

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 278  
Ways and Means

(Delegate Frank, *et al.*)

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Election Law - Special Election to Fill Vacancy in the Office of United States  
Senator

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This bill requires the Governor, in the event of a vacancy in the office of United States Senator, to call a special election to fill the vacancy between 60 and 90 days after the vacancy occurs. The Governor may appoint a qualified individual to fill the vacancy temporarily until the results of any special election called to fill the vacancy are certified. If a vacancy occurs between 60 and 90 days prior to the primary election for the office, the special election is held on the date of the primary. A special election may not be called if the vacancy occurs within 60 days of the primary election for the office or on or after the date of that primary election.

The bill takes effect July 1, 2009.

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Fiscal Summary

**State Effect:** General fund expenditures may increase by \$1.2 million in the event a vacancy occurs and a special election (held independent of a regular election) is called. Revenues are not affected.

**Local Effect:** Local government expenditures increase significantly in the event a vacancy occurs and a special election (held independent of a regular election) is called. Local revenues are not affected. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

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## Analysis

**Current Law:** If a vacancy occurs in the office of United States Senator, the Governor has to appoint an eligible individual to fill the vacancy. If the vacancy occurs before the date that is 21 days before the deadline for filing certificates of candidacy for the next succeeding regular statewide election in the second or fourth year of the term, a primary and general special election are called, to be held at the same time as the next regular statewide primary and general election. The appointed individual serves until a successor is elected or the end of the term (if the vacancy occurs after the date 21 days before the deadline for filing certificates of candidacy for the election held in the fourth year of the term).

The 17<sup>th</sup> Amendment to the U.S. Constitution specifies that when vacancies occur in the U.S. Senate, the executive authority of the applicable state must issue “writs of election” to fill such vacancies. A state legislature, however, may also empower the executive to make temporary appointments until such vacancies are filled by election as the legislature may direct.

**Background:** A vacancy in a Maryland U.S. Senate seat has not occurred since 1912. A recent vacancy in the U.S. Representative seat for the 4<sup>th</sup> Congressional District was filled in 2008 by a special election in June.

**State Fiscal Effect:** If a U.S. Senate vacancy occurs and a stand-alone special election is required under the bill, general fund expenditures will increase significantly to conduct the election.

With a transition to a paper-based voting system (that has not yet been procured) expected prior to the 2010 elections, it is difficult to estimate the additional costs that will be incurred to conduct a special election once a new system is implemented. The State Board of Elections (SBE), however, indicates that the increase in expenditures would primarily account for the cost of printing ballots and contractual services; which could total approximately \$2.4 million for each special election based on current cost projections. These costs would be split by the State and counties pursuant to a State law requirement regarding voting system costs (Chapter 564 of 2001).

*For illustrative purposes*, if a special election was held after the implementation of a paper-based voting system, SBE estimates the printing of ballots will cost approximately \$1.4 million. This estimate assumes one ballot would be printed for every registered voter, at \$0.40 per ballot (based on current absentee and provisional ballot costs) and is based on the number of registered voters as of December 31, 2008.

In addition, SBE estimates that contractual services for a single special election would cost approximately \$1.0 million.

### *Special Election Held Concurrently with a Regular Election*

The bill requires that a special election be held on the same date as the primary election for the U.S. Senate office if the vacancy occurs between 60 and 90 days before the date of the primary. In addition, the bill does not appear to prohibit a special election from being held concurrently with a regular statewide election in the second or fourth year of the term of the vacant office, if the regular election would fall within 60 and 90 days of the vacancy occurring. SBE advises increased ballot preparation costs may be incurred to account for the special election during a primary election (in the event party affiliation would need to be listed on the primary ballots for the special election race), but any increase in expenditures cannot be reliably estimated at this time. Nonetheless, any costs of conducting a special election concurrently with a regular election would be considerably less than the costs of conducting a stand-alone special election.

### *Operational Impact*

In addition to increased expenditures, SBE advises that a stand-alone special election would have a considerable operational impact on the board, potentially causing upgrades, improvements, and changes (such as the voting system transition) scheduled for periods between elections to be delayed or rushed.

**Local Fiscal Effect:** If a U.S. Senate vacancy occurs and a stand-alone special election is required under the bill, local government expenditures are expected to increase significantly to conduct the election. Counties will share half of the ballot printing and voting system-related contractual services costs mentioned above under State Fiscal Effect and will incur additional costs associated with conducting an election such as election judge compensation, communication, postage and printing, polling place rental, and additional contractual services costs.

Based on cost estimates provided by local boards of elections, the costs of a special election would vary considerably depending on the jurisdiction. Montgomery County and Baltimore City indicate that the costs for a single special election could be as high as \$7.4 million and \$6.0 million, respectively. In comparison, smaller jurisdictions such as Harford County and Caroline County provided estimates of \$523,000 and \$80,000, respectively.

As mentioned under State Fiscal Effect, costs associated with a special election held concurrently with a regular election would be considerably less than the costs of a stand-alone special election.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Baltimore, Caroline, Carroll, Charles, Frederick, Garrett, Harford, Howard, Kent, Montgomery, St. Mary's, Washington, Wicomico, and Worcester counties; State Board of Elections; Department of Legislative Services

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