



Sub. H.B. 262*

125th General Assembly

(As Reported by S. State and Local Government and Veteran's Affairs)

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* This analysis was prepared before the report of the Senate State and Local Government and Veteran's Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

BILL SUMMARY

Judges of elections

Compensation

- Increases from \$85 to \$95 per diem the maximum compensation that may be paid to each judge of an election (sec. 3501.28(C)).
- Permits a board of elections to increase the pay of a judge of an election up to, but not exceeding, 9% over the compensation paid in that county during the previous year, if the compensation paid during the previous year was \$85 or less per diem (sec. 3501.28(E)(1)(b)).
- Permits a board of elections to increase the pay of a judge of an election up to, but not exceeding, 4.5% over the compensation paid in that county during the previous year, if the compensation paid during the previous year was more than \$85 but less than \$95 per diem (sec. 3501.28(E)(1)(c)).

Government employees serving as election judges

- 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 (sec. 3501.28(G)(1)).
- Requires any terms and conditions set forth to include a standard procedure for deciding which employees are permitted to receive leave with pay if multiple employees apply to serve as a judge of elections and requires that procedure to be applied uniformly to all similarly situated employees (sec. 3501.28(G)(2)).
- Specifies that, if terms and conditions for leave with pay for serving as a judge of an election are not set forth, an employee may use personal leave, vacation leave, or compensatory time, or take unpaid leave, to so serve (sec. 3501.28(G)(6) and related sec. 124.57(B)(1)).

- Requires any state or political subdivision employee 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 (sec. 3501.28(G)(3)).
- 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 (sec. 3501.28(G)(4) and (5)). (See **COMMENT.**)

Voting machines, marking devices, and automatic tabulating equipment

Definitions

- Defines the terms "direct recording electronic voting machine," "Help America Vote Act of 2002," and "voter verified paper audit trail" for the purposes of the Voting Machine Law (sec. 3506.01(F), (G), and (H)).

Standards for voting machines and marking devices

- Requires a voter verified paper audit trail to be securely retained at the polling place until the close of the polls on the day of the election, and requires the Secretary of State to adopt rules specifying the manner of storing it at the polling place (sec. 3506.01(H)).
- Requires, before the initial certification of any direct recording electronic voting machine with a voter verified paper audit trail, and as a condition for the continued certification and use of those machines, the Secretary of State to establish, by rule, certification standards for those machines (sec. 3506.05(H)(3)).
- Requires those standards to include all of the following: a definition of a voter verified paper audit trail, requirements that it not be retained by any voter or contain individual voter information, a prohibition against the production by the machine of anything that could be legally removed from the polling place, a requirement that the paper be sturdy, clean, and resistant to degradation, a requirement that it be readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic codes, and a requirement that the paper trail be capable of being optically scanned for the purpose of a recount or other audit of the voting machine (sec. 3506.05(H)(3)(a)).

- Permits the Secretary of State to waive the requirement that the voter verified paper audit trail be capable of being optically scanned if the Secretary of State determines that the requirement is cost prohibitive (sec. 3506.05(H)(3)(b)).
- Specifies that no marking device or voting machine may provide to a voter any type of receipt or voter confirmation that the voter legally may retain after leaving the polling place (secs. 3506.06(G) and 3506.10(O)).
- Specifies that, on and after the first federal election that occurs after January 1, 2006, if a voting machine is a direct recording electronic voting machine, it must include a voter verified paper audit trail (sec. 3506.10(P)).

Voter verified paper audit trails

- Specifies that, for any recount of an election in which ballots are cast using a direct recording electronic voting machine with a voter verified paper audit trail, the voter verified paper audit trail must serve as the official ballot to be recounted (sec. 3506.18(A)).
- Requires voter verified paper audit trails to be preserved in the same manner and for the same time period as paper ballots are preserved (sec. 3506.18(B)).

