



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Elections Division

MEMORANDUM

To: William Francis Galvin, Secretary of the Commonwealth
John Rosenberry, Legislative Director

From: Michelle K. Tassinari, Director/Legal Counsel

Date: March 10, 2020

Re: An Act Relative to Election Emergencies

We are requesting that the attached legislation, An Act Relative to Election Emergencies, be filed as quickly as possible. This legislation would amend the current law to grant the secretary of the commonwealth authority to make certain decisions regarding the conduct of elections in times of emergency, such as a public safety event, or when conducting an election would be dangerous, such as extreme weather conditions. Similar legislation has been filed previously, including for this session as House Bill 714, however, this version has been expanded to incorporate the concerns surrounding the COVID-19 virus.

Under the current law, there are no provisions to accommodate the unique needs which arise when administering an election in an emergency situation. For example, as a result of the devastation of Hurricane Sandy, military and civilian personnel from Massachusetts were called to assist in the efforts in neighboring states several days before the November 6, 2012 state election. While there are provisions in federal law permitting active duty uniformed military personnel to receive absentee ballots electronically, there are no such provisions in federal or state law allowing civilian personnel, even when providing an emergency response, to receive absentee ballots electronically. 42 U.S.C. § 1973ff-1. Consequently, non-military responders who were absent from Massachusetts during the election because they were assisting with the Hurricane Sandy relief efforts were unable to receive a paper absentee ballot in time to cast their votes. The proposed legislation would grant the secretary of the commonwealth the authority to make accommodations, such as allow electronic absentee ballots to be sent to these civilian responders, to ensure that all qualified Massachusetts citizens are able to exercise their right to vote. Other states, such as New York

and New Jersey, have similar provisions which enabled them to ensure that such voters were able to participate in the election.

Additionally, in the past, court action has been necessary to either re-schedule or halt a municipal election when the weather made it either impossible or dangerous to conduct. Since some municipal elections occur in February and March, the weather can be an issue. Blizzard conditions and icing can make it unsafe for both voters and poll workers and therefore impede the ability to conduct the election. As noted above, since there is no state law process to postpone or cancel an election, court action has been necessary, either by the municipality proactively seeking a court order to postpone the election or by this Office seeking a court action setting for the procedures for re-scheduling an election after a municipality has cancelled it.

The immediate concerns are the COVID-19 virus and implications on administration of elections, especially local municipal elections and town meetings. Within the next two months, there are over 150 municipal elections scheduled, which could be impacted by COVID-19. The possible impacts include low voter turnout, insufficient poll workers and unavailability of polling places. These impacts could be a result of an actual outbreak in a particular area or a perceived threat of an outbreak.

These abovementioned situations, as well as others, must be addressed in time of emergency. The proposed legislation authorizes the secretary of the commonwealth to execute an emergency contingency plan, if necessary, once the governor has called a state of emergency, and to work with a municipality when weather affects the safety of the voting process.

In order to ensure the safe, efficient, and secure administration of elections, even in times of emergency, it is necessary to implement this proposed legislation.

An Act Relative to Election Emergencies

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 54 of the General Laws, as appearing in the 2016 official edition, is amended by adding the following language for newly created Section 62A:

62A. Postponement and extension of qualifying periods for elections for public office during state of emergency; Procedures for the Orderly Administration of Elections; Limitations.

Section 62A. (a) The state secretary shall have the authority to regulate elections in emergency situations, including, but not limited to, when the governor declares a state of emergency or a federal agency declares a state of emergency or disaster exists. Such authorization shall include, but not be limited to:

- (1) Postponing or extending the qualifying periods provided in this chapter or chapter 53 for the qualification of candidates seeking municipal, county, or state-wide office; and
- (2) Postponing the date of any primary, special primary, preliminary, election, or special election in the affected area, notwithstanding the provisions of any other law, by-law, ordinance or municipal charter to the contrary; and
- (3) Providing for procedures for the orderly conduct of elections; and
- (4) In the case of municipal elections, postponing or suspending such local election, including a preliminary, after consultation with local election officials and chief executive of the municipality or representative thereto.

Any such postponement or extension shall not exceed 45 days unless the secretary determines that the particular circumstances at issue require an additional postponement or extension of up to another 45 days.

(b) The secretary of the commonwealth shall adopt, by rule or regulation, an elections emergency contingency plan, which shall contain goals and policies that give specific direction to state and local elections officials when an election has been suspended or delayed due to an emergency or alternate voting procedures are necessary. The contingency plan shall address, but not be limited to, the following concerns:

- (1) Providing procedures for state and local elections officials to follow when an election has been suspended or delayed to ensure notice of the suspension or delay to the proper authorities, the electorate, the media, poll workers, and the custodians of polling places.
- (2) Providing procedures for state and local elections officials to follow when election deadlines are postponed or extended to ensure notice of the

- suspension or delay to the proper authorities, the electorate, candidates, and the media.
- (3) Providing procedures for the release and certification of election returns and documents relating to the election to the secretary's office for elections suspended or delayed and subsequently rescheduled under the provisions this section.
 - (4) Providing alternate voting procedures for local election officials and voters to follow when election emergencies exist that may affect the ability of voters to vote at a polling place and to ensure notice of any such alternate procedures to the proper authorities, the electorate, candidates, and the media.
- (c) Any actions taken by the secretary of the commonwealth under this section shall be reviewable in accordance with the provisions of section 59 of chapter 56 of the general laws.