

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Board of Elections
(DLS Control No. 15-094)**

Overview and Legal and Fiscal Impact

These regulations detail requirements concerning (1) how local boards of elections are to issue vote-by-mail ballots to voters; and (2) how voters are to return vote-by-mail ballots that are used for a special election by mail.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Board of Elections:

Special Elections by Mail: Issuance and Return:
COMAR 33.21.03.01, .02, .03, .04, .05, .06, .07

Legal Analysis

Background

Under Chapters 197 and 198 of 2013, provisions of the Election Law Article authorizing Montgomery County to conduct special elections by mail for vacancies in certain county offices were expanded to allow special elections by mail in all counties throughout the State. Under Chapters 197 and 198, vote-by-mail may be used for a special election to fill a vacancy in the office of representative in the United States Congress or to fill a vacancy for specified local offices if the local special election is not held concurrently with a regularly scheduled primary or general election.

Summary of Regulations

The regulations establish chapter .03 Issuance and Return under the new subtitle .21 Special Elections by Mail. More specifically, the regulations establish requirements concerning vote-by-mail ballots for a special election, including:

- instructions for marking and returning a vote-by-mail ballot;
- the outgoing and return envelopes for a vote-by-mail ballot;

- the issuance by a local board of elections of a vote-by-mail ballot and a replacement vote-by-mail ballot to a voter or the voter's agent;
- the methods a local board must use to transmit a vote-by-mail ballot to a voter, the address that the vote-by-mail ballot will be mailed to, and the timeline for the transmission;
- the return of a vote-by-mail ballot by a voter;
- the security and storage of vote-by-mail ballots returned to a local board pending the beginning of the election canvass; and
- determinations as to whether a vote-by-mail ballot that is returned to a local board was timely received.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The State Board of Elections cites §§ 2-102(b)(4), 9-501, 9-502, 9-504, 9-505, and 9-506 of the Election Law Article and 42 U.S.C. § 1973ff-g as authority for the regulations. Section 2-102(b)(4) grants the State board broad authority to adopt regulations to implement its powers and duties. Section 9-501 authorizes counties throughout the State to conduct local special elections by mail to fill a vacancy in the office of representative in the United States Congress or to fill a vacancy in specified local offices in the respective county. Section 9-502 establishes requirements and parameters for the mailing by a local board of elections of a vote-by-mail ballot and a replacement vote-by-mail ballot to registered voters who are eligible to vote in a special election. Section 9-504 outlines the methods that a voter may use to return a vote-by-mail ballot to a local board. Section 9-505 establishes standards for determining whether a vote-by-mail ballot is considered timely received and may be counted. Section 9-506 grants the State board the authority to adopt regulations as necessary to implement the provisions of law governing the conduct of special elections by mail.

42 U.S.C. § 1973ff-g does not exist, and the State board advises that this citation was a typographical error. The State board intended to cite 42 U.S.C. § 1973ff-1, pertaining to state responsibilities for facilitating voting by absentee ballot for absent uniformed services voters and overseas voters.

The State board should also cite § 2-102 of the Election Law Article generally instead of subsection (b)(4) specifically. Section 2-102 contains several other provisions beyond subsection (b)(4) that are applicable to the regulations, including requirements that the State board (1) manage and supervise elections in the State; (2) supervise the conduct of elections in the State; (3) direct, support, monitor, and evaluate the activities of each local board; (4) maximize the use of technology in election administration; and (5) receive, maintain, and serve as a depository for various elections documents.

With the addition of § 2-102, the authority cited is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

Please note that the State board was contacted regarding the addition of § 2-102 of the Election Law Article to the citation of statutory authority and correcting the reference to 42 U.S.C. § 1973ff-g. The State board advises that it will correct the citation and reference and submit replacement pages to the Division of State Documents.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The State Board of Elections advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs. The regulations implement State law governing the use of voting by mail in special elections that was enacted under Chapter 677 of 2012 (applicable only to Montgomery County Council special elections) and modified and expanded to apply statewide under Chapters 197 and 198 of 2013. The fiscal and policy notes for HB 725 of 2012 and SB 171 and HB 196 of 2013 (enacted as Chapter 677 of 2012 and Chapters 197 and 198 of 2013) indicated that State and local expenditures were expected to decrease in most, if not all, cases as a result of using voting by mail in a special election. These regulations should not have any independent fiscal impact.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The State Board of Elections advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Theodore E. King, Jr. – (410) 946/(301) 970-5350

Fiscal Analysis: Scott D. Kennedy – (410) 946/(301) 970-5510