



DIRECTIVE 2018-03

January 19, 2018

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: Availability of a Remote Ballot Marking System for Use by a Voter with a Disability
During Ohio's By-Mail Absentee Voting Period

SUMMARY

In 2016, the 131st General Assembly passed Substitute Senate Bill 63. The legislation amended Ohio law to permit the Ohio Board of Voting Machine Examiners (BVME) to certify ballot-marking devices without certification from the U.S. Election Assistance Commission (EAC). Recent technological developments have resulted in what is commonly referred to as a remote ballot marking system, which prior to the enactment of Sub. S.B. 63 could not be certified for use in Ohio. Following the enactment of the legislation, the BVME adopted standards for the testing and certification of remote ballot marking systems.

On January 12, 2018, the BVME approved the first remote ballot marking system for use in Ohio's elections. After which, the Secretary of State, having been assured through the certification process that the marking device is capable of meeting the substantive requirements for certification, certified the system for use by individuals with a disability during Ohio's by-mail absentee voting period.¹ Under the Americans with Disabilities Act (ADA)², a remote ballot marking system allows a disabled voter to participate in both methods of Ohio's absentee voting process independently and privately at a level equal to other voters.

The purpose of this Directive is to require each county board of elections to acquire a remote ballot marking system for use by a voter with a disability who 1) submits a complete and timely application to receive an absentee ballot by mail, and 2) requests to use the remote ballot marking system to mark his or her absentee ballot. Nothing in this Directive is intended to dissuade or prevent a voter with a disability from voting in-person on Election Day or during in-person absentee voting using a precinct-based ballot marking device, ADA-compliant voting machine or requesting assistance as otherwise provided by law.³

¹ As a reminder, boards of elections are required to provide an ADA-accessible voting device for in-person absentee voting as well as providing the assistance of two election officials of opposite political parties upon the request of the voter for both by-mail and in-person absentee voting. R.C. 3506.19; R.C. 3505.24; R.C. 3509.08.

² 42 U.S.C. § 12101 et seq.

³ R.C. 3505.24 and 3509.08.

The Secretary of State's Office, upon controlling board approval, intends to provide a \$1.5 million grant to assist with covering the initial cost for each county to acquire a remote ballot marking system.⁴ A spreadsheet detailing the amount of the grant each county can expect to receive before June 30, 2018 is attached for your reference.

BACKGROUND

A remote ballot marking system enables a voter to receive an accessible ballot securely and privately. The voter can access, read, and mark his or her ballot using the remote ballot marking system and any necessary assistive technology. Once the voter marks his or her absentee ballot, the voter must print and return it to the board of elections in order for the ballot to be processed and tabulated.⁵

The BVME approves – and the Secretary of State certifies for use in Ohio elections – remote ballot marking systems. Each remote ballot marking system is required to undergo testing at a National Voluntary Laboratory Accreditation Program (NVLAP)-approved test lab and must meet the criteria necessary for use in Ohio. A list of certified systems is available on the [Secretary of State's website](#).

INSTRUCTIONS

Each board of elections should work with its board of county commissioners regarding its selection of a remote ballot marking system. Additionally, it should involve its legal counsel, the county prosecuting attorney, in negotiating the terms of any contract or purchase agreement.

The remote ballot marking system must be ready for use in the November 2018 General Election. Each board will need to acquire, install, and test thoroughly its selected system by late summer of 2018 and not later than September 1, 2018.

Each county board of elections must make available its remote ballot marking system to any voter with a disability who timely submits a completed application to receive an absentee ballot by mail and requests to mark his or her absentee ballot using the system.

The Secretary of State's Office will prescribe forms for this process and issue detailed instructions to boards of elections in the coming weeks.

⁴ A request for appropriation was filed with the Controlling Board on January 16, 2018.

⁵ The voter must fulfill all of the requirements of state law including completing the absentee ballot identification statement. R.C. 3509.05.

If you have any questions concerning this Directive, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted