



Andrea Holmes

Final Analysis
Legislative Service Commission

Am. Sub. H.B. 350
127th General Assembly
(As Passed by the General Assembly)

Reps. Wolpert, Batchelder, Huffman, Evans, Peterson, Fende, Flowers, S. Williams, Webster, Bubp, Combs, Brown, Adams, Bacon, Barrett, Beatty, Bolon, Book, Boyd, Brady, Celeste, Chandler, Daniels, DeBose, DeGeeter, Dolan, Domenick, Driehaus, Dyer, Foley, Garrison, Gerberry, Gibbs, Goodwin, Goyal, J. Hagan, R. Hagan, Harwood, Heard, Hite, Hughes, Jones, Letson, Luckie, Lundy, Mallory, J. McGregor, R. McGregor, Newcomb, Okey, J. Otterman, Patton, Reinhard, Sayre, Schindel, Schlichter, Schneider, Sears, Setzer, D. Stewart, J. Stewart, Strahorn, Sykes, Szollosi, Uecker, Ujvagi, Wachtmann, White, B. Williams, Yates, Yuko, Zehringer

Sens. Cates, Grendell, Schuler, Fedor, Roberts, Wagoner, Buehrer, Harris, Morano, Niehaus

Effective date: September 12, 2008

ACT SUMMARY

Voting machines

- Requires any voting machine, marking device, or automatic tabulating equipment initially certified or acquired on or after December 1, 2008, to have, at a minimum, the most recent federal certification number issued by the Election Assistance Commission.
- Requires any voting machine, marking device, or automatic tabulating equipment already certified for use in this state on the effective date of the act to meet, as a condition of continued certification and use, the voting system standards adopted by the Federal Election Commission in 2002.
- Specifies that counties that acquire additional voting machines, marking devices, or automatic tabulating equipment on or after December 1, 2008, are not considered to have acquired those machines, devices, or

equipment on or after December 1, 2008, if they are replacement or supplementary in nature.

Secretary of State's authority to issue directives

- Permits the Secretary of State to issue permanent or temporary directives, and requires the Secretary of State to establish a process to allow public review and public comment of proposed permanent directives.
- Prohibits the Secretary of State from issuing a permanent directive during the period beginning 90 days prior to the day of an election and ending on the 40th day following the day of that election.
- Permits the Secretary of State to issue a temporary directive only during the period beginning 90 days prior to the day of an election and ending on the 40th day following the day of that election.
- Requires the Secretary of State to seek public review and public comment before a temporary directive may become a permanent directive.

Board of Voting Machine Examiners

- Changes the composition of the Board of Voting Machine Examiners from three members to four members, two appointed by the Secretary of State and two appointed by certain members of the General Assembly.
- Requires any vacancy on the Board of Voting Machine Examiners to be filled in the same manner as the original appointment, and requires the Secretary of State to provide staffing assistance to the Board, at the Board's request.
- Requires the Board of Voting Machine Examiners to submit any matter in controversy due to a tie vote to the Secretary of State, who must decide the question.

Absent voter's ballots

- Permits absent voter's ballots and armed service absent voter's ballots contained in envelopes that are postmarked prior to election day to be counted if they are received within ten days after election day.

- Eliminates individual size requirements for envelopes used to mail armed service absent voter's ballots and instead requires that the return envelope be of such size that the identification envelope can be conveniently placed within it for returning the identification envelope to the board of elections.
- Eliminates the requirement that all printing on armed service absent voter's ballot envelopes be in red ink.

Assignment of electors to precincts for special elections

- Expands the authority for a board of elections to assign voters from one precinct to vote in another precinct at a special election from applying only to school districts to apply to election district that crosses precinct boundaries.
- Permits voters in an election district that crosses county lines to be assigned to a precinct in another county at a special election with the consent and approval of the board of elections of the other county, if the number of voters assigned to vote in that other county is 200 or less.

Transportation of voted ballots

- Requires an employee or appointee of the board of elections who has taken an oath and who is a member of a different political party than the presiding judge to accompany the presiding judge to deliver the containers of ballots and other supplies required to be delivered to the board of elections.

Number of minors who may serve as election officers in each precinct

- Permits up to two high school seniors to serve as precinct officers at a polling place, if that polling place has six or more precinct officers.

