

HOUSE BILL 176

F3

5l0670

By: **Montgomery County Delegation**

Introduced and read first time: January 29, 2015

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2015

CHAPTER _____

1 AN ACT concerning

2 **Montgomery County Board of Education – Special Election to Fill a Vacancy**

3 **MC 22–15**

4 FOR the purpose of providing for the conduct of a special election to fill a vacancy for an
5 elected member on the Montgomery County Board of Education under certain
6 circumstances; ~~repealing~~ altering the authority of the elected members of the county
7 board to appoint an individual to fill a vacancy for an elected member on the county
8 board; providing that, under certain circumstances, the special election shall be held
9 concurrently with a ~~regularly~~ certain previously scheduled ~~general~~ election in the
10 county; requiring the County Executive for Montgomery County, after consultation
11 with the county board of elections, to establish the date for the special election and
12 under certain circumstances, a special runoff election; authorizing a special election
13 to fill a vacancy in the county board to be held at a time other than the date of a
14 regular primary election and a regular general election; providing that a local special
15 election to fill a vacancy shall be conducted by mail ~~if the proclamation of the chief~~
16 ~~executive officer or county executive of a charter county directs that the election be~~
17 ~~conducted by mail~~ under certain circumstances; providing for a delayed effective
18 date; and generally relating to a special election to fill a vacancy for an elected
19 member of the Montgomery County Board of Education.

20 BY repealing and reenacting, with amendments,

21 Article – Education

22 Section 3–901(a), (f)(5) and (6), and (g)

23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2014 Replacement Volume and 2014 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article – Education

4 Section ~~3–901(a)~~ 3–901(b) through (e), and (f)(1), (2), and (4), ~~and (6), and (g)~~

5 Annotated Code of Maryland

6 (2014 Replacement Volume and 2014 Supplement)

7 ~~BY repealing and reenacting, with amendments,~~

8 ~~Article – Education~~

9 ~~Section 3–901(f)(5)~~

10 ~~Annotated Code of Maryland~~

11 ~~(2014 Replacement Volume and 2014 Supplement)~~

12 BY repealing and reenacting, with amendments,

13 Article – Election Law

14 Section 8–401 and 9–501

15 Annotated Code of Maryland

16 (2010 Replacement Volume and 2014 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article – Education**

20 3–901.

21 (a) (1) In this subtitle the following words have the meanings indicated.

22 (2) “Board of Education District” means a geographic area of Montgomery
23 County in which an elected member of the Montgomery County Board of Education must
24 be a legal resident. The geographic area of each district is described in subsection (f) of this
25 section. Each district shall be substantially equal in population, and the districts shall be
26 reapportioned on the basis of each decennial census of the United States.

27 (3) **“COUNTY EXECUTIVE” MEANS THE COUNTY EXECUTIVE OF**
28 **MONTGOMERY COUNTY.**

29 (4) “Elected member” means 1 of the 7 elected and voting members of the
30 Montgomery County Board or a member appointed to fill a vacancy of 1 of these 7 members.

31 (5) **“VACANCY DATE” MEANS:**

32 (1) **THE DATE ON WHICH AN ELECTED MEMBER IS UNABLE TO**
33 **CONTINUE TO SERVE AS A MEMBER OF THE COUNTY BOARD; OR**

1 **(II) FOR AN ELECTED MEMBER WHO RESIGNS, THE EFFECTIVE**
2 **DATE OF THE RESIGNATION.**

3 (b) The Montgomery County Board consists of:

4 (1) 5 elected members, each of whom resides in a different board of
5 education district;

6 (2) 2 elected members who may reside anywhere in the county; and

7 (3) 1 student member.

8 (c) An elected member of the county board shall be a registered voter of
9 Montgomery County.

10 (d) Members of the Montgomery County Board shall be elected at the general
11 election every 2 years as required by subsection (f) of this section.

12 (e) (1) The student member shall be a bona fide resident of Montgomery
13 County and a regularly enrolled junior or senior year student from a Montgomery County
14 public high school.

