

SENATE BILL 163

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EMERGENCY BILL
ENROLLED BILL

(2lr0833)

— *Education, Health, and Environmental Affairs/Ways and Means* —

Introduced by ~~Senator Kagan~~ Senators Kagan, Ellis, Hester, Lam, Pinsky, and Washington

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Election Law – Ballots – Processing and Reporting Procedures**

3 FOR the purpose of altering the procedures for the canvassing of and curing of errors on
4 absentee and provisional ballots; repealing the requirements that a certain
5 statement of election results be by precinct and that the local boards of elections
6 publish copies of the complete election results in a certain manner; requiring that ~~all~~
7 a certain report of election results by the State Board of Elections be reported by
8 precinct, including reports of the early, absentee, and provisional vote; and generally
9 relating to ballot processing and reporting procedures.

10 BY repealing and reenacting, with amendments,
11 Article – Election Law
12 Section 11–101, 11–302, 11–303(d), and 11–402
13 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



(2017 Replacement Volume and 2021 Supplement)

BY adding to

Article – Election Law

Section 11–303.2

Annotated Code of Maryland

(2017 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Election Law

11–101.

(a) In this title the following words have the meanings indicated.

(b) “Board of canvassers” means the local board of elections in a county after the local board organizes itself for the purpose of canvassing the vote [after] FOR an election in that county.

(c) (1) “Canvass” means the entire process of vote tallying, vote tabulation, and vote verification [or audit], culminating in the production and certification of the official election results.

(2) For absentee ballots, the “canvass” includes the opening of any envelope accompanying an absentee ballot and the assembly and review of absentee ballots ~~in~~ preparation for vote tallying~~].~~

(3) For provisional ballots, the “canvass” includes the review of the provisional ballot applications described in § 11–303 of this title and the assembly and review of provisional ballots ~~in~~ preparation for vote tallying~~].~~

(4) For votes cast during early voting, the “canvass” includes the ~~VOTE~~ tabulation ~~of votes cast~~ during early voting.

(5) For votes cast in a special election conducted by mail under Title 9, Subtitle 5 of this article, the “canvass” includes:

(i) the opening of any envelope accompanying a vote-by-mail ballot and the assembly and review of vote-by-mail ballots in preparation for vote tabulation; and

(ii) the tabulation of vote-by-mail ballots.

1 (d) “Counting center” means one or more central locations designated by a local
2 board to conduct the canvass.

3 (e) “Removable data storage device” means a read-only memory device that is
4 programmed to record votes as they are cast on an electronic voting system.

5 (f) ~~[(1)]~~ “Unofficial returns” means [a] vote [tabulation] TOTALS reported on
6 election night after the polls close.

7 ~~[(2)]~~ “Unofficial returns” does not include ~~the absentee ballot count or the~~
8 provisional ballot count.

9 (g) “Vote tabulation” or “vote counting” means the aggregation of the votes cast
10 by individual voters to produce vote totals at any level.

11 (h) “Vote tallying” means the recording of votes cast by individual voters on a
12 certified voting system [whether done by:

13 (1) a mechanical lever voting machine;

14 (2) an electronic voting device; or

15 (3) making marks manually on a tally sheet].

16 11-302.

17 (a) (1) [Following an election, each] **EACH** local board shall meet at its
18 designated counting center to canvass the absentee ballots cast in that election in
19 accordance with the regulations and guidelines established by the State Board.

20 (2) ~~AFTER THE COMMENCEMENT OF THE CANVASS OF ABSENTEE~~
21 ~~BALLOTS IN ACCORDANCE WITH THIS SECTION~~ **PROMPTLY AFTER RECEIPT OF AN**
22 **ABSENTEE BALLOT, A LOCAL BOARD SHALL REVIEW THE BALLOT ENVELOPE OR**
23 **BALLOT/RETURN ENVELOPE FOR THE OMISSION OF THE VOTER’S SIGNATURE ON**
24 **THE OATH.**

25 (b) (1) [A] **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION AND**
26 **EXCEPT AS PROVIDED IN SUBSECTION (A)(2) OF THIS SECTION,** A local board may not
27 [open] **ACCEPT, REJECT, OPEN, OR PROCESS** any ~~envelope of an~~ absentee ballot [prior
28 to] **BEFORE 8 a.m. on the [Wednesday following election day] DAY THAT IS 8 BUSINESS**
29 **DAYS BEFORE THE FIRST DAY OF EARLY VOTING.**

30 (2) A local board may not delay the commencement of the canvass to await
31 the receipt of late-arriving, timely absentee ballots.

1 **(3) A LOCAL BOARD OR AN EMPLOYEE OF A LOCAL BOARD MAY NOT**
 2 ~~**TABULATE RELEASE TABULATE**~~ **ABSENTEE BALLOT RESULTS VOTE TOTALS BEFORE**
 3 **THE POLLS CLOSE ON ELECTION DAY.**

4 (c) (1) An absentee ballot shall be deemed timely received if it is received in
 5 accordance with the regulations and guidelines established by the State Board.

