



NEWSLETTERS

Politics News

MoCo Politics: Parties exert stranglehold on General Assembly vacancies. Is 2024 the year of change?

Reform measures that sail through Senate have died repeatedly in House Ways & Means panel

by **Louis Peck**

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The Maryland State House Credit: Photo by Alex Wong/Getty Images

(Editor's note: This is the first of two columns examining how vacancies in the Maryland General Assembly have been filled, the controversies the system has created and the options being proposed.)

Clarification: This article, originally published at 10:10 a.m. Jan. 25, 2024, was updated at 6:15 p.m. Jan. 25, 2024, to reflect the new name of a Widener University Commonwealth Law School professor.

Early last fall, with the 2024 session of the Maryland legislature on the horizon, the nine legislators who comprise Montgomery County's all-Democratic state Senate delegation gathered for an informal session with no fixed agenda.

As it turned out, a single topic dominated the half-hour meeting: the dysfunction coursing through the Montgomery County Democratic Central Committee (MCDCC) during the past year, intertwined with the MCDCC's nearly absolute power to make appointments to the county's legislative delegation when vacancies occurred in between elections for state office.

"It is clearly an issue that all nine [senators] are passionate about, and on which everyone thinks the status quo is untenable," said a delegation source, who requested anonymity to discuss private conversations.

The meeting of the Senate delegation took place in the wake of **revelations of a \$13,000 debt** owed by the central committee to the Internal Revenue Service. While incurred by a previous MCDCC regime, it nonetheless had subjected the current committee leadership to criticism for a lack of transparency.

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The IRS debt and other controversies happened to arise during a year in which the MCDCC was called upon to fill five vacancies in the county's legislative delegation in Annapolis—the result of a game of political musical chairs triggered when four elected legislators were tapped for appointments in the newly installed administration of Gov. Wes Moore (D). By the middle of 2023, more than 40% of the county's 35-member Senate and House legislative delegation (14 members) owed their initial entry into the General Assembly to appointment rather than election—up from 25% (nine members) at the beginning of the year.

Statewide, 23% of the 188-member General Assembly first acquired their seats through appointment: 20% of the 141-person House of Delegates and one-third of the 47-member state Senate, according to figures published this past October by Common Cause. Del. Julie Palakovich Carr (D-Rockville), in February 2023 testimony, pointed to more than 60 such mid-term vacancies in the General Assembly over the past decade.

"Over that span, Maryland ranks second in the nation in the number of total vacancies in our legislature, despite many states having larger legislatures," said Palakovich Carr, who introduced bills last year and again this session to set uniform statewide requirements for political committees in filling legislative vacancies.

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There appears to be no single cause for this rate of turnover: Numerous personal and professional factors have contributed. But the frequency of vacancies has led to a years-long push by several members of the Montgomery County legislative delegation to trim the power of political party committees in all of the state's 24 major jurisdictions to make such appointments—and to give rank-and-file voters a say when such do vacancies occur.

"The question is 'Is there a problem?'—and the answer is yes," said District 17 Sen. Cheryl Kagan (D-Rockville), who supports another approach: She introduced a bill to establish a system of special elections for filling legislative vacancies in advance of this month's convening of the 2024 session. "We live in a democracy—and yet vacancies are not being filled in a 'little d' democratic way."

Kagan added: "There are a lot of legislators who have been appointed, and, for some of them, this may make it an awkward issue to consider. [But] there are others who have been through the process who believe we need a solution."

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Those advocating a change in the status quo are cautiously optimistic that 2024 may finally be their year—although their chances of success are well short of certain, given the recent history of this issue in Annapolis.

Maryland's current system is unusual in the amount of unchecked power it gives local parties. Both Del. Linda Foley (D-Potomac) and Kagan's proposals aim to cede varying degrees of control back to voters. But previous reform measures that have sailed through the Senate twice in recent years have died in the House Ways & Means Committee. One objection has been a belief that the current system has helped promote greater racial diversity in the General Assembly than special elections would have. But analyses by MoCo360 and others show the practice has had a small impact on promoting diversity.

Appetite for change—after years of attempts

The legislative vacancy process is inscribed in Maryland's constitution. Changing the process requires not just action by the General Assembly but approval by voters; if the legislature OKs a change this session, it would go before voters in the November general election.

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It would likely be well received there: A 2023 September poll commissioned by Common Cause and conducted by Annapolis-based Gonzales Media & Research Services found 85% of registered Maryland voters favor filling legislative vacancies by special election.

