

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: June 3, 2016

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Michael Haas, Elections Division Administrator
Richard Rydecki, Voting Equipment Specialist

SUBJECT: Tabulating Ballots Using the Override Function

2015 Wisconsin Act 261 allows an election inspector to use the override function of voting equipment when processing an overvoted ballot rather than remaking the ballot. To promote consistency and reduce confusion, the Government Accountability Board has determined that voting equipment may also be programmed to allow for the override function to be used on ballots with crossover votes as well. The use of the override function is optional and is not mandatory. Municipalities should work with their county clerk and voting equipment programmer to assess the potential benefits and drawbacks of implementing this option.

Crossover votes can only occur at a partisan primary. A ballot with a crossover vote is a ballot where the voter did not select a party preference and voted in more than one party's primary, which is prohibited by [Wis. Stat. § 7.50\(1\)\(d\)](#). All voting equipment used in Wisconsin is required by [Wis. Stat. § 5.91\(6\)](#) to have the ability to reject any ballot with a crossover vote. Additionally, [Wis. Stat. § 5.91\(12\)](#) requires that voting equipment must "minimize the possibility of disenfranchisement of electors as the result of failure to understand the method of operation of [the equipment]." This safeguard is typically accomplished by providing the elector a warning message that displays when the ballot is initially rejected by the equipment. If the elector is not present or willing to fix the error and voter intent cannot be determined (e.g. clear marks next to candidates of more than one political party), it is after this warning message is displayed that an override is possible. Using the override function would result in no votes being counted for any partisan office (even if the elector only crossed over in a single contest), but all votes for nonpartisan contests would be counted.

Overvotes can occur at any election. An overvote is when the elector has voted for more than the maximum number of selections allowed in a contest. Per [Wis. Stat. § 7.50\(1\)\(b\)](#), "when an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid." [Wis. Stat. § 5.91\(7\)](#) requires overvoted ballots to be rejected and [Wis. Stat. § 5.91\(12\)](#) requires the voting equipment to minimize the possibility of disenfranchisement, usually via a warning message. If the elector is not present or willing to fix the error and voter intent cannot be determined (e.g. clear marks next to more choices than allowed), it is after this warning message is displayed that an override is

possible. Tabulating an overvoted ballot with the override function would result in no votes being counted for the overvoted contest(s), but votes for all other contests would be counted.

It is essential that election inspectors are trained on the override function of the voting equipment and are familiar with the notifications the voting equipment provides when an overvoted or crossover voted ballot is inserted into the machine. Election officials must also be able to explain the impact on a ballot if the voter decides to use the override function. Whether or not to cast a ballot that is improperly marked at the polling place or to spoil the ballot and mark another one is the voter's decision. Election inspectors must be able to explain how this decision impacts an overvoted or crossover voted ballot so that the voter can make an informed decision. In both circumstances, the decision to use the override function will result in no votes being counted for at least one contest.

The option to use the override function should allow for more efficient processing of absentee ballots on Election Day. In overvote and crossover vote scenarios, the voting equipment will display a warning message that provides information about the problem with the ballot. The voting equipment will also provide the option to cast the ballot 'as is' or return the ballot to the election official. Absentee ballots containing overvotes or crossover votes could be cast using the override function, eliminating the requirement that they be remade before being re-inserted into the voting equipment, except that ballots must be remade when the voter's intent can be determined.

The ability to use the override function for overvoted and crossover voted ballots conflicts with specific conditions that the Board has attached to its approval of several pieces of voting equipment used in the State. The Board has directed staff to remove the condition from existing voting equipment approvals and to exclude that condition from future voting equipment approvals. This change has been communicated to impacted voting equipment vendors so that they can best assist customers in programming their equipment in advance of the fall election cycle.

In addition, staff has developed detailed instructions for processing both overvoted ballots and ballots with crossover votes when voting equipment is programmed to permit the use of the override function. These instructions outline the procedures to follow when a voter is present in the polling place on Election Day and when poll workers are processing absentee ballots. They have been posted along with this communication and will be incorporated into the Election Day and Election Administration Manuals.