



Senate Bill 380 Sponsor Testimony
Senator Seitz
House State Government and Elections Committee
12.09.08

Thank you, Mr. Chairman, and members of the committee, for the opportunity to present Substitute Senate Bill 380. Substitute Senate Bill 380 clarifies four provisions in Ohio election law that appear to be unclear or subject to interpretation, and the latest version of that bill, which is the version to be adopted today in the Senate, is the version I will be addressing. This is not a bill that makes drastic or sweeping changes to Ohio election, but rather a bill that seeks to correct deficiencies, several of which were identified by the Secretary of State herself.

1. Same Day Voter Registration

Under current law, there is a five day overlap period during which a voter may register to vote and may receive an absentee ballot if the registration and ballot request are made in person at the board of elections. During that overlap period, a voter can register and vote on the same day.

The bill as originally introduced required a person to be registered to vote at least 30 days prior to the day absentee ballots must be ready in order to vote by absentee ballot. Absentee ballots must be ready on the 35th day before an election, so under the previous version of the bill, voters must be registered 65 days prior to the election in order to cast an absentee ballot.

I did not wish to be the first to shorten the current 30 day window for in person absentee voting. However, after reviewing the experience of other states, the testimony of the Ohio Association of Election Officials, and comments attributed to the Secretary of State, we have chosen a different way of eliminating the overlap period that eliminates any requirement that anybody register more than 30 days prior to the election. This change removes any possible legal challenges based on the assertion that what we had previously proposed might violate various federal statutes.

The current version of the bill removes the 30-day registration provision for absentee voting that was included in the previous substitute bill adopted by the committee. Under the new bill, absentee ballots are sent via mail beginning on the 28th day prior to the election; this is currently begun on the 35th day. In-person absentee voting will begin on the 20th day prior to the election and end at 5:00 p.m. the day before the polls open. The need for these changes was stated in the December 5, 2008 *Akron Beacon Journal* article which stated, "The better idea, advanced by Brunner, fellow Democrats in the legislature and the Ohio Association of Election Officials, would erase the confusion by starting absentee voting between 20 days and 28 days before Election Day, after the registration deadline but before the period of heaviest demand. Brunner also rightly has urged expanding the number of early voting sites, easing lines and equalizing access."

The bill retains the requirement in current law concerning overseas and military absentee voters (their ballots are sent 35 days prior to the election).

In order to make in-person absentee voting earlier and to avoid the long lines we saw this past year at the single early voting centers in each county, the new bill addresses the question of more than one early voting location per county. In person absentee voting locations may be held in up to three geographically dispersed sites, as determined by the local board of elections. The county board of elections must select the in-person absentee locations. If at least three members of the board do not vote in agreement on the locations, the county is limited to current law of just one site.

2. Qualified Observers

In order to ensure the integrity of our voting system and to avoid potential fraud, current law allows any political party to appoint a qualified elector to act as an observer during the casting and counting of ballots. Secretary of State Brunner issued an advisory (2008-24), to boards of elections that they are not required to allow election observers during the 35 day in-person absentee voting period. However, the Ohio Supreme Court disagreed with that advisory, and compelled the Secretary of State to issue a directive to election officials to permit observers in all early voting locations.¹ The need for this provision is best summarized by the Secretary herself, who said, in a statement to the *Columbus Dispatch* on October 4, 2008, “ I am not philosophically opposed to observers during in-person absentee voting, but the legislature simply has not given me the authority to require that action.”

Senate Bill 380 codifies the Supreme Court’s decision and clarifies current law by specifically stating that an observer may be present during any time that a board of elections permits an elector to vote an absentee ballot in person at the office of a board or at another authorized site. This provision ensures that the same procedures used on voting day are also used for in person absentee voting. The latest version of the bill incorporates language recommended by the Ohio Association of Election Officials to establish conduct standards for these observers to follow so they do not interfere with voters or election officials.

3. Absentee Ballots – Identification Envelope (§§3509.04 - .07, 3511.05, .11)

Current law includes a form that must substantially appear on the identification envelope for an absentee ballot. The form lists the following information to be included on the envelope:

- 1) name;
- 2) address;
- 3) date of birth;
- 4) signature; and
- 5) the last four digits of the voter’s social security number, the driver’s license number, or a copy of a valid driver’s license, photo i.d., utility bill, bank statement, paycheck, government check, or government document.

¹ *State ex rel. Stokes v. Brunner*, 2008 Ohio 5392.

In April, 2007 the Secretary of State issued Directive 2007-06, which required at least the five items listed above to be included on the identification envelope. In September, 2008 the Secretary issued conflicting Directive 2008-82 that required an absentee voter to provide only name, signature, and one of the identifying documents in listed in 5) above. Under this directive (contrary to the law requiring all five items) address and date of birth were no longer required to be filled out on the envelope.

The Secretary issued another directive on this subject on November 3, 2008 that required county boards to notify voters of any deficiencies on their identification envelope, and allowed voters to correct any errors through the tenth day after the election.² This directive states that the envelope must contain a name, signature, and identifying document; but even if that information is provided, additional information may be necessary to verify eligibility (in conflict with Ohio law and the previous directive that listed minimum requirements).

