

DIRECTIVE 2008-64

August 13, 2008

To: All County Boards of Elections

Re: Guidelines for Voting Machine Acquisition and Allocation

In preparation of the anticipated large voter turnout for the November 4, 2008, general election, and to ensure there are an adequate number of voting machines in polling places on Election Day, the Secretary of State's office is setting forth these guidelines for voting machine acquisition and allocation to boards of elections.

The intent of this directive is to help boards of election determine, in advance of a general election, whether the acquisition of additional equipment will be necessary to ensure fair allocation of voting machines.

This directive is issued pursuant to R.C. 3501.05(B) concerning guidelines for the proper methods of conducting elections as they relate to the acquisition and allocation of voting machines, tabulating devices and marking devices for each general election.

Guidelines for Voting Machine Acquisition

Boards of Elections Using Direct Recording Electronic (DRE) Voting Machines as the Primary Voting System on Election Day

All boards of elections using DREs as their primary voting system on Election Day must ensure that the county has acquired (i.e., purchased, leased or otherwise obtained) a sufficient number of voting machines to accommodate the number of voters in the county. The Secretary of State recommends that prior to each general election, boards determine a necessary minimum number of voting machines based on updated voter registration records. The Secretary of State recommends that prior to each general election, all boards of elections using a DRE voting system as its primary voting system acquire at least one DRE for every 175 voters listed in the board's voter registration records.

To help determine the necessary minimum number, boards should use a formula similar to that created by the Ohio General Assembly when the HAVA-funded DRE voting machines were initially distributed but should use updated voter registration records.

The formula created by the General Assembly for determining the minimum number of DRE voting machine that each county was required to acquire is set forth in the uncodified section of R.C. 3506.02, which provides, in part:

(C) The Secretary of State shall establish, for each county, a minimum number of direct recording electronic voting machines that the county shall be required to acquire to be eligible to acquire direct recording electronic voting machines as the primary voting system in the county with funds made available pursuant to the Help America Vote Act of 2002. The minimum number for each county shall be calculated as follows:

- (1) The total number of registered voters in the county on January 1, 2005, shall be multiplied by the statewide percentage of voters who were purged from the official lists of registered voters during the 2001 calendar year.
- (2) The number resulting from the calculation in division (C)(1) of this section shall be subtracted from the total number of registered voters in the county on January 1, 2005.
- (3) The number resulting from the calculation in division (C)(2) of this section shall be divided by one hundred seventy-five.
- (4) Any fraction resulting from the calculation in division (C)(3) of this section shall be rounded up to the next whole number.

Accordingly, the Secretary of State recommends that all counties using a DRE voting system as their primary voting system calculate the *minimum* number of voting machines that the county should acquire for each general election pursuant to the following formula:

- (1) The total number of registered voters in the county on January 1, [current year], shall be multiplied by the statewide percentage of voters who were purged from the official lists of registered voters during the 2001 calendar year.
- (2) The number resulting from the calculation in step (1) shall be subtracted from the total number of registered voters in the county on January 1, [current year].
- (3) The number resulting from the calculation in step (2) shall be divided by one hundred seventy-five.
- (4) Any fraction resulting from the calculation in step (3) shall be rounded up to the next whole number.

For Boards of Elections Using Precinct Based Optical Scanners as the Primary Voting System on Election Day

All boards of elections using a precinct-based optical scan voting systems as their primary voting system on Election Day must ensure that the county has acquired (i.e., purchased, leased or otherwise obtained) a sufficient number of voting machines to accommodate the number of voters in the county. The Secretary of State recommends that prior to each general election, all boards of elections using a precinct-based optical scan voting system acquire at least one scanner for each precinct for the general election of each year. In the alternative, the Secretary of State recommends that boards of election acquire at least one scanner for each 600 registered voters in a county for the general election, since this is the ratio recommended by the manufacturer.

Guidelines for Voting Machine Allocation and Distribution

Boards of Elections Using DRE Voting Machines as the Primary Voting System on Election Day

The Secretary of State recommends that boards of elections using DRE voting systems as their primary voting system allocate and distribute the voting machines based on the following guidelines and factors.

