SPONSOR: Rep. Lavelle & Sen. Blevins
Rep. Hall-Long, Schwartzkopf

HOUSE OF REPRESENTATIVES

144th GENERAL ASSEMBLY

HOUSE BILL NO. 120
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ABSENTEE VOTING IN MUNICIPAL ELECTIONS OTHER THAN THE CITY OF WILMINGTON.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 7556 of Title 15 of the Delaware Code by striking said Section in its entirety and redesignating § § 7557 through 7560 accordingly.

Section 2. Amend Chapter 75 of Title 15 of the Delaware Code by inserting immediately after § 7559 of said Chapter the following:

"Subchapter V. Absentee Voting in Municipal Elections Except for the City of Wilmington.

§ 7570. Purpose of subchapter; scope.

It is the purpose and intent of the General Assembly in enacting this subchapter to provide those qualified electors of municipalities governed under Subchapter IV of this Chapter who are unable to appear at a municipal election to cast their ballots with the ability to cast a ballot to be counted in the total for the municipal election.

§ 7571. Persons eligible to vote by absentee ballot.

Any person qualified under the provisions of a municipal charter to vote by absentee ballot in any municipal election held in that municipality ('elector') may vote by absentee ballot for any reason authorized by that municipality's charter or ordinances and for any of the following reasons:

(1) Because such person is in the public service of the United States or of this State, or is a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or such person's spouse or dependents when residing

with or accompanying the person, or is absent from this State because of illness or injury received while serving in the Armed Forces of the United States; or

(2) Because such person is in the Armed Forces of the United States or the Merchant Marines of the United States, or attached to and serving with the Armed Forces of the United States in the American Red Cross or United Service Organizations; or

(3) Because of the nature of such person's business or occupation, including the business or occupation of providing care to a parent, spouse or that person's child who is living at home and requires constant care due to illness or injury; or

(4) Because such person is sick or physically disabled; or

(5) Because such person is absent from the municipality while on vacation; or

(6) Because such person is unable to vote at a certain time or on a certain day due to the tenets or teachings of that person's religion.

§ 7572. Request for ballot; affidavits for absentee ballots; delivery of absentee ballots.

(a) An elector desiring to vote by absentee ballot in an election for which the elector is a qualified elector may request an absentee ballot from the municipality where the elector is qualified to vote by filing a written affidavit with the municipality no later than 12:00 noon the day before the election.

(b) An affidavit may be filed pursuant to this Section by mailing it, delivering it, or causing it to be delivered to the municipality where the elector is qualified to vote.

(c) Affidavits filed pursuant to this section shall:

(1) Indicate the election or elections for which the elector is requesting an absentee ballot;

(2) Include at least the following information:

(a) The elector's name;

(b) The address within the municipality at which the elector establishes eligibility to vote;

(c) The address to which the elector requests that the absentee ballot be mailed;

(d) The elector's date of birth;

(e) The elector's expected location on election day;

(f) The reason that the elector cannot appear at the regular polling place on the day of the election which reason shall be any of the reasons listed in §7571.

(g) A telephone number, if available, to assist in resolving any challenge;

(h) An e-mail address, if available, to assist in resolving any challenge; and

(i) The elector's signature;

(3) Be subscribed and sworn to by the elector, before an officer authorized by law to administer oaths affirming that under penalty of perjury, the information on the affidavit is correct and true except that the affidavit for a person voting in person at a municipality shall not be notarized but shall be accepted upon the voter presenting a form of ID acceptable by a notary;

(d) Notwithstanding any other provision of this Section to the contrary, the affidavit of any elector desiring to receive an absentee ballot because the person qualifies under any of the reasons set forth in § 7571(1), (2), (4) or who qualifies to vote by absentee ballot as a non-resident of the municipality where such voting is allowed may be self-administered.

(e) The Commissioner of Elections shall create an absentee affidavit template that municipalities shall use in creating their own absentee affidavit by adding additional reasons that a person may vote by absentee ballot. The Commissioner of Elections shall also designate envelopes and create a set of instructions for voters casting their votes by absentee ballot that municipalities may use to comply with the provisions of this subchapter.

(f) The municipality may adopt a printed or electronic affidavit form (or both), containing blanks associated with each item required by this Section to be listed on an affidavit, which may be completed by any elector wishing to receive an absentee ballot pursuant to this Section. An elector may submit a written or electronic request to the municipality for the municipality prepared affidavit form, which the municipality shall forward to the elector upon receipt of a request therefore.

