

Directive 2008-55

July 18, 2008

TO: All County Boards of Elections

RE: R.C. 3501.19 Notices of Election
Implementation of Appropriation for Absentee Ballot Applications in Am. Sub. H.B. 562

R.C. 3501.19 Notices of Election

General Information

R.C. 3501.19 mandates that each board of elections send a “Notice of Election and Identification Requirements” to registered electors of the county 60 days before the November 4, 2008 general election. This notice is commonly referred to as the “60-day notice.”

A board of elections **must mail the required notice** for the November 4, 2008 general election **on September 5, 2008**. The statute specifically requires mailing on this date, the 60th day before the 2008 general election.

Requirements of the notices – R.C. 3501.19(B)

Pursuant to R.C. 3501.19(B), the 60-day notice must contain the following:

- The day of the election; and
- The location of the polling place for the precinct in which the elector is registered to vote.

This notice must be sent by nonforwardable mail and also must include the following statement, printed in bold type:

Voters must bring identification to the polls in order to verify identity. Identification may include a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than this reminder or a voter registration notification, that shows the voter's name and current address. Voters who do not provide one of these documents will still be able to vote by providing the last four digits of the voter's Social Security number and by casting a provisional ballot. Voters who do not have any of the above forms of identification, including a Social Security number, will still be able to vote by signing an affirmation swearing to the voter's identity under penalty of election falsification and by casting a provisional ballot.

The Secretary of State has prescribed the following two forms for use by the boards as a template for these notices:

- Form 10-K; and
- Combined Notice of Election and Absent Voter's Ballot Application.

Form 10-K is attached to this directive and may be accessed on the Secretary of State's BOE Extranet, at <http://server6.sos.state.oh.us/boe/electionsinfo/forms/forms.htm>, and should be **used only** by boards of elections **not** participating in the program for reimbursement of postage costs set forth in Amended Substitute House Bill 562, which is explained in detail below.

The Combined Notice of Election and Absent Voter's Ballot Application is attached to this directive and is also available on the Secretary of State's BOE Extranet at <http://insite/boe/cbeinfo/directives/2008/directives08.htm>. This form **MUST** be used by boards of elections participating in the program for reimbursement of postage costs set forth in Amended Substitute House Bill 562, which is explained in detail below.

Exceptions: Electors to whom notices need not be sent – R.C. 3501.19(D)

The statute provides that a board is **not** required to send a 60-day notice to anyone who registered to vote within 30 days prior to the applicable notice mailing deadline, which is September 5, 2008. The 30th day before September 5, 2008, is August 6, 2008. All valid voter registration forms or change of address or name forms received by a board of elections on or before August 6, 2008, qualify the registrant/elector to receive the 60-day notice.

Additionally, a board is not required to send another notice to an elector to whom a similar notice was sent either in 2006 or in January of 2008 if that notice was returned to the board as undeliverable AND the elector has not voted or updated his or her voter registration since the prior notice was sent. The board's handling of returned notices is discussed below.

Notices returned to the board in 2006 or 2008 as undeliverable – R.C. 3501.19(C)

If a 60-day notice sent pursuant to R.C. 3501.19(A) is returned to the board as undeliverable, the board must do the following:

1. Mark the voter's name in the official registration list and in the poll book to indicate "Notice returned to board of elections;" and
2. Require a voter whose name has been so marked to provide identification at the first election at which the voter appears in order to vote.

A voter whose name has been so marked is permitted to cast a regular ballot upon producing a current and valid photo identification, a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election or a notice of voter registration mailed by a board of elections. Please see the directive currently in effect on voter identification guidelines for further information and clarification on permissible forms of identification for voting. Also, please note that Am. Sub. H.B. 562, effective June 24, 2008, repeals requirements for an address on a

military identification, so that a military identification, whether or not it contains the voter's address, is an acceptable form of voter identification.

Alternatively, in accordance with both R.C. 3501.19(C) and R.C. 3505.18(A)(4), a voter whose name has been marked in the poll book or in a poll list for a returned notice must be permitted to cast a *provisional ballot* at the election if the voter complies with any of the following procedures:

1. Provides a photo identification that does not contain the voter's current address, or
2. Provides the last four digits of the voter's Social Security number, or
3. Is unable to provide any of the required forms of identification, or
4. Refuses to provide any of the required forms of identification, or
5. Executes an affirmation that indicates that the voter does not have any of the specified forms of identification and is unable to provide the last four digits of a Social Security number.

Notice mailed under R.C. 3501.19 or 3503.19 is not a "government document" for voter identification purposes – R.C. 3501.19(E) and 3505.18(A)(1)

The law specifically provides that a voter cannot use, and election officials shall not accept, a notice that a board of elections mailed to the voter under either R.C. 3501.19(A) or 3503.19 as a government document for the purpose of providing identification under the various sections Title XXXV (35).

