

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
State Board of Elections
(DLS Control No. 15-277)**

Overview and Legal and Fiscal Impact

These regulations make various technical and administrative revisions to existing regulations governing provisional voting.

The 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:

Provisional Voting: Definitions; General Provisions: COMAR 33.16.01.01

Provisional Voting Documents and Supplies: COMAR 33.16.02.05

Issuance of Provisional Ballot: COMAR 33.16.03.01, .02

Pre-Canvass Procedures: COMAR 33.16.04.01

Canvass of Ballots – Procedures: COMAR 33.16.05.03, .04

Canvass of Ballots – Rejecting Ballots: COMAR 33.16.06.01

Legal Analysis

Background

A provisional ballot is a ballot that is cast when a voter's right to cast the ballot has not been definitively established. Provisional ballots are subject to review during the canvass to determine whether they should be counted. The most common reason that a voter may be required to cast a provisional ballot is because the voter's name does not appear on the voter rolls for the polling place where the voter appears to vote. The right to vote provisionally is guaranteed by federal law. Whether a provisional ballot is counted, however, depends on whether the voter was qualified to cast the ballot under State law.

Summary of Regulations

These regulations make various technical and administrative revisions to existing regulations governing provisional voting. Some of the changes are related to the introduction of same-day registration during early voting in 2016. This new process will allow voters who have moved but not updated their voter registration address to cast a regular ballot instead of a

provisional ballot during early voting, provided that they present proof of residency. In addition, the regulations also specify that the public may not have access to provisional ballot applications until after the completion of the canvass. Finally, the regulations provide that during the review of provisional ballots by the local board of canvassers, if a member abstains from voting, the decision of the local board to reject a provisional ballot shall be considered unanimous if all the other members vote to reject the ballot. State law requires a unanimous vote to reject a provisional ballot.

Legal Issues

The 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), 9-402, 9-403, 9-404, 9-406, and 11-303(c) and (e) of the Election Law Article as statutory authority for the regulations. Two sections are most relevant to these regulations. Section 9-403 requires the State board to “establish guidelines for the administration of provisional ballot voting by the local boards” including “ballot security”, the “canvass process”, and “standards for disallowance of ballots during the canvass”. In addition, § 11-303(c) authorizes the State board to adopt regulations to implement the canvass of provisional ballots. 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.

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.

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