

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulation
Board of Elections
(DLS Control No. 20-043)**

Overview and Legal and Fiscal Impact

The regulation requires that for the special general election for the 7th Congressional District held on April 28, 2020, and the presidential primary election held on June 2, 2020, a local election director shall stamp an absentee ballot return envelope with the date it was received only if the local board received the return envelope on the day before the election or any day thereafter. The regulation also requires the election director to store all ballot return envelopes in a container labeled with the date the ballots were received.

The regulation presents no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Board of Elections:

Absentee Ballots: Issuance and Return: COMAR 33.11.03.06

Legal Analysis

Background

Existing regulations require a local election director to stamp all absentee ballot return envelopes with the date the ballot was received. Existing statute and regulations require an absentee ballot to be timely in order to be counted. Existing regulations provide that an absentee ballot is timely if the ballot is received before the polls close on election day or the ballot is received on or before 10 a.m. on the second Friday after an election and was mailed on or before election day.

This regulation is part of a package of regulations making changes to election processes and procedures in response to the coronavirus pandemic. In the proclamations of March 17, 2020 and April 10, 2020, the Governor exercised his power under § 8-103 of the Election Law Article to make changes to election processes and procedures during a declared state of emergency, primarily by postponing the April 28, 2020 presidential primary election to June 2, 2020, and requiring that most voters cast ballots by mail in the April 28, 2020 special general election in the 7th Congressional District and the June 2, 2020 presidential primary election.

Summary of Regulation

The regulation requires that for the special general election for the 7th Congressional District held on April 28, 2020 and the presidential primary election held on June 2, 2020, a local election director shall stamp an absentee ballot return envelope with the date it was received only if the local board received the return envelope on the day before the election or any day thereafter. The regulation also requires the election director to store all ballot return envelopes in a container labeled with the date the ballots were received.

Legal Issues

The regulation presents no legal issue of concern.

Statutory Authority and Legislative Intent

The State Board of Elections cites §§ 2-102(b)(4), 2-202(b), 9-303, 9-305, 9-306, 11-301, 11-302, and 11-304 of the Election Law Article as statutory authority for the regulation. Under § 2-102(b)(4), the State board is broadly authorized to adopt regulations to implement its powers and duties. More specifically, under § 9-303 the State board is required to “establish guidelines for the administration of absentee voting by the local boards,” including “storage of returned ballots,” and “determining timeliness of receipt of applications and ballots”. The remaining cited authority is not relevant to this regulation.

The relevant cited authority is correct and complete. The regulation complies with the legislative intent of the law.

Emergency Status

The State board requests emergency status beginning April 23, 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 for the regulation to be in effect for the April 28, 2020 special election in the 7th Congressional District and the June 2, 2020 presidential primary election.

The State board indicates that the requirement to stamp every absentee ballot return envelope with the date it was received is unduly burdensome when the vast majority of ballots are cast by mail. The State board also indicates that requiring all ballot return envelopes to be stored in a container labeled with the date the ballots were received serves two purposes: (1) keeping track of when ballots that are not date-stamped were received; and (2) allowing ballots to rest for 24 hours before being processed to decrease the possibility of the coronavirus being transferred on the ballot return envelopes.

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.

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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