OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 135*

132nd General Assembly

(As Reported by S. Finance)

Sens. LaRose, Eklund, Uecker, Brown, Skindell

BILL SUMMARY

Voting machine acquisition program

- Requires the Secretary of State to implement a program to facilitate the acquisition and funding of new voting systems for Ohio's counties, with the assistance of the Department of Administrative Services (DAS).
- Creates the Voting Machine Acquisition Advisory Committee for the purpose of advising the Secretary and DAS in the acquisition and funding of new voting systems.
- Requires the Office of Budget and Management, at the request of the Secretary, to make arrangements for the issuance of obligations in an amount not to exceed $104.5 million to ensure the timely payment of the costs of the voting systems acquisition program.
- Allows the Secretary to enter into one or more lease purchase agreements or master lease purchase agreements, supplemental leases, subleases, and any other agreements necessary for the issuance of those obligations.
- Requires the Secretary to give a base funding allocation to each county based on its population, plus an additional allocation based on the actual number of registered voters in the county as of July 1, 2017.

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

- Specifies that each participating board of elections must select voting machines and related services from the list of vendors and voting machines certified by the Board of Voting Machine Examiners.

- Requires the Secretary and the board of county commissioners to enter into an agreement concerning the acquisition of the voting system.

- Provides that the Secretary is the owner of the voting system while the obligations are outstanding and that the board of county commissioners owns the system thereafter.

- Requires the board of county commissioners to pay any amount that exceeds the county's allocated funds under the bill.

Reimbursements for recent voting system purchases

- Appropriates $10 million from the General Revenue Fund for the Secretary to use to reimburse counties for voting system acquisitions or lease expenditures made on or after January 1, 2014, and before the bill takes effect, provided that the reimbursement does not exceed the county's allocation as determined under the bill.

Effective date and referendum

- States that the bill's provisions are exempt from the referendum and take effect immediately, except that the section concerning the obligations is subject to the referendum and therefore takes effect on the 91st day after the bill is filed with the Secretary.

CONTENT AND OPERATION

Voting machine acquisition program

Generally

The bill requires the Secretary of State to implement a program to facilitate the acquisition and funding of new voting systems for Ohio counties. The Department of Administrative Services (DAS) must provide solicitation and pricing assistance as requested by the Secretary.

As used in the bill, "voting systems" means voting machines, marking devices, automatic tabulating equipment, direct recording electronic voting machines, and associated allowable expenditures. "Associated allowable expenditures" includes the following costs associated with a voting system:

- Servers and software;
- Delivery, installation, configuration, and testing;
- Warranties and software licenses purchased at the time of initial acquisition with a term of at least five years.

However, "associated allowable expenditures" does not include costs associated with training or additional costs associated with operating, servicing, maintaining, or insuring a voting system.[1]

Voting Machine Acquisition Advisory Committee

The bill creates the Voting Machine Acquisition Advisory Committee for the purpose of advising the Secretary and DAS in the acquisition and funding of new voting systems. The Committee consists of the following members:

- One member of the majority party of the House of Representatives appointed by the Speaker of the House;
- One member of the minority party of the House appointed by the House Minority Leader;
- One member of the majority party of the Senate appointed by the President of the Senate;
- One member of the minority party of the Senate appointed by the Senate Minority Leader;
- The Secretary of State or the Secretary's designee;
- Four members who are election officials selected by the Ohio Association of Election Officials, two of whom must be Republicans and two of whom must be Democrats. Not more than two of those members may be from counties that fall into the same registered voter population category. (Those categories, as described below under "**Funding formula**," are 0-19,999; 20,000-99,999; and 100,000 or more.)
- Four members appointed by the County Commissioners Association of Ohio, two of whom must be Republicans and two of whom must be Democrats. Not more than two of those members may be from counties

[1] Sections 1 and 3 of the bill.

that fall into the same registered voter population category, as mentioned above.

All appointments to the Committee must be made within ten days of the bill's effective date, and the appointing authorities must provide written notice of their appointments to the Secretary of State as soon as possible after making the appointments. Members of the Committee must serve without compensation.

The Committee must meet at the call of the Secretary of State at least twice within 45 days after the bill takes effect in order to advise the Secretary and DAS in the acquisition and funding of new voting systems for Ohio's counties, as approved by the Board of Voting Machine Examiners under continuing law. Upon the selection of voting systems for Ohio's counties, the Committee must cease to exist.[2]

Fractionalized interests in public obligations

The bill specifies that at the request of the Secretary of State, the Office of Budget and Management must make arrangements for the issuance of obligations to ensure the timely payment of the costs of the voting systems acquisition program, provided that not more than $104.5 million in proceeds of those obligations may be raised for that purpose. The Secretary is authorized to enter into one or more lease purchase agreements or master lease purchase agreements, supplemental leases, subleases, and any other agreements necessary for the issuance of those obligations.

The obligations to be issued under the bill include fractionalized interests in public obligations, as defined in the Public Securities Law. Under that law, the term means participations, certificates of participation (COPs), shares, or other instruments or agreements, separate from the public obligations themselves, evidencing ownership of interests in public obligations or of rights to receive payments of, or on account of, principal or interest or their equivalents payable by or on behalf of an obligor pursuant to public obligations.

In other words, the bill authorizes the Secretary of State to fund the lease and purchase of voting machines by selling fractionalized interests in public obligations, such as COPs, to investors, who then receive principal and interest payments from the state, similar to holding a bond. If the state were to default on its payments, the investors would own an interest in the voting machines.[3]

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[2] Section 3 of the bill.

[3] Section 4 of the bill and R.C. 133.01(N), not in the bill.

Funding formula

The bill requires the Secretary of State to give a base funding allocation to each county, determined as described in the table below.

Registered voters in county	Base allocation
0 – 19,999	$205,000
20,000 – 99,999	$250,000
100,000 or more	$406,000

Then, the Secretary must give an additional allocation to each county based on the actual number of registered voters in the county as of July 1, 2017. For example, if the Secretary disbursed $30 million to counties in the form of base allocations, the Secretary could divide the remaining $74.5 million in authorized obligation proceeds by the number of registered voters in the state as of July 1, 2017, to determine a per-voter amount. The Secretary then could allocate an amount to each county equal to the number of registered voters in the county times the per-voter amount.[4]

Acquisition process

Upon request by a board of elections, the bill requires the Secretary of State to provide a list of the vendors and voting machines certified by the Board of Voting Machine Examiners, including related services and equipment. The board of elections must select voting machines and related services from that list. (It appears that the board is not required to choose from the voting machines selected by the Voting Machine Advisory Committee created by the bill.)

The Secretary of State and the board of county commissioners then must enter into an agreement concerning the selection and acquisition of the voting system. Under the bill, the Secretary is the owner of the voting system during the period for which the obligations are outstanding. Upon the maturity of the obligations, ownership of the voting system transfers to the board of county commissioners. In the agreement, the board of county commissioners must identify its selection and identify a breakdown of the total costs that enable identification of the costs of voting machines and associated allowable expenditures. The agreement must provide for the board of county commissioners to have the right to possess the voting system and to be responsible for all operation, servicing, maintenance, and insurance costs of, and all claims and liabilities relating to, the voting system.

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[4] Section 5(A) of the bill.

After the agreement is executed, the board of county commissioners must enter into all necessary contracts or agreements with the selected vendor. The Secretary of State must confirm the allowable voting system cost for the county, which must not exceed the amount allocated to the county under the bill's cost-sharing formula, and arrange for the state to pay that amount directly to the vendor. If the county's allocation does not cover the cost of the voting system, the board of county commissioners must pay the remaining amount directly to the vendor.[5]

Reimbursements for recent voting system purchases

The bill also appropriates $10 million to the Controlling Board from the General Revenue Fund to reimburse counties for voting system acquisitions or lease expenditures made on or after January 1, 2014, and before the bill takes effect. The bill requires the Secretary of State, in conjunction with the Controlling Board, to use those funds to make the reimbursements. The Director of Budget and Management, in conjunction with the Secretary of State, have the ability to access and move those funds as necessary in order to distribute them to the intended counties.

The board of elections must submit written documentation of its costs to the Secretary, including a breakdown of the total costs that enables identification of the costs of voting machines and associated allowable expenditures. After receiving that documentation, the Secretary must reimburse the county in a timely manner for those expenditures in an amount not to exceed the amount allocated to the county under the funding formula described above. The reimbursement must be paid to the county's general fund.[6]

Effective date and referendum

The bill states that its provisions are exempt from the referendum and take effect immediately, except that the section concerning the obligations is subject to the referendum and therefore takes effect on the 91st day after the bill is filed with the Secretary of State.[7]

Current law

Under existing law, each county is responsible for purchasing and maintaining its own voting and tabulation equipment, subject to the continuing requirement that the

[5] Section 5(B) of the bill.

[6] Sections 2 and 5(C) of the bill.

[7] Section 6 of the bill. See also Ohio Const., Art. II, Sec. 1d, which specifies which bills are subject to the referendum.

equipment be certified by the Secretary of State and the Board of Voting Machine Examiners.[8]

HISTORY

ACTION	DATE
Introduced	04-20-17
Reported, S. Finance	---

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[8] R.C. 3506.02, 3506.03, and 3506.06, not in the bill.