

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulation
Board of Elections
(DLS Control No. 20-028)**

Overview and Legal and Fiscal Impact

The regulation repeals the requirement that the State Board of Elections, before the close of registration for each election, send a pre-election mailing to each pre-qualified voter that either includes the correct polling place for the pre-qualified voter's address or instructs the pre-qualified voter how to find the correct polling place.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Board of Elections:

Same Day Registration and Address Changes: Public Notice: COMAR 33.19.02.01

Legal Analysis

Background

Sections 3-305 and 3-306 of the Election Law Article authorize individuals to register to vote during early voting and on election day. For the primary election that was scheduled for April 28, 2020, the State board contracted with the Maryland Correctional Enterprises (MCE) to print and mail postcards to individuals who have been determined by the State board to be eligible to register to vote. However, MCE has informed the State board that it will be unable to produce the postcards in the required timeframe due to the reduction of its workforce in compliance with the Governor's state of emergency declaration.

Summary of Regulation

The regulation repeals the requirement that the State board, before the close of registration for each election, send a pre-election mailing to each pre-qualified voter that either includes the correct polling place for the pre-qualified voter's address or instructs the pre-qualified voter how to find the correct polling place. The State board's regulations define "pre-qualified voter" as an individual who is not registered to vote, but whom the State board determines to be eligible to register to vote during early voting or election day.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The State board cites §§ 2-102(b)(4), 2-202(b), and 3-305(d) and (e) of the Election Law Article as statutory authority for the regulation. Section 2-102(b)(4) requires the State board to adopt regulations to implement its powers and duties. Section 3-305(e) requires the State board to adopt regulations and procedures in accordance with the requirements of the section for the administration of voter registration during early voting. The remaining cited authority is not relevant to these regulations.

In addition to those provisions, § 3-306(d) and (e) of the Election Law Article should be cited as authority for the regulation. Section 3-306 governs voter registration on election day and § 3-306(d)(1) requires the State board to take appropriate steps to notify potential registrants of the correct precinct polling place for the potential registrants' addresses before each election unless a local board elects to make the notification. Section 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.

With the addition of § 3-306(d) and (e) of the Election Law Article, this authority is correct and complete. The regulation complies with the legislative intent of the law.

Emergency Status

The State board requests emergency status beginning March 26, 2020, and expiring July 31, 2020. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The State board indicates the emergency status is necessary due to the inability of MCE to prepare, in the necessary time frame, the postcards the State board would use to fulfill the requirement of the regulation. Instead, the State board will use other appropriate measures, as required under § 3-306(d) of the Election Law Article, to inform potential registrants of their correct polling places. The measures could include posting information on the websites of the State board and the local boards of elections and using social media messaging.

Technical Corrections and Special Notes

In response to a suggestion by the Department of Legislative Services, staff for the State board agrees to add § 3-306(d) and (e) of the Election Law Article as statutory authority for the regulation.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The State board advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs. State board staff indicated during the board's March 25, 2020 meeting that this regulation would not directly affect whether or not the pre-election mailings would be produced and sent for the April 28 special general election or June 2 regular primary election and, correspondingly, whether or not expenditures associated with the mailings would be incurred. Instead, the regulation was initiated to allow for the possibility that the State board would not be able to procure services to produce the mailings for at least the April 28 election, due to circumstances caused by the COVID-19 outbreak. The recent change in the format of the April 28 special general election (made during the March 25 State board meeting), which eliminates any in-person voting and makes the election entirely by mail, should also make the specific pre-election mailings affected by the regulation (relating to identifying a pre-qualified voter's correct polling place) no longer necessary for that election.

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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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