

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Board of Elections  
(DLS Control No. 20-015)**

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## **Overview and Legal and Fiscal Impact**

The regulations (1) clarify that the provision requiring that a voter be issued a provisional ballot packet during early voting under certain circumstances applies only to an individual using the same day registration process; (2) repeal the Baltimore City primary and general elections from the regularly scheduled elections to which early voting applies; and (3) specify that same day registration is available on election day for special primary and general elections.

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:**

Provisional Voting: Issuance of Provisional Ballot: COMAR 33.16.03.01

Early Voting: Definitions; General Provisions: COMAR 33.17.01.02

Violations: Definitions; General Provisions: COMAR 33.19.01.01

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## **Legal Analysis**

### **Summary of Regulations**

The regulations (1) clarify that the provision requiring that a voter be issued a provisional ballot packet during early voting under certain circumstances applies only to an individual using the same day registration process; (2) repeal the Baltimore City primary and general elections from the regularly scheduled elections to which early voting applies; and (3) specify that same day registration is available on election day for special primary and general elections.

### **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The State Board of Elections cites §§ 1-101(v), 2-102(b)(4), 2-202(b), 3-305(e), 3-306, 9-102(i), 9-402 through 9-404, 9-406, 9-503, 10-301.1, 11-303(c) and (e), and 12-106(a) of the Election Law Article as statutory authority for the regulations. Section 2-102(b)(4) requires the State board to adopt regulations to implement its powers and duties in exercising its authority under the Election Law Article and in order to ensure compliance with State election law and with any requirements of federal law. Section 3-305(e) requires the State board to adopt regulations and procedures in accordance with the requirement of § 3-305 for the administration of voter registration during early voting. Section 3-305(b)(1) requires an applicant, when applying to register to vote during early voting, to provide proof of residency. Section 10-301.1 governs early voting and early voting centers. More specifically, § 10-301.1(a) authorizes a voter to vote at an early voting center in the voter's county of residence on any early voting day during any regularly scheduled primary or general election and § 10-301.1(h) requires the State board to adopt regulations and guidelines in accordance with the requirements of the section for the conduct of early voting. Section 3-306 authorizes an individual to appear at a precinct polling place in the individual's county of residence on election day and apply to register to vote. More specifically, § 3-306(e) requires the State board to adopt regulations and procedures in accordance with the requirements of the section for the administration of voter registration on election day. Section 1-101(v) defines "election day" to include special elections. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Technical Corrections and Special Notes**

The change to COMAR 33.16.03.01A(4)(d) is a result of a suggestion the Department of Legislative Services made when reviewing the repeal of COMAR 33.19.04.02B, which required a provisional ballot to be issued to a voter who was changing the voter's address during early voting, but who could not provide proof of address. The State board repealed that provision as statute no longer required proof of residency to be shown in that situation and the repeal took effect November 18, 2019. However, the department noted at that time that a provisional ballot would still have had to be issued in that same situation under COMAR 33.16.03.01A(4)(d). The State board agreed that a corresponding change needs to be made and is making that change in this proposal.

While the repeal of COMAR 33.17.01.02A(3) appears to be a substantive change that would no longer allow early voting for Baltimore City regularly scheduled primary and general elections, that is not the case. Chapter 548 and 549 of 2012 aligned the dates the Baltimore City regularly scheduled primary and general elections are held with the dates that statewide primary and general elections are held in the year in which the President of the United States is elected. As a result, § A(3) is duplicative of § A(1), which provides that early voting is applicable to presidential regularly scheduled primary and general elections.

COMAR 33.19.01.01C was amended as an emergency regulation effective December 30, 2019. The emergency period ends May 5, 2020. These regulations make the emergency change permanent.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The State board advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

## **Impact on Budget**

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

## **Agency Estimate of Projected Small Business Impact**

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

## **Contact Information**

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