. 110 extends this authority to terminate or decrease a levy to include an emergency and police services combined levy.<sup>11</sup>

All counties will be notified via email when an updated version of [the Ohio Questions and Issues Handbook](#) is available.

### ***Court Settlements that Conflict with the Revised Code***

H.B. 110 specifies that in any civil action in a state or federal court, no public official has authority to compromise or settle the action, consent to any condition, or agree to any order in connection with the case if the compromise, settlement, condition, or order nullifies, suspends, enjoins, alters, or conflicts with the Revised Code. Any such compromise, settlement, condition, or order is void and has no legal effect. In other words, this provision prohibits a public official or the official’s attorney, in the course of a lawsuit, from entering into an agreement not to enforce a provision of the Revised Code or to act contrary to the Revised Code.<sup>12</sup>

In the context of the provision described above, H.B. 110 defines “public official” as any elected or appointed officer, employee, or agent of the state or any political subdivision, board,

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<sup>7</sup> R.C. 125.04(B)(3).

<sup>8</sup> R.C. 3501.302.

<sup>9</sup> R.C. 5705.19(JJ)

<sup>10</sup> Section 803.90.

<sup>11</sup> R.C. 5705.19.

<sup>12</sup> R.C. 9.58(B) and (C).

commission, bureau, or other public body established by law. This would include members and employees of a county board of elections. The new law states that this provision must not be construed to limit or otherwise restrict a court’s authority under the Ohio Constitution. A court may still rule that a law is unconstitutional and order public officials not to enforce it.<sup>13</sup>

***Prohibition Against Public-Private Collaboration and Private Funding for Elections***

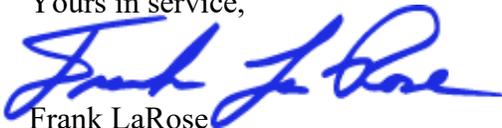
H.B. 110 prohibits a public official<sup>14</sup> responsible for administering or conducting an election from collaborating with, or accepting or expending any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose, other than the following:<sup>15</sup>

- (1) The collection of any fee that is authorized by law;
- (2) The use of any building to conduct an election, including as a polling place; or
- (3) The donation of food for precinct election officials at a polling place on Election Day.

Unfortunately, H.B. 110 does not define several key terms – for example, “collaborating,” “nongovernmental person or entity,” or “election-related purpose” are undefined. This leaves ambiguity about the scope of the prohibition. Boards must consult with their county prosecutor regarding appropriate measures to comply with this statute.

If you have any questions regarding 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>13</sup> R.C. 9.58(A) and (D).

<sup>14</sup> “Public official” is defined, for purposes of this provision, as any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

<sup>15</sup> R.C. 3501.054.