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# COUNTY ADVISORY BULLETIN

**CAB**

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## **CHANGES IN LAW RELATING TO BOARDS OF ELECTIONS**

### **INTRODUCTION**

The purpose of this CAB is to explain provisions contained in the State Operating Budget Bill, Am. Sub. House Bill 215 relating to boards of elections. The Budget Bill made changes in law relating to poll worker compensation, leases for board of elections office space, the cost of advertising proposed constitutional amendments statewide, and the cost of opening precincts solely for the consideration of a statewide ballot issue. All changes became effective June 30, 1997.

The issue of poll worker pay has been an issue of conflict between CCAO and election officials for a number of years. In an effort to resolve the conflict, CCAO President Tim Davis appointed a work group to work with election officials. Members of this work group included CCAO President Tim Davis (Summit County), CCAO 1st Vice President Courtney Combs (Butler County), CCAO Legislative Chair Dorothy Teater (Franklin County), and Commissioners Bob Bedinghaus (Hamilton County) and Gary Starnier (Hocking County). The result of this work, which involved significant compromise on all sides, was essentially what was included in the State Budget Bill.

### **POLL WORKER COMPENSATION (ORC 3501.28)**

With the recent increase in the minimum wage by the federal government, a real problem was created with the poll worker compensation statute. On September 1, 1997, the minimum wage will go from \$4.75 to \$5.15 an hour. The new amount times 14 hours a poll worker usually works on election day equals \$72.10 - an amount more than the maximum \$70 allowed under the law. In order to accommodate this recent raise and future increases of the minimum wage, ORC 3501.28 was amended to provide the following:

1. Poll workers are to be paid not less than the federal minimum wage.

2. The maximum amount of compensation allowed for a day's work will be raised and will be indexed with any future increases to the federal minimum wage.

As a result, the establishment of poll worker pay in a county shall include the following:

1. Poll workers are not to be paid less than the federal minimum wage.
2. The maximum amount of compensation allowed for a day's work shall be as provided in the following chart or as established by the Secretary of State if the federal minimum wage is increased in the future.
3. The board of elections continues to have the authority to set poll worker pay in each county. However, beginning with calendar year 1998, the board must enter into a written agreement with the board of county commissioners for any proposed poll worker increase that is greater than 9 percent of the compensation paid to poll workers the previous calendar year.
4. Before the board of elections can increase such pay, the board must give notice to the board of county commissioners no later than October 1 of the previous calendar year. (Such prior notification is not required for the November '97 elections.) Commissioners may review and comment, but cannot stop the increase. Even in a case where the commissioners do not appropriate adequate funds to meet the rate established by the board of elections, a mandamus section under ORC 3501.17 could be filed and the likely outcome would be that the commissioners would lose.

Year	Hourly Rate	Maximum Compensation
<b>1997 before Sept. 1</b>	\$4.75/hr	\$70 a day
<b>1997 after Sept. 1</b>	\$5.15/hr	<p>\$72.10 a day (\$5.15/hr x 14 hrs)</p> <p>This rate is the same for all counties as mandated by the federal minimum wage. The notice requirements outlined above do not apply to 1997, and counties will need to appropriate more money so that all poll workers receive \$72.10 for the November '97 election.</p>

<p><b>1998</b></p>	<p>\$5.15/hr at least</p> <p>(at least the established federal minimum wage)</p>	<p>\$78.59 a day</p> <p>The board of elections may increase compensation up to 9% of previous year's \$72.10. The board must give notice of any proposed compensation increase to commissioners by Oct. 1, 1997.</p> <p><b><u>Or</u></b></p> <p>\$85 a day</p> <p>The board of elections may increase compensation beyond 9% of previous year's rate if commissioners do not object and a written agreement between the two boards is adopted. The board of elections must give notice of any proposed increases to commissioners by Oct. 1, 1997.</p>
<p><b>1999 &amp; thereafter</b></p>	<p>\$5.15/hr at least</p> <p>(at least the established federal minimum wage)</p>	<p>\$85 a day</p> <p>The board of elections may increase compensation beyond 9% of previous year's compensation if commissioners do not object and a written agreement between the two boards is adopted. The board of elections must give notice of any proposed compensation increase to commissioners by Oct. 1 of the preceding calendar year.</p> <p>The \$85 a day maximum compensation may increase if the federal minimum wage is increased; the new amount would be established by the Secretary of State.</p>

It is important to note that the new law attempts to lessen the fiscal impact of pay worker raises on a county in any one year. The law provides that if the board of elections proposes to increase the maximum amount of compensation more than 9% in any one year, the board must obtain the approval of the board of county commissioners.

