



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 63*

131st General Assembly

(As Reported by H. Government Accountability and Oversight)

Sens. LaRose, Hite, Jones, Gardner, Lehner, Hottinger, Tavares, Brown, Coley, Bacon, Balderson, Beagle, Burke, Eklund, Faber, Manning, Obhof, Patton, Peterson, Sawyer, Seitz, Thomas, Uecker, Yuko

BILL SUMMARY

Online voter registration

- Requires the Secretary of State to establish a secure online process for voter registration and registration updates and specifies information that an applicant must provide to use the online system.
- Requires the Secretary of State to obtain an electronic copy of the applicant's signature that is on file with the Bureau of Motor Vehicles, to be used as the applicant's signature on voter registration records.
- Requires the online voter registration system, during the period beginning 29 days before the day of an election and ending on the day of the election to display a notice indicating that the applicant will not be registered to vote for the purposes of that election.
- Requires the Secretary of State to employ whatever security measures the Secretary considers necessary to ensure the integrity and accuracy of the system.
- Specifies that errors in processing voter registration applications in the online system must not prevent an applicant from becoming registered or from voting.
- Prohibits the online voter registration process from being in operation and available for use before January 1, 2017.

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

- Specifies that if any provision of the Revised Code concerning online voter registration is held invalid, then all of the provisions concerning online voter registration cease to operate.

Statewide Voter Registration Database

- Requires that certain state agencies that, under continuing law, transfer data to the Secretary of State for the purpose of maintaining the Statewide Voter Registration Database, transfer that data not later than the last day of each month.
- Adds language requiring the Secretary of State to transmit information to the boards of elections for the purpose of maintaining the Statewide Voter Registration Database in accordance with federal law and continuing state law.
- Requires the Secretary of State to conduct an annual review of the Statewide Voter Registration Database to determine whether any individuals who are not U.S. citizens are registered to vote.

Certification of voting equipment

- Permits a voting machine, marking device, or automatic tabulating equipment to meet either Election Assistance Commission (EAC) guidelines or Federal Election Commission (FEC) standards.
- Specifies that the federal certification requirements do not apply to such equipment if the EAC does not certify it as part of its testing and certification program.

Filling vacancies in local offices

- Specifies that if a vacancy occurs in certain local offices, the vacancy must be filled by the local central committee of the political party that nominated the former officer or officer-elect as a candidate for that office for the current term.
- Clarifies that, if the former officer or officer-elect was elected as an independent to serve the current term, certain local officials must fill the vacancy.



CONTENT AND OPERATION

Online voter registration

Application

The bill requires the Secretary of State to establish a secure online process for voter registration. The system must allow an applicant to register to vote or to update the applicant's name, address, or both.

The applicant must provide all of the following information:

- The applicant's name;
- The applicant's address;
- The applicant's date of birth;
- The last four digits of the applicant's Social Security number;
- The applicant's Ohio driver's license or state ID card number.

Under the bill, the applicant must be qualified to register to vote and must attest to the truth and accuracy of the information submitted in the application under penalty of election falsification. The online application must include the following language, along with a box that the applicant must mark in order to submit the application:

By clicking the box below, I affirm all of the following under penalty of election falsification, which is a felony of the fifth degree:

(1) I am the person whose name and identifying information is provided on this form, and I desire to register to vote, or update my voter registration, in the State of Ohio.

(2) All of the information I have provided on this form is true and correct as of the date I am submitting this form.

(3) I am a United States citizen.

(4) I will have lived in Ohio for thirty days immediately preceding the next election.

(5) I will be at least eighteen years of age on or before the day of the next general election.



(6) I authorize the Bureau of Motor Vehicles to transmit to the Ohio Secretary of State my signature that is on file with the Bureau of Motor Vehicles, and I understand and agree that the signature transmitted by the Bureau of Motor Vehicles will be used by the Secretary of State to validate this electronic voter registration application as if I had signed this form personally.

