



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 260 of the 128th G.A.](#)

Date: September 30, 2009

Status: As Introduced

Sponsor: Reps. Stewart and Heard

Local Impact Statement Procedure Required: Yes

Contents: Makes changes to election law

Overview

The bill makes numerous changes to Ohio's election law. Because the changes are numerous, the provisions with the greatest fiscal effect, either cost savings or cost increases, for both the state and political subdivisions are highlighted in the bullet points below. The detailed analysis that follows these highlights elaborates on the fiscal impact of these provisions and identifies other changes that have lesser or uncertain fiscal effects for the state and political subdivisions.

State Fiscal Highlights

- **Special elections.** The bill eliminates, in most circumstances, special elections held in February and August, and instead requires these special elections to be held in May and November. In those cases where the state would be required to pay a portion or all of the costs, this provision could result in substantial savings.
- **Ballot wording limit.** The bill limits the number of words of a ballot issue to 300. Generally, when ballot issues are advertised, the entire issue is printed. Therefore, this provision could result in savings, possibly in the hundreds of thousands, to the state.
- **Purchasing program for ballot supplies.** The bill requires the Department of Administrative Services (DAS), by administrative rule, to establish a purchasing program through which the Department enters into purchase contracts for supplies used by boards of elections, including any required polling place supplies. This program would be administered by DAS's General Services Division.
- **State agency voter registration responsibilities.** The bill requires the Secretary of State to enter into a memorandum of understanding with various state agencies to perform certain voter registration duties, and also gives private citizens the ability to initiate a mandamus action with the Ohio Supreme Court if it is believed that one of these agencies is failing to meet voter registration obligations. This could result in some litigation costs to these agencies to defend any such actions.

Local Fiscal Highlights

- **Special elections.** The bill eliminates, in most circumstances, special elections held in February and August, and instead requires these special elections to be held in May and November. In circumstances where a special election is required by county or municipal charter, those elections must take place as stated in the charter. In instances where a political subdivision would be responsible for the costs of a special election, this provision would reduce costs both to the county and to any other political subdivision affected.
- **Elections costs.** The bill reapportions the costs of elections between counties and other political subdivisions by expanding the costs that are paid by local subdivisions. In addition to paying the costs for conducting the election, subdivisions will also be required to pay any costs incurred for the preparation of the election, such as any compensation costs for overtime worked by a board of elections in preparation for the election.
- **Validity of provisional ballots.** The bill sets out the criteria for determining the validity of a provisional ballot. Should it be determined that the ballot is valid, and to be counted, and the individual is registered to vote in a precinct that is different than the precinct in which the provisional ballot was cast, the bill requires the board of elections to remake the provisional ballot on a ballot that is appropriate for that precinct, and count those issues and races for which the voter was eligible to vote. This provision could result in increased costs to boards of elections to verify and remake all valid provisional ballots cast.
- **Early voting.** The bill increases the number of possible locations at which a board of elections may permit absent voter's ballots to be cast in person from one to four and reduces the time in which in-person absentee voting may take place to 21 days. The reduction in early voting time before an election should result in decreased costs to counties.
- **Provisional ballot costs.** The bill changes the definition of "jurisdiction" from precinct to county, which allows individuals to cast a provisional ballot anywhere in the county in which they are registered. This provision could increase the number of provisional ballots cast in an election. Generally, it costs boards of elections more money to verify and count provisional ballots.
- **Ballot supplies purchasing program.** The bill requires the Department of Administrative Services (DAS) to establish a purchasing program through which the Department enters into purchase contracts for supplies used by boards of elections, including any required polling place supplies. If DAS can acquire these supplies through its contracts at a cheaper rate than each individual county, this would reduce some supply costs to county boards of elections.
- **Ballot priority contracts – public notice.** The bill increases the cost of ballot printing contracts that a board of elections may enter into without publishing notice and

without requiring a bond from \$10,000 to \$25,000. Assuming that counties would select the most cost effective printing bid available, this provision could reduce advertising costs to some counties.

