

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulation
Board of Elections
(DLS Control No. 20-099)**

Overview and Legal and Fiscal Impact

The regulation requires the State Administrator of Elections to allow a local board of elections to establish or change an early voting center no later than October 20, 2020 under certain circumstances and establish a deadline by which the State Board of Elections is required to vote on the establishment or change.

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:

Early Voting: Early Voting Centers: COMAR 33.17.02.02

Legal Analysis

Background

In 2008, the voters approved an amendment to the Maryland Constitution to give authority to the General Assembly to allow qualified voters to vote during the two weeks immediately preceding an election and on no more than 10 days. Chapter 445 of 2009 enacted, among other things, § 10-301.1 of the Election Law Article which governs early voting and early voting centers. Section 10-301.1 requires each county to have a certain number of early voting centers based on the number of registered voters in the county and requires that the State board designate each early voting center no later than six months before the primary election. As amended by Chapter 539 of 2019, the section allows a county to establish one additional early voting center if approved by the State board and the governing body of the county.

On March 5, 2020, the Governor issued a proclamation declaring a state of emergency and a catastrophic health emergency due to the spread of COVID-19 within the State. The declaration has been renewed several times, most recently on August 10, 2020. On March 12, 2020, the Governor issued an executive order that, among other things, allowed heads of State units to suspend certain legally required timelines and deadlines under certain circumstances. That executive order was restated and amended on June 19, 2020.

Using the June 19, 2020, executive order, the State board altered the early voting days and times for the November 3 general election. Early voting will be held from October 26, 2020, through November 2, 2020, from 7 a.m. until 8 p.m.

Summary of Regulation

The regulation requires the State Administrator to allow a local board of elections to establish or change an early voting center no later than October 20, 2020, if all other regulatory requirements can be met and (1) a previously approved center is no longer available; (2) the local board determines that there is a more suitable location; or (3) the local board approves an additional early voting center authorized under § 10–301.1(b)(7) of the Election Law Article. The State board is required to vote on the establishment or change no later than October 25, 2020.

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 10-301.1 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 10-301.1(b)(7) authorizes a county to establish one additional early voting center if the State board, in collaboration with the local board, and the governing body of the county agree to the establishment. Section 10-301.1(c) requires the State board to designate each early voting center no later than six months before the primary election. Section 10-301.1(h) requires the State board to adopt regulations and guidelines in accordance with the requirements of this section for the conduct of early voting. The remaining cited authority is not relevant to these regulation.

In addition to the authority cited, the executive order issued by the Governor on June 19, 2020, authorizes the head of each unit of State government to suspend the effect of any legal deadline on a finding that the suspension will not affect public health, welfare, or safety and after notification to the Governor. The executive order also requires that the unit head provide reasonable public notice of a suspension. The State board voted to use this authority during its August 28, 2020, meeting for the purpose of promulgating this regulation. Notice to the Governor was provided through an email letter that was sent on September 2, 2020, and notice to the public was posted on the State board's website on that date as well.

With the addition of the Governor's executive order, 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 September 14, 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 allow local boards of elections to establish additional early voting centers or change previously approved early voting centers. The State board submitted the regulation as an emergency regulation because of the short time before early voting begins for the November 3, 2020, general election.

Technical Corrections and Special Notes

In response to a suggestion from the Department of Legislative Services, staff for the State board agrees to add the June 19, 2020, executive order as statutory authority for the regulation.

Additionally, while the State board could approve an additional or change to an early voting center as late as the day before early voting begins, staff for the State board noted in asking the State board to approve the regulation that the deadlines were selected merely as a precaution in case an emergency situation occurred that would necessitate a change at that late date. Board staff do not envision having changes approved that close to the general election except under extraordinary circumstances.

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. If local boards of elections establish additional early voting centers pursuant to this regulation, there are additional costs associated with those early voting centers, but the source of that fiscal impact is the board's action at its August 28 meeting, pursuant to Executive Order No. 20-06-19-01, to suspend § 10-301.1(c) of the Election Law Article of the Maryland Code (which requires early voting centers to be designated no later than six months before the primary election) for the upcoming election. These emergency regulations implement that suspension and 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 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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