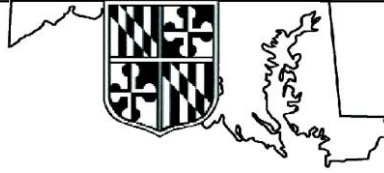


STATE BOARD OF ELECTIONS

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April 3, 2020

**Via Electronic Mail Only**

The Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland  
State House  
Annapolis MD 21401

Dear Governor Hogan:

Please find attached the State Board of Elections Comprehensive Plan for the June 2, 2020 Primary Election. In drafting this plan, the State Board of Elections balanced the safety of citizen voters, election volunteers, and election staff with the need to engage in one of the most fundamental aspects of our republic.

There are matters which are not shown in the Comprehensive Plan, but which we will address in our detailed planning, such as methods to ameliorate the lack of protective equipment for our staff and volunteers. We will also be considering how to address the possibility of fraud unique to this election.

Similarly, the plan mentions some matters in passing, such as not allowing the use of local board premises for voting. This was a considered decision in order to minimize the possibility of contamination of the key office in each county for conducting an election.

We are also acutely aware, as we know you are, that we have but a short time frame in which to act. As of the day of the meeting, we had 61 days to prepare for an election, the likes of which none of our professional staff has previously experienced. We are, of course, already making such preparations as we can. We are fortunate to have the highly capable staff that we do. Nevertheless, I ask that you provide us your decision as soon as possible. Every day is precious to us.

Very truly yours,

*Michael R. Cogan*

Michael R. Cogan  
Chairman  
State Board of Elections

## 1. Executive Summary

The highest priority of the State Board of Elections (SBE) is to deliver a safe and secure election for voters and election judges while also ensuring the fundamental right to vote. During this time, the balance between these two objectives is a delicate one, and this plan strives to accomplish both objectives.

SBE proposes to conduct the presidential primary election now scheduled for June 2, 2020 by mail with election day ballot drop off locations. After careful consideration of information provided by the Maryland Department of Health (MDH) and the staff of the local boards of elections, SBE determined that providing in-person voting for this election introduces more risk to voters and election judges than SBE is willing to accept.

## 2. Background

On March 17, 2020, Governor Hogan issued a proclamation moving the State's presidential primary election from April 28, 2020 to June 2, 2020 and requiring that SBE, in consultation with MDH, submit no later than April 3, 2020 a comprehensive plan to conduct this election<sup>1</sup>. Section 1B(ii) of the proclamation requires that the comprehensive plan "minimize injury and damage from the COVID-19 catastrophic health emergency, and save lives, while, to the fullest extent possible given the interference in the electoral process from the state of emergency and catastrophic health emergency<sup>2</sup>, inspire public confidence and trust in the conduct of the Primary Election by reasonably assuring under the circumstances that:

1. All persons served by the election system are treated fairly and equitably;
2. All qualified persons may register to vote and that those who are not qualified do not vote;
3. Those who administer elections are well-trained, that they serve both those who vote and those who seek votes, and that they put the public interest ahead of partisan interests;
4. Full information is provided to the public, including disclosure of campaign receipts and expenditures;
5. Citizen convenience is emphasized as is feasible and does not endanger the public health, welfare, or safety;

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<sup>1</sup> See §1B(i) of the "Renewal of Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID" available at <https://governor.maryland.gov/wp-content/uploads/2019/10/Special-Election.pdf>. The proclamation also changed how the special general election for the 7th Congressional District is to be conducted, but this plan does not cover the changes to the special general election for the 7th Congressional District.

<sup>2</sup> See Public Safety Article, §14-3A-01 *et seq.* and Health General Article, §18-901 *et seq.*, *Annotated Code of Maryland*.

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6. Security and integrity are maintained in the casting of ballots, canvass of votes, and reporting of election results;
7. The prevention of fraud and corruption is diligently pursued, and
8. Any offenses that occur are prosecuted.”

