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February 16, 2021

TO: The Honorable Anne R. Kaiser
Chair, Ways and Means Committee

FROM: The Office of the Attorney General

RE: HB 760 – Election Law - Time for Processing Absentee Ballots – **Letter of Support**

The Office of Attorney General (the “OAG”) urges this Committee to favorably report HB 760.

House Bill 760 allows local boards of election to take sensible steps before an election to prepare returned absentee ballots for tabulation while maintaining the requirement that the ballots be tabulated no earlier than 8 pm on Election Day (*i.e.*, the closing of polls). Under current law, local boards are not permitted to open absentee ballots before 8 am on the Wednesday after Election Day.¹ House Bill 760 would allow local boards to remove absentee ballots from return envelopes, review the ballots for compliance with any legal requirements (such as a signed oath on the return envelope, visible only after the envelope has been opened), and duplicate any ballots that require duplication onto the machine-readable stock. House Bill 760 would, at the same time, prohibit local boards from tabulating the ballots before 8 pm election day, or a later time if prescribed by regulation by the State Board of Elections.

If current law were to remain in effect, it will be difficult for local boards of election to process and count ballots in the short period of time after Election Day and before certification is required when absentee ballot usage is expected to increase in future elections. Under current law, the election results must be certified by local boards of canvassers no later than ten days

¹ See Md. Code Ann., Elec. Law § 11-302(b)(1). In 2020, under emergency authority delegated by the Governor’s directives to principally conduct the primary election by absentee ballots and to mail absentee ballots to all eligible voters, the State Board of Elections suspended the effect of § 11-302(b)(2). The State Board of Elections suspended the effect so local boards could begin the canvass of returned absentee ballots early. We assume (and, indeed, hope) that the State of Emergency will have been lifted by the 2022 statewide elections.

after the election.² Delays in certification due to increases in absentee voting could undermine public confidence in the integrity of the elections. At the same time, there is little risk that processing (but not counting) ballots early could lead to abuse of the electoral process or result in the unauthorized leaking of early results. For example, the Office of the Attorney General is unaware of any publication or public dissemination of tabulated absentee ballot results before the closing of polls in either the primary or general elections in 2020, although early ballot processing *and* tabulation were authorized under the Governor's emergency orders.

For the foregoing reasons, the Office of the Attorney General urges a favorable report on HB 760.

cc: Members of the Ways and Means Committee

² See Md. Code Ann., Elec. Law § 11-308(a)-(b).