

DIRECTIVE 2010-77

November 8, 2010

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Official Canvass and Report Forms for November 2, 2010 General Election

TIMELINE FOR OFFICIAL CERTIFICATION

In accordance with state law, the official canvass of the November 2, 2010, general election may begin no earlier than the 11th day after the election (Saturday, November 13, 2010) and must begin no later than the 15th day after the election (Wednesday, November 17, 2010). Each board of elections **must complete the official canvass** of votes cast in the November 2, 2010, general election **no later than the 21st day after the election (Tuesday, November 23, 2010).**

PERMISSIBLE PRE-CANVASS ACTIVITY

Prior to November 13, 2010, 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 2010-74 ("Guidelines for Determining the Validity of Provisional Ballots"), and Directive 2010-73 ("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 2, 2010 general election – including eligible ballots cast at the polling places on Election Day, including eligible provisional ballots, and all absentee ballots – must be included in the official canvass. A board that received any valid Federal Write-In Absentee Ballot (FWAB) must remake the ballot in accordance with Directive 2008-69 ("Remake of Optical Scan Ballots") before beginning the tabulation process.

In accordance with R. C. 3506.14(B), each board of elections must test the 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 Containing Votes 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 Ballots – Already Precinct Counted

If it has not already done so, the board shall inspect and segregate all precinct count optical scan ballots containing a “double bubble” vote (where a voter selected a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office) and all precinct count optical scan ballots containing a write-in vote where the oval or box was not filled in next to a line where the voter has written in an eligible write-in candidate’s name.

All ballots that are determined to contain “double bubble” votes or write-in votes where the oval or box was not filled in next to a line where the voter has written in an eligible write-in candidate’s name, but were not included in the unofficial canvass, should be tabulated using the “Tabulation Instructions for Ballots with Write-In Candidates” contained in this directive.

These ballots should not be remade, but instead a board of elections shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulates election results for inclusion in the official canvass.

Optical Scan Ballots – To Be Central Counted (Absentee and Provisional Ballots)

Set the optical scan tabulator machine being used for scanning purposes to reject any blank ballot or ballot containing one or more overvotes.

Scan all optical scan ballots and segregate blank or overvoted ballots rejected by the tabulator being used for ballot scanning purposes.

Inspect any and every ballot rejected by the tabulator being used for ballot scanning purposes to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was because of:

- folded, torn or mutilated ballot; or
- misaligned timing marks on the ballot; or
- voter consistently failed to follow marking instructions; or
- one or more overvotes.

R.C. 3506.21 requires the board to attempt to determine voter intent for ballots that were rejected by the central count tabulator – 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 (e.g., erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote. More information on determining or confirming voter intent can be found in Directive 2008-69 (Remake of Optical Scan Ballots).

If it is determined that a voter selected a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office (known as a “double bubble” vote), that ballot must be set aside, and the instructions in the “Tabulation Instructions for Ballots With Write-In Candidate Votes” section of this directive must be followed.

If, upon examination of the ballot, the board determines that the basis for rejection by the tabulator being used for scanning purposes is that a voter marked the ballot more than the permissible number of times for a particular race or issue, and 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 the race or issue overvoted, and no vote is counted on the ballot for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection, and the board must make an effective determination of voter intent in any other contest on such ballot.

Ballots for which it is determined that the *sole* reason for rejection by the tabulator being used for scanning purposes is one or more overvotes that do not involve a write-in candidate shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots have been completed. (See tabulation instructions below.)

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 section (above) for more information on the proper procedures to remake an optical scan ballot.

Directive 2008-69 (Remake of Optical Scan Ballots) provides instructions to boards of elections on the proper procedure to remake optical scan ballots. Remade ballots must be marked with an identifying mark or code to allow for the remade ballot to be matched 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.

Set the tabulator to override overvoted races and issues which will allow the tabulator to tabulate votes for races and issues which were otherwise properly marked.

Tabulate all absentee ballots and provisional ballots, including all remade optical scan ballots and ballots determined to have been rejected by the tabulator solely due to an overvote.

Processing and Tabulation Instructions for Counties Using a Combination of Direct Recording Electronic Machines (DRE) and Central Count Optical Scan Units

Optical Scan Ballots – To Be Central Counted (Absentee and Provisional Ballots)

Set the optical scan tabulator machine being used for scanning purposes to reject any blank ballot or ballot containing one or more overvotes.

