

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulation
Board of Elections
(DLS Control No. 20-089)**

Overview and Legal and Fiscal Impact

This regulation requires the State Administrator of Elections to send a specified pre-election mailing to each pre-qualified voter after the close of the voter registration period but before election day instead of requiring the mailing before the close of the registration period.

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:

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

Legal Analysis

Background

Chapter 755 of 2019 established procedures allowing for an individual to register to vote and subsequently vote on election day at a precinct polling place in the individual's county of residence. Under Chapter 755, the State Board of Elections must take specified measures to facilitate voter registration and subsequent voting on election day.

On March 17, 2020, the Governor issued a proclamation that required the State board to conduct a mail-in election for the 2020 primary because of the coronavirus pandemic. Due to the many safety protocols instituted to mitigate the public health risks from the pandemic, the contractor hired to perform the pre-election mailing was unable to fulfill the terms of the contract. The State board requested approval of an emergency action repealing the regulation requiring the State Administrator to send a pre-election mailing to each pre-qualified voter for the period of March 26, 2020 through July 31, 2020. On August 1, 2020, the emergency regulation expired and the original requirement was restored.

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.

Summary of Regulation

This regulation alters the time period during which the State Administrator of Elections must 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 requires the State Administrator to send a pre-election mailing to each pre-qualified voter after the close of the voter registration period but before election day instead of requiring the mailing before the close of the voter registration period.

Legal Issues

The regulation presents no legal issue 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 this regulation. Section 2-102(b)(4) requires the State board to adopt regulations to implement its powers and duties regarding the administration of elections in the State. 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 this regulation.

Although not cited by the State board, § 3-306(d) and (e) provides additional authority for this regulation. Section 3-306(d) requires the State board to take appropriate measures to notify potential registrants of the correct precinct polling place for the potential registrants' residence 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), 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 July 24, 2020 and expiring December 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 to facilitate the printing and mailing of the required pre-election mailing within the necessary timeframes for the 2020 general election.

Technical Corrections and Special Notes

In response to a suggestion from the Department of Legislative Services, staff for the State board has agreed to add § 3-306(d) and (e) of the Election Law Article to the citation of 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.

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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