§ 7573. Distribution of ballots, envelopes, and instructions; envelope specifications; pre-paid postage.

(a) Upon receipt of an affidavit from an elector pursuant to § 7572 of this Title, the municipality shall process the same and confirm that the elector qualifies for an absentee ballot pursuant to § 7571.

(b) Not more than 60 nor less than four (4) days prior to an election, and within three (3) days after the absentee ballots, envelopes, and instructions therefore become available, the municipality shall mail, to each elector who requests and qualifies for an absentee ballot pursuant to § 7571 of this Title, the following:

(1) An absentee ballot for the municipal election in which the elector is qualified to vote;

(2) Instructions for completing the absentee ballot and returning it to the municipality, marked 'INSTRUCTIONS FOR COMPLETING AND RETURNING AN ABSENTEE BALLOT'; and

(3) An envelope marked 'BALLOT ENVELOPE', which shall be:

(a) Of the type known as a security mailing envelope, designed to securely protect the contents thereof from tampering, removal, or substitution without detection;

(b) Large enough to carry the ballot; and

(c) Addressed for return to the municipality where the elector is qualified to vote.

(c) Postage for all mailings made pursuant to this subsection shall be pre-paid by the municipality.

(d) Nothing contained in this Section shall prevent the issuance of an absentee ballot to those lawfully entitled thereto when the request is made less than four (4) days prior to the election.

§ 7574. Requirements for ballot envelope; numbering and coding; voter identification label; affidavit of eligibility.

(a) The municipality shall provide to each elector to whom it sends an absentee ballot an envelope which shall be:

(1) A color other than white;

(2) Large enough to hold a completed ballot; and

(3) Designed to protect its contents from tampering, removal or substitution without detection.

(b) Upon each envelope provided pursuant to this Section shall appear:

(1) The words 'BALLOT ENVELOPE';

(2) An alpha-numeric symbol and/or bar-code for use in accounting for the absentee ballot

(3) Identification information for the elector receiving the absentee ballot, including: the name of the municipality where the elector is qualified to vote, the elector's name, the elector's mailing address, the address within the municipality that establishes the elector's eligibility to vote if different from the elector's mailing address, and such other information as the municipality may require; and

(4) The following oath:

'I do solemnly swear (affirm) that to the best of my knowledge I am eligible to vote in this municipal election and that the address that appears on the label on this envelope is the address at which I am qualified to vote in this municipal election. I also do solemnly swear (affirm) under penalty of perjury that I have not received or accepted, or offered to receive or accept, any money or other item of value as compensation, inducement or reward for the giving or withholding of a vote at this municipal election, nor that I am acting under duress or threat of duress or harm.'

(5) The voter's signature.

§ 7575. Voting procedure; execution of affidavit; return of ballot.

The procedure for completing an absentee ballot and returning it to the municipality is as follows:

(1) An elector who receives an absentee ballot pursuant to this Chapter shall complete the ballot by marking it with the elector's selections and shall place the completed ballot in the envelope marked 'BALLOT ENVELOPE'.

(2) The elector shall confirm that the information about that elector on the ballot envelope is correct and then sign the self-administered oath.

(3) The elector shall then seal the ballot envelope.

(4) The elector shall return the sealed ballot envelope to the municipality by:

a. Depositing it in a United States postal mailbox, thereby mailing it to the municipality issuing the ballot; or

b. Delivering it, or causing it to be delivered, to the municipality before the polls close on the day of the election.

§ 7576. Time limit for return of ballot; late ballots.

(a) Each municipality shall endorse the date and time of receipt on the ballot envelope of each absentee ballot received by the municipality.

(b) For an absentee ballot to be counted pursuant to this chapter, an elector voting by absentee ballot shall return the elector marked ballot to the municipality where the elector is qualified to vote before the polls close on the day of the election.

(c) Each municipality shall retain unopened any ballot envelope it receives after the polls close on the day of the election for 60 days after the election, or longer if directed by proper authority or required to do so by federal law.

§ 7577. Procedure on receipt of ballot envelope by municipality.

(a) Upon receipt of a ballot envelope the municipality, or a person authorized by the municipality, shall:

(1) Ascertain the names of each elector as they appear on the face of each ballot envelope;

(2) Ascertain from the information on the ballot envelope the municipal election district with whose votes the ballot within it shall be tallied; and

(3) Place the ballot envelope in a secure location until such time as it is opened and the ballot within it is counted.

