

COVID-19 EMERGENCY RESPONSE: General Court Authorizes Postponement of Elections

Along with the many other important challenges faced by cities and towns in response to the Covid-19 novel coronavirus, the majority of Massachusetts municipalities typically hold their annual elections and caucuses in March, April and May. Between the closing of public buildings, limited staffing of public offices and social distancing advisories, in many cases, the normal nomination and election processes have been paused. As previously detailed, there are typically only limited options for postponing an election for which the date has been set and/or nominations made, particularly if the date is set by special act, charter or bylaw. Many municipalities, therefore, have taken steps over the last few weeks to request special legislation authorizing the postponement of their election, and, in conjunction therewith, voted to postpone the same.

The General Court acted quickly to allow such postponement for the vast majority of municipalities with scheduled caucuses and elections. On March 23, 2020, both houses of the General Court approved, and Governor Baker signed, a new law authorizing the postponement of annual elections and caucuses, Chapter 45 of the Acts of 2020. The new law also authorizes special voter registration deadlines and voting options to address the possibility that the current public health crisis created by Covid-19 may not have abated completely this spring. We have summarized the highlights of the new law below. The new law will be applicable without any adjustments for communities whose elections are already well underway, with nominations and the time for filing objections already passed. For those communities with future filing deadlines, or who feel additional time is needed for circulation of nomination papers or the like, a follow-up court action or special act may still be necessary – for now, though, just one step at a time!

Local Municipal Elections and Caucuses

The new law applies to cities and towns that would otherwise hold a local caucus or election between March 23 and May 30, and authorizes the postponement to a date on or before June 30, 2020. The Select Board, City or Town Council, or Board of Voter Registrars (“Registrars”) are authorized to postpone the date of the election.

The act expressly provides that any elected official whose term would have expired on the original election date shall continue to serve in office until a successor is elected and qualified.

Voter Registration

To encourage voter participation, the last day to register to vote in a postponed election shall be 10 days (rather than 20 days) before the election. The Registrars shall conduct a registration session on that date for a minimum period of 2:00 - 4:00 p.m. and 7:00 - 8:00 p.m.

Election Materials

To avoid causing municipalities to have to reprint or reformat any election materials, the act provides that any election materials already prepared for the original election date, including official and absentee ballots, if any, shall be used for the postponed election “to the extent practicable.” For example, printed ballots with the original date printed on them shall be used and need not be reprinted. Moreover, the act provides that if new ballots are to be printed, they must be identical to that which would have been used for the regularly scheduled original election. The Elections Division has clarified that if ballots have not yet been printed, they may be printed with the new date once it is set. Further, if the ballot is finalized but no new election date has yet been established, the ballot may be printed as soon as possible (with the old date), so that voting by mail can commence.

Absentee Ballots

If any absentee ballots were cast before the election was postponed, such eligible ballots will be processed and counted at the postponed election in the usual manner. Note that if a voter who originally voted absentee would now like to vote in person at the polls, they may do so if their absentee has yet to be counted. To provide opportunity for the greatest number of people to be eligible to vote by absentee, the law specifically defines a voter that chooses not to vote in person at the election due to COVID-19 as “unable by reason of physical disability” to cast a vote.

Early Voting by Mail

A new “modified” early voting by mail provision was included in the legislation and will be applicable to all local elections this spring, not just elections that are postponed. Upon application, any voter may, through “any form of written communication”, file a request with the Clerk’s office to vote early by mail. There will be no “in person” early voting sessions, however. No special ballots need be printed. Instead, clerks may use absentee ballots (with the word “absentee” crossed out and the letters “EV” written on OR, if there is not a sufficient number of absentee ballots, then the same process can be followed for official ballots). Early and absentee ballots must be received before the close of the polls on the day of the election, and counted as they would be normally at the polling place.

Special Elections for State Representative and State Senator

In addition to addressing the timing of local elections, the Governor signed acts rescheduling special state elections to fill Senate and House vacancies, both originally scheduled on March 31, 2020, to the middle of May and June, respectively.

It is inevitable that court action or additional legislation will be needed to address various issues, including, for example, starting the election process over to allow for circulation and submission of nomination papers. We will continue to provide updates on any election related matters as the situation change.

Please contact Attorney Lauren F. Goldberg (lgoldberg@k-plaw.com) or Brian W. Riley (briley@k-plaw.com) at 617-556-0007 with any further questions concerning elections matters.

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