



Sub. H.B. 262

125th General Assembly
(As Passed by the House)

Reps. Carmichael, Peterson, Seitz, Niehaus, Bocchieri, Aslanides, Reinhard, Koziura, Buehrer, Calvert, D. Evans, Flowers, Gilb, Grendell, Kilbane Schmidt, Taylor

BILL SUMMARY

- Increases from \$85 to \$95 per diem the maximum compensation that may be paid to each judge of an election.
- Generally permits leave with pay for political subdivision employees who serve as judges of elections, subject to the terms and conditions set forth in an ordinance or resolution passed by the legislative authority of the political subdivision, and generally permits leave with pay for state employees who so serve, subject to the terms and conditions set forth by the head of the state agency by which the person is employed.
- Requires any person who is eligible for leave with pay for serving as a judge of an election to receive, in addition to the employee's regular compensation, the compensation paid to a judge of an election.
- Specifies that these leave with pay provisions do not apply to election officials or public school teachers and do not supersede or negate any provision of a collective bargaining agreement.
- Requires all protests against initiative and referendum petitions to be in writing and to specify the reasons for the protest.
- Specifies that protests for initiative and referendum petitions other than those to be voted on by electors throughout the entire state must be filed not later than 4 p.m. of the 64th day before the election.
- Permits an absent voter's ballot to be counted as a valid ballot if it is marked and returned by an absent voter who subsequently dies before the counting of the ballots.

- Requires a person who wishes to withdraw as a candidate to withdraw prior to the 40th day before the day of a primary election (other than a presidential primary election) or a general election, as applicable.
- Eliminates the requirement that the ballot language for a local option election regarding sales at a specific premises identify whether that premises was previously authorized to sell beer, wine and mixed beverages, or intoxicating liquor by a local option election.
- Replaces "intoxicating liquor" as a category of alcoholic beverages that may be approved for sale at a particular location by a local option election with "spirituous liquor."
- Changes the ballot language for local option elections held on the sale of alcoholic beverages at a particular location to specify that the election may be held on sales of beer, wine and mixed beverages, or spirituous liquor (instead of intoxicating liquor).
- Eliminates the requirement that a board of elections keep one or more of its offices open an additional seven hours during each of the three weeks before the close of registration before a primary or general election, and instead requires the office to remain open until 9 p.m. on the last day of registration before the election.
- Prohibits collective bargaining or other forms of collective negotiations between county boards of elections and their employees.

CONTENT AND OPERATION

Judges of elections

Maximum compensation

Beginning in calendar year 1998, each judge of an election in a county must be paid for the judge's services at a general, primary, or special election at the same hourly rate. That hourly rate must not be less than the minimum hourly rate established by the Fair Labor Standards Act and cannot exceed \$85 per diem. The bill requires, beginning with calendar year 2004, each judge of an election in a county to be paid for those services at an hourly rate not less than the minimum hourly rate established by the Fair Labor Standards Act, but not to exceed \$95 per diem. Thus, the bill increases the maximum possible compensation for a judge of elections by \$10 per day. (Sec. 3501.28(A)(3), (B), and (C).)



Government employees serving as election judges

Existing law does not require that state and political subdivision employees who serve as poll workers be paid their regular compensation while serving as poll workers. The bill generally permits any employee of the state or of any political subdivision of the state to serve as a judge of elections on the day of an election without loss of the employee's regular compensation for that day as follows (sec. 3501.28(G)(1)):

- For employees of a county office, department, commission, board, or other entity, or of a court of common pleas, county court, or county-operated municipal court, the employee's appointing authority may permit leave with pay in accordance with a resolution setting forth the terms and conditions for that leave passed by the board of county commissioners.
- For all other employees of a political subdivision of the state, leave with pay must be subject to the terms and conditions set forth in an ordinance or resolution passed by the legislative authority of the applicable political subdivision. (See **COMMENT 1**.)
- For state employees, leave with pay must be subject to the terms and conditions set forth by the head of the state agency by which the person is employed.

Any employee eligible for leave with pay under any of these provisions is required to receive, in addition to the employee's regular compensation, the compensation paid to the judge of an election (sec. 3501.28(G)(2)). These leave with pay provisions do not apply to election officials or public school teachers, and nothing in these provisions supersedes or negates any provision of a collective bargaining agreement in effect under the Collective Bargaining Law (sec. 3501.28(G)(3) and (4)).

