A Review of Delaware’s New Municipal Election Law HB 410
History

- Until 2004, the Delaware law was unclear about whether Title 15, Delaware’s election laws, applied to municipal elections
In the case of *Mullen v. Schaeffer*, 2005 WL 3250010, Plaintiff Mullen claimed that Mayor Schaeffer violated the absentee ballot provisions of Title 15 in the Smyrna election.

Smyrna moved to dismiss the case arguing that Title 15 does not apply to municipal elections.
The Superior Court held that because Title 15 does not apply to municipal elections, the absentee ballot provisions did not apply.

The election case against Smyrna was dismissed.
In reaction, the General Assembly passed HB 410, which is a major overhaul of municipal election law.
HB 410

- This law applies to all municipal elections that occur after July 1, 2007
- Municipalities are not permitted to adopt ordinances inconsistent with the law
- Municipalities must enact optional provisions of the law at least 60 days prior to the first election
- Must contract with Department of Elections at least 60 days prior to the election for election services
15 Del. C. § 7551 – Board of Elections

- Board must be set as provided by charter
- If the charter does not provide for a Board of Elections, the Board must be provided by ordinance
- Board must sign oath
- Oversee absentee ballot procedure
- Must post the members of Board of Elections at town hall and on town website
15 Del. C. 7552 – Complaint Procedure (Pre-Election)

- Board to handle complaint promptly, as soon as practical after a complaint is made
- Board must make decision within 24 hours
- Appeal within 2 days of Board’s decision to the Commissioner of Elections
- Appeal goes to Superior Court and appeal must be filed no less than 48 hours before the start of the election
15 Del. C § 7553 - Notices

- Must post notice of election 20 days prior to election
- Posting must include:
  - Date of election
  - Time and location of election
  - Candidates for each office
  - Qualifications to vote
  - Absentee ballot procedure
  - Must post as required by FOIA, on website, and provide a copy of the notice to Department of Elections
Must post for solicitation of candidates 20 days prior to filing deadline

Notice must include
- Office
- Term of office
- Deadline for declaring
- Procedure for declaring
- Qualifications for holding offices

Must post as required by FOIA, on website, and provide to Department of Elections
15 Del. C § 7554 Voter Eligibility (Continued)

- Town charter governs
- Can use state voter registration system as a registered voter list if an agreement is reached with Department of Elections
- Could be difficult for towns that allow non-registered voters or out-of-town voters to vote
15 Del. C. § 7554 – Voter Eligibility

- If towns maintain own voter registration, municipality must “publish” and post a schedule of when eligible citizens can register.
- Because “publish” is not defined, newspaper publication is probably required.
15 Del. C. § 7555 - Candidates

- Candidacy established by town charter or ordinance
- If charter does not address, the municipality should adopt ordinances to establish procedure
- Candidates disqualified if: (1) convicted of felony; (2) not a qualified elector for 1 year; and (3) under 21 years old
15 Del. C. § 7555 – Candidates (continued)

- Candidates must file certificate of intention or statement of organization

- Certificate of intention used for
  - Salary less than $1,000; and
  - Campaign contributions/expenditures less than $2,000

- Statement of organization for all other situations

- If these procedures are not followed, the Department of Elections can declare candidate ineligible
15 Del. C. § 7555 – Candidates (continued)

- 1 candidate for seat, Board of Elections declares winner
- Municipalities must submit to the Department of Elections all names of candidates for each seat 1 day after the filing deadline
Absence Ballot Procedure

- Must swear an affidavit stating why the person cannot vote because:
  - The person is in public service outside the U.S. or is in the military (15 Del. C. §5502(1), (2))
  - Cannot vote due to nature of occupation, sick or disabled, on vacation, or cannot vote for religious reasons
Absentee Ballot Procedure

- Absentee ballots must be mailed by the Department of Elections with a voucher envelope and a mailing envelope.
- Must have an affidavit of eligibility.
- Must contain instructions.
- Must return by mail in most cases.
- Must follow polling place delivery procedures.
Absentee Ballot Procedure

Absentee ballots must be rejected when incorrect (15 Del. C. §5502(1), (2))

Presumably, local Board of Elections has authority to review absentee ballot decisions of election officers
15 Del. C. § 7557 – Election Officers

- Unless otherwise provided by town charter or code:
  - Must have sufficient election officers to run election
  - Must have a chief elections officer (called an inspector)
Role of Election Officers

- Allow only qualified persons in the voting room (15 Del. C. § 7558(b))
- Enforce challenger restrictions (15 Del. C. § 7558(d))
- Hear disputes regarding challenges raised by challengers (15 Del. C. § 7558(d))
- Take oath
Role of Election Officers

- Prepare polling place for elections
- Post required information in polling places
- Verify voting machines
- Open the polls
- Circle names of voters, require voter to sign the voter log, annotate voter log for disqualified voters
- Announce closing of polls 30 minutes in advance
- Closing polls, tabulate unofficial election results, deliver results and absentee ballots to Board of Elections
Voting Machines

- Voting machines must be used
- Cost is $25.00 per machine
- Machines must be certified by 2 members of town Board of Elections prior to machines being delivered to polling places (15 Del. C. §7558 (e)(3))
Election Results

- No person can take oath until the 7th day following the election (15 Del. C. §7559(a))
- Board of Elections must recount absentee ballots if there is a .5 percent difference between the top two candidates
- Board of Elections certifies the elections
- Board of Elections must audit election results after certification of any election or after resolution of any contest to reconcile absentee ballots and those who voted on a voting machine
Challenge Procedures

- 15 Del. C. § 5941 – 5955 applies to local elections
- 5941 – determines who may challenge and why
- 5945 – contest must be filed within 20 days
- 5946 – contest petition must be verified
- 5948 – expedited proceedings
- 5953 – court may examine voting procedures