



DIRECTIVE 2020-07

March 27, 2020

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

Re: House Bill (“H.B.”) 197 and Additional Instructions

SUMMARY

On March 25, 2020, the Ohio General Assembly passed H.B. 197. Governor DeWine signed H.B. 197 into law on March 27, 2020. The legislation includes many provisions concerning Ohio’s response to Coronavirus/COVID-19, including changes to the 2020 Primary Election. The bill contains an emergency clause, which means that the bill goes into effect immediately upon the Governor’s signature.¹ This Directive provides additional information regarding H.B. 197, its implementation, and the conclusion of the 2020 Presidential Primary Election.

Additional guidance regarding the unofficial and official canvasses, Election Night Reporting, and other information is forthcoming.

H.B. 197 SUMMARY – 2020 PRIMARY ELECTION PROVISIONS

The election provisions in H.B. 197 lays out the path chosen by the Ohio General Assembly to conclude the 2020 Primary Election. Please note that the provisions are uncodified law and will not appear in the Ohio Revised Code. In sum, the temporary law does the following:

1. Extends absentee voting by mail in the March 17, 2020 Primary Election until 7:30 p.m. on April 28, 2020;
2. Allows an elector who has not already cast a ballot in the election, and who was registered to vote by the February 18, 2020 deadline, to cast an absentee ballot;
3. Requires the board of elections to prepay the return postage on the envelopes for absentee ballots for the remainder of this election;
4. Requires boards to have a secure receptacle outside the office for the return of ballots;

¹ Art. 2, Section 1(d) of the Ohio Constitution.

5. Appropriates \$7 million to fund 050627, the “Absent Voter’s Ballot Application Mailings” fund but does not authorize the mailing of absent voter’s ballot applications. These funds will be used to pay for the required informational postcard and other expenses related to implementing the bill’s provisions that conclude the 2020 Primary Election;
6. Requires the Secretary of State to send a postcard to all registered electors in the state for the 2020 Primary Election, regardless of whether they have voted in the 2020 Primary Election, already or not, advising the voters on how to request an absentee ballot from their board of elections;
7. Permits the boards of elections to mail provisional ballots in certain circumstances;
8. Limits in-person voting to April 28, 2020 and makes it available only for individuals with a qualifying disability or who cannot receive mail;
9. Sets out the timeline for campaign finance reporting; and
10. Sets out the timeline for post-election activities.

Additional instructions regarding the implementation of H.B. 197 and the 2020 Primary Election are set forth below.

INSTRUCTIONS

PART I – LEGISLATION IMPLEMENTATION INSTRUCTIONS

A. PROHIBITIONS

Boards of elections are prohibited from counting any ballots cast in the March 17, 2020 Primary Election, or releasing the count or any portion of the count of ballots cast in that election until after 7:30 p.m. on April 28, 2020. Additionally, H.B. 197 requires boards and election officials to wait until after April 28, 2020 to process any voter registration application submitted after February 18, 2020.² Please see Part II of this Directive for additional guidance on processing voter registrations. For the sake of brevity, this Directive will refer to both the primary election and any simultaneous special election as “the primary election.”

B. ABSENTEE BALLOT APPLICATIONS AND COMPILING OF DATA

Boards of elections must process absentee ballot applications for voters who were registered to vote in Ohio by February 18, 2020 and have not already cast a ballot in the March 17, 2020 Primary Election. If a board of elections receives an absentee ballot application that does not contain all of the required information, the board must promptly notify the voter of the additional

² H.B. 197, Section 32(B). *See* additional instructions regarding processing voter registrations in Part II of this Directive.

information required to be provided by the voter to complete the application. Boards should utilize telephone numbers and email to complete this process as quickly as possible. However, if electronic contact is not possible, boards should attempt to correct missing information by mail. Boards should ultimately retain a completed application at the board office. All applications for absentee ballots, including corrected applications, must be received at the office of the board of elections not later than noon on April 25, 2020.³

Each day, boards of elections are required to compile and transmit to the Secretary of State a list of all absentee ballot applications received by the board, except for any information that is not considered a public record under Ohio law.⁴ This list must be submitted to the Secretary of State in a format prescribed by the Secretary of State and must be submitted via email by 10 a.m. daily.

