Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 47*

130th General Assembly
(As Reported by S. State Government Oversight and Reform)

Sens. Seitz, Eklund

BILL SUMMARY

- Requires that a person who signs a petition reside in a precinct in which the candidacy or issue that is the subject of the petition will appear on the ballot.
- Requires that a person who circulates a petition be at least 18 years of age.
- Eliminates the requirement that a person who circulates a nominating petition for presidential electors be a resident of Ohio.
- Specifies that a signature on a nominating petition is not valid if it is dated more than one year before the date the petition was filed.
- Revises the timeline and requirements for filing initiative and referendum petitions with the Secretary of State, and adds the requirement that an electronic copy of the petition be filed.
- Specifies that the Ohio Supreme Court has exclusive original jurisdiction in all challenges to initiative and referendum petitions.
- Prohibits the committee interested in an initiative or referendum petition, or any person acting on behalf of the committee, from collecting or submitting additional signatures during the period beginning on the date that the petition is initially submitted to the Secretary of State and ending on the date that the Secretary of State notifies the committee that the petition has an insufficient number of valid signatures.

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

- Specifies that if the committee, or any person acting on behalf of the committee, submits additional signatures, the committee or person may submit only signatures that were signed and collected during the ten-day period beginning on the day after notification of an insufficient number of valid signatures.

- Requires the Secretary of State to prescribe a separate petition form for additional signatures submitted during that ten-day period that contains a unique identifier and that is made available to the petitioners only when the ten-day period begins.

- Clarifies that after the Secretary of State, a board of elections, or another public office rejects an initiative or referendum petition as containing insufficient signatures, that petition may not be resubmitted.

- Corrects the deadlines to file nominating petitions and for political parties to select candidates to fill vacant elective offices, so that the statutory deadlines match the deadlines established in the Ohio Constitution.

- Prohibits a person who seeks party nomination for an office or position at a primary election from becoming a candidate by filling a ballot vacancy at the next general election, except to fill a ballot vacancy for the office of member of the State Board of Education, member of a local board of education, member of a governing board of an educational service center, or township trustee.

- Clarifies that the deadlines for candidate withdrawals to determine whether the candidate's name must be removed from the ballot apply to withdrawals before both primary and general elections.

- Permits the Secretary of State to enter into agreements for the bulk purchase of election supplies in order to reduce the costs for those purchases by boards of elections.

- Requires a board of elections that desires to participate in such agreements to file a written request for inclusion with the Secretary of State agreeing to be bound by the terms and conditions that the Secretary of State prescribes and to make payments directly to the vendor under each agreement.

- Increases from $10,000 to $25,000 the cost of a contract for printing ballots and furnishing other election supplies that may be let without competitive bidding.

- Removes from various provisions of the Election Law the prohibition against using a notice of election for voter identification purposes, since the law requiring the notice of election to be sent was previously repealed and the document no longer exists.

- Corrects an incorrect cross-reference to refer to the correct section of the Revised Code.

- Specifies that the provisions of the bill are severable.

CONTENT AND OPERATION

Election petitions

Requirements to sign a petition

The bill relocates, and makes minor changes to, the law governing petition signatures. Instead of requiring a signer to have resided in the county and precinct in which the person is registered for 30 days at the time of the next election, the bill requires that the signer of a petition reside in a precinct in which the candidacy or issue that is the subject of the petition will appear on the ballot. Continuing law requires a signer to be a registered elector.

Requirements to circulate a petition

The bill eliminates the requirement that a person who circulates a declaration of candidacy or a nominating or recall petition be registered as an elector and have resided in the county and precinct where the circulator is registered for at least 30 days at the time of the next election.[1] The U.S. Supreme Court has ruled that laws requiring that petition circulators be registered voters violate the First and Fourteenth Amendments to the U.S. Constitution.[2]

The bill requires that a person who circulates any petition be at least 18 years of age. Under continuing law, a petition circulator must be a resident of Ohio. However, the bill specifies that the residency requirement does not apply to a person who is circulating a nominating petition for presidential electors (see **COMMENT**).[3]

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[1] R.C. 3503.06.

[2] *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999).

[3] R.C. 3503.06.

Expiration of signatures on nominating petitions

The bill specifies that a signature on a nominating petition is not valid if it is dated more than one year before the date the petition was filed. Under existing law, a signature on a nominating petition does not expire.[4]

Filing of initiative and referendum petitions

The bill establishes new requirements for filing statewide initiative and referendum petitions. Under the bill, when the committee interested in an initiative or referendum petition files the petition with the Secretary of State, each part-petition must be numbered sequentially and labeled by the county in which it was circulated. The committee also must file an electronic copy of the petition, a statement verifying that the electronic copy is a true representation of the original, a summary of the number of part-petitions filed per county, the number of signatures on each part-petition, and an index of the electronic copy.