Scan all optical scan ballots and segregate blank or overvoted ballots rejected by the tabulator machine being used for ballot scanning purposes.

Inspect any and every ballot rejected by the optical scan machine being used for scanning purposes to determine the cause(s) of rejection. The ballot must be examined to determine if the basis for rejection was because of:

- folded, torn or mutilated ballot; or
- misaligned timing marks on the ballot; or
- voter consistently failed to follow marking instructions; or
- one or more overvotes.

R.C. 3506.21 requires the board to attempt to determine voter intent for ballots that were rejected by the central count tabulator – 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 (e.g., erasure or other indication of voter intent) to invalidate a choice and, in effect, eliminate an overvote. More information on determining or confirming voter intent can be found in Directive 2008-69 (Remake of Optical Scan Ballots).

If it is determined that a voter selected a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office (known as a “double bubble” vote), that ballot must be set aside, and the instructions in the “Tabulation Instructions for Ballots With Write-In Candidate Votes” section of this directive must be followed.

If, upon examination of the ballot, the board determines that the basis for rejection by the scanner is that a voter marked the ballot more than the permissible number of times for a particular race or issue, and 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 the race or issue overvoted, and no vote is counted on the ballot for that race or issue. However, the ballot must be examined for any other reasons for tabulator rejection, and the board must make an effective determination of voter intent in any other contest on such ballot.

Ballots for which it is determined that the *sole* reason for scanner or tabulator rejection is one or more overvotes that do not involve a write-in candidate shall *not* be remade, but they shall be included in the ballots that are tabulated after remakes of ballots have been completed. (See tabulation instructions below.)

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 section (above) for more information on the proper procedures to remake an optical scan ballot.

Directive 2008-69 (Remake of Optical Scan Ballots) provides instructions to boards of elections on the proper procedure to remake optical scan ballots. Remade ballots must be marked with an identifying mark or code to allow for the remade ballot to be matched 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.

Set the tabulator to override overvoted races and issues which will allow the tabulator to tabulate votes for races and issues which were otherwise properly marked.

Tabulate all absentee ballots and provisional ballots, including all remade optical scan ballots and ballots determined to have been rejected by the tabulator solely due to an overvote.

Tabulation Instructions for Ballots with Potential Votes for Write-in Candidates

All optical scan ballots containing potential write-in votes that were not already inspected and reviewed for a determination of voter intent should be segregated for inspection. Inspection of ballots for potential write-in votes should be made by designated team(s) consisting of an equal number of board employees from each major political party.

Optical Scan Ballots - General Guidelines:

If the oval next to a line where the voter has written in an eligible write-in candidate's first and last name has been filled in, boards of elections are instructed to count this as a valid write-in vote. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the official canvass.

If the oval next to a line where the voter has written in *part of* an eligible write-in candidate's name has been filled in, boards of elections are hereby instructed as part of the official canvass to count a vote 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. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the official canvass.

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 (**other than** the name of the candidate already selected by filling in the oval next to the sole candidate's printed name), invalidates the voter's vote in that race, as the voter has overvoted by marking more choices than permitted for a particular race.

“Double Bubble” Votes and Write-in Votes with Unfilled Ovals

If it is determined that a **voter cast a vote for a candidate whose name is on the ballot for an office and also cast a write-in vote for that same candidate for the same office (known as a “double bubble” vote)**, such a write-in vote is **NOT** an overvote. Boards of elections are instructed to count this as a valid write-in vote. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board must enter the results from the hand count of write-in votes onto the server that tabulated election results for inclusion in the official canvass. 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.

Optical Scan Ballots – Precinct Count:

If the oval or box next to a line where the voter has written in an eligible write-in candidate's name has *not* been filled in, and 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, such a write-in vote is NOT an undervote. Boards of elections are hereby instructed as part of the official canvass to count this as a valid write-in vote. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the official canvass.

Optical Scan Ballots – Central Count:

If the oval or box next to a line where the voter has written in an eligible write-in candidate's name has *not* been filled in, and 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, such a write-in vote is NOT an undervote. Boards of elections are hereby instructed as part of the official canvass to count this as a valid write-in vote. In this case, the board shall follow the manual hand count instructions explained in Directive 2008-34. The board should enter the results from the hand count of write-in votes onto the server that tabulated elections results for inclusion in the official canvass.

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:

- **County Using Optical Scan Machines as Its Primary Voting System**

The board must:

- rerun the ballots that were centrally counted during the unofficial canvass (absentee ballots)
- rerun the precinct/polling place memory cards containing votes that were counted during the unofficial canvass and
- verify the count matches the unofficial count.