In order to clarify the law and to end these confusing and conflicting directives, Senate Bill 380 specifically states that the entire form appearing in the statute must appear on absentee identification envelopes and must be completed. To avoid any confusion, the bill states that the board shall notify a voter by mail or telephone if the envelope is incomplete, and the ballot will be rejected unless the voter appears at the board of elections and completes the statement prior to the close of polls on Election Day. A board is not required to notify voters of a deficiency if the ballot is received after the eighth day prior to the election; and if the board chooses to notify voters of incomplete envelopes received after the eighth day before the election, the board must notify all of those voters whose envelopes are incomplete. The need for this part of the bill was well stated by an e-mail dated January 30, 2008 from Secretary Brunner's office, in which her Director of Legislative Affairs stated, "I spoke with Secretary Brunner last night. In her opinion it is imperative to pass all 5 pieces of legislation before the primary.....Currently, BOE's are required to notify voters if there is a problem with their absentee application. However, there is no similar provision that allows voters to correct mistakes on their absentee ballot envelope. Under current Ohio law, if a voter returns his/her ballot and there is a problem on the envelope (a missing birth date for example) that vote is not counted. Secretary Brunner's change to 3509.07 would require BOE's to notify voters if there is missing information. Ohio law requires that BOE's notify voters if something is wrong with their absentee application. Ohio law also gives provisional voters the opportunity to correct wrong addresses and the like. This change would give voters a second chance to remedy issues when they send in their ballots when it matters most."

4. Statewide Voter Registration Database (§3503.15)

Federal law requires the Secretary of State to create and maintain a statewide voter registration database that is available to boards of elections. However, in SOS Directives 2008-99 and 100, the Secretary of State contends that the database may not be used as a means to challenge the eligibility of a voter, and that the law does not authorize mismatches in registrations to be shared with boards of election.

² SOS Directive 2008-109.

In order to assist boards of election in identifying fraud, the bill specifically requires the Secretary of State and the registrar of motor vehicles 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, as required by federal law.³ Further, the Secretary of State shall notify boards of elections of any mismatches between voter registration information and motor vehicle records that the Secretary of State receives.

Now this one could be viewed a little controversial, too, so let me further explain it. First, this is the issue that went all the way to the U.S. Supreme Court in Brunner v. Ohio Republican Party, 555 U.S. ___

(No 08A332) (Oct. 17, 2008). The U.S. District Court and the full Sixth Circuit voted that the Secretary must share this information with the local boards. The Supreme Court reversed those rulings – but not on the merits. Rather, the Supreme Court ruled only that the Ohio Republican Party did not have standing to challenge the Secretary’s decision. The Supreme Court said “We express no opinion on the question whether HAVA [federal law on mismatch data] is being properly implemented. Respondents [Ohio GOP], however, are not sufficiently likely to prevail on the question whether Congress has authorized the District Court to enforce [the law] in an action brought by a private litigant . . .” So, let’s be clear – this was not a decision on the merits. And anyway, her argument was that nothing in federal law required her to share the mismatch data – even if that’s true, nothing in federal law prevents us from requiring it as a matter of state law.

Second, since this is advent season, I will be charitable and concede that the Secretary was right when she said that sharing this information with the local boards would not be a smart idea, unless we took steps to assure that voters could not be denied their right to vote solely because of a mismatch. I don’t doubt for a New York minute that many of the mismatches are easily explainable, and therefore no basis to deny anybody their right to vote. But according to L.S.C., federal law already prohibits a board of elections from rejecting registrations solely on the basis of the database mismatches, and state law already prescribes how local boards go about issuing challenges based on the receipt of mismatch data. All we are doing is to require her to share the data; current federal and state law already cover what the local board can and cannot do with it. But to make all these points crystal clear, the latest version of the bill incorporates the suggestion of the Ohio Association of Election Officials that the Secretary of State will issue directives on this subject in conformity with the guidelines established by the Federal Election Assistance Commission; and, that local boards will notify voters of mismatch information and allow them to correct that data. Current law states that mismatched data does not, of itself, remove an individual from the voter registration database.

Finally, let me explain what this bill does not do:

- It does not deal with provisional ballots in any way, shape, or form

³ 42 U.S.C. §15483.

- It does not deal with whether we should revise our voter I.D. law to mirror the stricter Indiana law, the constitutionality of which was upheld by the U.S. Supreme Court in Crawford v. Marion County Election Board, 2008 U.S. LEXIS 3846 (2008).
- It does not deal with the Secretary of State's power to replace local board of election officials, even though that issue has been before the Ohio Supreme Court twice this year
- It does not deal with any issue concerning the ongoing debate over optical screen verses electronic touch machines, or the Secretary's previous request to spend \$63 million to upgrade those systems

After careful study, it is my judgment that each of those issues may be too controversial, or may require more study, than we have available to us in the remainder of this legislative session, and therefore they should be deferred until next session. But the issues addressed by this bill can and should be dealt with yet this year.

Again, these provisions are narrowly drafted to clarify ambiguous and conflicting provisions in Ohio's election laws that were brought to light in connection with the November elections. I urge your support of Substitute SB 380, and I would be happy to answer any questions.