Between the time the petition is filed and the time the county boards of elections determine the sufficiency of the signatures on the part-petitions and return them to the Secretary of State, the Secretary of State may fulfill a request to inspect or copy the original petition by permitting the inspection of, or providing copies of, the electronic copy of the petition. Discrepancies between the electronic copy and the original do not render the petition invalid. However, if the discrepancies are the result of fraud, the circulator or committee may be prosecuted for election falsification.

The bill requires the boards of elections to return the verified part-petitions, along with an electronic copy of the part-petitions at least 110 days, instead of 60 days, before the election. The Secretary of State must determine the sufficiency of the signatures at least 105 days before the election. These new deadlines comply with recent changes to the constitutional provisions governing initiative and referendum petitions, which revised the timeline for verifying and challenging petitions.[5] The bill requires the Secretary of State *promptly* to notify the committee in charge of the circulation as to the sufficiency or insufficiency of the petition and the extent of the insufficiency.[6]

Gathering additional signatures on an initiative or referendum petition

Under the bill, the committee interested in an initiative or referendum petition, or any person acting on behalf of the committee, may not collect or submit any

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[4] R.C. 3513.262 and 3513.263.

[5] Ohio Const., Art. II, Secs. 1a, 1b, 1c, and 1g.

[6] R.C. 3519.16.

additional signatures during the period beginning on the date that the petition is initially submitted to the Secretary of State and ending on the date that the Secretary of State notifies the committee that the petition has an insufficient number of valid signatures.

The Ohio Constitution gives the committee ten days after a notification of insufficient signatures to file additional signatures to the petition. The bill specifies that if the committee, or any person acting on behalf of the committee, submits additional signatures, the committee or person may submit only signatures that were signed and collected during that ten-day period, which begins on the day after the Secretary of State makes that notification.

Further, the bill requires the Secretary of State to prescribe a specific form for petitions to be submitted during that ten-day period. The form the Secretary of State provides to a particular committee must contain a unique identifier and must be separate from the standard forms for initiative and referendum petitions. The bill specifies that this form must comply with the requirements of the Ohio Constitution concerning initiative and referendum petition procedure and, except as described above, must comply with the continuing requirements for standard initiative and referendum petition forms.

The bill requires the Secretary of State to make the form for submitting additional signatures available to the committee at the same time that the Secretary of State notifies the committee that the initial petition contains an insufficient number of valid signatures. The committee must submit any additional signatures on this form in order for them to be considered valid.

If additional signatures are filed, the bill requires the boards of elections to verify the supplemental petitions within eight days, instead of within five days as under current law, and requires the Secretary of State to determine the sufficiency of those additional signatures not later than 65 days before the election.[7]

Challenges to initiative and referendum petitions

Ohio voters elected in 2008 to amend Section 1(g) of Article II of the Ohio Constitution to stipulate that the Ohio Supreme Court has exclusive original jurisdiction in all challenges to initiative and referendum petitions. The bill updates the statute to reflect this change by specifying that the Ohio Supreme Court has exclusive original jurisdiction in all challenges to initiative and referendum petitions.

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[7] R.C. 3519.05, 3519.16 and Ohio Const. Art. II, Sec. 1g.

It repeals obsolete language from the current statute that allowed the circulator, the committee interested in the petition, or any elector to file with a county board of elections a written protest against that board's findings regarding the sufficiency of signatures on an initiative or referendum petition or part-petition. For any initiative or referendum petition other than one to appear on a statewide ballot, the protesting party was required to file a protest by 4 p.m. on the 74th day before the day of the election. Within three days of the filing of the protest, the board, in an action before a judge of the county court of common pleas, was required to establish the verification and the sufficiency or insufficiency of the signatures. Any signatures the judge found insufficient would not be included in the petition.[8]

Resubmission of a rejected petition

The bill clarifies that after the Secretary of State, a board of elections, or another public office rejects an initiative or referendum petition as containing insufficient signatures, that petition may not be resubmitted.[9]

Process and deadlines for withdrawals and the filling of vacancies

Deadline for filling vacancies in office

The Ohio Constitution provides that when a vacancy occurs in an elective state office, other than in the office of the Governor, the Lieutenant Governor, or a member of the General Assembly, the Governor must appoint a person to hold the office until the next general election in an even-numbered year that occurs more than 40 days after the vacancy has occurred. If the unexpired term ends within one year immediately after the date of the general election at which the successor would have been elected, the appointment must be for the entire unexpired term.[10]

The bill corrects several statutory deadlines to reflect the constitutional requirement that a successor to a vacant office be elected at the next general election in an even-numbered year that occurs more than 40 days, instead of 56 days, after the vacancy has occurred.[11] Currently, these provisions require a vacancy to be filled by election if it occurs more than 56 days before the election, which conflicts with the Ohio Constitution.

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[8] R.C. 3519.05, 3519.16(A) and (B).

[9] R.C. 3501.38(I)(2)(b).

[10] Ohio Const., Art. IV, Sec. 13 and Art. XVII, Sec. 2.

[11] R.C. 3.02, 302.09, 305.02, 503.24, 733.31, 1901.10, 2301.02, and 3513.31.

