DIRECTIVE CONCERNING THE USE, IMPLEMENTATION AND OPERATION
OF ELECTRONIC VOTING SYSTEMS BY THE COUNTY
BOARDS OF ELECTIONS 6/09/2011

The use, implementation and operation of electronic voting systems by county boards of elections are governed by the following procedures. Electronic voting systems are defined at Section 1101-A of the Pennsylvania Election Code, 25 P.S. § 3031.1.

Activities prior to opening the polls on Election Day

1. *Notice of voting system preparation.* As part of its compliance with Section 1110-A(d) of the Election Code, 25 P.S. § 3031.10(d), on or before the fortieth (40th) day preceding any primary or election, a county board of elections shall mail a notice stating the times and places where preparation of the voting system will be started. This letter shall be sent to the chairmen of the county committee of each political party that is entitled to participate in primary elections in the county, as well as to the presiding officer of any organization of citizens in the county whose purpose is to investigate or prosecute election frauds and which organization has registered with the county board of elections at least fifty (50) days before the primary or election.

2. *Instructions on use of electronic voting systems.* As part of its compliance with Section 1111-A of the Election Code, 25 P.S. § 3031.11, a county board of elections shall instruct voters on the use of electronic voting systems in the following way.

   - *Public exhibition thirty (30) days before each primary or election.* During the thirty (30) days before an election, the county board of elections shall place on public exhibition the components of an electronic voting system that are used by the voter, containing a sample ballot for instructional use. "Such components shall be under the charge and care of a person competent as custodian and instructor. No voting system component which is assigned for use in an election shall be used for such public exhibition and instruction after having been prepared and sealed for the election." Section 1111-A(a) of the Election Code, 25 P.S. § 3031.11(a).

3. *Testing central automatic tabulating equipment.* As part of its compliance with the requirements of Section 1114-A(a) of the Election Code, 25 P.S. § 3031.14(a), a county that uses an electronic voting system that provides for central tabulation of ballots shall, by the fourth (4th) day prior to each election, have the central automatic tabulating equipment publicly tested to ascertain that it will accurately count the votes cast for all offices and all questions. Public notice of this test shall be given at least forty-eight (48) hours prior to the test, unless the central automatic tabulating equipment was tested during the voting system preparation provided for in part 1. In either event the testing must be done publicly, and public notice must be given at least forty-eight hours prior to the test.

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[1] This directive and instruction is issued by the Secretary of the Commonwealth pursuant to section 1105-A(a) of the Pennsylvania Election Code, 25 P.S. § 3031.5(a).

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4. *Secrecy in voting.* To assure compliance with the constitutional and statutory requirements that secrecy in voting be preserved (*see* Pa. Const. Art. VII, § 4; and 25 P.S. § 3031.7(1)), boards of elections should use privacy screens or hoods or take other physical measures that prevent other individuals in the polling place from seeing how an elector has cast his or her ballot on the machine. Electronic voting machines shall be positioned in the polling place in such a manner that other individuals may not watch an elector casting his or her ballot.

Activities while the polls are open on Election Day

5. *Instructions on use of electronic voting systems.* As authorized by Section 1111-A(b) of the Election Code, 25 P.S. § 3031.11(b), elections officials can use diagrams to show a voter how to use an electronic voting system before the voter enters the voting booth and give the voter audible instructions while the voter is in the voting booth whenever the voter asks for such help. When providing this help, elections officials shall not enter the voting booth with the voter or while the voter occupies the voting booth, and shall not request, suggest or try to persuade or induce the voter in any manner to vote for any particular candidate, ticket of candidates, or other persons, or in favor of or against a ballot question.

6. *Voter leaving voting system without completely casting ballot.* A county board of elections that uses a Direct Recording Electronic (DRE) voting system should implement the following procedures to prevent a voter from leaving the voting system without completing the process of casting his or her ballot (sometimes referred to as "the fleeing voter").

   - The county board of elections shall direct each local election board to post in a conspicuous place within the polling place informational posters containing information that alerts a voter to verify before leaving the voting compartment that his or her ballot has been properly cast on the electronic voting system.

   - At each election, the county board of elections shall make copies of the last screen that the voter will see after casting his or her ballot. The county board of elections or the local election board, as the case may be, shall post a copy of that screen in each voting booth. The county board of elections shall instruct the members of each local election board to point out to each voter the copy of the last screen and tell the voter that his or her vote will not be recorded until the voter sees that the last screen on the voting system is the same as that on the copy.

