

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 158
Ways and Means

(Delegate Ali, *et al.*)

Special Election for U.S. Senate Vacancies Act

This bill amends the process for filling a vacancy in the office of U.S. Senator, requiring the Governor, in most circumstances, to call a special primary election to be held between 60 and 90 days after the vacancy occurs and a special general election to be held between 60 and 90 days after the special primary election. A special election may not be called if the vacancy occurs less than 60 days before the regular primary election for the office or on or after the date of that primary election. The bill requires the Governor to temporarily appoint an individual to fill the vacancy until the vacancy is filled by special election, or if a special election is not called, until the results of the next general election are certified. The appointed individual must be of the same political party as the vacating senator and may not be a candidate in the special election to fill the vacancy. 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 \$1.0 million for contractual services, beginning in FY 2015, in the event a vacancy occurs and special primary and general elections (held independent of regular elections) are called. If an optical scan voting system is used, general fund expenditures may further increase by \$1.3 million 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 special primary and general elections (held independent of regular elections) are 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 U.S. 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 primary and general election must be called pursuant to the bill, general fund expenditures may increase by \$1 million 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 primary and general election may be higher than \$1 million, 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 \$1.3 million in paper ballot costs to conduct special primary and general elections 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 the special primary and/or general election be held on the same date as a regularly scheduled election if the regularly scheduled election will be held within the prescribed period in which the special election must be held. 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 stand-alone special primary and general elections are required under the bill, local government expenditures are also expected to increase significantly to conduct the elections. 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 special elections would vary considerably among the different jurisdictions. For example, to conduct special primary and general elections, Prince George's County expenditures may increase by at least \$2.0 million, Harford

County expenditures may increase by at least \$1.2 million, and Caroline County expenditures may increase by \$160,700.

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 primary and general elections, Prince George's, Harford, and Caroline counties could incur approximately \$188,700, \$55,200, and \$7,600, 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 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 on the bill.

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

Fiscal Note History: First Reader - February 14, 2010
mpc/mwc

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