(b) No agent or employee of the municipality shall open or attempt to open the ballot envelope, or change or alter or attempt to change or alter the ballot envelope, or any writing, printing or anything whatsoever thereon.

§ 7578. Counting procedure for absentee ballots.

At any time between the opening and the closing of the polls on an election day, absentee election judges selected by a municipality's Board of Elections, shall count absentee ballots at a properly noticed public meeting in the municipality's offices or at the place of the election, at the municipality's discretion, in accordance with the procedures set out below. Anything herein to the contrary notwithstanding, at the discretion of the municipality, the Board of Elections may itself act as the absentee election judges.

(1) The municipality's Board of Elections shall appoint a sufficient number of teams of absentee election judges, each consisting of an odd number of electors, to open and tally the absentee ballots before the close of the polls. The Board of Elections shall be responsible for deciding all challenges and overseeing the process.

(2) The municipality shall provide a list of persons who have returned absentee ballots for review by the public and challengers at the meeting. Challenges must be made prior to the opening of the ballot envelope for the voter being challenged.

(3) If a person has challenged an absentee voter as provided in § 7557 (d)(5) of this Chapter, an absentee election judge shall give that person's ballot envelope to the Board of Elections who shall then hear the evidence and decide the challenge. If the Board of Elections upholds the challenge, the Chairperson shall write the word 'CHALLENGED' on the ballot envelope, the reason for the challenge and then sign his/her name. When the challenge is denied, the ballot envelope shall be returned to the team to be opened and counted. The Board of Elections, after the close of the polls, shall seal the ballot envelopes for all voters who were successfully challenged in a carrier envelope along with a log sheet showing the serial number of the carrier envelope.

(4) Where absentee ballots have been prepared for counting in advance of the opening of the polls in accordance with § 7579 and are in a carrier envelope, the absentee election judges, upon opening a

carrier envelope, shall verify that the serial number on the log sheet is the same as the serial number on the carrier envelope. If the numbers are not the same, the judges shall report the discrepancy to the Board of Elections and then follow the instructions of the Board regarding that carrier envelope. If there are no discrepancies or the discrepancy has been resolved, the team shall remove the ballots from the carrier envelope.

(5) Where the ballots are in the ballot envelopes, a team of absentee election judges shall:

a. Check the ballot envelopes against the list of absentee voters. The teams shall not process any ballot envelopes that the municipality has not listed as returned on the list of absentee voters until the discrepancy has been resolved to the Board of Election's satisfaction.

b. Reject ballot envelopes that the voter did not sign or seal, or for a voter who is known to be dead. An absentee election judge shall print the word 'REJECTED' and the reason for the rejection on the front of the ballot envelope and then at least two of the absentee elections judges shall initial beside the entry.

c. Open each ballot envelope in such a manner as not to deface or destroy the self-administered affidavit thereon or the absentee ballot enclosed and then remove the ballot in such manner as to avoid seeing the markings thereon from the ballot envelope. If there is no ballot in the ballot envelope or if there is more than one ballot in a ballot envelope, an absentee election judge shall write the word "REJECTED" and the reason for the rejection on the front of the ballot envelope and then at least two absentee elections judges shall initial beside the entries. In the case where there was more than one ballot in a ballot envelope, the team shall put the ballots back into the ballot envelope.

d. Once an absentee ballot judge has removed a ballot from a ballot envelope, he/she shall put it face down on the table without examining it. The team shall open ballot envelopes until they have a sufficient number of ballots and ballot envelopes to fill a carrier envelope, create a predetermined batch, or they have opened all of the ballot envelopes for a municipal election district or the election, whichever occurs first. The team shall then shuffle the ballots and then proceed to tally the votes for that group of ballots.

(6) The team of absentee election judges shall then tally the votes for a group of ballots on absentee vote tally sheets with one person reading the votes and two others tallying the votes on separate

absentee vote tally sheets. Once the team has tallied a group of ballots, they shall verify that the results on both absentee vote tally sheet are the same. If the results are not the same, the team shall re-tally the votes until the result is the same. During the tally process, the team shall:

a. Attempt to determine the voter's intent pursuant to 15 *Del. C.* § 4972 in the event that a voter did not mark the ballot as instructed; and

b. Tally votes for write-in candidates on the absentee vote tally sheets if the municipality's charter or code permits write-in votes.