15 (2) The nomination and election process shall be as agreed on by the county
16 board and the Montgomery County region of the Maryland Association of Student Councils.
17 This agreement shall include a process by which to replace one or both of the final
18 candidates if they are unable to proceed in the election. Any student enrolled in a middle
19 or high school in the Montgomery County public schools may:

20 (i) Nominate a student member candidate;

21 (ii) Vote for delegates from the student's school, who in turn vote in
22 a nominating convention to reduce to 2 the number of candidates for student board member
23 if there are 3 or more candidates; and

24 (iii) Vote directly for 1 of the 2 remaining student board member
25 candidates.

26 (3) The candidate receiving the second highest number of votes in the
27 direct election shall become the alternate student member. The alternate shall serve if the
28 student member is unable to complete his elected term.

29 (4) Except as provided in paragraphs (5), (6), and (7) of this subsection, the
30 student member has the same rights and privileges of an elected member.

31 (5) Unless invited to attend by the affirmative vote of a majority of the
32 county board, the student member may not attend an executive session that relates to:

1 (i) Hearings held under § 6–202(a) of this article; or

2 (ii) Collective bargaining.

3 (6) As provided in paragraph (7) of this subsection, the student member
4 shall vote on all matters except those relating to:

5 (i) § 6–202(a) of this article;

6 (ii) Collective bargaining;

7 (iii) Capital and operating budgets; and

8 (iv) School closings, reopenings, and boundaries.

9 (7) On a majority vote of the elected members, the board may determine,
10 on a case by case basis, whether a matter under consideration is covered by the exclusionary
11 provisions listed in paragraph (6) of this subsection.

12 (f) (1) Each elected member serves for a term of 4 years beginning on
13 December 1 after the member's election and until a successor is elected and qualifies. The
14 terms of elected members are staggered as required by the terms of the members serving
15 on the county board as of July 1, 1978 so that 4 members are elected in gubernatorial
16 election years and 3 members are elected in presidential election years.

17 (2) Elected members of the county board shall be elected by the voters of
18 the entire county.

19 (4) (i) The student member serves for a term of 1 year beginning on
20 July 1 after the election.

21 (ii) The student member shall be replaced for the remainder of the
22 term by the alternate student member if the student member:

23 1. Resigns or otherwise is unable to complete the term; or

24 2. Is removed under the provisions of subsection (g) of this
25 section.

26 (iii) The elected members of the county board shall select a student
27 to complete the remainder of the term if the student member is replaced as provided in
28 subparagraph (ii) of this paragraph and the alternate member:

29 1. Resigns or otherwise is unable to complete the term; or

30 2. Is removed under the provisions of subsection (g) of this
31 section.

1 ~~(5)~~ ~~(H)~~ ~~(G)~~ **(1)** **(I)** [The remaining members of the county board
 2 shall select a qualified individual] **IN THE EVENT OF A VACANCY FOR AN ELECTED**
 3 **MEMBER ON THE COUNTY BOARD, IF THE VACANCY DATE IS AT LEAST 365 DAYS**
 4 **BEFORE THE END OF THE ELECTED MEMBER'S TERM, A SPECIAL ELECTION SHALL**
 5 **BE CONDUCTED IN ACCORDANCE WITH ~~§ 9-501 OF THE ELECTION LAW ARTICLE~~** to
 6 fill [any] THE vacancy on the [elected] COUNTY board for the remainder of that term and
 7 until a successor is elected and qualifies.

