

DIRECTIVE 2009-06

May 13, 2009

To: ALL COUNTY BOARDS OF ELECTIONS

Re: **Official Canvass and Report Forms for May 5, 2009 Election**

TIMELINE FOR OFFICIAL CERTIFICATION

In accordance with state law, the official canvass of the May 5, 2009, primary/special election may begin no earlier than the 11th day after the election (Saturday, May 16, 2009) and must begin no later than the 15th day after the election (Wednesday, May 20, 2009). Each board of elections **must complete the official canvass** of votes cast in the May 5, 2009, primary/special election **no later than the 21st day after the election (Tuesday, May 26, 2009).**

PERMISSIBLE PRE-CANVASS ACTIVITY

Prior to May 16, 2009, boards may examine poll books, poll lists or signature poll books, and tally sheets, and compare the information contained in those documents to the summary statements. Each board must note and reconcile any errors, defects or omissions. Each board must verify the eligibility of persons casting provisional ballots and the validity of the required provisional voter statements. (See Directive 2008-81 ("Provisional Voting"), Directive 2008-101 ("Guidelines for Determining the Validity of Provisional Ballots"), and Directive 2008-103 ("Directive Issued Pursuant to Court Order").

Reminder: R.C. 3505.183(D) requires that a board determine the eligibility of every provisional ballot cast in that county before the board may canvass any provisional ballot. Further, R.C. 3505.183(D) provides that observers may be present while the board determines the eligibility of provisional ballots.

INSTRUCTIONS FOR OFFICIAL CERTIFICATION

▪ All Voting Systems

All valid ballots cast in the May 5, 2009, primary/special – including eligible ballots cast at the polls, eligible provisional ballots and all absentee ballots – must be included in the official canvass.

▪ **Tabulation Instructions for Ballots NOT Included in the Unofficial Canvass**

In accordance with R.C. 3505.32(C), each board first must tally all eligible ballots that were *not* included in the unofficial canvass.

The board of elections must designate teams having an equal number of individuals from each major political party to inspect and/or tabulate the ballots. Depending on the type of voting system used in the county, the teams shall either inspect or tabulate the ballots as follows:

- **Optical Scan - Central Count (Absentee and Provisional Ballots)**

1. **Set the tabulator** to reject any blank ballot or any ballot containing one or more overvotes. A board may set the tabulator to also reject undervotes, if desired.
2. **Tabulate** optical scan ballots.
3. **Inspect** any ballot rejected by the tabulator to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was in whole or in part due to one or more overvotes. R.C. 3506.21 requires the board to attempt to determine voter intent (an activity to be confirmed by the board by majority vote in public session). Determining voter intent may include determining whether a voter attempted to remove a mark from the ballot (such as erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote.

An overvote exists if, upon examination of the ballot, the team determines that the basis for tabulator rejection is that the voter marked the ballot more than the permissible number of times for a particular race or issue, and that there is no indication of intent otherwise. If it is determined an overvote is the result of the voter writing in the name of a candidate for whom the voter has already voted (known as a “double bubble” vote), that ballot must be remade to reflect the voter’s intent.

When an overvote exists that does not involve a write-in candidate – i.e., an overvote for a question or issue – it is impossible to determine voter intent for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection in order to make effective voter intent in any other contest. Ballots may be remade using the guidelines provided in Directive 2008-69. Contests in which overvotes have been determined to exist must be reflected on remade ballots.

Remade ballots must be marked with an identifying mark or code to correlate the remade ballot with the original ballot, as provided in Directive 2008-69. This will make it possible to compare a remade ballot to the original ballot at a later time, to ensure the integrity and accuracy of the canvass.

A ballot that the board determines was rejected by the tabulator solely because the ballot contained one or more overvotes shall not be remade, but shall be included with the ballots that are tabulated after the board remakes ballots. Paragraph #4, immediately below, addresses remaking ballots in accordance with Directive 2008-69.

4. **Remake** any ballot where the intent of the voter has been determined so that it may be processed by a tabulator. Please see Directive 2008-69 and the instructions in the previous paragraph for more information on the proper procedures to remake an optical scan ballot.
5. **Set the tabulator** to override overvoted races and issues to allow the tabulator to count votes for races and issues which were properly marked.
6. **Tabulate** all remade optical scan ballots and all ballots determined to have been rejected by the tabulator earlier solely due to an overvote.

- **Direct Recording Electronic Voting Machines (DREs)**

The board shall run the cartridges, PCMCIA cards and other removable memory devices on which the uncounted ballots are stored.

- **Tabulation of Results for the Official Certification**

After tabulating all ballots that were *not* included in the unofficial canvass, each board must continue the official canvass certification process as follows:

- **Optical Scan - Centrally Counted Ballots (Absentee Ballots and Optical Scan Ballots Cast by Voters in Counties Using DRE Voting Machines)**

The board must:

- rerun the ballots that were centrally counted during the unofficial canvass and
- verify the count matches the unofficial count.

The results of the rerun centrally counted ballots from the unofficial canvass shall be combined with the results of those ballots just tabulated that had not been included in the unofficial canvass. This procedure will produce the totals to be certified as the official results for the May 5, 2009 primary/special election.

- **Optical Scan - Precinct Count**

The board must:

- rerun the precinct/polling place memory card and
- verify the count matches the unofficial count.

If the counts do not match, the board must run all ballots through the tabulator, which must be set to reject blank ballots and overvoted ballots. The board must follow the procedure noted above under "Tabulation Instructions for Ballots Not Included in the Unofficial Canvass."

