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Bill Analysis

Legislative Service Commission

Am. H.B. 406

124th General Assembly

(As Reported by H. State Government)

Reps. Reidelbach, Hollister, Seitz, Calvert, Seaver, Niehaus, G. Smith, Schmidt, Setzer, Husted, Latta, Kearns, Webster, Patton, Williams, Distel, Lendrum, Faber, Schneider, Carmichael, Flowers

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

Current law

Publication of the election statistics and 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 (sec. 111.12(A)).

Distribution of the pamphlet laws

Additionally, current law requires the Secretary of State to distribute pamphlet laws in the following manner (sec. 149.09):

- One copy to each county law library;
- One copy to each county auditor;
- 100 copies to the State Library Board;
- Any remaining copies to interested persons who request them.

Publication and distribution of the session laws

Finally, current law requires the Secretary of State to either annually or biennially publish and distribute a maximum of 900 copies of the session laws in a permanently bound form. 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 Secretary of State must distribute copies of these permanently bound volumes in the following manner (sec. 149.091(A) to (I)):

- 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.
- 13 to the Legislative Service Commission.

In addition, the Secretary of State may distribute 200 copies of these permanently bound volumes, free of charge, to public officials. (Sec. 149.091(J).)

Remaining copies of these permanently bound volumes may be sold by the Secretary of State at a price to be determined by the Department of Administrative Services (DAS). The selling price cannot exceed the cost of publication and distribution by 10%. (Sec. 149.091(K).)

Electronic records and signatures under the Uniform Electronic Transactions Act

The Uniform Electronic Transactions Act (UETA) authorizes state agencies to utilize electronic records and electronic signatures.¹ Generally, state agencies must determine if, and the extent to which, they will send and receive electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. (Sec. 1306.20(A), not in the bill.)

Furthermore, DAS must prescribe administrative rules governing the use of electronic records and electronic signatures by state agencies. The rules adopted by DAS must address all of the following (sec. 1306.21(A)(1) to (4), not in the bill):

- The minimum requirements for the method of creation, maintenance, and security of electronic records and electronic signatures;
- The control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and audibility of electronic records;
- Any other required attributes for electronic records that are specified for corresponding nonelectronic records or are reasonably necessary under the circumstances;
- The type of electronic signature required for those electronic records that must be signed;
- The manner and format in which an electronic signature must be affixed to an electronic record that must be signed;
- The identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process when an electronic record must be signed.

Additionally, DAS may adopt rules ensuring consistency and interoperability among state agencies with regard to electronic transactions, electronic signatures, and security procedures (sec. 1306.21(B)(1), not in the bill).

¹ R.C. 1306.20(I) generally defines "state agency" as every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government. It does not include, however, the General Assembly, any legislative agency, the Ohio Supreme Court, other courts of record, or any judicial agency.

If a state agency creates, uses, receives, or retains *electronic records*, any rules adopted by the agency relating to those records must be consistent with the rules adopted by DAS. Additionally, if a state agency creates, uses, or receives *electronic signatures*, it must do so in accordance with these DAS rules. (Sec. 1306.20(C) and (D), not in the bill.)

Finally, current law allows a state agency in a specified manner to waive requirements in the Revised Code, other than UETA requirements concerning electronic transactions, that relate to the method of posting or displaying records, the manner of sending, communicating, or transmitting records, or the manner of formatting records (sec. 1306.20(B)(1) and (2), not in the bill).

Changes proposed by the bill

Publication of the election statistics and the official rosters

The bill states that the Secretary of State may compile and publish biennially the election statistics of Ohio, the official roster of federal, state, and county officers, and the official roster of township and municipal officers *in an electronic format* under the UETA in lieu of compiling and publishing these documents biennially in a paper, book, or other nonelectronic format (sec. 111.12(B)(1)). (See **COMMENT 1**.)

Notwithstanding the previously discussed provisions of the UETA allowing an agency to waive statutory requirements governing record formatting, posting, display, and provision, the Secretary of State must (1) maintain the ability to compile and publish and (2) compile and publish the official rosters and election statistics in a paper, book, or other nonelectronic format for the purposes of public records requests made under the Public Records Law. The Secretary of State generally must provide a copy of any of these documents in such a format upon such a request. But, the bill states, that the Secretary of State is not required to produce more physical copies of these documents than existing law requires. (Sec. 111.12(A) and (B)(2).) (See **COMMENT 2**.)

Distribution of pamphlet laws

The bill also authorizes the Secretary of State to produce and distribute the pamphlet laws *in an electronic format* under the UETA. (See **COMMENT 1**.) If this happens, the Secretary of State must include in any associated rules the Secretary of State adopts a schedule for the electronic distribution of the pamphlet laws to county law libraries, county auditors, and the State Library Board as required under existing law. Additionally, the rules may authorize the compiling of one or more pamphlet laws in the same electronic distribution. (Sec. 149.09(B)(1).)

Notwithstanding the previously discussed provisions of the UETA allowing an agency to waive statutory requirements governing record formatting, posting, display, and provision, the Secretary of State must (1) maintain the ability to produce and distribute and (2) produce and distribute the pamphlet laws in a nonelectronic format for the purposes of public records requests made under the Public Records Law. The Secretary of State must provide a nonelectronic copy of a pamphlet law upon such a request. (Sec. 149.09(B)(2).) (See **COMMENT 2**.)

Publication and distribution of the session laws

The bill authorizes the Secretary of State to annually or biennially compile, publish, and distribute the session laws *in an electronic format* under the UETA in lieu of producing them in a permanently bound volume or other "paper" format (see **COMMENT 1**). If the Secretary of State does so, the electronic format session laws 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 as 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).)

The bill allows the session laws to also be distributed in an electronic format 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 if the individual or entity consents to the lesser distribution (sec. 149.091(B)(3)).

Notwithstanding the maximum number of permanently bound volumes or other "paper" format session laws (200) that the Secretary of State may distribute to public officials free of charge, the electronic format session laws may be distributed without limit and free of charge to public officials. Additionally, 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(A)(11) and (B)(4) and (5).)

COMMENT

1. 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. The Secretary of State, however, is subject to the rules

promulgated by DAS under the UETA with regard to electronic records and electronic signatures. The bill does not affect that requirement.

2. 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

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