Implementation of Appropriation for Absentee Ballot Applications

General Information

On June 10, 2008, the General Assembly adopted Amended Substitute House Bill 562 ("the capital bill"). Governor Strickland signed the capital bill into law on June 24, 2008. Among other things, the capital bill appropriated \$3 million in state funding to pay for some aspects of the absentee voting process in Ohio. Specifically, the appropriation may be used for the following two purposes:

- To pay for electors to return absentee ballot applications sent to them by boards of elections if the boards sent the applications in conjunction with notices required to be sent pursuant to R.C. 3501.19 (the 60-day notice); and
- To pay postage costs incurred by boards of elections for sending absentee ballot applications to voters if the boards sent the applications in conjunction with notices required to be sent pursuant to R.C. 3501.19.

The capital bill required the Secretary of State to establish, in advance of September 5, 2008, the method by which the \$3 million appropriation will be made available to the boards. This directive establishes that method.

All counties are eligible to receive a portion of the appropriated \$3 million. It should be noted, however, that the \$3 million appropriation is insufficient to compensate county boards of elections for the mailing of a notice to every registered elector of the state

(currently 7.953 million registered electors), and it is insufficient to compensate county boards of elections for this expense and the additional expense of paying electors' return postage on absentee ballot applications. Therefore, this directive attempts to equitably apportion reimbursement as is contemplated by this law.

Amount Available to Each County

In establishing an amount available to each county as required by Am. Sub. H.B. 562, a ratio will be determined based on each county's number of registered electors as compared to the state's total number of registered electors. This ratio will be applied to the total amount of funds available (\$3 million dollars) to make an initial determination of each county's share of funds.

Boards of elections are not required to send 60-day notices to electors who registered to vote during the thirty-day period prior to sending the 60-day notices. Accordingly, the date for establishing each county's number of registered voters is August 6, 2008.

Each county board of elections is therefore eligible for a minimum amount of money in proportion to the number of registered voters in the county on August 6, 2008, compared to the total number of registered voters statewide on that date. For example, a county whose registered electors comprise 10% of the total registered electors in Ohio on August 6, 2008, is eligible to receive 10% of the \$3 million appropriation, or \$300,000. The Secretary of State's office will inform each county of the minimum amount of appropriated funds available to it on or shortly after August 6, 2008, but prior to September 5, 2008.

Priority of Use of Funds

The Secretary of State's office was not contacted about this appropriation or its enabling language by whoever initiated it and we remain uncertain of the amendment's origins. It is unfortunate for boards of elections that our office was not provided the opportunity to offer suggestions or comments that may have improved the implementation of this law and resulted in a realistic appropriation to support the intended use of the funds.

Regardless of these circumstances, our office believes it incumbent on the state's elections officials to place the interests of the voters above administrative concerns of elections officials, and therefore, because of the shortfall in state moneys to fully fund this new mandate, our office has prioritized the uses of the funds available as follows:

- Each county board of elections participating in this program shall first use the funds available to it to pay for postage for the return of any absent voter's ballot application by a voter who received that application in conjunction with a notice of election required to be mailed by boards of elections pursuant to R.C. 3501.19; and
- Each county board of elections participating in this program may **then** use the remainder of the funds available to it to pay the costs incurred in sending an absent voter's ballot application to each voter in conjunction with a notice of election pursuant to R.C. 3501.19.

A board of elections may not opt to participate in one aspect of the program and not the other. For example, a board may not choose to use the funds only for the mailing of the absentee ballot application in conjunction with the notice of election pursuant to R.C. 3501.19. Nor may a board use funds available from Am. Sub. H.B. 562 for return postage on absentee ballot applications without first having sent absent voter's ballot applications in conjunction with the R.C. 3501.19 notice of election.

For boards participating in the program, return postage on absentee ballot applications must be paid **in addition for all absent voter's ballot applications supplied by the board of elections on or after August 6, 2008 through Saturday, November 1, 2008 at noon.** The purpose of this policy is to avoid the potential for litigation contesting the constitutionality of the application of Am. Sub. H.B. 562, based on denial of equal protection under the law, to electors who register to vote or change their registration on or after August 6, 2008 through October 6, 2008 to be eligible for the November general election.

Form of Application

In order for boards of elections to take advantage of the funds appropriated for this program, the General Assembly has required that the absent voter's ballot applications must be mailed "in conjunction" with the notices of election required to be sent pursuant to R.C. 3501.19. The Secretary of State has prepared a prescribed form that combines the notice of election and an absent voter's ballot application – the Combined Notice of Election and Absent Voter's Ballot Application – and that must be used to qualify for reimbursement. That form is attached to this directive.

Before using the attached prescribed form, boards of elections must add the address of their office for the return of the absent voter's application, and must arrange for paying the postage for the return of the application, whether by postal permit or by postal stamp.