To prepare this plan, SBE consulted with MDH on infectious disease control and public health issues related to conducting an election under the current circumstances and obtained feedback and information from the local boards of elections on the various options to conduct the upcoming presidential primary election. At its March 25, 2020 meeting, the members of the State Board of Elections (Board) requested and received from an MDH representative relevant health-related information on current and projected COVID-19 information and unanimously recommended sending ballots to all eligible voters and providing election day ballot drop off locations in lieu of in-person voting during early voting and on election day.

### **3. Relevant Public Health Information**

Since Governor Hogan declared a state of emergency and catastrophic health emergency on March 5, 2020, Governor Hogan issued several other relevant orders applicable to conducting an election. These include:

1. On March 12, 2020, Governor Hogan issued an Executive Order directing the State Department of Budget and Management to implement Elevated Level II of its Pandemic Flu and Other Infectious Diseases Attendance and Leave Policy.<sup>3</sup>
2. On March 23, 2020, Governor Hogan issued Executive Order 20-03-23-01 prohibiting large gatherings of more than ten people.<sup>4</sup>
3. On March 25, 2020, the State Department of Budget and Management required State agencies to follow building entry protocol to protect State employees, visitors, and those in the care and custody of the State.<sup>5</sup>

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<sup>3</sup> See §I of the order entitled “For the Implementation of Elevated Level II of Pandemic Flu and Other Infectious Diseases Attendance and Leave Policy for Executive Branch State Employees” available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Elevated-Level-II.pdf>. Employees at 20 of the local boards of elections are State employees and are covered by this Executive Order.

<sup>4</sup> See §III of the order entitled “Amending and Restating the Order of March 23, 2020, Prohibiting Large Gatherings and Events and Closing Senior Centers, and All Non-Essential Businesses and Other Establishments, and Additionally Requiring All Persons to Stay at Home,” available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf>. This language was initially §II of the March 23, 2020 order.

<sup>5</sup> See <https://dbm.maryland.gov/employees/Documents/COVID-19%20Building%20Entry%20Protocol.pdf>

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4. On March 30, 2020, Governor Hogan issued an Executive Order directing all Maryland residents to stay in their homes or places of residences except to conduct or participate in essential and other named activities (defined in the order).<sup>6</sup>

At the March 25, 2020 SBE meeting, SBE requested that MDH provide a representative to answer questions about COVID-19. Some questions and the responses in summary are:

- The Governor’s request to all Marylanders was to not assemble in crowds of more than ten people, and “unless you have an essential reason to leave your house, stay in your home;”<sup>7</sup>
- That the COVID-19 outbreak would more likely than not be a duration of months and not weeks;
- Due to the global nature of this pandemic, certain testing materials and personal protective equipment (e.g. masks, gloves, other items that lessen the probability of exposure to the virus) are in critical supply and their availability to election judges and other elections staff for the April and June elections cannot be guaranteed;<sup>8</sup> and
- Due to the highly contagious nature of this virus, extreme precautions should be taken to protect the lives of Marylanders, especially those in high risk categories, and any election judge without protective equipment would be at high risk of becoming infected by COVID-19.<sup>9</sup>

In addition, in response to questions from the Board, MDH believes that Maryland in late March is still in the growth phase of this epidemic<sup>10</sup>, and that it is too soon to say when social restrictions may be lessened. The goal of all measures implemented by the State to date are designed to limit the number of infected individuals as much as possible and to lower the rate of increase of the infection. Any form of “congregation” where people from one location move to another location and then back or to another location increases the probability of transmitting or becoming infected by COVID-19.

