



Lynda J. Jacobsen

Final Analysis
Legislative Service Commission

Sub. S.B. 380
127th General Assembly
(As Passed by the General Assembly)

Sens. Seitz, Cates, Carey, Wagoner, Amstutz, Coughlin, Harris, Schaffer, Faber, Buehrer

Reps. Daniels, Aslanides, Bacon, Batchelder, Blessing, Bubb, Carmichael, Ciafardini, Flowers, Gibbs, Grady, J. Hagan, Mecklenborg, Nero, Schindel, Schneider, Sears, Setzer, Stebelton, Uecker, Wachtmann, Wagner

Vetoed: January 6, 2009

ACT SUMMARY

The Governor vetoed the act, which would have done all of the following:

- Specified the times at which absent voter's ballots would have had to be printed and ready for use: (1) 35 days before the election, for overseas and military voters (continuing law), (2) 28 days before the election, for other absent voters who are not voting in person, (3) 20 days before the election, for absent voters who are voting in person, and (4) 25 days before the day of a presidential primary election, for other absent voters who are not voting in person (continuing law).
- Required the "Statement of Voter" that appears on an absent voter's ballot identification envelope or an armed service absent voter's ballot identification envelope to match the statement as it appears in the Revised Code.
- Prohibited an absent voter's ballot or armed service absent voter's ballot from being counted unless the Statement of Voter on the identification envelope within which that ballot is contained was completed.
- Generally required boards of elections to notify absent voters who did not completely fill out the Statement of Voter that their ballots would have been rejected if they did not complete the Statement of Voter prior to the close of the polls on the day of an election.

- Specified that boards of elections would not be required to notify voters whose absent voter's ballots were received after the eighth day before the election if the Statement of Voter was incomplete, but would have required a board that notified any such voter to notify all voters of incomplete statements.
- Permitted election observers to be appointed to serve at the board of elections or at another designated site during the time absent voter's ballots may be cast in person.
- Permitted election observers only to watch and listen to election officials engaging in their duties and to interactions between voters and election officials, and permitted election observers to take notes on their observations.
- Prohibited election observers from interacting with election officials and voters, other than in an incidental interaction, and would have permitted a voter to bring a civil suit for harassment in violation of the election laws against an observer who interfered with a voter casting the voter's ballot.
- Required the Secretary of State and the Registrar of Motor Vehicles to enter into an agreement to match voter registration information with motor vehicle records, as required under federal law.
- Required the Secretary of State to notify the applicable board of elections of mismatches between voter registration information and motor vehicle records that the Secretary of State receives through the matching agreement regarding persons registered to vote in the applicable county.
- Defined a "mismatch" as any of the following data fields that are not identical to one another when the statewide voter registration database is compared to motor vehicle records: driver's license number, Social Security number, or date of birth.
- Required boards of elections to notify affected voters of a mismatch and provide those voters with an opportunity to verify and correct the mismatched information.

- Required the Secretary of State to establish, by rule, procedures for boards of elections to notify voters of mismatches and provide voters with the chance to verify and correct mismatched information, which rules must conform to the voluntary guidelines for implementing statewide voter registration lists adopted by the United States Election Assistance Commission.
- Revised the process by which boards of elections members are appointed by requiring the Secretary of State to appoint recommended electors, unless the Secretary of State determined that they had been adjudicated incompetent or been convicted of or plead guilty to a felony.
- Required the Secretary of State to prove, by clear and convincing evidence, that a recommended elector was incompetent to serve on a board of elections in any mandamus action related to the appointment.
- Required the appointment process to be repeated after each refusal of the Secretary of State, with the county executive committee of the applicable political party having an opportunity to make a recommendation, until an elector was appointed.

CONTENT AND OPERATION

Availability of absent voter's ballots

Continuing law requires a person to be registered to vote for 30 days before an election to be eligible to vote in that election (Ohio Constitution, Article V, Section 1 and R.C. 3503.01). Continuing law also permits any qualified elector to vote an absent voter's ballot at an election (R.C. 3509.02(A)).

Under continuing law, absent voter's ballots must be printed and ready for use 35 days before the day of an election or, if the election is a presidential primary election, on the 25th day before the day of the election. The act would have revised the time at which absent voter's ballots must be printed and ready for use, depending on the type of voter seeking the absent voter's ballot and the location at which that ballot will be voted (R.C. 3509.01(B)):

- For overseas voters and absent uniformed services voters eligible to vote under the Uniformed and Overseas Citizens Absentee Voting Act, ballots would have been required to be printed and ready for use 35 days before the day of any election other than a presidential primary election;

- For all voters, other than overseas voters and absent uniformed services voters, who would have been applying to vote absent voter's ballots other than in person, ballots would have been required to be printed and ready for use on the 28th day before the day of any election other than a presidential primary election;
- For all voters, other than overseas voters and absent uniformed services voters, who would have been applying to vote absent voter's ballots in person, ballots would have been required to be printed and ready for use beginning on the 20th day before the day of the election and would have continued to be available for use through 5 p.m. on the day before the day of the election;
- For all voters who would have been applying to vote absent voter's ballots other than in person, ballots would have been required to be printed and ready for use on the 25th day before the day of a presidential primary election.

