

Procedures for Counting Ballot Marking Device Ballots

The following Procedures are being provided by the State Board of Elections for use by the State of New York's County Boards of Elections, to implement the use of Ballot Marking Devices in 2008 and the Order of the United States District Court, dated January 16, 2008.

Ballot Marking Devices provide accessibility to the voting booth for persons with disabilities. The procedures are designed to provide guidance to election officials in processing ballots that are cast using the ballot marking device. They are designed to ensure that County Boards provide outreach to the community and to ensure that the privacy of the voter is maintained when the ballots are counted.

The Procedures are as follows:

1. Designation of Sites for the Accessible Ballot Marking Device

a. County Boards of Elections shall provide for the placement of a minimum of one ballot marking device in each designated poll site, in use in any election conducted by the County Board of Elections.

2. Application of the Election Law

a. Ballots created by these devices shall be counted in a manner similar to emergency ballots.

b. All provisions of the Election Law apply, including but not limited to: allowing poll watchers at each poll site, implementing the voter identification provisions when applicable, and ballot canvassing procedures.

c. Each of these ballot marking devices shall be operated by either election inspectors or clerks as provided in Election Law §§ 3-400 and 8-202

3. Who Can Use the Accessible Ballot Marking Devices

a. Each Board of Elections shall permit voters from the election district to cast their ballots using the ballot marking device.

b. The target voting population for the accessible devices is voters with disabilities who would like to cast their ballots in person. Boards should work with local advocacy groups to help inform voters with disabilities of the opportunity to vote privately and independently at their respective poll sites using an accessible ballot marking device. To the extent feasible, all outreach efforts implemented by a county board should include directions to the State Board's website where a demonstration of each ballot marking device currently interim-certified in the

State of New York may be viewed, accompanied by a telephone number which voters can call to learn of any in-person demonstrations which may be scheduled. Outreach efforts do not have to be county wide, but rather can be targeted to the population most likely to use the device.

c. In order to ensure the privacy of the ballots cast by voters with disabilities, county boards shall take steps to encourage the use of accessible voting devices, and ensure that any registered voter who wishes to use the device may do so..

4. Voting with the Ballot Marking Device:

a. A voter seeking to vote with the ballot marking device shall be processed as any other voter. Inspectors shall verify that the voter's registration record appears in the poll book for the voter's election district, and shall verify the registration and enrollment pursuant to the procedures provided in Election Law, Section 8-302.

b. Inspectors shall record on the voter's poll book entry, a unique public counter number (for example, BMD 1, BMD 2, etc), to ensure that the public counters for lever machines and ballot marking devices can be reconciled with votes cast, at the close of the polls

c. Inspectors or clerks shall provide a method which indicates the ballot style information necessary for an inspector or clerk to deliver to the voter the appropriate paper ballot, and/or set and enable the ballot marking device to activate and display each individual voter's ballot style, such as a card with the necessary ballot style information on it.

d. The ballot generated by the ballot marking device shall be placed in a ballot box.

e. Any voter whose name does not appear in the poll book registration record for the election district, or for whom, in a primary election, the party enrollment declared does not match the enrollment noted in the poll book registration record shall be processed in a manner consistent with the procedures provided in Election Law, Section 8-302(3)(e). If the voter chooses to vote by affidavit ballot, the voter shall be permitted to use the ballot marking device, but the inspector or clerk responsible for the ballot marking device, shall insure that the ballot generated for the voter is placed in the affidavit ballot envelope, which shall be retained and processed like all other affidavit ballots for that election district.

5. Ballot Accountability

a. Ballots to be used with ballot marking devices shall be in a form consistent with Election Law Section 7-106. Each ballot shall have a numbered

stub which can be separated from it along a perforated boundary. County boards may, by written procedure, develop an alternate method of ensuring ballot accountability. A copy of such written procedure shall be filed with the State Board of Elections.

b. The ballot stubs or alternate method of accountability shall provide sequential numbering, and shall include the date of the election, the political subdivision(s) in which the ballot is valid, and in a primary election, the name of the party conducting the primary, and further, stubs may be color-coded, to correspond to same. Any ballots with attached stubs shall be detached from the numbered stub prior to the election inspector giving the ballot to the voter.

Approved by Co-Executive Directors
September 2, 2008

Ratified by Commissioners of the New York State Board of Elections
September 5, 2008