

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Board of Elections
(DLS Control No. 15-358)**

Overview and Legal and Fiscal Impact

The regulations make changes to election practices and procedures that are required to implement the State’s new optical scan voting system.

These regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Board of Elections:

Voting Systems – System Requirements and Procedures: EVS Voting Solution:

COMAR 33.10.01.01, .02, .03, .04, .05, .06, .07, .08, .09, .10

EVS Voting Solution: COMAR 33.10.01.11, .12, .13, .14, .15, .16, .17, .18, .19, .20

EVS Voting Solution: COMAR 33.10.01.21, .22, .23, .24, .25, .26, .27, .28, .29

Legal Analysis

Background

The State is planning to implement a new paper-based voting system in 2016. Chapters 547 and 548 of 2007 required the State Board of Elections to certify a voting system that provides a “voter-verifiable paper record” for use in elections beginning after January 1, 2010. This law was enacted in response to concerns about the security and auditability of the State’s former touchscreen voting system. Implementation of the new system was delayed for several years due to a lack of funding. Funding for a new system was provided, however, beginning in fiscal 2013. The State board certified the new voting system in October 2014 and the Board of Public Works approved the voting system contract in December 2014. The contract provides for a lease of the system for two years followed by two additional optional periods of two years each. The cost of the contract was \$29 million, split equally between the State and the counties in accordance with State law.

The new voting system is an optical scan system, in which voters record their votes on paper ballots that are then scanned and tabulated electronically by machines. On Election Day, most voters will mark their ballots by hand, but voters with disabilities will have the option of using a ballot marking device, which includes a touchscreen interface that a voter uses to make

their selections. The device then prints a paper ballot that is capable of being optically scanned. During early voting, all voters will use ballot marking devices, which make it easier to ensure that voters receive the correct ballot style for their residence address.

Summary of Regulations

The regulations make changes to election practices and procedures that are needed to implement the new optical scan voting system. There are some substantive changes in procedures to reflect the new technology, but many changes are non-substantive, simply updating terminology and making other technical changes. The regulations cover the following, among other matters:

- a description of the new voting system;
- system specifications;
- use of the voting system for municipal elections or certain other elections;
- preelection testing;
- ballot content and arrangement;
- ballot accounting;
- distribution and return of voting equipment and supplies;
- polling place procedures;
- generating election results; and
- system security.

Several provisions of the regulations are noteworthy as representing significant changes from current practice. Early voting centers are required to have at least two precinct tabulators and a number of ballot marking devices determined by the State Administrator of Elections. Each Election Day polling place is required to have at least one precinct tabulator and one ballot marking device and a number of voting booths determined by the State Administrator. The optical scan voting system therefore requires significantly less voting equipment than the former voting system, which required one voting unit for each voter casting a ballot at any one time.

Preelection testing for the new voting system is accomplished by running a “test desk” of ballots containing predetermined markings through the tabulator machines to verify their accuracy. With the old voting system, preelection testing consisted of logic and accuracy testing of the touchscreen voting units. Preelection testing with the new voting system is expected to take less time because there are significantly fewer units to be tested.

Accounting for all paper ballots furnished to a polling place will be an important task of the election judges with the new voting system because all votes will be cast on paper. With the former voting system, only provisional votes were cast on paper in polling places.

The process for correcting errors made by voters when casting their ballots will also be different with the new voting system. Voters who make an error in marking a paper ballot will be issued a replacement ballot. Voters may receive no more than two replacement ballots. With the

former voting system, voters could correct errors on the touchscreen voting units by retouching the screen.

Legal Issues

These regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The State board cites §§ 2-102(b)(4), 2-202(b), and 11-201 of the Election Law Article as statutory authority for the regulations. Under § 2-102(b)(4), the State board is authorized to “adopt regulations to implement its powers and duties”. The State board is authorized to adopt regulations “governing the canvass” under § 11-201. The remaining cited authority is not relevant to these regulations.

In addition to these provisions, the State board should also cite §§ 9-102 and 9-105 and Title 9, Subtitle 2 of the Election Law Article as statutory authority for the regulations.

Section 9-102(d) requires the State board to certify a voting system that provides a “voter-verifiable paper record”. Section 9-102(i) requires the State board to adopt regulations for each voting system it certifies that “specify the procedures necessary to assure that the standards of this title are maintained”. The statute requires the regulations to specifically include:

- a description of the voting system;
- a public information program concerning the new system;
- local officials’ responsibility for managing the system;
- security of the system;
- supplies and equipment required;
- storage, delivery, and return of the supplies and equipment;
- standards for training election officials,
- preelection testing;
- the number of voting stations or voting booths required in each polling place;
- polling place practices and procedures;
- ballot accounting;
- ballot tabulation; and
- postelection review and audit.

The regulations address nearly all of these matters, with the exceptions of a public information campaign and postelection review and audit.

Section 9-105(b) authorizes a local board of elections to lease a voting system to “any governmental or nongovernmental entity” in the county and allows the local board to determine the “terms and conditions” of the lease. The regulations incorporate similar provisions.

Title 9, Subtitle 2 of the Election Law Article relates to ballots. The regulations implement several provisions of this subtitle, including the content and arrangement of ballots (§§ 9-202, 9-205, and 9-206), instructions for ballots with multiple faces (§ 9-212), and ballot accounting (§ 9-216). In addition, § 9-215(c) requires that “the regulations adopted by the State Board for the use of each voting system shall provide standards for the printing of ballots” including timeliness of printing and receipt of ballots and suitability of ballots for use, among other things. The regulations address these matters.

With the addition of §§ 9-102 and 9-105 and Title 9, Subtitle 2 of the Election Law Article, this authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to a suggestion by the Department of Legislative Services, staff for the State board agreed to add §§ 9-102 and 9-105 and Title 9, Subtitle 2 of the Election Law Article as statutory authority for the regulations.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The board advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs. The regulations establish system requirements and procedures for a new voting system that has been procured and that the State and local boards of elections are currently using in preparing for the 2016 elections.

Impact on Budget

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

Agency Estimate of Projected Small Business Impact

The board 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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