Any absentee ballot application must not be considered invalid solely on the basis that the application indicates a date other than March 17, 2020 as the date of the 2020 Primary Election. An absentee ballot application that indicates the voter's desire to vote in the 2020 Primary Election is acceptable even if an incorrect date or no date is indicated.⁵

C. VOTING PROCEDURES

Voters who have not already cast a ballot in the March 17, 2020 Primary Election and who registered to vote in Ohio as of February 18, 2020 may vote an absentee ballot in the 2020 Primary Election. A voter must deliver the absentee ballot to the board of elections by 7:30 p.m. on April 28, 2020, or have the ballot postmarked by April 27, 2020, and the ballot must be received at the board of elections by May 8, 2020. UOCAVA ballots received by May 8, 2020 are valid, so long as they were submitted for mailing not later than 12:01 a.m. at the place where the voter completed the ballot on April 28, 2020, regardless of whether the ballots are postmarked.⁶

1. DROP BOXES

Boards of elections must place a secure receptacle outside of the board for the return of ballots.⁷ The secure receptacle must be monitored 24/7, and at least one Republican and Democrat must together retrieve the drop box's contents daily. Boards of elections must also retrieve the contents at 7:30 p.m. on April 28, 2020.

2. VOTE BY MAIL

Boards must promptly deliver an absentee ballot to a voter who submits a valid application. Boards of elections should use their current ballots, including Election Day ballots, before purchasing additional ballot stock. The board of elections must deliver those absentee ballots by

³ H.B. 197, Section 32(C)(3) and (C)(5)(a); *See* R.C. 3509.08, [Form 11-B](#), and [Form 11-B-2](#) for hospitalized voters. Except that an elector who would qualify to apply by 3:00 p.m. on Election Day because of an unforeseeable hospitalization may apply by 3:00 p.m. on April 28, 2020.

⁴ H.B. 197, Section 32(C)(4).

⁵ H.B. 197, Section 32(C)(5)(b).

⁶ H.B. 197, Section 32(C)(1) and (E).

⁷ H.B. 197, Section 32(E)(1).

mail unless a voter submitted an application for assistance due to a disability, confinement, or unforeseeable hospitalization.⁸ Boards of elections must prepay the return postage for the ballots.⁹

The United States Postal Services (“USPS”) recommends the following options for prepaying the postage on return ballot envelopes:

1. The board may utilize the board or county’s postage meter to apply sufficient, first-class postage to the return envelope for the return of the ballot. The metered postage must not contain a date.
2. The board may utilize or obtain a Business Reply Mail permit to allow for a voter to return the ballot without applying postage to the return envelope. The board should work with the USPS and a Mailpiece Design Analyst (“MDA”) to ensure the proper artwork is created for the return envelope.
3. The board may apply a sufficient, first-class postage stamp to the return envelope for the return of the ballot.

The board must not delay fulfilling absentee ballot requests because of the implementation of a Business Reply Mail permit. Boards must use one of the alternative methods listed above to apply postage to the return envelope in the interim.

For assistance with mailpiece design, contact the MDA Support Center at (855) 593-6093 (hours of operation are Monday – Friday, 7:00 a.m. – 5:00 p.m. CT) or by sending your request by email to mda@usps.gov. Please contact the local Election Mail Coordinator in your district if assistance is needed.

The following deadlines apply to the return of absentee ballots by mail:

- All non-UOCAVA absentee ballots sent by mail must be postmarked by April 27, 2020 and received by the boards of elections by May 8, 2020.
- UOCAVA ballots sent by mail must be received at the board of elections by May 8, 2020.

3. LIMITED OPTIONS FOR IN-PERSON OPPORTUNITY VOTING

The bill does not allow most people to vote in-person. A qualified elector must fit into either of the following exceptions to vote in person:¹⁰

- An elector who has a qualifying disability and who wishes to cast an absentee ballot using a direct recording electronic voting machine or marking device that is accessible for voters with disabilities, including nonvisual accessibility for the blind

⁸ See R.C. 3509.08, [Form 11-B](#), and [Form 11-F](#).

⁹ H.B. 197, Section 32(C)(6).

¹⁰ H.B. 197, Section 32(D)(1).

and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. Each board must have at least one such machine or device available for use at the board of elections; and

- An elector who is unable to receive mail at the place where the elector resides or at another location.

