

Canvassing Guidance for County Boards

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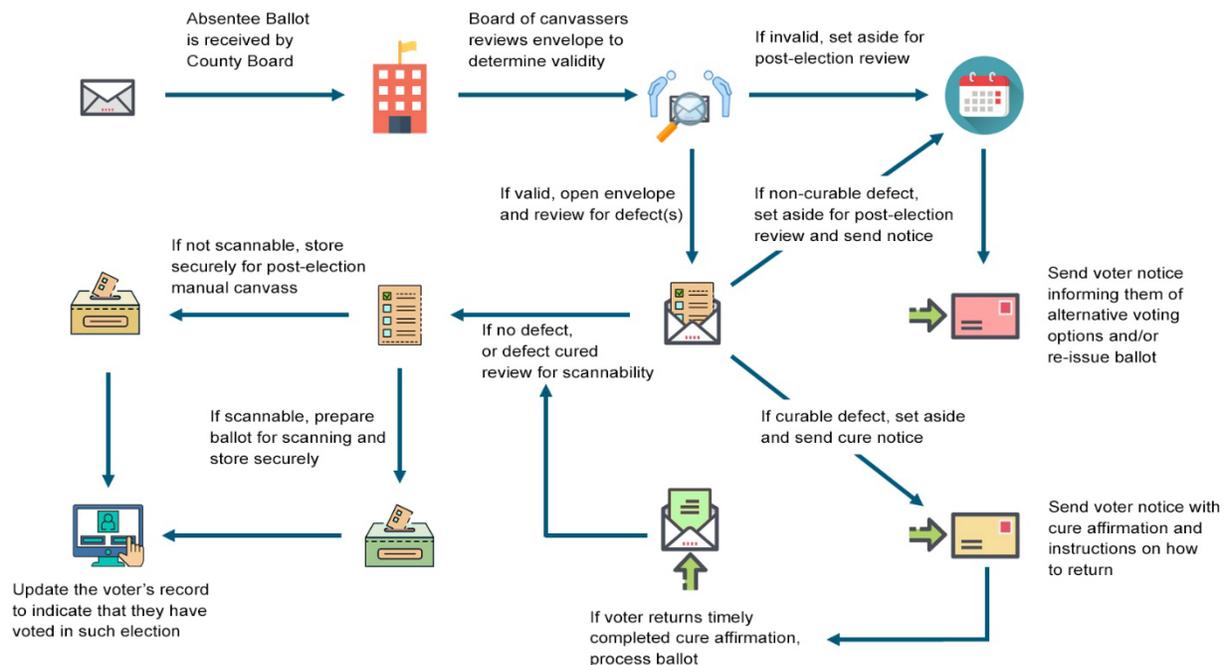
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General Provisions

Overview

The new law changes the way that absentee ballots are handled by County Boards of Elections upon their receipt. Whereas under previous law, absentee ballots were kept sealed and not canvassed until after Election Day, the new law now requires that absentees be reviewed and prepared for scanning prior to Election Day on a rolling basis. With regard to the scanning of absentee ballots itself, it should be made clear that this is not to be done on a rolling basis. Rather, it is only to take place at two times prior to Election Day – on the day before the first day of Early Voting and after the close of polls on the last day of Early Voting. At no point should any absentee ballots be manually canvassed prior to Election Day.

The diagram below provides a very basic overview of the process to be followed for handling ballots received prior to Election Day.



The information set forth below serves to provide a more detailed overview of the processes to be followed as a result of the recent changes in law. As always, should you have any questions about any of the material below, please do not hesitate to contact the State Board of Elections for more information.

Prevention of Double Voting and Premature Release of Results

Similar to procedures previously established for Early Voting, the board of elections shall adopt procedures, consistent with regulations of the state board of elections, to prevent voters from voting more than once and to secure ballots and prevent public release of election results prior to election day. Such procedures shall be consistent with the regulations of the state board of elections and shall be filed

with the state board of elections at least ninety days before they shall be effective. Existing procedures for Early Voting may be expanded to include the early canvassing of absentee ballots to maintain consistency.

At the Poll Site

If a voter's name appears in the poll book or computer generated registration list with a notation indicating that the board of elections has issued the voter an absentee, military or special ballot, such voter shall not be permitted to vote on a voting machine at an early voting site or on election day but may vote by affidavit ballot.