   - If possible, notify the voter before he or she leaves the polling place to return to the voting booth to complete the voting process.

   - If these procedures are not successful and the voter leaves the polling place without completing the process for casting the ballot, then two district election officials of different political parties

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shall jointly cancel that elector's vote. The district election officials shall keep a record of the number of canceled votes so that they can compare that record to the numbered list of voters.

7. *Inoperable electronic voting systems - repairs, substitutes and emergency back-up paper ballots.* If **50%** of electronic voting machines in a precinct are inoperable, "paper ballots, either printed or written and of any suitable form," for registering votes (described herein as "emergency back-up paper ballots") shall be distributed immediately to eligible voters pursuant to section 1120-A(b) of the Election Code. Emergency back-up paper ballots shall be used thereafter until the county board of elections is able to make the necessary repairs to the machine(s) or is able to place into operation a suitable substitute machine(s).

For this purpose, county boards of elections may use, as "emergency back-up paper ballots," ballots specifically designed for use as emergency back-up paper ballots; surplus, un-voted absentee ballots; surplus, un-voted alternative ballots; ballots that the county board of elections has supplied to the district election board for use as provisional ballots; or other paper ballots that are "either printed or written and of any suitable form."

- **Except as noted below, the procedures applicable to the casting of absentee ballots, alternative ballots or provisional ballots (declaration and affidavit requirements) do not apply to an emergency back-up paper ballot that is cast under section 1120-A(b) of the Election Code.**

- When ballots originally intended for use as absentee ballots, alternative ballots or provisional ballots are used as emergency back-up paper ballots under section 1120-A(b) of the Election Code, the ballot is cast as a regular ballot, and not as an absentee ballot, alternative ballot or provisional ballot. **Provisional ballots which are used as emergency back-up paper ballots must be clearly distinguished from provisional ballots and may not be rejected if the envelope in which the ballot is placed is missing any information that would be required of a provisional ballot.**

- A county board of elections must supply an adequate amount of emergency back-up paper ballots to ensure that voting continues uninterrupted until the voting systems become operable.

As a regular ballot, the emergency back-up ballot shall be deposited by the voter in a ballot box or other secure receptacle designated by the board of elections for the deposit of completed emergency back-up paper ballots, as required for paper ballots by Section 1003(a) of the Election Code, 25 P.S. § 2963(a). Absentee ballots, alternative ballots or provisional ballots that are being used as emergency back-up paper ballots must be identified as regular ballots and must be segregated from absentee ballots, alternative ballots and provisional ballots.

EXCEPTION NOTE: Persons permitted or required to vote by provisional ballot must follow the procedures applicable to casting of provisional ballots, whether electronic voting systems or

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paper ballots are used to conduct an election. When ballots labeled as provisional ballots are employed under section 1120-A(b) of the Election Code, 25 P.S. § 3031.20(b) as emergency back-up paper ballots for the casting of regular ballots in place of inoperable machines, the local board of elections must continue to require individuals to cast provisional ballots when those individuals are required by law to vote in that manner, subject to all of the procedures prescribed for casting a provisional ballot at section 1210(a.4) of the Election Code, 25 P.S. § 3050(a.4).

8. *Accessible Electronic Voting Systems.* County boards of elections must direct the district election boards to prepare, in the manner provided by section 1110-A(g) of the Election Code, 25 P.S. § 3031.10(g), an electronic voting system for voting in a precinct where such system is necessary to provide to a disabled voter the same opportunity for access and participation in the voting process as is afforded voters who do not have a disability. See section 301(a)(3) of the Help America Vote Act (HAVA), 42 U.S.C. § 15481(a)(3). Audio components for the visually impaired must be in working order and must present instructions and information in a user-friendly and understandable format. **(All district election boards must comply with this requirement regardless of whether the district board anticipates that a disabled voter will present himself or herself to vote on the day of the primary or election.)**

Activities after closing the polls on Election Day

9. *Counting and recording absentee ballots.* In order to assure compliance with all provisions of the Election Code, especially sections 1113-A, 1115-A, 1226 and 1308 of the Election Code, 25 P.S. §§ 3031.13, 3031.15, 3066 & 3146.8, county boards of elections shall **not, at any time**, manually enter absentee ballots into an electronic voting system, including the time after the voting system has been locked against voting at the closing of the polls.