(7) Once a team has tallied the absentee votes for a group of ballots, the members shall sign both copies of the absentee vote tally sheet and then put the voted ballots, rejected ballots, ballot envelopes, and one copy of the absentee vote tally sheet into a carrier envelope. The team shall then complete the log sheet showing the serial number of the carrier envelope, put the log sheet into the carrier envelope and then seal the carrier envelope. The team shall then give the carrier envelope and the second copy of the absentee vote tally sheet to the Board of Elections.

(8) Upon receipt of a carrier envelope and the second copy of the absentee vote tally sheet for that carrier envelope, the Board of Elections shall:

a. Put the carrier envelope in a secure location until such time it is needed for a recount, legal action, or is to be destroyed as provided in this chapter; and

b. Record the results from the absentee vote tally sheet onto a master absentee vote tally sheet for the election. After the Board of Elections has received all of the absentee vote tally sheets and has entered the results for each candidate on the master absentee vote tally sheet, the board shall total the votes for each candidate and then, after the polls have closed, enter the results on the Vote Tabulation for the election. The Board of Elections shall then seal the absentee vote tally sheet(s) in a carrier envelope along with a log sheet showing the serial number of the carrier envelope.

(9) Ballot envelopes received after the ballots have been counted or the ballots for a specific municipal election district have been counted shall be opened and tallied in accordance with the above procedure except that they all shall be sealed in one or more carrier envelopes, as necessary, after the polls have closed.

(10) The teams shall repeat the above process as many times as necessary in order to count the absentee ballots.

(11) A municipality that permits absentee voting shall establish a procedure to insure that persons who voted by absentee ballot shall not be permitted to vote at a polling place on the day of the election.

(12) Anything herein to the contrary notwithstanding, when the number of absentee ballots returned to the municipality is less than five (5), the municipality may develop a counting procedure protective of the secrecy of the ballot.

§ 7579. Preparing absentee ballots to be counted.

Notwithstanding any other provision of this Chapter, the Board of Election of any municipality may open absentee ballot envelopes in a public meeting in order to prepare them to be counted. Such meeting shall take place, upon proper notice, at any time between 8:00 a.m. of the day prior to the election and up to one (1) hour before the polls are scheduled to open. The municipality shall notify each candidate on the ballot that they may have challengers at the meeting during which the Board of Election opens the absentee ballots. At such meeting, the Board of Elections shall act in accordance with the same procedures as set out in § 7578, subsections (1), (2), (3), and (5) (a) through (d) inclusive, with the exception that the absentee ballot judges shall not proceed to tally the votes for any group of ballots but shall then secure such ballots, ballot envelopes, and any rejected ballot envelopes in a carrier envelope along with the log sheet showing the serial number of the log sheet. The absentee ballot judges shall then seal the carrier envelope(s) and deliver it/them to the Board of Elections. The Board of Elections shall then secure the carrier envelope(s) in locked cabinets until opened at a subsequent public meeting to tally the ballots on the day of the election in accordance with § 7578 (4) and (6) through (10).

§ 7580. Carrier envelope specifications; carrier envelopes as ballot boxes.

(a) The municipality shall purchase envelopes to be used as carrier envelopes, which shall be security mailing envelopes, designed to securely protect the contents thereof from tampering, removal, or substitution without detection and shall be large enough to accommodate multiple absentee ballots cast in the election.

(b) Carrier envelopes shall:

(1) For all purposes of this title be considered the official ballot boxes for absentee votes cast during a given election;

(2) Contain voted absentee ballots from a municipality;

(3) Be labeled to reflect the municipality whose absentee ballots are held inside; and

(4) Ensure the security of said ballots in the event they must be moved for the purposes of certifying an election or recounting votes cast in an election.

(c) A sealed carrier envelope may be reopened only when necessary to certify an election or recount votes cast in an election.

(d) In the event the municipality must move absentee ballots for the purposes of certifying an election, or recounting votes cast in an election, it shall select the carrier envelopes for the affected municipal election districts and move them, in a secure fashion, to the location where the carrier envelopes will be opened and the votes inside inspected.

(e) Upon completion of any inspection of votes pursuant to this subsection, absentee ballots shall be returned to the carrier envelopes from which they were removed and the carrier envelopes shall be:

(1) Resealed in a secure manner, or shall be placed in another security envelope, for the purposes of securely protecting the contents thereof from tampering, removal, or substitution without detection; and

(2) Put the carrier envelope in a secure location until such time it is needed for a recount, legal action, or is to be destroyed as provided in this chapter.

