

DIRECTIVE 2009-17

November 13, 2009

To: ALL COUNTY BOARDS OF ELECTIONS

Re: **Official Canvass and Report Forms for November 3, 2009 Election**

TIMELINE FOR OFFICIAL CERTIFICATION

In accordance with state law, the official canvass of the November 3, 2009, general election may begin no earlier than the 11th day after the election (Saturday, November 14, 2009) and must begin no later than the 15th day after the election (Wednesday, November 18, 2009). Each board of elections **must complete the official canvass** of votes cast in the November 3, 2009, general election **no later than the 21st day after the election (Tuesday, November 24, 2009).**

PERMISSIBLE PRE-CANVASS ACTIVITY

Prior to November 14, 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 November 3, 2009, general election – including eligible ballots cast at the polls, eligible provisional ballots, and all absentee ballots – must be included in the official canvass.

In accordance with R. C. 3506.14(B), each board of elections shall test automatic tabulating equipment just prior to and just after the tabulation of ballots to ascertain that the central tabulation system will accurately count the votes cast for all offices and on all questions and issues. Please see Directive 2008-90 for detailed instructions for conducting the test prior to commencing the tabulation and after completing the tabulation of ballots for 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 an erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote.

If it is determined that a voter wrote in the name of a candidate the voter has already voted for (known as a “double bubble” vote), that ballot should be set aside and the instructions in the “Tabulation Instructions for Ballots With Write-In Candidate Votes” section of this directive should be followed.

If, upon examination of the ballot, the board determines that the basis for tabulator rejection is that a 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, an overvote exists.

When an overvote exists that does not involve a write-in candidate, 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.

If necessary, ballots may be remade using the guidelines provided in Directive 2008-69 and the guidelines provided in this directive for ballots with write-in candidates (page 3). Contests where overvotes have been determined to exist should be reflected on remade ballots. Remade ballots must be marked with an identifying mark or code to identify the remade ballot with the original ballot as provided in Directive 2008-69. Linking original and remade ballots will allow the ballots to be compared at a later time, to ensure integrity and accuracy.

Ballots for which it is determined that the *sole* reason for tabulator rejection is one or more overvotes shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots. (See tabulation instructions below.)

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 Instructions for Ballots with Write-in Candidates

Assuming a candidate has filed a valid declaration of intent to be a write-in candidate, boards of elections are hereby instructed to count a ballot in which a voter has written in only the last name of the candidate, if there is only one candidate with that last name. If there are two or more write-in candidates with the same last name, however, the voter must provide sufficient information for election officials to determine the voter's intent in order for the vote to be counted. For example, a voter who has written on the ballot the write-in candidate's first and last name, or the candidate's last name and the office sought should be considered to be a valid write-in vote.

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

The oval or box next to the candidate's name that has been written in by the voter must be filled in for a write-in vote to be valid, unless no other oval has been filled in by the voter for the office for which the voter voted for a write-in candidate who filed a valid declaration of intent form.

If there is a write-in candidate for a particular office in which the **voter has written in the name of a candidate for whom the voter has already voted (known as a “double bubble” vote)**, such a write-in vote is **NOT** an overvote. In this case, ballots should be remade when “double bubble” votes are discovered using the guidelines for remaking a ballot outlined in Directive 2008-69. The remade ballots should then be tabulated and the results should be included in the unofficial canvass.

Otherwise, in a race where only one candidate is to be selected, a voter's selection of a candidate whose name is printed on the ballot and the selection of and writing in the name of a write-in candidate (whose name is **not** already printed on the ballot), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

- **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:

- o rerun the ballots that were centrally counted during the unofficial canvass and
- o 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 November 3, 2009 general election.

- **Optical Scan - Precinct Count**

The board must:

- o rerun the precinct/polling place memory card and
- o 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 explained 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 2009-16 (Unofficial Canvass – November 3, 2009 General 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 November 3, 2009, general 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 November 3, 2009, general 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 *Absentee Ballots* and *Provisional Ballots* report forms are 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. **Official Certification of Results for State Issues.** This report must be sent to the Secretary of State's office **and** to the President of the Ohio Senate. Please send the report for the President of the Ohio Senate to:
Matt Schuler, Chief of Staff
Ohio Senate
1 Capitol Square, 2nd Floor
Columbus, Ohio 43215
2. **Official 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.
3. **Official Certification of Results for Township Office.**
4. **Official Certification of Results for Board of Education.**
If the office appears in more than one county, the overlapping county must send a copy of this form to the most populous county.

5. Official 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.

6. Official 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.

7. Official 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

8. Absentee Ballots Report.

Each county board of elections must enter their county's data for in-country and out-of-country absentee voters on the appropriate lines on the Excel spread sheet.

9. Provisional Ballots Report.

Each county board of elections must enter their county's data for provisional voters on the appropriate lines on the Excel spread sheet.

10. Supplemental Report.

Each county board of elections must enter their county's data for number of regular ballots counted, absentee ballots counted, provisional ballots counted, number of ballots containing overvotes or "double bubble" votes and number of remade ballots on the appropriate lines on the Excel spread sheet.

11. Election Results by Precinct Abstract.

Each county board of elections must use this file layout for the precinct by precinct abstract for reporting the number of registered voters, the number of persons voting and the results for the three state issues.

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, December 4, 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, December 4, 2009**.

Every board must maintain a copy of each of its completed certification and report 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