

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Board of Elections  
(DLS Control No. 14-099)**

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**Overview and Legal and Fiscal Impact**

This regulation alters the requirements regarding when the State Board of Elections is required to hold a hearing on an administrative complaint.

The regulation presents no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**Board of Elections:**

Definitions; General Provisions: Administrative Complaint Procedure:  
COMAR 33.01.05.06

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**Legal Analysis**

**Background**

The federal Help America Vote Act (HAVA) requires that a complainant be offered a hearing for alleged violations by the State of Title III of HAVA. Title III of HAVA contains requirements for federal elections related to, among other things, voting systems, provisional voting, and voter registration lists.

Maryland law currently authorizes individuals to file complaints alleging violations of provisions of law related to provisional ballots or actions of local boards of elections related to voter registration. However, the law does not specify administrative complaint procedures; rather, the board is authorized to establish those procedures.

**Summary of Regulation**

Currently, COMAR 33.01.05.06 requires the board to conduct a hearing on the record at the request of a complainant. This regulation specifies that the State board must conduct a hearing on the record if (1) the complainant is alleging a violation of any provision of Title III of HAVA or (2) the State Administrator of Elections determines that a hearing is necessary to decide a complaint alleging a violation of any provision of the Election Law Article relating to provisional ballots or an action of a local board regarding voter registration. This change preserves the requirement that a hearing be held regarding alleged violations of Title III of

HAVA, but gives discretion to the State Administrator to determine whether a hearing is needed for complaints alleging certain violations of the Election Law Article.

### **Statutory Authority and Legislative Intent**

The board cites §§ 2-102(b)(4) and 2-202(b) of the Election Law Article as legal authority for the regulations. More specifically, § 2-102(b)(4) requires the board to adopt regulations to implement its powers and duties. Section 2-202(b) contains the powers of the local boards and is not needed as legal authority for the regulation.

The board also cites 42 U.S.C. § 15512(a) as additional legal authority. More specifically, 42 U.S.C. § 15512(a) requires a state that receives certain federal elections funding to establish and maintain a state-based administrative complaint process that meets the requirements of the section. Among those requirements is the requirement that a complainant who alleges a violation of Title III of HAVA be given a hearing at the request of the complainant.

In addition to the State and federal provisions cited, §§ 3-602 and 11-305 of the Election Law Article also need to be cited as authority for the regulation. Section 3-602 provides that a person who feels aggrieved by an action of a local board regarding voter registration may file a complaint under the procedures established by the board. Section 11-305 authorizes any person who asserts that an election official has violated the provisions of the article related to provisional ballots to file an administrative complaint under procedures established by the board.

With the addition of the two provisions mentioned above, the authority is complete. The regulation complies with the legislative intent of the law.

### **Technical Corrections and Special Notes**

The board was contacted regarding the need to add §§ 3-602 and 11-305 of the Election Law Article as statutory authority for the regulation. The board will contact the Division of State Documents to have those provisions added before the regulation is published in the *Maryland Register*.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The State Board of Elections indicates that the regulation does not materially affect State or local government finances. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The State Board of Elections advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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