

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Board of Elections
(DLS Control No. 15-097)**

Overview and Legal and Fiscal Impact

These regulations address the following voting center procedures for voting centers that are used for in-person voting during a special election by mail: (1) the evaluation program required for voting centers; (2) voting hours activities at a voting center; and (3) procedures relating to non-voting hours activities at a voting center in order to enhance ballot security.

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: Voting Center Procedures:
COMAR 33.21.06.01, .02, .03

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 .06 Voting Center Procedures under new subtitle .21 Special Elections by Mail. More specifically, the regulations apply the existing early voting center evaluation program required under COMAR 33.17.06.03 to voting centers used for in-person voting for a special election by mail. Under the evaluation program, the election director must make at least two unannounced visits to an early voting center to assess election judges' compliance with applicable procedures and their general performance.

The regulations also specify procedures for (1) the issuance of a regular or provisional ballot to a voter who chooses to vote in-person during voting hours at a voting center; and (2) the receipt of vote-by-mail ballots that are delivered to a voting center.

Finally, the regulations specify that, except for procedures applicable to post-early voting activities under COMAR 33.17.07.04, the procedures applicable to non-voting hours activities at early voting centers during non-voting hours under COMAR 33.17.07 (primarily relating to storage and security of ballots and voting equipment) also apply to voting centers established for in-person voting for a special election by mail.

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), 9-503, and 9-506 of the Election Law Article 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 9-503 (1) requires that each local board establish at least one voting center for the use of any eligible voter who chooses to cast a ballot in person during a vote-by-mail special election; and (2) establishes requirements concerning access, days and hours of operation, and other matters. 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.

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; and (4) 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. The State board advises that it will correct the citation 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.

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