If the laws governing the holding of a special election on a day other than the day on which a primary or general election is held would have made it impossible for absent voter's ballots to be printed and ready for use by the previously described deadlines, absent voter's ballots for those special elections would have been required to be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of the special election (R.C. 3509.01(D)).

Absent voter's ballot identification envelopes

Statement of voter form and requirements

After an absent voter finishes marking the voter's ballot, the absent voter is required to seal the ballot in an identification envelope and complete the "Statement of Voter" on the outside of the envelope. The absent voter also must sign the statement. (R.C. 3509.05.) The form of the statement must be substantially the same as the form specified in the Revised Code (R.C. 3509.04 and 3511.05).

The act would have retained the provisions requiring absent voters to complete and sign the Statement of Voter. But, instead of requiring the form of the statement to be substantially the same as the form presented in the Revised Code, the act would have required the Statement of Voter appearing on the envelope to match the statement as it appears in the Revised Code. (R.C. 3509.04 and 3511.05.)

Under continuing law, if the Statement of Voter on an absent voter's ballot envelope completed by an absent voter is insufficient, the absent voter's ballots contained in that envelope must not be counted. The act would have expanded this prohibition to apply to incomplete statements. Under the act, if the Statement of Voter completed by an absent voter was incomplete or insufficient, the ballots contained within that identification envelope would not have been counted. (R.C. 3509.06(D) and 3509.07.)

Notification of incomplete Statement of Voter

Under the act, if a board of elections determined, prior to the close of the polls on the day of the election, that the Statement of Voter on a voter's absent voter's ballot identification envelope was incomplete, the board would have been required to notify the absent voter by mail or by telephone that the voter's absent ballot would be rejected unless the voter completed the statement prior to the close of the polls on the day of the election.

A board of elections would not have been required to notify voters of their incomplete Statements of Voter for any absent voter's ballots that the board received after the eighth day before the day of the election. However, if a board of elections chose to notify voters of incomplete absent voter's ballot envelope statements for absent voter's ballots received after the eighth day before the day of the election, the board would have been required to notify all voters whose absent voter's ballot envelope statements were incomplete that their absent voter's ballot envelopes would be rejected unless the voter completed the statement prior to the close of the polls on the day of the election. (R.C. 3509.05(D) and 3511.11(B).)

Election observers during the time absent voter's ballots may be cast in person

Continuing law permits any political party supporting candidates to be voted on at an election and any group of five or more candidates to appoint a qualified elector to serve as an observer for the party or candidates during the casting of the ballots and during the counting of the ballots. The political party or group of candidates must notify the board of elections of the names and addresses of the observers and the precincts at which they will serve. (R.C. 3505.21.)

The act would have expanded the times and locations for which observers may be appointed by permitting a political party or group of five or more candidates to also appoint an observer for any time in which a board of elections permits an elector to vote an absent voter's ballot in person at the office of the board or at another site designated by the board. The political party or group of candidates would have been required to notify the board of elections of observers appointed to serve during the time absent voter's ballots may be cast in person not less than 11 days before those ballots are required to be printed and available for

use. The notification would have been made on forms prescribed by the Secretary of State and could have been amended by filing an amendment with the board of elections at any time until 4 p.m. of the day before the observer was appointed to serve. Observers would have been permitted to file certificates of their appointment with the director of the board of elections the day before or on the day that the observers were scheduled to observe the casting of absent voter's ballots. (R.C. 3505.21.)

Activities of election observers who serve during the casting of the ballots

Continuing law permits observers to serve during the casting and during the counting of the ballots. Although the law describes the process for appointing election observers, it does not specify what observers may and may not do while in a polling place. The act specified that observers who serve during the casting of the ballots would only be permitted to do the following (R.C. 3505.21(G)(1)):

(1) Watch and listen to the activities conducted by the precinct election officials and the interactions between precinct election officials and voters, as long as the precinct election officials were not delayed in performing the officials' prescribed duties and voters were not delayed in casting their ballots;

(2) Make notes on the observer's observations other than by means of a photographic, video, or audio recording.