Watchers

Nothing in this law prohibits a representative of a candidate, political party, or independent body entitled to have watchers present at the polls in any election district in the board's jurisdiction from observing the review of ballot envelopes. Such representatives can observe the opening process, but they cannot make any objections that would cause a ballot to be set aside, preventing opening of the absentee envelope. Whether to open the ballot envelope is a determination made solely by the board of canvassers. Pursuant to the new law, a candidate or objector can no longer go to court to challenge the board of canvassers' decision to open and count an absentee ballot. If the board of canvassers splits as to whether a ballot is valid, such ballot shall be prepared to be cast and canvassed. Also, since the ballots are prepared for later scanning without examining the face of the ballot, observers cannot inspect the face of the ballot to make any objections on the ballot itself. In this way, absentee and affidavit ballots are treated in a manner consistent with election day voters' ballots, which are placed into the scanner directly without any prior review. Additional changes made in this legislation relating to challenges are outlined in article 16, where a court cannot alter the canvass schedule unless a candidate demonstrates to the court clear and convincing evidence a change to the schedule is needed.

Processing Ballots

Central Board of Canvassers

- Within 4 days of the receipt of the first absentee ballot (including military, special federal, special ballots, etc), board must designate central board of canvassers.
- Central board of canvassers shall consist of at least one set of poll clerks, and that each such set shall be divided equally between representatives of the two major political parties.
- If the central board of canvassers splits as to whether a ballot is valid, it shall immediately prepare such ballot to be cast and canvassed.
- If canvassing board finds that ministerial error by the board of elections or any of its employees caused a ballot envelope not to be valid on its face, it shall process the ballot for scanning as if it were valid.

How to process a ballot

- Once you have determined that an individual is properly registered and has requested an absentee ballot, the envelope shall be opened, and the ballot(s) shall be taken out, unfolded, stacked face down and placed in a secure ballot box or envelope. The voters record shall then be updated with a notation that the voter has voted in the election. The ballots shall be held until the appropriate time to scan them.

Timeframe for the processing of a ballot

- Prior to Election Day = within 4 days of receipt
- On or after Election Day = within 1 day of receipt

Organization of ballots for processing

All ballots from a single election district shall be assigned to a single set of clerks.

Examination of ballot envelopes

1. Identify ballots to be set aside for post-election review. Board of canvassers to indicate on the ballot envelope, in red ink, the specific reason for invalidity. In the case where there is a split between the canvassers as to whether or not a ballot meets the specific criteria set forth in the list below for invalidity, that ballot should be set aside for post-election review.
 - a. Voter not registered
 - b. No voter name on affirmation envelope (regardless of signature)
 - c. Not timely postmarked or received
 - i. Any absentee ballot delivered in person and received by the board on or before the close of polls on Election Day shall be considered to be timely.
 - ii. Any absentee ballot received by the board via mail, and not bearing a postmark, shall be considered timely if received on or before the day after Election Day.
 - d. Both outer and inner envelopes unsealed
 - i. The board shall notify the voter by mail, sent within three business days of such rejection, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a

- ii. new ballot. *(see State Board's Cure Procedures for more information)*
- 2. Voters who returned multiple ballots
 - a. If board issued a second ballot, any initial ballot should be set aside unopened to provide the voter time to return the second ballot.
 - b. Both timely?
 - i. One with later date of execution accepted and other(s) rejected
 - 1. Unless earlier one already opened. Then set aside more recent one unopened.
 - ii. Can't determine? All ballots rejected
- 3. Compare signature on envelope against voter record (same name & address)
 - a. If the signatures are found to correspond, such central board of canvassers shall certify thereto, indicating as much on the envelope with the initials of inspectors from both parties.
 - b. If signatures do not match, follow guidance for curable defect.
- 4. If voter registered, requested a ballot and signature matches:
 - a. The ballot envelope shall be opened, the ballot(s) withdrawn from the envelope.
 - i. If Primary Election ballot, confirm voter is of proper party. In previewing the ballot, the board shall take all measures necessary to ensure the privacy of voters.
 - 1. If yes, place ballot(s) unfolded, stacked face down and deposited in a secure ballot box or envelope.
 - 2. If not, ballot shall be rejected and shall be returned to the ballot envelope which shall be endorsed "not enrolled".
 - ii. Aside from confirmation of proper enrollment, no further review of the ballot or the votes contained therein, shall be made.
 - iii. If a ballot envelope shall contain more than one ballot for the same offices, all the ballots in such ballot envelope shall be rejected.

