

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 157 (Senators Brochin and Raskin)
Education, Health, and Environmental Affairs

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

This bill amends the process for filling a vacancy in the office of United States Senator, by requiring the Governor, in most circumstances, to call a special election to fill the vacancy, to be held between 90 and 160 days after the vacancy occurs. A special election may not be called if the vacancy occurs within 90 days of the regular primary election for the office or on or after the date of that primary election. The bill authorizes the Governor to temporarily appoint an individual to fill the vacancy, until the vacancy is filled by special election. The bill only applies to a vacancy that occurs on or after the commencement of the term of the Governor who is sworn in on January 21, 2015.

Fiscal Summary

State Effect: General fund expenditures may increase by \$500,000 for contractual services, beginning in FY 2015, in the event a vacancy occurs and a special election (held independent of a regular election) is called. If an optical scan voting system is used, general fund expenditures may further increase by \$713,300 due to the cost of printing paper ballots. Revenues are not affected.

Local Effect: Local government expenditures increase significantly beginning in FY 2015 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: Minimal.

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 special primary and general 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 17th 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: According to the National Conference of State Legislatures, U.S. Senate vacancies are filled by special election in 14 states, while the remaining 36 states fill a U.S. Senate vacancy at their next regularly scheduled, statewide general election. 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 4th Congressional District was filled by special election in 2008.

State Fiscal Effect: If a U.S. Senate vacancy occurs after the beginning of the gubernatorial term in 2015 and a stand-alone special election must be called pursuant to the bill, general fund expenditures may increase by \$500,000 for voting system contractual services, according to an estimate provided by the State Board of Elections (SBE) for similar bills during the 2009 session. This accounts for the State’s share of the contractual services costs, pursuant to Chapter 564 of 2001, which requires the counties to pay one-half of the State’s cost of acquiring and operating the State’s voting systems. SBE indicated those services could include county technicians, ballot programming, audio recording, logic and accuracy testing support, election day support personnel, help desk support, and transportation.

Based on limited information provided by SBE more recently, it appears the cost of conducting a statewide special election may be higher than \$500,000, but complete information is not available to provide an updated estimate. Costs presumably may also increase due to inflation or other factors, depending on when a special election will be called.

SBE has been in the process of procuring a new optical scan voting system to be used along with a portion of the current touch screen voting machines (which would be used to provide access for voters with disabilities) in accordance with Chapters 547 and 548 of 2007 and Chapter 428 of 2009. Funding for the voting system, however, is not currently included in the Governor's proposed fiscal 2011 budget. It is unclear how contractual services costs of an optical scan voting system would compare with those of a touch screen system, but paper ballot costs would increase. The State could incur approximately \$713,300 in paper ballot costs to conduct a special election with an optical scan voting system, assuming a ballot would be printed for every registered voter.

Chapter 428 of 2009 also requires that the touch screen voting machines be replaced within two years of a voting machine that provides a voter-verifiable paper record having been examined and shown by an independent testing laboratory approved by the U.S. Election Assistance Commission to meet certain requirements, including requirements of accessibility for voters with disabilities. Such a change in voting systems presumably could also affect special election costs.

Special Election Held Concurrently with a Regular Election

The bill requires that a special election be held on the same date as the regular primary election for the U.S. Senate office if the vacancy occurs between 90 and 160 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 90 and 160 days of the vacancy occurring. SBE has advised in the past that 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. 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 has advised in the past that a stand-alone special election would have a considerable operational impact on the board, potentially causing upgrades, improvements, and changes scheduled for periods between elections to be delayed or rushed.

Local Fiscal Effect: If a U.S. Senate vacancy occurs after the beginning of the gubernatorial term in 2015 and a stand-alone special election is required under the bill, local government expenditures are also expected to increase significantly to conduct the

election. Based on estimates provided by local boards of elections of the cost of administering a regular countywide election using the current touch screen voting system, the costs of a special election would vary considerably among the different jurisdictions. For example, to conduct a single special election, Prince George's County expenditures may increase by at least \$1.0 million, Harford County expenditures may increase by at least \$632,900, and Caroline County expenditures may increase by \$80,400.

The estimates for Prince George's and Harford counties do not account for costs shared by the State and counties and therefore should be higher when taking those costs into account. Caroline County's estimate, however, does account for shared costs. Presumably local government costs may also increase due to inflation or other factors, depending on when a special election will be called.

If an optical scan system is used to conduct the special election, Prince George's, Harford, and Caroline counties could incur approximately \$102,900, \$30,100, and \$4,200, respectively, in paper ballot costs, assuming a ballot would be printed for every registered voter.

As mentioned with respect to the 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.

Additional Comments: The information above accounts for the costs of administering a single special election. If a special primary election may also be necessary, to nominate principal political party candidates for the special election, additional costs would be incurred.

Additional Information

Prior Introductions: HB 278 and HB 369 of 2009, both similar bills, received unfavorable reports from the House Ways and Means Committee. SB 325 of 2009, also a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: None.

Information Source(s): State Board of Elections; Governor's Office; Baltimore City; Allegany, Calvert, Caroline, Frederick, Harford, Montgomery, Prince George's, Queen Anne's, and Worcester counties; National Conference of State Legislatures; Department of Legislative Services

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