6 (2) An absentee ballot that is received after the deadline specified by the
 7 regulations and guidelines may not be counted.

8 (d) (1) The State Board shall adopt regulations that reflect the policy that the
 9 clarity of the intent of the voter is the overriding consideration in determining the validity
 10 of an absentee ballot or the vote cast in a particular contest.

11 (2) **[A] SUBJECT TO § 11-303.2 OF THIS SUBTITLE,** A local board may
 12 not reject an absentee ballot except by unanimous vote and in accordance with regulations
 13 of the State Board.

14 (3) The local board shall reject an absentee ballot if:

15 (i) the voter failed to sign the oath on the ballot envelope **OR**
 16 **BALLOT/RETURN ENVELOPE AND FAILED TO CORRECT THE OMISSION BEFORE 10**
 17 **A.M. ON THE DAY THAT IS 10 DAYS AFTER ELECTION DAY;**

18 (ii) the local board received more than one ballot from the same
 19 individual for the same election in the same ballot envelope; or

20 (iii) the local board determines that an absentee ballot is
 21 intentionally marked with an identifying mark that is clearly evident and placed on the
 22 ballot for the purpose of identifying the ballot.

23 **(4) (I) THE STATE BOARD SHALL ADOPT REGULATIONS**
 24 **REQUIRING A LOCAL BOARD TO:**

25 **1. ~~WITHIN 3~~ AS SOON AS PRACTICABLE BUT NOT LATER**
 26 **THAN 3 BUSINESS DAYS AFTER THE DATE ON WHICH IT WAS DETERMINED THAT A**
 27 **VOTER FAILED TO SIGN THE OATH ON THE BALLOT ENVELOPE OR BALLOT/RETURN**
 28 **ENVELOPE, NOTIFY THE VOTER OF THE FAILURE; AND**

29 **2. PROVIDE THE VOTER AN OPPORTUNITY TO CORRECT**
 30 **THE OMISSION AND HAVE THE BALLOT COUNTED.**

31 **(II) THE REGULATIONS UNDER THIS PARAGRAPH SHALL ALLOW**
 32 **A VOTER TO:**

1 1. SUPPLY A SIGNATURE TO THE LOCAL BOARD
2 THROUGH A DIGITAL PICTURE MESSAGE SENT BY ~~MOBILE TELEPHONE OR~~ E-MAIL
3 OR, BEGINNING JUNE 1, 2023, MOBILE TELEPHONE, IF THE VOTER FAILED TO SIGN
4 THE OATH ON THE BALLOT ENVELOPE OR BALLOT/RETURN ENVELOPE; AND

5 2. CHOOSE AMONG MULTIPLE METHODS OF
6 COMMUNICATING WITH THE LOCAL BOARD TO CORRECT THE FAILURE TO SIGN THE
7 OATH ON THE BALLOT ENVELOPE OR BALLOT/RETURN ENVELOPE, INCLUDING:

8 A. ~~TEXT MESSAGE;~~

9 ~~B.~~ E-MAIL;

10 ~~B. C.~~ B. AN ACCESSIBLE ONLINE PORTAL;

11 ~~C. D.~~ A MAILED FORM; AND

12 ~~D. E.~~ C. AN IN-PERSON VISIT TO THE LOCAL BOARD
13 OFFICE; AND

14 D. BEGINNING JUNE 1, 2023, TEXT MESSAGE AND AN
15 ACCESSIBLE ONLINE PORTAL.

16 ~~[(4)] (5)~~ If the local board receives more than one legally sufficient ballot,
17 ~~in separate envelopes, from the same individual, the local board shall:~~

18 ~~(i)~~ ~~count only the ballot with the [latest] FIRST properly signed~~
19 ~~oath; and~~

20 ~~(ii)~~ ~~reject any other ballot.~~

21 ~~[(5)] (6)~~ (5) If the intent of the voter is not clearly demonstrated, the local
22 board shall reject only the vote for that office or question.

23 ~~[(6)] (7)~~ (6) If an absentee voter casts a vote for an individual who has ceased
24 to be a candidate, the vote for that candidate may not be counted, but that vote does not
25 invalidate the remainder of the ballot.

26 (e) [At] **BEGINNING AFTER THE POLLS CLOSE ON ELECTION DAY, AT** the end
27 of each day of canvassing, a local board shall prepare and release a report of the unofficial
28 ~~results~~ RETURNS of the absentee ballot vote tabulation.

1 (d) (1) [A] SUBJECT TO § 11-303.2 OF THIS SUBTITLE, A local board may
 2 not reject a provisional ballot except by unanimous vote and in accordance with regulations
 3 of the State Board.

