

Advisory 2008-05

February 29, 2008

To: All County Boards of Elections

Re: Am. S. B. 286 (127th General Assembly) – To amend section 3506.21; Optical scan ballot marking requirements

Am. S. B. 286, signed by the Governor on February 27, 2008, makes changes to statutes relating to overvotes on optical scan ballots, the mid-day pickup of centrally counted optical scan ballots and prohibits the use of voting systems whose primary method of tabulation is centrally counted optical scan ballots after May 1, 2008. Please be advised this new law was emergency legislation, and therefore the law became effective immediately upon having been signed by the Governor. An electronic version of the enrolled act (law) may be reviewed at:

http://www.legislature.state.oh.us/bills.cfm?ID=127_SB_286

In general, Am. S. B. 286 amends R. C. 3506.21 by adding Section (B)(3) which states:

If automatic tabulating equipment detects that more marks were made on an optical scan ballot for a particular office, question, or issue than the number of selections that a voter is allowed by law to make for that office, question, or issue, the voter's ballot shall be invalidated for that office, question, or issue. The ballot shall not be invalidated for any other office, question, or issue for which the automatic tabulating equipment detects a vote to have been cast, in accordance with the law.

Impact On Boards of Elections

If during tabulation or processing of optical scan ballot, the optical ballot scanner detects a possible “overvote” (marking a ballot for more choices in a particular office, question, or issue than permitted), the board should first determine voter intent as explained in *Directive 2008-32 Unofficial Canvass 2008 Primary and Directive 2007-31 Remake of Optical Scan Ballots*. As stated in the latter directive, if a Board of Elections determines a voter did not follow proper instructions and “overvoted” in a particular office, question, or issue, the board shall tabulate the ballot, recording only the votes that the voter marked in accordance with the ballot marking instructions contained on the ballot. Under no circumstances shall a board reject an entire ballot – or fail to count validly cast votes – on account of an “overvote” for a particular race or races on the ballot. More detailed instructions on handling and remaking ballots containing one or more overvotes are outlined in *Directive 2008-32*.

If you have any questions concerning this Advisory, please contact the elections attorney assigned to your county.

Sincerely,

Jennifer Brunner