

Votes Act: Summary

Prepared for the January 2023 MMA Annual Business Meeting and Trade Show

On June 22, 2022, Governor Baker signed into law [Chapter 92 of the Acts of 2022](#), entitled “An Act Fostering Voter Opportunities, Trust, Equity and Security”, the so-called “Votes Act”. The Votes Act codifies significant changes to the election laws of the Commonwealth, including shortening voter-registration deadlines; allowing “no excuse” early voting by mail and in person; increasing availability of accommodations for persons with disabilities and voters with limited English proficiency; and more. While we anticipate further guidance from the state as the primary nears, please find below several important issues to consider.

Voter Registration: The last day and hour to register to vote for an election is now 5:00 p.m. on the 10th day prior to the date of that election, rather than on the 20th day prior to the election. The Secretary of the Commonwealth has made the online registration portal accessible in English, Spanish, Portuguese, Chinese, and any other languages deemed necessary, as required by the Act.

The Act also made changes to voter registration at health agencies and the Registry of Motor Vehicles. Each person verified as a citizen of the United States is automatically registered at the time of the transaction. A person cannot “opt out” at the time of the transaction, as they could previously. Instead, they may only decline registration after receipt of written notification from the local board of registrars or election commissioners.

Election Officers: It has long been the case that no clear route exists to fill vacancies in the complement of election officers, or to fill them on time for the election. This situation is exacerbated by the requirement that such appointments be made from lists submitted by the two major parties. Further, the appointing authority for election officers is typically a multiple-member body that must meet in accordance with the Open Meeting Law to act.

The Votes Act changes this outcome significantly as the date of the election nears. Now if, within 6 weeks of an election, a municipal clerk determines in writing that a deficiency exists in the number of election workers, such workers may be appointed in the normal course, but without regard to political party membership, voter status, residency, or inclusion on the political party committees’ lists. Likewise, if within 3 weeks of an election one or more vacancies exist in the position of warden, clerk, or inspector, the municipal clerk may fill the position without regard to the above factors. These new procedures should reduce the pressure and difficulty of trying to find, and properly appoint, willing substitutes for these positions.

Early Voting By Mail: Early voting by mail is now available for all municipal, state, and presidential primaries and elections. This means that a registered voter in Massachusetts may vote by mail for any reason or for no

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reason, rather than be limited to the reasons to vote by absentee ballot (physical impossibility; religious issue; out of municipality on date of election). Note that the select board or town or city council, may vote, after a public hearing held at least 45 days before an election, to opt out of early voting by mail for any regular or special municipal election held on a date other than that of a state primary or election.

A significant number of persons voted early by mail at recent elections, increasing the amount of processing required both before and on election day. It is appropriate to plan for upcoming annual city or town election staffing based on this information.

The application for an early vote by mail ballot must be received by 5:00 p.m. on the 5th business day before the election. Persons may still apply for an absentee ballot over the counter until 12:00 p.m. on the last business day before the election. Additionally, the Votes Act clarifies that requests to the clerk for accommodations with regard to filling out a ballot, whether by mail, e-mail, or phone, shall be made no later than 7 business days before the election. Of course, that deadline does not prohibit a city or town from providing accommodations as the date of the election nears.

An early voting ballot may be returned by the voter or a family member to: 1) the clerk's office in-person; 2) an early voting location during in-person hours; or 3) a secured municipal drop box. The ballot may also be mailed to the municipal clerk. Regardless of the delivery method, all early voting ballots must be received before the polls close on election day, with the exception that an early voting ballot for state elections will be accepted until 5:00 p.m. on the 3rd day after the election if a postmark is legible that evidences the time of mailing.

Early Voting In-Person: Early voting in-person is required for any presidential or state primary, biennial state election or primary, or special state election to fill a vacancy for congressional senator or representative, and any municipal election held on the same day. Early voting in-person requires a significant amount of staff coordination, and can be overwhelming, particularly if there are split precincts and/or a town meeting in the near future. As compared to early voting by mail, a municipality, through a select board or town or city council vote, can opt-in to early voting in person. The select board or town or city council may vote to authorize early in-person voting for any other municipal election, if: 1) there is a request from at least half of the registrars recommending in-person early voting, and 2) the vote occurs at least 5 business days prior to the beginning of the early voting period.

Incarcerated Voters: The Votes Act requires that the officer in charge of a correctional facility take particular action to facilitate voting and voter registration. Qualified voters who are incarcerated for offenses other than felonies remain qualified to vote by absentee ballot.

Police Details: At every election, a sufficient number of police officers or constables must be detailed for each building containing a polling place for one or more precincts to preserve order, protect the election officers and supervisors from any interference with their duties, and to aid enforcement of the laws relating to elections. Previously, this duty typically rested with the Police Chief, who worked with the municipal clerk to determine what coverage was required. In our opinion, this authority may still be delegated to the Police Chief and municipal clerk.

We expect that the state will issue further guidance and regulations concerning implementation of the Votes Act. Please contact Attorney [Devan Braun](#) or Attorney [Lauren Goldberg](#) at 617.556.0007 with any further questions.

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