



Form: TH-09

Virginia Regulatory Town Hall

townhall.virginia.gov

Exempt Action Final Regulation Agency Background Document

Agency name	State Board of Elections
Virginia Administrative Code (VAC) citation	1VAC20-60-40
Regulation title	When ballot cast
Action title	
Final agency action date	8/13/2013
Document preparation date	8/13/2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Senate Bill 1027 was passed by the General Assembly and subsequently signed into law by the Governor. It includes a provision that allows an officer of election to cause a machine to accept an optical scan ballot that was rejected due to an undervote or overvote. The action allowed within this legislation was directly counter to a regulation currently enforced within the Commonwealth, 1VAC20-60-40.

The regulation stated that a ballot was cast when a voter preserved a permanent record of their selections by inserting an optical scan ballot into an electronic counter. When an optical scanner rejected a ballot due to an undervote or overvote, no permanent record of that voter's selections was

created and thus the ballot was not “cast.” Therefore, if a voter inserted a ballot into an optical scanner and left, if the machine returned the ballot due to an undervote or overvote it could not be reinserted by an officer of election unless the voter specifically directed such action. However, because the newly-created statute specifically anticipates this occurrence and contains a provision allowing the officer of election to cast the ballot for the voter, the regulation needed an exception to be in full conformance with the Code of Virginia.

In sum, the changes being currently brought before the board provide an exception to the general rule that a ballot may only be cast by a voter or an officer of election who has been specifically directed to do so by the voter.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board Elections at its meeting on August 13, 2013, approved the amendment to the regulation titled When Ballot Cast, 1 VAC 20-60-40.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

None.