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RE: La. R.S. 49:968B Report of Department of State, Elections Division - Intent to Adopt LAC 31:I, Chapter 3, §§301-305

Gentlemen:

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et. seq.), the Department of State, Elections Division, intends to promulgate LAC 31:I. Chapter 3, §§301-305, Opportunity to Cure Deficiencies in Absentee By Mail Ballots as a permanent rule. This rule is being promulgated in accordance with La. R.S. 18:18(A)(3) and La. R.S. 37:742.

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et. seq.), the Department of State, Elections Division, has exercised the emergency provisions of the Administrative Procedure Act, specifically R.S. 49:953(B), to promulgate a similar procedure for absentee by mail envelope flaps with deficiencies to be cured on an emergency basis. Emergency rules have had effective dates of June 15, 2020, October 12, 2020, February 9, 2021 and, most recently, June 9, 2021.

The permanent rule is necessary so that a permanent procedure may be provided for curing absentee by mail ballot envelope flaps with deficiencies.

Attached please find:

(1) Copy of the proposed Rule, including Family Impact Statement, Poverty Impact Statements, Small Business Statement and Provider Impact Statement; and

(2) Fiscal and Economic Impact Statement as approved by the Legislative Fiscal Office.

If you have any questions, please contact me.

Celia R. Cangelosi

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2 Attachments

NOTICE OF INTENT

Department of State Elections Division

Opportunity to Cure Deficiencies in Absentee By Mail Ballots (LAC 31:I:Chapter 3)

In accordance with R.S. 49:950, et. seq., the Administrative Procedure Act, notice is hereby given through authority granted in R.S. 18:18(A)(3) and R.S. 36:742 the Department of State proposes to add to Title 31, Part I, by adding Chapter 3, §§301, 303 and 305, to provide a permanent procedure for curing absentee by mail ballot envelope flaps with deficiencies. Emergency rules on this topic have been in effect since June 15, 2020.

Title 31

ELECTIONS

Part I. Election Process

Chapter 3. Opportunity to Cure Deficiencies in Absentee by Mail Ballots

§301. Absentee by mail ballot deficiencies that may be cured:

- A. Each registrar of voters shall review the absentee by mail ballot envelope flap for the following deficiencies:
 - 1. Missing voter signature;
 - 2. Missing witness signature; and
 - 3. Incomplete affidavit information, including but not limited to missing election date and voter information.
- B. This review shall be conducted immediately upon receipt of the absentee by mail ballot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(3) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR

§303. Absentee Ballot Deficiency Notification

- A. Upon receipt of an absentee by mail ballot envelope flap with one or more of the above identified deficiencies, the registrar of voters shall segregate the ballot envelope and promptly notify the voter of the ballot envelope flap deficiency and of the opportunity to cure the deficiency.
- B. The registrar of voters shall identify the ballot in the voter's absentee record and notate it as "deficient with opportunity to cure."
- C. The registrar shall immediately mail a written notice of the ballot envelope flap deficiency and the opportunity to cure the deficiency. If there is a telephone number or email address available in the voter's registration record, the registrar shall also attempt to contact the voter by telephone or email.

- D. All deficiency notifications shall inform the voter of the type of deficiency, the process for curing the deficiency, and the deadline and method to cure the deficiency. The registrar shall make a log of the date and methods of contact for each voter.
- E. Effective February 1, 2022, there will be a space on the Secretary of State website area to Check Absentee Ballots indicating that the voter has been notified of an opportunity to cure a deficiency.
- F. Voters are required to appear in person at their registrar of voters office during normal business hours until 4:30 p.m. the day before the election to cure the ballot envelope flap deficiency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(3) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR
_____.

§305. Curing Absentee By Mail Ballot Deficiencies

- A. To cure a missing voter signature, the voter shall appear at the office of the registrar and sign the ballot envelope flap in the presence of an employee of the registrar of voters. The employee of the registrar who observes the signature shall also sign the ballot envelope flap as witness.
- B. To cure a missing witness signature, the voter shall appear at the office of the registrar and resign the ballot envelope flap in the presence of an employee of the registrar of voters. The employee of the registrar who observes the signature shall sign the ballot envelope flap as witness.
- C. To cure an incomplete affidavit, the voter shall appear at the office of the registrar and complete the affidavit on the ballot envelope flap.
- D. If the voter appears at the office of the registrar to cure the deficiency, the notation in the voter's absentee record shall be updated to so reflect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(3) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR
_____.

Family Impact Statement

1. What effect will this rule have on the stability of the family? The proposed rule will not affect the stability of the family.
2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed rule will not affect the authority and rights of persons regarding the education and supervision of their children.
3. What effect will this have on the functioning of the family? The rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This rule will not affect the family earnings or family budget.
5. What effect will this have on the behavior and personal responsibility of children? This rule will not affect the behavior or personal responsibility of children.
6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the proposed rule will have no impact.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of these proposed Rules have been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and no increase on direct or indirect cost. The proposed Rule will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments relative to the proposed Rule or request a public hearing on the proposed rule until 4:30 p.m., July 10, 2021, by U.S. mail to the Louisiana Department of State, ATTN: Ray Wood, 8585 Archives Ave., Baton Rouge, LA 70809.

