

The Connecticut General Assembly

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Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: July 24, 2012

Regulation No:	2012-29
Agency:	Secretary of the State
Subject Matter:	Emergency contingency model plan for elections
Statutory Authority: (copy attached)	9-174a

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

While the agency certifies that notice appeared in the Connecticut Law Journal on April 3, 2012, the agency failed to include a copy of the notice with its submission.

Substantive Concerns:

1. In section 9-XXX-18 and in other sections throughout the proposed regulation, the second sentence of the introductory language is written in the passive voice, making it unclear from whom the instruction is coming. It seems that the instruction might be the written procedure prepared in advance by the registrars of voters, in which case the phrase

"In such an event," makes the sentence confusing as it seems that the instructions are being given simultaneously with the occurrence of the event, rather than as a written procedure given in advance. Generally, throughout the proposed regulation, provisions written in the passive voice should be rewritten in the active voice for clarity. As well, if the intent is that the written procedure provide that in such an event certain actions are to be taken, that should be explicitly stated in the text of the provision.

2. In section 9-XXX-18, it is unclear whether the moderator shall do (3) or (4), and (5) or whether the moderator shall do (3), or (4) and (5). Depending upon the agency's intent, subdivisions (3) to (5) should be rewritten as follows:

"(3)(A) If available, use the onsite copier to print additional ballots to be used for a hand count, or (B) have additional ballots printed at an offsite document printing facility.

(4) Request additional paper ballots from the registrars of voters."

OR

"(3)(A) If available, use the onsite copier to print additional ballots to be used for a hand count, or (B) (i) have additional ballots printed at an offsite document printing facility, and (ii) request additional paper ballots from the registrars of voters."

3. In section 9-XXX-19, the first sentence and the second sentence may lead to a conflict if the written procedures differ from sections 9-242a-12 and 9-242a-16. In the first sentence, the registrars are directed to develop a written procedure to implement in the event a voting tabulator machine malfunctions. The next sentence states that "In such an event, the moderator shall be instructed pursuant to section 9-242a-12 and section 9-242a-16...." To avoid a potential conflict, (1) the moderator should either follow (A) the written procedure required in the first sentence, or (B) the procedures in sections 9-242a-12 and 9-242a-16, or (2) the registrars should incorporate into the written procedure the requirements set forth in sections 9-242a-12 and 9-242a-16 and the moderator should follow the written procedure established under this section of the proposed regulation.

4. In sections 9-XXX-32 and 9-XXX-33, the agency directs that changes to a town's local Emergency Plan of Operations, required under section 28-7(a) of the general statutes, that are due to the provisions of the proposed regulation, be included in the town's annual submission of such plan. The agency lacks authority to direct a town to include these changes under said section 28-7. As well, it is unclear why such a plan would be amended due to the provisions of the proposed regulation. Moreover, because said section 28-7 requires that any changes to the plan be included in the annual submission of the plan, it is unnecessary to include this provision in the proposed regulation.

Technical Corrections:

1. In the introductory language and throughout the proposed regulation, "9-XXX" should be renumbered as "9-174a", for proper form.

2. In the introductory language, the sections referenced should be "9-174a-1 to 9-174a-34, inclusive," rather than "9-XXX-1 to 9-XXX-33, inclusive," for accuracy.
3. In section 9-XXX-2 and throughout the proposed regulation, references to the plan should be "sections 9-174a-2 to 9-174a-34, inclusive," rather than "sections 9-XXX-1 to 9-XXX-34, inclusive", for accuracy.
4. In section 9-XXX-3, in the second to last line, "referenda held" should be "referenda," for clarity.
5. In section 9-XXX-7, and throughout the proposed regulation, when required actions are listed, for clarity, the language should state that each element is required. For example, the second line of said section should be rewritten as:
"Contingency Plan for each polling location that shall include each of the following:"
6. In section 9-XXX-14(3), the second sentence should be rewritten as follows, for clarity:
"The moderator shall instruct the poll worker assigned accountability for securing the voting materials that such poll worker shall secure such materials in the event of an emergency, only if time and conditions permit."
7. In section 9-XXX-16, in subdivision (1), "poll workers" should be "other poll workers", for accuracy and in subdivision (2), "the election." should be "election, primary or referenda", for consistency.
8. In section 9-XXX-23(2) "ask the moderator to leave" should be "tell the moderator to leave", for consistency with section 9-XXX-24(2).
9. In section 9-XXX-26(4), "Sections 9-XXX-14" should be "section 9-174a-14", for proper form.

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part X Rejection without prejudice</p>

Reviewed by: Angela Rehm / Bradford M. Towson

Date: July 12, 2012

From 2012 Supplement

Sec. 9-174a. Emergency contingency plan for elections. Model plan. (a) For each municipality, the registrars of voters, in consultation with the municipal clerk, shall create an emergency contingency plan for elections, primaries and referenda to be held within such municipality. Such plan shall include, but not be limited to, (1) solutions for ballot shortages, and (2) strategies to implement in the event of (A) a shortage or absence of poll workers, (B) a loss of power, (C) a fire or the sounding of an alarm within a polling place, (D) voting machine malfunctions, (E) a weather or other natural disaster, (F) the need to remove a poll worker or moderator and to replace such worker or moderator, and (G) disorder in and around the polling place.

(b) Not later than six months after the adoption of a model plan by the Secretary of the State provided for in regulations adopted pursuant to subsection (d) of this section, the registrars of voters shall submit the plan created under subsection (a) of this section to the legislative body of such municipality or, in a municipality where the legislative body is a town meeting or representative town meeting, the board of selectmen, for approval. Upon approval, such plan shall remain on file with the municipal clerk until such plan is amended by the registrars of voters, in consultation with the municipal clerk, and approved by the legislative body of the municipality or, in a municipality where the legislative body is a town meeting or representative town meeting, the board of selectmen. If, not later than six months after the adoption of a model plan by the Secretary, a municipality fails to create and approve an emergency contingency plan, the municipality shall be deemed to have adopted the model plan adopted by the Secretary.

(c) Any municipality that activates the emergency contingency plan established pursuant to this section shall provide a written report concerning the activation of such plan to the Secretary of the State not later than thirty days after such activation. Such report shall include the reason for such activation as well as the procedures in the emergency contingency plan that were activated and the outcome of the activation of such plan.

(d) The Secretary of the State shall adopt regulations, in accordance with the provisions of chapter 54, as the Secretary deems necessary to implement the provisions of this section. Such regulations shall include a model plan that municipalities may adopt.