Minnesota Votes

2012 LEGISLATIVE REPORT

Township Use of Accessible Voting Equipment

Introduction

Minnesota Statutes § 206.57 subdivision 5 requires that certain townships use accessible voting equipment (the AutoMark) in March elections held after December 31, 2009. Subdivision 5a provides an exemption to this requirement to townships with fewer than 500 registered voters as of June 1 of the preceding year. Subdivision 5b requires that the Office of the Secretary of State, after consultation with interested parties, make a report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over elections policy and finance regarding options for all townships to provide accessible voting equipment in their March elections.

The Office of the Secretary of State consulted with members of the majority and minority caucuses in both houses of the Minnesota Legislature, the Minnesota Association of County Officers, the Minnesota Association of Townships, the Minnesota Disability Law Center, the Minnesota State Council on Disability, the National Federation of the Blind, and the League of Minnesota Cities in preparing this report.

Background

Townships

Townships have traditionally held elections for town officers on the second Tuesday in March, in conjunction with their annual town meetings. The elections and meetings are normally held in the town hall, which are generally small in size and have limited utility services. Usually voter turnout is extremely low in March township elections. In 2011, 65% of the townships had 25 or fewer voters participate in their March elections. Each year approximately 90% of the township offices on the ballot are uncontested, if defined as having one or fewer candidates.

In March 2011, 1,176 townships held elections. In 2012, 228 of them will be required to use accessible voting equipment.

In the 1990s townships were given the option of moving the elections of town officers to November (Minnesota Statutes, section 205.075, subd. 2). 610 townships have chosen to make this move.

In 2010, townships that had moved their elections to November were given the option of moving them back to March (Minnesota Statutes, section 205.075, subd. 2a). To be eligible to exercise this option, the township must have conducted at least two town general elections in November, unanimously adopt a resolution to move the election at the annual meeting in March and have the resolution approved by the voters in the subsequent November election. To date, none of the townships with November elections have used this process to move them back to March.

Voting for Individuals with Disabilities

Although the right to vote by secret ballot is a cornerstone of elections in the United States, up until recently, very few individuals who are blind or who have a disability related to their motor skills had ever been able to exercise this right. These individuals have had to tell another person for whom they wanted to vote and then counted upon this other person to mark their ballot for them.

A major goal of the federal Help America Vote Act is to allow individuals with disabilities to vote with independence and privacy. This Act provided millions of dollars to states to purchase accessible voting equipment for use in federal elections; in Minnesota's case, the state purchased at least one AutoMark for every polling place used in federal elections. The AutoMark is able to read an optical scan ballot and present the information on the ballot on a screen, with enlarged text or high contrast text if the voter so desires, or can read the ballot aloud to the voter (earphones are provided). The voter can mark their selections using the touch screen or tactile buttons. Once the voter has made his or her selections, the machine marks the ballot and returns it to the voter to be placed in the ballot box or optical scanner along with other voters' ballots.

The Help America Vote Act requires that accessible voting equipment be made available to voters in federal elections. The state legislature extended this requirement to also apply to all state elections held after December 31, 2005 and to county, city and school board elections held after December 31, 2007. The statute originally required all townships to comply by this date as well.

Equipment purchased with Help America Vote Act funds for use in federal elections can be used in stand-alone state and local elections. However, these funds cannot be used to purchase equipment exclusively for use in local elections.

Previous Meetings

In 2007, the Office of the Secretary of State conducted a series of meetings with representatives from the townships and the disability community, as well as other local election officials and legislators, to explore ways that townships could comply with this requirement.

The group identified a number of challenges to township use of AutoMarks in their March elections:

1. Cost

The initial setup fee for programming a single township election is at least $285.00, with additional charges for having more than one race on a ballot, additional precincts, and other related charges. Costs are aggregated within a county, which means that the costs vary depending upon the number of townships in a county with March elections. If there was only one township with a March election in a county, it would be charged $660 for programming, plus approximately 25 cents per ballot. A township in a county with fourteen other townships with March elections, on the other hand, would be charged $385 for programming, plus the cost of printing ballots. The costs for insurance and transportation, if necessary, would be additional.

2. Distribution & Logistical Issues

Although there are more AutoMark devices in Minnesota than there are March township elections, they are not distributed in a way that facilitates their use in March township elections. The majority of AutoMarks are located in the metro area and most townships are in greater Minnesota. Greater Minnesota counties did not purchase AutoMarks for every precinct because many of their sparsely populated areas vote entirely by mail in state elections, and one AutoMark at the county elections office for voters from these precincts meets the federal and state requirements. Townships borrowing AutoMarks from the metro area would likely incur significant transportation, maintenance and shipping insurance costs, in addition to the programming and ballot printing costs. Also, the AutoMark requires electricity and there are town halls in the state used for March township meetings and elections that do not have sufficient electrical service to run the equipment.

3. Privacy of the Vote

Although use of the AutoMark allows an individual to fill out his or her ballot privately and independently, it may mark it in a way that makes it obvious to anyone examining the ballot that it was marked by a machine. In a township election, where ballots are counted by hand and very few voters may have cast ballots, this may mean that it would be obvious to the election judges that a ballot was marked by the AutoMark, and, if only one or very few voters used it, the judges would know how they voted.