Beginning with calendar year 1998, the Secretary of State will establish by rule the maximum amount of compensation poll workers are to receive each time the federal minimum wage is increased. The Secretary of State shall determine by what percentage the federal minimum wage has been increased and establish a new maximum amount of compensation for poll workers that is increased by the same percentage that the minimum hourly rate has been increased. This ensures that the maximum amount of compensation is adequately established to reflect the same increase.

The law also provides that no poll worker who works less than the full election day shall be paid the maximum amount allowed under this statute or the maximum amount as set by

the board of elections, whichever is less.

### **LEASES FOR BOARD OF ELECTIONS OFFICE SPACE (ORC 3501.10)**

Prior to the enactment of HB 215, ORC 3501.10 allowed the board of elections to contract for office space for up to 15 years. After notification of the execution of a lease, the board of county commissioners could then void the action of the board of elections within 60 days of being notified of the lease. The notification of the commissioners at the back end of the process and the possibility of them voiding a contract 60 days after being executed created a problematic situation.

Under HB 215, the law now provides that the board of elections can only enter into third party contracts with the prior approval of the commissioners. The board of elections must notify the commissioners in writing 30 days prior to entering into a lease of the board's intent to do so. The notice must specify the terms and conditions of the lease.

The board of county commissioners has 30 days in which it can reject the proposed lease by a majority vote. If the commissioners reject the proposed lease, they must send written notification of such action to the board of elections. The board of elections cannot enter into the lease that was rejected, but may immediately enter into additional lease negotiations, which must be reviewed by the commissioners.

The existing law, which was unchanged by HB 215, also provides that the board may maintain permanent or temporary branch offices at any place within the county.

The new law will provide a more business-like, professional approach to county government. By providing commissioners with up front notification of a possible lease agreement, commissioners and the board of elections can work together in locating cost-efficient office space and prevent hassles and legal problems that could result in voided contracts had both boards not worked together at the beginning.

### **STATEWIDE BALLOT ISSUE ADVERTISING & PRECINCT COSTS (ORC 3501.17)**

For several years, CCAO has been lobbying the legislature to remove the unfunded mandate counties have incurred in advertising statewide ballot issues and the costs involved in opening precincts for the sole purpose of considering a statewide ballot issue.

In recent years, the legislature with the help of the State & Local Government Commission's Mandates Task Force and Lieutenant Governor Nancy Hollister, has provided a small pot of money to address several unfunded mandates facing local governments, including the costs associated with statewide ballot issues.

HB 215 provided definitive relief in this area for counties by stating, for the first time, that the state shall reimburse counties for all expenses incurred in the following:

1. The entire cost of advertising in newspapers statewide ballot issues, explanations of those issues, and arguments for or against those issues.

2. The entire cost of the election in a precinct in which that precinct was opened during a general, primary, or special election solely for the purpose of submitting to the voters a statewide ballot issue.

A "statewide ballot issue" means any ballot issue, whether proposed by the General Assembly or by initiative or referendum, that is submitted to the voters throughout the state.

Relief from these unfunded mandates comes at no better time. This fall a referendum has been proposed asking Ohio voters to prevent the implementation of Senate Bill 45, which established changes to workers compensation benefits. The ballot language of SB 45 along with the entire wording of the legislation must be printed in newspapers throughout the state 3 times prior to November's election. SB 45 as enacted by the legislature totals over 100 typed pages. While counties initially will pay the publication costs of statewide ballot language and the bill, the state will reimburse counties for all expenses incurred.

## **ACKNOWLEDGMENTS**

Because of the cooperation between representatives of the Ohio Association of Election Officials, Secretary of State Bob Taft and his legislative counsel, Jon Allison, along with CCAO, agreement on the aforementioned issues were resolved. Thanks to these individuals for their time and efforts.

Also, much appreciation goes to Senator Roy Ray and Representative Tom Johnson along with the General Assembly who supported these changes and their addition to HB 215.

Finally, special thanks to Jon Allison for reviewing this CAB for its accuracy. Any errors or omissions, however, are the sole responsibility of CCAO. For further information about this CAB, contact either Larry Long, CCAO Executive Director, or Cheryl Subler, CCAO Research Associate, at (614) 221-5627.