

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

House Bill 725

(Montgomery County Delegation)

Ways and Means

Education, Health, and Environmental Affairs

Montgomery County - County Council Special Elections - Voting by Mail
MC 5-12

This bill allows for a special election to fill a vacancy in the Montgomery County Council, that is not held concurrently with a regularly scheduled election, to be conducted largely by mail. All registered voters eligible to vote in an election will be sent a vote-by-mail ballot with a postage-paid return envelope. The bill establishes various related requirements, including deadlines for mailing of ballots to voters and the return of ballots and a requirement that at least one voting center be established, per council district, for the use of any eligible voter who chooses to cast a ballot in person.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: General fund expenditures are expected to be affected if a county council special election in Montgomery County is conducted largely by mail pursuant to the bill, with certain costs decreasing and others increasing. Under one set of assumptions, expenditures decrease by \$17,300 for a special primary and general election held in a single county council district and by \$81,200 for a countywide special primary and general election.

Local Effect: Montgomery County expenditures are expected to decrease if a county council special election is conducted largely by mail. Under one set of assumptions, county expenditures decrease by approximately \$245,000 for a special primary and general election held in a single county council district and by approximately \$633,000 for a countywide special primary and general election.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Utilization of Voting by Mail

The bill allows for voting by mail to be utilized in a special election to fill a vacancy in the Montgomery County Council that is not held concurrently with a regularly scheduled primary or general election if the county council directs that the election be conducted by mail. At least 14 days before the day of a special election, ballots, along with postage-paid return envelopes, must be mailed to each registered voter eligible to vote in the election, unless a voter has requested that the ballot be sent by other means. Voters do not need to submit an application to receive a ballot.

A ballot generally must be sent to the voter's address on file in the statewide voter registration list. However, a registered voter may request to receive a ballot at another address, if the voter is temporarily absent from the address on file or has changed residence, up until the Tuesday preceding the day of a special election. A replacement ballot must be issued to a voter if the Montgomery County election director has reasonable grounds to believe the voter's previously issued vote-by-mail ballot has been lost, destroyed, or spoiled.

A voter may return a vote-by-mail ballot by mail, in person, or through a duly authorized agent in accordance with specified requirements applicable to use of an agent to return an absentee ballot. A vote-by-mail ballot is considered timely and may be counted if the ballot (1) is returned in person to the office of the Montgomery County Board of Elections no later than 8 p.m. on the day of a special election; or (2) is received by mail by the board of elections no later than 10 a.m. on the second Friday after a special election and was mailed on or before election day.

The Montgomery County Board of Elections must pay the cost of the return envelopes. The State Board of Elections (SBE) may adopt regulations as necessary to implement the bill. Except as otherwise stated in the bill, State election laws relating to absentee voting apply to voting by mail; county laws relating to the conduct of a county council special election apply to a special election utilizing voting by mail; and State election laws relating to the conduct of elections apply to a special election utilizing voting by mail unless a law specifically relevant to a special election applies.

Voting Centers

The Montgomery County Board of Elections must establish voting centers for the use of any eligible voter who chooses to cast a ballot in person in a special election utilizing voting by mail. At least one voting center must be established in the applicable county council district for a special election held in a single county council district, and at least one voting center must be established in each district for a countywide special election. A voting center must (1) provide access to a voting system that is accessible to voters with disabilities in accordance with specified federal law; (2) provide for provisional voting; (3) satisfy State law requirements applicable to polling places; and (4) be open for voting during the days and hours that the county council directs. Except as otherwise provided in the bill, any provision of the Election Law Article that applies to voting at a polling place on election day applies to voting at a voting center.