§ 7581. Challenges.

(a) The ballot of any elector choosing to vote by absentee ballot may be challenged for the same causes and in the same manner as provided in this title for other voters.

(b) In addition, the vote of an absentee voter may be challenged:

(1) On the ground that the affidavit filed by the voter in compliance with § 7572 of this Title is false; or

(2) On the ground that the self-administered affidavit on the ballot envelope is not signed.

(c) If a challenge is made pursuant to subsection (a) of this Section, an absentee judge shall return the ballot to its ballot envelope, shall mark the ballot envelope as 'CHALLENGED', and shall set the envelope aside in a secure location for consideration at a later time as provided elsewhere in this Title. If a challenge is made pursuant to subsection (b) of this Section, an absentee judge shall mark the ballot envelope as 'CHALLENGED' and shall set it aside in a secure location for consideration at a later time as provided elsewhere in this Title.

(d) All challenges to absentee ballots must be resolved before the counting of votes may be considered complete. Any challenge not resolved by the absentee judges within a reasonable time of the challenge having been made shall be referred to the Board of Elections for the municipality for resolution

§ 7582. Rejected ballots.

(a) No vote shall be accepted or counted if:

(1) The affidavit of the absentee voter that appears on the front of the ballot envelope is found to have been altered or is not signed; or

(2) The absentee voter is not a duly qualified elector entitled to vote in the municipality

(3) The ballot envelope is open; or

(4) It is evident that the ballot envelope has been opened and resealed;

(5) It is evident that the ballot envelope has been tampered with or altered.

(b) If the ballot envelope has not been opened at the time an absentee judge decides that the offered ballot contained therein should not be accepted or voted for any of the reasons set forth in subsection (a) of this Section, it shall not be opened but shall instead be endorsed thereon as, 'REJECTED', giving reason therefore.

(c) If the ballot envelope has been opened at the time an absentee judge decides that the offered ballot contained therein should not be accepted or voted for any of the reasons set forth in

subsection (a) of this Section, the ballot shall be returned to its ballot envelope and the absentee judge shall endorse on the ballot envelope, 'REJECTED', giving reason therefore.

(d) Whenever it is made to appear by due proof to an absentee judge that any absentee voter, who has marked and forwarded the absentee voter's ballot, has died, the ballot envelope containing the ballot shall not be opened but shall be marked 'REJECTED, DEAD', and shall be preserved and disposed of as other rejected ballots.

(e) Whenever a ballot has not been counted but has been rejected pursuant to this Section, the appropriate notation shall be made on the absentee ballot tally and the number of ballots so rejected shall be noted on the certificates of election.

(f) Ballots rejected pursuant to this Section shall be deposited in a carrier envelope for the municipal election district to which they apply.

§ 7583. Validity of absentee voter's ballot for wrong municipal election district.

If an absentee voter marks and returns an absentee ballot for a municipal election district other than the one (1) of which the absentee voter is a duly registered elector, such ballot, because thereof, shall not be adjudged invalid, but, as indicated by the marking of the ballot by the voter, shall be counted as a vote for every candidate appearing thereon who is a candidate for an office to be duly voted for in the municipal election district.

§ 7584. Procedure if requests or ballots sent to wrong official; absentee ballots received by election officers.

If any request for an absentee ballot and accompanying envelopes, or any marked ballot of any such elector are addressed to and returned to any official other than the proper official of the municipality where the elector is qualified to vote, then the official shall immediately transfer such request or returned marked ballot to the proper officer of the municipality where the elector is qualified to vote, to be acted upon by the municipality as provided by this subchapter.

§ 7585. File of absentee voters.

(a) The municipality shall maintain records providing for the prevention of fraud and to make possible the tracing and detection of any attempt to do so. Such records shall include, but shall not be limited to, the following entries:

(1) The name of elector;

(2) The address at which the elector establishes eligibility to vote;

(3) The address where ballot is to be mailed;

(4) The date the affidavit is received by the municipality;

(5) The elector's municipal election district, if applicable;

(6) The ballot envelope identification number;

(7) The date the ballot is mailed or delivered to the elector; and

(8) The date the ballot is returned.

(b) The municipality shall compile from its files a list of names and addresses of all applicants for absentee ballots, and shall, upon request, send current and complete copies thereof without cost to candidates on the ballot in the forthcoming election. Such lists shall be provided no later than two (2) weeks prior to the date of the election.".