CONTENT AND OPERATION

Voting machines

Federal certification of voting machines

Prior law in the Ohio Revised Code did not address federal certification of voting machines. In the Ohio Administrative Code, the Board of Voting Machines and Marking Device Examiners requires all voting machine equipment to be

certified by an independent testing authority as meeting or exceeding the minimum requirements of the Federal Election Commission voting system standards (OAC 111:3-3-01).

The act requires any voting machine, marking device, or automatic tabulating equipment initially certified or acquired on or after December 1, 2008, to have, at a minimum, the most recent federal certification number issued by the Election Assistance Commission and requires that any voting machine, marking device, or automatic tabulating equipment already certified for use in this state on the effective date of the act to meet, as a condition of continued certification and use, the voting system standards adopted by the Federal Election Commission in 2002 (R.C. 3506.05(H)(4)(a) and (b)).

Exception to updated requirements for certain purchases of new equipment

Under the act, counties that acquire additional voting machines, marking devices, or automatic tabulating equipment on or after December 1, 2008, are not considered to have acquired those machines, devices, or equipment on or after December 1, 2008, if the newly acquired equipment is the same as the equipment currently used in that county, the equipment does not replace or change the primary voting system used in that county, and the new equipment is for the purpose of replacing inoperable equipment or for the purpose of providing additional equipment required to meet allocation requirements (R.C. 3506.05(H)(4)(c)).

Secretary of State's authority to issue directives

Continuing law permits the Secretary of State to issue instructions by directives and advisories to members of the Boards of Elections as to the proper methods of conducting elections. The act permits the Secretary of State to issue either permanent or temporary directives. (R.C. 3501.05 and 3501.053.)

Permanent directives

The act permits the Secretary of State to issue permanent directives, and requires the Secretary of State to establish a process to allow public review and public comment of proposed permanent directives. The Secretary of State must provide reasonable notice of the issuance of the directive to the public and allow reasonable time for public review and public comment. The Secretary of State is not permitted to issue a permanent directive during the period beginning 90 days prior to the day of an election and ending on the 40th day following the day of that election. (R.C. 3501.053(A).)

Temporary directives

The act permits the Secretary of State to issue a temporary directive only during the period beginning 90 days prior to the day of an election and ending on the 40th day following the day of that election, and a temporary directive will have effect only during that period. A temporary directive will not be subject to public review or public comment. If the Secretary of State wishes to make a temporary directive permanent, the Secretary of State must seek public review and public comment in the manner described above for permanent directives. If the situation prompting the temporary directive appears likely to recur, the Secretary of State must establish a permanent directive addressing the situation. (R.C. 3501.053(A).)

Board of Voting Machine Examiners

Under continuing law, the Board of Voting Machine Examiners examines and approves equipment and its related manuals and support arrangements. Prior law required the Secretary of State to appoint the members of the Board. The Board consisted of three members--one competent and experienced election officer and two persons knowledgeable about the operation of such equipment. Under prior law, there was no procedure for handling vacancies on the Board. (R.C. 3506.05(B).)

The act changes the composition of the Board of Voting Machine Examiners from three members to four members: two appointed by the Secretary of State; one appointed by the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, whichever is a member of the opposite political party from the one to which the Secretary of State belongs; and one appointed by the President of the Senate or the Minority Leader of the Senate, whichever is a member of the opposite political party from the one to which the Secretary of State belongs. Each member of the Board must be a competent and experienced election officer or a person who is knowledgeable about the operation of voting equipment. Should the Board reach a tie vote or a disagreement that cannot be resolved, the Board must submit the matter in controversy to the Secretary of State, who must make a final decision. The act also requires any vacancy on the Board of Voting Machine Examiners to be filled in the same manner as the original appointment and requires the Secretary of State to provide staffing assistance to the Board, at the Board's request. (R.C. 3506.05(B).)

Absent voter's ballots

Return of absent voter's ballots

Continuing law requires absent voter's ballots from voters who are located within the United States to be delivered to the director of the applicable board of

elections before the close of the polls on the day of the election. Ballots may be accepted from voters who are outside of the United States through the 10th day after the day of the election (or the 20th day after a presidential primary election), as long as those ballots were signed and mailed prior to the close of the polls on election day.

