

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
State Board of Elections**  
(DLS Control No. 15-272)

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## **Overview and Legal and Fiscal Impact**

The regulations update existing canvassing regulations to account for the State's new optical scan voting system. The regulations also make miscellaneous technical corrections and some substantive changes to canvassing procedures.

These regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

## **Regulations of COMAR Affected**

### **State Board of Elections:**

Canvassing: Definitions; General Provisions: COMAR 33.08.01.02, .05, .08

Uniform Definition of a Vote: COMAR 33.08.02.02

Central Count Procedures: COMAR 33.08.04.03, .04, .07, .08

Post Election Verification and Audit: COMAR 33.08.05.04, .05, .06, .07

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## **Legal Analysis**

### **Background**

Chapters 547 and 548 of 2007 required that the State's voting system include a "voter-verifiable paper record" that would provide an independent means to verify vote totals produced by the voting system's electronic vote tabulation machines. Adequate funding to procure a new optical scan voting system to replace the State's existing touchscreen voting system was only recently appropriated. The new voting system will be in place for the 2016 elections. Voting on an optical scan system involves marking a paper ballot by hand or by using a ballot marking device. (A ballot marking device is an electronic touchscreen system that produces a paper ballot and is primarily used to make the voting process accessible to persons with disabilities.) The paper ballot is then scanned by an electronic tabulation machine. This voting process differs significantly from the previous voting system, in which most polling place votes were cast on touchscreen voting machines that did not provide a paper record. Many changes to election processes and procedures are required to implement the new voting system.

## **Summary of Regulations**

The regulations update existing canvassing regulations to account for the State's new optical scan voting system. The regulations also make miscellaneous technical corrections and some substantive changes to canvassing procedures. For example, the regulations provide that a challenge to an action of a local board of elections regarding an absentee ballot or provisional ballot application must be made at the time the ballot or application is presented to the local board for acceptance or rejection. Current regulations provide that a challenge to the canvass may be brought at any time during the canvass.

## **Legal Issues**

These regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The State Board of Elections cites §§ 2-102(b)(4), 2-202(b), 9-403, 11-201, and 11-301 of the Election Law Article as authority for the regulations. The State board also cites 52 U.S.C. § 21081, which, among other things, requires each state to adopt standards for what constitutes a vote for the voting systems in use in the state. However, the provision most relevant to these regulations is § 11-201, which authorizes the State board to adopt regulations "governing the canvass." Section 9-403 provides the State board with additional authority to adopt guidelines for the administration of provisional voting. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Technical Corrections and Special Notes**

The State board notes that the proposed repeal of COMAR 33.08.04.03 & .04 does not mean that there will no longer be a ballot box inspection process. The State board proposes to move the ballot box inspection requirements to COMAR 33.07.10.01 & .02. This is a more appropriate location for these regulations because with the implementation of the new voting system, all ballots cast in polling places will be on paper. These regulations should therefore be under the subtitle relating to Election Day activities rather than the subtitle relating to canvassing.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

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

The State Board of Elections advises that the regulations have no impact on State or local governments. 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 regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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