



Ohio Legislative Service Commission

Terry Steele

Fiscal Note & Local Impact Statement

Bill: S.B. 296 of the 131st G.A.

Date: May 13, 2016

Status: As Passed by the Senate

Sponsor: Sen. Seitz

Local Impact Statement Procedure Required: No

Contents: Specifies the conditions under which a court may order that a polling place be kept open on the day of an election

State Fiscal Highlights

- The bill requires the Secretary of State to make all estimates of expenses and overtime pay of county boards of elections available on its website by 6:30 a.m. on Election Day. There may be some negligible costs for making these available, likely paid for through the Secretary of State's GRF appropriations.

Local Fiscal Highlights

- The bill specifies the conditions for which polling locations may remain open for extended hours on Election Day, which may include conducting hearings on a petition for extended voting hours. Such hearing costs would likely be minimal and be borne by either a county court of common pleas or court of appeals.
- The bill requires the issuance of a bond in some cases to file a petition. If a court grants this petition and it is later overturned, then the costs of extending polling hours would be paid for from the bond.
- The bill requires county boards of elections to generate an estimate of the costs of extending voting hours in polling locations in the county, and file that estimate with the Secretary of State. There may be some small cost incurred for preparing these estimates.
- The bill also specifies that all votes cast during these extended voting hours must be provisional ballots. Because this is the current procedure during extended voting hours, there would appear to be no new costs associated with this provision.
- The bill specifies that individuals seeking to file an action that seeks an order to modify voting laws or procedures of the Secretary of State or boards of elections must file the action in the Supreme Court of Ohio or appropriate court of appeals.

Detailed Fiscal Analysis

Overview

The bill establishes several requirements to be met in order for a state court to order that a polling place be kept open for extended hours on the day of an election, including bond requirements, estimates of expenses, and the conditions necessary to be met for a court order to be granted. The bill further requires each court of appeals to establish a special Election Day panel for each day an election is held in the court's territory. The panel must be available upon notice to hear and determine any appeals of orders to extend polling hours. Overall, the provisions of the bill would appear to have some minimal cost increases for county courts and courts of appeals related to any hearings that may result. However, it is also possible given the conditions of the bill that the number of instances in which a board of elections may need to keep polling locations open extra hours, already an uncommon occurrence, could also decrease.

Bond requirements

The bill requires a person who is seeking a court order to keep one or more polling places in a county open beyond the normal closing time to file a petition in the court of common pleas in that county. The individual seeking this court order is required to post a cash bond with the court clerk in an amount determined by the court in accordance with Civil Rule 65. The court must consider the cost of keeping the requested polling places open for the requested period of time. If the court determines that the individual seeking the court order is indigent, the court is required to waive the bond requirement. However, 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, but no other person, to vote during that time.

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 such a determination to keep the polls open is subsequently overturned, then the individual forfeits the bond and that bond must be used to pay the costs of keeping the polls open. Any amount of the bond in excess of these costs is returned to the petitioner. However, if the bond does not fully cover the costs, the court may order the petitioner to pay the board of elections the amount necessary to cover those total costs.

Estimate of expenses and overtime

The bill requires that 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 Secretary of State must adjust that rate in January of each year according to the

percentage change in the federal Consumer Price Index (CPI). Currently, precinct election officials earn a maximum salary of \$133.72 per day. The board must file this estimate with the Secretary of State and the Secretary of State must make the estimate available on the Secretary's official website no later than 6:30 a.m. on Election Day.

The overall fiscal impact of these provisions is difficult to quantify. It would appear as though the provisions of the bill could potentially reduce the number of instances in which polling locations are ordered to remain open. Additionally, if such an order were to occur and was later overturned, the costs of keeping polling locations open would be offset through the cash bond required under the bill. There would be no new costs under the bill for keeping polling locations open as county boards of elections, or in some cases the state, currently pays those costs.

It is possible for there to be some minimal additional costs experienced by county courts for potentially conducting hearings on a petition to have polling locations remain open. County boards of elections may also experience some minimal costs for generating and filing the estimates of expenses with the Secretary of State, as would the Secretary of State for making those estimates available on the office's website.

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 board of elections must then wait until the 11th day after the day of the election to examine the ballot. If, at that time, a court has entered an unappealed final order that these ballots are not eligible, then they are not counted. Under current law, the Secretary of State directs election officials to require any person who votes after the close of the polls under a court order to cast a provisional ballot. Therefore, the bill does not place any new requirements on boards of elections with respect to provisional ballots.

Filing of actions

The bill specifies that during the period beginning on the 50th day before the day of an election and ending with the day before an election, any person who files an action that seeks an order to modify the laws or procedures that the Secretary of State or a county board of elections will follow in administering that election, must file that action in the Supreme Court of Ohio or in the appropriate court of appeals. This would mean that individuals could not file such actions in a court of common pleas. This could potentially shift the costs of hearing such actions from a county court to the Supreme Court, in some instances. Cases filed in a county court of appeals instead of a court of common pleas would still see the costs borne by the applicable county.