THE COUNTING AND RECORDING OF VOTES CAST ON ABSENTEE BALLOTS MUST BE COUNTED AND RECORDED SEPARATELY FROM BUT IN A LIKE OR SIMILAR MANNER AS THE VOTES CAST ON ELECTRONIC VOTING SYSTEMS.

10. *Computation and canvass of returns – random sampling.* As part of the computation and canvass of returns, in order to comply with the requirement at Section 1117-A of the Election Code, 25 P.S. § 3031.17, the county board of elections must conduct a statistical recount of a random sample of at least two percent (2%) of the ballots cast or two thousand (2,000) ballots, whichever number is fewer.

   - For those counties using optical scan electronic voting systems, the county board of elections shall conduct the statistical recount manually.

   - For those counties using direct recording electronic (DRE) voting systems, the county board of elections shall conduct the statistical recount manually using the ballot images contained in the system, rather than the "totals tapes."

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11. ***Sealing voting system terminals for recounts and election contests.*** A county board of elections shall keep voting terminals sealed or otherwise locked against voting for at least twenty (20) days, or longer if there are recounts or election contests pending, unless a court should order the terminals to be opened. *See* Section 1230 of the Election Code, 25 P.S. § 3070.

12. ***Reuse of memory cards and retention of ballot images.*** A county board of elections may reuse memory cards for the next election if the county maintains either a printed or electronic copy of the ballot images contained in the system. For Federal elections, a county board of elections must retain these ballot images for 22 months from the date of the election. 42 U.S.C. § 1974. For municipal elections, the county board of elections must retain the ballot images for a least 20 days, unless ordered otherwise by a court as provided at Section 1230 of the Election Code, 25 P.S. § 3070.

CONDUCTING THE RECOUNT AND RECANVASS

1. In a county in which an election district uses an electronic voting system that does not utilize paper ballots, the county board must conduct the recanvass similar to the procedure used to recanvass the vote cast on voting machines:

   - The county board must make a record of the number of the seal upon the voting machine and the number on the protective counter or other device.

   - The county board must make visible the registering counters of the machine, and without unlocking the machine against voting, recanvass the vote cast on the machine.

   - The county board shall conduct the recanvass by examining the totals tape on each machine, which shall constitute the recount total.

   - If, upon such recanvass, it appears that the original canvass of the returns has been correctly made from the electronic voting system (system), and that the discrepancy, **if applicable**, still remains unaccounted for, the county board of elections must unlock the voting and counting mechanism of the system and examine and test the system to determine the cause of the discrepancy. In this case, the counter must be reset at zero before it is tested, after which it must be operated at least 100 times. After the examination and test has been completed, the machine inspector must prepare a written statement detailing the result of the examination and test. The written statement must be witnessed by the persons present and filed with the county board of elections.

   - If, upon such recanvass, it appears that the original canvass of the returns was incorrect, the returns and all papers being prepared by the board of elections shall be corrected accordingly: Provided, however, that in the case of returns from an election district wherein the election was held by the use of a voting system equipped with a mechanism for

printing paper proof sheets, the proof sheets, if mutually consistent, shall be deemed to be the primary evidence of the result of the election.

2. Due to the requirement to use a different type of manual, mechanical or electronic device in a recount than was used in the specific election, as required by section 1404(e)(3)(i) of the Election Code, 25 P.S. § 3154(e)(3)(i), in counties in which an election district uses an electronic voting system utilizing paper ballots (that is, optical scan):

- The county board of elections must recount all ballots using manual, mechanical or electronic devices of a different type than that used for the specific election.
    - Counties using a central-count tabulator shall conduct the recanvass using a precinct-count tabulator or conduct the recanvass by a hand count of the paper ballots.
    - Counties using a precinct-count tabulator shall conduct the recanvass by using a central-count tabulator or conduct the recanvass by a hand count of the paper ballots.

- All ballots containing overvotes must be counted **manually**.

3. Under section 1407(a) of the Election Code (25 P.S. § 3157(a)), appeals of determinations made by a county board of elections following an order for a recount by the Secretary of the Commonwealth relate to the offices or ballot questions that are the subject of the statewide recount must be taken to the Commonwealth Court – even after the recount and recanvass ordered by the Secretary has been completed.