The act would have prohibited an observer who serves during the casting of the ballots from interacting with any precinct election official or with any voter while the observer was inside the polling place, within the area between the polling place and the small United States flags placed on the thoroughfares and walkways leading to the polling place, or within ten feet of any elector in line waiting to vote, if the line of electors waiting to vote extended beyond those small flags (R.C. 3505.21(G)(2)(a)). An observer who violated this prohibition would have been subject to the default penalty applicable to a violation of the Election Law, a misdemeanor of the first degree (R.C. 3599.40--*not in the act*). Additionally, the observer could have been sued in a civil action for harassment in violation of the Election Law (R.C. 3501.90).

The act specified that no violation of the prohibition would have occurred as a result of an incidental interaction between an observer and a voter or a precinct election official, such as an exchange of greetings (R.C. 3505.21(G)(2)(b)).

Notification of mismatches between voter registration and motor vehicle records

The act would have defined a "mismatch" as any of the following data fields that were not identical to one another with respect to a particular individual when information in the statewide voter registration database was compared to motor vehicle records: driver's license number, Social Security number, or date of birth.

The Help America Vote Act of 2002 (HAVA) requires each state to maintain a single uniform statewide voter registration database that serves as the single system for storing and managing the official list of registered voters throughout the state. HAVA also requires the chief state election official and the official responsible for the state motor vehicle authority to enter into an agreement to match information in the statewide voter registration database with motor vehicle records for the purpose of verifying the accuracy of the information provided on voter registration applications. (42 U.S.C. 15483.)

The act would have required the Secretary of State and the Registrar of Motor Vehicles to enter into the required matching agreement. Additionally, the Secretary of State would have been required to notify the applicable board of elections of any mismatches between voter registration information and motor vehicle records that the Secretary of State received through the matching agreement regarding persons registered to vote in the applicable county.

Upon notification of mismatches by the Secretary of State, a board of elections would have been required to notify each affected voter of the mismatch regarding the voter's information. The board then would have been required to provide the voter with the opportunity to verify and correct the mismatched information. The Secretary of State would have been required to establish, by rule, procedures for boards of elections to notify affected voters of mismatches and to provide those voters with the opportunity to verify and correct the mismatched information. The Secretary of State's rules would have been required to conform to the Voluntary Guidelines for Implementing Statewide Voter Registration Lists adopted by the United States Election Assistance Commission. A mismatch could not have been the sole reason for the removal of a voter from the statewide voter registration database. (R.C. 3503.15(H).)

Appointment of board of elections members

When there is a vacancy on a board of elections, and prior to the expiration of the term of a member, continuing law permits the county executive committee of a political party to make and file a recommendation with the Secretary of State for the appointment of a qualified elector. The Secretary of State is required to appoint the elector, unless the Secretary of State believes that the elector would

not be a competent member of the board. If the Secretary of State believes the elector would not be a competent member, the Secretary of State must state that in writing, with the reasons for the Secretary of State's decision. The county executive committee then may either recommend another elector or apply for a writ of mandamus to the Ohio Supreme Court to compel the Secretary of State to appoint the elector. In such an action, the burden of proof is on the county executive committee to show the elector's qualifications. If no recommendation is made, the Secretary of State is required to make the appointment.

Under the act, the Secretary of State would have been required to appoint the recommended elector, unless the Secretary of State found that the elector was not competent to serve on the board of elections (1) as a result of the elector's adjudication of incompetence by a court of competent jurisdiction, or (2) the elector's prior conviction of or plea of guilty to a felony. If the Secretary of State refused to appoint the elector, the Secretary would have been required to state the reasons for the refusal in writing to the chairperson of the county executive committee. The county executive committee could, with respect to each refusal of the Secretary of State, either recommend another elector or apply for a writ of mandamus. In such actions, the act states that the Secretary of State would have been required to prove, by clear and convincing evidence, the lack of competence of the person recommended.

Upon dismissal of the mandamus action, the county executive committee would have had 15 days to make and file another recommendation with the Secretary of State. If no such recommendation was made within 15 days after either the Secretary of State refused the appointment or the dismissal of the mandamus action, the Secretary of State would have been required to make the appointment. The process would have been repeated, as needed, after each refusal of the Secretary of State, until the appointment was made. (R.C. 3501.07.)

HISTORY

ACTION	DATE
Introduced	11-18-08
Reported, S. State & Local Gov't & Veterans Affairs	12-09-08
Passed Senate (19-11)	12-09-08
Reported, H. State Government & Elections	12-16-08
Passed House (55-43)	12-16-08
Senate concurred in House amendments (19-12)	12-17-08
Vetoed by Governor	01-06-09

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