



STATE OF DELAWARE  
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GOVERNOR

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TO THE MEMBERS OF THE HOUSE OF REPRESENTATIVES  
OF THE 146<sup>TH</sup> GENERAL ASSEMBLY:

Pursuant to Article III, Section 18 of the Delaware Constitution, I am vetoing House Substitute No. 1 to House Bill No. 33 ("HS 1 to HB 33") by returning it with my objections to the House of Representatives without my signature.

Delaware's municipal election laws need to be improved, and there is no question that the sponsors of this legislation, other members of General Assembly, the Attorney General's Office, the Department of Elections and local government representatives worked diligently and in good faith on this bill. HS 1 to HB 33 does clarify the law in some important respects. However, after careful review, I have concluded that HS 1 to HB 33 has the potential to introduce further uncertainty and dispute into the municipal election process.

HS 1 to HB 33 authorizes the State Elections Commissioner, "in his or her sole discretion," to cancel municipal elections that are "rendered impracticable due to conditions outside of the municipality's control," unless the municipality's charter otherwise provides. Under existing law, the Elections Commissioner has no explicit authority to cancel a municipal election. The bill does not define the circumstances in which an election would be "rendered impracticable," nor does it specify what conditions are "outside of the municipality's control." Nor is it clear what benefit would be gained by granting the Elections Commissioner the authority to cancel local elections instead of leaving those decisions to the municipalities themselves.

HS 1 to HB 33 also gives the Elections Commissioner the authority to hear citizen complaints if the municipal Board of Election "fails to timely meet and issue a written decision." Because the phrase "timely meet" is not defined, it is not clear when the Commissioner would be authorized to step in and hear those complaints. Further, the bill grants the Elections Commissioner the specific authority to invalidate an election if she or he determines that a violation "altered or is reasonably likely to have altered the results of the election." This vests what is normally a judicial function with an executive branch official. Given the significant and challenging issues underlying the decision to invalidate an election, I think the courts are best equipped to make that determination.

Finally, in the event of a tie in a municipal election, HS 1 to HB 33 requires a vacancy to be declared by the State Elections Commissioner, unless a municipal charter dictates otherwise. The bill then requires the municipality's governing body to fill that vacancy until the next election. As a result, when the voters are evenly divided, the incumbent town or city council makes an appointment, likely to be from among the tied candidates, until the next municipal election. I propose to work with municipalities, legislators and other interested parties to find a fairer way to fill a vacancy resulting from a tie vote.

The proper conduct of elections is fundamental to our system of government, and the procedures regarding those elections must be as clear as possible to avoid questioned or questionable results. That is why I have focused on these issues. The sponsors and those who helped craft this bill are to be commended for their earnest and good-faith attempts to address some of the situations faced in recent municipal elections. I pledge to work with those involved over the next few months to craft legislation that addresses these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jd Markell". The signature is written in a cursive, stylized font.

Jack A. Markell  
Governor