- iv. As each ballot envelope is opened, if one or more of the different kinds of ballots to be voted at the election are not found therein, the central board of canvassers, shall make a memorandum showing what ballot or ballots are missing.
 - 1. When the review of such ballots shall have been completed, the central board of canvassers shall ascertain the number of such ballots of each kind which have been deposited in the ballot box by deducting from the number of ballot envelopes opened with the number of missing ballots and shall make a return thereof.
 - 2. The number of voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box, in order to determine the number of all ballots of each kind to be accounted for in the ballot box.
- v. If unscannable (like FWABs and those downloaded and printed by military, special fed and accessible absentee voters), then set aside for post-election manual canvass.
- b. Upon such processing of the ballot, the voter's record shall be updated with a notation that indicates that the voter has already voted in such election. This information should be included in all print and electronic poll books where possible, and voter history shall be recorded for inclusion in the information provided to the State to conduct its post-election statewide voter data match.

Additional Procedures for Scanners/Systems Used for Early Canvassing of Absentee Ballots

- The Operations Unit of the State Board has prepared additional procedures specific to the various systems which can be used for the scanning of absentee ballots prior to Election Day. Similar to procedures provided to boards for the different configurations of precinct scanner systems which can be used during Early Voting, this guidance explains how scanners/systems used for the early canvassing of absentee ballots should be configured, operated and secured. Please contact Election Operations for more information on the particular system that your board expects to use for this purpose.

Ballot Defects and the Cure Process

Steps for determining curable defects

1. At the time a ballot affirmation envelope is reviewed, the board of elections shall determine whether the ballot envelope has one of the following curable defects:

- a. is unsigned
 - b. has a signature that does not correspond to the registration signature
 - c. has no required witness to a mark
 - d. is returned without a ballot affirmation envelope in the return envelope
 - e. has a ballot affirmation envelope that is signed by the person that has provided assistance to the voter but is not signed or marked by the voter
 - f. contains the signature of someone other than the voter and not of the voter
2. Ballot envelopes are not invalid and do not require a cure if:
- a. a ballot envelope is undated or has the wrong date, provided it is postmarked on or prior to election day or is otherwise received timely by the board of elections
 - b. the voter signed or marked the ballot affirmation envelope at a place on the envelope other than the designated signature line
 - c. a voter used a combination of ink (of any color) or pencil to complete the ballot envelope
 - d. papers found in the ballot envelope with the ballot are materials from the board of elections, such as instructions or an application sent by the board of elections
 - e. an extrinsic mark or tear on the ballot envelope appears to be there as a result of the ordinary course of mailing or transmittal
 - f. the ballot envelope is partially unsealed but there is no ability to access the ballot
3. When the board of elections invalidates a ballot affirmation envelope, and the defect is not curable:
- a. the ballot envelope shall be set aside for the post-election review
 - b. the board shall notify the voter by mail, sent within three business days of such rejection, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a new ballot.

4. If a ballot is returned by a voter with both outer and inner envelopes unsealed, the board shall notify the voter by mail, sent within three business days of such rejection, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a new ballot.

Notifying voter of curable defect

1. If ballot envelope found to have curable defect, the board shall indicate the issue that must be cured on the ballot envelope in red ink.
 - a. Within one day of such determination, send to the voter's address indicated in the registration records and, if different, the mailing address indicated on the ballot application, a notice explaining the reason for such rejection and the procedure to cure the rejection. The board shall include a cure affirmation with the notice to the voter. The affirmation shall be in a form prescribed by the state board of elections.
 - i. The board shall also contact the voter by either electronic mail or telephone, if such information is available to the board in the voter's registration information, in order to notify the voter of the deficiency and the opportunity and the process to cure the deficiency.

Voter process for curing defects

1. The voter may cure any identified curable defects by filing a duly signed affirmation with the board no later than seven business days after the board's mailing of such curable rejection notice or the day before the election, whichever is later.
 - a. If the board determines that such affirmation addresses the curable defect, the rejected ballot shall be reinstated and prepared for canvassing.
 - b. If the board of elections is split as to the sufficiency of the cure affirmation, such envelope shall be prepared for canvassing.
 - c. If the ballot envelope contains one or more curable defects that have not been timely cured, the ballot envelope shall be set aside for the post-election review.

Scanning of Ballots Prior to Election Day

General considerations for scanning ballots

Although the processing of returned absentee ballots is a continual process, the scanning of processed ballots is not. The law requires that, prior to Election Day, scanning of ballots that have been examined and prepared occurs at two specific times. The times at and manner in which ballots shall be scanned are described below.

