

SENATE BILL 163

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EMERGENCY BILL
(PRE-FILED)

2lr0833

By: **Senator Kagan**

Requested: October 19, 2021

Introduced and read first time: January 12, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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; requiring that all election results be reported by
5 precinct, including reports of the early, absentee, and provisional vote; and generally
6 relating to ballot processing and reporting procedures.

7 BY repealing and reenacting, with amendments,

8 Article – Election Law

9 Section 11–302, 11–303(d), and 11–402

10 Annotated Code of Maryland

11 (2017 Replacement Volume and 2021 Supplement)

12 BY adding to

13 Article – Election Law

14 Section 11–303.2

15 Annotated Code of Maryland

16 (2017 Replacement Volume and 2021 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article – Election Law**

20 11–302.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) AFTER THE COMMENCEMENT OF THE CANVASS OF ABSENTEE**
2 **BALLOTS IN ACCORDANCE WITH THIS SECTION, A LOCAL BOARD SHALL REVIEW THE**
3 **BALLOT ENVELOPE OR BALLOT/RETURN ENVELOPE FOR THE OMISSION OF THE**
4 **VOTER'S SIGNATURE ON THE OATH.**

5 (b) (1) **[A] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A local**
6 **board may not [open] ACCEPT, REJECT, OPEN, OR PROCESS** any envelope of an absentee
7 **ballot [prior to] BEFORE 8 a.m. on the [Wednesday following election day] DAY THAT IS 8**
8 **DAYS BEFORE THE FIRST DAY OF EARLY VOTING.**

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

11 **(3) A LOCAL BOARD MAY NOT TABULATE ABSENTEE BALLOT RESULTS**
12 **BEFORE ELECTION DAY.**

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

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

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

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

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

24 (i) the voter failed to sign the oath on the ballot envelope **AND**
25 **FAILED TO CORRECT THE OMISSION BEFORE 10 A.M. ON THE DAY THAT IS 10 DAYS**
26 **AFTER ELECTION DAY;**

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

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

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

1 **1. WITHIN 3 DAYS AFTER THE DATE ON WHICH IT WAS**
2 **DETERMINED THAT A VOTER FAILED TO SIGN THE OATH ON THE BALLOT ENVELOPE,**
3 **NOTIFY THE VOTER OF THE FAILURE; AND**

4 **2. PROVIDE THE VOTER AN OPPORTUNITY TO CORRECT**
5 **THE OMISSION AND HAVE THE BALLOT COUNTED.**

6 **(II) THE REGULATIONS UNDER THIS PARAGRAPH SHALL ALLOW**
7 **A VOTER TO:**

8 **1. SUPPLY A SIGNATURE TO THE LOCAL BOARD**
9 **THROUGH A DIGITAL PICTURE MESSAGE SENT BY MOBILE TELEPHONE OR E-MAIL IF**
10 **THE VOTER FAILED TO SIGN THE OATH ON THE BALLOT ENVELOPE OR**
11 **BALLOT/RETURN ENVELOPE; AND**

12 **2. CHOOSE AMONG MULTIPLE METHODS OF**
13 **COMMUNICATING WITH THE LOCAL BOARD TO CORRECT THE FAILURE TO SIGN THE**
14 **OATH ON THE BALLOT ENVELOPE, INCLUDING:**

15 **A. TEXT MESSAGE;**

16 **B. AN ACCESSIBLE ONLINE PORTAL;**

17 **C. A MAILED FORM; AND**

18 **D. AN IN-PERSON VISIT TO THE LOCAL BOARD OFFICE.**

19 **[(4)] (5)** If the local board receives more than one legally sufficient ballot,
20 in separate envelopes, from the same individual, the local board shall:

21 (i) count only the ballot with the **[latest] FIRST** properly signed
22 oath; and

23 (ii) reject any other ballot.

24 **[(5)] (6)** If the intent of the voter is not clearly demonstrated, the local
25 board shall reject only the vote for that office or question.

26 **[(6)] (7)** If an absentee voter casts a vote for an individual who has ceased
27 to be a candidate, the vote for that candidate may not be counted, but that vote does not
28 invalidate the remainder of the ballot.

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

4 11-303.

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

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

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

12 (ii) the individual failed to sign the oath on the provisional ballot
13 application;

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

15 (iv) the local board determines that a provisional ballot is
16 intentionally marked with an identifying mark that is clearly evident and placed on the
17 ballot for the purpose of identifying the ballot.

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

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

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

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

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

29 **11-303.2.**

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

1 **(1) RECEIVED THE ABSENTEE BALLOT BEFORE THE COMMENCEMENT**
2 **OF THE CANVASS OF PROVISIONAL BALLOTS; AND**

3 **(2) (I) THE ABSENTEE BALLOT WAS LEGALLY SUFFICIENT WHEN**
4 **RECEIVED; OR**

5 **(II) 1. THE ABSENTEE BALLOT WAS LEGALLY INSUFFICIENT**
6 **DUE TO THE FAILURE OF THE VOTER TO SIGN THE OATH ON THE BALLOT ENVELOPE;**
7 **AND**

8 **2. THE VOTER CORRECTED THE OMISSION UNDER §**
9 **11-302 OF THIS SUBTITLE.**

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

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

14 **(2) THE PROVISIONAL BALLOT IS LEGALLY SUFFICIENT.**

15 11-402.

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

20 (1) who is elected or nominated for office:

21 (i) in county government; or

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

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

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

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

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

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

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

7 (iii) by county legislative district; and

8 (iv) for each county as a whole.

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

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