If the count does not match the unofficial count, the board must run all ballots through the tabulator, which should be set to override overvoted races and issues to allow the tabulator to tabulate votes for races and issues that were otherwise properly marked. 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 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 2, 2010, general election.

- **County Using Direct Recording Electronic Voting Machines (DREs) as Its Primary Voting System**

The board must:

- rerun the ballots that were centrally counted during the unofficial canvass (absentee ballots and any “back up” optical scan ballots)
- rerun the precinct cartridges, PCMCIA cards, and other removable memory devices containing votes that were counted during the unofficial canvass and
- verify the count matches the unofficial count.

If the count does not match the unofficial count, the board must run all centrally counted ballots through the tabulator, which should be set to override overvoted races and issues to allow the tabulator to tabulate votes for races and issues which were otherwise

properly marked. The board must follow the procedure explained above under “Tabulation Instructions for Ballots Not Included in the Unofficial Canvass.” The board must also 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 or a statewide post-election audit as prescribed by the Secretary of State, the board must notify the Elections Division of the Secretary of State’s office immediately.

If the counts match, 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 2, 2010, general election.

FORMS FOR OFFICIAL CERTIFICATION

The following reporting forms are included with this directive:

1. **Official Certification of Results for Statewide Candidates.** This report includes, in addition to the votes cast for statewide candidates, the number of registered voters, and the number of electors voting. Certification of results must be sent to the Secretary of State’s office and to the President of the Ohio Senate.

Please send the Official Certification of Results for Statewide Candidates report for the President of the Ohio Senate to:

Matt Schuler, Chief of Staff
Ohio Senate
Statehouse, 2nd floor
Columbus, OH 43215

2. **Official Certification of Results for District Offices.** 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. **Official Certification of Results for County Offices.**
4. **Official Certification of Results for Judges or Clerks of the Court of Common Pleas.**
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, however, report only your county’s results on Form 5. Most populous counties must also use Form 5-U (described below) for reporting vote totals for questions or issues that overlap into other counties.
6. **Official Certification of Results by Most Populous County for Local Questions and Issues (Form No. 5-U).** If your county contains **the most populous portion of a multi-county district**, please report the total vote for the question or issue on Form 5-U 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. Official 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. Official 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. Official Supplemental Report.

Each county board of elections must enter the following on the appropriate lines on the Excel spread sheet:

- Ballots remade (includes ballots remade for unofficial *and* official canvasses).
- Ballots containing overvotes (includes ballots identified as containing overvotes at the unofficial *and* official canvass).
- *DRE counties only*: Optical scan ballots cast pursuant to Directive 2010-61.
- *DRE counties only*: The number of voters who were incorrectly required to vote a ballot provisionally when requesting an optical scan ballot.
- *DRE counties only*: The cost of ballots and printing of backup optical scan ballots in compliance with Directive 2010-61. Reimbursement for the printing costs incurred as a result of that directive will be for the printing of at least the minimum number of ballots required (15%). Please provide invoices and/or other documentation to substantiate the requested reimbursement amount.

OFFICIAL ABSTRACT OF ELECTION RESULTS BY PRECINCT

All counties must provide an electronic abstract of the final official precinct by precinct vote totals for the following offices:

- Governor/Lieutenant Governor,
- Attorney General,
- Auditor of State,
- Secretary of State,
- Treasurer of State,
- United States Senator,
- Representative to Congress,
- Chief Justice of the Supreme Court,
- Justices of the Supreme Court,
- State Senator, and
- State Representative.

The names of the candidates (including write-ins) in each race must be listed in alphabetical order. In addition, the abstracts must also include by precinct: the total number of persons registered from each precinct and number of persons who voted from each precinct (not ballots cast). **The abstracts must be received by the Secretary of State's office no later than December 15, 2010.**

The abstract (preferably in .CSV format) must show the county number, precinct code number, precinct name, the subtotal for cities, villages and townships, and the grand total of all precincts. Please proofread all figures and double check addition for subtotals and grand totals to assure accuracy. The grand total of the votes on the abstract must agree with the vote totals entered on the certification forms for the candidates.

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 Thursday, December 2, 2010**. 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 by the Secretary of State's office no later than **Thursday, December 2, 2010**.

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 Melanie Poole via fax at 614-752-4360 or email mpoole@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