To reflect this 40-day requirement, the bill also corrects the deadlines to file a nominating petition and for political parties to select a candidate to fill a vacancy in an elective office. Under the bill, candidates for the office of Judge or Clerk in a municipal court must file their nominating petitions by 4 p.m. on the tenth day after the vacancy occurs, except that when the vacancy occurs fewer than 46 days (but more than 40 days), instead of 60 days, before the general election, the filing deadline is 4 p.m. on the 36th day, instead of the 50th day, before the general election.[12]

Similarly, when a vacancy in an elective office occurs between the 86th day and the 46th day, instead of the 56th day, before the general election, the appropriate committee of a political party may select a candidate and certify the candidate's name by 4 p.m. on the 10th day after the vacancy occurs. When a vacancy occurs fewer than 46 days (but more than 40 days) before the general election, the appropriate committee of a political party may select a candidate and certify the candidate's name by 4 p.m. on the 36th day before the general election.[13]

Filling vacancies with a person who lost a primary election

The bill prohibits a person who

(1) seeks a party nomination for an office or position at a primary election, or

(2) is a first choice for President of candidates seeking election as delegates and alternates to the national convention of a major political party, when those delegates and alternates are chosen by direct vote of the electors, from becoming a candidate to fill a vacancy in an elective office at the next general election. This prohibition is in addition to the current prohibitions against such persons becoming candidates by nominating petition or by filing a declaration of intent to be a write-in candidate at the next general election.

Continuing law permits such a person to become a candidate to fill a vacancy in the office of member of the State Board of Education, member of a local board of education, member of a governing board of an educational service center, or township trustee.

Because the bill specifically prohibits a candidacy to fill a vacancy under R.C. 3513.31, an additional exception may exist to allow such a person to file a

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[12] R.C. 1901.10(A)(1)(b).

[13] R.C. 3513.31(I).

nominating petition under R.C. 1901.10(A)(1)(b) to become a candidate to fill a vacancy in the office of Judge or Clerk of a municipal court.[14]

Withdrawal of candidates before a general election

The bill establishes a process for removing a candidate's name from the ballot when the candidate withdraws prior to the general election. The new process mirrors the current law procedure for removing the name of a withdrawn candidate prior to the primary election. When a person has filed a declaration of candidacy, or has been nominated in a primary election or by nominating petition as a candidate at the next general election, and withdraws on or before the 70th day before the general election, the board of elections must remove the candidate's name from the ballot. When such a candidate withdraws after the 70th day before the general election, the board of elections must not remove the person's name from the ballot, but must post a notice at each polling place on the day of the election, and must enclose a notice with each absent voter's ballot given or mailed after the candidate withdraws, that votes for the candidate will be void and will not be counted.[15]

Bulk purchase of election supplies

The bill permits the Secretary of State to enter into agreements for the bulk purchase of election supplies in order to reduce the costs for those purchases by boards of elections. Under the bill, a board of elections that desires to participate in such agreements must file a written request for inclusion with the Secretary of State agreeing to be bound by the terms and conditions that the Secretary of State prescribes and to make payments directly to the vendor under each agreement.[16]

Bid thresholds for ballots and election supplies

The bill increases from $10,000 to $25,000 the cost of a contract for printing ballots and furnishing other election supplies that may be let without competitive bidding. Further, the bill increases from $10,000 to $25,000 the cost of a contract for printing ballots that may be let without requiring the contractor to provide a bond of twice the amount of the bid.[17]

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[14] R.C. 1901.10(A)(1)(b), 3513.04, and 3513.31.

[15] R.C. 3513.30(E).

[16] R.C. 3501.302.

[17] R.C. 3501.301 and 3505.13.

Elimination of obsolete cross-reference in Voter Identification Law

The bill removes from various provisions of the Election Law the prohibition against using a notice of election for voter identification purposes, since the law requiring the notice of election to be sent was previously repealed and the document no longer exists.[18]

Correction of cross-reference

The bill corrects an incorrect cross-reference to refer to the correct section of the Revised Code.[19]

COMMENT

Ohio law requires that initiative and referendum petition circulators be residents of Ohio.[20] Similar requirements in other states have been invalidated on the grounds that they violate the First Amendment free speech and association rights of the petition circulators.[21]

HISTORY

ACTION	DATE
Introduced	02-19-13
Reported, S. State Government Oversight & Reform	----

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[18] R.C. 3503.14, 3503.16, 3503.19, 3503.28, 3505.18, 3505.181, 3505.182, 3505.183, 3509.03, 3509.04, 3509.05, 3511.02, 3511.05, and 3511.09.

[19] R.C. 3501.38(A).

[20] R.C. 3503.06.

[21] See, e.g., *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. Ct. App. 2008); *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. Ct. App. 2008); *Bogaert v. Land*, 675 F. Supp. 2d 742 (W. Dist. Mich., S. Div. 2009); and *Frami v. Ponto*, 255 F. Supp. 2d 962 (W. Dist. Wisc. 2003).