Options Considered

In these meetings, a variety of options were explored, including the following:

- Require townships to move their elections to November to be held in conjunction with the state general election. This option was strongly opposed by the representatives from the townships who argue that holding elections in March is critical to maintaining their culture, particularly participation at the annual town meeting.

- Provide all townships with March elections an exemption from the requirement to provide an AutoMark. This option was strongly opposed by the representatives from the disability community who want to be able to vote privately and independently every time they cast a ballot.

- Exempt township elections which are uncontested from the requirement to provide an AutoMark. The question here is how to define “uncontested.” Does it include only races in which one candidate files or also races in which no candidates file? What if there is a write-in campaign against the one candidate who filed? Does the race then change from being considered “uncontested” to being “contested”?

- Require townships to provide an AutoMark at a place other than the town hall. For example, require that there be one AutoMark for all townships in the county located in the county elections office. This addresses issues related to town halls that do not have electricity and would reduce the programming costs, as they could be split between multiple townships. It also addresses the distribution problem, as all counties have several AutoMarks. However, there were concerns about requiring an individual who wanted to vote in this manner to travel all the way to the county seat, as well as concerns that this travel could interfere with the person attending and participating in the town meeting.

- Require multiple townships to hold their town meetings and elections at a central location and have an AutoMark there. This would have addressed the problems with the previous solution, but there was concern about townships having to move their town meetings and elections outside of their townships, especially because this might further reduce participation.

- Alter the terms of contracts with the vendor that provides ballot programming services to allow aggregation of the orders at a regional, statewide, or other level, so that the cost of the programming will not be dependent upon the number of townships in a county with March elections. Although this would be beneficial, there is little likelihood that the vendor would agree to this change.

- Find others who could program the AutoMarks and provide ballot layout services with more affordable prices. One suggestion was to have the Office of the Secretary of State play this role. There were concerns about this option because it would result in a great increase in work and would require additional resources that there was no guarantee of acquiring. Another option discussed was to see if any of the counties would be interested in doing this programming. Several program their own AutoMarks for use in state elections. However, programming them for use in other jurisdictions would require changing the contract with the vendor from which the programming software is licensed and there is little incentive for the vendor to agree to this change. Furthermore, the counties to which this was suggested indicated little interest in taking on this role, due to concerns about resources as well as liability for any errors.

- Require the use of another type of accessible technology in polling places during March township elections. The group explored the use of "Vote by Phone" which is used by several other states. None of the group members were impressed with this technology. In addition, it requires access to a phone and a fax machine at the polling place, items that are not available at many town halls, and which may require more electrical capacity than the town hall can provide. Storage of any type of equipment at a small town hall that is not kept heated between meetings could also be a problem.

- Alter the way that town elections are run. One option would be to end the practice of having candidates for township offices file for office and instead to move toward a purely write-in election. This would reduce the programming costs significantly, because only a very few ballot styles would need to be programmed and printed. However, there were concerns that this option would fundamentally change the way that township elections are conducted.

- Require townships to conduct their elections by mail and use an alternate type of accessible technology. Individuals with disabilities are often encouraged to vote by absentee ballot, often because this is perceived as easier for them. However, many individuals with disabilities want to participate in the same way as everyone else, even if that comes with some challenges. From the perspective of voters with disabilities, having everyone vote by mail is different than just having them vote by absentee ballot, because they are not being singled out and treated differently. The State of Oregon, which votes entirely by mail, has developed technology that allows voters to read and fill out their ballots on a computer, using accessible software that either the voter has purchased for themselves or that is available at a public library. Voters then print out their ballots and return them by mail. The drawback is that Oregon has not gotten their software tested by an Independent Testing Authority to ensure that it meets the Election Assistance Commission's Voluntary Voting System Guidelines and does not have plans to do so, which precludes it from being used in Minnesota.

As a result of these discussions, the group ultimately recommended that townships with fewer than 500 registered voters be exempt from the requirement to provide accessible voting equipment in their March township elections, as long as the cost of compliance remains more than $150. This proposal was enacted by the legislature during the special session in September 2007.

Update

Since 2007, there have been only a few changes related to accessible voting equipment in Minnesota:

1. All of the AutoMark devices have come off of their initial warranty, and some are not covered in non-state election years- AutoMarks require frequent maintenance.

2. In 2007, there were two vendors who could provide AutoMark maintenance service. In October 2009, the number was reduced to one when Election Systems & Software purchased Premier Election Systems, Incorporated. In May 2010, the selection was again expanded to two companies, Election Systems & Software and Dominion Voting Systems, as a result of a settlement agreement between them.

Options for Full Compliance and Methods of Reducing Costs of Compliance

Little has changed since the 2009 report, or since this issue was examined in-depth in 2007, and the costs of compliance remain above the $150 threshold provided in Minnesota Statutes § 206.57 subdivision 5a. Given this, the Office of the Secretary of State is not aware of any additional options for full compliance by all townships or of additional methods for reducing the costs of compliance other than those considered, and rejected, by the group of stakeholders in 2007.