Protests against initiative and referendum petitions

With respect to initiative and referendum petitions, existing law permits the circulator of any part-petition, the committee interested in the petition, or any elector to file with the board of elections a protest against the board's findings regarding the sufficiency or insufficiency of the signatures on the petition and indicating whether or not the part-petition is properly verified (sec. 3519.16). Initiative or referendum petitions to be voted on by electors throughout the entire state must be presumed to be sufficient in all respects, unless otherwise proven not later than 40 days before the election (Ohio Constitution, Article II, Section 1g).



Existing law does not specify the form that a protest must take, nor does it establish a deadline by which a protest must be filed if the protest is against an initiative or referendum petition to be voted on by less than the entire state. The bill requires protests to be in writing and to specify the reasons for the protest. It also requires protests for all initiative and referendum petitions other than those to be voted on by electors throughout the entire state to be filed not later than 4 p.m. of the 64th day before the day of the election. Once any protest is filed, all procedures for determining the sufficiency or insufficiency of the signatures on the petition must proceed as under existing law. (Sec. 3519.16.)

Counting the absent voter's ballots of deceased electors

Existing law prohibits the counting of an absent voter's ballot whenever it appears to the election officials by sufficient proof that the elector who marked and forwarded the ballot has died. The bill eliminates this prohibition. Thus, under the bill, it appears that an absent voter's ballot may be counted if that ballot was marked and forwarded by an absent voter who subsequently died before the counting of the ballots. (Sec. 3509.07.)

Deadline for candidate withdrawal

Any person filing a declaration of candidacy may withdraw as a candidate at any time prior to the primary election or, in the case of a presidential primary election, at any time prior to the 50th day before that election. Similarly, any person nominated in a primary election or by nominating petition as a candidate for election at the next general election may withdraw as a candidate at any time before the general election. The bill changes both of these provisions to permit a candidate to withdraw at any time prior to the 40th day before a primary election (other than a presidential primary election) or before a general election. (See COMMENT 2.) (Sec. 3513.30(B) and (D).)

Local option elections for sales at a particular establishment

Ballot language regarding prior elections

Local option elections are generally held in an election precinct on various questions regarding the sale of beer, wine, mixed beverages, or spirituous liquor. Some questions relate to the sale of specific alcoholic beverages for on-premises consumption, while other questions deal with the sale of specific beverages for off-premises consumption; separate local option questions govern Sunday sales and the operation of a liquor permit premises that has been declared a nuisance. (Secs. 4301.32 to 4301.403, 4303.29, and 4305.14.)



For various types of local option elections, the Revised Code specifies the ballot language to be submitted to electors in the appropriate precinct. With respect to a local option election regarding whether beer, wine and mixed beverages, or "intoxicating liquor" (see below) may be sold *at a particular establishment*, existing law requires the ballot to state, when it is the case, that sales at that premises were previously approved by a prior local option election. The bill eliminates that requirement. Thus, the ballot, in a local option election dealing with a particular premises, no longer would be required to specify that the sale of specific alcoholic beverages was previously approved in another local option election regarding that premises. (Sec. 4301.355(C) and (D).)

Types of liquor that may be approved for sale

Existing law permits three categories of alcoholic beverages to be authorized for sale at a particular location by a local option election: beer, wine and mixed beverages, or intoxicating liquor. The bill changes the types of liquor that may be approved for sale at a particular location by a local option election by substituting spirituous liquor for intoxicating liquor.¹ The bill similarly changes the required ballot language applicable to these elections. Thus, under the bill, local option elections may be held on the sale of beer, wine and mixed beverages, or spirituous liquor at a particular location. (Secs. 4301.323, 4301.355, and 4301.365.)