- **Elections by mail.** The bill permits a board of elections of a county to conduct certain elections held within the county by mail. This includes (1) a special election held on a day other than the day of a primary or general election as authorized by a municipal or county charter, and (2) an election to fill a vacancy in a nomination for Congressional representative or a vacancy in the office of Congressional representative are all permitted to be held by mail. In these cases, the political subdivision would experience cost savings through elections by mail versus operating polling places. However, the number of instances in which this provision would be applicable is seemingly minimal.
- **County vote centers.** The bill permits the Secretary of State to implement a pilot project to evaluate the use of county vote centers for general elections for state and county office in the year 2010 as an alternative to operating precinct polling places. A county vote center is a polling location at which any person registered to vote in a county may appear to cast a ballot on the day of the general election, regardless of the location of the precinct within the county in which the person resides. This provision would presumably reduce staffing and other related election costs associated with conducting elections at individual polling places.
- **Electronic transmission of absent voter ballots.** The bill permits the Secretary of State to implement a pilot project to evaluate the effectiveness and reliability of transmitting unvoted absent voter's ballots and unvoted armed service absent voter's ballots by secure electronic transmission to eligible voters. If implemented permanently, sending such ballots through electronic transmission could reduce mailing costs to counties.

Detailed Fiscal Analysis

The bill makes numerous changes to different facets of the election law. These changes and their state and local fiscal effects have been grouped into various categories and are discussed below. Please consult the LSC bill analysis for further detail on these and other provisions.

Election administration

Establishment of election precincts

The bill requires boards of elections, whenever there are any changes to precinct boundaries or numbers, or any changes to the location of polling places, to notify the Secretary of State's Office within five days of the changes being approved by the board, instead of the 45 days that is in current law. The bill does not make any changes to the manner in which these notifications would be made. Therefore, any additional costs related to the shortening of these deadlines would be minimal.

Allocation of Voting Machines

The bill alters the process by which a county board of elections determines the allocation and distribution of voting machines and equipment. The board is required to use a different set of criteria identified in the bill, and then post the proposed distribution plan at the board of elections, and on the board's web site, for public comment. Once the public comment period is complete, the full board must vote to approve the distribution plan. Generally, the new criteria used under the bill could allow a board of elections to distribute machines differently than in the past, possibly allocating them in such a fashion as to reduce the wait to vote. If this should happen, it could prevent polls from having to stay open longer, which would in turn reduce overtime costs in some cases.

Apportionment of election costs

The bill reapportions the costs of elections between counties and other political subdivisions. The expenses of a board of elections are paid for from the county treasury just as other expenses. However, the costs of conducting elections in odd-numbered years, such as the cost of renting polling places, and the costs of placing and removing ballot boxes, are charged to the subdivisions holding elections. The bill expands the costs that are paid by local subdivisions. In addition to paying the costs for conducting the election, subdivisions will also be required to pay any costs incurred for the preparation of the election, such as any compensation costs for overtime worked by a board of elections.

Additionally, to the extent that money is appropriated, the state will also be required to pay these same costs when a constitutional amendment proposed by the General Assembly is placed on the ballot during these odd-numbered years. With respect to the state, these costs would be paid for from the Secretary of State's Boards of

Election Reimbursement and Education Fund (Fund 5FG0). It should be noted that any ballot advertising costs are paid for from a different fund, the Statewide Ballot Advertising Fund (Fund 5FH0).

Ballot marking instruction cards

Boards of elections are required to have printed instruction cards for guiding electors in marking their ballots. The bill revises the information that must appear on these cards. If boards of elections do not typically print out new instruction cards for polling places in each election, then there could be some minimal costs for printing new instruction cards.

Qualifications for specified activities under election law

Qualifications of an elector

The bill revises the qualifications needed to be an elector. Under the bill, a person is qualified to be an elector if the person "will have been a resident" for 30 days by the day of the election and the person "will have been registered to vote" for 30 days by the day of the election. Additionally, the bill eliminates the provision that a person reside in the precinct in which the person offers to vote. Eliminating this provision could ultimately result in an increased number of provisional ballots (see **Casting of a Provisional Ballot** for detailed fiscal impact).