If the counts match, the board shall segregate all precinct count optical scan ballots containing a "double bubble" vote that were not machine-segregated and remade on election night in accordance with Directive 2009-04 (Unofficial Canvass- May 5, 2009 Primary/Special Election).

First, the board must inspect each such ballot for overvotes that resulted from the voter filling in the oval adjacent to the write-in space and writing in the name of the candidate for whom the voter had voted by filling in the oval next to the candidate's printed name on the ballot. The board may inspect ballots either manually (visual

inspection) or by re-scanning all ballots, not to tabulate, but simply to identify overvotes. If the board can determine that the intent of the voter was to vote for only one candidate – i.e., because the name of the “write-in candidate” is the same as the name of the candidate for whom the voter had voted on the printed ballot – the board shall segregate the ballot as one with a “double bubble” vote.

Second, the board must count ballots containing “double bubble” votes using one of the following methods:

- o **Hand Count.** After the ballots with “double bubble” votes are segregated, the board shall hand count the “double bubble” votes on the segregated ballots. The board shall follow the manual hand count instructions explained in directives on recounts and post-election audits.
- o **Manually Enter Results.** Rather than remake the ballot, the board shall manually enter the results from the hand count for each candidate onto the server that tabulated election results. This will ensure that no votes for other races are counted twice. Audit logs must be turned on to document the manual entry of the election results for these particular candidates.

Finally, the board must combine the results of the rerun memory card tabulation of the unofficial canvass with the results of those ballots just tabulated that had not been included in the unofficial canvass. This procedure will produce the totals to be certified as the official results for the May 5, 2009, primary/special election.

- **Direct Recording Electronic Voting Machines (DREs)**

First, the board must rerun the precinct cartridges, PCMCIA cards and other removable memory devices, and verify that the count matches the unofficial count. If the count does not match the unofficial count, the board must compare the internal program memory on the voting machine to the cartridge results and determine the cause of the difference.

Note: The seal on the canister or the tape on the verified voter paper audit trail (VVPAT) shall not be broken to determine official results. If the seal must be broken for any auditing reason other than for recount purposes, the board must notify the Elections Division of the Secretary of State’s office immediately.

Second, the board shall combine the rerun results of the unofficial canvass with the results of those ballots just tabulated that had not been included in the unofficial canvass. This procedure will produce the totals to be certified as the official results for the May 5, 2009, primary/special election.

FORMS FOR OFFICIAL CERTIFICATION

In addition to the certification forms for reporting candidate and issues results, additional reporting forms accompany this directive. Because R.C. 3501.05(Y) requires the Secretary of State to publish a report on the number of absentee and provisional ballots cast and counted, the *Official Certification for Absentee and Provisional Ballots* form is provided for all Boards to report those totals.

As indicated below, a copy of some candidate and issue certification forms must be returned to other officials in addition to the Secretary of State. The following candidate and issue reporting forms are included with this directive:

1. *Certification of Results for Municipal Office*. If the municipal office appears in more than one county, the overlapping county must send a copy of this form to the most populous county.
2. *Certification of Results for Municipal Judge and Municipal Clerk*. If the office appears in more than one county, the overlapping county must send a copy of this form to the most populous county.
3. *Certification of Results for Local Questions and Issues* (Form No. 5).
In reporting local questions and issues on Form No. 5, please indicate by use of an asterisk (*) any subdivisions that overlap into another county.
4. *Certification of Results by Most Populous County for Local Questions and Issues* (Form No. 5-U).
If a multi-county question or issue, the most populous county of the multi-county district must report the total vote for the question or issue indicating the vote for each county.
5. *Certificate of Results for Local Liquor Option Questions* (Form No. 126-B).
Copies of this form are sent both to the Secretary of State's office *and* to the Division of Liquor Control at the following address:
Division of Liquor Control
PO Box 4005
Reynoldsburg, OH 43068-9005

TIMELINE FOR REPORTS

The Secretary of State's office must receive each board's properly completed certification forms **no later than the close of business on Friday, June 12, 2009**. Completed forms may be submitted as follows:

- Electronically to Kathy Malott at kmalott@sos.state.oh.us.
- In person at the Elections Division, 180 East Broad Street, 15th Floor, Columbus.
- Via U.S. Mail to Ohio Secretary of State, Elections Division, PO Box 2828, Columbus, OH 43216. Please remember that a board that opts to mail its completed forms must ensure that the forms are received at the Secretary of State's office no later than **Friday, June 12, 2009**.

Every board must maintain a copy of each of its completed certification forms at its office.

RECOUNTS

If, after canvassing all votes, more than the number of candidates to be elected to an office received the largest and equal number of votes, the board must break that tie as provided in R.C. 3505.33 and declare the winner *before* the board can certify the results of the election for that office. (By contrast, a board does not break a tie in the case of a ballot issue that received an equal number of votes for and against the issue; that issue failed by operation of law, because it

did not receive a majority of affirmative votes. In short, a tie in an issue election results in the failure of the issue.)

Please do not delay submitting the official certification forms due to a recount for any race or issue. Any recount shall be conducted in accordance with the procedures set forth in R.C. 3515.01 through 3515.071.

If a recount is to be conducted, please send notice of the recount to the attention of Robin Fields via fax at 614-752-4360 or email rfields@sos.state.oh.us. Also, please see the most recent directive on proper recount procedures. If a recount should result in vote totals changing, the board must submit an amended certification and abstract.

If you have any questions regarding this directive, please contact your county's assigned elections counsel at (614) 466-2585 or via email.

Sincerely,

Jennifer Brunner