The bill specifies that during the period beginning 29 days before the day of an election and ending on the day of the election, the online voter registration system must display a notice indicating that the applicant will not be registered to vote for the purposes of that election. Under continuing law, a person must be registered to vote not later than 30 days before the day of an election in order to vote in that election.¹

Processing applications

Under the bill, when an individual uses the online system to register to vote or to update the individual's registration, the information provided on the application must not be inconsistent with the information on file with the Bureau of Motor Vehicles (BMV). The Secretary of State must obtain an electronic copy of the individual's signature that is on file with the BMV to be used as the individual's signature on voter registration records, for all election and signature-matching purposes. The bill specifies that an application submitted through the online registration system need not contain a signature in order to be valid.²

Administration

The bill requires the Secretary of State to employ whatever security measures the Secretary considers necessary to ensure the integrity and accuracy of voter registration information submitted electronically through the online system. The bill also specifies that errors in processing voter registration applications in the online system must not prevent an applicant from becoming registered or from voting.

The online voter registration process must not be in operation and available for use before January 1, 2017.³

¹ R.C. 3503.01, not in the bill, and 3503.20.

² R.C. 3503.14(E) and 3503.20.

³ R.C. 3503.20.



Unity clause

The bill specifies that if any of the bill's provisions pertaining to online voter registration are held invalid, or if the application of any of those provisions to any person or circumstance is held invalid, then all of the bill's provisions pertaining to online voter registration cease to operate. By contrast, the general rules of construction that apply to the Revised Code state that the invalidity of one provision of the Revised Code does not affect other related provisions, if those other provisions can be given effect without the invalid provision.⁴

Statewide Voter Registration Database

Data sharing with state agencies

Under the bill, certain state agencies that continuing law requires to provide data to the Secretary of State to maintain the Statewide Voter Registration Database must provide that data according to a specified schedule. Specifically, the Department of Health, the Bureau of Motor Vehicles, the Department of Job and Family Services, the Department of Medicaid, and the Department of Rehabilitation and Corrections must do so not later than the last day of each month. (While the bill adds the Department of Medicaid to the list of state agencies that are explicitly required to participate in data sharing with the Secretary of State, current law requires the Department to do so.)

Currently, only the Department of Health must share data with the Secretary of State according to a specific schedule. The bill changes that schedule to require the Department to file reports with the Secretary of State not later than the last day of each month, instead of at least once each month.⁵

Database maintenance

The bill requires the Secretary of State to regularly transmit to the boards of elections data received from state agencies and from other states in order to ensure that the accuracy of the Statewide Voter Registration Database is maintained on a regular basis in accordance with applicable state and federal law. The Secretary of State must transmit data that is necessary to do the following:

- Require the boards of elections to maintain the Database in a manner that ensures that the name of each registered elector appears in the Database, that only individuals who are not registered or eligible to vote are

⁴ R.C. 1.50, not in the bill, and 3503.20(F).

⁵ R.C. 3503.15 and 3503.18.



removed from the Database, and that duplicate registrations are eliminated from the Database;

- Require the boards of elections to make a reasonable effort to remove individuals who are not eligible to vote from the Database;
- Establish safeguards to ensure that eligible electors are not removed in error from the Database.

Federal law and continuing state law require the Secretary of State and the boards of elections to share data and to maintain the Database in this manner.⁶

Annual citizenship review

Under the bill, the Secretary of State must conduct an annual review of the Statewide Voter Registration Database to determine whether any individuals who are not U.S. citizens are registered to vote. The review must not occur during the 90 days immediately preceding a primary or general election for federal office. In conducting the review, the Secretary of State must compare the information in the Database with the information the Secretary of State obtains from the Bureau of Motor Vehicles (BMV) under continuing law to identify any person who does all of the following, in the following order:

- Submits documentation to the BMV that indicates that the person is not a U.S. citizen;
- Registers to vote, updates the person's name or address in the person's voter registration, or votes;
- Submits documentation to the BMV that indicates that the person is not a U.S. citizen.

The Secretary of State must send a written notice to each such person, instructing the person either to confirm that the person is a U.S. citizen or to submit a completed voter registration cancellation form to the Secretary of State. The notice must include a blank cancellation form. If the person fails to respond to the notice not later than 30 days after the notice was sent, the Secretary of State promptly must send the person a second notice and form.