The act generally retains the requirement that absent voter's ballots from voters within the United States must be returned by the close of the polls. However, the act requires an absent voter's ballot to be counted if it is postmarked within the United States prior to election day and delivered to the director during the ten days after the election. Ballots received later than the 10th day after the election must not be counted, but must be kept by the board in the sealed identification envelopes with other uncounted ballots. (R.C. 3509.05(A) and (C)(1) and 3511.11(C) and (D)(1).)

The act also prohibits the counting of ballots received after the close of the polls on election day that are postmarked using a postage evidencing system, including a postage meter (R.C. 3509.05(C)(2) and 3511.11(D)(2) and (E)(3)).

Size and quality of identification and return envelopes

Prior law required the identification envelope for an armed service absent voter's ballot to be a No. 10, 24-lb. white official envelope, four and one-eighth inches by nine and one-half inches in size. The return envelope was required to be a No. 11, 24-lb. white official envelope, four and one-half inches by ten and three-eighths inches in size. The envelope in which the two envelopes and the armed service absent voter's ballots are mailed to the elector was required to be a No. 12, 24-lb. white official envelope, four and three-quarter inches by eleven inches in size. The act eliminates these individual size requirements and instead simply requires the return envelope to be of such size that the identification envelope can be conveniently placed within it for returning the identification envelope to the board of elections. The act also eliminates an existing requirement that all printing on armed service absent voter's ballot envelopes be in red ink. (R.C. 3511.06.)

Assignment of electors to precincts for special elections

Under continuing law, when only a portion of a precinct is included within the boundaries of a school district, the board of elections is permitted to assign the electors living in that portion of a precinct to the nearest precinct within the boundaries of the school district for the purpose of voting at any special school election held in that school district. In an election in which only a part of the electors of a precinct is qualified to vote, the board is permitted to assign voters in that partial precinct to an adjoining precinct. The assignment may be made to an adjoining precinct in another county with the consent and approval of the board of

elections of that county. The board is required to notify all electors so assigned of the location of the polling place at which they are entitled to vote at least ten days before the election. (R.C. 3503.01.)

The act expands these provisions by applying them to voters in any election district, instead of only to voters in school district elections. An "election district" means a school district, municipal corporation, township, or other political subdivision that includes territory in more than one precinct or any other district or authority that includes territory in more than one precinct and that is authorized by law to place an issue on the ballot at a special election. Thus, under the act, a board of elections may assign voters from one precinct to vote in another precinct at a special election, if the election district conducting the special election crosses precinct boundaries.

The act also limits the number of voters who may be assigned to a precinct in another county. Under the act, voters may only be assigned to a precinct in another county if the number of voters who would be voting in a precinct in the other county is 200 or less. (R.C. 3503.01.)

Transportation of voted ballots

Continuing law requires the presiding judge of a polling place to deliver to the board of elections the containers of ballots and the sealed pollbook, poll list, and tally sheet, together with all other election reports, materials, and supplies required to be delivered to the board of elections. The act requires an employee or appointee of the board of elections who has taken an oath to uphold the laws and constitution of this state and who is a member of a different political party than the presiding judge to accompany the presiding judge to deliver the containers of ballots and other supplies required to be delivered to the board of elections. (R.C. 3505.31.)

Number of minors who may serve as election officers in each precinct

Continuing law permits a board of elections, in conjunction with the board of education of a city, local, or exempted village school district, the governing authority of a community school, or the chief administrator of a nonpublic school to establish a program permitting certain high school students to serve as precinct officers at an election. To be eligible to participate, a student must be a United States citizen, a resident of the county, at least 17 years of age, and enrolled in the senior year of high school. Students who are appointed as precinct officers cannot serve as presiding judges and are excused from school on the day of the election.

Prior law prohibited more than one precinct officer in any given precinct from being under 18 years of age. Under the act, up to two students who are under

18 years of age and participating in the previously described program may serve as precinct officers in a precinct, if the precinct has six or more precinct officers. If a precinct has fewer than six precinct officers, not more than one of those officers may be under 18 years of age. (R.C. 3501.22(D).)

HISTORY

ACTION	DATE
Introduced	10-11-07
Reported, H. State Gov't & Elections	02-12-08
Passed House (95-0)	04-02-08
Reported, S. State & Local Gov't & Veterans Affairs	05-28-08
Passed Senate (32-0)	05-28-08
House concurred in Senate amendments (90-6)	05-29-08

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