EMERGENCY PAPER BALLOTS

Proper Use of Emergency Paper Ballots

The only provision in the Election Code authorizing the use of paper ballots after an electronic voting system has been installed in an election district is section 1120-A(b) of the Code. This subsection provides that paper ballots may be used as emergency back-up ballots in the event that an electronic voting system fails or malfunctions and cannot be used at the polling place. This subsection provides precisely as follows:

> If any electronic voting system or any component thereof being used in any election shall become inoperable during [an] election, it shall, if possible, be repaired or another machine substituted by the custodian or county board of elections as promptly as possible, for which purpose the county board may purchase as many extra systems or system components as it may deem necessary, *but in case such repair or substitution cannot be made, paper ballots, either printed or written and of any suitable form, may be used for registering votes.*

25 P.S. § 3031.20(b) (Emphasis added).

On September 15, 2006, the Secretary of the Commonwealth issued a Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by the County Boards of Elections. **Directive #7 on page 3** of that document outlines the proper procedures for providing emergency paper ballots in the event that the voting systems used within a precinct become inoperable prior to or during the progress of voting.

Determining How Many Emergency Paper Ballots to Distribute

As you may recall, the Department of State received several questions prior to the 2008 General Primary regarding the preparation and use of emergency paper ballots, as prescribed by section 1120-A(b) of the Election Code, 25 P.S. § 3031.22(b), in the event that voting systems malfunction on Election Day. Specifically, we were asked whether there is a "formula" for determining how many emergency paper ballots should be distributed to each election district.

We believe that providing to each election district a number of emergency paper ballots equal to **20% of the number of registered electors in each district** is a

reasonable formula for determining how many emergency paper ballots to make available on location at each election district.

Though section 1120-A(b) of the Election Code does not prescribe a formula, the Election Code does offer some general guidance on the question of how many ballots to supply to each election district. Section 1007 of the Election Code, 25 P.S. § 2967, requires that in an election district where paper ballots are used the county board of elections must provide 50 ballots for every 45 registered and enrolled electors in the district. Prior to its amendment by Act 1998-18, section 1007 also required the county board to print an additional 10% above the number of ballots printed for general distribution. Therefore, each county was to print 50 ballots for each 45 registered electors within an election district and also an additional 10% above that number. Using this formula, an election district containing 180 registered electors would have required the printing of an additional 40 ballots (approximately **20%** of the number of registered electors in the district). As I'm sure you are aware there could be an unprecedented turnout in this year's General Election. Therefore, it would not be prudent to rely solely on historical turnout figures for general elections when calculating the number of emergency paper ballots to distribute.

Furthermore, each county should make sure that a sufficient amount of emergency paper ballots are available **on location** at each polling place and that preparations are made to **supplement that supply** in the event that the voting system malfunction(s) cannot be quickly resolved. Making sure that enough emergency paper ballots are available on location is important because, as you know, the majority of malfunctions are most likely to occur at the opening of the polls. This is also traditionally one of the busier periods of voting during the day. Ensuring that voting occurs uninterrupted during this critical timeframe, and until any malfunctions can be corrected, is extremely important.