Boards of elections should first determine the minimum number of voting machines required for each precinct, based on the number of registered voters assigned to a precinct. The General Assembly's formula for the acquisition of voting machines, explained above, should also apply to determine the minimum number of voting machines in a precinct. Therefore, at a minimum, each precinct should contain 1 DRE for every 175 registered voters. For example, a precinct containing 950 voters should have, at a minimum, 4 DRE voting machines ($950 / 175 = 3.7$ which should be rounded up to 4). Similarly, a precinct containing 1,300 registered voters should have, at a minimum, 8 DRE voting machines ($1,300 / 175 = 7.4$). All fractions should be rounded up to the next whole number. Boards should take into account the age of the DRE voting machines as well as the rate of failure of the voting machines in prior elections and determine if more than the minimum would be beneficial to ensure that at least the minimum number of DRE machines is operating at any given time during Election Day. Boards may study and determine precincts, if any, where there is a greater rate of machine failure and assign more machines accordingly.

After the minimum number of voting machines per precinct is determined, boards of elections should allocate additional voting machines to precincts based on the following three factors.

- First, boards of elections should determine which precincts have experienced heavy voter turnout and longer-than-average lines in similar elections. After this information is obtained, boards should allocate additional voting machines to these precincts. For example, if certain precincts experienced longer than average lines in the previous presidential election in November 2004, the board should allocate additional voting machines to those precincts for the November 2008 presidential election.
- Second, boards of elections should determine which precincts will have ballots requiring a longer-than-average time for the voter to complete and cast the ballot (e.g. the ballot contains a significant number of county or local issues, in addition to state issues). Longer ballots typically require more time for a voter to cast his or her ballot, which may result in longer lines at that precinct compared to other precincts in the county. Boards of election are encouraged to conduct mock elections, either internally or through an outside group, to determine the time necessary for a voter to cast his or her ballot using ballots representative of the actual ballot to be used on Election Day.

After it is determined which ballots will require more time for the voter, boards should allocate additional voting machines to precincts with those ballots. For example, assume precinct A will have 16 questions and issues on its ballot (six state, three county and seven local) while neighboring precinct B will have 9 questions and issues (six state, three county and zero local). Assuming both precincts have equal number of registered voters, precinct A should be allocated additional machines to account for the added time it will require electors to vote in that precinct.

- Third, boards of elections should project prior to the close of registration the likely number of registered voters in the county as of the close of registration, the likely number of absentee ballots to be voted, creating a percentage of absentee ballots voted of the total, and if possible, determining geographically, which areas of the county, if any have greater use of absentee voting, which may offset Election Day voting numbers in those areas. While this process cannot be accomplished with certainty, it should assist in determining final allocation of voting machines.
- Fourth, boards of elections should determine how many machines, if any, would be kept at the board office to deploy on Election Day to precincts experiencing long lines or

machine malfunctions. The board should develop procedures prior to Election Day to provide for the logic and accuracy testing, programming and delivery of these machines, to provide for continuous voting in precincts experiencing long lines or machine malfunctions.

Boards of elections may discover that, after reviewing these guidelines, it is appropriate to acquire additional machines for a general election. The Secretary of State encourages this action in the interest of ensuring that no voters are turned away from voting because of long lines on Election Day.

However, to ensure that the board's allocation and distribution determination is based on the most current voter information, the board should not make final allocation decisions until after voter registration is closed and most, if not all, of voter registrations have been processed.

For Boards of Elections Using Precinct Based Optical Scanners as the Primary Voting System on Election Day

The Secretary of State recommends that boards of election using precinct-based optical scanners as their primary voting system allocate and distribute at least one scanner per precinct or allocate and distribute at least one scanner per 600 registered voters in a precinct or multi-precinct polling place, since this is the ratio recommended by the manufacturer.

After the minimum number of voting machines per precinct is determined, boards of elections should allocate additional voting machines to precincts based on the following three factors.

- First, boards of elections should determine which precincts have experienced heavy voter turnout and longer-than-average lines in similar elections. After this information is obtained, boards should allocate additional voting machines to these precincts. For example, if certain precincts experienced longer than average lines in the previous presidential election in November 2004, the board should allocate additional voting machines to those precincts for the November 2008 presidential election.
- Second, boards of elections should determine which precincts will have ballots requiring a longer-than-average time for the voter to complete and cast the ballot (e.g. the ballot contains a significant number of county or local issues, in addition to state issues). Longer ballots typically require more time for a voter to cast his or her ballot, which may result in longer lines at that precinct compared to other precincts in the county. Boards of election are encouraged to conduct mock elections, either internally or through an outside group, to determine the time necessary for a voter to cast his or her ballot using ballots representative of the actual ballot to be used on Election Day.

