

HJR 46: Study of Election Laws Use of AutoMARK Machines

April 2008

Background

The Help America Vote Act (HAVA) required that each state's voting system be accessible for people with disabilities and for the blind and visually impaired. The federal law requires the use of these accessible systems for federal elections.¹

The state purchased AutoMARK machines to meet the federal requirement, and counties first used the machines in 2006. Some counties have since used the machines for municipal elections held in odd-numbered years, but many counties plan to use them only in federal elections because of the costs. Those costs include:

- using special stock for printing the ballots;
- programming the machines with the necessary language for each election;
- testing the machines before each election;
- using special printer cartridges that must be discarded frequently; and
- paying maintenance and support costs of approximately \$330 per machine per year.

HAVA does not specifically require the use of accessible voting machines in non-federal elections, but the Americans with Disabilities Act (ADA) does require governments to ensure that their services, programs, or activities are available to people with disabilities.² A government must make its services accessible unless it can demonstrate that doing so would result "in undue financial and administrative burdens."³

In addition, state laws also prohibit discrimination based on physical disability.⁴

Use of AutoMARKS in Mail Ballot Elections

Under current law, mail ballot elections may not be held for federal elections. Instead, they are used for smaller municipal and special district elections, such as those for fire, water, or sewer districts. Many counties have not used AutoMARK machines for mail ballot elections because of the low number of voters involved in many of these elections (fewer than 100 in some cases) and the relatively high cost of programming, testing, and using the machines.

While counties must comply with the ADA and state laws on accessibility, some counties contend that using AutoMARKS would be extremely costly and thus may make the argument that requiring their use would result in undue financial and administrative burdens.

Implications for Draft Legislation

As part of the HJR 46 study, the State Administration and Veterans' Affairs Interim Committee has under consideration two different bill drafts that involve the use of accessible voting machines. Those bill drafts, and the implications of requiring the use of AutoMARKs, are:

- LC 60, the mail ballot pilot project. Several smaller counties that would like to participate in the mail ballot pilot project have said they may not be able to do so if they must use AutoMARK machines in 2009 for municipal or special district elections.

¹ 42 U.S.C. § 15481.

² 42 U.S.C. § 12132.

³ 28 C.F.R. § 35.150.

⁴ Title 49, Chapter 2, and Title 49, Chapter 3, Montana Code Annotated.

- LC 35, the general clarification and cleanup of election laws (formerly LC9050). SAVA has approved this bill draft, which would require the use of accessible voting machines, such as AutoMARKs, at all places of deposit for *all* mail ballot elections allowed under current law – generally municipal, school, and special district elections. This could be a significant change from current practice in some counties.

Potential SAVA Action

Because of the concerns raised by local officials, SAVA may want to consider the following:

- In LC 60, whether to:
 - ▶ require the use of accessible voting machines only for federal and state elections for those counties participating in the pilot project;
 - ▶ limit the pilot project only to elections held in 2010, so municipal elections would not be affected; or
 - ▶ cover the costs of using AutoMARK machines in non-federal and state elections.
- In LC 35, whether to:
 - ▶ remove the new requirement in 13-19-307(2), MCA, that accessible voting machines be present at all places of deposit for all mail ballot elections, because it represents a significant change from current practice; and
 - ▶ whether to introduce that requirement in a separate bill.

Language Currently Included in LC9050 Cleanup Bill Draft (now LC 35)

The language approved for LC 35, the cleanup bill draft, is reprinted below. This language would apply to all mail ballot elections, not just to those conducted as part of the pilot project.

Section 2. Section 13-19-307, MCA, is amended to read:

"13-19-307. Places of deposit. (1) (a) The election administrator shall designate ~~his~~ the election administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector or the elector's agent or designee.

(b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator must designate at least one accessible place of deposit.

(2) An accessible voting machine must be made available to electors at each place of deposit.

~~(2)~~(3) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

~~(3)~~(4) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

~~(4)~~(5) The election administrator may designate certain locations as election day places of deposit, and any designated location ~~so designated shall~~ must function as a place of deposit only on election day.

(6) Each place of deposit must be staffed by at least two election officials who are selected as provided for election judges in 13-4-102.

~~(5)~~(7) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law."