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<sup>6</sup> See <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf>

<sup>7</sup> See <https://governor.maryland.gov/2020/03/23/governor-hogan-announces-closure-of-all-non-essential-businesses-175-million-relief-package-for-workers-and-small-businesses-affected-by-covid-19/>

<sup>8</sup> For example, as reported by MDH, the State requested 502,309 surgical masks and 305,541 ‘N95-type’ masks from the federal government’s strategic supply and as of March 29, 2020, only received 264,000 surgical masks and 110,240 ‘N95-type’ masks. As of March 27, 2020, the State’s laboratory has approximately 1,500 test kits and chemical materials to analyze 4,300 tests. In addition, please see the Health Secretary’s Order of March 23, 2020 directing health care providers to conserve personal protective equipment in line with the CDC’s recommendations:

<https://phpa.health.maryland.gov/Documents/03.23.2020%20Sec%20Neall%20Healthcare%20Matters%20Order.pdf>

<sup>9</sup> The CDC defines those at high-risk for severe illness from COVID-19 to include people aged 65 years and older; those in a long-term care facility; individuals with chronic lung disease or moderate to severe asthma, serious heart conditions, people who are immunocompromised including cancer treatment, and other certain underlying medical conditions. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

<sup>10</sup> See (Maryland): <https://covid19.healthdata.org/> and <https://91-divoc.com/pages/covid-visualization/>

As such, voters are similarly increasing their risk of becoming infected by the COVID-19 virus by voting in person. The Centers for Disease Control and Prevention (CDC) has recognized the risks associated with in-person voting and recommends using voting methods that minimize direct contact with other people and reducing crowd size at voting locations.<sup>11</sup> Election judges, especially those without personal protective equipment, in a traditional in-person environment are at high risk of exposure to infection.<sup>12</sup> Employees of the local boards of elections canvassing (i.e., opening and counting ballots), with CDC-recommended safeguards, are at lower risk due to the typical time delay of the U.S. postal system.

#### **4. Preparing for and Conducting an Election**

Preparing for an election is a process that takes several months, and the timeline for preparing for an election varies by jurisdiction. While some of the pre-election activities are complete for the presidential primary elections, other activities are not complete and completing them either violates an existing State directive or requires a significant change to the process.

The local boards of elections provided the following list of critical election activities impacted by current State directives.

1. Training classes: Election judges and other training classes typically have more than ten individuals (instructors and trainees), and some training facilities are not available. Smaller classes can be conducted following social distancing guidelines, and online training can be explored as a possible but less than ideal alternative to in-person training sessions.
2. Pre-election logic and accuracy testing of the voting equipment: This is a multi-day effort with multiple individuals supporting this effort. At many local boards of elections, the number of individuals performing this work simultaneously is more than ten. These tasks cannot be performed remotely and should incorporate appropriate sanitizing efforts.

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<sup>11</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

<sup>12</sup> For example, the Maryland National Guard was deployed to set up a drive-through outdoor COVID-19 testing site at FedEx Field in Prince George's County in mid-late March 2020. Prior to any tests being conducted to the public, members of the National Guard were exposed and may have become infected with COVID-19 while following the military's infectious disease prevention protocols. See <https://foxbaltimore.com/news/coronavirus/military-tents-fedexfield-coronavirus> and <https://www.nbcwashington.com/news/local/sources-guardsman-with-coronavirus-stationed-at-fedex-field/2256405/>

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3. Packing supplies for voting locations: This is a multi-day effort with multiple individuals supporting this effort. These tasks cannot be performed remotely.
4. Conducting in-person early voting: At most early voting centers, the number of election judges and other support staff needed to run an early voting center is more than ten individuals. Some early voting centers have the capacity to implement social distancing guidelines, while others do not. Most of the early voting centers are in facilities that are currently closed.<sup>13</sup>
5. Conducting in-person election day: The minimum number of election judges and other support staff needed to staff an election day voting location is five individuals. As is the case with early voting centers, some election day voting locations have the capacity to implement social distancing guidelines, while others do not. Most of the election day voting locations are in facilities that are currently closed.
6. Voter registration and absentee voting program at nursing home and assisted living facilities: For the safety of residents at nursing homes and assisted living facilities, the local boards of elections are no longer authorized to conduct this program on-site as long-term care facilities are sharply restricting visitors due to CDC and MDH guidelines.<sup>14</sup>

In addition to these activities, there are other important election activities impacted by current directives. These include the inability to issue absentee ballots to and receive voted ballots from voters at the offices of the local boards of elections, updating the electronic pollbooks within a 24 to 48 hour window, and facilitating the election judges picking up supplies. The first activity cannot be performed because the offices are closed to the public, and the other activities require more than ten individuals in one space to complete in the limited time.

