

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 251

(Senator Pinsky)

Education, Health, and Environmental Affairs

Ways and Means

Election Law - Special Elections - Calendar Revisions

This emergency bill makes various changes, primarily to dates and deadlines relating to special elections to fill a vacancy in the office of Representative in Congress and, in some cases, relating to special elections more generally. The bill also allows for a candidate in the regular primary election for Representative in Congress for the 7th Congressional District to withdraw their candidacy within two days after the special primary election being held on February 4, 2020, for that office. **The bill's provision allowing for a candidate to withdraw their candidacy for the regular primary election, within two days after the special primary election on February 4, 2020, terminates six months after the bill is enacted.**

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local government finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Special Election to Fill a Congressional Vacancy

Shortening of the Period When a Special Election Can Be Declined

The bill shortens the period in which, if a vacancy in the office of Representative in Congress occurs, the Governor may decline to call a special primary and general election and allow the office to remain vacant for the remainder of the term. The period is shortened from 60 days before the regular primary election, through the last day of the term, to 39 days before the regular primary election, through the last day of the term.

Limitation on Candidate Filings for a Merged Special and Regular Primary

Under current law, the Governor's proclamation declaring a special election to fill a vacancy in the office of Representative in Congress must order that the special primary election be merged with the regular primary election if the vacancy occurs or becomes known to the Governor during the period beginning 120 days before the regular primary election for Representatives in Congress and ending 40 days before the primary election. Also under current law, any individual who files a certificate of candidacy for the regular primary election must be deemed to have filed a certificate of candidacy for the special primary election and any other qualified individual may file a certificate of candidacy, for both the special primary election and the regular primary election, by 9 p.m. on the day that is two days after the issuance of the proclamation. The bill prohibits those "other qualified individual[s]" from filing a certificate of candidacy if there are 64 days or less before the date of the primary election.

Dates of Elections

For a special election to fill a vacancy in the office of Representative in Congress, the bill requires that the special primary election be held on a Tuesday that is *at least 80 days*, rather than at least 65 days, after the date of the Governor's proclamation declaring that a special primary election and special general election be held to fill the vacancy. The bill also requires that the special general election be held on a Tuesday that is *at least 70 days*, rather than at least 65 days, after the date of the special primary election.

Compliance with Federal and State Laws

The bill requires that the State Administrator of Elections ensure that a special election to fill a vacancy in the office of Representative in Congress is conducted in compliance with all federal and State laws.

Certificate of Nomination by a Nonprincipal Political Party

In a special election to fill a vacancy in the office of Representative in Congress, a certificate of nomination for a candidate nominated by a political party that is not required to nominate its candidates by party primary must be filed with the State Board of Elections (SBE) by 5 p.m. on the day of the special primary election.

Certification of Qualifying Candidates/Nominees

The bill moves up the dates by which SBE must certify to the appropriate local boards the name, residence, and party affiliation of each candidate or nominee who qualifies to appear on the special primary or general election ballot in a special election to fill a vacancy in the office of Representative in Congress. The dates are moved from 20 days before each election to 55 days before each election.

Certificate of Candidacy

The bill modifies the deadline for a certificate of candidacy for an office to be filled by a special election to be filed. The deadline is changed from 5 p.m. on the Monday that is 3 weeks or 21 days prior to the date for the special primary election to 5 p.m. on the first Monday that is 3 weeks or 21 days after the issuance of the proclamation by the Governor for the special primary election.

The bill also establishes that, for a write-in candidate, the certificate of candidacy for a special election must be filed by the earlier of (1) seven days after a total expenditure of at least \$51 is made to promote the candidacy by any authorized candidate campaign committee of the candidate or (2) 5 p.m. on the seventh day preceding the start of voting at a precinct polling place or, if the election is being conducted by mail, a voting center.

Nominations by Petition

The bill requires that, if a petition seeks to place the name of an individual on the ballot for a special election, (1) the verification and counting of validated signatures on the petition must be completed within 10 days after the filing of the petition and (2) judicial review must be sought by the second day following the determination to which the judicial review relates.

Certification and Display of Ballots for a Special Primary Election

The bill moves up the date by which SBE must certify and publicly display the content and arrangement of each ballot for a special primary election. The date is moved from 18 days before the election to 55 days before the election.

Transmittal of Results

The bill modifies the date by which each board of canvassers (the local board of elections, when organized for the purpose of tabulating and certifying voting results) must transmit the results of a special primary or general election held independent of a regular primary or general election to the Governor, SBE, and the clerk of the circuit court for the county. The date is changed from no later than the second Thursday after the election to no later than the second Friday after the election.

Candidate Withdrawal Deadline for the 7th Congressional District Primary Election

The bill establishes that an individual who has filed a certificate of candidacy for the (regular) primary election for Representative in Congress for the 7th congressional district may withdraw the certificate in accordance with procedures determined by the State Administrator of Elections within two days after the special primary election being held on February 4, 2020, for that office.