The purview of the state Senate's Education, Energy and Environment Committee extends to election law. Chair Brian Feldman (D-Potomac) numbers among the 14 members of the Montgomery County delegation who initially acquired their current seats through appointment. But Feldman first joined with now-House Majority Leader David Moon (D-Takoma Park) nearly a decade ago to sponsor a bill taking a step toward a special election structure.

This year, efforts to modify the appointment system have the endorsement of Senate President Bill Ferguson (D-Baltimore). "This is going to be an issue that we take up very seriously this year," Ferguson told the **District 18 Democratic Breakfast Club in October**.

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The issue appears to be generating significant interest among voters in Montgomery County, the state's most populous jurisdiction.

"I get a lot of questions about it from constituents," said Foley. A former chair of the MCDCC, she also gained her seat through appointment. "I do believe this issue needs to be addressed," she said.

In the 2023 session and again this year, Foley has sponsored legislation similar to what Feldman and Moon first introduced in 2015. It's more incremental than Kagan's proposal. Foley's bill would require those appointed to legislative vacancies in the first part of a four-year term to face a special election in a presidential year—two years in advance of the next regular election for state legislative offices in Maryland.

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The intent is to pre-empt situations in which appointees serve for protracted periods without facing the electorate: Under the current system, the five Montgomery County legislators appointed to their

seats in the first half of 2023 will serve for three and a half to four years without the voters having an opportunity to weigh in.

In the months following his November 2022 election, Moore tapped six members of the General Assembly from across the state for his administration, including four from Montgomery County. Because they were Democratic legislators chosen in the previous election, the Maryland constitution empowered the MCDCC to fill what resulted in five openings triggered by Moore's appointments of the Democratic legislators.

The relevant constitutional provisions—in place for past 90 years with little change—mandate that “the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee of the political party, if any, with which the Delegate or Senator, so vacating, had been affiliated...”

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It gives the governor little option but to defer to the party committees.

Political parties' unusual power in Maryland

Nationally, four states utilize the hybrid appointment/election system that Foley's bill envisions, while 25 others **require a special election** whenever a vacancy occurs. Maryland is among a minority of 21 states that rely strictly on appointments for legislative vacancies—with those states varying on whether that power rests with the governor, a state legislative chamber, a county board of commissioners or a political party.

Even among states that rely on some combination of the governor and a political party to fill a vacancy, Maryland appears to be an outlier.

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“Maryland's current system is unlike most others in the country in terms of the absolute power given to local party committees, the lack of practical oversight by any elected official, and the permanency

of the appointment,” according to **a 2020 article** published by the University of Baltimore Law Forum from a Widener University Commonwealth Law School professor who is now named Quinn Yeargain.

Added Yeargain: “... Party committees having some say in same-party legislative appointment systems isn’t unusual—most states grant them at least some power—but absolute control is rare. ... Under Maryland’s current system, the party doesn’t pick a nominee; it picks a designee. In so doing, unless it can’t agree on a single name and sends the governor more than one name, the party’s decision is unreviewable. Very few other states have such a party-focused system, and most grant the formal and practical selection power to an elected actor.”

In recent years, such concerns twice prompted the political odd couple of liberal Democratic Sen. Clarence Lam of Howard County and conservative Republican then-Sen. Michael Hough of Frederick County to push for a special election bill similar to the measure that Foley is sponsoring. “This was probably the only issue that Sen. Hough and I could see eye-to-eye on,” Lam said in an interview, chuckling. “We felt that, if this is something we could come together on, we should be able to push this through.”

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Lam and Hough guided the bill through the Senate without a dissenting vote—47-0 in 2021, 45-0 in 2022—but “ran into a wall,” as Lam put it, when the measure reached the House committee of jurisdiction, the Ways and Means panel. On both occasions, the legislation received a hearing before the Ways and Means Election Law Subcommittee but went no further.

In both instances, the Election Law Subcommittee was chaired by Del. Jheanelle Wilkins (D-Silver Spring). Wilkins also chairs the General Assembly’s Legislative Black Caucus, whose 65 members make it the largest such organization in any state legislature in the nation.

Wilkins said the Black Caucus has not taken a formal position on whether to move to a special election system—nor has it ever conducted a study seeking to analyze how efforts at greater legislative diversity have been advanced by the appointment process, as compared to success at the ballot box.

