



Am. H.B. 406

124th General Assembly
(As Passed by the House)

Reps. Reidelbach, Hollister, Seitz, Calvert, Seaver, Niehaus, G. Smith, Schmidt, Setzer, Husted, Latta, Kearns, Webster, Patton, Williams, Distel, Lendrum, Faber, Schneider, Carmichael, Flowers, Hughes, Wolpert, McGregor, Salerno, Coates, Peterson, Sullivan, Cirelli, Barrett, Bocchieri, Gilb, Oakar, Latell

BILL SUMMARY

- Authorizes the Secretary of State to publish and distribute election statistics, official rosters, pamphlet laws, and session laws in an electronic format.

CONTENT AND OPERATION

Overview of existing law and the bill

Under current law, the Secretary of State is required to compile, publish, and distribute various documents, including the election statistics of Ohio, the official roster of federal, state, and county officers, the official roster of township and municipal officers, the pamphlet laws, and the session laws. The law generally specifies the number of these documents that must be produced and/or distributed, and persons and entities entitled to receive copies of them. In addition, because these documents are public records, it would seem that any person may obtain copies of them under the Public Records Law.

Current law authorizes the Secretary of State's office and other state agencies to use electronic records and electronic signatures in accordance with the Uniform Electronic Transactions Act (UETA) and the rules the Department of Administrative Services (DAS) prescribes under that law. Some requirements of the UETA and other Ohio statutes may be waived by a state agency, including requirements pertaining to the method of posting or displaying records, the manner of sending, communicating, or transmitting records, and the manner of formatting records. But, most of the UETA's requirements concerning electronic transactions cannot be waived.

The bill generally authorizes the Secretary of State to compile, publish, and distribute the documents mentioned above in an electronic format instead of in the nonelectronic (paper or book) format currently required. The Secretary of State generally must maintain, however, the ability to provide a paper, book, or other nonelectronic format of these documents in case a public records request is made for a nonelectronic format of a document. The public records requirements of the bill cannot be waived under the UETA. (See **COMMENT 1**.)

Publication of the election statistics and the official rosters

Current law requires the Secretary of State to biennially compile and publish 2,500 copies of the election statistics of Ohio; 4,000 copies of the official roster of federal, state, and county officers; and 2,500 copies of the official roster of township and municipal officers. The bill generally continues to require the Secretary of State to biennially compile and publish these documents in the stated numbers, "in a paper, book, or other nonelectronic format." (Sec. 111.12(A).)

But, the bill also generally authorizes the Secretary of State to biennially compile and publish these documents in an electronic format under the UETA in lieu of in a paper, book, or other nonelectronic format in the numbers mentioned above. The Secretary of State must maintain, however, the ability to compile and publish these documents in a nonelectronic format, and generally must provide a copy of these documents in a nonelectronic format when a nonelectronic format is requested for a copy under the Public Records Law. Despite the provision in the Public Records Law allowing a person to choose to obtain a paper copy of a public record, the bill establishes as *maximum* numbers, the numbers mentioned above for documents in nonelectronic format otherwise required to be compiled and published, and thus seems to prohibit the Secretary of State from providing more copies of those documents in a paper, book, or other nonelectronic format once the maximums have been reached. (Sec. 111.12(B)(1) and (2); sec. 149.43(B)(1) and (2), not in the bill.) (See **COMMENT 2**.)

Distribution of pamphlet laws

Current law specifies the manner of *distributing* pamphlet laws for the Secretary of State.¹ The pamphlet laws traditionally have been in a paper format. (Sec. 149.09.) Under the bill, the Secretary of State is authorized to *produce and distribute* the pamphlet laws in an electronic format under the UETA. In doing so,

¹ *One copy of each pamphlet law must be forwarded to each county law library and each county auditor, and 100 copies of each pamphlet law must be forwarded to the State Library Board. Any remaining copies of each pamphlet law "received by the Secretary of State" must be distributed upon the request of interested persons.*

the Secretary of State must establish a "schedule," in any rules adopted under the UETA, for the electronic distribution of the pamphlet laws to county law libraries, county auditors, and the State Library Board, and the Secretary of State may authorize in those rules the compilation of one or more pamphlet laws in the same electronic distribution. (Sec. 149.09(B)(1).)