In-person voting will only be at the board of elections. There will be no polling locations. In-person voting will occur on April 28, 2020, beginning at 6:30 a.m. and ending at 7:30 p.m. However, if electors are waiting in line to cast ballots at 7:30 p.m., they must be permitted to cast a ballot.¹¹ Additionally, the board must provide a provisional ballot to any qualifying voter who chooses to vote in person and is required to receive a provisional ballot. Boards should follow social distancing, voting machine disinfection, hand hygiene, and all other directions in accordance with public health authorities and voting machine manufacturer guidelines. Additionally, boards are encouraged to work with advocacy groups that represent disability and homeless populations in their county to help inform these voters of the limited in-person voting opportunity on April 28, 2020.

During this extended absentee voting period for the 2020 Primary Election, it is imperative that we ensure voters with disabilities can safely participate in the election and have access to accessible absentee voting. As accessible absentee voting is available through the use of your remote ballot marking system, boards should be prepared to receive, process requests, send accessible ballots, and receive marked ballots from voters using this system. Voters with a qualifying disability who want to use the remote ballot marking system may submit [Secretary of State Form 11-G](#) or other written application for an absentee ballot by 12:00 noon on April 25, 2020.¹²

4. PROVISIONAL BALLOTS BY MAIL

Boards of elections must promptly deliver a provisional ballot if the board determines that an application for an absentee voter's ballot is not valid because the voter has moved or changed their name without updating their voter registration as set forth in R.C. 3503.16, or for any other reason. The board must deliver the provisional ballot by mail, except to those voters with a disability, those who are unable to receive mail at the place where the voter resides or at another location, or those who have requested assistance in casting the elector's ballot pursuant to R.C. 3509.08. Boards of elections must prepay the return postage for the provisional ballot.¹³

The board must include the following with the provisional ballot:

- The reasons the voter has received a provisional ballot instead of a regular absentee ballot;

¹¹ H.B. 197, Section 32(D)(2).

¹² For additional instructions regarding remote ballot marking systems, review [Chapter 5, pages 6-8 of the EOM](#).

¹³ H.B. 197, Section 32(C)(7).

- Instructions for the voter to complete the provisional ballot affirmation, including an option to submit a copy of a form of identification described in R.C. 3505.182;
- Instructions for the voter to return the provisional ballot in the same manner as a regular absentee voter’s ballot and a return envelope in which the applicant may return the provisional ballot;
- Instructions for the applicant to ascertain the status of the applicant’s provisional ballot, as described in R.C. 3505.181.

The following forms have been updated or created for the special purposes of the 2020 Primary Election and will be available on the Secretary of State’s website:

- Form 12: Instructions to Absentee Voters (updated for the 2020 Primary Election only);
- Form 12-1: Special Notice to Absentee Voters (updated for the 2020 Primary Election only);
- Form 12-H: Provisional Ballot Notice (updated for the 2020 Primary Election only);
- Provisional Ballot Instructions (created for the 2020 Primary Election only); and
- Provisional Ballot Reason Form (created for the 2020 Primary Election only).

As described above, the Provisional Ballot Reason Form, the Provisional Ballot Instructions, the Provisional Ballot Envelope, a return envelope, and the Provisional Ballot Notice must be provided to each provisional voter.

D. PROCESSING ABSENTEE BALLOTS

Boards of elections may begin processing absentee ballots using the guidelines outlined in [Chapter 5, Section 1.06 of the Election Official Manual](#) (“EOM”).

E. CURE PERIOD

For seven days following April 28, 2020 the boards of elections must maintain hours that permit voters to cure a deficiency on an absentee or provisional ballot. Voters have until May 5, 2020 to cure any deficiency regarding their absentee or provisional ballot.¹⁴ Those dates and hours are:

- Wednesday, April 29, 2020 8:00 a.m. – 5:00 p.m.
- Thursday, April 30, 2020 8:00 a.m. – 5:00 p.m.

¹⁴ H.B. 197, Section 32(F).

- Friday, May 1, 2020 8:00 a.m. – 5:00 p.m.
- Saturday, May 2, 2020 8:00 a.m. – 12:00 p.m.
- Sunday, May 3, 2020 1:00 p.m. – 5:00 p.m.
- Monday, May 4, 2020 8:00 a.m. – 5:00 p.m.
- Tuesday, May 5, 2020 8:00 a.m. – 5:00 p.m.