Voter registration

Voter registration at designated agencies

Background

The National Voter Registration Act of 1993 (NVRA) requires each state to designate agencies for the registration of voters for federal office. Designated voter registration agencies must include (1) all offices in the state that provide public assistance and (2) all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities. In addition to these agencies, NVRA requires each state to designate other offices within the state as voter registration agencies; those agencies may include various state or local government offices or federal and nongovernmental offices. The designated state agencies in Ohio are the Department of Job and Family Services, Department of Health, Department of Mental Health, the Department of Developmental Disabilities, the Rehabilitation Services Commission, and state-assisted colleges or universities that provide services to disabled students.

The bill designates the Secretary of State as the chief elections official who coordinates Ohio's responsibilities under the NVRA provisions described above. Not later than 120 days after the effective date of this provision, or 120 days after an agency is deemed to be a designated agency, the Secretary of State is required to enter into a memorandum of understanding with the head of those state agencies for the purpose of

prescribing a general program for registering voters or updating voter registration information.

The bill also creates a process for the Secretary of State, an individual, or the head of a state agency with supervisory authority over a designated agency to effect compliance with the Voter Registration Law. Under the bill, an individual may initiate a mandamus action before the Ohio Supreme Court if a designated agency fails to enter into the required memorandum of understanding, or correct any deficiency in compliance with the Voter Registration Law within 45 days of receiving written notice of the deficiency by the individual. This could potentially result in some mandamus filings with the Ohio Supreme Court, stemming from private individuals being given this authority under the bill. While the number of such claims arising from the bill is uncertain, it is possible that both designated state agencies and county offices could experience some cost increases associated with litigating any such claims.

Change of address and change of name

Under current law, a voter who moves between precincts, between counties, or who changes his or her name must update the person's voter registration and vote a provisional ballot. The bill permits such a voter who moves within a county to cast a regular ballot at the board of elections, at an in-person absent voting location, or at the voter's precinct polling place under specified conditions. Generally, this provision would reduce the number of provisional ballots cast during a particular election, thereby reducing costs for boards of elections. However, this provision also provides for a new potential election falsification offense. Election falsification is a fifth degree felony, which is generally punishable by between 6 and 12 months in prison, and a fine of up to \$2,500. It can be assumed that there would be very few new cases resulting from this provision. The impact on county courts, therefore, would likely be minimal.

Deadline for registering voters

Current law requires a board of elections to register an applicant within 20 business days after receiving the application, unless the application is received during the 30 days prior to an election. The bill changes these dates to require a board of elections to register an applicant within ten business days, unless the application is received during the 28 days before an election. Reducing the timeframe for boards of elections could potentially result in some increased staffing costs if a particular board receives a large number of applications at one particular time, such as right before the 28 day deadline.

Notifying voters of rejected applications

The bill requires that if a board of elections does not accept a person's voter registration application, it must notify the applicant, by whatever means of contact the applicant has provided on the registration application, of the reasons for rejecting the application and request that the applicant provide the necessary information. There

could be some minimal costs associated with this provision. Most likely, any additional costs would be in the form of postage to send such notifications through standard mail.

Statewide voter registration database

The bill requires the Secretary of State and the Registrar of Motor Vehicles to enter into a matching agreement to verify the accuracy of voter registration records. The Secretary of State must establish, by rule, a process for notifying boards of elections of any relevant nonmatch and a procedure for the boards to process the nonmatch. The Secretary of State and Registrar of Motor Vehicles have previously been working on establishing such an agreement. Therefore, any future costs are likely to be minimal, and related to any software, maintenance, and system programming to link the statewide voter database and BMV database. The Secretary of State would pay these costs from their GRF, whereas the Department of Public Safety would pay for these costs from the BMV Operating Expenses Fund (Fund 4W40).

Ballot language

300 word limit for question and issue ballot language

The bill generally prohibits ballot language for any state or local question, issue, or amendment from exceeding 300 words. Currently, ballot language, when advertised, generally contains the full text of the ballot initiative in question. The Secretary of State would incur costs for ballot advertising under Article XVI, Section 1 of the Ohio Constitution, which requires that notice of ballot questions be published once a week for three consecutive weeks in a newspaper of general circulation in each Ohio county. The cost would depend on the length of the amendment proposed by this resolution. As a recent example, the combined newspaper advertising costs for Issues 1, 2, 3, 5, and 6, which appeared on the November 4, 2008 general election ballot, were \$631,629. Limiting the ballot language to 300 words would conceivably reduce the cost of advertising these issues by a substantial amount.