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Nevertheless, legislators in the Black Caucus—whose membership now comprises more than one-third of the 188-member General Assembly—have hesitated to alter the status quo, amid concerns within the caucus that moving away from the current appointment regimen could impede efforts at greater diversity in the General Assembly's makeup.

"It's definitely true that the central committees have made historic appointments that I think a lot of people across the state have been proud of—whether it's selecting the first woman ever to represent a district or the first person of color ever to represent a district," Wilkins said during an extensive interview.

Does the appointment process boost diversity?

Lam and several other legislators, however, contend there is little evidence to link increases in diversity to the appointment process. "There are folks who point to the fact that these appointments have resulted in more minority or women members replacing white or male members," said Lam, who is Asian American. "But when we actually looked at the numbers, I don't think that we saw in our analysis that there was significant diversity value to the appointments [process]."

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He continued: "Number one, there's no requirement that the appointments process even consider diversity. And there are many examples where diversity was enhanced through an election as well, and not necessarily through an appointment process."

This is clearly a sensitive issue from a racial and political standpoint, and a couple of legislators who have conducted relevant analyses declined to go on record: One such analysis shared with MoCo360 showed that, of nearly 115 appointments to vacancies made over the past quarter of a century, only about 15% increased diversity.

An analysis of the current membership of the Legislative Black Caucus by MoCo360 yielded a similar conclusion. Among 50 Black Caucus members of the House of Delegates, two-thirds— 34—were initially elected. Of the 16 who first reached the House via appointment, six had white predecessors, with the remaining 10 replacing other Black legislators—for a 12% increase in the size of the House contingent of the caucus.

Of note is that, of the six instances of Black House members replacing white legislators, three occurred in Montgomery County—with two such appointments, Bernice Mireku-North in District 14 and W. Gregory Wims in District 39—taking place in the first half of 2023.

The number of members of the Black Caucus serving in the 35-member Montgomery County delegation has increased to seven from just a decade ago—including a half-dozen House of Delegates members and Sen. Will Smith (D-Silver Spring). Included in this increase: Wilkins, then a member of the MCDCC, who was appointed in 2017 to fill the vacancy created when then-Del. Smith was named to the seat of then-Sen. Jamie Raskin when the latter was elected to Congress.

Asked about the failure of his special elections bill to move out of the subcommittee chaired by Wilkins after twice passing the Senate unanimously, Lam said, “I don’t know how much of this is Del. Wilkins’ personal opinion versus how much of this is coming from leadership upstairs—the speaker’s office or whomever—telling her we can’t advance this bill.”

Responded Wilkins: “No one person in the House gets to decide that a bill moves forward or not, and so I would not say that I unilaterally made the decision around this or any bill.”

House Speaker Adrienne Jones (D-Baltimore County)—another legislator whose legislative career began with appointment to a vacancy, more than a quarter of a century ago—is said by multiple sources to have been privately non-committal on this issue in the past.

Her spokesperson, Marty McGowan, told MoCo360 just prior to the 2024 session, “I think we’re going to wait and see what is introduced, and I’m sure she’s going to want to talk to her folks on Ways and Means...to see what they think the best path is to take moving forward with it.”

Pressed on the failure of a bill to emerge from her subcommittee, Wilkins—now also vice-chair of the full Ways and Means Committee—said: “I think it’s important to start with the fact that having a representative inclusive democracy is really critical, especially here in Maryland—where we have one of the most diverse legislatures that is reflective of the diversity of our state. We are, according to the census, the fourth most diverse state in the nation.”

She added: “Right now, there hasn’t been necessarily a sense that we have the perfect right solution to move forward that addresses all of the different feedback that we are getting I think what’s important is that the House has been seriously deliberating, looking at this [issue] and every single

election law bill. We have to make sure that we get this right, and if that takes a couple of years to do, then that's what we will do."

Privately, Wilkins is said to have acknowledged recently that legislation relating to this issue is likely to pass this year, amid intensifying calls for reform. With the General Assembly set to adjourn in early April, what form that will take—whether a move toward special elections, greater regulation of the political committees that now fill legislative vacancies, or some combination of the two—remains unclear.

Louis Peck (lou.peck@moco360.media) has covered and supervised coverage of government and politics at the national, state and local levels for the past five decades.

(Next: A detailed look at proposals on the table for reforming how legislative vacancies are filled, and some of the arguments and political circumstances working for and against them.)