



ADVISORY 2019-03

March 1, 2019

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

Re: Sub. H.B. 41, Am. Sub. H.B. 300, Sub. H.B. 341, Sub. H.B. 500, and Sub. S.B. 296 (132nd
General Assembly)

SUMMARY

This Advisory alerts boards of elections to changes in the administration of elections resulting from the passage of five bills: Substitute House Bill 41, Amended Substitute House Bill 300, Substitute House Bill 341, Substitute House Bill 500, and Substitute Senate Bill 296.

BACKGROUND

Substitute House Bill 41 modifies the procedures concerning challenges to voter registrations and absentee voting. The bill also expands the eligibility for reimbursements for the purchase of voting systems (originally set forth in Amended Substitute Senate Bill 135; 132nd General Assembly). The effective date for this bill is Wednesday, March 20, 2019.

Amended Substitute House Bill 300 makes changes to one type of identification that may be used for voting purposes by establishing an *eight-year* period of validity for a non-driver identification card issued to an Ohio resident who is permanently or irreversibly disabled. Instead of expiring four years after the date of issuance, a state identification card that is issued to an Ohio resident who is permanently or irreversibly disabled expires eight years after the date of issuance. The effective date for this bill is Monday, April 8, 2019.

Substitute House Bill 341 amends Ohio's Public Records Law regarding exemptions for judges and magistrates. The effective date of this bill is Friday, April 5, 2019.

Substitute House Bill 500 makes changes to the law governing certification of questions and/or issues to the ballot. The bill, effective Friday, January 1, 2021, allows political subdivisions to certify to the board of elections, in *electronic* form, a question or issue to be placed on the ballot.

Substitute Senate Bill 296 increases the compensation of members of boards of elections by 1.75 percent in 2019 through 2028. This legislation is effective currently due to the existence of an emergency clause.

ADDITIONAL EXPLANATION¹

Substitute House Bill 41 (“Sub. H.B. 41”)

Challenges to Voter Registrations

The bill shortens the time period before an election during which an elector may submit a correction to a precinct registration list or challenge another elector’s right to vote. The application to correct or challenge must be filed with the appropriate board no later than the 30th day prior to an election. Due to this change, Sub. H.B. 41 eliminates the previous procedure that allowed a board to postpone a hearing on an application to correct or challenge an individual’s registration until after the election when such a challenge was filed after the 30th day before the election.

UOCAVA Ballots

Sub. H.B. 41 requires a board to have Uniformed and Overseas Citizens Absent Voter’s ballots (“UOCAVA ballots”) prepared and ready to be issued on the 46th day prior to an election. Previously, the deadline was the 45th day prior to an election. Thus, under this bill, the UOCAVA ballots must be issued on a Friday instead of a Saturday.

Changes to In-Person Absentee Voting

Sub. H.B. 41 creates a new process for the casting of in-person absentee ballots. An in-person absentee voter may provide identification in the same manner as a voter who is casting a ballot on Election Day. The legislation also provides that only an election official may challenge an in-person absentee voter, and that no other person may challenge such a voter. Please see [Directive 2019-01](#) outlining the new procedure for in-person absentee voting.

With regard to processing absentee ballots, the legislation codifies the existing practice of allowing a board to begin processing absentee ballots prior to the close of polls on Election Day. A board still is prohibited from tabulating or counting absentee ballots before the close of polls on Election Day. The bill defines “processing” to include any of the following acts:

- Examining the identification envelope statement of a voter to verify that the absent voter’s ballot is eligible to be counted;
- Opening the identification envelope if the absent voter’s ballot is eligible to be counted under R.C. 3509.07;
- Determining the validity of the absent voter’s ballot under R.C. 3509.07;
- Preparing and sorting the absent voter’s ballot for scanning by automatic tabulating equipment; and,

¹ Amended Substitute House Bill 300 and Substitute House Bill 500 are intentionally excluded as they do not require additional explanation for purposes of this Advisory.

- Scanning the absent voter’s ballot by automatic tabulating equipment if the equipment permits a ballot to be scanned without tabulating or counting the votes on the ballot.

This bill also allows for observers to be present for the processing of absentee ballots in the same manner as existing law provides for the counting of all ballot types.