Conducting an election typically takes over 20,000 election judges, and recruiting individuals to serve in these important but low pay and long hour positions is one of the most challenging jobs of the local boards of elections. Most local boards of elections have not surveyed election judges about whether they would serve without personal protective

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<sup>13</sup> While election officials are responsible for providing a safe environment within a voting location for voters and election judges, many voters will be required to walk by individuals campaigning for their candidate or candidates of choice. While the Governor's directives would apply to electioneering activities outside of the authority of the local boards of elections, election officials plan for voters' safety once they arrive at a voting location until they leave.

<sup>14</sup> See <https://pha.health.maryland.gov/Documents/Recommendations%20for%20COVID-19%20Infection%20Control%20and%20Prevention%20-%20March%2010%202020.pdf>

equipment, but the local boards of elections are currently reporting vacancy rates of 25% for early voting and 26% for election day. As a result of the current public health emergency, the local boards of elections expect that more election judges – the majority of whom are over 60 years old – will resign their appointments and recruitment efforts will become even more difficult. Additional election judges might be needed if health screenings are required to enter the facilities.

## 5. Conducting the June 2, 2020 Election

### A. Proposed Plan for June 2, 2020 Election

At its April 2, 2020 meeting, the Board adopted a plan to conduct the presidential primary election scheduled for June 2, 2020. The plan is to:

1. Send all eligible active voters an absentee ballot<sup>15</sup>. A return envelope with pre-paid postage will be included with the absentee ballot.
2. During the period designated by law for the conduct of early voting through election day, a local board of elections shall establish at least one but no more than four locations for voters to drop off ballots. The ballot drop off locations shall be existing, available early voting centers unless the early voting center is located at the offices of the local board of elections. If the early voting center and the local board office are in the same building, the ballot drop off location shall be at another location approved by the State Administrator.
3. On election day, a local board of elections shall establish at least one but no more than four locations for voters to drop off ballots or, for voters who are unable to vote by mail, to vote in person. The ballot drop off/voting locations shall be existing, available early voting centers unless the early voting center is located at the offices of the local board of elections. If the early voting center and the local board office are located in the same building, the ballot drop off/voting location shall be at another location approved by the State Administrator.

Although current regulations allow voters to drop off voted absentee ballots at facilities open for voting during early voting and on election day<sup>16</sup>, the approved plan for the presidential primary election allows for ballot drop off after early voting ends through

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<sup>15</sup> A voter may choose to receive a ballot via SBE's online ballot delivery system. A voter receiving a ballot this way may: (1) download a blank ballot, print the ballot, and mark the ballot by hand; or (2) use an accessible online ballot marking tool to make and review selections and print the ballot. Regardless of how the voter marks the ballot, the voted ballot must be returned by mail or dropped off at a ballot drop off location.

<sup>16</sup> See COMAR 33.11.03.06

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election day. Rigorous security and retrieval procedures will be developed, implemented and audited.

Implementing this plan will require an extensive voter education campaign. While voters have used a paper-based voting system since the 2016 elections, an election primarily conducted by mail is a significant and fundamental change to how elections are conducted in Maryland and makes a statewide voter education campaign necessary. The campaign will include reaching out to voters who are unable to vote by mail (for example, voters who have difficulty receiving mail or who are unable to mark a ballot by hand) and informing voters of ballot drop off locations. SBE currently has a contract for public relations and digital media support and can expand this contract to incorporate this effort.