When to scan ballots

1. The Day Before the First Day of Early Voting
 - a. The day before the first day of early voting, the central board of canvassers shall scan all valid ballots previously reviewed and prepared.
2. After the Close of the Polls on the Last Day of Early Voting
 - a. After the close of the polls on the last day of early voting, the central board of canvassers shall scan all valid ballots received and prepared pursuant to this section, and not previously scanned on the day before the first day of early voting

Manner in which to scan ballots

1. The central board of canvassers shall scan all valid ballots previously reviewed and prepared as nearly as practicable in the following manner:
 - a. Such ballots may be separated into sections before being placed in the counting machine and scanned.
 - b. Upon completion of the scanning of such valid ballots, the scanners used for such purpose shall be secured, and no tabulation of the results shall occur until one hour before the close of the polls on election day.
 - c. All portable memory devices containing such scanning data shall be secured in the same manner as portable memory devices used during early voting or on election day.
 - d. Any ballots scanned during this period shall be secured in the same manner as voted ballots cast during early voting or on election day.
 - e. Any valid ballots that cannot be cast on a scanner shall be held inviolate and unexamined and shall be duly secured until after the close of polls on election day when

such ballots shall be examined and manually canvassed.

- f. Boards have the option of using the same or different scanners for the two instances of pre-Election Day scanning.
- g. In casting and canvassing such ballots, the board shall take all measures necessary to ensure the privacy of voters.

Tabulating Unofficial Results for Election Night

The board of elections may begin to obtain tabulated results for all ballots previously scanned no earlier than one hour before the scheduled close of polls on election day.

No unofficial tabulations of election results shall be publicly announced or released in any manner until after the close of polls on election day at which time such tabulations shall be added into the election night vote totals provided to the State Board.

Audit of Scanners Used in Canvassing Early-Processed Absentees

Within three days of any election, the board of elections or a bipartisan committee appointed by such board shall audit the scanners used for early-processed absentees by auditing the ballots from three percent of election districts that were tabulated by such scanners within the jurisdiction of such board by that time. This audit should be conducted in the same manner as the traditional post-election audit of scanners used to centrally count absentee ballots pursuant to §6210.18.

To the extent additional ballots are tabulated through scanners after the initial audit, three percent of election districts shall thereafter be audited as to the additional ballots tabulated. The certification of the canvass shall not await the completion of such additional audit; provided, however, if upon the completion of such additional audit the criteria are met for the results of the audit to replace the canvass then the board of canvassers shall forthwith reconvene and adjust the canvass as required.

New Data Match Timeline

Pursuant to §6211.6, county boards are required to provide information to the State Board with regard to in-person voter history during the early voting period and on election day, absentee requests/returns and affidavit ballots. The State Board then aggregates this information, searches for potential matches between counties and provides information on those matches to the counties involved.

Although the deadlines for each type of information differ, the information overall was due to the State Board not later than 7 days after a primary election and 10 days after a general. During the 2021 election cycle, the Governor issued an Executive Order which reduced that timeframe to 48 hours after the election.

As a result of some of the changes contained in the new law, the State Board will be revising its regulations to call for this information to be provided not later than three days after an election, regardless of election type. The State Board will then strive to provide the processed information back to counties by the following day, in advance of the required timeframe for canvassing affidavit ballots.

Canvass of Affidavit Ballots

Within four business days of the election, the board of elections shall review all affidavit ballots cast in the election.

1. If the central board of canvassers determines that a person was entitled to vote at such election it shall cast and canvass such affidavit ballot in the following manner:
 - (i) If the board of elections receives one or more timely absentee ballots from a voter who also cast an affidavit ballot at a poll site, the last such timely absentee ballot received shall be canvassed and the affidavit ballot shall be set aside unopened.
 - (ii) If a voter was issued an absentee ballot and votes in person via an affidavit ballot and the board does not receive such absentee ballot, the affidavit ballot shall be canvassed if the voter is otherwise qualified to vote in such election.
 - (iii) Affidavit ballots are valid when cast at a polling site permitted by law by qualified voters:
 - i. who moved within the state after registering
 - ii. who are in inactive status
 - iii. whose registration was incorrectly transferred to another address even though they did not move
 - iv. whose registration poll records were missing on the day of such election
 - v. who have not had their identity previously verified
 - vi. whose registration poll records did not show them to be enrolled in the party in which they are enrolled
 - vii. who are incorrectly identified as having already voted.
 - (iv) Affidavit ballots are valid to the extent that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