Implementation of the Help America Vote Act of 2002 (HAVA)

Acquisition of voting systems before the certification of voter verified paper audit trails

- Permits counties that were originally scheduled to acquire new voting systems during the 2004 calendar year under the Ohio state plan with HAVA funds to vote to affirm any prior decision to so acquire the voting systems within 30 days after the bill's effective date (Section 3(B)(1)(a)).
- Specifies that, if a county reaffirms its prior decision to acquire a new voting system for use during the 2004 calendar year with HAVA funds, the county must proceed with the acquisition according to the current version of the Ohio state plan, with the Secretary of State acting as a purchase agent on behalf of the board of county commissioners (Section 3(B)(1)(c)).

- Specifies that, if a county does not vote to reaffirm its decision within the 30-day period, the county must not proceed with the acquisition of the new voting system for use during the 2004 calendar year with HAVA funds, and specifies that the Secretary of State cannot compel the board of elections of the county to vote to reaffirm its decision (Section 3(B)(1)(b)).
- Permits counties to acquire new voting systems during 2005 prior to the certification of direct recording electronic voting machines with a voter verified paper audit trail if the county has not already acquired a new voting system and if the county selected a voting system other than a direct recording electronic voting system as the primary voting system to be used in the county (Section 3(B)(2)).

Payment for retrofitting machines previously purchased

- Specifies the intent of the General Assembly that the state of Ohio pay, with HAVA funds or an appropriation of state capital funds, for any additional costs a county incurs after the initial purchase of direct recording electronic voting machines, to upgrade or retrofit those machines with a voter verified paper audit trail (Section 3(C)).

Acquisition of voting systems after the certification of voter verified paper audit trails

- Changes the process for counties other than those previously mentioned to acquire new voting systems with HAVA funds, with respect to any direct recording electronic voting machine a county selects for acquisition (Section 3(D)).
- Requires the Secretary of State to adopt a schedule by which the Secretary of State must certify direct recording electronic voting machines with a voter verified paper audit trail for use in this state and that provides for the certification, acquisition, and implementation of those machines not later than the first federal election that occurs after January 1, 2006, unless required sooner by HAVA (Section 3(E)(1)(a)).
- Requires the Secretary of State, before certifying those machines, to establish standards for their certification that comply with HAVA, the Voting Machine Law, the bill, and any other applicable laws and standards (Section 3(E)(1)(b)).

- Permits any vendor of a direct recording electronic voting machine with a voter verified paper audit trail to seek certification of that machine, and provides that no currently approved vendor, type, or model of a direct recording electronic voting machine may remain on the approved list for acquisition with HAVA funds unless it is subject to the new certification standards (Section 3(E)(1)(c) and (d)).
- Requires the Secretary of State to commence price negotiations with currently approved vendors and perform specified calculations based on the outcome of those price negotiations to determine the percentage cost associated with the acquisition of direct recording electronic voting machines with a voter verified paper audit trail (Section 3(E)(2), (3), and (4)).
- Specifies that, if the percentage cost is 120% or less, the Secretary of State, if approved by the Controlling Board, may permit counties to acquire the vendor's machines and to upgrade or retrofit any machines previously purchased from the vendor with a voter verified paper audit trail from the vendor (Section 3(E)(5)).
- Specifies that, if the percentage cost is more than 120%, the Secretary of State must not accept the cost and any contract negotiated with the vendor must be deemed null and void with respect to any direct recording electronic voting machines not yet purchased (Section 3(E)(6)).
- Permits any vendor of a direct recording electronic voting machine with a voter verified paper audit trail that is certified in this state to submit a bid to provide voting machines, marking devices, or automatic tabulating equipment for those counties whose original direct recording electronic voting machine selection is no longer available under this process (Section 3(F)(1)).
- Requires the Secretary of State to develop a process by which vendors may submit bids, by which the Secretary of State must approve for acquisition, and by which counties whose voting machine selection is no longer available may purchase, voting machines marking devices, or automatic tabulating equipment with HAVA funds (Section 3(F)(2)).
- Requires voting systems purchased through the process the Secretary of State develops to meet the requirements of HAVA, the Voting Machine Law, the bill, and any other applicable laws and standards (Section 3(F)(2)).