Public Hearing

If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, the Department of State will conduct a public hearing at 4:00 p.m. on July 28, 2021 in the conference room at the State Archives, 3851 Essen Ln, Baton Rouge, LA 70809. To confirm whether or not a public hearing will be held, interested persons should first call Ray Wood at (225) 287-7475 after July 10, 2021. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

R. Kyle Ardoin, Louisiana Secretary of State

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person Preparing Statement: Sherri Hadskey
Commissioner of Elections Department: Department of State

Phone: (225) 922-0900 Office: Elections Division

Return Address: 8585 Archives Ave
Baton Rouge, LA 70809 Rule Title: Opportunity to Cure Deficiencies
In Absentee By Mail Ballots

Date Rule Takes Effect: Emergency Rule was Effective June 15, 2020

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS
(Summary)

The proposed rule enacts a procedure for absentee by mail ballot envelope flaps with deficiencies to be cured. The Department of State will incur one-time implementation costs of \$52,000 of SGF to make programming changes to the voter registration and elections systems - Election and Registration Information Network (ERIN). The programming changes will allow each registrar of voters to track the number of voters who received an absentee ballot deficiency notice, the reason for the deficiency, how many voters cured the deficiency, and how many ballots were rejected because of the deficiency.

Also, the Department of State will incur recurring costs of at least \$15,600 annually to print and mail absentee ballot deficiency notices to voters affected by this proposed rule. There are at least four elections a year and the proposed rule will cost \$3,900 per election to print and mail absentee ballot deficiency notices to voters ($\$3,900 \times 4$ elections = \$15,600). The Department anticipates other recurring costs including additional overtime hours worked by registrars of voters and their full-time staff and additional hours worked by part-time staff, which are indeterminable.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS
(Summary)

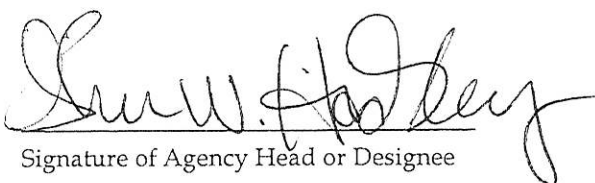
The proposed rule change will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule change enacts a procedure that notifies absentee by mail ballot voters when their ballot has deficiencies and allows voters an opportunity to cure these deficiencies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.


Signature of Agency Head or Designee

Sherri Hadskey, Commissioner of Elections
Typed Name & Title of Agency Head or Designee

June 9, 2021
Date of Signature


Legislative Fiscal Officer or Designee

6/9/21
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Registrars of voters will be required to immediately upon receipt review absentee by mail ballot envelope flaps as they arrive in the registrar's office prior to an election for specified deficiencies: missing voter or witness signatures, incomplete affidavit information, and signature mismatch (for July and August 2020 elections only).

The registrar is required to immediately notify the voter of the ballot envelope flap deficiency and of the opportunity to cure the deficiency. To cure the deficiency, the voter must appear at the office of the registrar and perform certain acts on or before 4:30 p.m. on the day before the election.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

There is a line of federal cases holding that procedural due process requires that an absentee by mail voter be afforded notice of deficiencies in his ballot and afforded an opportunity to cure these deficiencies.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

Yes, the rule change will result in an increase in postage, paper, envelopes, and printer ink used by registrars of voters for each election.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) XX NO. If no, provide justification as to why this rule change should be published at this time

The proposed rule is necessary to provide voters the opportunity to cure deficiencies in their absentee ballot, so that the state complies with the line of federal cases holding that procedural due process requires that an absentee by mail voter be afforded notice of deficiencies in his ballot and afforded an opportunity to cure these deficiencies. The department will utilize funding appropriated for general election expenses.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 21	FY 22	FY 23
Personal Services			
Operating Expenses	\$15,600	\$15,600	\$15,600
Professional Services	\$52,000		
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$67,600	\$15,600	\$15,600

POSITIONS (#)

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The Department of State will incur one-time implementation costs of \$52,000 to make programming changes to the department's Election and Registration Information Network (ERIN). The programming changes will allow registrars to track the number of voters who received an absentee ballot deficiency notice, the reason for the deficiency, how many voters cured the deficiency, and how many ballots were rejected because of the deficiency.

The Department of State will also incur recurring costs of \$15,600 a year (at least \$3,900 per election, at least four elections a year) to print and mail absentee ballot deficiency notices to voters affected by these rules. Other recurring costs may include additional overtime hours worked by registrars of voters and their full-time staff, and additional hours worked by part-time staff.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 21	FY 22	FY 23
State General Fund	\$67,600	\$15,600	\$15,600
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$67,600	\$15,600	\$15,600

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The Department will have to utilize existing funding appropriated for general election expenses in order to pay for the implementation and recurring costs because there was not a direct appropriation for this purpose. In order to absorb the cost, non-critical expenses may be reduced.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule change will not result in any costs or savings to local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 21	FY 22	FY 23
State General Fund	0	0	0
Agency Self-Generated	0	0	0
Dedicated Funds*	0	0	0
Federal Funds	0	0	0
Local Funds	0	0	0
TOTAL	\$0	\$0	\$0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The proposed rule change will not affect revenue collections for state or local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES,
OR NONGOVERNMENTAL GROUPS

- A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There is a line of federal cases holding that procedural due process requires that an absentee by mail voter be afforded notice of deficiencies in his ballot and afforded an opportunity to cure these deficiencies. The proposed rule change enacts a procedure that notifies absentee by mail ballot voters when their ballot has deficiencies and allows voters an opportunity to cure these deficiencies.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

The proposed rule will not impact receipts and/or income of affected persons, small businesses, or nongovernmental groups.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule change will not affect competition or employment.