

# HOUSE BILL 1065

F3, G1  
HB 176/15 – W&M

6lr0307

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By: **Montgomery County Delegation**

Introduced and read first time: February 11, 2016

Assigned to: Ways and Means

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Committee Report: Favorable

House action: Adopted

Read second time: March 14, 2016

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

3 **MC 2–16**

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; altering the authority of the elected members of the county board to  
7 appoint an individual to fill a vacancy for an elected member on the county board;  
8 providing that, under certain circumstances, the special election shall be held  
9 concurrently with a certain previously scheduled election in the county; requiring  
10 the Montgomery County Executive, after consultation with the county board of  
11 elections, to establish the date for the special primary election and, under certain  
12 circumstances, a special general election; authorizing a special election to fill a  
13 vacancy in the county board to be held at a time other than the date of a regular  
14 primary election and a regular general election; providing that a local special election  
15 to fill a vacancy shall be conducted by mail under certain circumstances; and  
16 generally relating to a special election to fill a vacancy for an elected member of the  
17 Montgomery County Board of Education.

18 BY repealing and reenacting, with amendments,  
19 Article – Education  
20 Section 3–901(a), (f)(4), (5), and (6), and (g)  
21 Annotated Code of Maryland  
22 (2014 Replacement Volume and 2015 Supplement)

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### 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 BY repealing and reenacting, without amendments,  
2 Article – Education  
3 Section 3–901(b) through (e) and (f)(1) and (2)  
4 Annotated Code of Maryland  
5 (2014 Replacement Volume and 2015 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – Election Law  
8 Section 8–401 and 9–501  
9 Annotated Code of Maryland  
10 (2010 Replacement Volume and 2015 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
12 That the Laws of Maryland read as follows:

13 **Article – Education**

14 3–901.

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

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

21 (3) **“COUNTY EXECUTIVE” MEANS THE MONTGOMERY COUNTY**  
22 **EXECUTIVE.**

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

25 (5) **“VACANCY DATE” MEANS:**

26 **(I) THE DATE ON WHICH AN ELECTED MEMBER IS UNABLE TO**  
27 **CONTINUE TO SERVE AS A MEMBER OF THE COUNTY BOARD; OR**

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

30 (b) The Montgomery County Board consists of:

31 (1) 5 elected members, each of whom resides in a different board of  
32 education district;

1 (2) 2 elected members who may reside anywhere in the county; and

2 (3) 1 student member.

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

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

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

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

15 (i) Nominate a student member candidate;

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

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

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

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

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

28 (i) Hearings held under § 6-202(a) of this article; or

29 (ii) Collective bargaining.

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

32 (i) § 6-202(a) of this article;

- 1 (ii) Collective bargaining;
- 2 (iii) Capital and operating budgets; and
- 3 (iv) School closings, reopenings, and boundaries.

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

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

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

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

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

- 18 1. Resigns or otherwise is unable to complete the term; or
- 19 2. Is removed under the provisions of subsection [(g)] (I) of  
 20 this section.

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

- 24 1. Resigns or otherwise is unable to complete the term; or
- 25 2. Is removed under the provisions of subsection [(g)] (I) of  
 26 this section.

27 [(5)] (G) (1) (I) [The remaining members of the county board shall  
 28 select a qualified individual] **IN THE EVENT OF A VACANCY FOR AN ELECTED MEMBER**  
 29 **ON THE COUNTY BOARD, IF THE VACANCY DATE IS AT LEAST 365 DAYS BEFORE THE**  
 30 **END OF THE ELECTED MEMBER'S TERM, A SPECIAL ELECTION SHALL BE**  
 31 **CONDUCTED** to fill [any] **THE** vacancy on the [elected] **COUNTY** board for the remainder  
 32 of that term and until a successor is elected and qualifies.