- Requires the acquisition of voting machines, marking devices, or automatic tabulating equipment with HAVA funds to be completed before the first federal election that occurs after January 1, 2006, unless required sooner by HAVA (Section 3(G)).

Payment for costs of acquisition

- Specifies the intent of the General Assembly that the state of Ohio pay, with HAVA funds or an appropriation of state capital funds, for the full cost of acquiring voting machines, marking devices, or automatic tabulating equipment as required by the bill (Section 3(H)).

Remaining funds

- Creates the County Electronic Voting Machine Maintenance Fund, into which all moneys received under HAVA that are not approved for release by the Controlling Board as of the first federal election that occurs after January 1, 2006, must be deposited (sec. 3506.17).

Amending the Ohio state plan

- Requires the Secretary of State to amend the Ohio state plan that must be filed under HAVA as required to conform with the bill's provisions (Section 4).

Disabled accessibility

- Requires the Secretary of State to establish the position of Americans with Disabilities Act Coordinator within that office to assist the Secretary of State in ensuring equal access to polling places for persons with disabilities, to assist the Secretary of State with ensuring that each voter may cast the voter's ballot with privacy and independence and more generally in a manner that provides the same opportunity for access and participation as for other voters, and to assist the Secretary of State in developing voting machine, marking device, and automatic tabulating equipment certification standards (sec. 3501.05(V)).
- Requires, on and after the first federal election that occurs after January 1, 2006, unless required sooner by HAVA, any system that produces a voter verified paper audit trail to be accessible to disabled voters, including visually impaired voters, in the same manner as the direct recording electronic voting system that produces it (sec. 3506.01(H)).

- Requires, on and after the first federal election that occurs after January 1, 2006, unless required sooner by HAVA, each polling location to have available for use at all elections at least one direct recording electronic voting machine with a voter verified paper audit trail that is accessible for individuals with disabilities (sec. 3506.19).

Protests against initiative and referendum petitions

- Requires all protests against initiative and referendum petitions to be in writing and to specify the reasons for the protest (sec. 3519.16).
- 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 (sec. 3519.16).

Disposal of excess funds and excess aggregate contributions

- Specifies that candidates for state office must dispose of *excess funds*, and candidates for state office who accepted contributions prior to deciding upon or announcing an office or accepted contributions for the purpose of nominating or electing the candidate to an office not subject to the Campaign Finance Law's contribution limits must dispose of both *excess funds* and *excess aggregate contributions* (sec. 3517.109(A)(15) and (B)).
- Generally prohibits a candidate for state office from appearing on the ballot unless the candidate or the candidate's campaign committee has disposed of excess funds, excess aggregate contributions, or both, as required (sec. 3517.109(D)(1)).
- Specifies that a candidate must not be prohibited from appearing on the ballot if the candidate or the candidate's campaign committee accepted a total of excess aggregate contributions of less than \$5,000 from all contributors (sec. 3517.109(D)(2)).
- Requires the campaign committees of candidates required to dispose of excess aggregate contributions to include in the report regarding that disposal the source and amount of each excess aggregate contribution disposed of and a description of the manner in which it was disposed (sec. 3517.109(E)(2)).

Counting the absent voter's ballots of deceased electors

- 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 (sec. 3509.07).

Elimination of vacant office exception to duplicate candidacy prohibition

- Eliminates the exception to the general prohibition against persons seeking nomination or election to more than one office at the same election that applied to persons being a candidate to fill a vacant office while seeking nomination or election to another office (sec. 3513.052(G)).

Local option elections for sales at a particular establishment

- 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 (sec. 4301.355).
- 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" (secs. 4301.323, 4301.355, and 4301.365).
- 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) (sec. 4301.355 and 4301.365).

Board of elections office hours before the close of voter registration

- 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 (sec. 3501.10).

Collective bargaining between boards of elections and employees

- Prohibits collective bargaining or other forms of collective negotiations between county boards of elections and their employees (sec. 4117.03(C) and (D)).

Appropriations

- Makes appropriations (Sections 5 and 7).

COMMENT

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(G)(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*.

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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