



**Am. S.B. 286**  
127th General Assembly  
(As Passed by the General Assembly)

**Sens. Cates, Fedor, Roberts, Harris, R. Miller, Spada, Wilson**

**Reps. Beatty, Boyd, Brown, Budish, Chandler, DeBose, Domenick, Dyer, Foley, Garrison, Luckie, Mallory, J. McGregor, Redfern, D. Stewart, Szollosi, B. Williams, Yates, Yuko**

**Effective date:** \*

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**ACT SUMMARY**

- Permits the board of elections of a county that voted, prior to February 1, 2008, to tabulate the unofficial results of optical scan ballots voted in a precinct polling place at the March 4, 2008, primary election at a central location to arrange for a collection and delivery of the voted ballots to the office of the board between noon and 3 p.m. on election day.
- Specifies procedures for a midday ballot reconciliation and procedures for the midday collection and delivery of voted ballots to a board of elections for eligible counties at the March 4, 2008, primary election.
- Requires the Secretary of State, by directive, to provide additional requirements for midday ballot collection and delivery for eligible counties at the March 4, 2008, primary election.
- Specifies that an optical scan ballot that contains more than the permissible number of marks for a particular office, issue, or question is invalidated only for that office, issue, or question.
- Generally prohibits a board of elections of a county that uses optical scan ballots and automatic tabulating equipment as the primary voting system

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\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

for the county from tabulating the unofficial results of optical scan ballots voted on election day at a central location.

- Relocates, but otherwise does not change, the prohibition against an election official, observer, or police officer possessing or distributing any ballot or ticket except in the course of the person's official election duties.
- Declares an emergency.

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## **CONTENT AND OPERATION**

### **Midday ballot collection of central count optical scan ballots**

#### **Authority for midday ballot collection and delivery**

The act permits a board of elections that voted, prior to February 1, 2008, to tabulate the unofficial results of optical scan ballots voted in a precinct polling place at the March 4, 2008, primary election at a central location to arrange to have voted ballots collected and delivered to the office of the board of elections at any time between noon and 3 p.m. on the day of the election. Voted ballots that have been properly sealed in locked containers must be collected and delivered to the board by members of the board or by their designated agents. "Designated agents" means a team of two persons who are members of different political parties and includes law enforcement officers or employees or agents of a board of elections who have taken an oath to uphold the laws and Constitution of the State of Ohio, including an oath that they will directly, promptly, and securely collect the voted ballots from the polling places and deliver them to the board of elections. (R.C. 3505.25(A) and (B).)

#### **Duties of precinct officers**

If a board of elections chooses to conduct a midday ballot collection at the March 4, 2008, primary election, the presiding judge of each precinct must, by proclamation, announce that a midday collection of the ballots for delivery to the board of elections will be conducted. Two judges of elections, who must be members of different political parties, are required to do all of the following in the presence of any observers before the designated agents assigned by the board collect those ballots from the polling location for midday delivery to the board of elections (R.C. 3505.25(C)):

- (1) Count the number of electors who have voted, as shown in the pollbook or poll list;

(2) Insert the number of electors who have voted on the report forms in the pollbook or poll list;

(3) Count the number of voted ballots. If the number of voted ballots exceeds the number of electors who have voted, the presiding judge must enter an explanation of that discrepancy in the pollbook or poll list. If the remaining judges agree with the explanation, they must subscribe their signatures in the pollbook or poll list along with the explanation. Any judge with a different explanation must enter that explanation in the pollbook or poll list and subscribe the judge's signature with that explanation.

(4) Separately retain spoiled ballots for reconciliation following the close of the polls.

Once the judges have determined the number of electors who have voted and the number of ballots that have been voted, the judges must certify that information to the board of elections as of the time the presiding judge has proclaimed for the midday collection and delivery of ballots. The judges are required to make the certification by a summary statement prepared in duplicate. The forms for the certification are required to be provided by the board of elections and prescribed by the Secretary of State. (R.C. 3505.25(C).)