In order for boards of elections to be reimbursed for the costs associated with sending absent voter's ballot applications in conjunction with notices of election, boards of elections must use the form prescribed by this office. This requirement will serve multiple purposes, including, among others:

- Using the prescribed form will ensure that the number of absent voter's ballot applications returned to boards of elections as part of this program is accurately documented;
- Using the prescribed form will limit the costs associated with the mailing of the applications to voters by ensuring that boards of elections are not sending separate mailings when they must be combined to receive reimbursement; and
- Using the prescribed form will reduce the amount of money boards of elections must otherwise spend to mail R.C. 3501.19 notices.

This office recommends using postal permits both for mailing absent voter's ballot applications to voters under this program and for the return of absent voter's ballots under this program. This will simplify the process of tracking and reporting the following:

- The number of applications sent to voters;
- The number of returned applications under this program; and
- The costs associated with the mailing and return of applications under this program.

Another significant benefit of using a postal permit for this program is that by doing so boards of elections will only be required to pay for postage for applications actually returned to them by voters. In contrast, if a board of elections uses stamps, that board must ensure that every application mailed has affixed to it postage sufficient in amount to pay for the application's return whether or not that application is returned by a voter.

If a board of elections uses stamps to allow voters to return absent voter's ballot applications at no cost to the voter, that board of elections must first confirm with the U.S. Postal Service the correct amount of postage for voters in the county to return the application to the board of elections. That board must also then ensure that stamps sufficient in amount to pay for the return of applications under this program are adhered to each application mailed under this program. Further, boards of elections must track the following:

- How many applications it sends to voters under this program;
- How many stamps it places on each application for return postage; and
- The value of the stamps used.

To obtain reimbursement under this program, counties must report to the Secretary of State the costs incurred for this program, as discussed below. The Secretary of State will reimburse boards of elections for eligible postal expenses incurred under this program, to the extent possible based on Amended Substitute House Bill 562 funding. Reimbursement will be made during the current fiscal year for boards of elections, to the extent possible.

Tracking, Accounting and Reporting

Boards of elections opting to take advantage of the funding provided by Am. Sub. H.B. 562 must carefully track postage paid for the return of absent voter's applications by electors. This expense will be paid first.

Boards of elections choosing to participate in this program must also carefully track postage paid to mail absent voter's ballot applications sent in conjunction with notices of election pursuant to R.C. 3501.19.

Any other expenses related to return and mailing of absentee ballot applications should be accounted for separately.

The initial allocation provided to you is based on an initial assumption that all counties will participate. It is anticipated, however, that not all counties will participate in this program. Funds not used by counties that opt not to participate will become available for counties that do participate and will be distributed proportionately, according to a participating county's ratio of registered electors to the total number of registered electors in counties participating in this program. No county will be reimbursed in an amount in excess of its

documented reimbursable expenses, and thus, any further amount allocated to a county but not used will be available to other participating counties on a pro rata basis.

By September 30, 2008, all boards of elections participating in this program must report to the Secretary of State the following three items of information:

- The number of absent voter's ballot applications mailed to voters as part of this program (that number should match the number of registered voters in the county on August 6, 2008);
- The cost of postage for mailing each absent voter's ballot application mailed under this program; and
- Any additional costs associated with mailing the applications, and these costs should be itemized by type and amount.

If the Secretary of State's office does not receive this information from your board by September 30, 2008, we will assume that your board is not participating in this program, and your county will forego the funds available to your county at that time. Funds initially made available to counties that do not participate in the program will be reallocated to counties that are participating in the program.

By November 28, 2008 all boards of elections participating in this program must report to the Secretary of State the following three items of information:

- The number of absent voter's ballot applications returned to boards of elections under this program;
- The cost of postage for the return mailing of each absent voter's application returned under this program;
- Any additional costs associated with the return mailing of the applications, and these costs should be itemized by type and amount.

The reports due from participating boards of elections on September 30 and November 28 shall be made on forms prescribed by the secretary of state. Those forms will be provided in early September 2008. The directive accompanying those reporting forms will also provide detailed information about when and to whom boards of elections should send those reports.

Reallocation

As the number of boards of elections participating in this program is determined, as well as the extent of costs incurred by each participating board, our office will reallocate to participating counties any unused remaining funds until the \$3 million appropriate is depleted.

Reimbursement

All counties participating in this program will be reimbursed for the costs incurred, to the extent possible, during the current fiscal year for boards of elections.

Participation is not Mandatory

The capital bill does not mandate that all boards of elections send an absent voter's ballot application to each voter. Rather, the capital bill simply instructs that if boards of elections do so, in conjunction with the notices of election sent pursuant to R.C. 3501.19, some or all of the postage to do so may be paid for using money appropriated in the capital bill.

If you have any questions about interpreting or implementing this directive, please contact the Secretary of State elections attorney assigned to assist your county.

Sincerely,

Jennifer Brunner