Voting Machine Reimbursement

Sub. H.B. 41 amended the uncodified provisions of Amended Substitute Senate Bill 135 (“Am. Sub. S.B. 135”) from the 132nd General Assembly. Under Sub. H.B. 41’s changes, a county that acquired or leased voting or tabulation equipment between January 1, 2014 and July 30, 2018 may use the funding allocated to that county under Am. Sub. S.B. 135 to acquire additional voting equipment with the previously allocated funds. To be eligible to utilize these funds, a county must follow the procedures outlined in [Secretary of State Advisory 2019-01](#).²

Substitute House Bill 341 (“Sub. H.B. 341”)

Generally

Sub. H.B. 341 adds judges and magistrates to the list of professions whose residential and familial information is exempt from disclosure under Ohio’s Public Records Law. Previous law allowed for the redaction of “residential and familial information” of “peace officers.” The bill restructured the provision, which outlined what professions were part of the “peace officer” exemption. All professionals contained in the R.C. 149.43(A)(1)(p) “peace officer” exemption are now referred to as “designated public service worker[s].”

“Residential and familial information” means any information that discloses any of the following about a “designated public service worker”³:

1. The address of the actual personal residence of a designated public service worker *except* for the following information:
 - The address of the actual personal residence of a prosecuting attorney or judge; and,
 - The state or political subdivision in which a designated public service worker resides.
2. Information compiled from referral to or participation in an employee assistance program;

² For additional information regarding the procedures codified in Am. Sub. S.B. 135, please see [Secretary of State Advisory 2018-03](#).

³ R.C. 149.43(A)(8).

3. The Social Security Number, residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to a designated public service worker;
4. The name of any beneficiary of employment benefits, including life insurance benefits, provided to a designated public service worker by the worker's employer;
5. The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the worker's compensation, unless state or federal law requires the deduction;
6. The name, residential address, employer, employer's address, Social Security Number, residential telephone number, bank account, debit card, charge card, or credit card number, or emergency telephone number of the spouse, former spouse, or any child of a designated public service worker; and/or,
7. A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

Online Records

The bill permits a designated public service worker to request that his/her address be redacted from any record of a board that is publicly available on the Internet in which the designated public service worker's address appears.⁴ The request must be made in writing and on a [form](#) developed by the Ohio Attorney General.

Substitute Senate Bill 296 ("Sub. S.B. 296")

Amount of Increase

Under Ohio law, the annual compensation of a member of a board of elections is based on the population of the county where the member serves. Sub. S.B. 296 sets the following base amounts for 2018:

- \$102.41 for each full 1,000 of the first 100,000 population,
- \$48.79 for each full 1,000 of the second 100,000 population,
- \$26.50 for each full 1,000 of the third 100,000 population, and,
- \$8.13 for each full 1,000 above 300,000 population.

⁴ R.C. 149.45(D)(1).

Generally, this bill increased these amounts by 1.75 percent for 2019 and in each calendar year thereafter through calendar year 2028.⁵

Mid-term Increases

For many offices, the Ohio Constitution contemplates mid-term pay increases, barring them in some instances.⁶ However, as board members are not included in this prohibition, mid-term salary increases for board members are permitted.⁷ Additionally, this bill expressly states that board members are not subject to Article II, Section 20, of the Ohio Constitution.⁸ Accordingly, these changes are effective for most board members beginning in 2019.

Pay Commission

The bill also created the Public Office Compensation Advisory Commission, tasked with reviewing the current compensation of each public office in the state whose compensation is set by the Ohio General Assembly under the Ohio Constitution. Annually, the Commission shall prepare a proposed compensation plan, and submit a report of the plan to the Ohio General Assembly leaders for consideration.

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

⁵ Due to population size, many Ohio counties are impacted by minimum salary amounts. It is recommended that each board consult with its legal counsel, the county prosecuting attorney, to confirm the annual compensation of their board members under this bill.

⁶ Article II, Section 20, Ohio Constitution (“The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished”); Article II, Section 31, Ohio Constitution; Article III, Section 19, Ohio Constitution; and, Article IV, Section 6, Ohio Constitution.

⁷ See 1997 Ohio Atty.Gen.Ops. No. 027.

⁸ R.C. 3501.12(D).