Current Law:

Special Election to Fill a Congressional Vacancy

Period When a Special Election Can Be Declined

If there is a vacancy in the office of Representative in Congress, the Governor must issue a proclamation, within 10 days after the date that the vacancy occurs or becomes known to the Governor, declaring that a special primary election and a special general election must be held to fill the vacancy. However, if the vacancy occurs during the period beginning 60 days before the regular primary election and ending on the last day of the term, the Governor may decline to issue a proclamation and allow the office to remain vacant for the remainder of the term.

Merged Special and Regular Primary

Regardless of other provisions, if a vacancy in the office of Representative in Congress occurs or becomes known to the Governor during the period beginning 120 days before the regular primary election for Representatives in Congress and ending 40 days before the

primary election, the Governor's proclamation must order that the special primary election be merged with the regular primary election. Any individual who files a certificate of candidacy for the regular primary election must be deemed to have filed a certificate of candidacy for the special primary election and any other qualified individual may file a certificate of candidacy, for both the special primary election and the regular primary election, by 9 p.m. on the day that is two days after the issuance of the proclamation.

Dates of Elections

The Governor's proclamation declaring that a special primary election and a special general election be held to fill a vacancy in the office of Representative in Congress must specify the dates of the special primary election and the special general election. The special primary election must be held on a Tuesday that is at least 65 days after the date of the proclamation and the special general election must be held on a Tuesday that is at least 65 days after the date of the special primary election.

Certificate of Nomination by a Nonprincipal Political Party

A deadline for filing a certificate of nomination for a candidate nominated by a political party that is not required to nominate its candidates by party primary is not established in statute.

Certification of Qualifying Candidates/Nominees

At least 20 days before the special primary election and before the special general election, SBE must certify to the appropriate local boards the name, residence, and party affiliation of each candidate or nominee who qualifies to appear on the ballot for each election.

Certificate of Candidacy

A certificate of candidacy for an office to be filled by a special election must be received and filed in the office of the appropriate board by 5 p.m. on the Monday that is 3 weeks or 21 days prior to the date for the special primary election specified by the Governor in the proclamation for the special primary election.

A deadline for a certificate of candidacy to be filed by a write-in candidate, specific to a special election, is not established in statute.

Verification and Counting of Petition Signatures and Judicial Review

The verification and counting of validated signatures on a petition must be completed within 20 days after the filing of the petition.

If a petition seeks to place the name of an individual or a question on the ballot at any election, except a presidential primary election, judicial review must be sought by the 10th day following the determination to which the judicial review relates or the 69th day preceding the election, whichever day is earlier.

Certification and Display of Ballots for a Special Election

For a special primary election, SBE must certify and publicly display the content and arrangement of each ballot at least 18 days before the election. For a special general election, SBE must certify and publicly display the content and arrangement of each ballot not later than a date specified in the Governor's proclamation.

Transmittal of Results

After each election, each board of canvassers must transmit one certified copy of the election results in its county to the Governor, SBE, and the clerk of the circuit court for the county. After a special primary or special election held independent of a regular primary or general election, the transmittal must be made as soon as possible, but not later than the second Thursday after the election.

Candidate Withdrawal from a Regular Primary Election

An individual who has filed a certificate of candidacy may withdraw the candidacy by filing a certificate of withdrawal within 10 days after the certificate of candidacy filing date. In a presidential election year, a certificate of candidacy must be filed by a candidate for nomination by a principal political party (by party primary) by 9 p.m. on the 95th day before the day of the primary election.

Background: Following the death of U.S. Congressman Elijah Cummings on October 17, 2019, the Governor issued a proclamation on October 28, 2019, declaring that a special primary election be held on February 4, 2020, and a special general election be held on April 28, 2020, to fill the vacancy in the office of Representative in Congress for the 7th Congressional District of Maryland.

The proclamation set the following deadlines:

- *November 20, 2019* – deadline for filing of a certificate of candidacy by a principal political party candidate;
- *January 13, 2020* – deadline for filing of a declaration of intent by a nonprincipal political party candidate or candidate seeking nomination by petition;

- *February 4, 2020* – deadline for filing of a certificate of candidacy by a nonprincipal political party candidate or candidate seeking nomination by petition;
- *the earlier of (1) seven days after a total expenditure of at least \$51 is made to promote a candidacy by a campaign finance entity of the candidate or (2) April 9, 2020* – deadline for filing of a certificate of candidacy for the election of a write-in candidate;
- *Two days following the applicable filing date* – deadline for withdrawal of a certification of candidacy; and
- *February 24, 2020* – deadline for certification and public display by SBE of the content and arrangement of each ballot for the special general election.

The proclamation also required that the special primary and general elections be conducted in accordance with (1) all applicable provisions of Maryland law; (2) all applicable regulations of SBE, unless the regulation conflicts with Maryland law; and (3) any instructions that the State Administrator provides in accordance with Maryland law.

State and Local Fiscal Effect: The bill is not expected to materially affect State or local finances; however, the shortening of the period in which the Governor may decline to call a special primary and general election to fill a congressional vacancy may result in increased State and local expenditures associated with a special primary and/or general election if a vacancy happens to occur in the future in that 21-day period during which, under the bill, if a vacancy occurs, the Governor can no longer decline to call a special election and allow the vacancy to remain through the end of the term.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Department of Legislative Services

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