If the person responds to the notice not later than 60 days after the first notice was sent and confirms that the person is a U.S. citizen, the Secretary of State must take

⁶ R.C. 3501.05, not in the bill, and 3503.15. See also 52 U.S.C. 21083.



no action concerning the person's registration. If the person responds during that time period by sending a completed cancellation form to the Secretary of State, the Secretary of State must instruct the board of elections to cancel the person's registration.

If the person fails to respond to a second notice not later than 30 days after it was sent, the Secretary of State must refer the matter to the Attorney General for further investigation and possible prosecution under the laws that prohibit ineligible persons from registering to vote or voting, or under any other applicable provision of the Revised Code. If, after the 30th day after the second notice was sent, the person sends the Secretary of State a completed cancellation form, the Secretary of State must instruct the board to cancel the person's registration and must notify the Attorney General of the cancellation.⁷

Certification of voting equipment

The bill requires any voting machine, marking device, or automatic tabulating equipment ("voting equipment") used in Ohio to meet either the 2002 Federal Election Commission (FEC) voting system standards or the most recent federal Election Assistance Commission (EAC) voluntary voting system guidelines. If the voting equipment was initially certified or acquired on or after December 1, 2008, it also must have the most recent federal certification number issued by the EAC. However, under the bill, those requirements do not apply to any voting equipment that the EAC does not certify as part of its testing and certification program.

Existing law specifies that any voting equipment initially certified or acquired on or after December 1, 2008, must have the most recent federal certification number issued by the EAC. But, voting equipment that was certified for use in Ohio on September 12, 2008, must meet the 2002 FEC voting system standards.⁸

Filling vacancies in local offices

The bill clarifies the manner in which a vacancy in certain local offices must be filled until an election is held. The bill affects the city offices of mayor, director of law, auditor, and treasurer. And, the bill affects vacancies in the following county offices: county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, and coroner.

Under the bill, if a vacancy occurs in any of those offices, the vacancy must be filled by the county central committee of the political party that nominated the former

⁷ R.C. 3503.15(H) and 3503.21.

⁸ R.C. 3506.05(H)(4).



officer or officer-elect as a candidate for that office for that term, except that in the case of a vacancy in the office of mayor, if the party has a city central committee, that committee fills the vacancy. Existing law states that such a vacancy must be filled by the city or county central committee, as applicable, of the party with which the former officer or officer-elect "was affiliated."

Under continuing law, if the former officer or officer-elect was elected as an independent candidate, certain local officers must appoint a person to fill the vacancy. The bill clarifies that this procedure applies if the person was elected *to serve the current term* as an independent candidate. In the case of a county office, the board of county commissioners fills the vacancy, except that if the vacancy is in the office of county commissioner, the prosecuting attorney and the remaining commissioners must make the appointment. If the vacancy is in the office of city mayor, the city's legislative authority fills the vacancy. And, if the vacancy is in the office of city director of law, auditor, or treasurer, the mayor fills the vacancy.⁹

As a result, the bill clarifies the procedure for filling a vacancy if the former officer or officer-elect has changed the person's political party affiliation between the time of the election and the time of the vacancy. The Ohio Attorney General and the Ohio Supreme Court have stated that the current law is ambiguous because it does not account for such a situation.¹⁰ The table below illustrates the effect of the bill.

Officer's affiliation at time of election	Officer's affiliation at time of vacancy	Who fills the vacancy under current law	Who fills the vacancy under the bill
Party A	Party A	Party A	Same as current law.
Party B	Party B	Party B	Same as current law.
Independent	Independent	Local officials	Same as current law.
Party A	Party B	Unclear	Party A
Party B	Party A	Unclear	Party B
Party A	Independent	Unclear	Party A
Independent	Party A	Unclear	Local officials

⁹ R.C. 305.02, 733.08, and 733.31.

¹⁰ 2015 Op. Att'y Gen. 38 (2015) and *State ex rel. Herman v. Klopffleisch*, 72 Ohio St.3d 581 (1995).



HISTORY

ACTION	DATE
Introduced	02-18-15
Reported, S. Gov't Oversight & Reform	06-24-15
Passed Senate (31-1)	06-24-15
Reported, H. Gov't Accountability & Oversight	---

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