8 **(II) THE COUNTY BOARD SHALL IMMEDIATELY NOTIFY THE**
 9 **COUNTY EXECUTIVE OF THE VACANCY DATE.**

10 **(III) 1. WITHIN 7 DAYS AFTER RECEIVING NOTICE OF A**
 11 **VACANCY FROM THE COUNTY BOARD, AND AFTER CONSULTATION WITH THE COUNTY**
 12 **BOARD OF ELECTIONS, THE COUNTY EXECUTIVE SHALL ISSUE A PROCLAMATION**
 13 **ESTABLISHING:**

14 **A. THE DATE FOR A SPECIAL ELECTION; AND**

15 **B. IF MORE THAN TWO CANDIDATES RUN IN THE SPECIAL**
 16 **ELECTION, THE DATE FOR A SPECIAL RUNOFF ELECTION BETWEEN THE TWO**
 17 **CANDIDATES THAT RECEIVE THE HIGHEST NUMBER OF VOTES IN THE SPECIAL**
 18 **ELECTION.**

19 **2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF**
 20 **THIS PARAGRAPH, THE SPECIAL ELECTION AND SPECIAL RUNOFF ELECTION SHALL**
 21 **BE CONDUCTED IN ACCORDANCE WITH TITLE 9, SUBTITLE 5 OF THE ELECTION LAW**
 22 **ARTICLE.**

23 **(IV) IF THE COUNTY EXECUTIVE IS NOTIFIED OF A VACANCY**
 24 **THAT WILL OCCUR MORE THAN 40 DAYS BUT LESS THAN 120 DAYS BEFORE A**
 25 **PREVIOUSLY SCHEDULED COUNTY-WIDE REGULAR OR SPECIAL PRIMARY OR**
 26 **GENERAL ELECTION, THE COUNTY EXECUTIVE SHALL ISSUE A PROCLAMATION**
 27 **ESTABLISHING A SPECIAL ELECTION AT THE SAME TIME AND CONDUCTED IN THE**
 28 **SAME MANNER AS THE PREVIOUSLY SCHEDULED ELECTION.**

29 **(2) IN THE EVENT OF A VACANCY FOR AN ELECTED MEMBER, IF THE**
 30 **VACANCY DATE IS LESS THAN 365 DAYS BEFORE THE END OF THE ELECTED**
 31 **MEMBER'S TERM, THE REMAINING MEMBERS OF THE COUNTY BOARD SHALL SELECT**
 32 **A QUALIFIED INDIVIDUAL TO FILL THE VACANCY FOR THE REMAINDER OF THE TERM**
 33 **UNTIL A SUCCESSOR IS ELECTED AND QUALIFIES.**

34 ~~**(H) IF THE VACANCY OCCURS ON OR AFTER THE DAY THAT IS**~~
 35 ~~**180 DAYS BEFORE THE NEXT GENERAL ELECTION IN THE COUNTY, BUT MORE THAN**~~

~~1 10 DAYS BEFORE THE FILING DEADLINE FOR CANDIDATES FOR THAT ELECTION, THE
2 SPECIAL ELECTION TO FILL THE VACANCY SHALL BE HELD AT THE SAME TIME AS
3 THE PENDING GENERAL ELECTION.~~

~~4 (H) THE COUNTY EXECUTIVE OF MONTGOMERY COUNTY
5 SHALL ESTABLISH BY PROCLAMATION THE DATE FOR THE SPECIAL ELECTION.~~

~~6 (G) (i) (H) (1) Subject to subparagraph (ii) of this paragraph
7 PARAGRAPH (2) OF THIS SUBSECTION, an elected county board member shall forfeit the
8 office if the member fails to reside in the board of education district from which the member
9 was elected.~~

~~10 (ii) (2) If the failure to continue to reside in the district is caused
11 by an alteration in the board of education district boundaries because of reapportionment,
12 the member may complete the term for which the member was elected.~~

~~13 (iii) (3) In the event of a vacancy caused by a member who is
14 required to reside in a particular board of education district, the person appointed to fill
15 the vacancy shall reside in the same district at the time of appointment and while filling
16 out the unexpired term.~~

~~17 (E) (I) (1) The Montgomery County Council may remove a member of the county
18 board for:~~

- ~~19 (i) Immorality;~~
- ~~20 (ii) Misconduct in office;~~
- ~~21 (iii) Incompetency; or~~
- ~~22 (iv) Willful neglect of duty.~~