The Secretary of State must maintain the ability to produce and distribute the pamphlet laws in a nonelectronic format for purposes of public records requests made under the Public Records Law. The Secretary of State must provide a nonelectronic copy of a pamphlet law when a public records request is made for a copy in a nonelectronic format (see **COMMENT 3**). This requirement of the bill cannot be waived under the UETA. (Sec. 149.09(B)(2).)

Publication and distribution of the session laws

Under current law, the Secretary of State is required to publish and distribute annually or biennially a maximum of 900 copies of the session laws in a *permanently bound form* to be distributed as specified in the law.² These permanently bound volumes must contain copies of all enrolled acts and joint resolutions, a subject index, a table indicating the Revised Code sections affected, and a certificate that the laws, as assembled in each volume, are true copies of the original enrolled acts in the Secretary of State's office. (Sec. 149.091.)

The bill authorizes the Secretary of State to compile, publish, and distribute annually or biennially the session laws in an electronic format under the UETA in lieu of compiling and publishing them in a permanently bound volume or other "paper" format. The electronic format must include copies of all enrolled acts and joint resolutions, a subject index, and a table indicating the Revised Code sections affected. Each compilation of session laws in electronic format must include the Secretary of State's certificate that the laws so compiled and published are true copies of the original enrolled acts and joint resolutions in the Secretary of State's office. (Sec. 149.091(B)(1) and (2).)

² *The Secretary of State must distribute copies of these permanently bound volumes in the following manner: 109 to the Clerk of the House of Representatives; 43 to the Clerk of the Senate; one to each county auditor; one to each county law library, 75 to the Ohio Supreme Court; two to the Division of the Library of Congress; two to the State Library; two to the Ohio Historical Society; and 13 to the Legislative Service Commission (sec. 149.091(A) to (I)). In addition, the Secretary of State may distribute 200 copies, free of charge, to public officials (sec. 149.091(J)). Remaining copies may be sold by the Secretary of State at a price to be determined by DAS. The selling price cannot exceed the cost of publication and distribution by 10%. (Sec. 149.091(K).)*

The bill states that the session laws in an electronic format may be distributed to the Clerk of the House of Representatives, the Clerk of the Senate, each county auditor, each county law library, the Ohio Supreme Court, the Division of the Library of Congress, the State Library, the Ohio Historical Society, and the Legislative Service Commission in a lesser number than that prescribed by existing law (see Footnote 2) if the individual or entity consents to the lesser distribution (sec. 149.091(B)(3)). The bill also provides that, notwithstanding "the maximum number of [paper format] compilations permitted to be distributed" free of charge to public officials (200), the Secretary of State may distribute the session laws in an electronic format without limit and free of charge to public officials (sec. 149.091(B)(4)). Finally, the bill states that the session laws may be sold in an electronic format to other individuals or entities at a price to be determined by DAS, but that selling price must not exceed by 10% the cost of publication and distribution (sec. 149.091(B)(5)).

COMMENT

1. The UETA authorizes state agencies (including the Secretary of State's office) to utilize electronic records and signatures. The Department of Administrative Services must prescribe administrative rules under the UETA governing the use of electronic records and signatures by state agencies. If a state agency elects to create, use, receive, or retain electronic records or signatures, any rules adopted by the agency for its records must be consistent with DAS' rules. The UETA currently allows the Secretary of State to publish and distribute electronically the official rosters, the election statistics, the pamphlet laws, and the session laws. In doing so, the Secretary of State would have to follow rules promulgated by DAS under the UETA. The bill does not affect this requirement. (Secs. 1306.20 and 1306.21.)

2. Because the bill's official rosters and election statistics provisions establish "maximum" numbers for these documents when they are in a nonelectronic format (sec. 111.12(B)(2)), the bill may need a clarifying amendment to create an express exemption from the Public Records Law, which otherwise is required to be liberally construed in favor of broad access to and disclosure of public records. *State ex rel. Gannett Satellite Information Network v. Shirey* (1997), 78 Ohio St.3d 400 and *State ex rel. The Miami Student v. Miami Univ.* (1997), 79 Ohio St.3d 168.

3. Under the Public Records Law, all public records generally must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. If a person chooses to obtain a copy of a public record, the public office or person responsible for the public record generally *must permit that person to choose* to have the public record

duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record (sec. 149.43(B)(1) and (2), not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-17-01	p. 950
Reported, H. State Government	01-15-02	pp. 1231-1232
Passed House (97-0)	01-16-02	p. 1237

h0406-ph.124/kl