After it is determined which ballots will require more time for the voter, boards should allocate additional voting machines to precincts with those ballots. For example, assume precinct A will have 16 questions and issues on its ballot (six state, three county and seven local) while neighboring precinct B will have 9 questions and issues (six state, three county and zero local). Assuming both precincts have equal number of registered voters, precinct A should be allocated additional machines to account for the added time it will require electors to vote in that precinct.

- Third, boards of elections should project prior to the close of registration the likely number of registered voters in the county as of the close of registration, the likely number of absentee ballots to be voted, creating a percentage of absentee ballots voted of the total, and if possible, determining geographically, which areas of the county, if any

have greater use of absentee voting, which may offset Election Day voting numbers in those areas. While this process cannot be accomplished with certainty, it should assist in determining final allocation of voting machines.

- Fourth, boards of elections should determine how many machines, if any, would be kept at the board office to deploy on Election Day to precincts experiencing long lines or machine malfunctions. The board should develop procedures prior to Election Day to provide for the logic and accuracy testing, programming and delivery of these machines, to provide for continuous voting in precincts experiencing long lines or machine malfunctions.

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For All Boards of Elections: Voting Equipment Accessible for Individuals with Disabilities

Ohio law requires that each polling location have available for use at all elections at least one DRE or ballot marking device that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired. The law requires that device(s) be accessible in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters (see R.C. 3506.19). The Secretary of State recommends that each county acquire **for each precinct** at least one DRE or ballot marking device, such as an AutoMARK, that is accessible for individuals.

Boards of elections may discover that, after reviewing these guidelines, it is appropriate to acquire additional machines for a general election. The Secretary of State encourages this action in the interest of ensuring that no voters are turned away from voting because of long lines on Election Day.

However, to ensure that the board's allocation and distribution determination is based on the most current voter information, the board should not make final allocation decisions until after voter registration is closed and most, if not all, of voter registrations have been processed.

Requirement of Public Meeting/Public Report

R.C. 3501.11(I) requires that each board of elections conduct a full vote of the board during public session on the allocation and distribution of voting machines, tabulating equipment and marking devices for each precinct prior to each election day. Specifically, R.C. 3501.11(I) provides that all boards of election shall:

Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the

board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.

As part of the board's duty to ensure that all polling places are suitably provided with a sufficient number of voting machines, tabulating equipment and marking devices, I am directing all boards of election to **post** both publicly and on the board of elections website, if the board has a website, and **make available** a report at least 15 days prior to each general election identifying and explaining all of the following:

Acquisition of Voting Equipment

- The total number of voting machines, tabulating equipment or marking devices available for distribution and use on Election Day.
- Whether the board intends to use all of its voting equipment acquired and, if not, what percentage of voting units the board will not use for the general election.
- Whether the board has acquired (i.e., purchased, leased or otherwise obtained) additional voting equipment since the previous general election and, if so, the number of units acquired and the make and model of the voting equipment acquired.
- Whether the board has followed the Secretary of State's guidelines for acquiring the necessary minimum number of voting units for each general election, as described in this directive.
- If the board of elections has not followed the Secretary of State's guidelines or has deviated from the guidelines, the reasons why the board has not followed the guidelines or deviated from the guidelines.

Allocation and Distribution of Voting Equipment

- The number of voting machines, tabulating equipment or marking devices allocated to each precinct for the general election.
- The total number of registered voters in the county and a list of precinct names along with the number of registered voters in each precinct.
- The voter turnout in each precinct from a similar election.
- Whether the board has followed the Secretary of State's guidelines for allocating voting equipment.
- How many voting machines will be kept at the board of elections office, if any, to deploy on Election Day to precincts experiencing long lines or machine malfunctions.
- If the board has not followed the Secretary of State's guidelines in allocating voting equipment or has deviated from those guidelines, the reasons why the board has not followed or deviated from the guidelines.

This report on the acquisition and allocation of voting equipment must be posted and made available at least fifteen days prior to each general election.

Please remember that these guidelines provide for the minimum number of voting units each county board of elections should acquire and allocate for a general election. Boards of election are encouraged to go beyond these guidelines, if possible.

If you have questions concerning this directive, please contact your assigned elections attorney.

Sincerely,

Jennifer Brunner