4 (2) The local board shall reject a provisional ballot if:

5 (i) pursuant to paragraph (4) of this subsection, the local board
 6 determines that the individual who cast the provisional ballot is not qualified to vote that
 7 provisional ballot;

8 (ii) the individual failed to sign the oath on the provisional ballot
 9 application; OR

10 (iii) ~~the individual cast more than one ballot for the same election; or~~

11 ~~(iv)~~ the local board determines that a provisional ballot is
 12 intentionally marked with an identifying mark that is clearly evident and placed on the
 13 ballot for the purpose of identifying the ballot.

14 (3) If the intent of the voter with respect to a particular contest is not
 15 clearly demonstrated, the local board shall reject only the vote for that contest.

16 (4) For the purposes of this section, an individual is qualified to vote the
 17 provisional ballot cast if the local board determines that:

18 (i) the individual is registered in the State;

19 (ii) if the provisional ballot was cast because the voter failed to
 20 provide required identification, the individual who cast the provisional ballot has met the
 21 identification requirements established by the State Board; and

22 (iii) if the provisional ballot was cast during a period covered by a
 23 court order or other order extending the time for closing the polls, the order has not been
 24 invalidated by a subsequent court order.

25 **11-303.2.**

26 ~~(A) A LOCAL BOARD SHALL COUNT AN ABSENTEE BALLOT AND REJECT A~~
 27 ~~PROVISIONAL BALLOT CAST BY THE SAME INDIVIDUAL IF THE LOCAL BOARD:~~

28 ~~(1) RECEIVED THE ABSENTEE BALLOT BEFORE THE COMMENCEMENT~~
 29 ~~OF THE CANVASS OF PROVISIONAL BALLOTS; AND~~

30 ~~(2) (1) THE ABSENTEE BALLOT WAS LEGALLY SUFFICIENT WHEN~~
 31 ~~RECEIVED; OR~~

~~(H) 1. THE ABSENTEE BALLOT WAS LEGALLY INSUFFICIENT DUE TO THE FAILURE OF THE VOTER TO SIGN THE OATH ON THE BALLOT ENVELOPE; AND~~

~~2. THE VOTER CORRECTED THE OMISSION UNDER § 11-302 OF THIS SUBTITLE.~~

~~(B) A LOCAL BOARD SHALL COUNT A PROVISIONAL BALLOT AND REJECT AN ABSENTEE BALLOT CAST BY THE SAME INDIVIDUAL IF:~~

~~(1) THE LOCAL BOARD RECEIVED THE ABSENTEE BALLOT AFTER THE COMMENCEMENT OF THE CANVASS OF PROVISIONAL BALLOTS; AND~~

~~(2) THE PROVISIONAL BALLOT IS LEGALLY SUFFICIENT.~~

IF A LOCAL BOARD RECEIVES MORE THAN ONE BALLOT, IN SEPARATE ENVELOPES, FROM THE SAME INDIVIDUAL, THE LOCAL BOARD SHALL:

(1) COUNT THE FIRST BALLOT FROM THE INDIVIDUAL THAT IS DETERMINED TO BE LEGALLY SUFFICIENT; AND

(2) REJECT ANY OTHER BALLOT.

11-402.

(a) Unless otherwise provided by the Maryland Constitution, and [except as provided in] **SUBJECT TO** subsection (b) of this section, each board of canvassers shall prepare a statement of election results ~~by precinct~~ for each candidate or question voted on at the election and declare:

(1) who is elected or nominated for office:

(i) in county government; or

(ii) for any other office voted for only within that county, if the certificate of candidacy for that office was issued by the local board; and

(2) whether or not a question is adopted or approved.

(b) The statement prepared by the board of canvassers under SUBSECTION (A) OF this section [may not] **SHALL** report the **EARLY**, absentee, **AND PROVISIONAL** vote separately ~~by precinct~~.

~~(e) Each local board shall publish a sufficient number of copies of the complete election results, tabulated by precinct, and shall make the copies available to the public at cost.~~

~~(d)~~ **(C)** (1) In addition to the statement of election results specified under subsection (a) of this section, the State Board shall make available in an electronic format a report of election results for each candidate or question voted on at the election:

(i) by precinct, **INCLUDING THE EARLY, ABSENTEE, AND PROVISIONAL VOTE;**

(ii) by State legislative district, including any subdistrict;

(iii) by county legislative district; and

(iv) for each county as a whole.

(2) The State Board may make the report specified under paragraph (1) of this subsection available to the public at cost.

SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding § 11-302(b)(3) of the Election Law Article, as enacted by Section 1 of this Act, only during the 2022 statewide primary election, a local board or an employee of a local board:

(1) may tabulate absentee ballot vote totals before the polls close on election day; and

(2) may not release absentee ballot vote totals before the polls close on election day.

~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.