Sample ballots

Boards of elections are permitted to print sample ballots for all general elections. Under current law, a board may not print more than 500 sample ballots in a county with a population less than 100,000. In all other counties, the board is prohibited from printing more than 1,000 sample ballots. The bill removes the limit on the number of sample ballots that may be printed. This is permissive authority under the bill, so it does not impose any new direct costs. However, should some counties opt to exceed the previous limit, there could be an increase in costs.

Voting process

Voter identification

The bill alters the documents that may be accepted as identification and revises the criteria for what constitutes photo identification. Under the bill, a voter may provide identification either in the form of a current and valid photo I.D. or provide any

two items that list the voter's name in a manner that substantially conforms to the voter's name in the statewide voter registration database. These two forms of I.D. can be issued by a nonprofit organization, an institution, a business, or government entity. These changes could potentially reduce the number of provisional ballots that are cast and the costs that counties incur for processing them.

Time limit for using a voting booth

A voter is currently prohibited from occupying a voting booth for more than five minutes when all the voting compartments or machines are in use and voters are waiting to occupy them. The bill eliminates this time limit. This provision could potentially lead to longer lines in certain voting precincts which may result in overtime for poll workers and other employees, thereby increasing costs to counties. This would particularly be the case in elections with numerous candidates or issues in the ballot.

Provisional ballots

Location for casting a provisional ballot

Under current law, an individual must cast a provisional ballot in the correct jurisdiction for the ballot to be eligible and counted. Currently, jurisdiction is defined as the precinct in which the person is registered. The bill redefines jurisdiction as the county in which the person is registered. This provision could result in increases in provisional ballots cast in a given election, perhaps to a significant degree.

Determining Validity of Provisional Ballots

The bill sets out the criteria for determining the validity of a provisional ballot. Should it be determined that the ballot is valid, and to be counted, and the individual is registered to vote in a precinct that is different than the precinct in which the provisional ballot was cast, the bill requires the board of elections to remake the provisional ballot on a ballot that is appropriate for that precinct, and count those issues and races for which the voter was eligible to vote. Since the definition of jurisdiction was changed to county under the bill, there is a potential increase in the number of provisional ballots that may be cast. Since a majority of these provisional ballots will be eligible to be counted under the bill, counties may be required to remake a substantial number of provisional ballots into precinct specific ballots. This could impose a substantial cost to counties. In the November 2008 general election, there were approximately 207,000 provisional ballots cast in Ohio, which constituted roughly 3.6% of all ballots cast, an increase from the 2006 and 2004 general elections in which 3.1% and 2.4%, respectively, of all ballots cast were provisional ballots.

Absent voter's ballots

Time and location for casting absent voter's ballots in person

The bill increases the number of possible locations at which a board of elections may permit absent voter's ballots to be cast in person from one to four. Under the bill, a board of elections must not employ more than four locations. If a board votes to

establish more than one location, the board must submit a plan to the Secretary of State for those locations. Presumably, counties would only operate more than one voting center when it is determined to be more cost effective than operating one single early voting center. However, it can be assumed that reducing from 35 to 21 the days before an election that a voter may cast an absent voter ballot will reduce the overall costs of operating these early voting centers. As an illustration, the Franklin County Board of Elections spent a total of \$225,015 to conduct in-person absentee voting at Veterans' Memorial Coliseum for the 2008 presidential election; \$142,433 of this cost was for staffing. Most likely, if a board of elections opted to use more than one voting center, it would select facilities that cost less to rent individually and would staff them with fewer people at each location.

Annual applications for absent voter's ballots

The bill permits a voter to make a single request for absent voter's ballots for all elections at which the voter is eligible to vote during a calendar year. Overall, this provision could result in some minimal cost savings for counties through reducing the overall number of absent voter ballot applications that must be processed.

