



Ohio Legislative Service Commission

Bill Analysis

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S.B. 296

131st General Assembly
(As Introduced)

Sens. Seitz, Coley, Jones, Hite, Burke, Bacon, Jordan, Uecker, Patton, Eklund

BILL SUMMARY

- Requires a person who seeks a court order that a polling place be kept open for extended hours on Election Day to file a petition in the county court of common pleas.
- Requires the petitioner to post a cash bond in an amount equal to the cost of keeping the requested polling places open for the requested period of time, based on a board of elections estimate that includes the cost of compensating precinct election officials at a specified overtime rate.
- Requires the court to waive the bond requirement if the petitioner is indigent, but specifies that the court may extend polling hours only for the petitioner personally to vote if no bond has been posted.
- Specifies that if the court extends the polling hours but the decision is later overturned, the bond must be applied to cover the cost of keeping the polls open during that time.
- Requires the petitioner to serve notice of the petition on the Secretary of State and the Attorney General, and requires the court to allow those officers or their designees to be heard in the case.
- Allows the court to order that the polls be kept open only if the petitioner has proved by clear and convincing evidence that no prospect of a fair election exists in the absence of the order, if certain evidentiary requirements are met, and if the procedures described above have been followed.

- Provides that an order to keep the polls open is subject to immediate appeal to a special Election Day panel of the court of appeals.
- Requires a person who votes after the close of the polls because of a court order to cast a provisional ballot, and specifies the procedure for processing that ballot.

CONTENT AND OPERATION

Court procedure

The bill establishes several requirements that must be met in order for a court to order that a polling place be kept open for extended hours on the day of an election. (The bill applies only to cases filed in Ohio courts. If a person filed a complaint in a federal court seeking extended polling hours, the bill would not affect that action because federal law determines the procedures for federal courts.)

Bond

Bond requirement

If a person seeks a court order that one or more polling places in a county remain open past the time for the closing of the polls, the bill requires the person to file a petition in the court of common pleas of that county. (Under continuing law, the polls generally close at 7:30 p.m., although a person who is waiting in line at that time may vote.) The petitioner must post a cash bond with the court clerk in an amount equal to the cost of keeping the requested polling places open for the requested period of time, based on the board of elections estimate discussed below.

If the court determines that the petitioner is indigent, the court must waive the bond requirement. But, if no bond has been posted and the court extends the polling hours for one or more polling places, the court's order must allow the petitioner or petitioners, but no other person, to vote during that time.¹

Estimate of expenses and overtime pay

Under the bill, before the day of an election, each board of elections must prepare an estimate of the hourly cost of keeping a polling place in the county open after 7:30 p.m. The estimate must include the cost of compensating the precinct election officials at an overtime rate of \$22.50 per hour, as adjusted for inflation. Beginning in 2017, the

¹ R.C. 3501.32 and 3501.321(A) and (B)(2).

Secretary of State must adjust that rate in January of each year according to the percentage change in the federal Consumer Price Index. (Currently, precinct election officials earn a maximum of \$133.72 per day.) The board must file the estimate with the Secretary of State, and the Secretary of State must make the estimate available on the Secretary's official website not later than 6:30 a.m. on Election Day.²

Disposition of bond

If the petition does not result in any polling places remaining open past 7:30 p.m., or if the petition results in one or more polling places remaining open and the court's decision is not overturned, the bond is returned to the petitioner. However, if the petition results in one or more polling places remaining open past 7:30 p.m. and a court of competent jurisdiction later makes an unappealed final ruling that the ballots cast during that time are not eligible to be counted, the bond is forfeited and must be used to cover the cost of keeping the polls open. The board of elections must calculate the total cost incurred as a result of keeping the polls open under the order and must submit that total to the court. If the amount of the bond is greater than the total cost, the excess portion of the bond must be returned to the petitioner. The court then must order the clerk to remit the bond to the board of elections.

Upon receiving the bond, the board must determine the portion of the total cost that was paid by the state, the county, and each political subdivision, as applicable, and refund that amount to each entity. If the amount of the bond is less than the total cost, the board must divide the amount of the bond by the total cost, multiply the quotient by the amount each governmental entity paid, and refund the resulting amount to each governmental entity. (For example, if the bond covers 75% of the cost of keeping the polls open, each governmental entity receives a refund of 75% of its portion of the cost.)³

Notice to Secretary of State and Attorney General

Upon filing a petition to keep the polls open, the petitioner must serve notice of the petition on the Secretary of State and the Attorney General. As is discussed below,

² R.C. 3501.17(K)(1), 3501.28, and 3501.32 and Ohio Secretary of State, *Election Official Manual* at 2-91 (2015), available at sos.state.oh.us/sos/upload/elections/EOResources/general/2015EOM.pdf, accessed April 14, 2016.

³ R.C. 3501.17(K)(2) and 3501.321(D).

the court must afford those officers or their designees an opportunity to be heard in the case.⁴

Conditions for court order

The bill specifies that when a petition is filed in a court of common pleas, seeking an order to keep the polls open for extended hours, the court may issue the order only if all of the following conditions are met:⁵

- The petitioner has posted the required bond, unless the court has determined that the petitioner is indigent. If the petitioner is indigent, the court may allow only the petitioner to vote after the close of the polls (see "**Bond**," above).
- The petitioner has served notice of the petition on the Secretary of State and the Attorney General.
- The court has afforded the Secretary of State and the Attorney General or their designees an opportunity to be heard in the case.
- The petitioner has proved by clear and convincing evidence that no prospect of a fair election exists in the absence of the order.
- The court's decision is based solely on testimonial evidence submitted under oath and on any physical evidence submitted to the court. The court must not consider evidence gathered from a media report that is not submitted under oath and must not consider hearsay.

Appeal

The bill requires each court of appeals to establish a special Election Day panel for each day on which an election is held in the court's territory. The panel must be available upon instant notice to hear and determine any appeals of orders to extend polling hours. If a court of common pleas issues an order extending the polling hours, the order is subject to immediate appeal to the panel and, if it is appealed, the order must be stayed pending the panel's decision. The panel must decide the appeal immediately, without briefing, based on oral arguments and on the evidence submitted

⁴ R.C. 3501.321(A)(1) and (B)(1)(b).

⁵ R.C. 3501.32 and 3501.321(B).

to the lower court. The panel's decision is subject to appeal in the same manner as any other decision of the court of appeals.

If a court of common pleas denies a petition to keep the polls open, the denial is not subject to immediate appeal to the panel. Instead, the order is subject to appeal in the same manner as any other court decision.⁶

Provisional ballots

The bill requires a person who votes after the close of the polls because of a court order to cast a provisional ballot. The precinct election officials must note on the provisional ballot affirmation that the ballot was cast under those circumstances. Then, the board of elections must wait until the 11th day after the day of the election to examine the ballot. If, at the time the board examines the ballot, a court has entered an unappealed final order that ballots cast after 7:30 p.m. are not eligible to be counted, the board must not count the ballot.⁷

The Secretary of State currently directs election officials to require any person who votes after the close of the polls under a court order to cast a provisional ballot. The election officials mark those ballots as being cast during that time and keep those ballots separate from other provisional ballots.⁸

HISTORY

ACTION	DATE
Introduced	03-14-16

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⁶ R.C. 2505.40 and 3501.321(C).

⁷ R.C. 3505.18(C), 3505.181(A)(8), 3505.182, and 3505.183.

⁸ Ohio Secretary of State, *Election Official Manual* at 7-39 (2015), available at sos.state.oh.us/sos/upload/elections/EOResources/general/2015EOM.pdf, accessed April 14, 2016.