Current Law: The Maryland Constitution allows for the county council of a charter county, as expressly authorized by statute, to provide for the filling of a vacancy in the county council by special election. (*See* Md. Const. Article XI-A, § 3.) Charter counties are authorized in State statute to provide for the conduct of a special election to fill a vacancy in the county council. (*See* Article 25A § 5(Q).) The Montgomery County Code requires a vacancy that occurs before December 1 of the year before a year in which a quadrennial State election (gubernatorial election) will be held to be filled by a special election. The special election is conducted among the registered voters of the council district represented by the previous member, or among the registered voters of the entire county when the previous member did not represent a council district. Under circumstances in which a vacancy occurs within a specified period prior to a scheduled regular or special election, the special election is held concurrently with the other election. (*See* Montgomery County Code § 16-17.)

Subject to certain exceptions, the Montgomery County Code specifies that, to the extent applicable, special elections for county council must be conducted in a manner consistent with provisions of State law that govern special elections to fill vacancies in the U.S. House of Representatives. Beyond that, the county code also specifies that the general provisions of State and county law that govern quadrennial elections for council members apply to special elections to fill a county council vacancy. (*See* Montgomery County Code § 16-17.) State law provides for elections, whether regular or special elections, to be conducted through both in-person and absentee voting. (*See* Election Article §§ 9-301, *et seq.*, 10-301 *et seq.*)

Background: Oregon and Washington conduct all elections by mail and according to the National Conference of State Legislatures, 17 additional states allow certain elections to be held by mail: Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, and North Dakota.

Montgomery County, a charter county, has conducted two special elections to fill a county council vacancy in recent years, in 2008 and 2009.

State Fiscal Effect: General fund expenditures are expected to be affected if a county council special election in Montgomery County is conducted largely by mail since SBE shares certain voting system-related costs with the local boards of elections. Voting system-related costs associated with conducting in-person voting would decrease and printing costs for ballots (considered a voting system-related cost) would increase.

It appears that the costs that would be shared by the State and Montgomery County for a special election, whether conducted largely at polling places (under current law) or largely by mail (pursuant to the authorization in the bill), would be voting equipment delivery costs and printing costs associated with absentee and provisional ballots. Under one set of assumptions, general fund expenditures decrease by \$17,300 for a special primary and general election held in a single county council district and by \$81,200 for a countywide special primary and general election. This is based on a relatively conservative assumption of the State's share of ballot-related costs, however, and if the State's share of those costs were larger, the increase in the State's ballot-related costs could be greater than the decrease in voting equipment delivery costs, resulting in a net increase in general fund expenditures.

If the State acquires and implements an optical scan, paper ballot-based voting system (in accordance with Chapters 547 and 548 of 2007 and Chapter 428 of 2009) to replace the current touchscreen voting system, the cost difference between conducting a special election at polling places and by mail would be affected. In that case, a significant number of paper ballots would need to be printed for a special election conducted at polling places, which would lessen the increase in paper ballot costs to conduct a vote-by-mail election instead of an election at polling places.

Local Fiscal Effect: Montgomery County expenditures are expected to decrease in the event a special election to fill a county council vacancy is conducted largely by mail instead of at polling places. Under one set of assumptions, county expenditures decrease by approximately \$245,000 for a special primary and general election held in a single county council district and by approximately \$633,000 for a countywide special primary and general election. This is based on a relatively conservative assumption of the State's share of ballot-related costs, however, and if the State's share of those costs were larger, county expenditures could decrease by a greater amount.

The overall decreases in expenditures account for reduced personnel costs (election judges, temporary staff, and overtime), sample ballot costs, and voting equipment delivery costs, partially offset by an increase in paper ballot printing and mailing costs. The estimates assume that the minimum of one voting center for a special election held in

a single county council district and five voting centers (one per district) for a county wide special election would be established, in both cases for just one day per primary or general election.

As mentioned above with respect to the State fiscal effect, the type of voting system used to conduct voting at polling places will also affect the cost difference between conducting a special election at polling places and by mail.

Additional Information

Prior Introductions: HB 546 of 2011, a similar bill, authorizing special elections in Montgomery County to be conducted by mail, was withdrawn.

Cross File: None.

Information Source(s): State Board of Elections, Montgomery County, Department of Legislative Services

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