Board of elections office hours before the close of registration

Existing law requires the board of elections in each county to keep its offices, or one or more of its branch registration offices, open for the performance of its duties an additional seven hours each week for three weeks before the close

¹ *"Intoxicating liquor" includes all liquids and compounds, other than beer, containing one-half of one per cent or more of alcohol by volume that are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. "Intoxicating liquor" includes wine even if it contains less than 4% of alcohol by volume, mixed beverages even if they contain less than 4% of alcohol by volume, cider, alcohol, and all solids and confections that contain any alcohol. "Spirituous liquor" includes all intoxicating liquors containing more than 21% of alcohol by volume. (Sec. 4301.01(A)(1) and (B)(5)--not in the bill.)*

Wine and mixed beverages also are types of intoxicating liquor. They contain, by definition, not less than one-half of one per cent, and not more than 21%, of alcohol by volume. (Sec. 4301.01(B)(3) and (4).) In contrast, beer, by definition, contains one-half of one per cent or more, but not more than 12%, of alcohol by volume (sec. 4301.01(B)(2)).



of registration before a general or primary election. The bill eliminates this requirement and, instead, requires the board to keep its offices, or one or more of its branch registration offices, open for the performance of its duties until 9 p.m. on the last day of registration before a primary or general election. (Sec. 3501.10(B).)

Collective bargaining between boards of elections and employees

Collective bargaining generally

The current Collective Bargaining Law grants defined "public employees" certain rights when dealing with a public employer. These public employees have the right to join an employee organization, which generally is defined as a labor or other bona fide organization whose purpose is to deal with public employers about grievances, labor disputes, wages, hours, terms, and other conditions of employment. These public employees, then, may collectively bargain through their "exclusive representative" employee organizations with their public employers over those types of matters and enter into collective bargaining agreements. (Sec. 4117.03(A) and sec. 4117.01(D)--not in the bill.)

Public employers must engage in collective bargaining with these public employees through their "exclusive representative" employee organizations. But, the Collective Bargaining Law does not preclude public employers from engaging in collective bargaining or in any other form of collective negotiations with their employees who *are not* subject to the Law. In the latter instances, public employers may elect to collectively bargain with, or engage in other forms of collective negotiations with, their exempted employees. (Sec. 4117.03(C) and secs. 4117.04 and 4117.05--not in the bill.) "Public employer" includes the state or any political subdivision of the state located entirely in the state (sec. 4117.01(B)--not in the bill).

Covered and exempted employees

Current law defines "public employee" for purposes of the Collective Bargaining Law generally as any person who works for a public employer, whether by employment or appointment. But, the definition also lists 19 specific categories of exempted employees, causing those employees not to be "public employees" for collective bargaining purposes. (Sec. 4117.01(C)--not in the bill.) One of those categories of exempted employees is employees of county boards of elections (sec. 4117.01(C)(12)--not in the bill).

However, as mentioned above, nothing in the Collective Bargaining Law prohibits public employers from electing to engage in collective bargaining, to meet and confer, to hold discussions, or to engage in any other form of collective



negotiations with their employees who are not subject to the Law. Thus, even though their employees are not technically covered by the Collective Bargaining Law, county boards of elections as such public employers and their otherwise exempted employees may engage, under current law, in collective bargaining or other forms of collective negotiations if the boards so elect.

Changes proposed by the bill

The bill generally retains the provisions of the Collective Bargaining Law discussed above, but it prohibits a "public employer" from engaging in collective bargaining or other forms of collective negotiations with the otherwise exempted employees of county boards of elections. It does not affect the ability of other exempted employees and their public employers to engage in collective bargaining if the employers elect to do so. (Sec. 4117.03(C) and (D).)

COMMENT

1. For employees of a municipal corporation, the Ohio Supreme Court has held that a city or village, pursuant to its constitutionally granted home rule authority, may provide compensation at variance with any state law seeking to regulate such a matter of substantive local self-government. Article XVIII, Section 3, Ohio Constitution and *Northern Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St. 2d 375, 378. The bill essentially provides that an employee of a municipal corporation may serve as a judge of elections on the day of an election without loss of the employee's regular compensation for that day subject only to "terms and conditions set forth in an ordinance" of the municipal corporation's legislative authority (sec. 3051.28(C)(1)(b)). An argument can be made that this provision constitutes a requirement for full pay for municipal employees who serve as poll workers and that this provision cannot prevail over a conflicting municipal corporation ordinance or charter provision under the principles set forth in *Benevolent Association*.

2. The effect of the bill's "withdrawal of candidacy deadline" provisions may be unclear if a person wishes to withdraw as a candidate within 40 days prior to an election. Presumably, the person would remain listed on the ballot as a valid candidate. If elected, however, the person could not be required to accept the office. In such case, an appointment or a subsequent election would be necessary to fill the office.



HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-14-03	p. 1033
Reported, H. State Gov't	01-21-04	p. 1501
Passed House (59-38)	01-21-04	pp. 1520-1546

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