F. DEADLINES AND UNOFFICIAL AND OFFICIAL CANVASSES

Boards of elections and the Secretary of State must complete the unofficial canvass, the canvass of the election returns, and all other post-election procedures with respect to the March 17, 2020 Primary Election on the following dates:¹⁵

- Saturday, April 25, 2020, 12:00 p.m. – Application Deadline to Receive an Absentee Ballot by Mail
- Monday, April 27, 2020 – Absentee Ballot Postmark Deadline
- Tuesday, April 28, 2020, 3:00 p.m. – Application Deadline for Unforeseeably Hospitalized Voters
- Tuesday, April 28, 2020, 7:30 p.m. – Last Day for Voting
- Wednesday, April 29, 2020, 12:00 p.m. – Unofficial Canvass Must Be Completed
- Tuesday, May 5, 2020 – Absentee and Provisional Ballot Cure Deadline
- Friday, May 8, 2020 – Absentee Ballots Must Be Received
- Saturday, May 9, 2020 – Official Canvass May Begin
- Wednesday, May 13, 2020 – Official Canvass Must Begin
- Tuesday, May 19, 2020 – Official Canvass Must Be Completed
- Tuesday, June 2, 2020 – Voter History Must Be Uploaded to the Statewide Voter Registration Database

¹⁵ H.B. 197, Section 32(G).

- Friday, June 5, 2020, 4:00 p.m. – Post-Primary Campaign Finance Reports Due

Each board should follow the instructions provided in [Chapter 6 of the EOM](#) for processing provisional ballots. The board of elections must not vote on the eligibility of any provisional ballot cast in the 2020 Primary Election until after May 5, 2020.

G. CAMPAIGN FINANCE

For the purpose of the contribution limits described in R.C. 3517.102, the date of the 2020 Primary Election is March 17, 2020. However, the statements of contributions and expenditures required to be filed as part of the post-primary report must be filed no later than 4:00 p.m. on June 5, 2020 to reflect activity through May 29, 2020.¹⁶

Boards of elections and the Secretary of State must notify candidates of their requirement to file the post-primary report by May 26, 2020, as set forth in R.C. 3517.11.

PART II – VOTER REGISTRATION

Boards of elections must not process any voter registration forms submitted after February 18, 2020 voter registration deadline.¹⁷ H.B. 197 prohibits processing the voter registration forms before 7:30 p.m. on April 28, 2020. The Secretary of State directs boards to wait until the official canvass has ended to process voter registration forms, including processing records received electronically from the online voter registration system and through the Bureau of Motor Vehicles. Boards must not transmit voter history to the Secretary of State until further information is provided.

PART III – REIMBURSEMENT

The Ohio General Assembly and the United States Congress appropriated funds for the completion of the 2020 Primary Election and to aid in Ohio’s response to Coronavirus/COVID-19 pandemic, respectively. In the coming days and weeks, the Secretary of State’s Office will work with boards of elections to ensure that appropriate protocols are in place for reporting covered expenses. The Secretary of State’s Office will provide additional information regarding the reimbursement for postage and other expenses related to concluding the March 17, 2020 Primary Election. Part II, Section C.2 of this Directive outlines the available methods of prepaying return postage for absentee ballots.

PART IV – RECORDS RETENTION

Because ballots for the 2020 Primary Election include candidates for election to federal offices, each board of elections is required by law to retain all ballots prepared for the election – both used and unused – for 22 months following the election.¹⁸ If there is litigation relating to the Primary still pending at the end of that period, the Secretary of State’s Office may direct counties

¹⁶ H.B. 197, Section 32(H).

¹⁷ H.B. 197, Section 32(B)(3).

¹⁸ [R.C. 3505.31](#); [52 U.S.C. 20701](#).

to retain the ballots for the duration of the litigation. If the board uses a voting system and software that captures images of ballots as they are scanned by a high-speed scanner, those images may be subject to disclosure pursuant to a public records request and must be retained. Accordingly, consult with the county prosecuting attorney regarding the retention of those images.

If the board has any questions regarding this Directive, please contact the Secretary of State's elections counsel at (614) 728-8789.

Yours in service,

A handwritten signature in blue ink, appearing to read "Frank LaRose". The signature is fluid and cursive, with the first name "Frank" and last name "LaRose" clearly distinguishable.

Frank LaRose
Ohio Secretary of State