~~23 (2) Before removing a member, the County Council shall provide the
24 member a copy of the charges against him and give him an opportunity within 10 days to
25 request a hearing.~~

~~26 (3) If the member requests a hearing within the 10-day period:~~

~~27 (i) The County Council promptly shall hold a hearing, but a hearing
28 may not be set within 10 days after the County Council sends the member a notice of the
29 hearing; and~~

~~30 (ii) The member shall have an opportunity to be heard publicly
31 before the County Council in the member's own defense, in person or by counsel.~~

1 (4) A member removed under this subsection has the right to a de novo
2 review of the removal by the Circuit Court for Montgomery County.

3 **Article – Election Law**

4 8–401.

5 (a) A special primary election and a special general election may be held at a time
6 other than the date of a regular primary election and a regular general election:

7 (1) to fill a vacancy in the office of Representative in Congress; [or]

8 (2) to fill a vacancy in the county council or in the office of chief executive
9 officer or county executive if the charter of that county provides for special elections; OR

10 (3) TO FILL A VACANCY IN THE MONTGOMERY COUNTY BOARD OF
11 EDUCATION.

12 (b) (1) Special elections to fill a vacancy in the office of Representative in
13 Congress shall be held at the time specified in Subtitle 7 of this title.

14 (2) Special elections to fill vacancies in a county council or in the office of
15 chief executive officer or county executive shall be held as provided in the county charter.

16 (3) SPECIAL ELECTIONS TO FILL VACANCIES IN THE MONTGOMERY
17 COUNTY BOARD OF EDUCATION SHALL BE HELD AS PROVIDED IN § 9–301 OF THE
18 EDUCATION ARTICLE.

19 (c) An election to fill a vacancy in the office of United States Senator shall be held
20 concurrently with a regular election as provided in Subtitle 6 of this title.

21 9–501.

22 (a) This subtitle applies only to a special election that is not held concurrently
23 with a regularly scheduled primary or general election.

24 (b) Voting by mail may be utilized in a special election in accordance with this
25 subtitle.

26 (c) A special election to fill a vacancy in the Office of Representative in Congress
27 shall be conducted by mail if the Governor’s proclamation issued under § 8–710 of this
28 article directs that the election be conducted by mail.

29 (d) (1) In this subsection, “local special election” means a special election to:

1 (i) fill a vacancy in the offices of county council member, chief
2 executive officer, or county executive of a charter county if the charter of that county
3 provides for special elections;

4 (ii) fill a vacancy in the board of county commissioners of a code
5 home rule county if a local law enacted by that county provides for special elections;

6 (iii) fill a vacancy in the board of county commissioners of a
7 commission county if a law provides for special elections;

8 (iv) fill a vacancy in a local board of education if State law provides
9 for special elections;

10 (v) elect members of a charter board or submit a proposed charter to
11 the voters for adoption or rejection in accordance with Article XI–A, § 1A of the Maryland
12 Constitution; or

13 (vi) submit a local law enacted by a code home rule county to the
14 voters for adoption or rejection in accordance with § 9–313 of the Local Government Article.

15 (2) A local special election shall be conducted by mail if **THE**
16 **PROCLAMATION OF THE CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE OF A**
17 **CHARTER COUNTY, OR** the resolution of the county council or board of county
18 commissioners **OF THE AFFECTED COUNTY**, establishing the date of the special election
19 directs that the election be conducted by mail.

20 (e) Except as otherwise provided in this subtitle:

21 (1) provisions of this article relating to absentee voting apply to voting by
22 mail; and

23 (2) all pertinent State or local laws relating to the conduct of a special
24 election apply to a special election conducted under this subtitle.

25 (f) Provisions of this article relating to the conduct of elections apply to a special
26 election conducted under this subtitle, unless a law specifically relevant to a special election
27 applies.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, ~~2015~~ 2016.