B. Request for Proclamation

Because the Board's plan for the presidential primary election differs from the type of election required by the Election Law Article of the *Annotated Code of Maryland*, the Board requests a proclamation with language similar to §II of the proclamation dated March 17, 2020, which declared that the April 28, 2020 Special General Election for the 7<sup>th</sup> Congressional District should be conducted using an alternate voting system of voting by mail. The Board believes that a similar proclamation for the June 2, 2020 Presidential Primary Election would be sufficient to allow SBE to implement the broad process for the election described in paragraph 5.A above, as well as allow for the following deviations from existing statutory and regulatory requirements that the present emergency conditions necessitate:

1. Allow for ballot drop off locations from the end of early voting through election day
2. Allow same day registration on election day
3. Limit the number of challengers and watchers if the State directive related to gatherings of more than ten individuals and/or social distancing requirements remain in effect for this election
4. Change the placement of the accredited challengers and watchers in the voting locations if the social distancing requirements remain in effect for this election
5. Allow the opening and counting of the ballots to start on May 21, 2020 but the results will be embargoed until 8 pm on June 2, 2020
6. Allow one individual to determine whether a returned voted ballot is timely received, the oath is signed, and whether the ballot can be scanned by the tabulation scanner
7. Provide remote public observation of the canvasses with ability to challenge ballots



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8. Require that members of the local boards of canvassers only attend when a canvass starts, ends, and when decisions are made about referred ballots
9. Waive the requirement to report results by precinct

The Board may require an additional order or proclamation from the Governor to ensure that all facilities previously approved as early voting centers are accessible for purposes of serving as ballot-drop off locations during early voting and through election day, and open for purposes of voting on election day.

C. Possible Postponement of Dates and Time Periods

The proclamation dated March 17, 2020 authorized the Board to postpone “all other statutory and regulatory dates and time periods” for the presidential primary election in order to “conform” to the Governor’s order. The Board may rely on this language to:

1. Extend the voter registration and other associated deadlines
2. Extend the deadline for completing the pre-election logic and accuracy testing and public demonstration<sup>17</sup>. There may not be sufficient time between the release of the equipment for the special general election for the 7<sup>th</sup> Congressional District and the presidential primary election for the three jurisdictions in the 7<sup>th</sup> Congressional District to complete these tasks by May 22, 2020.
3. Extend the deadline for certifying the election, as the canvass of mailed ballots will take longer than the usual canvassing window

Except as noted above and with one additional exception, SBE expects that all other statutory and regulatory provisions that otherwise apply to an election administered under Election Law Article, § 9-501 *et seq.* will apply in this primary election. If SBE subsequently identifies other statutory or regulatory provisions that need modification, the modification will be presented to the Board for discussion and approval, in a manner consistent with any proclamation or order issued by the Governor.

The one exception is the requirement in Senate Bill 145 and House Bill 37 of the 2020 Legislative Session. One provision of this emergency legislation changes all references to “absentee ballots” and “absentee voting” to “mail-in ballots” and “mail-in voting.”<sup>18</sup> If this

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<sup>17</sup> Pre-election logic and accuracy testing must be performed on the scanning equipment used for counting ballots returned by mail.

<sup>18</sup> The other provision of Senate Bill 145 and House Bill 37 requires pre-paid postage for returning absentee ballots. When this requirement was added to the legislation, the original effective date (January 1, 2021) was removed and the bill was changed to emergency legislation. Pre-paid postage will be used for the presidential primary election, and

legislation becomes effective before the presidential primary election, this provision will not be implemented for this election. This change will require updating numerous forms and system modifications and may cause voter confusion in the midst of an election cycle.

After conducting the special general election for the 7th Congressional District by mail, there may be a need for additional requests and postponements.

## **6. Conclusion**

As stated above, the highest priority of SBE is to deliver a safe and secure election for voters and election judges while ensuring the fundamental right to vote. As a result of the currently public health emergency, delivering a safe election is challenging in a very real way as the health and well-being of the voters and election judges are at risk. The Board believes that this plan complies with the various directives issued by Governor Hogan and State agencies and guidance from the CDC and MDH and proposes a solution for the 2020 Presidential Election that strikes an appropriate balance between the safety of all participants in the electoral process and the fundamental right to vote.

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the change to “mail-in voting” and “mail-in ballots” will be implemented after the 2020 General Election, as originally contemplated in Senate Bill 145 and House Bill 37.