

# SENATE BILL 163

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EMERGENCY BILL  
(PRE-FILED)

2lr0833

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By: ~~Senator Kagan~~ **Senators Kagan, Ellis, Hester, Lam, Pinsky, and Washington**

Requested: October 19, 2021

Introduced and read first time: January 12, 2022

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 9, 2022

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## 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  
14 (2017 Replacement Volume and 2021 Supplement)

15 BY adding to  
16 Article – Election Law  
17 Section 11-303.2  
18 Annotated Code of Maryland  
19 (2017 Replacement Volume and 2021 Supplement)

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

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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.



## 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.

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

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

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

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

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

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

5 (1) a mechanical lever voting machine;

6 (2) an electronic voting device; or

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

8 11–302.

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

12 (2) **AFTER THE COMMENCEMENT OF THE CANVASS OF ABSENTEE**  
13 **BALLOTS IN ACCORDANCE WITH THIS SECTION, A LOCAL BOARD SHALL REVIEW THE**  
14 **BALLOT ENVELOPE OR BALLOT/RETURN ENVELOPE FOR THE OMISSION OF THE**  
15 **VOTER’S SIGNATURE ON THE OATH.**

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

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

22 (3) **A LOCAL BOARD OR AN EMPLOYEE OF A LOCAL BOARD MAY NOT**  
23 **~~TABULATE~~ RELEASE ABSENTEE BALLOT ~~RESULTS~~ VOTE TOTALS BEFORE ELECTION**  
24 **DAY.**

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

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

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

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

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

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

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

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

13 (4) (I) THE STATE BOARD SHALL ADOPT REGULATIONS  
 14 REQUIRING A LOCAL BOARD TO:

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

19 2. PROVIDE THE VOTER AN OPPORTUNITY TO CORRECT  
 20 THE OMISSION AND HAVE THE BALLOT COUNTED.

21 (II) THE REGULATIONS UNDER THIS PARAGRAPH SHALL ALLOW  
 22 A VOTER TO:

23 1. SUPPLY A SIGNATURE TO THE LOCAL BOARD  
 24 THROUGH A DIGITAL PICTURE MESSAGE SENT BY MOBILE TELEPHONE OR E-MAIL IF  
 25 THE VOTER FAILED TO SIGN THE OATH ON THE BALLOT ENVELOPE OR  
 26 BALLOT/RETURN ENVELOPE; AND

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

30 A. TEXT MESSAGE;

31 B. E-MAIL;

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

1                    ~~C.~~ **D.** A MAILED FORM; AND

2                    ~~D.~~ **E.** AN IN-PERSON VISIT TO THE LOCAL BOARD OFFICE.

3                    [(4)] (5)        If the local board receives more than one legally sufficient ballot,  
4 in separate envelopes, from the same individual, the local board shall:

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

7                    (ii)       reject any other ballot.

8                    [(5)] (6)        If the intent of the voter is not clearly demonstrated, the local  
9 board shall reject only the vote for that office or question.

10                   [(6)] (7)        If an absentee voter casts a vote for an individual who has ceased  
11 to be a candidate, the vote for that candidate may not be counted, but that vote does not  
12 invalidate the remainder of the ballot.

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

16 11-303.

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

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

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

24                    (ii)       the individual failed to sign the oath on the provisional ballot  
25 application;

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

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

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

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

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

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

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

12 **11-303.2.**

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

15 (1) RECEIVED THE ABSENTEE BALLOT BEFORE THE COMMENCEMENT  
16 OF THE CANVASS OF PROVISIONAL BALLOTS; AND

17 (2) (I) THE ABSENTEE BALLOT WAS LEGALLY SUFFICIENT WHEN  
18 RECEIVED; OR

19 (II) 1. THE ABSENTEE BALLOT WAS LEGALLY INSUFFICIENT  
20 DUE TO THE FAILURE OF THE VOTER TO SIGN THE OATH ON THE BALLOT ENVELOPE;  
21 AND

22 2. THE VOTER CORRECTED THE OMISSION UNDER §  
23 11-302 OF THIS SUBTITLE.

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

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

28 (2) THE PROVISIONAL BALLOT IS LEGALLY SUFFICIENT.

29 11-402.

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

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

6 (i) in county government; or

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

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

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

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

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

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

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

21 (iii) by county legislative district; and

22 (iv) for each county as a whole.

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

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