

CHAPTER 248
FORMERLY
HOUSE BILL NO. 230
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend §7550(h), Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(h) The date and time of municipal elections, the offices up for election, and the terms of those offices shall be as provided in the municipality's charter and/or ordinance, provided that, upon the request or concurrence of the municipality's board of elections, the State Election Commissioner may, unless otherwise provided in the municipality's charter and/or ordinance, cancel any municipal election the conduct of which is rendered impracticable due to severe inclement weather, acts of God or similar emergencies outside of the municipality's control. Upon such cancellation, the municipality shall reschedule the election in accordance with Section 7553 of this chapter and the term of any existing officeholder shall continue until the results of the rescheduled election are certified pursuant to Section 7558.

Section 2. Amend §7552, Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7552. Complaint procedure – pre-election activity.

(a) A citizen of the municipality may submit a written complaint, regarding any aspect of pre-election activity that is contrary to the provisions of subchapters IV and V of this chapter, to the municipality's Board of Elections. The complainant shall state with specificity the action or activity that is contrary to the provisions of subchapters IV and V of this chapter. The municipal Board of Elections shall meet in a special public meeting held as soon as practicable in compliance with the Delaware Freedom of Information Act [Chapter 100 of Title 29], but in no event later than ten days following receipt of the complaint ~~and~~ to determine if the complaint has any merit. Within 24 hours of the special public meeting, the municipal Board of Elections shall issue a written decision on whether the pre-election action or activity was legally incorrect and ordering lawful action necessary to correct such legal error in the pre-election action or activity. The Board of Elections shall immediately make its decision available to the public. If the municipality's Board of Elections fails to meet and issue a written decision within the time frames set forth herein, the citizen may file the complaint directly with the State Election Commissioner. Such complaints shall be heard in accordance with paragraph (b) hereunder.

(b) Decisions and orders of a municipal Board of Elections may be appealed to the State Election Commissioner in writing within 2 business days of the Board's decision and order. The State Election Commissioner shall take testimony at a special public hearing that the Commissioner conducts within 4 business days following receipt of the appeal. The Commissioner shall hold the hearing in accordance with the Administrative Procedures Act [Chapter 101 of Title 29] except as provided in this section. The Commissioner shall give 48 hours prior notice to all parties to such special public hearing in lieu of the notice provisions of § 10122 of Title 29. Notice of the hearing shall be posted as well as published on the Commissioner's website in lieu of the notice provisions of § 10124 of Title 29. ~~The Commissioner shall issue a written decision no later than 2 business days following the hearing.~~ No later than 2 business days following the hearing, the Commissioner shall issue a written decision on whether the pre-election action or activity was legally incorrect and ordering lawful action necessary to correct such legal error in the pre-election action or activity. Decisions of the Commissioner may be appealed in writing to Superior Court no less than 48 hours before the date of the election.

(c) Notwithstanding the foregoing, at the option of the complainant, that complainant may elect to appeal the decision of the municipal Board of Elections in writing to the Superior Court no less than 48 hours before the date of the election.

Section 3. Amend §7553(f), Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(f) Within three business days of posting election notices pursuant to subsections (a) and (b), a A municipality shall provide a copy of each election notice to the Department of Elections. The Department of Elections may reject any election notice that is filed late or that is materially incorrect. If such rejection results in the violation of subsection (a) or (b) of this section, the municipality shall reschedule the election in accordance with this section.

Section 4. Amend Chapter 75, Subchapter IV, Title 15 of the Delaware Code by making insertions as shown by underlining as follows:

§7557A. Complaint procedure – unlawful election activity altering result of election.

(a) A citizen of a municipality may submit a written complaint to the State Election Commissioner regarding any aspect of that municipality’s election activity that is contrary to state or federal law which altered or is reasonably likely to have altered the result of the election. Such complaint shall be filed no later than 20 days after the result of the municipal election shall have been certified by the municipality’s Board of Elections. The complaint shall state with particularity (i) the action or activity that is contrary to state or federal law, and (ii) the specific basis for the complainant’s belief that such activity altered or is reasonably likely to have altered the result of the election.

(b) The State Election Commissioner shall review the complaint and such other materials as he or she deems necessary or appropriate. If, following such review, the Commissioner determines there is reasonable probability that conduct in violation of state or federal law altered or is reasonably likely to have altered the result of the election, then the Commissioner shall file suit in Superior Court on behalf of the complainant to invalidate the result of the election or such other relief as shall be appropriate.

Section 5. Amend §7558, Title 15 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7558. Election results; recounts; contests.

(a) A person certified as being elected shall not take office before the seventh day following certification of the election.

(b) The municipal Board of Elections shall announce the results of an election as soon as possible following the close of the polls.

(c) The municipal Board of Elections shall recount the absentee ballots if the difference between the top 2 candidates is 1/2 of 1% or less than the total votes cast for the office. Where electors vote for more than 1 candidate for an office, the municipal Board of Elections shall recount absentee ballots if the difference between the last candidate elected and the next closest candidate is 1/2 of 1% or less than the total votes cast for the office.

(d) No later than 48 hours following the closing of the polls, the municipal Board of Elections shall convene within to determine the result of the election and certify the name of the winning candidates.

(e) If, following certification of the election and the resolution of any contest, there is a tie vote for a municipal office, then the State Election Commissioner shall order a new election in which only the candidates or positions tied will be on the ballot, unless the laws of the municipality otherwise provide. The municipality shall conduct the special election in accordance with this subchapter; provided, however, that the Department of Elections shall defray the cost of such election up to a cap of \$2,500.

~~(d)~~(f) The municipal Board of Elections, following certification of the election and the resolution of any contest, shall audit the election records in order to reconcile the number of voters who cast ballots as compared to the number of voters who returned absentee ballots and voted on voting machines. The results of this audit shall be reported to the municipality's chief executive and be made available for public review.

~~(e)~~(g) Sections 5941 through 5955 of this title apply to election contests within municipalities. For purposes of this subsection, the words ‘county, district or hundred’ as used in Section 5941 shall mean ‘municipality’ and the words ‘board of canvass’ as used throughout Sections 5941 through 5955 shall mean ‘municipal Board of Elections.’

Approved June 05, 2012