From the time the voted ballots are removed from the ballot box for the purpose of determining the number of voted ballots until the number of those ballots is determined and the certification has been completed, signed, and tendered to the designated agents along with the voted ballots for midday collection, no judge in the precinct is permitted to separate or leave the polling place, except from unavoidable necessity. An "unavoidable necessity" includes illness, death of a family member, or other incapacitation that would prevent the judge from observing or assisting in the midday ballot reconciliation and collection of the voted ballots. At no time can more than one half of the judges of elections conducting a midday ballot reconciliation be members of the same political party. (R.C. 3505.25(D).)

After the judges have completed the midday reconciliation of the voted ballots and signed the certification, the judges must, in the presence of the designated agents, place all voted ballots to be collected by the designated agents and delivered to the board of elections in a sealed container that cannot be opened without breaking the seal. The container and its seal are required to bear a number that corresponds to a recorded key or list of such numbers that the board of elections maintains. The number on the container and its seal must be verified and recorded on the key or list when the voted ballots are delivered midday to the board of elections. (R.C. 3505.25(E).)

### **Collection and delivery of the ballots by designated agents**

Before leaving the polling location, the designated agents are required to sign a receipt, which must be maintained by the judges of that precinct, acknowledging that the designated agents have received the voted ballots, forms, certifications, and any other materials prescribed by the Secretary of State for midday delivery to the board of elections. A plain indication that the items are to be delivered midday to the board of elections must appear in a prominent location on the outside of the items. The designated agents are required to deliver the voted ballots, forms, certifications, and any other materials prescribed by the Secretary of State for midday delivery to the director and deputy director of the board of elections, who must record their delivery in the manner prescribed by the Secretary of State. (R.C. 3505.25(E).)

### **Secretary of State directives for midday ballot collection and delivery**

The Secretary of State, by directive, is required to provide requirements for all of the following regarding the midday collection and delivery of voted ballots to a board of elections at the March 4, 2008, primary election (R.C. 3505.25(F)):

- (1) Persons to serve as designated agents;
- (2) The manner of handling ballots during collection and delivery;
- (3) Maintenance of ballot boxes for each precinct;
- (4) Secure delivery of the voted ballots to the board of elections;
- (5) Ballot reconciliations with the pollbook or poll lists that are transported to and from a polling location.

### **Sunset**

The act repeals the provisions allowing central counting of optical scan ballots as of May 1, 2008 (Section 3, repealing R.C. 3505.25).

### **Prohibition on central counting of optical scan ballots**

Except as otherwise provided in the act, the act prohibits a board of elections of a county that uses optical scan ballots and automatic tabulating equipment as the primary voting system for the county from tabulating the unofficial results of optical scan ballots voted on election day at a central location. The act clarifies, however, that optical scan ballots required to be provided for the March 4, 2008, primary election at each precinct pursuant to Directive 2008-01, issued by the Secretary of State, may be counted at a central location.

The act also clarifies that a board of elections that provides for the tabulation at each precinct of voted ballots, and then, at a central location, combines those precinct ballot totals with ballot totals from other precincts, including optical scan ballots voted by absent voters, will not be considered to be tabulating the unofficial results of optical scan ballots at a central location. (R.C. 3505.25(B) and 3506.21(D) and Section 4.)

**Invalidating marks on optical scan ballots**

Continuing law specifies the marks on an optical scan ballot that, if made consistently throughout the ballot, will be counted as a valid vote. The act retains these provisions and also specifies that an entire optical scan ballot must not be invalidated if more marks were made on an optical ballot scan for a particular office, issue, or question than a voter is allowed by law to make for that office, question, or issue. In that case, the optical scan ballot must be invalidated only with respect to that office, question, or issue. The ballot must not be invalidated for any other office, question, or issue for which a vote has been cast, in accordance with the law. (R.C. 3506.21(B)(3).)

**Relocation of continuing law**

The act relocates, but otherwise does not change, the prohibition against an election official, observer, or police officer possessing or distributing any ballot or ticket except in the course of the person's official election duties (R.C. 3505.25, relocated to 3599.07).

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**HISTORY**

ACTION	DATE
Introduced	02-04-08
Reported, S. State & Local Gov't & Veterans Affairs	02-06-08
Passed Senate (32-0)	02-06-08
Reported, H. State Government & Elections	02-19-08
Passed House (84-9)	02-19-08

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