1                   **(II) THE COUNTY BOARD SHALL IMMEDIATELY NOTIFY THE**  
2 **COUNTY EXECUTIVE OF THE VACANCY DATE.**

3                   **(III) 1. SUBJECT TO SUBSUBPARAGRAPH 3 OF THIS**  
4 **SUBPARAGRAPH, WITHIN 7 DAYS AFTER RECEIVING NOTICE OF A VACANCY FROM**  
5 **THE COUNTY BOARD, AND AFTER CONSULTATION WITH THE COUNTY BOARD OF**  
6 **ELECTIONS, THE COUNTY EXECUTIVE SHALL ISSUE A PROCLAMATION**  
7 **ESTABLISHING:**

8                   **A. THE DATE FOR A SPECIAL PRIMARY ELECTION AMONG**  
9 **CANDIDATES TO FILL THE VACANCY; AND**

10                   **B. THE DATE FOR A SPECIAL GENERAL ELECTION**  
11 **BETWEEN THE TWO CANDIDATES WHO RECEIVE THE HIGHEST NUMBER OF VOTES IN**  
12 **THE SPECIAL PRIMARY ELECTION REQUIRED UNDER ITEM A OF THIS**  
13 **SUBSUBPARAGRAPH IF MORE THAN TWO CANDIDATES RUN IN THE SPECIAL**  
14 **PRIMARY ELECTION.**

15                   **2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF**  
16 **THIS PARAGRAPH, THE SPECIAL PRIMARY ELECTION AND THE SPECIAL GENERAL**  
17 **ELECTION SHALL BE CONDUCTED IN ACCORDANCE WITH TITLE 9, SUBTITLE 5 OF**  
18 **THE ELECTION LAW ARTICLE.**

19                   **3. IF ONLY TWO CANDIDATES RUN IN THE SPECIAL**  
20 **PRIMARY ELECTION TO FILL THE VACANCY, THE CANDIDATE WHO RECEIVES THE**  
21 **HIGHEST NUMBER OF VOTES IN THAT ELECTION SHALL BE DECLARED ELECTED AND**  
22 **A SPECIAL GENERAL ELECTION MAY NOT BE HELD.**

23                   **(IV) IF THE COUNTY EXECUTIVE IS NOTIFIED OF A VACANCY**  
24 **THAT WILL OCCUR MORE THAN 60 DAYS BUT LESS THAN 120 DAYS BEFORE A**  
25 **PREVIOUSLY SCHEDULED COUNTYWIDE 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.**

1            **[(6) (i) (H) (1)]** Subject to [subparagraph (ii) of this paragraph]  
 2 **PARAGRAPH (2) OF THIS SUBSECTION**, an elected county board member shall forfeit the  
 3 office if the member fails to reside in the board of education district from which the member  
 4 was elected.

5            **[(ii) (2)]** If the failure to continue to reside in the district is caused  
 6 by an alteration in the board of education district boundaries because of reapportionment,  
 7 the member may complete the term for which the member was elected.

8            **[(iii) (3)]** In the event of a vacancy caused by a member who is  
 9 required to reside in a particular board of education district, the person appointed to fill  
 10 the vacancy shall reside in the same district at the time of appointment and while filling  
 11 out the unexpired term.

12            **[(g) (I) (1)]** The Montgomery County Council may remove a member of the  
 13 county board for:

- 14            (i) Immorality;
- 15            (ii) Misconduct in office;
- 16            (iii) Incompetency; or
- 17            (iv) Willful neglect of duty.

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

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

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

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

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

29            **Article – Election Law**

30            8-401.

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

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

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

4 **(3) TO FILL A VACANCY IN THE MONTGOMERY COUNTY BOARD OF**  
5 **EDUCATION.**

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

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

10 **(3) SPECIAL ELECTIONS TO FILL VACANCIES IN THE MONTGOMERY**  
11 **COUNTY BOARD OF EDUCATION SHALL BE HELD AS PROVIDED IN § 3-901 OF THE**  
12 **EDUCATION ARTICLE.**

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

15 9-501.

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

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

20 (c) A special election to fill a vacancy in the Office of Representative in Congress  
21 shall be conducted by mail if the Governor's proclamation issued under § 8-710 of this  
22 article directs that the election be conducted by mail.

23 (d) (1) In this subsection, "local special election" means a special election to:

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

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

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

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

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

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

8 (2) A local special election shall be conducted by mail if **THE**  
9 **PROCLAMATION OF THE CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE OF A**  
10 **CHARTER COUNTY, OR** the resolution of the county council or board of county  
11 commissioners **OF THE AFFECTED COUNTY**, establishing the date of the special election  
12 directs that the election be conducted by mail.

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

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

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

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.