

Linda Foley  
*Legislative District 15*  
Montgomery County

Environment and Transportation  
Committee

The Maryland House of  
Delegates  
6 Bladen Street, Room 220  
Annapolis, Maryland 21401  
410-841-3052 • 301-858-3052  
800-492-7122 Ext. 3052  
Linda.Foley@house.state.md.us

## THE MARYLAND HOUSE OF DELEGATES

Delegate Linda Foley, District 15

**Bill:** HB 412 General Assembly – Special Election to Fill a Vacancy in Office

**Committee:** Ways and Means

**Position:** Favorable

This bill would allow Marylanders to vote on a Constitutional Amendment changing the way legislative vacancies during the 4-year term of office are filled. Currently, the Central Committee of the departing legislator's political party recommends candidates to the Governor, who then then appoints a nominee to fulfill the remainder of a departing Delegate's or Senator's term, whether it be 6 months, 2 years or, in some cases, a complete 4-year term.

HB 412 would inject more democracy and voter engagement in the vacancy-filling process. The Amendment, if approved by the voters, would require a Delegate or Senator, appointed (using the current process) to fill a vacancy that occurs more than 2 years before the end of a legislative term, to stand for election. A special election would be held during the regular primary and general elections in the Presidential Election year. Vacancy appointments made more than 2 years into a legislative term would not be subject to a special election.

The intent of the bill is to curtail situations in which appointees serve for several years without facing the voters. In the first few months following the 2022 election, Gov. Wes Moore tapped six members of the General Assembly for his administration. Their replacements will serve a full or nearly full legislative term without being on a ballot.

This bill is actually a compromise. Abstractly, it may seem like holding a special election for every General Assembly vacancy that occurs during a 4-year term would be the most democratic way to fill those vacancies. However, that approach would require large expenditures by local election boards and would likely result in very low-turnout elections that don't accurately reflect the will of the voters. In addition, the time required to conduct a stand-alone special election would likely result in under-representation for a given district during a given legislative session.

Instead, this bill combines the efficiency and continuity of an appointment process with the democracy of voter input at least every 2 years. Holding one special election during the regular Presidential primary and general election at the mid-term of a legislative term ensures that voter turnout for the special election will be robust.

The time frame in the bill allows potential appointees who face mid-term special elections enough time to raise money. That, combined with the advantage of incumbency, puts the appointees in front-runner posture for the special election.

The vast majority of mid-term legislative vacancies around the country are filled by processes that include special elections. In all, 35 states have procedures to fill legislative vacancies that include special elections in at least some circumstances. Twenty-five states fill vacancies in their legislatures by conducting a special election in every case. Ten states have a combination of appointment and special elections, like what HB 412 envisions. Only 15 out of 50 states, including Maryland, currently use appointments without any intervening election to fill legislative vacancies. And Maryland is the only state with 4-year terms in both houses that currently uses only appointments to fill legislative vacancies.

This year, there is a groundswell of support in Maryland for some type of special election process to fill legislative vacancies. Over the past 6 months, there have been numerous articles on the subject in the Washington Post, Baltimore Banner, Baltimore Sun, Maryland Matters and MoCo 360.

In a 2023 poll conducted by PIRG Maryland and Common Cause, 87 percent of Marylanders surveyed expressed support for a special elections process to fill legislative vacancies, as opposed to 13 percent who expressed support for an appointment process. That's with 23 percent of the 188-member General Assembly who first acquired their seats through appointment, including this delegate.

This bill should be very familiar to most members of this committee. This is the second year I have put it before you. Prior to my sponsorship, several delegates and senators have proposed it in past years. In 2022, it passed the Senate 45-0.

The history of this bill goes back decades. It was first proposed in 2008 by Senator Richard Madaleno and then-Senator Jamie Raskin (District 20), who, as we know, has continued to advocate for policy that promotes our democratic form of government.