2. If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter appeared at the correct polling place, regardless of the fact that the voter may have appeared in the incorrect election district and regardless of whether the voter's name was in the registration poll record.
3. If the central board of canvassers finds that a voter submitted a voter registration application through the electronic voter registration transmittal system pursuant to title eight of article five of this chapter and signed the affidavit ballot, the board shall cast and canvass such affidavit ballot if the voter is otherwise qualified to vote in such election.
4. If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter substantially complied with the requirements of this chapter. For purposes of this paragraph, "substantially complied" shall mean the board can determine the voter's eligibility based on the statement of the affiant or records of the board.
5. If the central board of canvassers finds that the statewide voter registration list supplies sufficient information to identify a voter, failure by the voter to include on the affidavit ballot envelope the address where such voter was previously registered shall not be a fatal defect and the board shall cast and canvass such affidavit ballot.
6. If the central board of canvassers finds that the voter registered or pre-registered to vote for the first time pursuant to title nine of article five of this chapter at least twenty-five days before a primary, appeared at such primary election, and indicated on the affidavit ballot envelope the intent to enroll in such party, the affidavit ballot shall be cast and canvassed if the voter is otherwise qualified to vote in such election.
7. When the central board of canvassers determines that an affidavit ballot is invalid due to a missing signature on the affidavit ballot envelope, or because the signature on the affidavit ballot envelope does not correspond to the registration signature, such ballots shall be set aside and subject to the cure procedure as earlier described. The voter may cure any identified curable defects by filing a duly signed affirmation with the board no later than seven business days after the board's mailing of such curable rejection notice. Those affidavit ballots which have been set aside for this reason shall be canvassed upon receipt of a timely completed cure affirmation from the voter.
8. The board of elections shall enter information into its voter registration system to be transmitted to the statewide ballot tracking system to allow a voter who cast a ballot in an affidavit envelope to determine if the vote was counted.

Post-Election Review of Set Aside Ballots

Within four business days of the election, the board of elections shall designate itself or such of its employees to act as a central board of canvassers and meet to review absentee, military and special ballots determined to be invalid upon their initial examination, ballot envelopes that were returned to the board as undeliverable, and ballot envelopes containing one or more curable defects that have not been timely cured.

At least five days prior to the time fixed for such meeting, the board shall send notice by first class mail to each candidate, political party, and independent body entitled to have had watchers present at the polls in any election district in the board's jurisdiction. Such notice shall state the time and place fixed by the board for such post-election review. Alternatively, this date can be included on the candidate notice sent by the board which contains the dates and times of other pre and post election activities they are entitled to participate in and/or observe.

Each such candidate, political party, and independent body shall be entitled to appoint such number of watchers to attend upon each central board of canvassers as the candidate, political party, or independent body was entitled to appoint at the election in any election district for which the central board of canvassers is designated to act.

Upon assembling at the time and place fixed for such meeting, each central board of canvassers shall then review the ballot as described above.

Each such candidate, political party, and independent body shall be entitled to object to the board of elections' determination that an absentee or affidavit ballot is invalid. Such ballots shall not be counted absent an order of the court. In no event may a court order a ballot that has been counted to be uncounted.

Canvassing of Ballots After Election Day

As stated previously, the board of canvassers shall process absentee ballots received on or after Election Day within one day. Such board shall then canvass the following categories of ballots:

- all valid ballots received and prepared, and not previously scanned on the day before the first day of early voting or scanned after the close of the polls on the last day of early voting.
- all absentee ballots that were deemed valid but were unable to be scanned previously (Military, Overseas, Accessible, etc.).
- all absentee ballots that were determined to have a curable defect and for which a timely and complete cure affirmation was returned by the voter on or after election day.
- all affidavit ballots that were determined to have a curable defect and for which a timely and complete cure affirmation was returned by the voter.

For the purposes of the candidate notice sent by the board which contains the dates and times of various pre and post election activities for which they are entitled to participate in and/or observe, the post-election canvassing activities may either be considered a continuation of canvassing which has taken place prior to Election Day, or may be considered a separate event with its own specific date and time. Either way, it should be made clear when any post election canvassing of absentee ballots is to begin.

Certification of Results

Upon completing the casting and canvassing of any remaining valid ballots as hereinabove provided for any election district, the central board of canvassers shall thereupon, as nearly as practicable in the manner provided in this article for absentee, military and special ballots, verify the number of ballots so cast, tally the votes so cast, add such tally to the previous tally of all votes cast in such election district, and record the result.

The record of the vote counted by each scanner and manually for each candidate and for and against each ballot proposal, printed by election district, shall be preserved in the same manner and for the same period as the returns of canvass for the election.

The certification of the board of canvassers must be transmitted to the State Board no later than twenty-five days following a general or special election.

Conducting Post-Election Audits

The process and timeline for conducting the 3% audit of the precinct scanners used during early voting and on Election Day, as described in §6210.18, remains unchanged. For scanners used to centrally count absentee ballots after Election Day, a separate audit of 3% of the election districts scanned on such equipment shall also be conducted.

As was stated previously, the certification of the canvass shall not await the completion of such additional audit; provided, however, if upon the completion of such additional audit the criteria are met for the results of the audit to replace the canvass then the board of canvassers shall forthwith reconvene and adjust the canvass as required.