Transmission of absent voting materials

When receiving an application for absent voter's ballots that contains all necessary information, the director of a board of elections is required to deliver proper absent voter's ballots to the applicant. Those ballots, under current law, can be delivered in person, or mailed directly to the applicant, by special delivery mail, air mail, or regular mail, postage prepaid. The bill retains these methods but also permits a board of elections to deliver absent voter's ballots to an applicant using a method other than United States mail if the address is outside of the United States. This provision could potentially reduce costs to counties for sending out absent voter's ballots.

Elections by mail and the elimination of February and August special elections

The bill permits a board of elections of a county to conduct certain elections held within the county by mail. This would apply to (1) special elections held on a day other than the day of a primary or general election as authorized by a municipal or county charter and (2) elections to fill a vacancy in a nomination for Congressional representative or a vacancy in the office of Congressional representative. In cases in which the election by mail extends across a single county line, the election can only be conducted by mail if all applicable counties agree to do so. The county would also be required to publish notice of its intent to conduct the election by mail in a newspaper of general circulation within the county.

The bill also eliminates special elections held in February and August. Under the bill, a special election may only be held on the first Tuesday after the first Monday in May (primary election) or November (general election), or on the day specified in a municipal or county charter. The bill retains the provision that requires special elections to be held in March (primary election) during a presidential election year.

Overall, the number of special elections that would be conducted by mail under the bill is likely to be minimal. In those cases where such a special election was to be held, if it would be such that the county or other political subdivision would be responsible for paying the total costs of the election, the option to conduct the election by mail would reduce costs.

As it pertains to the elimination of special elections held in February and August, this provision of the bill could result in substantial savings to the state and political subdivisions. The Secretary of State's Office recently estimated that the statewide cost of a special election, based upon special elections conducted in calendar years 2006, 2007, and 2008, would be approximately \$11.4 million for each election. The Secretary of State's Office calculated the cost per precinct of these special elections and applied that per precinct cost to all 11,107 precincts in the state ($\$1,026 \times 11,107 = \$11,395,782$). Assuming there would be a primary and general election, this cost would then double to \$22.8 million.

Pilot projects

Using county vote centers in lieu of precinct polling places

The bill permits the Secretary of State to implement a pilot project to evaluate the use of county vote centers for general elections for state and county office in the year 2010 as an alternative to operating precinct polling places. A county vote center is a polling location at which any person registered to vote in a county may appear to cast a ballot on the day of the general election, regardless of the location of the precinct within the county in which the person resides. A county board of elections wishing to be involved in the pilot project would be required to hold public hearings on the issue and submit public comments to the Secretary of State. The board of elections must also have implemented a computerized voter registration list that allows election officials at the county vote center to verify that a person has not already voted. The Secretary of State would be required to determine if the county has sufficient resources to implement such a program. Conceivably, operating a singular vote center could reduce the number of staff and other related costs attributable to operating numerous polling places on election day.

Electronic transmission of unvoted absent voter's ballots

The bill also permits the Secretary of State to implement a pilot project to evaluate the effectiveness and reliability of transmitting unvoted absent voter's ballots and unvoted armed service absent voter's ballots by secure electronic transmission to eligible voters. Sending such ballots through electronic transmission could reduce mailing costs to counties. The costs of conducting this pilot program are unclear but for the counties selected, could reduce ballot costs.

Miscellaneous provisions

Purchase contracts for election supplies

The bill requires the Department of Administrative Services (DAS) to establish a purchasing program through which the Department enters into purchase contracts for supplies used by boards of elections, including any required polling place supplies. If a county opts to participate in the purchasing program, it may purchase its supplies through DAS contracts. Presumably, DAS can acquire these supplies through its contracts at a cheaper rate than each individual county, thereby reducing some supply costs to county boards of elections.

Ballot printing contracts

Under current law, a contract for the printing of ballots involving a cost of \$10,000 or more must not be let until after five days' notice is published once in a leading newspaper of general circulation. The bill increases the cost of ballot printing contracts that a board of elections may enter into without publishing notice and without requiring a bond from \$10,000 to \$25,000. Assuming that counties would select the most cost effective printing bid available, this provision could reduce advertising costs to some counties.