

SB379

Favorable

Submitted by Alan Banov

I enthusiastically support Senate Bill 379. I am a Member of the Montgomery County Board of Elections, but I submit this statement as an individual citizen who supports free and full elections.

While our Board of Elections has taken no formal position on SB379, in 2022 it did vote to support the provisions in SB163 which would have permitted local boards to begin processing mailed-in ballots 8 days before Early Voting (20 days before election day), with two provisos: (1) that in processing them, staff could begin scanning them into scanners, but not reporting them, and that (2) that the bill define “tabulating” to mean directing the scanners to add up the ballots for publication. New SB379 contains such provisos.

As you know, the current law, Maryland Election Code Section 11-302(b) prohibits local election boards from processing mailed-in ballots until 8 a.m. on the Wednesday following Election Day, while the State Board of Elections Regulations, COMAR Section 33.11.04.03, inconsistently provide that the local “board shall start to canvass the absentee ballots on the Thursday after the election” (emphasis added).

These restrictions unduly restrict local boards from processing mailed ballots at a time when mailed ballots are not only growing enormous popularity, but are also a safe alternative to voting in person for voters with disabilities or fears of being infected. In 2020, in recognition that the covid pandemic would deter many voters from voting in person, the State Board of Elections not only sent out mail ballots to all who requested them, but also authorized local election boards to start COUNTING mailed-in ballots on May 21, 11 days before the June 2 primary. Similarly, the State Board authorized local boards to start canvassing on October 1, 2020, 33 days before the Presidential Election. Last year the General Assembly, recognizing the

severe difficulty faced by local boards in having to process hundreds of thousands of mail-in ballots, passed SB379 to permit local boards to begin this complicated task 8 business days before Early Voting. We know that the governor vetoed the legislation at the last minute. Only because the judicial system intervened did local boards have adequate time to process mail-in ballots before December.

Voting by mail is enormously popular and is growing in popularity. In the 2020 Presidential election, 348,744 of Montgomery's 518,056 non-provisional votes were cast by mail (or by drop box). That's over 67%. Voting by mail continued to be popular in the gubernatorial election last year. In Montgomery County 118,530 mail-in ballots were received in the general; that represented almost 36% of the total votes. Statewide 541,990 mail-in ballots were counted; this was about 28% of the total votes!

You should also recall the many steps involved in processing votes cast by mail. Here is how the Montgomery County Board does it:

When the voter votes by mail, the ballot comes in an envelope either by U.S. mail or in a Board drop box. Either way, once it arrives, the envelope is "beeped" in, using the bar code on it, and receives a RECEIVED date stamp. Later, based on the bar codes, the envelopes are sorted by a machine which sorts them by precinct into trays or boxes. Ideally there are 50 in a batch, but sometimes there are fewer.

In addition, the Board staff needs to check the oath on the outside of the envelope to make sure it has been signed and dated. (If not, assuming the ballot is timely, to "cure" the ballot, they contact the voters to ask them to sign and date their oaths.) When it is appropriate to canvass the envelopes, staff runs them through a slitter machine, which opens the tops of the envelopes. (Sometimes it misses and slits only part of the envelope.)

The envelopes are then given to the bipartisan volunteer canvasser teams, generally in batches of 50. After that, canvassers will open the envelopes, take out the ballots, and flatten them for further processing. The canvassers count the number of ballots in the batch, check to make sure the envelopes are all signed and received timely, and review the ballots. In doing so, they will make sure there are no over-votes (such as votes for 4 candidates in a 3-member legislative district) and that the votes are clear on the paper (*i.e.*, the voter filled in the ovals sufficiently with ink for the ballot scanner to read them). If the voter used a pencil, the canvassers will cover the penciled-in votes with ink, under the observation of Board members or our staff. (The SBE must change the directions on the ballots to instruct voters to use black or blue ink, since penciled in ovals will not scan well and it takes minutes for canvass teams to cover the penciled ovals with ink.) The canvassers will also look to see if the voter signed their name on the ballot (failure to do so disqualifies the entire ballot, under current state law) or if there are other clearly identifying marks (which also disqualify the ballot). However, if the voter changes a vote and adds their initials and the initials do not clearly identify the voter, their ballot is accepted and counted. If the ballot is a regular mail-in ballot, assuming there are no issues of the voter's intent, the ballot is now ready for scanning.

If it is a web-based ballot, the votes must be copied meticulously onto a scannable ballot by pen. I have randomly timed this copying. It can take 2 or more minutes, even for experienced canvassers. (Multiply that by thousands, and you have a very time-consuming task!)

In Montgomery County we started our canvass for the gubernatorial election on October 15 and finished it on November 28, just days before some local elected officials needed to be sworn in. Indeed, we certified the County votes on November 30, and the new County Board of Education was sworn in on December 1! As many as one hundred canvassers worked most days,

and we spent 18 days canvassing mail-in and provisional ballots. We were very thankful that the courts allowed us to start the canvass when we did. If not, we could have been counting into December!

For these reasons, I support the provision in SB379 which would provide that local boards “SHALL BEGIN PROCESSING ABSENTEE BALLOTS ON THE DAY THAT IS 8 BUSINESS DAYS BEFORE THE FIRST DAY OF EARLY VOTING.” [Amendment to Election Code Section 11-302(b)(1)] Since some local board may not want to start their canvass then, the Committee may want to change “shall” to “may.”

I also support the provision of SB379 which would codify the practice of “curing” ballots for voters who timely submitted their mail-in ballots, but forgot to sign the oath (which is usually on the envelope). The Montgomery County Board of Elections already makes efforts to give forgetful voters the opportunity to cure their ballot.

Finally, I like the provision which provides that the first legally sufficient ballot from a voter will count. The vendor employed by the State Board to send voters mail-in ballots was late in sending some out, and some voters were not confident that their local board had received their mail-in ballots. (Others forgot they received mail-in ballots or misplaced them.) Thus, a good number of our provisional ballots were cast by voters who may have already submitted mail-in ballots. It makes sense for the first valid ballot to count.

Thank you for considering my testimony.

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